Office of Medicaid

BOARD OF HEARINGS

Appellant Name and Address:

Appeal Decision:	Approved	**Appeal Number:**	1004772
Decision Date:	8/17/10	**Hearing Date:**	June 28, 2010
Hearing Officer:	Stanley M. Kallianidis		

Appellant Representative:

MassHealth Representative:

Jeff Sypeck, 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

Appeal Decision:	Approved	**Issue:**	transfer of assets
Decision Date:	8/17/10	**Hearing Date:**	June 28, 2010
MassHealth Rep.:	Jeff Sypeck	**Appellant Rep.:**	

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 3, 2010 MassHealth denied the appellant's application for MassHealth benefits prior to March 9, 2010 due to a disqualifying transfer (see Exhibit 1). The appellant filed this appeal in a timely manner on March 8, 2010 (see 130 CMR 610.015) and Exhibit 2). A dispute over the amount of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth benefits prior to March 9, 2010.

Issue

Was MassHealth correct, pursuant to 130 CMR 520.007(C)(4) and 520.019 in determining that the appellant made a disqualifying transfer of $80,498.00?

Summary of Evidence

The MassHealth representative testified that the appellant applied for MassHealth on June 22, 2009 (Exhibit 3). The application was denied prior to March 9, 2010 due to a disqualifying transfer of assets totaling $80,498.00 (Exhibit 1). He stated that the appellant purchased an annuity for $355,000.00 in September 2009. The appellant was 79 years old at the time with a life expectancy of 8.11 years according to life expectancy tables used by MassHealth. Given the amount of the annuity and appellant's life expectancy, the amount he is expected to receive is $43,773.12 per year, or $3647.76 monthly. The difference between the life expectancy payments and the actual payments of $2820.61 is the disqualifying amount. This amount is $9925.80 yearly for 8.11 years, or $80,498.00. The representative explained that the ineligibility period was 294 days. It was determined by taking the amount of the disqualifying transfer, $80,498.00 and dividing by the average daily private nursing home rate, $274.00, beginning May 2009 (Exhibits 4 & 5). In support of the penalty period, the MassHealth representative cited 130 CMR 520.007(C)(4)) which states that a purchase of an annuity is a disqualifying transfer of assets-

> (b) when the beneficiary is the applicant, member, or spouse and when the total present value of projected payments from the annuity is less than the value of the transferred asset (purchase price). In this case, MassHealth determines the amount of the disqualifying transfer based on the actuarial value of the annuity compared to the beneficiary's life expectancy using the life-expectancy tables as determined by MassHealth, giving due weight to the life-expectancy tables of institutions in the business of providing annuities.

The appellant's attorney disputed that a disqualifying transfer had taken place. He argued that under the above referenced regulation, MassHealth must give "due weight to the life-expectancy tables of institutions in the business of providing annuities." MassHealth was given a copy of an Aviva Life Expectancy table that was used in calculating the monthly payout of a lifetime annuity for the appellant. According to the table, which was in effect at the time of the creation of the annuity in 2009, the appellant at 79 years of age had a life expectancy of 10.75 years of age. Even though this results in a lower monthly payout to the appellant, MassHealth must accept this under its own regulations. In order to be paid out over his life expectancy of 10.75 years, the appellant must receive at least $2752.00 monthly from a $355,000.00 annuity (Exhibit 6).

Findings of Fact

Based on a preponderance of the evidence, I find:

1. The appellant applied for MassHealth on June 22, 2009 (Exhibit 3).

2. The application was denied prior to March 9, 2010 due to a disqualifying transfer of assets totaling $80,498.00 (Exhibit 1).

3. The assessed purchased an annuity for $355,000.00 in September 2009(Exhibits 5 & 6).

4. The appellant was 79 years old at the time with a life expectancy of 8.11 years according to life expectancy tables used by MassHealth (Exhibits 4 & 5).

