

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

Appeal Decision:	Approved	Appeal Number:	1106404
Decision Date:	9/20/11	Hearing Date:	September 01, 2011
Hearing Officer:	B. Padgett		

Appellant Representative:

MassHealth Representative:

A. O'Connor



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

APPEAL DECISION

Appeal Decision:	Approved	Issue:	130 CMR 520.019
Decision Date:	9/20/11	Hearing Date:	September 01, 2011
MassHealth Rep.:	A. O'Connor	Appellant Rep.:	
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 March 10, 2011, stating: "We have reviewed your application for MassHealth. You are not eligible for MassHealth because: Due to a disqualifying transfer of \$10,000.00 on 4/24/07 and 4/27/07, you are nor eligible for payment of nursing facility services from 1/1/11 through 2/5/11. You are eligible for community [M]edicaid as of 1/1/11." (Exhibit 1).

The appellant filed this appeal timely on April 04, 2011 (130 CMR 610.015); Exhibit 2).

Denial for assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant MassHealth benefits prior to February 05, 2011.

Issue

Did MassHealth correctly determine the appellant's date of eligibility?

Summary of Evidence

The MassHealth representative testified that the appellant enter a nursing home on August 2010 and applied for MassHealth long term care benefits on February 09, 2011. The appellant was determined to be eligible for assistance as of January 01, 2011; however it was revealed the appellant transferred \$10,000.00 (\$8,000.00 check dated April 24, 2007 + \$2,000.00 check dated April 27, 2007) within the look-back period. Based on the regulations at 130 CMR 520.019 the transferred amount was determined to be impermissible and as a result a disqualification period was assessed. MassHealth divided the \$10,000.00 transfer by the nursing home day rate of \$267.00 resulting in 36 day of disqualification. The appellant is therefore ineligible for MassHealth long term care assistance from January 01, 2011 until February 06, 2011. MassHealth submitted into evidence the appellant's application and bank statements. (Exhibit 4 and 5).

The appellant's representatives indicated the appellant was hospitalized in April 2010 after a fall. The appellant was transferred to rehab and by August 2010 she could no longer walk and was admitted to a long term care nursing facility. The appellant privately paid for her medical care until January 01, 2011. The appellant's attorney argued that in April 2007 the appellant gave her daughter \$10,000.00 to assist her with some financial difficulties. At the time the checks were written the appellant was in good health, living at home alone with no thoughts of applying for MassHealth. The appellant gave this gift to ease the financial burden of her daughter without the knowledge she would be entering a nursing home or with the intent to spend down her assets to apply for MassHealth 3½ years later. The appellant's representatives are requesting the transfers be deemed permissible and a recalculation of the appellant's eligibility start date. The representatives submitted into evidence a memo in support and an affidavit from the appellant's daughter indicating she has no funds to repay the appellant and relevant regulations. (Exhibit 6 and 7).

Findings of Fact

Based on a preponderance of the evidence, I find:

1. The appellant applied for MassHealth long term care assistance on February 09, 2011.
2. The appellant transferred a total of \$10,000.00 to her daughter in April 2007.
3. At the time of the transfer the appellant was in good health and living on her own.
4. The appellant enter the nursing facility as a result of a fall in April 2010.

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. 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))¹. The regulations do allow for a transfer of resources if the resources were transferred exclusively for a purpose other than to qualify for MassHealth (130 CMR 520.019(F))². At the time of the transfer the appellant was in good health, living on her own and decided to give a gift to her daughter who was having financial difficulties. There is no evidence the appellant transferred the funds with the intent to apply for MassHealth 3½ years later.

I find the transfer of \$10,000.00 was for a purpose other than to qualify for MassHealth and therefore not a disqualifying transfer. This appeal is approved.

Order for MassHealth

Redetermine appellant's date of eligibility and send the appellant notification of the new start date.

¹ 130 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.

² 130 CMR 520.019 (F) Determination of Intent. 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.

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