

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

Appeal Decision:	Approved	Appeal Number:	1716522
Decision Date:	12/27/17	Hearing Date:	12/08/2017
Hearing Officer:	Thomas J. Goode		

Appellant Representative:

MassHealth Representative:
Nereida Mercado, Chelsea MEC



*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	Issue:	130 CMR 520.019(F)
Decision Date:	12/27/17	Hearing Date:	12/08/2017
MassHealth Rep.:	Nereida Mercado	Appellant Rep.:	
Hearing Location:	Chelsea MassHealth Enrollment Center Room 1	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 September 27, 2017, MassHealth notified Appellant that his MassHealth application had been denied for coverage prior to May 30, 2017 due to resource transfers (see 130 CMR 520.019 and Exhibit 1). Appellant filed this appeal in a timely manner on October 12, 2017 (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 coverage prior to May 30, 2017 due to resource transfers.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in denying coverage prior to May 30, 2017 due to resource transfers.

Summary of Evidence

The MassHealth representative testified that Appellant was admitted to a skilled nursing facility on April 8, 2017. A MassHealth application was submitted on July 25, 2017, seeking coverage effective April 8, 2017. A request for verifications was issued on August 21, 2017, and returned on September 20, 2017. MassHealth coverage was approved effective May 31, 2017. MassHealth coverage was denied for the period April 8, 2017 through May 31, 2017 due to disqualifying resource transfers. Appellant was discharged home on October 17, 2017. The MassHealth representative testified that 3 withdrawals were made from the community spouse's account totaling \$18,759. The funds were given to Appellant's son. The private pay rate for the facility is \$354 a day, which resulted in a period of ineligibility from April 8, 2017 through May 31, 2017. The MassHealth representative noted that a previous MassHealth application was received on March 29, 2017, and was denied on June 20, 2017. The denial of the previous application was not appealed.

Appellant was represented by his daughter who is also power of attorney. She testified that Appellant had a stroke on March 12, 2017. In February 2017, Appellant's spouse withdrew funds from her IRA and gave the funds to her son because he was facing foreclosure. She stated that the funds were withdrawn weeks before Appellant suffered the stroke for the sole purpose of stopping the foreclosure proceedings. Appellant's son is married with five children, had been laid off from his job for over a year, and was not eligible for unemployment benefits. Appellant's spouse felt that she had no choice but to help her son, so she withdrew money from her retirement savings and gave it to her son. Appellant's wife's retirement savings were accumulated over 20 years as a sales clerk at Macy's Department Store, and she has no other savings or assets. On February 3, 2017, a withdrawal of \$1,761 was given to the son to pay child support that was overdue. On February 11, 2017, a withdrawal of \$12,000 was given to the son to stop foreclosure proceedings (Exhibit). A withdrawal of \$4,998.83 was made on March 27, 2017 and given to the son to make overdue mortgage payments. Appellant's daughter testified that the transfers were not made for MassHealth eligibility purposes, and were made before Appellant had a stroke. The transfers were for the sole purpose of stopping foreclosure proceedings and helping the son through a financial crisis. Appellant's daughter also stated that the previous application was submitted after the stroke. She stated that the application was not completed because two different Boston Medical Center employees who had been helping her family complete the application stopped communicating with the family, and the application was left incomplete. When Appellant was admitted to the rehabilitation facility, a staff member helped with the second application which was approved, with benefits effective May 31, 2017.

Findings of Fact

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

1. Appellant was admitted to a skilled nursing facility on April 8, 2017.

2. A MassHealth application was submitted on July 25, 2017, seeking coverage effective April 8, 2017.
3. A request for verifications was issued on August 21, 2017, and returned on September 20, 2017.
4. MassHealth coverage was approved effective May 31, 2017.
5. MassHealth coverage was denied for the period April 8, 2017 through May 31, 2017 due to disqualifying resource transfers.
6. Appellant was discharged home on October 17, 2017.
7. Three withdrawals were made from the community spouse's account totaling \$18,759, and were given to Appellant's son.
8. The private pay rate for the facility is \$354 per day, which resulted in a period of ineligibility from April 8, 2017 through May 31, 2017.
9. A previous MassHealth application was received on March 29, 2017, and was denied on June 20, 2017. The denial was not appealed.
10. In February 2017, Appellant's spouse withdrew funds from her IRA and gave the funds to her son because he was facing foreclosure.
11. Appellant had a stroke on March 12, 2017.
12. Appellant has no other savings or assets.
13. On February 3, 2017, a withdrawal of \$1,761 was given to the son to pay child support that was overdue.
14. On February 11, 2017, a withdrawal of \$12,000 was given to the son to stop foreclosure proceedings.
15. A withdrawal of \$4,998.83 was made on March 27, 2017 and given to the son to make mortgage payments for February 2017 and March 2017.