5. Given the amount of the annuity and appellant's life expectancy, the amount he is expected to receive is $43,773.12 per year, or $3647.76 monthly (Exhibits 4 & 5).

6. The difference between the life expectancy payments and the actual payments of $2820.61 is the disqualifying amount (Exhibits 4 & 5).

7. The ineligibility period was 294 days. It was determined by taking the amount of the disqualifying transfer, $80,498.00 and dividing by the average daily private nursing home rate, $274.00, beginning May 2009 (Exhibits 4 & 5).

8. MassHealth was given a copy of an Aviva Life Expectancy table that was used in calculating the monthly payout of a lifetime annuity for the appellant. According to the table, which was in effect at the time of the creation of the annuity in 2009, the appellant at 79 years of age had a life expectancy of 10.75 years of age (Exhibit 6).

9. In order to be paid out over his life expectancy of 10.75 years, the appellant must receive at least $2752.00 monthly from a $355,000.00 annuity (Exhibit 6).

Analysis and Conclusions of Law

MassHealth 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). 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. 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, MassHealth 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 (130 CMR 520.019(C)).

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

<u>Determination of Intent:</u> In addition to the permissible transfers described in 130 CMR 520.019(D), MassHealth 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 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.

130 CMR 520.007(C)(4) states: Payments from an annuity are countable income in accordance with 130 CMR 520.009. If the annuity can be converted to a lump sum, the lump sum, less any penalties or costs of converting to a lump sum, is a countable asset. Purchase of an annuity is a disqualifying transfer of assets for nursing-facility residents as defined at 130 CMR 515.001 in the following situations:

(a) when the beneficiary is other than the applicant, member, or spouse;

(b) when the beneficiary is the applicant, member, or spouse and when the

> total present value of projected payments from the annuity is less than the value of the transferred asset (purchase price). In this case, MassHealth determines the amount of the disqualifying transfer based on the actuarial value of the annuity compared to the beneficiary's life expectancy using the life-expectancy tables as determined by MassHealth, giving due weight to the life-expectancy tables of institutions in the business of providing annuities;

MassHealth defines an annuity as “a legal instrument that pays a fixed sum in regular, periodic installments for a designated period or for life” (130 CMR 515.001).

In the instant appeal, the appellant’s MassHealth application of June 22, 2009 was denied prior to March 9, 2010 due to a disqualifying transfer of assets totaling $80,498.00. The assessed purchased an annuity for $355,000.00 in September 2009. The appellant was 79 years old at the time with a life expectancy of 8.11 years according to the life expectancy table used by MassHealth. Given the amount of the annuity and the appellant’s noted life expectancy, the amount he is expected to receive is $43,773.12 per year, or $3647.76 monthly. The difference between the life expectancy payments and the actual payments of $2820.61 is the disqualifying amount.

Although MassHealth’s calculation was correct using the life expectancy table that it did, it was incorrect to ignore the appellant’s life expectancy table from Aviva. In this case, MassHealth was presented with a copy of the Aviva table and, without sufficient justification, refused to apply it. In light of the above regulation, this is not acceptable, as a life expectancy table from an annuity company cannot be disregarded for the sole reason that it affords a better outcome for a client; rather it must be afforded “due weight.”

Using the table that the appellant provided, which was in effect at the time of the creation of the annuity in 2009, the appellant at 79 years of age had a life expectancy of 10.75 years of age. In order to be paid out over his life expectancy of 10.75 years, the appellant needs to receive at least $2752.00 monthly from a $355,000.00 annuity. The appellant’s annuity for this amount pays out more than $2752.00 each month with a payout of $2820.61. Thus, there is no disqualifying transfer in this case.

The appeal is therefore approved.

Order for the MassHealth

Rescind penalty period and determine appellant’s earliest MassHealth start date.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this notice, you should contact your local office. 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.

Stanley M. Kallianidis
Hearing Officer
Board of Hearings