

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**

<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	1801834
<b>Decision Date:</b>	3/14/18	<b>Hearing Date:</b>	02/14/2018
<b>Hearing Officer:</b>	Rebecca Brochstein		

**Appearances for Appellant:**

**Appearances for MassHealth:**  
Yuos Khieu, Chelsea MEC



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

# APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Long-term care eligibility; transfer of resources
<b>Decision Date:</b>	3/14/18	<b>Hearing Date:</b>	02/14/2018
<b>MassHealth's Rep.:</b>	Yuos Khieu	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Chelsea MassHealth Enrollment Center		

## Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

## Jurisdiction

Through a notice dated November 27, 2017, MassHealth approved the appellant for long-term care benefits effective July 22, 2017. The appellant was denied benefits for the period of June 16 through July 21, 2017, because of a disqualifying transfer of resources (Exhibit 1). The appellant filed a timely appeal of the notice on December 8, 2017 (Exhibit 2). Imposition of a disqualifying transfer of resources is a valid basis for appeal (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth determined that the appellant transferred resources for less than fair-market value and imposed a period of disqualification between June 16 and July 21, 2017.

## Issue

The appeal issue is whether MassHealth was correct in determining that the transfer was disqualifying.



## Summary of Evidence

A long-term care eligibility worker from the Chelsea MassHealth Enrollment Center appeared at the hearing and testified as follows: The appellant was admitted to a long-term care facility on May 26, 2017. A MassHealth long-term care application was filed on her behalf on June 14, 2017, seeking coverage as of June 16, 2017. After reviewing the application, MassHealth determined that the appellant had transferred \$12,448 to her daughter during the regulatory look-back period. MassHealth found this to be a disqualifying transfer and imposed a penalty period from the requested start date of June 16, 2017, through July 21, 2017. Long-term care coverage was approved beginning July 22, 2017.

The MassHealth representative testified that the appellant has argued her daughter is disabled, and that the transfer was therefore permissible. However, he stated that the daughter has not been certified as disabled by MassHealth, the Social Security Administration, or the Massachusetts Commission for the Blind. As such, MassHealth cannot consider the daughter disabled or the transfer permissible.

The appellant was represented by an attorney, who appeared by telephone. He did not dispute that the appellant transferred funds to her daughter, but argued that the transfer is permissible because of the daughter's disability. He conceded that the daughter has not been found disabled by any of the relevant agencies. He noted that she cannot be eligible for Social Security Disability Income because she is over 65, so he doubted she could be found disabled by SSA. He further acknowledged that it is not MassHealth's burden to determine whether the daughter is disabled, as she is not herself seeking coverage. Rather, he indicated that he is premising the daughter's claim of disability on documentation from her primary care physician.<sup>1</sup> He requested a brief record-open period to submit a letter from the doctor.

On February 15, 2018, the appellant's attorney submitted the doctor's letter. It states that the daughter "is a patient under my medical care with scleroderma that I have followed for many years. She is totally disabled." See Exhibit 6.

## Findings of Fact

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

1. The appellant was admitted to a nursing facility on May 26, 2017.
2. A MassHealth long-term care application was filed on the appellant's behalf on June 14, 2017, seeking coverage as of June 16, 2017.

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<sup>1</sup> The appellant's attorney also submitted a few pages of medical records and a completed MassHealth Adult Disability Supplement. See Exhibit 4.

3. On June 15, 2017, the appellant wrote a \$12,448 check to her daughter.
4. In reviewing the application, MassHealth determined that the payment to the daughter was a disqualifying transfer of resources.
5. MassHealth imposed a period of disqualification between June 16 and July 21, 2017, because of the transfer of resources.
6. The appellant's daughter has not been found disabled by MassHealth, the Social Security Administration, or the Massachusetts Commission for the Blind.

### **Analysis and Conclusions of Law**

MassHealth considers any transfer during the appropriate look-back period by the nursing-facility resident . . . of a resource, or interest in a resource, owned by or available to the nursing-facility 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). 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).

Among the permissible transfers listed at 130 CMR 520.019(D) is a transfer to an applicant's "permanently and totally disabled or blind child or to a trust, a pooled trust, or a special-needs trust created for the sole benefit of such child." 130 CMR 520.019(D)(3). Pursuant to 130 CMR 515.001, "permanent and total disability" is defined under Title XVI of the Social Security Act or under applicable state laws. For adults 18 years of age or older, permanent and total disability is specifically defined as follows:

(a) The condition of an individual, 18 years of age or older, who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that 1. can be expected to result in death; or 2. has lasted or can be expected to last for a continuous period of not less than 12 months.

(b) For purposes of 130 CMR 515.001: Permanent and Total Disability, an individual 18 years of age or older is determined to be disabled only if his or her physical or mental impairments are of such severity that the individual is not only unable to do his or her previous work, but cannot, considering age, education, and work experience, engage in any other kind of substantial gainful work that exists in the national economy, regardless of whether such work exists in the immediate area in which the individual lives, whether a specific job vacancy exists, or whether the individual would be hired if he or she applied for work. "Work that exists in the national economy" means work that exists in significant numbers, either in the region where such an individual lives or in several



regions of the country.

Under 130 CMR 519.006(B), disability is verified by (a) certification of legal blindness by the Massachusetts Commission for the Blind (MCB); (b) a determination of disability by the Social Security Administration (SSA); or (c) a determination of disability by the MassHealth Disability Determination Unit (DDU).

In this case, MassHealth determined that the appellant's transfer of \$12,448 to her daughter constituted a disqualifying transfer of resources and imposed a penalty period corresponding to the value of the gift. MassHealth declined to find that the daughter qualified as a "disabled child" because it found that she had not been found permanently and totally disabled by any of the government agencies authorized to make such determinations.<sup>2</sup> The appellant does not dispute that she has not been found disabled by either the Social Security Administration or by a state-designated disability determination unit.

Further, even if the case were considered solely on the regulatory definition of "permanent and total disability," without regard to consideration by a government disability unit, the daughter in this case has fallen far short. The only evidence in support of the daughter's claim of permanent and total disability are a few pages of medical records and a simple, conclusory statement from her physician that she is "totally disabled." While it is possible that the daughter could be found disabled if she had filed her own application and been evaluated by a designated disability unit, the evidence provided here fails to satisfy the specific standards for "permanent and total disability" set forth in the state and federal regulations.

For the foregoing reasons, this appeal is denied. The appellant will have 60 days from the date of this decision to cure the disqualifying transfer.

### **Order for MassHealth**

If the appellant cures the disqualifying transfer of resources within 60 days of the date of this decision, redetermine the start date for her MassHealth long-term care benefits.

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<sup>2</sup> Though 130 CMR 516.009 applies to long-term care applicants, the language of 130 CMR 515.001, which defines "permanent and total disability" in the context of the Social Security Act "or applicable state laws," suggests that an individual in the daughter's position is similarly required to show that she has been found disabled by the Social Security Administration or by a state-designated disability determination unit.

## 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.

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Rebecca Brochstein  
Hearing Officer  
Board of Hearings

cc: Chelsea MEC