

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**

<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	1014765
<b>Decision Date:</b>	5/26/11	<b>Hearing Date:</b>	03/17/2011
<b>Hearing Officer:</b>	Sara E. McGrath	<b>Record Open to:</b>	04/14/2011

**Appellant Representative:****MassHealth Representative:**  
Patti Young**Appellant Witnesses:**

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



## APPEAL DECISION

Appeal Decision:	Approved	Issue:	Eligibility
Decision Date:	5/26/11	Hearing Date:	03/17/2011
MassHealth Rep.:	Patricia Young	Appellant Rep.:	
Hearing Location:	Revere MassHealth Enrollment Center		

### 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 December 29, 2010, MassHealth denied appellant's application for MassHealth benefits due to a disqualifying transfer of assets, 2010. (Exhibit 1). The appellant appealed this issue in a timely manner on January 5, 2011. (130 CMR 610.015; Exhibit 1, p. 4). The denial of assistance is a valid ground for appeal. (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth benefits due to a disqualifying transfer of assets. (Exhibit 1).

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.018, in denying the appellant's application for MassHealth benefits due to a disqualifying transfer of assets?



## Summary of Evidence

The MassHealth representative testified that appellant submitted a MassHealth long-term care application in September 8, 2010. On December 29, 2010, MassHealth issued a denial notice due to a disqualifying transfer of assets in the amount of \$442,600.00 on February 3, 2010 with a penalty period lasting four years from July 1, 2010. (Exhibit 1). The nursing facility seeks coverage effective July 1, 2010. The MassHealth representative testified that appellant transferred one half of the value of property located at 169 Allston Street, Cambridge, Massachusetts.

The appellant's representative testified to the following facts: In 1952, the applicant and her husband purchased the subject property as tenants by the entirety. In 1977, the applicant and her husband transferred the property to a family trust. In 1985, the applicant and her husband attempted to transfer the property to their son. In 1988, the trust transferred the property to the son. The deed purporting to transfer the property in 1985 was recorded on February 3, 2010, and the deed transferring the property in 1988 was recorded on March 25, 2010. (Exhibits 5 and 13).

The appellant's son and daughter testified to the facts surrounding the above-mentioned transfers. The son testified that in 1985, his parents attempted to transfer the property to him, and gave him a deed to the property. He did not record a deed at that time. In 1988, the son had plans to turn the property into condominiums, and had an architect draw up plans. (Exhibit 13, exhibit 13). While investigating financing, the parties realized that his deed was invalid, in that his parents did not own the property that they attempted to transfer to him in 1985. Thus, in 1988, the trust transferred the deed to the son; the son did not record the deed. The son paid his parents \$89,000.00 at this time, in addition to paying all of the expenses related to the property. (Exhibits 8 and 13). The son testified that his parents were living in Florida at this time and that the applicant's spouse then became ill, and the son's plans were put on hold. The applicant's spouse passed away in 1992.

MassHealth submitted an opinion from the Executive Office of Health and Human Services' (EOHHS) Legal Department regarding the issue of the transfer of the real estate at issue here. MassHealth takes the position that the transfers in 1985 and 1988 did not take effect until recording in 2010, at which time the trust no longer owned the home.<sup>1</sup> (Exhibit 14). In support of its position, MassHealth cites to Equity One v. Estate of Alfred Williams, 889 N.E. 2d 982 (2008).

↓  
judgment  
reversed by  
72 Mass App Ct 1108 (2008)

<sup>1</sup> MassHealth argues that when the applicant's spouse, the trustee of the trust, died in 1992, the trust terminated and the corpus distributed to the beneficiaries, the applicant and her daughter. MassHealth takes the position that the 1985 transfer that became effective on February 3, 2010 results in a disqualifying transfer of one half of the value of the real estate, as appellant and her daughter owned the property and thus appellant could only transfer one half of the value of the home. (Exhibit 14).



The appellant's representative argues that legal transfer of real property takes place upon delivery of the deed, not recording, citing to the following case law: Graves v. Hutchinson, 39 Mass. App. Ct. (1996); Cooper v. Monroe, 237 Mass. 192 (1920); and Doyle v. Carter (Rescript Opinion). (Exhibits 9-12). The appellant's representative also cites to M.G.L. c. 183, sec. 1 that provides that a deed executed and delivered by the person, or by the attorney of the person, having authority therefore, shall be subject to the limitations of section four, be sufficient, without any other act or ceremony, to convey land." (Exhibit 13).

The appellant's representative also submitted a letter from Michael J. Ring, an attorney and former first assistant register of deeds at the Southern Middlesex Registry of Deeds from 1974 through 2003. (Exhibit 16). Attorney Ring writes that he was asked to render an opinion as to the validity of the 1988 deed that was executed and delivered by the grantor to the grantee on December 15, 1988, but not recorded until March 25, 2010. Attorney Ring cites to M.G.L. c. 183, sec. 210, which provides in part as follows: "A conveyance of an estate in fee simple, fee tail or for life, or a lease for more than seven years from the making thereof, . . . shall not be valid as against any person, except the grantor or lessor, his heirs and devisees and persons having actual notice of it, unless it . . . is recorded in the registry of deeds for the county or district in which the land to which it relates lies." <sup>2</sup>

Attorney Ring writes that this statute is based upon earlier common law, and that Massachusetts is considered a "race/notice jurisdiction," meaning that a deed between a grantor and a grantee is effective upon delivery and is good between the parties, their successors, assigns and heirs and all who have actual notice of it. Recording is required for notice to the world only. The risk that a grantee takes by not recording a deed is that the grantor could convey the same property to another grantee who, without notice of the prior conveyance and upon recording the subsequent deed in the appropriate registry of deeds, would defeat the prior conveyance. (Exhibit 16). He writes that a later recorded deed from the trust in this case to another grantee, who without notice of the 1988 deed from the trust to the son, would have defeated the conveyance to the son. However, an examination of the records at the appropriate registry in this case did not reveal any other deeds for the subject property at 169 Allston Street, Cambridge, Massachusetts. (Exhibit 16).

