

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**

<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	1118365
<b>Decision Date:</b>	4/19/12	<b>Hearing Date:</b>	February 13, 2012
<b>Hearing Officer:</b>	B. Padgett	<b>Record Open to:</b>	March 13, 2012

**Appellant Representative:**

**MassHealth Representative:**

S. Mulhern



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

# APPEAL DECISION

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	130 CMR 520.019
<b>Decision Date:</b>	4/19/12	<b>Hearing Date:</b>	February 13, 2012
<b>MassHealth Rep.:</b>	S. Mulhern	<b>Appellant Rep.:</b>	
<b>Hearing Location:</b>	Taunton		

## 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 August 24, 2011 stating: We have reviewed your application for MassHealth. You are not eligible for MassHealth because: “You have transferred assets within 60 months of application, period of ineligibility was determined by taking the total value (\$36,000.00) and dividing by the average nursing home rate of \$274.00 per day, resulting in a penalty period which expires on August 17, 2011.” (Exhibit 1).

The Appellant filed this appeal timely on September 16, 2011. (130 CMR 610.015); Exhibit 2).

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

## Action Taken by MassHealth

MassHealth denied the Appellant MassHealth benefits prior to August 17, 2011.

## Issue

Did the Appellant transfer funds to make herself eligible for MassHealth?

## Summary of Evidence

The MassHealth representative testified that the Appellant applied for MassHealth on April 12, 2011 requesting long-term-care (LTC) benefits beginning April 08, 2011. During the application process it was determined that in 2008 the Appellant transferred a total of \$36,000.00 to her grandchildren (two checks each for \$12,000.00 dated November 06, 2008 and one check for \$12,000.00 dated December 12, 2008). Based on the regulations at 130 CMR 520.019 the transferred amount was within the look-back period and determined to be impermissible resulting in the assessment of a disqualification period. MassHealth divided the \$36,000.00 transfer by the nursing home day rate of \$274.00 resulting in 131 days of disqualification or until August 17, 2011. MassHealth submitted into evidence the Appellant's application and verification of transfer. (Exhibit 4).

The Appellant's representative argued that at the time of the transfer the Appellant was giving her grandchildren a gift and relying on tax advice that she could transfer \$12,000.00 to each without a penalty. At the time these checks were written the Appellant was in relatively good health, still driving and working with no thoughts of applying for MassHealth. The Appellant gave these gifts to ease the financial burden of her grandchildren and without the knowledge she would be entering a nursing home or the intent to spend down her assets to apply for MassHealth more than 2½ years later. The Appellant's representative stated the Appellant entered the nursing home on January 15, 2010 and privately paid until April 08, 2011 (\$126,000.00) for her care. The representative maintains if the Appellant was transferring funds to make herself eligible for MassHealth she would not have kept \$126,000.00 to privately pay the nursing home, she would have transferred more funds in an effort to reduce her assets to \$2,000.00.

The Appellant's daughter testified the Appellant did not exhibit any signs of Alzheimer's disease in 2008 and when she did it was a very rapid decline. The Appellant submitted into evidence her fee agreement with Woodford Medicaid Consultants dated September 14, 2010. (Exhibit 5).

At the hearing officers request the record remained open until March 13, 2012 to allow the Appellant to submit medical records and/or other evidence to demonstrate she was in good health at the time of the transfer. (Exhibit 6)

The Appellant submitted within the required time limits a letter from the POA stating the Appellant had been suffering from depression since 2008 and that at the time she was living on her own, functioning normally and although she had stopped caring for her grandchildren she continued to drive them around as their mother was working. The representative maintains the Appellant had no expectation that she would be in a nursing facility in 2010 when she gifted funds in 2008. Further the Appellant was not diagnosed with Alzheimer's disease until 2010. The representative provided a medical examination dated April 22, 2008 which lists the Appellant's ailments as: hyperlipidemia; microhematuria, neg cysto, GERD, stress incontinence, Hypertension, sleep disorder, osteopenia, allergic rhinitis, squamous cell carcinoma, and depression. (Exhibit 7).

## Findings of Fact

Based on a preponderance of the evidence, I find:

1. In 2008 the Appellant transferred \$36,000.00 to her grandchildren (two checks each for \$12,000.00 dated November 06, 2008 and one check for \$12,000.00 dated December 12, 2008).
2. The Appellant entered the nursing facility on January 15, 2010 and privately paid until April 08, 2011 for her care (\$126,000.00).
3. The Appellant applied for MassHealth on April 12, 2011 requesting long-term-care benefits beginning April 08, 2011.
4. A medical examination dated April 22, 2008 indicates a problem list of: hyperlipidemia; microhematuria, neg cysto, GERD, stress incontinence, Hypertension, sleep disorder, osteopenia, allergic rhinitis, squamous cell carcinoma, and depression.

## 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). 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))<sup>1</sup>.

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<sup>1</sup> 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

In 2008 the Appellant transferred to her grandchildren a gift of \$12,000.00 each. The Appellant did so relying on tax advice and in an attempt to ease the financial burden of her grandchildren. At the time of the transfer the Appellant was 83 years old and although she had a number of medical issues she was in reasonably good health and there is no evidence that she transferred the funds with the knowledge that she would be entering a nursing home in 2010 or with the intent to establish eligibility for MassHealth benefits in 2011.

The regulations allow for a transfer of resources if the funds were transferred exclusively for a purpose other than to qualify for MassHealth (130 CMR 520.019(F))<sup>2</sup>. Based on the above I find the transfer of \$36,000.00 was made exclusively 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.

## **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, Division of Medical Assistance, at the address on the first page of this decision.

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Brook Padgett  
Hearing Officer  
Board of Hearings

cc: MassHealth representative: Taunton MEC

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the specific circumstances involved. A disqualifying transfer may include any action taken which would result in making a formerly available asset no longer available.

<sup>2</sup> 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.