Analysis and Conclusions of Law

A disqualifying transfer of resources is defined at 130 CMR 520.019¹:

(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

¹ (D) Permissible Transfers. The MassHealth agency considers the following transfers permissible. Transfers of resources made for the sole benefit of a particular person must be in accordance with federal law. (1) The resources were transferred to the spouse of the nursing-facility resident or to another for the sole benefit of the spouse. A nursing-facility resident who has been determined eligible for MassHealth agency payment of nursing-facility services and who has received an asset assessment from the MassHealth agency must make any necessary transfers within 90 days after the date of the notice of approval for MassHealth in accordance with 130 CMR 520.016(B)(3). (2) The resources were transferred from the spouse of the nursing-facility resident to another for the sole benefit of the spouse. (3) The resources were transferred to the nursing-facility resident's permanently and totally disabled or blind child or to a trust, a pooled trust, or a special-needs trust created for the sole benefit of such child. (4) The resources were transferred to a trust, a special-needs trust, or a pooled trust created for the sole benefit of a permanently and totally disabled person who was under 65 years of age at the time the trust was created or funded. (5) The resources were transferred to a pooled trust created for the sole benefit of the permanently and totally disabled nursing-facility resident. (6) The nursing-facility resident transferred the home he or she used as the principal residence at the time of transfer and the title to the home to one of the following persons: (a) the spouse; (b) the nursing-facility resident's child who is under age 21, or who is blind or permanently and totally disabled; (c) the nursing-facility resident's sibling who has a legal interest in the nursing-facility resident's home and was living in the nursing-facility resident's home for at least one year immediately before the date of the nursing-facility resident's admission to the nursing facility; or (d) the nursing-facility resident's child (other than the child described in 130 CMR 520.019(D)(6)(b)) who was living in the nursing-facility resident's home for at least two years immediately before the date of the nursing-facility resident's admission to the institution, and who, as determined by the MassHealth agency, provided care to the nursing-facility resident that permitted him or her to live at home rather than in a nursing facility. (7) The resources were transferred to a separately identifiable burial account, burial arrangement, or a similar device for the nursing-facility resident or the spouse in accordance with 130 CMR 520.008(F).

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 130 CMR 520.019(F) 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 transfers exclusively for a purpose other than qualifying for Medicaid:

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.

Resource transfers to family members made within the 5-year look-back period must be allowable under 130 CMR 520.019(D), or there must be convincing evidence of another specific purpose for

the transfer that shows that qualifying for MassHealth benefits was not reason for the transfer. In this case, the dates of the transfers demonstrate that with the exception of \$4,998.83 transferred on March 27, 2017, the resource transfers at issue were made prior to Appellant suffering a stroke on March 12, 2017 which precipitated the admission to the rehabilitation facility. All three transfers were made prior to the April 8, 2017 admission date. Appellant has presented evidence of foreclosure proceedings against the son commencing in January 2017 (Exhibit 5), and which support testimony that the transfers were made for a specific purpose other than MassHealth eligibility. I also find convincing Appellant's daughter's testimony that failing to complete the previous application had nothing to do with the resource transfers. Although the transfers to the son were made contemporaneously with filing the first MassHealth application, I find nothing to conclude as a result of that filing date that the transfers were made for the purpose of establishing MassHealth eligibility, particularly in light of the resources falling within the \$120,900 community spousal resource allowance. Thus, I conclude that Appellant has carried the burden of proof under 130 CMR 520.019(F)(1) in showing that \$18,759 was transferred exclusively for a purpose other than to qualify for MassHealth.

Order for MassHealth

Rescind the September 27, 2017 notice, and determine MassHealth eligibility without regard to the \$18,759 resource transfers.

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.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc: