

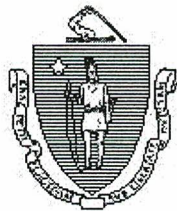
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

Appeal Decision:	Approved in Part; Denied in Part	Appeal Number:	1700439
Decision Date:	5/5	Hearing Date:	02/02/2017
Hearing Officer:	Marc Tonaszuck	Record Open to:	02/24/2017

Appellant Representative:

MassHealth Representative:
Patricia Lemke



*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

Appeal Decision:	Approved in Part; Denied in Part	Issue:	Long Term Care
Decision Date:	5/5	Hearing Date:	02/02/2017
MassHealth Rep.:	P. Lemke	Appellant Rep.:	
Hearing Location:	Springfield 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 12/01/2016, MassHealth notified appellant that it denied her application for long term care (LTC) benefits because she recently gave away or sold assets to become eligible for MassHealth services. MassHealth calculated a period of ineligibility from 10/01/2016 to 02/28/2017 (130 CMR 520.018, 520.019; Exhibit 1). The appellant filed a timely appeal on 12/19/2016 (130 CMR 610.015(B); Exhibit 2). A denial of benefits is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's application for LTC benefits and notified her of a period of ineligibility for MassHealth long term care benefits from 10/01/2016 to 02/28/2017 due to disqualifying transfers of resources during the look back period.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.018 and 520.019, in calculating a period of ineligibility for MassHealth long term care benefits from 10/01/2016 to 02/28/2017 due to disqualifying transfers of resources during the look back period.

Summary of Evidence

The MassHealth representative testified that appellant, a 93 year old woman, was admitted to a skilled nursing facility on 08/12/2016. An application for long-term-care benefits was submitted to MassHealth on appellant's behalf on 10/11/2016 seeking eligibility beginning 10/01/2016. The representative testified that this application was denied on the basis of transfers of resources that were made by the appellant during the appropriate 60-month look back period. The representative testified that there were five transfers that she determined were disqualifying and warranted a period of ineligibility. Those transfers were as follows:

09/23/2015	\$15,000.00
10/20/2015	\$15,160.00
12/21/2015	\$2,501.00
12/22/2015	\$16,057.00
03/21/2016	\$4,925.00
Total	\$53,643.00

All of the transfers were made from the appellant's bank account to her daughter/POA. The representative testified that she divided the total amount of disqualifying transfers by the daily private rate of the skilled nursing facility pursuant to the SC-1 (Exhibit 4), \$495.00, to calculate a period of ineligibility of 151 days, beginning on the date she was otherwise eligible for MassHealth benefits, 10/01/2016, and ending on 02/28/2017 (Exhibits 1 and 4).

The MassHealth representative testified that she received an explanation from the appellant's representative that some of the money was transferred to the appellant's daughter and used to renovate the kitchen in the daughter's home so that the appellant, who recently moved in with the appellant, could better access the cabinets, counters, table, stools and appliances.

The appellant's daughter/POA appeared at the fair hearing in person, while Terry Parker appeared by telephone to assist the appellant (Exhibit 2). She testified that the appellant's husband passed away and the appellant lived alone for about one year in a "lonely situation." They all considered it was better for her to move in with the daughter and she did eight years ago. Both the daughter and her husband work. The appellant was home all day alone with the dog. She was able to wash dishes and shower; however, she was not sure of herself walking with a walker. The appellant and the daughter agreed to renovate the kitchen in June 2015. The floor was "glossy," so it needed to be changed. The upper cabinets were too high for the appellant to reach. They made some accommodations for the appellant, including creating a kitchen island and putting the

microwave in the basement. They bought a steam oven and an articulating faucet. Plumbing had to be done. They also made a coffee station. The appellant has monthly income of approximately \$2,200.00, of which she contributed \$800.00 per month to her daughter and son-in-law while she lived with them. She used the rest of her income to go to Foxwoods, take family out to lunch and pay for her own expenses.

The daughter addressed each of the items deemed disqualifying transfers by MassHealth:

The \$15,000.00 check dated 09/23/2015 was made out directly to Kitchen Associates as a portion of the total charges on the contract to renovate the kitchen in the daughter's home. The contract includes cabinets, labor, countertops, sink and structural accommodations.

The \$15,160.00 check drawn on 10/20/2015 was to pay a credit card balance for the following charges: \$13,142.96 to pay Percy's appliances for a refrigerator, steam oven, wall oven, oven racks and taxes; \$1,627.67 to pay Percy's appliances for partial payment for cooktop and articulating faucet; \$39.00 to pay CT Lighting for a deposit.

The \$2,501.50 was a check drawn on 12/21/2015 to pay Citi credit card for personal expenses.

The \$16,057.00 was a check drawn on 12/22/2015 to pay Citi credit card for: \$15,000.00 as a payment towards the kitchen renovations; \$200.00 to CT Lighting; \$343.68 to Tasse's, a plumbing contractor for the kitchen renovations; and \$398.86 for personal items and clothing for the appellant.

The \$4,925.00 was a check drawn on 03/21/2016 to pay Citi credit card for: \$4,000.00 towards Kitchen Associates for renovations; \$1,336.44 and \$163.34 for furniture for the appellant's room; and \$95.95 for the appellant's bedding and clothing.

The daughter/POA also testified that "cures" to the transfers were made. The daughter/POA testified that she owned stocks jointly with her mother. They were cashed out and the proceeds were used to renovate the kitchen in the daughter's home. The total value of the stocks was \$69,971.40, of which half was the appellant's, or \$34,985.70. Since the daughter used her share, along with the appellant's share, to renovate the kitchen for the appellant's benefit, it should be considered as a cure to the disqualifying transfer amount.

In addition, the appellant's daughter and husband paid an additional \$8,000.00 and \$7,975.69 for the renovations in the kitchen. They contend that the total paid for the kitchen, \$67,116.11 should be considered as a cure because the appellant got fair market value in exchange for her purchases. The appellant's representative stated that some of

the renovations were not the type that she and her husband wanted and that they would not increase the value of the home.

Additionally, the appellant reported the full distribution of the stocks on her taxes. She was required to pay state and federal taxes totaling \$9,973.00 based on that distribution. The appellant's daughter/POA testified that in March 2016 she paid the taxes on behalf of the appellant in addition to the tax preparation fees of \$535.00. This should also be considered a cure. Finally, the appellant's representatives testified that there was no intent to qualify for MassHealth when she made the expenditures.

At the fair hearing, the MassHealth representative considered the testimony of the appellant's daughter/POA and the documentation submitted. She gave credit for half of the taxes paid as a result of the stock distribution, reducing the disqualifying transfer amount by \$4,685.00. She also considered payments the appellant made for personal items and further reduced the disqualifying transfer amount by \$2,084.00, to \$29,891.98.

The record remained open in this matter until 02/24/2017 for additional documentation from the appellant and a response from MassHealth (Exhibit 6). On 02/10/2017, the appellant's representative submitted her packet (Exhibit 7) and on 02/22/2017, MassHealth responded by stating that she reduced the disqualifying transfer amount to \$9,803.00, which results in a period of ineligibility of 28 days at the MassHealth rate of \$354 per day (10/1/2016-10/28/2016), making the appellant's new start date 10/29/2016 (Exhibit 8).

The MassHealth representative wrote the following, addressing each of the transfers by number as follows:

1. I have eliminated the \$15,000.00 as this was proven that it was Marilyn's money that came from her account and then was paid back to her.
2. No changes to this line.
3. No changes to this line.
4. This was a credit card bill that was paid with the appellant's money, the only thing I am deducting from this is \$1,057.00 for the appellant's personal effects as the rest was for kitchen cabinets.
5. This line I am deducting \$925.00, as the remaining is for Kitchen Associates.

This brings our new transfer amount to \$36,661.00. From this amount I am going to allow the following deductions. \$36,661.00 - \$20,089.00. This amount was deposited into the appellant's account November 2015 that I counted as her asset but was informed that this was the daughter's share of the stock sale. The new balance is \$16,572.00. I am also allowing half of the taxes that were paid for the stock sale. Since the daughter is half owner she is responsible for half of the taxes, therefore \$4,685.00 is being deducted from the \$16,572.00 leaving a new

balance of \$11,887.00. There is also one other deduction that is being allowed. The daughter stated that she paid a credit card bill of the appellant's that has personal items for the appellant on it. From that statement I am allowing another \$2,084.00 to be deducted. That brings the new transfer amount to \$9,803.00.

(Exhibit 8).

The appellant's daughter replied on 02/23/2017 that MassHealth allowed half of the taxes from the proceeds of the stock distribution as a cure to the disqualifying transfer amount. She argued that the entire amount of the taxes should be considered a cure because the daughter's social security number does not appear on the 1099 form and that the daughter gave the entire stock distribution to the appellant. Second, the daughter requested that the amount paid to prepare the appellant's taxes (\$535.00) should be considered a cure, since the daughter paid that expense.

Third, the daughter stated that the appellant

did receive "fair market value" for her investment in the kitchen accommodations. She has received valuable consideration by using her money to enhance and make the kitchen she used daily accessible to her. She received personal value from these accommodations. These accommodations were made for [the appellant's] needs and not for the purpose of reducing her countable assets to render her eligible for MassHealth benefits. She made an investment in order to maintain her quality of life, continue living in our home (that she considered to be her home), and prolong her independence. [The appellant], my husband and myself have always had her best interest at heart when we made the financial decisions to try to keep her living in our home for what thought would be for the rest of her life. She lived with us for 8 years and there was no reason to think that our goal of continuing to have her live with us forever would be changed based on her sudden medical changes in July of 2015 (one year after we began the kitchen accommodations).

(Exhibit 9).

Findings of Fact

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

1. The appellant, a 93 year old woman, was admitted to a skilled nursing facility on 08/12/2016.
2. An application for long-term-care benefits was submitted to MassHealth on appellant's behalf on 10/11/2016 seeking eligibility beginning 10/01/2016.

3. Through a notice dated 12/01/2016, MassHealth notified appellant that it denied her application for long term care benefits because she recently gave away or sold assets to become eligible for MassHealth services. MassHealth calculated a period of ineligibility from 10/01/2016 to 02/28/2017.
4. In the course of MassHealth's review of the appellant's bank records, the following transactions were noted:

09/23/2015	\$15,000.00
10/20/2015	\$15,160.00
12/21/2015	\$2,501.00
12/22/2015	\$16,057.00
03/21/2016	\$4,925.00
Total	\$53,643.00

5. MassHealth determined that the above transactions were disqualifying transfers of resources totaling \$53,643.00.
6. During the record open period, MassHealth adjusted the disqualifying transfer amount to \$9,803.00, resulting in a period of ineligibility of 28 days at the MassHealth rate of \$354 per day (10/1/2016-10/28/2016), making the appellant's new start date 10/29/2016.
7. The appellant moved into her daughter's home approximately eight years ago.
8. The appellant contributed approximately \$800.00 per month to her daughter while she lived in the daughter's home.
9. In September, October and November 2015 the appellant and her daughter took distributions of stock totaling \$69,971.40. They were joint owners of the stock and each received fifty percent, or \$34,985.70.
10. The appellant used the proceeds from the sale of the stock to pay for renovations to the kitchen in her daughter's home beginning in the summer of 2015. The daughter and son-in-law also contributed to the renovations.
11. MassHealth did not consider the expenses paid by the appellant for kitchen renovations to the daughter's home as permissible transfers.
12. MassHealth reduced the amount of the disqualifying transfers by \$4,685.00, for half of the appellant's taxes for a stock distribution, paid by the appellant's

daughter.

13. MassHealth did not reduce the amount of the disqualifying transfer by the amount of the appellant's tax preparation, \$535.00, paid by the appellant's daughter.

Analysis and Conclusions of Law

A disqualifying transfer of resources is defined at 130 CMR 520.019:

(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 will consider the specific circumstances involved. A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available.

Regulation 130 CMR 520.019(G)(3), effective February 8, 2006, provides in pertinent part:

- (1) Begin Date. For transfers occurring before February 8, 2006, the period of ineligibility will begin on the first day of the month in which resources have been transferred for less than fair-market value. For transfers occurring on or after February 8, 2006, the period of ineligibility will begin on the first day of the month in which resources were transferred for less than fair-market value or the date on which the individual is otherwise eligible for MassHealth payment of long-term-care services, whichever is later. For transfers involving revocable trusts, the date of transfer is the date the payment to someone other than the nursing-facility resident or the spouse is made.

Regulation as 130 CMR 520.019(G)(2) addresses cures as follows:

After Issuance of the Notice of the Period of Ineligibility. After the issuance of the notice of the period of ineligibility, the nursing-facility resident may avoid imposition of the period of ineligibility in the following instances. ...

(b) Curing a Transfer. If the full value or a portion of the full value of the transferred resources is returned to the nursing-facility resident, the MassHealth agency will rescind or adjust the period of ineligibility and will apply the countable-assets rules at 130 CMR 520.007 and the countable-income rules at 130 CMR 520.009 to the returned resources in the determination of eligibility.

Regulation 130 CMR 520.019(F) reads as follows:

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.

The State Medicaid Manual (HCFA Transmittal letter 64) at Section 3258.10 sets forth the following guidance to address transfers exclusively for a purpose other than qualifying for Medicaid:

2. Transfers Exclusively for a Purpose Other Than to Qualify for Medicaid.-- Require the individual to establish, to your satisfaction, that the asset was transferred for a purpose other than to qualify for Medicaid. Verbal assurances that the individual was not considering Medicaid when the asset was disposed of are not sufficient. Rather, convincing evidence must be presented as to the specific purpose for which the asset was transferred.

This case involves the appellant's application for long term care benefits and several asset transfers during the look back period that MassHealth determined were disqualifying and result in a period of ineligibility. The appellant, a 93 year old woman, was admitted to a

skilled nursing facility on 08/12/2016. An application for long-term-care benefits was submitted to MassHealth on appellant's behalf on 10/11/2016 seeking eligibility beginning 10/01/2016. Initially, MassHealth determined that five transfers totaling \$53,643.00 were disqualifying transfers of resources. At hearing and during the record open period, MassHealth adjusted the disqualifying transfer amount to \$9,803.00, resulting in a period of ineligibility of 28 days at the MassHealth rate of \$354 per day (10/1/2016-10/28/2016), making the appellant's new start date 10/29/2016.

Ultimately MassHealth determined that the appellant's payment for kitchen renovations in her daughter's home were disqualifying transfers; however MassHealth reduced the disqualifying transfer amount by expenses paid by the appellant's daughter for the appellant's benefit. This makes it difficult to specifically cite to whether specific expenditures are disqualifying transfers and which are permissible transfers. MassHealth started its evaluation of the appellant's financial eligibility by making a determination that the money she spent for renovations to her daughter's kitchen was a disqualifying transfer of resources because the appellant did not receive fair market value in exchange for the money she spent. The appellant's daughter argued that the appellant moved in with her approximately eight years ago. In June 2015 the appellant and her daughter began planning to renovate the kitchen to make it easier for the appellant to use the appliances, sit at the table and reach the cabinets. To pay for the renovations, the appellant and her daughter sold stocks they jointly owned. Each received fifty percent, or \$34,985.70. The appellant used this money to pay for the kitchen renovations and the daughter used her half of the proceeds.

The appellant's representative asserted that the appellant received fair market value for the money she spent to renovate the kitchen because it was an "investment in order to maintain her quality of life, continue living in our home (that she considered to be her home), and prolong her independence." I disagree. The appellant has not shown how she received fair market value for the money she spent to renovate the kitchen in her daughter's home. Even though the renovations might not have been exactly what the appellant's daughter may have chosen, the renovations were performed approximately one year prior to the appellant's admission to the skilled nursing facility and after living in the home for 8 years. Any fair market value was received by the appellant's daughter and son-in-law, the owners of the home. Additionally, based on the appellant's advanced age, the proximity of the time of the transfer in relation to her admission to the nursing facility, and the appellant's declining health, evidenced by the fact that "accommodations" were made to the daughter's kitchen for the appellant's safety, I conclude that the transfers made for the renovations were not exclusively for a purpose other than to qualify for MassHealth benefits. Thus, MassHealth correctly determined that the money spent by the appellant for the renovations to the kitchen in her daughter's home was a disqualifying transfer of resources warranting a period of ineligibility. This portion of the appeal is therefore denied.

MassHealth mitigated the period of ineligibility by finding that some of the money spent by

the appellant was from bank accounts that held some of the daughter's money. MassHealth also determined that the daughter's payments for the appellant's tax liability based on the sale of her stocks reduced the disqualifying transfer amount by half of the tax amount. The appellant's representative argues that the full amount of the tax liability, paid by the daughter, should be considered a cure. I agree with the appellant's position. She paid for the appellant's tax obligation. She also paid for the tax preparation. Although, according to the appellant's daughter, the only reason taxes were filed was because of the stock distribution, I find that the daughter's payments for the appellant's tax liability and her tax preparation are akin to returning funds to the appellant and qualifies as a cure pursuant to the above regulation. Thus, this portion of the appeal is approved in part.

In summary, the daughter's assertion that she cured the transfers by using her own money to pay for her own kitchen renovations is not supported by the regulations. Because the appellant did not receive fair market value in exchange for the payments she made to renovate her daughter's kitchen, the money the daughter paid (the proceeds from the sale of the stock) was not returned to the appellant within the meaning of the above regulation and is therefore not a cure to the disqualifying transfer.

The appellant will have 30 days from the date of this fair hearing decision to make further cures to the recalculated disqualifying transfer amount.

For the foregoing reasons, this appeal is approved in part; denied in part.

Order for MassHealth

Reduce the disqualifying transfer amount of \$9,803.00 by the remaining amount of tax liability paid by the appellant's daughter, \$4,685.00, and the tax preparation fee of \$535.00. Redetermine period of ineligibility based on the disqualifying transfer amount of \$4,583.00. Issue notice of implementation only. Do not include appeal rights.

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, Division of Medical Assistance, at the address on the first page of this decision.

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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc: