

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**

<b>Appeal Decision:</b>	Approved in part; denied in part	<b>Appeal Number:</b>	1708238
<b>Decision Date:</b>	10/17/17	<b>Hearing Date:</b>	7/21/2017
<b>Hearing Officer:</b>	Cynthia Kopka	<b>Record Open to:</b>	8/18/2017

**Appellant Representative:**

**MassHealth Representative:**

Eileen Smith, via telephone (for Lucy Gucciardi)



*The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, Quincy, Massachusetts 02171*

# APPEAL DECISION

<b>Appeal Decision:</b>	Approved in part; denied in part	<b>Issue:</b>	Long term care eligibility – transfers
<b>Decision Date:</b>	10/17/17	<b>Hearing Date:</b>	7/21/2017
<b>MassHealth Rep.:</b>	Eileen Smith (for Lucy Gucciardi)	<b>Appellant Rep.:</b>	
<b>Hearing Location:</b>	Tewksbury		

## Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

## Jurisdiction

Through a notice dated March 2, 2017, MassHealth determined that Appellant was not eligible for MassHealth because of impermissible transfers of assets, resulting in a disqualification period from October 12, 2016 through June 2, 2019 (Exhibit 1). Appellant filed this appeal in a timely manner on March 27, 2017 (Exhibit 2). 130 CMR 610.015(B). Challenging the denial or scope of assistance is a valid basis for appeal. 130 CMR 610.032.

## Action Taken by MassHealth

MassHealth determined that Appellant was not eligible for MassHealth because of impermissible transfers of assets, resulting in a disqualification period from October 12, 2016 through June 2, 2019.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that Appellant made disqualifying transfers during the look-back period and in calculating the period of ineligibility.

## Summary of Evidence

The MassHealth representative appeared via telephone and testified as follows. On November 14, 2016, MassHealth received Appellant's application for long term care benefits. Appellant entered the nursing facility on July 13, 2016 and requested October 12, 2016<sup>1</sup> as the coverage start date. On December 29, 2016, MassHealth denied Appellant's application for failure to submit verifications. MassHealth relogged the application on January 20, 2017.

On March 2, 2017, MassHealth determined that Appellant made two separate disqualifying transfers of assets within the sixty month look-back period. First, Appellant transferred property to her son by deed. On June 12, 2015, Appellant and her son purchased a property (hereinafter, "the Property") for \$479,000. Mortgage documents show that Appellant and her son mortgaged the Property for \$470,324. On September 9, 2015, Appellant and her son transferred the Property by deed to Appellant's son and his wife. MassHealth did not receive the HUD document for the September transaction and thus could not determine whether Appellant received fair market value for the transfer. MassHealth determined that the tax assessed value of the Property was \$337,100.

Additionally, on September 9, 2016, Appellant transferred \$14,000 by check number 1756 to her son. In October 2016, \$10,000 was deposited into Appellant's account. MassHealth considered \$10,000 of the transfer cured, which left \$4,000 as an unverified transfer. The MassHealth representative at hearing testified that the total amount of the disqualifying transfer was \$337,500. However, after hearing, the MassHealth representative assigned to the case learned that the Property was jointly held by Appellant and her son, not her spouse. MassHealth determined that the correct amount of the disqualifying transfer was \$172,550 (Exhibit 9). Using the average daily rate of \$354, the period of ineligibility of 487 days would run from October 12, 2016 through February 11, 2018.

Appellant's representatives (her son and daughter-in-law) and attorney appeared in person and testified as follows. Appellant's attorney relied on 130 CMR 520.005(B), which states that

Any asset, other than a joint bank account, jointly owned by two or more individuals, is presumed to be owned in equal shares and counted proportionately unless a different distribution of ownership is verified ... When such a different distribution of ownership is verified, the MassHealth agency attributes the countable value of the assets to the applicant ... in proportion to the ownership interest.

Appellant's attorney argued that the facts of this case demonstrated that Appellant had no equitable interest and no ownership interest in the Property. Appellant's daughter-in-law testified that in April 2015, she refinanced the mortgage on her former home, a two-family property, as a primary owner. Soon after, Appellant's son and daughter-in-law decided to purchase the Property. Appellant's son and daughter-in-law made an offer on the Property that was accepted and both signed the contract to purchase real estate (Exhibit 5, Tab 4). Appellant's attorney noted that Appellant did not sign the accepted offer, and that the \$1,000 deposit came from the daughter-in-law's bank account (Exhibit

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<sup>1</sup> At hearing, the MassHealth representative testified that the requested coverage start date was October 1, 2016.

5, Tab 8).

After signing the contract, Appellant's son and daughter-in-law learned from their real estate broker that Appellant's daughter-in-law could not be named on the mortgage because she had refinanced her other property within six months. The broker informed Appellant's daughter-in-law that her financing for the Property would be denied if her name was on the paperwork.<sup>2</sup> Therefore, only Appellant's son's name appears on the purchase and sale agreement (Exhibit 5, Tab 4).

Appellant's son was not approved for a mortgage based on his sole income. The broker suggested having a family member be part of the mortgage to meet the income threshold for mortgage approval. Appellant's son added Appellant's name to the mortgage for approval (Exhibit 5, Tab 7).<sup>3</sup> Appellant's name was also added to the deed because the bank recorded both the deed and the mortgage. On June 12, 2015, the former owners of the Property signed the deed transferring the Property to Appellant and her son (Exhibit 5, Tab 5). The deed transferring the property to Appellant and her son was recorded on June 12, 2015. On the same day, Appellant signed and had notarized a second deed transferring the Property to her son and daughter-in-law on, which was not recorded until September 9, 2015 (Exhibit 5, Tab 5).

Appellant's attorney and representatives argued that Appellant had no equitable interest in the home and therefore it was never her asset. Appellant's attorney and representatives testified that Appellant never lived in the home, nor put any money towards it. Appellant's attorney presented bank statements and checks illustrating that the purchase deposits and mortgage payments all came from Appellant's son and daughter-in-law. Appellant's son and daughter-in-law paid \$1,000 for the initial deposit on the Property, \$15,765 as an additional deposit upon executing the purchase and sale agreement, and \$2,822.60 for costs due at closing (Exhibit 5, Tabs 4, 6, and 8). Appellant's son and daughter-in-law testified that they paid the full \$3,201.42 monthly mortgage payment from their joint bank account and demonstrated this by submitting copies of their bank statements from August 2015 through October 2016 showing the payment (Exhibit 5, Tab 9). Thus, Appellant's proportional interest in the property was zero, per 130 CMR 520.005(B).

Appellant's attorney argued because Appellant's proportional interest in the property was zero, Appellant did not convey anything of value when she signed the deed transferring the Property to her son and daughter-in-law. Further, when Appellant conveyed her interest in the Property to her son and daughter-in-law, her intent was not to qualify for MassHealth, but to allow her son and daughter-in-law to purchase their new home.

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<sup>2</sup> After the hearing, Appellant's attorney explained that on March 31, 2015, Appellant's daughter-in-law had refinanced her former home and received the primary occupant interest rate on the new mortgage. The mortgage agreement for the former home required Appellant's daughter-in-law to occupy the former home as her principal residence for at least one year. This contingency in the new mortgage prevented Appellant's daughter-in-law from including her name on the deed and mortgage on June 12, 2015 when Appellant's son purchased the Property (Exhibit 8).

<sup>3</sup> MassHealth representative pointed out that Appellant and her son are listed as "husband and wife" on the recorded mortgage. Appellant's attorney explained that this was an error.

At hearing, Appellant's attorney was not prepared to discuss the \$4,000 transfer because he was not informed of it prior to hearing. The hearing record was held open for Appellant to submit documentation to MassHealth, and for MassHealth to respond (Exhibit 6). The MassHealth representative stated that she did not receive anything regarding the uncured \$4,000 transfer after the hearing (Exhibit 9).

## **Findings of Fact**

Based on a preponderance of the evidence, I find the following:

1. On November 14, 2016, MassHealth received Appellant's application for long term care benefits.
2. Appellant entered the nursing facility on July 13, 2016 and requested October 12, 2016 as the coverage start date (Exhibit 9).
3. On December 29, 2016, MassHealth denied Appellant's application for failure to submit verifications. MassHealth relogged the application on January 20, 2017.
4. On March 2, 2017, MassHealth determined that Appellant made disqualifying transfers of assets within the sixty month look-back period (Exhibit 1).
5. After hearing, MassHealth provided a corrected disqualifying transfer total of \$172,550 (Exhibit 9).
6. Using the average daily rate of \$354, the period of ineligibility of 487 days would run from October 12, 2016 through February 11, 2018.
7. On June 12, 2015, Appellant and her son received the deed to the Property as joint tenants and the mortgage on the Property (Exhibit 5, Tabs 5 and 7).
8. This deed and the mortgage on the Property were recorded with the Registry of Deeds on June 12, 2015.
9. On June 12, 2015, Appellant and her son transferred by deed their joint tenancy in the Property to Appellant's son and daughter-in-law as tenants by the entirety for nominal consideration (Exhibit 5, Tab 5).
10. This deed was recorded with the Registry of Deeds on September 9, 2015 (Exhibit 5, Tab 5).
11. Appellant's son and daughter-in-law paid \$1,000 for the initial deposit on the Property, \$15,765 as an additional deposit upon executing the purchase and sale agreement, and \$2,822.60 for costs due at closing (Exhibit 5, Tabs 4, 6, and 8).

12. Appellant's son and daughter-in-law testified that they paid the full \$3,201.42 monthly mortgage payment from their joint bank account and demonstrated this by submitting copies of their bank statements from August 2015 through October 2016 showing the payment (Exhibit 5, Tab 9).
13. On September 9, 2016, Appellant transferred \$14,000 by check to her son.
14. In October 2016, \$10,000 was deposited into Appellant's account.

## **Analysis and Conclusions of Law**

Per 130 CMR 519.006(A)(4), to qualify for MassHealth Standard coverage as a resident of a long term care facility, an individual must have countable assets of \$2,000 or less. Regarding assets that are jointly owned, 130 CMR 520.005(B) provides that

[a]ny asset, other than a joint bank account, jointly owned by two or more individuals, is presumed to be owned in equal shares and counted proportionately unless a different distribution of ownership is verified or unless assets are being assessed in accordance with 130 CMR 520.016. When such a different distribution of ownership is verified, the MassHealth agency attributes the countable value of the assets to the applicant or member or the spouse in proportion to the ownership interest.

MassHealth considers any transfer of a resource owned by a nursing facility resident for less than fair market value during the appropriate look-back period to be a disqualifying transfer unless the transfer in question is permitted or exempted under the regulations. Specifically, 130 CMR 520.018(B) states that MassHealth "will deny payment for nursing facility services to an otherwise eligible nursing-facility resident ... who transfers or whose spouse transfers countable resources for less than fair-market value during or after the period of time referred to as the look-back period." The look-back period for transfers of resources occurring on or after February 8, 2006 is 60 months. 130 CMR 520.019(B)(2).

According to 130 CMR 520.019(C),

The MassHealth agency considers any transfer during the appropriate look-back period by the nursing-facility resident or spouse of a resource, or interest in a resource, owned by or available to the nursing-facility resident or the spouse (including the home or former home of the nursing-facility resident or the spouse) for less than fair-market value a disqualifying transfer unless listed as permissible in 130 CMR 520.019(D), identified in 130 CMR 520.019(F), or exempted in 130 CMR 520.019(J). The MassHealth agency may consider as a disqualifying transfer any action taken to avoid receiving a resource to which the nursing-facility resident or spouse is or would be entitled if such action had not been taken. Action taken to avoid receiving a resource may include, but is not limited to, waiving the right to receive a resource, not accepting a resource, agreeing to the diversion of a

resource, or failure to take legal action to obtain a resource. In determining whether or not failure to take legal action to receive a resource is reasonably considered a transfer by the individual, the MassHealth agency considers the specific circumstances involved. A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available.

A transfer may be cured if the full value or a portion of the full value of the transferred resources is returned to the applicant. 130 CMR 520.019(K)(2)(b). Per 130 CMR 520.019(F), MassHealth will not impose a period of ineligibility for transferring resources at less than fair market value if the resident demonstrates to MassHealth's satisfaction that

- (1) the resources were transferred exclusively for a purpose other than to qualify for MassHealth; or
- (2) the nursing-facility resident or spouse intended to dispose of the resource at either fair-market value or for other valuable consideration. Valuable consideration is a tangible benefit equal to at least the fair-market value of the transferred resource.

The federal Health Care Finance Administration (HCFA) Transmittal No. 64, Section 3258.10 sets forth the following guidance to transfers exclusively for a purpose other than qualifying for Medicaid:

Transfers Exclusively for a Purpose Other Than to Qualify for Medicaid.--Require the individual to establish, to your satisfaction, that the asset was transferred for a purpose other than to qualify for Medicaid. Verbal assurances that the individual was not considering Medicaid when the asset was disposed of are not sufficient. Rather, convincing evidence must be presented as to the specific purpose for which the asset was transferred.

Here, MassHealth ultimately determined that Appellant made two disqualifying transfers totaling \$172,550. First, Appellant wrote a check to her son for \$14,000. Of that amount, \$10,000 was returned to Appellant, and MassHealth considered this amount to be cured pursuant to 130 CMR 520.019(K)(2)(b). However, during the record open period Appellant did not verify whether the remaining \$4,000 was an allowable transfer of assets, or whether Appellant received fair market value. Regarding the \$4,000 disqualifying transfer, this appeal is denied in part.

Second, MassHealth considered Appellant's transfer of the deed to the Property to her son and daughter-in-law to be a disqualifying transfer of \$168,500. However, Appellant presented sufficient evidence demonstrating that Appellant had no real ownership interest in the property. Appellant's representatives demonstrated through testimony and bank records that Appellant never lived in, nor paid any money towards, the Property. Additionally, Appellant both acquired and transferred the Property on the same day: June 12, 2015. Appellant has established that per 130 CMR 520.005(B), her proportionate ownership interest in the Property was zero. Finally, the bank records and documents set forth sufficient, convincing evidence that Appellant's intent in

transferring the deed to the Property was exclusively for a purpose other than to qualify for Medicaid. The series of signed documents and bank records clearly illustrate that the parties intended for Appellant's son and daughter-in-law to own the Property, particularly given that Appellant acquired and transferred the deed to the Property on the same day. To the extent that MassHealth determined that Appellant made a disqualifying transfer of \$168,500, this appeal is approved in part.

## **Order for MassHealth**

Adjust the total amount of the disqualifying transfer from \$172,550 to \$4,000. Redetermine the period of disqualification in accordance with the adjusted impermissible transfer figure.

## **Notification of Your Right to Appeal to Court**

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

## **Implementation of this Decision**

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings at the address on the first page of this decision.

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Cynthia Kopka  
Hearing Officer  
Board of Hearings

cc: