

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**

<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	0804275
<b>Decision Date:</b>	9/3//08	<b>Hearing Date:</b>	May 21, 2008
<b>Hearing Officer:</b>	Stanley M. Kallianidis	<b>Record-Open Date:</b>	June 1, 2008

**Appellant Representative:**

**MassHealth Representative:**

Jean Julio, Taunton



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
Two Boylston Street  
Boston, MA 02116*

## APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Transfer of Assets
<b>Decision Date:</b>	9/3/08	<b>Hearing Date:</b>	May 21, 2008
<b>MassHealth Rep.:</b>	Jean Julio	<b>Appellant Rep.:</b>	

### 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 10, 2008, MassHealth terminated the appellant's MassHealth benefits on March 22, 2008 due to a disqualifying transfer of assets (Exhibit 1). The appellant filed his appeal on March 25, 2008 (see 130 CMR 610.015) and Exhibits 1 & 2). The imposition of a penalty period is valid grounds for appeal (see 130 CMR 610.032).

### Action Taken by MassHealth

MassHealth terminated the appellant's MassHealth benefits due to a disqualifying transfer of assets.

### Issue

Was MassHealth correct, pursuant to 130 CMR 520.019, that the appellant made a disqualifying transfer?

## Summary of Evidence

The MassHealth representative testified that the appellant applied for MassHealth on October 24, 2007. According to the application, his spouse's place of residence was an assisted living center in North Dartmouth, Massachusetts. Also according to the application, the appellant and his spouse were beneficiaries of a home in a trust located in Rehoboth, Massachusetts, and the trust was in the process of transferring it back to them (Exhibit 3). A verifications checklist was sent out the appellant's attorney on October 25, 2007. The checklist indicated that, with regard to the home in the trust, either an Agreement to Sell form had to be submitted, or, in the alternative, the home had to be rented for it to be noncountable (Exhibit 4).

On November 15, 2007, a quitclaim deed transferring the Rehoboth property from the trust to the appellant and his spouse was executed. On the same day, the couple transferred the home to the community spouse only (Exhibits 5 & 6). The property had previously been listed for sale with a real estate agent (Exhibit 7).

The transfer out of the appellant's name is considered to be a disqualifying transfer as the home cannot be liened. The house was sold for \$499,000.00. Half, or \$250,000.00 is considered the disqualifying amount. The case was initially approved because the second deed had been missed. The community spouse briefly returned to the house before it was sold in April 2008. She purchased an annuity with the proceeds and now lives in an apartment (Exhibits 8 & 9).

The appellant's attorney testified that the appellant and his spouse moved into assisted living in 2005. On August 9, 2007, the appellant was admitted into his nursing facility. Because the appellant's spouse did not need to be in an assisted living facility and only went there to be with her husband, she moved back into her Rehoboth home in January 2008. On January 4, 2008, the appellant was sent out an approval for MassHealth beginning on October 23, 2007, and on the same date, a lien notice was sent to him. The expectation was that the lien would be placed and \$40,000.00 from the \$499,000.00 was placed in an escrow account for payment of the lien. However, a lien was not placed and the appellant's benefits were terminated. The remaining funds were used to purchase an annuity for the community spouse (Exhibit 10).

During the record-open period the appellant's attorney responded to the contention that there was a disqualifying transfer of assets. The community spouse could not afford her assisted living unit even though she had downsized; therefore, she had to return home to Rehoboth. She needed to sell her home to have funds for living expenses. She currently lives in an apartment in Dartmouth, Massachusetts (Exhibits 11 & 12). A letter from the community spouse's assisted living center indicated that she vacated her unit at the end of January 2008, and not December 2007 (Exhibit 13). A letter from the appellant's daughters stated that their mother had to sell the house because it was in disrepair and that she could not afford to fix it. They stated that their parents did not try to circumvent MassHealth regulations in the process (Exhibit 14).

## **Findings of Fact**

Based on a preponderance of the evidence, I find:

1. The appellant applied for MassHealth on October 24, 2007. On August 9, 2007, the appellant was admitted into his nursing facility (Exhibit 3).
2. At the time of application, his spouse's place of residence was an assisted living center in North Dartmouth, Massachusetts (Exhibit 3).
3. Also at the time of application, the appellant and his spouse were beneficiaries of a home in a trust located in Rehoboth, Massachusetts, and the trust was in the process of transferring it back to them (Exhibit 3).
4. On November 15, 2007, a quitclaim deed transferring the Rehoboth property from the trust to the appellant and his spouse was executed. On the same day, the couple transferred the home to the community spouse only (Exhibits 5 & 6).
5. On January 4, 2008, the appellant was sent out an approval for MassHealth, and on the same date, a lien notice was sent to him (testimony).
6. The transfer out of the appellant's name was considered to be a disqualifying transfer as the home cannot be liened. The house was sold for \$499,000.00. Half, or \$250,000.00 was considered the disqualifying amount (testimony).
7. The case was initially approved in error with eligibility beginning on October 23, 2007 (Exhibit 13 and testimony).
8. The case was initially approved because the second deed had been missed. The community spouse briefly returned to the house before it was sold in April 2008. She purchased an annuity with the proceeds and now lives in an apartment (testimony).

9. MassHealth was unable to place a lien on the Rehoboth property prior to its sale (testimony).

## **Analysis and Conclusions of Law**

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 will consider the specific circumstances involved. A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available (130 CMR 520.019(C)).

130 CMR 520.019(F) provides with regard to intent of transferring assets:

In addition to the permissible transfers described in 130 CMR 520.019(D), the MassHealth agency will not impose a period of ineligibility for transferring resources at less than fair-market value if the nursing-facility resident or the spouse demonstrates to the MassHealth agency'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.

For transfers occurring before February 8, 2006, the period of ineligibility will begin on the first day of the month in which resources have been transferred for less than fair-market value. For transfers occurring on or after February 8, 2006, the period of ineligibility will begin on the first day of the month in which resources were transferred for less than fair-market value or the date on which the individual is otherwise eligible

for MassHealth payment of long-term-care services, whichever is later (130 CMR 520.019(l)(3)).

In the instant appeal, I have found that the appellant applied for MassHealth on October 24, 2007. On August 9, 2007, he was admitted into his nursing facility. Prior to his nursing home admission, the appellant and his spouse resided together in an assisted living facility. The couple also owned a second home in Rehoboth, Massachusetts that was held in trust. In November 2007, the house was transferred out of the trust, back to the appellant and his spouse. On the same date, the house was transferred solely to the community spouse. While the spouse later briefly moved back to the property before selling it, it was the deed that removed the appellant's name from the property that MassHealth considered to be a disqualifying transfer. I agree with its action.

As stated in the above regulation, "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." Here, the action taken, removing the appellant as a joint owner of the Rehoboth property, made it impossible for MassHealth to place a lien on it. MassHealth would have been entitled to a lien because neither the appellant nor his spouse lived in it at the time of application. The appellant did not receive anything for the transfer, thus it is disqualifying. Given the proximity between the appellant's application and the transfer, only a few weeks, qualifying for MassHealth was a factor, thus satisfying the intent requirement.

In conclusion, the appellant made a disqualifying transfer of the value of his half of the property, or \$250,000.00, as the transfer precluded MassHealth from placing a lien on it.

The appeal is therefore denied.

## **Order for the MassHealth**

None, other than to calculate the appellant's penalty period based upon \$250,000.00 transfer.

## **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.

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Stanley M. Kallianidis  
Hearing Officer  
Board of Hearings

cc:

Taunton MEC