The hearing officer left the record open until April 14, 2011 for appellant's representative to submit additional documentation, and for MassHealth to respond. (Exhibit 15). Both parties submitted documentation in a timely manner. (Exhibits 16 and 17).

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<sup>2</sup> The accurate citation is M.G.L. c. 183, sec. 4. (Exhibit 18).



## Findings of Fact

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

1. Appellant filed a MassHealth long-term care application on September 8, 2010.
2. On December 29, 2010, MassHealth issued a denial notice due to a disqualifying transfer in the amount of \$442,600.00 on February 3, 2010 with a penalty period running for four years from July 1, 2010. (Exhibit 1).
3. The nursing facility seeks coverage effective July 1, 2010.
4. In 1952, the applicant and her husband purchased property located at 169 Allston Street, Cambridge, Massachusetts as tenants by the entirety.
5. In 1977, the applicant and her husband transferred the property to a family trust.
6. In 1985, the applicant and her husband attempted to transfer the property to their son.
7. In 1988, the trust transferred the property to the son.
8. The deed purporting to transfer the property in 1985 was recorded on February 3, 2010, and the deed transferring the property in 1988 was recorded on March 25, 2010. (Exhibits 5 and 13).

## Analysis and Conclusions of Law

MassHealth will deny payment for nursing facility services to an otherwise eligible nursing facility resident who transfers countable resources for less than fair market value during or after the period of time referred to as the look-back period. (130 CMR 520.018(B)). MassHealth considers any transfer of a resource as defined in 130 CMR 515.001 owned by the resident 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). (130 CMR 520.019(C)). I find that appellant has not demonstrated that any of these exceptions apply to the facts of this case.

In addition to the permissible transfers described in 130 CMR 520.019(D) and the exempted transfers described in 130 CMR 520.019(J), 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 520.019(F)).

I do not agree with the MassHealth position that appellant transferred a one half interest in the subject property on February 3, 2010. I conclude that in 1988, a deed was executed and delivered to appellant's son, and that there is no evidence that the son's ownership interest in the property changed from 1988 to the date of hearing.

MassHealth takes the position that the deeds at issue in this case had no effect until recording took place in 2010, citing Equity One v. Estate of Alfred Williams, 889 N.E. 2d 982 (2008) in support of its position. (Exhibit 19). My interpretation of the holding of this case differs from the MassHealth interpretation. In its order, the Massachusetts Appeals Court provides that "... failure to comply with a recording statute renders a deed invalid against third parties, but the instrument is still binding between the parties." (Exhibit 19). In this case, I find that the deed delivered to the son in 1985 did not transfer title to the subject property; the applicant and her husband did not own the property in 1985, and thus could not transfer it. (Exhibit 5). I find, however, that the deed delivered to the son in 1988 did effectuate the transfer from the trust to the son. (Exhibit 5). At that time, the trust had owned the property since 1977. (Exhibit 5). Although there was no specific dispute at hearing as to whether the 1988 deed was delivered to the son, the son presented credible testimony as to the acts and intentions of the parties at that time, both of which are to be considered in deciding whether there has been delivery of a deed. Equity One v. Estate of Alfred Williams, 889 N.E. 2d 982 (2008). The son testified that his parents delivered the deed to him, which he kept in a drawer until 2010. The son verified payment of \$89,000.00 to his parents, and testified in detail regarding his plans to turn the property into condominiums, providing the condominium plans as well. (testimony; Exhibit 8; Exhibit 13, exhibit 13).

M.G.L. c. 183, sec. 4, provides in part as follows: "A conveyance of an estate in fee simple, fee tail or for life, or a lease for more than seven years from the making thereof, . . . shall not be valid as against any person, except the grantor or lessor, his heirs and devisees and persons having actual notice of it, unless it . . . is recorded in the registry of deeds for the county or district in which the land to which it relates lies." In this case, appellant provided unrefuted evidence that in 1988, the grantor (the trust) executed and delivered a deed to the grantee (the son), and that between 1988 and the date of hearing, no subsequent deed has been recorded at the applicable registry of deeds. (Exhibit 16). As such, in this "race/notice jurisdiction" of Massachusetts, the 1988 conveyance transferred title of the subject property, and appellant did not transfer one half of the value of the property within the look-back period.<sup>3</sup> (130 CMR 520.018(B)).

<sup>3</sup> MassHealth takes the position that appellant's disqualifying transfer took place on February 3, 2010, the date the 1985 deed was recorded. However, as I have concluded above, the 1985 transfer was invalid, and thus the February 3, 2010 recording of that deed had no legal effect.



The appeal is APPROVED.

## **Order for MassHealth**

Rescind notice dated December 29, 2010 and open case effective July 1, 2010, if otherwise eligible.

## **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, Office of Medicaid, at the address on the first page of this decision.

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Sara E. McGrath ...  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Charlene Mancusi, Revere MassHealth Enrollment Center Appeals Coordinator