

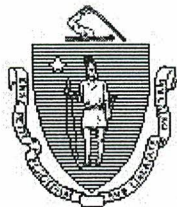
# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**

<b>Appeal Decision:</b>	Approved in Part; Denied in Part	<b>Appeal Number:</b>	1700155
<b>Decision Date:</b>	3/15/17	<b>Hearing Date:</b>	02/03/2017
<b>Hearing Officer:</b>	Susan Burgess-Cox	<b>Record Open to:</b>	02/06/2017

**Appellant Representative:**

**MassHealth Representative:**  
Perla Pinedo



*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 in Part; Denied in Part	<b>Issue:</b>	Start Date
<b>Decision Date:</b>	3/15/17	<b>Hearing Date:</b>	02/03/2017
<b>MassHealth Rep.:</b>	Perla Pinedo	<b>Appellant Rep.:</b>	
<b>Hearing Location:</b>	Chelsea 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 November 18, 2016, MassHealth determined that the appellant is not eligible for MassHealth because she transferred assets totaling \$101,036 resulting in a penalty period from August 20, 2016 to May 31, 2017. (130 CMR 520.000; Testimony; Exhibit 1). The appellant appealed this decision in a timely manner. (130 CMR 610.015(B); Exhibit 2). Denial of assistance is valid grounds for appeal. (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth determined that the appellant is not eligible for MassHealth due to a transfer of assets totaling \$101,036.

### Issue

Whether MassHealth was correct in determining that the appellant made a disqualifying transfer.



## Summary of Evidence

The MassHealth representative, from the Chelsea MassHealth Enrollment Center, testified that the appellant was admitted into a long-term care facility on June 21, 2014. The appellant applied for MassHealth on August 3, 2016 seeking coverage as of August 20, 2016. MassHealth initially denied the application for failure to provide information necessary to complete the application. The appellant provided information on September 30, 2016. MassHealth re-stamped the application and sent out a second request for information on October 12, 2016. On November 18, 2016, MassHealth processed the application and determined that the appellant was ineligible for a period due to a transfer of resources.

In November 2015, the appellant and his niece sold a two-family house in Watertown that they owned as tenants-in-common. (Testimony; Exhibit 5). The appellant received \$209,556.90 from the sale which was one half of the sale proceeds. (Testimony; Exhibit 5). In January 2016, the appellant paid his niece \$101,036 as a reimbursement for expenses she paid for the home. (Testimony; Exhibit 5). The appellant provided an affidavit to MassHealth stating that the funds were transferred to his niece to pay for taxes and other expenses that she paid alone while they owned the property together. (Testimony; Exhibit 5). The appellant retained approximately \$108,000 from the sale. (Testimony; Exhibit 5).

The appellant's niece and her husband appeared in person with counsel for the appellant. Documents from the appellant were incorporated into the hearing record as Exhibit 5.<sup>1</sup> The appellant obtained an interest in the Watertown property in 1964. (Testimony; Exhibit 5). At that time, the property was owned by his sister-in-law, a widow. (Testimony; Exhibit 5). In 1998, the appellant's sister-in-law transferred her interest in the home to her daughter, the appellant's niece. (Testimony; Exhibit 5). The appellant retained his interest in the home and continued to reside in the home until he went into a long-term care facility. (Testimony; Exhibit 5). The appellant's niece and husband continued to live in the home until the sale in November 2015. (Testimony; Exhibit 5).

From 1986 to 1998, the appellant made quarterly payments of \$300 to his sister-in-law for expenses and maintenance of the home for a total of \$1,200 each year. (Testimony; Exhibit 5). From 1998 to 2012, the appellant made these quarterly

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<sup>1</sup> Counsel for the appellant appeared at the hearing with an extensive number of documents reflecting debt owed by the appellant to his niece as a tenant-in-common. At the time of the application, counsel provided only an affidavit, not actual bills or statements. MassHealth did not accept the affidavit as verification of the debt. Counsel did not provide records related to the debt until the day of the hearing. It is unclear why counsel did not provide such records to MassHealth to consider prior to the hearing. At the hearing, MassHealth would not accept the documents presented for further consideration. Instead, MassHealth asked the Board of Hearings to issue a decision without a review or response from MassHealth.

payments of \$300 to his niece for a total of \$1,200 each year for expenses and maintenance of the home. (Testimony; Exhibit 5). The appellant paid for his own utilities except water. (Testimony; Exhibit 5). From 2012 to 2014 the appellant paid \$600 each quarter to his niece for a total of \$2,400 each year for expenses and maintenance of the home. (Testimony; Exhibit 5). In 2014, the appellant began receiving VA benefits so could fully pay his share of the property taxes, insurance and water. (Testimony; Exhibit 5). The appellant's niece testified at the hearing that she and her husband understood that the appellant could not afford to contribute more than he did before receiving VA benefits. The appellant's niece testified that the appellant believed that his interest in the home would transfer to her upon his death.

In 2015, the appellant's niece and her husband decided to sell the house. (Testimony; Exhibit 5). The niece's husband testified that they could not keep the home without having a tenant. The appellant's niece understood that a portion of the rental income would be attributed to the appellant and impact his patient paid amount. A distribution of this income to the appellant would not provide them with income necessary to remain in the home. At the time of the sale, the proceeds were divided equally. (Testimony; Exhibit 5). The appellant then reimbursed his niece for the expenses paid between 1998 and 2013 that the appellant did not contribute to as an owner of the property. (Testimony; Exhibit 5). Counsel cited M.G.L. Chapter 60, Section 85 that allows a tenant in common who pays the entire tax assessed upon land held in common to have a lien upon the interest of each of his co-tenants to secure payment to him of the proportion of such taxable payable by each of said co-tenants respectively, with the costs of enforcing the same. (Testimony; Exhibit 5). The statute also provides the co-tenant with the right to recover it back if illegally assessed as he would have had if the tax had been paid under a protest by him in writing. Counsel for the appellant utilized this tool to calculate an amount owed by the appellant to his niece. (Testimony; Exhibit 5).

Counsel for the appellant included an interest rate of 14% compounded annually on this debt arguing that the town of Watertown charges this rate of interest on unpaid bills. (Testimony; Exhibit 5). The appellant's niece made these payments on her own with the quarterly contribution of the appellant that they agreed upon. The appellant did not show any agreement or arrangement for interest based repayment. Counsel did not note any interest charged to the appellant's niece for bills past due or liens placed on the premises.

Counsel notes that the amount calculated does not fully cover the expenses that the appellant's niece paid on his behalf since 1998. (Testimony; Exhibit 5). Instead, it was an amount that the appellant could clearly account and document as repayment. (Testimony; Exhibit 5). Counsel provided a detailed spreadsheet and bills to verify most of this debt owed by the appellant to his niece. (Testimony; Exhibit 5). For those bills that were not possible to locate,



counsel provided estimates for payments based upon figures from the year before and the year after. (Testimony; Exhibit 5). Counsel included costs for new porches installed in 2000 and 2014. (Testimony; Exhibit 5). The calculations included taking the total amount due, dividing that amount by two, deducting the amount paid by the appellant and compounding an annual interest rate of 14%. (Testimony; Exhibit 5). After the hearing, counsel obtained additional bills and was able to provide a new accounting for the record. A brief and records submitted after the hearing were incorporated into the hearing record as Exhibit 6.

The total amount clearly accounted for by the appellant was \$37,087.01.<sup>2</sup>

Year	Property Taxes	Insurance	Water	Repairs	Total Due by Appellant Total Bills ÷ 2	Payment from Appellant	Amount Due to Niece Total Due - Payment
1998	\$3,180.87	\$1,290.00	\$752.05		\$2,611.46	\$1,200.00	\$1,411.46
1999	\$3,297.92	\$1,300.00	\$533.68		\$2,565.80	\$1,200.00	\$1,365.80
2000	\$3,422.95	\$1,320.00	\$550.36	\$7,000.00	\$6,146.66	\$1,200.00	\$4,946.66
2001	\$3,134.20	\$557.00	\$936.24		\$2,313.72	\$1,200.00	\$1,113.72
2002	\$3,172.67	\$896.20	\$689.43		\$2,379.15	\$1,200.00	\$1,179.15
2003	\$3,386.13	\$113.40	\$277.14		\$1,888.34	\$1,200.00	\$688.34
2004	\$4,004.36	\$230.62	\$1,380.00		\$2,807.49	\$1,200.00	\$1,607.49
2005	\$4,486.25	\$1,416.00	\$279.22		\$3,090.74	\$1,200.00	\$1,890.74
2006	\$4,723.70	\$413.20	\$936.24		\$3,036.57	\$1,200.00	\$1,836.57
2007	\$4,521.44	\$1,704.00	\$600.19		\$3,412.82	\$1,200.00	\$2,212.82
2008	\$4,805.92	\$413.20	\$936.24		\$3,077.68	\$1,200.00	\$1,877.68
2009	\$4,972.77	\$1,858.50	\$1,095.00	\$4,390.00	\$6,158.14	\$1,200.00	\$4,958.14
2010	\$4,789.50	\$1,320.48	\$828.00		\$3,468.99	\$1,200.00	\$2,268.99
2011	\$4,874.33	\$2,173.76	\$995.00		\$4,021.55	\$1,200.00	\$2,821.55
2012	\$5,320.56	\$2,167.96	\$653.13		\$4,070.83	\$2,400.00	\$1,670.83
2013	\$5,875.17	\$2,638.40	\$560.44		\$4,537.01	\$2,400.00	\$2,137.01
2014	\$3,001.79	\$0.00	\$0.00	\$8,000.00	\$5,500.90	\$2,400.00	\$3,100.90
<b>Totals:</b>	<b>\$70,970.53</b>	<b>\$19,812.72</b>	<b>\$12,002.36</b>	<b>\$19,390.00</b>	<b>\$61,087.81</b>	<b>\$24,000.00</b>	<b>\$37,087.81</b>

## Findings of Fact

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

<sup>2</sup> This figure takes into account payments made by the appellant, verification and some estimates provided by counsel for taxes, insurance and water owed by the appellant without an accounting of interest. Counsel provided several spreadsheets and bills to consider in this decision. The figures in this decision pull from each in an attempt to calculate a figure that reflects figures compiled from both tables.

1. The appellant was admitted into a long-term care facility on June 21, 2014.
2. The appellant applied for MassHealth on August 3, 2016 seeking coverage as of August 20, 2016.
3. MassHealth initially denied the application for failure to provide information necessary to complete the application.
4. The appellant provided information on September 30, 2016. MassHealth re-stamped the application and sent out a second request for information on October 12, 2016.
5. On November 18, 2016, MassHealth processed the application and determined that the appellant was ineligible for a period due to a transfer of resources.
6. In 1964, the appellant obtained an interest in a home owned by his sister-in-law, a widow.
7. In 1998, the appellant's sister-in-law transferred her interest in the home to her daughter, the appellant's niece.
8. The appellant retained his interest in the home and continued to reside in the home until he went into a long-term care facility.
9. From 1986 to 1998, the appellant made quarterly payments of \$300 to his sister-in-law for expenses and maintenance of the home for a total of \$1,200 each year.
10. From 1998 to 2012, the appellant made these quarterly payments of \$300 to his niece for expenses and maintenance for a total of \$1,200 each year.
11. From 2012 to 2014 the appellant paid \$600 each quarter to his niece for expenses and maintenance for a total of \$2,400 each year.
12. In 2014, the appellant began payment his entire share of the property taxes and insurance as he began receiving VA benefits.
13. The appellant's niece paid for maintenance, repairs, water, taxes and insurance on the home through her own income and the contributions made by the appellant.



14. The appellant's niece understood at the time of making these payments that the appellant was unable to contribute more due to a lack of income.
15. The appellant and his niece did not have any written or oral agreement regarding terms of repayment for ownership expenses not covered by his monthly payments.
16. In 2015, the appellant's niece and her husband decided to sell the house.
17. The appellant's niece could not keep the home without having a tenant.
18. Income from the tenancy would impact the appellant's patient paid amount as co-tenant of the home.
19. The appellant's entitlement to a portion of rental income would not allow the appellant's niece and nephew to keep the home.
20. At the sale, proceeds were divided equally between the appellant and his niece.
21. The appellant retained approximately \$108,000 from the sale and transferred \$101,036 to his niece as reimbursement for expenses she paid for the home from 1998 to 2014 that were not covered by the appellant's quarterly payments.
22. The reimbursement included an interest rate of 14% compounded annually on this debt.
23. The interest rate was based upon that charged by the town of Watertown for unpaid bills.
24. No interest was charged to the appellant's niece for bills past due or liens placed on the premises.
25. The appellant's niece was able to document bills and amounts due from the appellant of \$37,087.81.

## **Analysis and Conclusions of Law**

MassHealth administers and is responsible for the delivery of health-care services to MassHealth members. (130 CMR 515.002). The regulations governing MassHealth at 130 CMR 515.000 through 522.000 (referred to as Volume II)

provide the requirements for noninstitutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by M.G.L. c. 118E, and certain Medicare beneficiaries. (130 CMR 515.002). The appellant in this case is an institutionalized person. Therefore, the regulations at 130 CMR 515.000 through 522.000 apply to this case. (130 CMR 515.002).

MassHealth determined that the transfer from the appellant to his niece of \$101,036 for repayment of ownership expenses plus interest not covered during the course of their co-tenancy was a disqualifying transfer pursuant to 130 CMR 520.019. In 1964, the appellant obtained an interest in a home owned by his sister-in-law, a widow. In 1998, the appellant's sister-in-law transferred her interest in the home to her daughter, the appellant's niece. The appellant retained his interest in the home and continued to reside in the home until he went into a long-term care facility.

During the course of the tenancy, the appellant made quarterly payments to both his sister-in-law and his niece to cover some ownership expenses. The appellant's niece sold the home upon the appellant entering a long-term care facility and retained her portion of the sale proceeds along with \$101,036 from the appellant to cover expenses not paid for by the appellant along with interest of 14%. The appellant's niece paid all of the bills on time. No lien was placed on the property for non-payment of taxes or utility bills. The appellant's niece understood at the time of making these payments that the appellant was unable to contribute more due to a lack of income. The appellant and his niece did not have any written or oral agreement regarding terms of repayment for ownership expenses not covered by his monthly payments.

Pursuant to 130 CMR 520.019, 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. 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). (130 CMR 520.019(C)). A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available. (130 CMR 520.019(C)).

MassHealth does consider certain transfers as permissible. (130 CMR 520.019(D)). The transfer at issue in this case is not one listed as permissible. (130 CMR 520.019(D)). 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 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. (130 CMR 520.019(F)).

The regulations state that valuable consideration is a tangible benefit equal to at least the fair-market value of the transferred resource. (130 CMR 520.019(F)).

The appellant's niece sold the home and demonstrated that the appellant initially received fair market value for the sale. (130 CMR 520.019(F)). Additionally, counsel cited a chapter in Massachusetts General Laws that require co-tenants to make payments for taxes that they did not contribute to during the course of the tenancy. Therefore, the reimbursement for taxes paid is clearly understood. Also, the collection of payments for repairs made to the home, water bills and insurance is also understood as the appellant did contribute some but not all to cover these expenses during the course of his co-tenancy.

What is not understood is the application of a 14% interest rate to such debt. Counsel for the appellant did not demonstrate that any of the expenses covered by the appellant's niece went unpaid, were charged interest or incurred fees beyond the principal due. Additionally, the parties agreed over the years that the appellant would pay a certain amount as his contribution. Therefore, the collection of interest on this debt is not realistic. Counsel did not cite any law, regulation or agreement by the parties requiring interest due for a portion of bills not paid for by the appellant. Reliance on the practice of a town to collect interest on such unpaid expenses is not reliable for calculating a personal debt that was paid timely and not charged interest by the town. The attempt at this time to collect interest on such a debt from a co-tenant is not reasonable and was clearly done for purposed of reducing the appellant's assets to qualify for MassHealth at an earlier date. (130 CMR 520.019).

This appeal is approved in part to allow for reimbursement for expenses covered by the appellant's niece during the course of the co-tenancy that could be clearly accounted for and documented. (130 CMR 520.019). Payment of interest on such a debt, especially at a rate of 14% seems to appear as one that would allow for MassHealth eligibility sooner rather than a legal obligation of the appellant. (130 CMR 520.019). Counsel provided two spreadsheets and bills to include in the hearing record. The calculation done for purposes of this decision includes most of the expenses verified along with some estimates that were included in the initial spreadsheet but left out completely from the second. The total amount clearly accounted for by the appellant was \$37,087.01.

MassHealth should adjust the penalty period to deduct \$37,087.01 from the original transfer amount. This appeal is approved in part and denied in part.

## **Order for MassHealth**

Adjust the ineligibility period reducing the transfer amount by \$37,087.81 and provide the appellant 30 days to cure the remaining transfer amount.

## **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.

## **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 you experience problems with the implementation of 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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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

cc: