

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**

<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	1602466
<b>Decision Date:</b>	6/17	<b>Hearing Date:</b>	04/05/2016
<b>Hearing Officer:</b>	Patricia Mullen	<b>Record Open to:</b>	05/05/2016

**Appellant Representative:**

**MassHealth Representative:**  
Lindsay Gallant



*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>	Denied	<b>Issue:</b>	Transfer of assets
<b>Decision Date:</b>	6/17	<b>Hearing Date:</b>	04/05/2016
<b>MassHealth Rep.:</b>	Lindsay Gallant	<b>Appellant Rep.:</b>	
<b>Hearing Location:</b>	Taunton MassHealth Enrollment Center		

## Authority

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

## Jurisdiction

Through a notice dated January 6, 2016, MassHealth denied the appellant's application for MassHealth Standard benefits for long term care residents because MassHealth determined that the appellant transferred assets for less than fair market value resulting in a period of ineligibility until January 15, 2016. (see 130 CMR 520.019 and Exhibit 1). The appellant filed this appeal in a timely manner on January 20, 2016. (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

## Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth with a period of ineligibility until January 15, 2016.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that the appellant transferred assets for less than fair market value resulting in a period of ineligibility until January 15, 2016.

## Summary of Evidence

The appellant was represented telephonically by her Power of Attorney (POA) who is also her daughter, and by the POA's attorney. The appellant is in her late 90's and was admitted to the nursing facility on September 22, 2015. (testimony, Exhibit 6) The appellant submitted an application for MassHealth Standard for long term care residents on November 27, 2015 seeking an October 15, 2015 start date. (testimony, Exhibit 1) The MassHealth representative stated that the appellant had reduced her assets to the MassHealth limit of \$2,000.00 by October 15, 2015, however MassHealth determined that a total of \$28,241.00 was transferred for less than fair market value and thus the appellant had a period of ineligibility until January 15, 2016. The MassHealth representative stated that the appellant was approved for MassHealth benefits by notice dated January 8, 2016 with a start date of January 15, 2016. (Exhibit 6)

The MassHealth representative testified that the appellant had both a savings account and a checking account at Randolph Savings Bank. The MassHealth representative stated that for the period September 2, 2014 through October 8, 2015, a total of \$23,700.00 was transferred out of the appellant's savings account into the daughter's bank account. (Exhibit 6) The list shows one to three transfers were made into the daughter's account each month from September, 2014 to October, 2015 ranging in amount from \$300 a month to \$3,000.00 a month. (Exhibit 8) The MassHealth representative stated that for the period September 8, 2014 through November 16, 2015, a total of \$11,100.00 was transferred from the appellant's checking account into the daughter's bank account. (Exhibit 6) That list shows one to three transfers were made into the daughter's account each month (with the exception of November, 2014, May, 2015, and June, 2015) ranging in amount from \$400.00 a month to \$1,600.00 a month. (Exhibit 8) The MassHealth representative stated that the appellant's daughter deposited \$700.00 into the appellant's bank account on March 26, 2015. The MassHealth representative stated that the appellant's daughter submitted to MassHealth bills totaling \$5,858.96 which she noted were for her mother's expenses. (Exhibit 9) The MassHealth representative stated that the bills were for a storage facility rental, electric bills, and oil charges. (Exhibit 9) The MassHealth representative stated that she deducted both the \$700.00 deposit and the \$5,858.96 in bills from the total transfer amount of \$34,800.00 and determined a total disqualifying transfer amount of \$28,241.00. The hearing officer questioned why MassHealth did not look back any farther than September 2, 2014 for any transfers and the MassHealth representative noted that she was not sure why no earlier statements were reviewed.

The MassHealth representative stated that there was no documentation submitted to support that fair market value was received by the appellant for \$28,241.00 and thus MassHealth determined that amount to be a disqualifying transfer and calculated a period of ineligibility. The MassHealth representative explained that MassHealth divided the disqualifying transfer amount of \$28,241.00 by the average daily rate of nursing facility care in the Commonwealth, \$310.00, and determined an ineligibility period of 92 days. Because the appellant was otherwise eligible for MassHealth on October 15, 2015, the ineligibility period begins on this date and counting 92 days forward from and including October 15, 2015 is January 14, 2015. (testimony)

The MassHealth representative stated that the appellant lived with her daughter and the appellant's house was transferred to the appellant's daughter, but such transfer was permissible because the daughter was considered a caregiver child. The MassHealth representative presented some of the appellant's bank statements at the hearing and pointed out that certain expenses including the following were all paid out of the appellant's bank account and were not counted toward the total transfer amount: 1<sup>st</sup> Health, HPHC, town water/sewer bills, real estate taxes, hair appointments, car excise tax, landscaping, podiatrist, tree service, Comcast cable, stamps, homeowner's insurance, Quincy Mutual premium. (Exhibit 11)

The appellant's attorney stated that he was just retained by the POA two weeks prior and was still reviewing the bank accounts at issue. The appellant's attorney noted that he did not have the list of the specific withdrawals which MassHealth determined to be disqualifying transfers and the MassHealth representative stated that she would send the list to him. The appellant's attorney stated that the appellant's daughter can account for each withdrawal.

The appellant's daughter stated that she moved into the appellant's house 18 years ago and she was storing her items in the storage facility at a cost of \$250.00 a month. Based on the bills submitted, MassHealth allowed a total of \$2,880.00 in storage facility bills toward the partial cure of \$5,858.98. (Exhibit 9) The appellant's daughter stated that the appellant helped her with her bills. The hearing officer asked the appellant's daughter if she had a source of income and the appellant's daughter testified that she has a pension and had recently applied for Social Security. The MassHealth representative stated that she thought the storage facility bill was the appellant's expense, not the daughter's, and that is why she allowed it as part of the partial cure.

The record was left open for one month, until May 5, 2016, to give the appellant's representatives the opportunity to submit documentation showing fair market value was received for the transferred amount.

Within the record open period, the appellant's attorney submitted a letter noting that the appellant's daughter was unable to obtain receipts of transactions and instead provided written notes regarding each credit and debit to the accounts. (Exhibit 8) The appellant's attorney stated that the appellant's daughter maintained that many of the institutions where money was transferred to do not keep records going back far enough to obtain the relevant receipts and/or invoices. (Exhibit 8) The appellant's daughter submitted 4 receipts from Walgreens dated May 12, 2015, June 14, 2015, July 17, 2015, and September 6, 2015 with prescription costs totaling \$205.65 charged to her credit card. (Exhibit 8) The appellant's daughter also submitted a Prescription Records printout for the appellant from Walgreens for the period August 20, 2014 through December 12, 2015 showing prescription expenses totaling \$649.88<sup>1</sup>. (Exhibit 8) The medications listed on the receipts match up to some of the medications listed in the appellant's Prescription Records printout. (Exhibit 8) In her handwritten notes, the appellant's daughter lists amounts paid for groceries, a vet, a pet store,

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<sup>1</sup> The listed individual prices on the Prescription Records printout add up to \$312.50 and thus it is not clear how the total amount of \$649.88 was calculated. (Exhibit 8)

restaurants, gas, stamps, clothes, perfume, yard work, car payments, auto insurance, Comcast cable, oil, oil tank insurance, 1<sup>st</sup> Health, HPHC, water bill, taxes, hair, tax prep, auto excise tax, snow removal, trees, and nursing facility bills. (Exhibit 8) The appellant's daughter writes that the listed expenses total \$32,287.15. (Exhibit 8)

The MassHealth representative reviewed the post hearing submissions and informed the hearing officer that MassHealth's original determination stands. (Exhibit 8)

## Findings of Fact

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

1. The appellant is in her late 90's and was admitted to the nursing facility on September 22, 2015.
2. The appellant submitted an application for MassHealth Standard for long term care residents on November 27, 2015 seeking an October 15, 2015 start date.
3. The appellant had reduced her assets to the MassHealth limit of \$2,000.00 by October 15, 2015.
4. The appellant was approved for MassHealth benefits by notice dated January 8, 2016 with a start date of January 15, 2016.
5. The appellant had both a savings account and a checking account at Randolph Savings Bank.
6. For the period September 2, 2014 through October 8, 2015, a total of \$23,700.00 was transferred out of the appellant's savings account into the daughter's bank account; one to three transfers were made into the daughter's account each month from September, 2014 to October, 2015 with amounts ranging from \$300 a month to \$3,000.00 a month.
7. For the period September 8, 2014 through November 16, 2015, a total of \$11,100.00 was transferred from the appellant's checking account into the daughter's bank account; one to three transfers were made into the daughter's account each month (with the exception of November, 2014, May, 2015, and June, 2015) ranging in amount from \$400.00 a month to \$1,600.00 a month.
8. The appellant's daughter deposited \$700.00 into the appellant's bank account on March 26, 2015 and submitted to MassHealth bills totaling \$5,858.96 which she noted were for her mother's expenses.

9. The submitted bills totaling \$5,858.96 were for a storage facility rental totaling \$2,880.00, electric bills, and oil charges.
10. The storage rental facility was for the appellant's daughter and was her expense.
11. The appellant lived with her daughter and the appellant's house was transferred to the appellant's daughter as a caregiver child.
12. The appellant paid certain expenses out of her checking account and such were not part of the disqualifying transfer amount calculated by MassHealth; these included checks written for 1<sup>st</sup> Health, HPHC, town water/sewer bills, real estate taxes, hair appointments, car excise tax, landscaping, podiatrist, tree service, stamps, and homeowner's insurance, and direct withdrawals for Quincy Mutual and Comcast cable.
13. The appellant's daughter submitted 4 receipts from Walgreens dated May 12, 2015, June 14, 2015, July 17, 2015, and September 6, 2015 with prescription costs totaling \$205.65 charged to her credit card.
14. A Prescription Records printout for the appellant from Walgreens for the period August 20, 2014 through December 12, 2015 shows prescription expenses with a total price of \$649.88, but the actual amounts on the report add up to \$312.50.
15. The appellant's daughter submitted a note listing amounts paid for groceries, a vet, a pet store, restaurants, gas, stamps, clothes, perfume, yard work, car payments, car insurance, Comcast cable, oil, oil tank insurance, 1<sup>st</sup> Health, HPHC, water bill, taxes, hair, tax prep, car excise, snow removal, trees, and nursing facility bills; no receipts or bills accompanied the note.

## **Analysis and Conclusions of Law**

Fair-Market Value — an estimate of the value of a resource if sold at the prevailing price. For transferred resources, the fair-market value is based on the prevailing price at the time of transfer. See 130 CMR 515.001.

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. See 130 CMR 520.019(C).

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.

See 130 CMR 520.019(F).

Duration of Ineligibility. If the MassHealth agency has determined that a disqualifying transfer of resources has occurred, the MassHealth agency will calculate a period of ineligibility. The number of months in the period of ineligibility is equal to the total, cumulative, uncompensated value as defined in 130 CMR 515.001 of all resources transferred by the nursing-facility resident or the spouse, divided by the average monthly cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency. See 130 CMR 520.019(G)(1).

For transfers occurring on or after February 8, 2006, the MassHealth agency adds the value of all the resources transferred during the look-back period and divides the total by the average monthly cost to a private patient receiving long-term-care services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency. The result will be a single period of ineligibility beginning on the first day of the month in which the first transfer was made or the date on which the individual is otherwise eligible for long-term-care services, whichever is later. See 130 CMR 520.019(G)(2)(i).

The appellant transferred a total of \$34,800.00 to her daughter for the 14 month period from September, 2014 to November, 2015. From this total transfer amount, MassHealth determined that the appellant's daughter paid \$700.00 directly back to her and paid \$5,858.98 in expenses for the appellant for a total partial cure of \$6,558.98 and a disqualifying transfer amount of \$28,241.00. Storage facility bills totaling \$2,880.00, which were counted toward the \$6,558.98 partial cure, are actually the appellant's daughter's bills and not the appellant's bills and thus should not be counted toward the partial cure. The appellant submitted receipts documenting that prescription expenses totaling \$205.65 were charged to her daughter's credit card. The

medications listed on the prescription receipts match up with some of the medications listed on the Prescription Records printout for the appellant. The individual medication prices listed on the Prescription Records printout total \$312.50. Based on the receipts submitted, it appears to be the appellant's daughter's habit to charge the appellant's medication expenses to her credit card. The appellant's Prescription Records printout shows total prescription costs to the appellant of \$312.50. Accordingly it is reasonable to determine that the appellant's daughter paid \$312.50 for the appellant's prescription costs for the period at issue.

