

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

Appeal Decision:	Denied	Appeal Number:	1805122
Decision Date:	5/15/18	Hearing Date:	March 23, 2018
Hearing Officer:	Brook Padgett	Record Open:	April 24, 2018

Appellant Representative:

MassHealth Representative:
Patricia Lemke



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th floor
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	130 CMR 520.019
Decision Date:	5/15/18	Hearing Date:	March 23, 2018
MassHealth Rep.:	P. Lemke	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 December 05, 2017 stating: MassHealth has decided you are eligible for MassHealth Standard benefits beginning September 08, 2017. (Exhibit 1).

The Appellant filed this appeal timely on January 03, 2018. (130 CMR 610.015(B); Exhibit 2).

Eligibility start date is a valid ground for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the Appellant's long term care application beginning December 05, 2018.

Issue

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

Summary of Evidence

MassHealth testified the Appellant entered a nursing facility on May 09, 2017 and applied for MassHealth benefits on May 24, 2017. On December 05, 2018 the Appellant was approved for long term care services retroactive to September 08, 2017 with a Patient Paid Amount (PPA) of \$980.20. MassHealth stated the Appellant has been unable to verify she received fair market value for a \$43,000.00 check withdrawn from her account on August 04, 2015. MassHealth divided the transferred amount (\$43,000.00) by the average daily nursing facility pay rate (\$354.00) to calculate 122 days of disqualification or from the nursing facility request date of May 09, 2017 to September 08, 2017. MassHealth submitted into evidence MassHealth application, verification of bank withdrawals, verification checklist. (Exhibit 4).

The Appellant's representative indicated she is not appealing the amount of the PPA but rather the start date. The representative argued that the \$43,000.00 in funds were for work on the Appellant's home to ready it for sale and payment for assisted living. Unfortunately the Appellant did not keep any receipts.

The Appellant requested the record remained open until April 24, 2018 to allow the Appellant's representative's time to obtain any verification of the \$43,000.00 withdrawal. (Exhibit 5).

The Appellant's representative failed to submit any additional verification prior to the close of the Record Open period. (Exhibit 7).

Findings of Fact

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

1. The Appellant entered a nursing home on May 09, 2017. (Exhibit 4).
2. The Appellant applied for MassHealth long term care benefits on May 24, 2017. (Exhibit 4).
3. The Appellant withdrew \$43,000.00 from her bank account on August 04, 2015. (Exhibit 4).
4. The Appellant has no verification that she received fair market value for a \$43,000.00 check withdrawn from her account on August 04, 2015.
5. The transferred amount of \$43,000.00 divided by the average daily nursing facility pay rate of \$354.00 equals 122 days of disqualification or from May 09, 2017 to September 08, 2017. (Exhibit 4).
6. The Appellant's long term care application was approved on December 05, 2017 with

benefits to start retroactively on September 08, 2017.

Analysis and Conclusions of Law

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. 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 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 regulations allow for a transfer of resources if it can be demonstrated to MassHealth's satisfaction that the transfer was exclusively for some other purpose than to qualify for MassHealth.

The Appellant applied for MassHealth long term care benefits on May 09, 2017. During the application process MassHealth determined the Appellant transferred \$43,000.00 on August 04, 2015. The Appellant has been unable to provide any verification that she received fair market value for the \$43,000.00 transfer. Although the Appellant's representative argued the transfer was repayment for work performed on the Appellant's home, there was no evidence presented to establish this fact.

Based on the evidence in the record the Appellant has failed to demonstrate that the transfer of \$43,000.00 for less than fair market value was exclusively for a purpose other than to qualify for

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. (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 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.

MassHealth and therefore not a disqualifying transfer (130 CMR 520.019(F)).²

This appeal is denied.

Order for MassHealth

None.

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.

Brook Padgett
Hearing Officer
Board of Hearings

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.