

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

Appeal Decision:	Denied	Appeal Number:	1001130
Decision Date:	7/29/10	Hearing Date:	March 29, 2010
Hearing Officer:	B. Padgett		

Appellant Representative:

MassHealth Representative:

J. Thomas



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

APPEAL DECISION

Appeal Decision:	Denied	Issue:	130 CMR 610.018
Decision Date:	7/29/10	Hearing Date:	March 29, 2010
MassHealth Rep:	L Thomas	Appellant Rep:	Son
Hearing Location:	Springfield		

Authority

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

Jurisdiction

The appellant received a notice dated December 21, 2009, stating: "You are not eligible for MassHealth. Because of a transfer of assets, the home, on 8-3-2007, a disqualifying transfer has occurred from 10-16-09, the date otherwise eligible until 8/16/2010. The Division cannot pay for nursing home services until 8/17/2010" (Exhibit 1).

The appellant filed this appeal timely on January 06, 2010 (130 CMR 610.015); Exhibit 2).

The denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth has denied the appellant MassHealth long term care benefits until August 16, 2010.

Issue

Did MassHealth correctly determine the appellant's eligibility for MassHealth long term care?

Summary of Evidence

The MassHealth representative testified that the appellant applied for MassHealth long term care benefits on August 18, 2009. The appellant was denied on September 25, 2009, for lack of verifications. On October 07, 2009, additional verifications were submitted and the appellant's application was re-stamped as of that date. Based on the submitted information the appellant was determined eligible for community MassHealth and denied long term care coverage as she had transferred her home assessed at \$129,600.00 on August 02, 2007, which is within the regulatory look-back period. The appellant retained a life estate in the property and MassHealth originally determined the remainder interest barred the appellant from MassHealth long term care benefits for 305 days or until August 17, 2010. After review MassHealth determined the correct transfer amount was \$92,181.00, (the appellant's age of 85 years times the MassHealth Life Estate and Remainder Interest Table ($\$129,600.00 \times .71128$), which causes the appellant to be ineligible for MassHealth long term care benefits for 336 days or September 16, 2010. This is based on the average nursing home pay rate per day of \$274.00 divided by the transferred amount ($\$92,181.00 \div \$274.00 = 336$). MassHealth submitted into evidence the appellant's application, assessed value of property, deed dated August 02, 2007, Table S and Tiger Table (Exhibit 4).

The appellant's representative indicated that his mother had transferred her property in 2005, however her attorney never recorded the deed. The representative argued that the family should not be penalized because someone they hired to do the legal work neglected to record the deed. The representative testified that the appellant's husband died in 1999 and that they both were World War II veterans and had worked their entire life and all they wanted is to leave a little something to their family. The representative stated the appellant lived in the home until she was getting ill and had to move into assisted living and then the nursing home on October 16, 2009. The appellant submitted a copy of a deed dated September 26, 2005 (Exhibit 5).

The MassHealth representative indicated if the appellant had recorded the deed in 2005 the appellant would be eligible for MassHealth long term care benefits, but because it was not recorded until 2007 and is therefore within the look-back period and an impermissible transfer.

The appellant was contacted and a request was made by the hearing officer for the appellant's representative to submit the original 2005 deed (although the appellant's representative submitted a copy of the 2005 deed at hearing, he indicated he had the original) and a letter from the closing attorney at the time indicating he neglected to record the deed. The record was opened until May 19, 2010, and then this period was extended to June 18, 2010, to allow the appellant to submit the requested documentation. Although the appellant's representative left several voice mail messages indicating he had contacted the closing attorney and would be submitting the requested documentation no additional evidence was received prior to the record close date or by the issuance of this decision.

Findings of Fact

Based on a preponderance of the evidence, I find:

1. The appellant transferred her home with an assessed value of \$129,600.00 on August 02, 2007, for \$1.00, retaining a life estate interest in the property.
2. At the time of the transfer the appellant was 85 years old.
3. MassHealth determined the appellant's life estate interest in the property to be \$92,181.00, based on the appellant's age and the MassHealth Life Estate and Remainder Interest Table ($\$129,600 \times .71128$).
4. MassHealth determined the appellant is ineligible for MassHealth long term care benefits for 336 days or September 16, 2010 (average nursing home pay rate per day of \$274.00 divided by the transferred amount ($\$92,181.00 \div \$274.00 = 336$)).

Analysis and Conclusions of Law

MassHealth 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. A disqualifying transfer may include any action taken which would result in making a formerly available asset no longer available (130 CMR 520.019(C)).

130 CMR 520.019: Transfer of Resources Occurring on or after August 11, 1993

- (B) Look-Back Period. Transfers of resources are subject to a look-back period, beginning on the first date the individual is both a nursing-facility resident and has applied for or is receiving MassHealth Standard. This period generally extends back in time for 36 months. The look-back period for transfers of resources from a revocable trust to someone other than the nursing-facility resident, or transfers of resources into an irrevocable trust where future payment to the nursing-facility resident is prevented, is 60 months.
- (C) Disqualifying Transfer of Resources. The Division 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 Division 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 Division will consider the specific circumstances involved. A disqualifying transfer may include any action taken which would result in making a formerly available asset no longer available.

The appellant applied for MassHealth long term benefits on October 07, 2009, after transferring her home to her children on August 02, 2007, for \$1.00 (the home has been assessed at \$129,000.00 for tax purposes) retaining a life-estate interest in the property under the terms of the sale. Based on the appellant's age and the appropriate life estate tables MassHealth determined the appellant transferred \$92,181.00. Pursuant to 130 CMR 520.019, the appellant was determined to be disqualified for 336 days and as a result the appellant was found to be ineligible for MassHealth long-term-care benefits until September 16, 2010.

The appellant's representative argues that the property was transferred in September 2005 and assert the closing attorney never recorded the transfer. The representative maintains the family should not be penalized because someone else neglected to record the deed.

Delayed recording of a deed does not render it defective; however delivery is essential to the validity and effectiveness of the deed, (Town of Lexington v. Ryder, 296 Mass.566, 6 N.E.2d 761 (1937)), and the issue of whether and when the deed was delivered is a question of fact (see Boyle v. Owens, 326 Mass. 163, 93 N.E.2d 404 (1950)). Delivery occurs when the grantor intends the deed to effect a present transfer of the property conveyed and the grantee assents to the conveyance. Frankowich v. Szczuka, 321 Mass. 75, 71 N.E.2d 761 (1947). The date shown on the deed is prima facie evidence of the date of delivery but that presumption can be overcome by evidence of extrinsic facts or circumstances. Ashkenazy v. R.M. Bradley & Co, 328 Mass. 242, 247 (1952); Graves v. Hutchinson, 39 Mass. App. Ct. 634, 640 (1996). Words or conduct of the grantor evidencing an intention to render the deed presently operative and effectual so as to vest the estate in the grantee, and to surrender control over the title, is necessary and sufficient to constitute a valid delivery. Frankowich v. Szczuka, 321 Mass. 75, 71 N.E.2d 761 (1947).

In this case, the representative testified that because the appellant wanted to leave something to her family she transferred her property to her children in 2005; however the deed was never recorded. If this were the extent of the activity regarding the transfer, the representative could argue that a deed does not necessarily need to be recorded to be valid.¹ Unfortunately the

¹ **Recording or Filing Place** – Generally, deeds should be recorded in the county in which the real estate is located. Although generally a deed does not have to be recorded to be a valid conveyance, there are practical reasons for recording a deed. Deeds usually do not take effect as to creditors and subsequent purchasers without notice until the instrument is recorded. Thus, unrecorded deeds may be void as to all subsequent creditors and subsequent purchasers without notice until they are filed for record. Recording a deed places subsequent purchasers on constructive notice in that subsequent purchasers are deemed to have actual knowledge of any recorded instrument. Some states are "race-notice" states, which mean that the first grantee without notice to record a deed to property will be protected against the interests of other grantees with unrecorded deeds to the same property.

appellant transferred the property again on August 02, 2007, which was recorded. This action directly contradicts the notion that she had already transferred the property as she would have no legal right over the property if it had already been transferred. In addition at the fair hearing the appellant's representative submitted a copy of the 2005 deed and indicated he had access to the original. Further when contacted he stated he would submit the original 2005 deed along with a statement from the 2005 closing attorney that the attorney neglected to record the deed. Despite opening the record until May 19, 2010, and then extending the record open period until June 18, 2010, the appellant's representative failed to provide any additional evidence.

I therefore conclude for the purposes of MassHealth eligibility that the delivery of the deed occurred when it was recorded in 2007. Thus, a disqualifying transfer occurred within the look-back period. MassHealth has correctly determined the appellant's life estate interest in the property and period of ineligibility.

This appeal is DENIED.

Order for MassHealth

None.

Notification of Your Right to Appeal to Court

If you disagree with this decision, in part or whole, 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.

Brook Padgett
Hearing Officer
Board of Hearings

cc: MassHealth representative: Springfield MEC