The appellant's daughter maintained that she could not document her payment of \$28,241.00 of the appellant's expenses from September, 2014 to November, 2015 because many of the institutions to which money was transferred do not keep records going back far enough to obtain the relevant receipts. (Exhibit 8) It is not clear what institutions' records are needed to support \$28,241.00 in payments over a 15 month period that occurred less than 2 years ago. The appellant's daughter claims that about \$32,000.00 was spent on behalf of the appellant, according to the handwritten list she provided at Exhibit 8. Some of the expenses noted on the appellant's daughter's list, including 1<sup>st</sup> Health, HPHC, water/sewer, real estate taxes, hair, car excise, landscaping services, tree services, Comcast cable, and stamps were all expenses paid out of the appellant's joint bank account with her daughter and were not included in the total transfer amount calculated by MassHealth. The listed oil payments were allowed as part of the partial cure calculated by MassHealth. The listed car payments and car insurance would be the daughter's expenses, not the appellant's.

The appellant had income and assets available to pay her bills. Because the appellant and her daughter lived together, many bills may have been shared by them. MassHealth did not review bills paid out of the appellant and her daughter's joint bank account to determine if only half should be counted as fair market value for the appellant, rather none of the expenses paid out of the appellant and her daughter's joint bank account were considered part of the disqualifying transfer. MassHealth counted as a disqualifying transfer only the money transferred into the appellant's daughter's sole account for the period at issue. The appellant's daughter stated that she transferred money out of the appellant's joint accounts into her own account because it was easier to pay the bills that way. Many bills were paid directly out of the appellant's joint account with her daughter and thus it does not make sense to claim that transferring money into the daughter's sole account was an easier way to pay bills; in fact it added another step in the process and made it more time consuming. Furthermore, no documentation was submitted to support that the appellant's daughter paid \$28,241.00 toward the appellant's expenses for the period September, 2014 to November, 2015. This is a considerable amount of money spent over a 15 month period, especially in light of the fact that many expenses were being paid out of the appellant's joint account and weren't even counted as part of the \$28,241.00 transfer. Furthermore, for the last three months of the period at issue, September, 2015 through November, 2015, the appellant was a resident of a skilled nursing facility and thus had considerably reduced expenses.



The appellant lived with her daughter and helped her with expenses. The appellant had the right to give her money to her daughter or to anyone else she desired, however she did so at the risk of not having necessary funds should she need them for her own needs, as in this case. An individual cannot give away assets with the expectation that MassHealth will pay for his/her nursing facility expenses. The appellant was in her mid to late 90's throughout 2014 and 2015 and thus it was reasonable to believe that she might need resources to cover possible nursing facility needs. The appellant transferred a total of \$34,800.00 to her daughter in a little over a year's time and I determine that it is not reasonable and there is no evidence to support that this amount of money was used for the appellant's expenses.

Out of the total amount transferred, MassHealth determined a partial cure of \$6,558.98. From this amount, \$2,880.00 in storage facility expenses should not be counted toward the cure because the storage facility expenses were not the appellant's expenses. Accordingly the partial cure is reduced to \$3,678.98 ( $\$6,558.98 - \$2,880.00$ ). To this amount is added the appellant's prescription expenses of \$312.50 paid by the appellant's daughter. The total partial cure is thus \$3,991.48 ( $\$3,678.98 + \$312.50$ ). I determine no further cures based on the documentation submitted.

Based on all of the above, I determine that the appellant transferred \$30,808.52 for less than fair market value ( $\$34,800.00 - \$3,991.48$ ). The ineligibility period is 99 days ( $\$30,808/\$310 = 99$ ). The earliest possible start date for MassHealth coverage was October 15, 2015 and thus the ineligibility period begins on that date and runs through January 21, 2016. The appellant was approved for MassHealth with a start date of January 15, 2016. Since MassHealth's start date calculation is more generous to the appellant, MassHealth's determination stands. MassHealth's action is upheld and the 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.

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Patricia Mullen  
Hearing Officer  
Board of Hearings

cc