

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

Appeal Decision:	Approved	Appeal Number:	1106530
Decision Date:	9/9/11	Hearing Date:	05/31/2011
Hearing Officer:	Marc Tonaszuck	Record Open to:	06/17/2011

Appellant Representative:**MassHealth Representative:**
Ann O'Connor

*The 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:	Long Term Care
Decision Date:	9/9/11	Hearing Date:	05/31/2011
MassHealth Rep.:	Ann O'Connor	Appellant Rep.:	
Hearing Location:	Springfield 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 03/16/2011, MassHealth denied appellant's application for MassHealth benefits due to a disqualifying transfer of assets of \$80,614.50 on 03/24/2008 (130 CMR 520.019(G); Exhibit 1). The appellant appealed this issue in a timely manner on 03/29/2011 (130 CMR 610.015; Exhibit 2). 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 520.019, 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 01/31/2011. The appellant, a 92 year old widow, was admitted to the skilled nursing facility on 12/30/2010. On 03/16/2011, MassHealth issued a denial notice due to a disqualifying transfer of assets in the amount of \$80,614.50 on 03/24/2008 with a penalty period lasting 294 days from 01/21/2011 to 11/10/2011 (Exhibit 1). The nursing facility seeks coverage effective 01/21/2011. The MassHealth representative testified that the transfer at issue in this appeal is a life estate in a home located at 17 Barber Avenue, Greenfield, MA, that the appellant transferred to her children in consideration of \$1.00. The date that the deed was recorded is the date that on which MassHealth determined there was a transfer of assets. The value of the real estate transferred, not including the appellant's retained life estate, was calculated by using the assessed value of the home (\$120,500.00) and multiplying by the remainder interest factor of 0.66900, which was found on Table S under the appellant's age of 89 (Exhibit 5).

The MassHealth representative also submitted a legal memorandum from the MassHealth Legal Unit (Exhibit 6). In the memorandum, Katy Schelong, Assistant General Counsel of MassHealth, argues that the transfer of the home was a disqualifying transfer because she disposed of the property for less than fair market value and that the transfer was made at the time the deed was recorded. Additionally, she argues that the deed was not valid until it was executed, delivered and recorded; that the deed had no validity for MassHealth purposes until it was recorded; and that the date of the disqualifying transfer is the date upon which the appellant completely and fully divested herself of her ownership interest in the real property, which is the date it was recorded (Exhibit 6).

The appellant's attorney testified that on October 19, 1999, he had an appointment with the appellant concerning estate planning issues. She brought to his office an unsigned deed that had been prepared by another attorney transferring her real estate located at 17 Barber Ave., Greenfield, MA to her two sons with her retaining a life estate. She had not executed that deed because she was concerned that one of her sons was having domestic relations issues and if she deeded the real estate to him and the deed was recorded at the Franklin County Registry of Deeds, that her house could be involved in her son's divorce. Counsel testified that after much discussion it was decided that the appellant would execute the deed and counsel would notarize her signature and the appellant would deliver the deed to her son with instruction that the property belonged to him and that she considered this a completed gift to her two sons when she delivered the deed to the son and that he could record the deed at his pleasure. Counsel testified that he then removed the signature page from the deed prepared by the other attorney and prepared a new signature page with a notarization of the appellant's signature by counsel as notary. Counsel testified that the appellant signed the deed and he notarized her signature and he gave her the signed original deed. Counsel testified that he instructed the appellant to go home and deliver the deed to her son and notify him that this was a completed gift as she delivered the deed to him. Counsel testified he asked the appellant to call him when this was completed. He testified that a few days later, the appellant called him and informed him that she had in fact delivered the deed to her son and informed him that this was delivery of the deed and as far as she was concerned this was a completed gift. Counsel argued that on 10/19/1999, she gave a remainder interest in her home to her two sons and this was a completed gift on that date. Because the date is outside the 60 month look back period, it cannot be considered a disqualifying transfer by MassHealth and the appellant should not incur any disqualification period (Exhibits 7 and 9¹).

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. (1986); Cooper v. Monroe, 237 Mass. 192 (1920); and Doyle v. Carter (Rescript Opinion) (Exhibit 9). 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, and be sufficient, without any other act or ceremony, to convey land² (Exhibit 9).

¹ Exhibit 7 is a statement of appellant's counsel, attached to the quitclaim deed for the property at issue, as well as tax records. Exhibit 7 was submitted at hearing. Exhibit 9 is counsel's response to MassHealth's legal memorandum that he was provided with at hearing. Counsel requested that he be allowed time to respond to MassHealth's legal memorandum. His request was granted and the record remained open until 06/17/2011 for his response (Exhibit 8). On 06/17/2011, appellant's representative submitted his response (Exhibit 9), which restates some of his testimony that was provided at hearing and in Exhibit 7, and further articulates the legal basis for his argument.

Findings of Fact

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

1. Appellant is 92 years of age and is a widow. She was admitted to a skilled nursing facility on 12/30/2010 (Testimony; Exhibit 4).
2. Appellant filed a MassHealth long-term care application on 01/31/2011, seeking an eligibility start date of 01/21/2011 (Testimony; Exhibit 4).
3. On 03/16/2011, MassHealth issued a denial notice to the appellant due to a disqualifying transfer in the amount of \$80,614.50 on 03/24/2008 with a penalty period running for 294 days from 01/21/2011 to 01/10/2011 (Exhibit 1).
4. Prior to the transfer at issue in this appeal, the appellant individually owned all right, title and interest to real property located at 17 Barber Avenue, Greenfield, MA (property) (Testimony).
5. By a deed that was executed on 10/19/1999, the appellant transferred a remainder interest in the property to her two sons in consideration of \$1.00, while retaining a life estate (Exhibit 5).
6. On 10/19/1999, Attorney Bishop, who represented the appellant at the hearing, notarized the appellant's signature on the quitclaim deed and informed the appellant to deliver the deed to her son and inform him that it was a completed gift (Exhibit 5).
7. A few days after signing the deed, the appellant notified Attorney Bishop that she had delivered the deed to her son and notified him that by her delivery, it was a completed gift (Testimony; Exhibit 9).
8. The deed transferring the property was recorded on 03/24/2008 (Testimony; Exhibits 5, 6, 7, 9).

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.

(See 130 CMR 520.019(F).)

Chapter 183, section 1 of the Massachusetts General Laws reads that

A deed executed and delivered by the person, or by the attorney for the person, having authority therefore, shall, subject to the limitations of section four, be sufficient, without any other act or ceremony, to convey land.

"Delivery occurs where the grantor intends the deed to effect a present transfer of the property conveyed, and the grantee assents to the conveyance." Graves v. Hutchinson, 39 Mass.App. Ct. 634, 659 N.E.2d 1212, 1216 (1996) (abrogated on other grounds). MassHealth argues that the appellant did not intend to "effect a present transfer of the property" on the date the deed was signed, 10/19/1999. In support of its argument, MassHealth states that the appellant continued to live in the real property and it does not appear that the children assumed any of the responsibilities or liabilities attendant upon owners of real property. MassHealth concludes that no "delivery" occurred until the date the deed was recorded.

I disagree with MassHealth's analysis of the facts in this appeal. Appellant's appeal representative was her attorney at the time that the deed was signed and notarized. His testimony at hearing is credible that he notarized the appellant's signature on the quitclaim deed and informed the appellant to deliver the deed to her son and inform him that it was a completed gift. She informed him by telephone "within a couple of days" that she had done as counsel instructed. The fact that she continued to live in the property has nothing to do with her intentions regarding a transfer the property, because she transferred only a remainder interest in the property while retaining a life estate. As such, she was responsible for the property. The facts support the appellant's argument that

delivery of the deed took place on or about 10/19/1999. Accordingly, the transfer did not take place during the look-back period (130 CMR 520.019(B)(1)).

The appeal is APPROVED.

Order for MassHealth

Rescind notice dated 03/16/2011 and open case effective 01/21/2011, 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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Maryellen Sullivan