

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

Appeal Decision:	Denied	Appeal Number:	1714972
Decision Date:	2/20/18	Hearing Date:	11/08/2017
Hearing Officer:	Christopher Jones	Record Open to:	01/12/2018

Appellant Representative:

MassHealth Representative:
Lucy Gucciardi



*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:	Denied	Issue:	LTC – Transfer
Decision Date:	2/20/18	Hearing Date:	11/08/2017
MassHealth Rep.:	Lucy Gucciardi	Appellant Rep.:	
Hearing Location:	Chelsea MassHealth Enrollment Center	Aid Pending:	No

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 August 9, 2017, MassHealth denied the appellant's application for MassHealth long-term-care benefits because the appellant had improperly transferred assets in order to qualify for MassHealth. Exhibit 2; 130 CMR 520.018, 520.019. The appellant filed this appeal in a timely manner on August 30, 2017.¹ Exhibit 2; 130 CMR 610.015(B). Denial of assistance is valid grounds for appeal. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied the appellant's long-term-care application because it assessed a period of ineligibility running from April 4, 2017 through June 30, 2018 arising from a disqualifying transfer.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.018 and 520.019, in determining that the appellant had given away real property in part to qualify for MassHealth benefits.

¹ The request for a fair hearing is signed by the appellant's attorney, Bryan Woodford. The appellant's representative at the hearing confirmed that Mr. Woodford is representing the appellant as his attorney, as there otherwise would have been a lack of authority to file the appeal.

Summary of Evidence

The MassHealth representative testified that the appellant is over the age of 65, and he was admitted to a skilled nursing facility on April 4, 2017. On June 26, 2017, an application for MassHealth long-term-care benefits was submitted on his behalf. MassHealth's asset verification system turned up real property in New Hampshire that the appellant transferred to his son on March 5, 2013. The property was then sold on October 17, 2013 for \$163,000. Because this transaction occurred within five years of the appellant's application for long-term-care benefits, MassHealth deemed it to be a disqualifying transfer. The MassHealth representative testified that she had not actually finished processing the appellant's case since he was already denied based upon the transfer of the real property. She testified that when his transfer period expired, she would need to still review the appellant's assets to determine the date on which he was otherwise eligible.

The appellant's son testified that his father has not had a bank account for about six years because he could never remember his pin number. The appellant's son testified his father's checks went into his account and he would mail his father cash so that he would not have to use an ATM. His father's checks now go directly to the nursing facility. The appellant's son testified that his father can barely remember 30 seconds, and that much of his deterioration corresponded with a particularly difficult period of his own life. The appellant's son is a veteran, and he was diagnosed with post-traumatic-stress disorder after returning from his last tour in Iraq in 2006.

The appellant lived in Alabama from the mid-1990s to sometime in 2014 when he moved to an assisted living facility in Quincy. He continued to deteriorate and he became more and more agitated and asked to move in with his son. The appellant's son tried to take him in, in early 2017, but the appellant could not be left alone for five minutes without wandering, and that is when he moved into the nursing facility.

Regarding the property in New Hampshire, the appellant had bought the land in the early 1990s, but he had never lived on the property, as it was undeveloped. The appellant's son's recollection is that his father had given it to him sometime in 2011, though they did not get around to recording the transaction until 2013. He thought that he had something in writing from his father from sometime in 2011, and he asked that the record be left open for him to get some paperwork to document that the property had been transferred to him before April 4, 2012. He testified that he had built a house on the property, which he intended his dad to move into so he could be closer, but his father condition deteriorated too greatly before he was able to move in, so he simply sold the property. He also testified that he had several conversations regarding this timeline with the real estate broker and attorney who helped him sell the property, which he could also document.

The record was left open to allow the appellant the opportunity to submit any form of documentary evidence establishing that the appellant had transferred the property to his son before April 4, 2012, or alternatively to show expenses that were laid-out to improve the property prior to its sale. After an extension of the record open period, the appellant submitted no further evidence into the record other than the recorded deed documenting that the property was transferred on February 25, 2013. See Exhibit 4.

Findings of Fact

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

1. The appellant is over the age of 65; he was admitted to a skilled nursing facility on April 4, 2017; and this appeal is regarding a June 26, 2017 application for MassHealth long-term-care benefits.
2. MassHealth denied the appellant's application because it determined that the appellant had transferred real property worth \$163,000 to his son. This transfer resulted in a period of ineligibility running from April 4, 2017 through June 30, 2018.
3. The appellant's son testified that the appellant had actually signed over the property to him in 2011, and that the appellant's son had gone to some expense to build a house for his father on the property.
4. At the time the property was transferred to the appellant's son, the appellant's mental condition was already in decline.
5. The record was left open to for the appellant's son to submit any form of documentary evidence that could support his testimony. No documentary support was submitted.

Analysis and Conclusions of Law

An applicant for MassHealth benefits has the burden to prove his or her eligibility, including that a transfer of resources was legitimate, not gratuitous, or for less than fair market value. 130 CMR 515.001, 520.007; and G.L. ch. 118E, § 20. Federal Medicaid law states that if an institutionalized individual (or spouse) transfers assets for less than fair market value on or after the lookback date the applicant is ineligible for long-term-care services for a defined period. 42 USC §1396p(c)(1)(A). If an applicant or member has transferred resources for less than fair market value, MassHealth long-term-care benefits may not be paid until a period of ineligibility has been imposed and expires. See 42 USC §1396p(c)(1)(A); G.L. 118E, § 28. The federal law is reflected in MassHealth regulations 130 CMR 520.018 and 520.019, which provide that a disqualifying transfer exists where an applicant transfers an interest during the appropriate lookback period for less than fair-market value. "A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available," unless the transfer is "listed as permissible in 130 CMR 520.019(D), identified in 130 CMR 520.019(F), or exempted in 130 CMR 520.019([K])."² 130 CMR 520.019(C).

The exception identified in 130 CMR 520.019(F) requires a determination of the giver's intent:

² As published, the last cross-reference is to subsection (J) and is likely a typographical error. Subsection (J) specifically **includes** as disqualifying transfers of home equity loans and reverse mortgages if transferred for less than fair market value. Subsection (K), however, **exempts** listed transactions from the period of ineligibility.

(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; 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.

130 CMR 520.019(F) (emphasis added). An applicant must make a heightened evidentiary showing on this issue: "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." Gauthier v. Dir., Office of Medicaid, 80 Mass. App. Ct. 777, 785 (2011) (citing State Medicaid Manual, Health Care Financing Administration Transmittal No. 64, § 3258.10(C)(2)).

This heightened evidentiary standard is a difficult burden to meet. The standard requires that the appellant prove a negative: that the possibility of requiring public assistance for medical care never entered into their mind at the time the decision to transfer was made. Here, the surrounding circumstances make it difficult to conclude that the appellant would not have been contemplating the possible need of public assistance in the future. It is reasonable to assume that any elderly individual would begin to seriously consider their final days, and in this day and age, such considerations likely include contemplating the possibility of requiring nursing facility care. The appellant has been living in various forms of assisted living communities for years, and his mental decline appears to have started prior to the documented transfer of the New Hampshire property.

The story of the transfer and the appellant's son is compelling, but the appellant's evidentiary burden has not been met. In the absence of the appellant's own testimony that he had not contemplated needing public assistance, the appellant would need to provide some form of documentary evidence establishing either intent, or that the transfer took place prior to the lookback period. The record was left open for the appellant's representatives to submit any form of evidence that documented either fact, and no such evidence was submitted. Therefore, this appeal must be 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.

Christopher Jones
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Ms. Nancy Hazlett