

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2200824
<b>Decision Date:</b>	5/10/2022	<b>Hearing Date:</b>	03/03/2022
<b>Hearing Officer:</b>	Paul C. Moore	<b>Record Closed:</b>	04/01/2022

**Appearances for Appellant:**



**Appearance for MassHealth:**

Jessica Barney, Taunton MassHealth  
Enrollment Center (by telephone)



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street  
Quincy, MA 02171*

# APPEAL DECISION

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Disqualifying Transfers
<b>Decision Date:</b>	5/10/2022	<b>Hearing Date:</b>	03/03/2022
<b>MassHealth Rep.:</b>	Jessica Barney	<b>Appellant Reps.:</b>	
<b>Hearing Location:</b>	Board of Hearings (remote)		

## Authority

This hearing was conducted pursuant to Massachusetts General Laws (G.L.) Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

## Jurisdiction

By a notice dated January 6, 2022, MassHealth informed the appellant that she is eligible for MassHealth long-term care coverage, but with a period of ineligibility through January 29, 2022, because she recently gave away or sold assets to become eligible for MassHealth (Exhibit 1). The appellant filed a timely appeal with the Board of Hearings (BOH) on February 3, 2022 (130 CMR 610.015; Exhibit 3). A hearing was held on March 3, 2022, and the record of this appeal remained open through April 1, 2022 for the submission of a legal brief and additional evidence by the appellant.

Limitation of the amount or scope of assistance is a valid ground for appeal to BOH (130 CMR 610.032(A)(5)).

## Action Taken by MassHealth

MassHealth determined that the appellant is eligible for MassHealth coverage, but with a period of ineligibility due to disqualifying transfers of resources.

## Issue

The issue is whether MassHealth correctly determined that the appellant made disqualifying

transfers of resources in order to qualify for MassHealth.

### **Summary of Evidence**

The MassHealth representative from the Taunton MassHealth Enrollment Center testified by telephone that the appellant, who is over 65 years old, entered a nursing home on [REDACTED]. The appellant is seeking coverage for her nursing home stay beginning on the same date. The MassHealth representative stated that a long-term care conversion packet was completed and submitted to MassHealth on the appellant's behalf on October 20, 2021. The MassHealth representative testified that subsequently, the MassHealth representative sent a request for information (VC-1) Form to the appellant, and responsive documents were received. The MassHealth representative stated that upon reviewing a number of checks written by the appellant and her spouse during the five-year lookback preceding the date of application, MassHealth located a number of "gifts" the couple made to family members, in various amounts.<sup>1</sup> The total value of gifts made during the five-year lookback period was \$117,727.88, according to the MassHealth representative. MassHealth considers these transfers to be disqualifying transfers of resources. The MassHealth representative added that the appellant's spouse was also admitted to the same nursing facility on [REDACTED] and also applied for MassHealth coverage. The MassHealth representative testified that she therefore divided the total transfer amount of \$117,727.88 by two, and attributed one half this amount, or \$58,863.94, to each spouse as a transfer of resources, triggering a period of ineligibility for each.<sup>2</sup> The MassHealth representative added that she believes she may have overlooked some of the gifted amounts, in error, but noted that MassHealth is not seeking to increase or amend the period of ineligibility (Testimony).

To arrive at the period of ineligibility for the appellant, MassHealth divided \$58,863.94 by \$410.00, the average daily cost to a person paying privately for nursing facility services in the Commonwealth, yielding a benefit start-date of January 29, 2022 (Testimony).<sup>3</sup>

The MassHealth representative submitted a list of checks that were written to family members, as well as copies of canceled checks, comprising the disqualifying transfer amounts, as follows:<sup>4</sup>

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<sup>1</sup> The MassHealth representative stated that the word "gift" was written on the memo line of all of these checks (Testimony).

<sup>2</sup> The appellant's spouse received a similar notice of ineligibility, which he appealed. A separate BOH decision issued on that matter.

<sup>3</sup> Although the MassHealth representative testified that she used a daily private pay figure of \$410.00 to arrive at the period of ineligibility, that figure would yield a penalty period of 143 days. It appears instead that she used a daily private pay figure of \$391.00, yielding a penalty period of 150 days. The \$391.00 per day is the figure specified in MassHealth Eligibility Operations Memo 21-20 (December, 2021) for MassHealth applications received before December 1, 2021, as is the case here, where an applicant has made disqualifying transfers. 150 days from September 1, 2021 is January 29, 2022.

<sup>4</sup> Initials of family members are used to protect confidentiality.

<u>Date of check</u>	<u>Check Number/Amount</u>	<u>Payee</u>
August 24, 2017	4357 / \$12,000.00	K.P.
August 24, 2017	4358 / \$3,733.08	S.K.
August 24, 2017	4359 / \$14,000.00	E.P.
August 24, 2017	4360 / \$1,731.60	N.P.
August 24, 2017	4361 / \$12,000.00	M.C.
August 24, 2017	4365 / \$10,000.00	S.G.
August 24, 2017	4366 / \$5,731.60	A.G. (1)
August 31, 2017	4364 / \$3,731.60	C.P.
November 2, 2017	4389 / \$5,000.00	P.P.
March 10, 2018	4551 / \$8,560.00	E.P.
March 10, 2018	4552 / \$11,560.00	K.P.
March 10, 2018	4553 / \$11,560.00	R.C.
March 12, 2018	4554 / \$2,560.00	A.G. (2)
March 12, 2018	4555 / \$9,000.00	S.G.
April 1, 2018	4559 / \$6,560.00	P.P.

(Exh. 6B)<sup>5</sup>

All of these checks were written from a joint account of the appellant and her spouse at Bank #1 (*Id.*).<sup>6</sup>

The appellant was represented at the hearing by an attorney, who appeared by telephone, and by two of her daughters, who testified telephonically. The appellant's attorney asserted that the appellant and her spouse had no intent, in 2017 and 2018, to transfer resources for less than fair-market value in order to qualify for MassHealth benefits. She asked the MassHealth representative why the appellant's coverage has not started, since the period of ineligibility ended January 29, 2022, according to the MassHealth notice. The MassHealth representative stated that she believes the appellant needs to file a new MassHealth application. The appellant's attorney asserted that she does not believe this is correct. Upon a request by the appellant's attorney, the MassHealth representative agreed to check with her supervisor as to whether benefits could be granted to the appellant beginning January 30, 2022.

At hearing, the appellant's attorney asked the appellant's daughter, [REDACTED] a series of questions.

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<sup>5</sup> Some of the check numbers are listed incorrectly on the MassHealth exhibit, which the hearing officer pointed out at hearing. In this appeal decision, the hearing officer has listed the correct check numbers where applicable. Also, the final disqualifying transfer check in the amount of \$6,560.00 was listed as check number "6560" on the MassHealth exhibit, purportedly written on March 12, 2018. In fact, this check, number 4559, was written on April 1, 2018 (Exh. 6B, Exh. 8A, attachment A).

<sup>6</sup> Check number 4389, dated November 2, 2017, did not contain the word "gift" on the memo line, and was payable to [REDACTED] the appellant's spouse (Exh. 6B).

█ testified that her parents are Greek immigrants who have lived in the U.S. since the early 1950s. Prior to the appellant's admission to the nursing facility, the appellant and her spouse lived in a two-family home in █. The appellant lived in the first floor unit of the home, and E.P. and her spouse live on the second floor. █ and her spouse own the home, and the appellant and her spouse paid █ monthly rent. In 2021, the appellant's health began to decline, resulting in the need for nursing home care. █ testified that the checks identified by MassHealth were written to the appellant's five adult children and/or their spouses, and some to the appellant's grandchildren, in 2017 and 2018. Specifically, █ identified the check payees as █ and █ the appellant's daughters; █, the appellant's son-in-law; █ the appellant's daughter-in-law; and █ and █, the appellant's grandchildren (Testimony).<sup>7</sup>

█ testified the appellant and her spouse had a pattern of making gifts to their family members to assist the latter with their daily living expenses. For example, one of the appellant's daughters is a single mother who needed to replace the windows in her home, so the appellant made a gift to help her in 2017.<sup>8</sup> E.P. stated all of the gift amounts met the I.R.S. gift tax exclusion, which █ was told by an accountant was approximately \$14,000.00 at the time in question. █ testified that her parents never sought the advice of an estate-planning or Medicaid-planning attorney (Testimony).

█ testified that between August, 2017 and March, 2018, the appellant's health was generally good, and she and her spouse were "self-sufficient." █ stated that she believes the appellant may have had hypertension at that time, for which she took medication. █ added that the appellant was not contemplating a nursing home admission in late 2017 or early 2018, and she recalls no discussions with the appellant and her spouse on this topic in 2017 and 2018. █ stated that she and the appellant's daughter, █, completed the appellant's MassHealth application in 2021, without any kind of assistance, and the appellant did not retain legal counsel until after the denial of her MassHealth application (Testimony).

█ added that the appellant's gifting to her children and grandchildren began approximately fifteen years ago, prior to the five-year lookback period preceding the appellant's submission of her MassHealth application. The earliest gifts were in smaller amounts, and were to assist her daughters to purchase homes, and to assist grandchildren with college tuition payments, according to █. The appellant worked outside the home for twenty-five years. In 2017 and 2018, the appellant and her spouse were fully ambulatory and independent with their activities of daily living (Testimony).

█ noted that the appellant currently has a diagnosis of dementia, which her physician has

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<sup>7</sup> The A █ to whom the appellant wrote a check on August 24, 2017 is the appellant's granddaughter, and the █ to whom the appellant wrote a check on March 12, 2018 is the appellant's daughter (Testimony, Exh. 6B).

<sup>8</sup> █ did not specify which check was written for this purpose.

deemed permanent, and testified that her health care proxy was invoked in December, 2021 (Testimony, Exh. 4).

At the close of the hearing, the appellant's attorney asked for a record-open period to submit a legal memorandum. In addition, the hearing officer asked the appellant's attorney to provide a copy of correspondence or other reliable documentation from the appellant's community primary care physician/nurse practitioner addressing the appellant's general health during the approximate period August, 2017 through March, 2018, including any medical diagnoses, prescribed medications, and describing the appellant's ability to conduct her activities of daily living independently (Exh. 7). The hearing officer agreed to keep the record of this appeal open for the appellant's attorney until April 1, 2022 (*Id.*). The hearing officer asked the MassHealth representative if she wanted an opportunity to respond to the appellant's record-open submission, and she stated that she did not.

On March 30, 2022, the hearing officer received the appellant's legal memorandum (Exh. 8A). In addition, on the same date, the appellant submitted a letter dated March 16, 2022 from the appellant's primary care physician, D.M., which states in relevant part:

I have been asked by the family of [the appellant] to clarify issues related to her medical care back some years ago.

I have been the primary care physician for [the appellant] for many years. [The appellant] started nursing home care in September, 2021. Prior to that date, she was seen approximately every six months for comprehensive medical care.

Specifically, during the years of 2017 and 2018, [the appellant] was living independently with her husband and family and was able to successfully perform all of the necessary activities of daily living. My progress notes from that span of time have been reviewed, and given their (*sic*) successful independent living, there was no discussion, nor any medical indication to discuss the need for nursing home care. . . .

(Exh. 8B)

In the appellant's legal memo (Exh. 8A), she asserts that:

[T]ransfers of resources are subject to a five-year lookback period when an applicant is seeking to apply for Medicaid benefits. Therefore, ordinarily, if an applicant gives away money within five years of applying for Medicaid benefits, he or she will be deemed ineligible for long-term care benefits for a period of time calculated by a penalty divisor that is adjusted for inflation from time to time. However, an exception to this transfer penalty exists for transfers of resources made for a purpose other than to qualify for Medicaid benefits. This exception is codified in the

regulations at 130 CMR 520.019(F), and provides 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.

(Exh. 8A, pp. 2-3)

The appellant next cites to a prior BOH decision in which a hearing officer determined that an intent to qualify for Medicaid benefits must be demonstrated in order for transfers of resources to be deemed disqualifying (*Id.*, p. 3, and attachment B).<sup>9</sup> The appellant also cites to a Superior Court decision, Demurjian v. Division of Medical Assistance, 11 Mass. L. Rptr. 71 (1999), in which the court reversed and remanded a BOH decision that upheld a denial of MassHealth benefits for an applicant who gave her daughter and son-in-law \$100,000.00 to purchase a handicapped-accessible home where the applicant could live for the rest of her life (*Id.*). In the Demurjian decision, the court wrote that, "it appears . . . that the resources transferred to [the applicant's] daughter and son-in-law may have been transferred for the exclusive purpose of assisting [her] daughter in purchasing a new home which would provide [the applicant] with a comfortable place to live in [the applicant's] declining years" (Exh. 8A, attachment C, page 2).

In her legal memo, the appellant also cites to a Superior Court decision in the matter of Ceres v. Tsai, 2020 WL 5746334 (Mass.Super.) (June 15, 2020), in which the court vacated a BOH decision holding that an applicant's transfers of resources to three of her children approximately six months before the applicant was hospitalized for an acute condition, and subsequently admitted to a nursing facility, were disqualifying transfers (*Id.*, attachment D). In Ceres, the court wrote that, "[w]hile the hearing officer was not obliged to credit the [applicant's] attestations that she made the transfers out of love and affection for her family members and that facilitating her MassHealth eligibility played no role in her thinking or her actions, [the hearing officer] was not free to entertain wholly speculative inferences to conclude that the transfers were motivated in part by Medicaid planning concerns. Yet that is what it seems to the court that [the hearing officer] did" (*Id.*, attachment D, page 4).<sup>10</sup>

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<sup>9</sup> Pursuant to the Fair Hearing Rules at 130 CMR 610.085(A)(2): ". . . Facts found and issues decided by the hearing officer in each case are binding on the parties to that case and cannot be disputed again between them in any other administrative proceeding nor used as binding precedent by other parties in other proceedings."

<sup>10</sup> The appellant also includes with her memo a copy of a third Superior Court decision, Cantwell v. Executive

The appellant also avers in her legal memo that “. . . [the appellant and her spouse] were proud to share their funds with their family. It provided them with fulfillment to make gifts to their family members, and was not part of a plan to qualify for benefits in the event that they ever needed care in the nursing home” (Exh. 8A, p. 4). The appellant also asserts that:

Allowing the penalty period to remain in place, and penalizing [the appellant and her spouse] for gifts made to family members almost five years before, will result in hardship to them. The funds are gone and are no longer available to be returned. If the penalty period is not removed, [the appellant and her spouse] risk eviction from the facility for non-payment during the penalty period. It is unfair and unlawful for MassHealth to simply declare that because ‘transfers’ were made, a penalty period must be assessed. This is legally incorrect, as the fact that a transfer was made does not result in automatic ineligibility from benefits. Rather it must be demonstrated that transfer was made for the purpose of qualifying for benefits.

(*Id.*, p. 5)<sup>11</sup>

### Findings of Fact

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

1. The appellant is over age 65, and entered a nursing facility on [REDACTED] (Testimony, Exh. 6A).
2. The appellant completed and submitted an application for MassHealth long-term coverage in October, 2021 (*Id.*).
3. The nursing facility is seeking coverage for the appellant’s stay on [REDACTED] (*Id.*).
4. Upon reviewing a number of checks written by the appellant and her spouse from a joint account at Bank #1 during the five-year lookback preceding the date of application, MassHealth located a number of “gifts” the couple made to family members in 2017 and 2018, in various amounts, totaling \$117,727.88 (Testimony, Exh. 6B).

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Office of Health and Human Services, 2021 WL 6617263 (Mass.Super.) (December 1, 2021), in which the court allowed a plaintiff-applicant’s motion for judgment on the pleadings and vacated a BOH decision affirming that the plaintiff-applicant’s gift of \$9,500.00 to her sister-in-law shortly before applying for MassHealth benefits was not made exclusively for a purpose other than to qualify for MassHealth benefits (*Id.*, attachment E, p. 4).

<sup>11</sup> The appellant attached to her legal memo a spreadsheet summarizing the gifts made to family members during the period August 25, 2017 (*sic*) through April 1, 2018 (Exh. 8A, attachment A). The total value of gifts made, according to the appellant, was \$128,457.48, none of which the appellant made with an intent to qualify for MassHealth benefits, according to the appellant.

5. MassHealth deemed these gifts to be disqualifying transfers of resources (Testimony).
6. Because appellant's spouse was also admitted to the same nursing facility on [REDACTED], and also applied for MassHealth coverage, MassHealth divided the total transfer amount of \$117,727.88 by two, and attributed one half this amount, or \$58,863.94, to each spouse as a transfer of resources, triggering a period of ineligibility for each (Testimony).
7. MassHealth overlooked some of the gifted amounts, in error, but is not seeking to increase or amend the period of ineligibility for the appellant (Testimony).
8. All but one of the checks MassHealth reviewed were payable to family members, and all but one contained the word "gift" on the memo lines of the checks (Exh. 6B).
9. By a notice dated January 6, 2022, MassHealth informed the appellant that he is eligible for MassHealth long-term care coverage, but with a period of ineligibility through January 29, 2022 because he recently gave away or sold assets to become eligible for MassHealth (Exhibit 1).
10. The appellant filed a timely appeal of this notice with the BOH on February 3, 2022 (Exh. 3).
11. To calculate a period of ineligibility, MassHealth divided \$58,863.94 by the average daily cost to a person paying privately for nursing facility services in the Commonwealth in October, 2021, or \$391.00, yielding a period of ineligibility from September 1, 2021 through January 29, 2022 (Testimony, Exh. 6A, MassHealth Eligibility Operations Memo 21-20 (December, 2021)).
12. Checks were written by the appellant and her spouse to various family members, including to the appellant's daughters and their spouses, and to the appellant's grandchildren, between August 24, 2017 and April 1, 2018 (Testimony, Exh. 6B).
13. The check amounts ranged from \$1,731.60 through \$14,000.00 (Exh. 6B, Exh. 8A).
14. The appellant and her spouse enjoyed making gifts to their children, their children's spouses, and their grandchildren to help them with their daily lives, such as to assist them in buying homes and to assist with college tuition payments (Testimony, Exh. 8A).
15. In 2017 and 2018, the appellant and her spouse lived independently on the first floor of a two-family home in [REDACTED], and, except for hypertension, the appellant was generally in very good health (Testimony, Exh. 8A, Exh. 8B).

16. All of the gift amounts met the I.R.S. gift tax exclusion, which the appellant's daughter was told was approximately \$14,000.00 at that time (Testimony).
17. The appellant's gifting to her children, children's spouses and grandchildren began approximately fifteen years ago, prior to the five-year lookback period preceding the appellant's submission of her MassHealth application (Testimony).
18. Initially, the gifts given by the appellant to her family members were in smaller amounts (Testimony).
19. In 2017 and 2018, the appellant's daughter, who lived upstairs in the same home, did not recall the appellant and her spouse ever discussing the need for nursing home care (Testimony).
20. In 2021, the appellant's health began to decline, necessitating a nursing home admission (Testimony).
21. The appellant currently has a diagnosis of dementia, which her physician has deemed permanent, and her health care proxy was invoked in December, 2021 (Testimony, Exh. 4).
22. The appellant asserts that she made these gifts exclusively for a purpose other than to qualify for MassHealth, and therefore, that MassHealth should not impose a period of ineligibility (Testimony, Exh. 8A).

### **Analysis and Conclusions of Law**

MassHealth 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(K).<sup>12</sup>

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

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<sup>12</sup>130 CMR 515.001 defines fair-market value as "an estimate of the value of a resource if sold at the prevailing price. For transferred resources, the fair market value is based on the prevailing price at the time of transfer."

130 CMR 520.019: Transfer of Resources Occurring on or after August 11, 1993

(A) Payment of Nursing-facility Services. The MassHealth agency applies the provisions of 130 CMR 520.018 and 520.019 to nursing-facility residents as defined at 130 CMR 515.001: Definition of Terms requesting MassHealth agency payment for nursing facility services provided in a nursing facility or in any institution for a level of care equivalent to that received in a nursing facility or for home- and community-based services provided in accordance with 130 CMR 519.007(B): Home- and Community-based Services Waiver Frail Elder.

**(B) Look-back Period. 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.**

(1) For transfers occurring before February 8, 2006, this period generally extends back in time for 36 months.

**(2) For transfers of resources occurring on or after February 8, 2006, the period generally extends back in time for 60 months.** The 60-month look-back period will begin to be phased in on February 8, 2009. Beginning on March 8, 2009, applicants will be asked to provide verifications of their assets for the 37 months prior to the application. As each month passes, the look-back period will increase by one month until the full 60 months is reached on February 8, 2011.

(3) For transfers of resources from or into trusts, the look-back period is described in 130 CMR 520.023(A).

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

(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 younger than 65 years old 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 younger than 21 years old, 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).

...

**(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.**

**(G) Period of Ineligibility Due to a Disqualifying Transfer.**

**(1) Duration of Ineligibility. If the MassHealth agency has determined that a disqualifying transfer of resources has occurred, the MassHealth agency will calculate a period of ineligibility. The number of months in the period of ineligibility is equal to the total, cumulative, uncompensated value as defined in 130 CMR 515.001: Definition of Terms of all resources transferred by the nursing-facility resident or the spouse, divided by the average monthly cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency.**

...

(Emphases added)

Here, the appellant filed a MassHealth long-term care application in October, 2021. MassHealth identified a series of gifts the appellant and her spouse made to family members in the summer of 2017 and the spring of 2018, during the five-year lookback period.

These gifts did not meet the criteria for permissible transfers as listed at 130 CMR 520.019(D). Therefore, MassHealth deemed them to be disqualifying transfers of resources, and imposed a period of coverage ineligibility.

Next, turning to 130 CMR 520.019(F), the inquiry shifts to ascertaining the appellant's subjective intent when she made these transfers. While these gifts were made during the five-year lookback period, they were also made at a time when the appellant's health was generally good, and when she was independent with her activities of daily living. Medical documentation from the appellant's community physician corroborates these facts.

The evidence reflects that the appellant and her spouse had a pattern of giving gifts to their family members beginning prior to the lookback period. The appellant's daughter testified credibly that the appellant derived fulfillment from assisting her daughters, their spouses, and her grandchildren in their daily lives. It is abundantly clear that the appellant was very close to, and generous with, her family members.

In addition, the appellant's daughter offered reliable testimony that she did not recall any discussion with the appellant in 2017 or 2018 about the appellant's possible need for nursing home care.

Pursuant to 130 CMR 520.019(F)(1), "Determination of Intent," 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 the resources were transferred exclusively for a purpose other than to qualify for MassHealth.

The appellant has shown by a preponderance of the evidence that the transfers she and her spouse made in 2017 and 2018 were exclusively for a purpose other than to qualify for MassHealth. Simply put, these gifts were made by the appellant out of generosity and love for her family. At the time, divesting resources in order to qualify for MassHealth was not a consideration.

MassHealth's decision to impose a period of ineligibility due to the appellant's purported disqualifying transfers of resources was not correct.

For all of these reasons, the appeal is APPROVED.

### **Order for MassHealth**

Rescind notice of January 6, 2022. Establish long-term care coverage for the appellant effective [REDACTED] if she is otherwise eligible.

### **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 Acting Director of the Board of Hearings, Office of Medicaid, at the address on the first page of this decision.

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Paul C. Moore  
Hearing Officer  
Board of Hearings

cc: Justine Ferreira, Appeals Coordinator, Taunton MEC