

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

Appeal Decision:	Denied	Appeal Number:	1009905
Decision Date:	10/21/10	Hearing Date:	September 21, 2010
	Hearing Officer:	Stanley M. Kallianidis	

Appellant Representative:

MassHealth Representative:

Jean Julio, Taunton



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th Floor
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Transfer of Assets
Decision Date:	10/21/10	Hearing Date:	September 21, 2010
MassHealth Rep.:	Jean Julio	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 May 24, 2010, MassHealth denied the appellant's application due to a disqualifying transfer of \$170,000.00 (Exhibit 1). The appellant filed her appeal on June 2, 2010 (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 denied the appellant's application for MassHealth benefits and established a penalty period.

Issue

Was MassHealth correct, pursuant to 130 CMR 520.019, in its calculation of the appellant's penalty period?

Summary of Evidence

The MassHealth representative testified that the appellant applied for MassHealth long-term care benefits on March 15, 2010 (Exhibit 3). She entered her nursing facility on May 5, 2009 (Exhibit 3). The application was denied through December 11, 2011 due to a disqualifying transfer of assets of \$170,000.00 (Exhibit 1). She explained that the appellant had \$170,000.00 withdrawn from her bank account on February 15, 2008 and that this amount went to her son (Exhibit 4). MassHealth considered this to be a gift, and thus a disqualifying transfer of assets (Exhibit 5). The average daily private nursing home rate is \$274.00. The appellant's otherwise eligible date is May 1, 2010 as this is the date that the appellant's nursing home was paid privately through. The transfer of \$170,000.00 led to a penalty of 620 days, not expiring until December 11, 2011 (Exhibit 4).

The appellant's daughter and power of attorney testified that the appellant has severe dementia and needs to be in a nursing home. Prior to her nursing home, she was in assisted living. The \$170,000.00 that went to her brother came from the sale of the appellant's home in 2008. This was not a gift, but rather, repayment of a loan. She testified that her brother loaned their parents \$35,000.00 at 9% interest in 1988 and 1989 (Exhibit 5).

Submitted into the record were the wills of the appellant and her spouse drafted in 1990. The spouse died in 2001. According to Article IV of the wills, there is "no evidence of any promissory note for this indebtedness," in reference to the \$35,000.00 loans which came in seven payments of \$5000.00 each from 1988-1989. The wills each state that repayment with interest is to come from the estate of the surviving spouse. According to a letter from the appellant's spouse, this claim of principal and interest "supersedes all other claims as to final distribution of the estates" (Exhibits 6-8).

Findings of Fact

Based on a preponderance of the evidence, I find:

1. The appellant applied for MassHealth on March 15, 2010 (Exhibit 3).
2. The appellant entered her nursing facility on May 5, 2009 (Exhibit 3).
3. The application was denied through December 11, 2011 due to a disqualifying transfer of assets of \$170,000.00 (Exhibit 1).
4. The appellant had \$170,000.00 withdrawn from her bank account on February 15, 2008 and this amount went to her son (Exhibit 4).

5. The average daily private nursing home rate is \$274.00. The appellant's otherwise eligible date is May 1, 2010 as this is the date that the appellant's nursing home was paid privately through (Exhibit 1).
6. The appellant's son loaned his parents \$35,000.00 at 9% interest in 1988 and 1989 (Exhibit 5).
7. The appellant and her spouse each drafted wills in 1990. The spouse died in 2001 (Exhibits 7 & 8).
8. According to Article IV of the wills, there is "no evidence of any promissory note for this indebtedness, " in reference to the \$35,000.00 loans which came in seven payments of \$5000.00 each from 1988-1989 (Exhibits 7 & 8).
9. The wills each state that repayment with interest is to come from the estate of the surviving spouse (Exhibits 7 & 8).
10. According to a letter from the appellant's spouse, this claim of principal and interest "supersedes all other claims as to final distribution of the estates" (Exhibit 6).

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 March 15, 2010 and entered her nursing facility on May 5, 2009. The application was denied through December 11, 2011 due to a disqualifying transfer of assets. The appellant had \$170,000.00 withdrawn from her bank account on February 15, 2008 and this amount went to her son. While MassHealth deemed the transfer a disqualifying gift, the appellant contended that the withdrawal was for a legitimate transaction, repayment of a loan.

The appellant's \$170,000.00 came from the sale of her house. While there is evidence of a loan agreement between the appellant and her spouse with their son, there are no repayment terms in the loan that call for it to be repaid during their lifetimes. Rather, according to the couples' respective wills, repayment of the loan, \$35,000.00 made in installments in 1988 and 1989 at 9% interest, is to come from the estate of the surviving spouse. Thus, where the appellant's spouse died in 2001, repayment is to come from her estate.

Accordingly, based on the foregoing, the appellant's son was not entitled to recoup payment of his loan from the sale of his mother's home. Moreover, even if the son were entitled to repayment of the loan in 2008, the most he would be entitled to would be \$98,000.00, not \$170,000.00 (\$35,000.00 principal + \$63,000.00 interest using the proscribed 9% interest rate for a 20 year term). Therefore, the \$170,000.00 withdrawal was a disqualifying transfer of assets for less than fair market value consideration. Finally, the appellant had intent to qualify for MassHealth because she was in declining health at the time of the transfer, evidenced by the sale of her home and the need to

enter an assisted living center.

In conclusion, with intent and a lack of fair-market consideration, the appellant's withdrawal is a disqualifying transfer.

The appeal is therefore denied.

Order for the MassHealth

None.

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.

Stanley M. Kallianidis
Hearing Officer
Board of Hearings

cc:

Taunton MEC