

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**

<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	1808954
<b>Decision Date:</b>	5/30/18	<b>Hearing Date:</b>	May 22, 2018
<b>Hearing Officer:</b>	Stanley M. Kallianidis		

**Appellant Representative:**

**MassHealth Representative:**

Gloria Medeiros, Taunton



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, 6<sup>th</sup> Floor  
Quincy, MA 02171*

## APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Transfer of Assets
<b>Decision Date:</b>	5/30/18	<b>Hearing Date:</b>	May 22, 2018
<b>MassHealth Rep.:</b>	Gloria Medeiros		

### 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 February 5, 2018, MassHealth denied the appellant's application for MassHealth benefits from October 9, 2017 to March 9, 2018 due to a disqualifying transfer (see Exhibit 1). The appellant filed this appeal in a timely manner on March 6, 2018 (see 130 CMR 610.015) and Exhibit 2). A dispute over the amount of assistance is valid grounds for appeal (see 130 CMR 610.032).

### Action Taken by MassHealth

MassHealth initially denied the appellant's application for MassHealth from October 9, 2017 to March 9, 2018. It then revised the penalty period, ending it on January 21, 2018.

### Issue

Was MassHealth correct, pursuant to 130 CMR 520.019 in determining that the appellant made a net disqualifying transfer of \$36,920.94?

## Summary of Evidence

The MassHealth representative testified that the appellant applied for MassHealth on December 12, 2017. The application was denied from October 9, 2017 to March 9, 2018 due to a disqualifying transfer of \$53,703.94 (Exhibit 1). The MassHealth representative explained that the appellant sold her home in May 2015 and deposited the net proceeds into her grandson's checking account (Exhibit 3). The grandson cured a portion of the transfer by paying a total of \$16,783.00 for the appellant's funeral and burial expenses, her home cleanout, and her elderly housing deposit (Exhibit 4). While the appellant's grandson claimed that he also paid for additional expenses of the appellant, there was no documentation of this. The MassHealth representative noted that the grandson has the appellant's monthly income of \$1,151.69 transferred to his account and uses this to pay for her rent (Exhibit 3).

The MassHealth representative explained that the ineligibility period was 104 days. This was determined by taking the net transferred amount, \$36,920.94 and dividing it by the average daily private nursing home rate, \$354.00, beginning October 9, 2017, the date that she was otherwise eligible for MassHealth (Exhibit 5).

The appellant's grandson testified that his grandmother is now 92 years old. She initially moved in with him after selling her house, but then decided to move into elderly housing. He testified that her income barely covers her rent. He testified that he used the proceeds from the sale of her home to pay for her other monthly expenses, namely food and medicine. He acknowledged, however, that he did not have any documentation of this.

## Findings of Fact

Based on a preponderance of the evidence, I find:

1. The appellant, now 92 years of age, applied for MassHealth on December 12, 2017 with a nursing home request date of October 9, 2017 (testimony).
2. The application was denied from October 9, 2017 to March 9, 2018 due to a disqualifying transfer of \$53,703.94 (Exhibit 1).
3. The appellant sold her home in May 2015 and deposited the net proceeds into her grandson's checking account (Exhibit 3).
4. The grandson cured a portion of the transfer by paying a total of \$16,783.00 for the appellant's funeral and burial expenses, her home cleanout, and her elderly housing deposit (Exhibit 4).



5. The grandson also has the appellant's monthly income of \$1,151.69 transferred to his account and uses this to pay for her rent (Exhibit 3).
6. The appellant's ineligibility period was 104 days. This was determined by taking the net transferred amount, \$36,920.94 and dividing it by the average daily private nursing home rate, \$354.00, beginning October 9, 2017, the date that she was otherwise eligible for MassHealth, and ending January 21, 2018 (Exhibit 5).
7. While the grandson claimed to have paid for additional expenses of the appellant from the proceeds of the sale of her home, no supportive documentation was ever submitted to MassHealth or into the hearing record.

## **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). 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. 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, MassHealth 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 (130 CMR 520.019(C)).

130 CMR 520.019(F) provides with regard to intent of transferring assets:

Determination of Intent: In addition to the permissible transfers described in 130 CMR 520.019(D), 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.

In the instant appeal, I have found that the appellant applied for MassHealth on December 12, 2017 with a nursing home request date of October 9, 2017. The application was denied from October 9, 2017 to March 9, 2018 due to a disqualifying transfer of \$53,703.94 after the appellant sold her home in May 2015 and deposited the net proceeds into her grandson's checking account. After the grandson cured a portion of the transfer by paying a total of \$16,783.00 for the appellant's funeral and burial expenses, her home cleanout, and her elderly housing deposit, the net transferred amount was \$36,920.94.

The appellant's revised ineligibility period was 104 days. This was determined by taking the net transferred amount, \$36,920.94 and dividing it by the average daily private nursing home rate, \$354.00, beginning October 9, 2017, the date that she was otherwise eligible for MassHealth, and ending January 21, 2018.

I have further found that the grandson also has the appellant's monthly income of \$1,151.69 transferred to his account and uses this to pay for her rent. He claimed to have paid additional expenses of the appellant out of the proceeds from the sale of her home due to the insufficiency of her income to make ends meet, but there was no documentation available to corroborate this claim. Accordingly, without any supportive evidence of additional bills paid on behalf of the appellant, I conclude that the net transferred amount of \$36,920.94 was a gift with no fair market value compensation received in return. Finally, I also conclude that there was intent to qualify for MassHealth on the part of the appellant as the transaction at issue was made when she was 89 years of age and a couple of years prior to her admission to a nursing facility.

Accordingly, where the appellant transferred \$36,920.94 for less than fair market value, and where the transfer was not "exclusively for a purpose other than to qualify for MassHealth," it was indeed a disqualifying transfer.

The appeal is therefore denied.

## **Order for the 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.

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Stanley M. Kallianidis  
Hearing Officer  
Board of Hearings