

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**

<b>Appeal Decision:</b>	APPROVED	<b>Appeal Number:</b>	1803454
<b>Decision Date:</b>	4/18/18	<b>Hearing Date:</b>	02/27/2018
<b>Hearing Officer:</b>	Kenneth Brodzinski	<b>Record Open to:</b>	03/27/2018

**Appellant Representative:**

**MassHealth Representative:**

Catlin Giuggio – Springfield MEC



*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

<b>Appeal Decision:</b>	APPROVED	<b>Issue:</b>	Eligibility - Asset Transfers
<b>Decision Date:</b>	4/18/18	<b>Hearing Date:</b>	02/27/2018
<b>MassHealth Rep.:</b>	Catlin Giuggio	<b>Appellant Rep.:</b>	Pro se
<b>Hearing Location:</b>	Springfield MEC		

### Authority

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

### Jurisdiction

Through notice dated December 1, 2017, MassHealth denied Appellant's application for MassHealth Long Term Care benefits upon determining that Appellant made disqualifying transfers of assets. MassHealth further assessed a period of ineligibility due to the transfers (Exhibit A). Appellant filed this appeal in a timely manner on December 29, 2017 (Exhibit A). Denial of assistance constitutes valid grounds for appeal (see 130 CMR 610.032).

### Action Taken by MassHealth

MassHealth denied Appellant's application for MassHealth Long Term Care benefits upon determining that Appellant made disqualifying transfers of assets. MassHealth further assessed a period of ineligibility due to the transfers.

### Issue

The appeal issue is whether MassHealth properly applied the controlling regulation(s) to accurate facts when it denied Appellant's application for MassHealth Long Term Care benefits upon determining that Appellant made disqualifying transfers of assets and assessed a period of ineligibility due to the transfers.



## Summary of Evidence

The MassHealth representative testified that Appellant filed an application for MassHealth Long-Term Care benefits on September 19, 2017. The application was ultimately denied on December 1, 2017 due to disqualifying transfers of countable assets. The MassHealth representative testified that Appellant transferred \$17,600.00 within the five-year look back period prior to the date of application. The MassHealth representative explained that the full transfer amount was divided by the average daily rate of skilled nursing facilities in the Commonwealth (\$354.00) which resulted in a 50-day period of ineligibility.

The MassHealth representative explained the nature of the disqualifying transfers as a series of withdrawals and checks made out to or paid to Appellant's adult son. There were nine separate transfers extending on and between September 12, 2016 and July 17, 2017 ranging in amounts from \$100.00 to \$5000.00 (Exhibit B). The MassHealth representative also testified that there were two subsequent transfers that were not considered disqualifying because Appellant verified that these transfers involved funds that had been stolen by the son and were not the actions of the Appellant.

Appellant appeared on her own behalf along with her two sisters. Appellant and her representatives testified that Appellant has two sons. One son is said to be in poor health and living in New Hampshire. The other resides in Massachusetts and is an alcoholic. Appellant testified that the transfers at issue had nothing to do with spending down her assets in order to qualify for MassHealth. Appellant testified that at the time the transfers were made she was 75 years old and in reasonably good health with no expectation of ever needing a nursing home in the foreseeable future. She testified that she suddenly had a stroke and subsequently experienced dementia like effects which have now dissipated. She testified that she had been in and out of the hospital and nursing homes in the Spring and early Summer of 2017. She testified that she now has a pacemaker and appears to be doing fairly well.

Appellant testified that the subject transfers involve her alcoholic son as she was trying to help him with his expenses. She testified that she bought him an \$8,000.00 used car. She paid for his car insurance and also gave him money for gasoline. She also helped pay his rent and buy food. According to Appellant, all of the transfers were related to her efforts to try to sustain her alcoholic son.

Appellant's sisters testified that they went to the police in the Fall of 2017 after they discovered that the alcoholic son had stolen and used some of Appellant's checks while she was in the nursing facility. A police reports was filed and there is a warrant outstanding for the son. They also testified that the son had attempted to open a credit card in Appellant's name.

The MassHealth representative acknowledged that she received verification of the

son's malfeasance and MassHealth was not concerned with the transfers involving the thefts reported to the police.

The hearing officer requested that the Appellant verify or provide additional information concerning her health status prior to suffering a stroke in order to help substantiate her claim is that the transfers were not made with any intent to alienate assets in order to qualify for MassHealth benefits. Accordingly, the record was held open for a month to allow Appellant to obtain and submit medical documentation or a letter from her physician.

Appellant timely submitted a letter dated March 2, 2018 from the Saint Vincent Ambulatory Care Center. The letter is signed by a doctor. The letter states Appellant was a patient at the Center at the time of her CVA and that prior to the CVA, she had been in good health except for depression and hypertension (Exhibit C).

## Findings of Fact

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

1. Appellant filed an application for MassHealth Long-Term Care benefits on September 19, 2017.
2. MassHealth denied the application on December 1, 2017 due to disqualifying transfers of countable assets.
3. Appellant transferred \$17,600.00 within the five-year look back period prior to the date of application.
4. MassHealth divided the full transfer amount by the average daily rate of skilled nursing facilities in the Commonwealth (\$354.00) which resulted in a 50-day period of ineligibility.
5. The disqualifying transfers arose from a series of withdrawals and checks made out to or paid to Appellant's adult son.
6. There were nine separate transfers extending on and between September 12, 2016 and July 17, 2017 ranging in amounts from \$100.00 to \$5,000.00 (Exhibit B).
7. There were two subsequent transfers that were not considered disqualifying because Appellant verified that these transfers involved funds that had been stolen by her son and were not the actions of the Appellant.
8. Appellant has two sons.



9. One son is said to be in poor health and living in New Hampshire.
10. The other son resides in Massachusetts and is an alcoholic.
11. At the time the transfers were made Appellant was 75 years old and in reasonably good health with no reasonable expectation of needing a nursing home in the foreseeable future.
12. All of the transfers at issue involve funds Appellant used to financially assist her alcoholic son.
13. In early 2017, Appellant suddenly had a stroke (CVA) and subsequently experienced dementia like effects which have now dissipated.
14. Appellant was in and out of the hospital and nursing homes in the Spring and early Summer of 2017.
15. Appellant now has a pacemaker and resides in the community.
16. A letter dated March 2, 2018 from the Saint Vincent Ambulatory Care Center, signed by a physician, indicates Appellant was a patient at the Center at the time of her CVA and that prior to the CVA she had been in good health except for depression and hypertension (Exhibit C).

## Analysis and Conclusions of Law

Regulation 130 CMR 520.019 governing resource transfer states as follows:

*(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.*

*(1) For transfers occurring before February 8, 2006, this period generally extends back in time for 36 months.*

*(2) For transfers of resources occurring on or after February 8, 2006, the period generally extends back in time for 60 months. The 60-month look-back period will begin to be phased in on February 8, 2009. Beginning on March 8, 2009, applicants will be asked to provide verifications of their assets for the 37 months prior to the application. As each month passes, the look-back period will increase by one month until the full 60 months is reached on February 8, 2011.*

*(3) For transfers of resources from or into trusts, the look-back period is described in 130 CMR 520.023(A).*

*(C) Disqualifying Transfer of Resources. The MassHealth agency 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 MassHealth agency 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 MassHealth agency considers the specific circumstances involved. A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available.*

*(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; 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.*

There was no dispute that Appellant transferred her own funds to one of her sons. Appellant argues that the transfers should not be deemed disqualifying because the intent behind the transfers was not to gain MassHealth eligibility, but to assist a troubled child in need of financial assistance. She also argues that the transfers were made at a time in her life when there was no reason to suspect that she would need to be placed in a skilled nursing facility in the foreseeable future. I agree. Appellant's age and health at the time the transfers were made is verified by the doctor's letter submitted post-hearing. The medical event that caused Appellant's short-term placement in a skilled nursing facility was not reasonably foreseeable given her state of health at the time. I do not find any basis in fact to conclude that Appellant made the transfers at issue with any intent other than to assist a specific child in need.

For the foregoing reasons, the appeal is APPROVED.

## **Order for MassHealth**

Re-determine Long-Term Care Eligibility without regard to transfer of assets.

## 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 the Enrollment Center gives you any problems with implementing this decision, you should report this in writing to the Director of the Board of Hearings at the address on the first page of this decision.

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Kenneth Brodzinski  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu