

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

Appeal Decision:	APPROVED	Appeal Number:	1717373
Decision Date:	4/27/18	Hearing Date:	01/18/2018
Hearing Officer:	Kenneth Brodzinski	Record Open to:	02/09/2018

Appellant Representative:

MassHealth Representative:

Cara Miller



*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:	Disqualifying Asset Transfer
Decision Date:	4/27/18	Hearing Date:	01/18/2018
MassHealth Rep.:	Cara Miller	Appellant Rep.:	
Hearing Location:	Tewksbury MEC		

Authority

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

Jurisdiction

Through notice dated July 25, 2017, MassHealth denied Appellant's application for MassHealth benefits and assessed a period of ineligibility upon determining that Appellant had made a disqualifying transfer of assets (Exhibit A). Appellant filed for this appeal in a timely manner on August 22, 2017 (Exhibit A). Denial of assistance constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied Appellant's application for MassHealth benefits and assessed a period of ineligibility upon determining that Appellant had made a disqualifying transfer of assets.

Issue

The appeal issue is whether or MassHealth applied accurate facts to the controlling regulations when it denied Appellant's application for MassHealth benefits and assessed a period of ineligibility upon determining that Appellant had made a disqualifying transfer of assets

Summary of Evidence

The MassHealth representative testified that Appellant filed an application for MassHealth Long Term Care benefits on March 15, 2017. Multiple verifications were requested on March 22, 2017, including an Annuity Tracking Form for MetLife Contract 000874776RB. The annuity tracking form was signed and returned to MassHealth on April 17, 2017. After an initial denial for lack of verifications, a re-stamp of the application, and verification that ownership of the annuity had been transferred to the community spouse, the case was initially approved on July 14, 2017. Shortly thereafter, a statement dated July 11, 2017 from MetLife was received by MassHealth, indicating that the Primary Beneficiary could not be changed because the community spouse had died. This prompted a review of the case. Upon review, it was discovered that despite the signature on Annuity Tracking Form indicating that the Primary Beneficiary had been changed to the Commonwealth of Massachusetts, in fact it had not been changed. The Annuity Tracking Form that was signed specifically stated: "Failure to name and keep the Commonwealth of Massachusetts as a beneficiary of the annuity in the proper position will result in the termination of MassHealth benefits and the Commonwealth may recover MassHealth benefits paid while the individual was not eligible." Because the Commonwealth of Massachusetts was not named as the primary beneficiary as required, MassHealth issued the subject denial for resource transfers on July 25, 2017. MassHealth submitted active supporting documentation (Exhibit B).

Appellant was represented by legal counsel who appeared at hearing along with a memorandum of law supporting documentation (Exhibit C). Counsel indicated that she had been under the impression prior to hearing that the issue to be determined was whether Appellant's transfer of ownership of the annuity to the community spouse constituted a disqualifying transfer of countable assets. Upon hearing the MassHealth representatives testimony counsel realized that the issue centered on the lack of designation of the Commonwealth of Massachusetts as the primary beneficiary of the annuity.

After further discussion between the parties, Appellant requested additional time to submit a new memorandum of law supporting documentation. The request was granted and the record was held open until February 9, 2018. Appellant timely submitted a post-hearing memorandum supporting documentation (Exhibit D).

In her memorandum, Appellant lays out a detailed timeline concerning the application process, the verifications requested and Appellant's responses. Appellant's central argument is that the annuity was created in February 2000 when Appellant and her husband purchased it. Appellant argues that because the subject annuity was established on or before February 8, 2006 MassHealth regulations do not require that the Commonwealth of Massachusetts be named as a primary beneficiary on the annuity (Exhibit D). This argument was raised at the time of hearing. At that time the MassHealth

representative responded that the salient date for purposes of applying the regulation concerning accountability of annuities is when the annuity was first annuitized which was in January 2015 meaning the regulations controlling annuities created after February 8, 2006 are controlling.

Findings of Fact

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

1. In February 2000, Appellant and her husband purchased MetLife Contract 000874776RB, an annuity.
2. The MetLife annuity was annuitized in January 2015.
3. Appellant filed an application for MassHealth Long Term Care benefits on March 15, 2017.
4. MassHealth initially approved the case on July 14, 2017 under the belief that the Commonwealth of Massachusetts had been made the Primary Beneficiary of the annuity.
5. Shortly thereafter, MassHealth received a statement dated July 11, 2017 from MetLife, indicating that the Primary Beneficiary could not be changed because the community spouse had died.
6. Because the Commonwealth of Massachusetts was not named as the primary beneficiary as required, MassHealth issued the subject denial for resource transfers on July 25, 2017.

Analysis and Conclusions of Law

MassHealth erred in not applying the correct controlling regulation.

MassHealth regulations governing annuities and disqualifying transfers do not state that for these purposes the date of annuitization is the date the annuity was established. Rather, the regulations consider this date to be the date the annuity was purchased.

130 CMR 520.007(J)(1) states (emphasis supplied):

(J) Annuities, Promissory Notes, Loans, Mortgages, and Similar Transactions.

(1) Treatment of Annuities Established Before February 8, 2006. Payments from an annuity are countable income in accordance with 130 CMR 520.009. If the annuity can be converted to

a lump sum, the lump sum, less any penalties or costs of converting to a lump sum, is a countable asset. **Purchase of an annuity** is a disqualifying transfer of assets for nursing-facility residents as defined at 130 CMR 515.001 in the following situations:

- (a) when the beneficiary is other than the applicant, member, or spouse;
- (b) when the beneficiary is the applicant, member, or spouse and when the total present value of projected payments from the annuity is less than the value of the transferred asset (purchase price). In this case, the MassHealth agency determines the amount of the disqualifying transfer based on the actuarial value of the annuity compared to the beneficiary's life expectancy using the life-expectancy tables as determined by the MassHealth agency, giving due weight to the life-expectancy tables of institutions in the business of providing annuities;
- (c) when the terms of the annuity postpone payment beyond 60 days, the MassHealth agency will treat the annuity as a disqualifying transfer of assets until the payment start date; or
- (d) when the terms of the annuity provide for unequal payments, the MassHealth agency may treat the annuity as a disqualifying transfer of assets. Commercial annuity payments that vary solely as a result of a variable rate of interest are not considered unequal payments under 130 CMR 520.007(J)(1)(d).

(2) **Treatment of Annuities Established on or after February 8, 2006.** In addition to the requirements in 130 CMR 520.007(J)(1), the following conditions must be met.

- (a) **The purchase of an annuity** will be considered a disqualifying transfer of assets unless
 1. the Commonwealth of Massachusetts is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the institutionalized individual;
 2. the Commonwealth of Massachusetts is named as such a remainder beneficiary in the second position after the community spouse, or minor or disabled children; or
 3. the Commonwealth of Massachusetts is named as such a remainder beneficiary in the first position if the community spouse or the representative of any minor or disabled children in 130 CMR 520.007(J)(2)(a)2. disposes of any such remainder for less than fair-market value.
- (b) **The purchase** of an annuity is considered a disqualifying transfer of assets unless the annuity satisfies 130 CMR 520.007(J)(1) and (J)(2)(a) and is irrevocable and non-assignable, or unless the annuity satisfies 130 CMR 520.007(J)(2)(c).
- (c) **The purchase** of an annuity is considered a disqualifying transfer of assets unless the annuity satisfies 130 CMR 520.007(J)(2)(b), or unless the annuity names the Commonwealth of Massachusetts as a beneficiary as required under 130 CMR 520.007(J)(2)(a) and the annuity is
 1. described in Section 408(b) or (q) of the Internal Revenue Code of 1986;
 2. purchased with the proceeds from an account or trust described in Section 408(a), (c), or (p) of the Internal Revenue Code of 1986;
 3. purchased with the proceeds from a simplified employee pension described in Section 408(k) of the Internal Revenue Code of 1986; or
 4. purchased with the proceeds from a Roth IRA described in Section 408A of the Internal Revenue Code of 1986.

Appellant's annuity, purchased in 2000, is governed by 130 CMR 520.007(J)(1) which

does not require that the Commonwealth of Massachusetts be designated as the Primary Beneficiary. MassHealth's contention that the date the annuity was annuitized constitutes the date the annuity was established is simply not supported by the regulations. The annuitization date is only considered if payments were delayed by more than 60 days, as they were in this case (130 CMR 520.007(J)(1)). Application of this provision means that a period of disqualification would have run from the date of purchase to the date that payments first began in January 2015. But this period predates Appellant's requested start date by years. Accordingly, it has no affect on her current application.

For the foregoing reasons, the appeal is APPROVED.

Order for MassHealth

Rescind denial of July 25, 2017 and re-determine eligibility without disqualifying transfer period consistent with 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 the Enrollment Center gives you any problems with implementing 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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar