

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2312218
<b>Decision Date:</b>	02/29/2024	<b>Hearing Date:</b>	01/02/2024
<b>Hearing Officer:</b>	Kimberly Scanlon		

**Appearance for Appellant:**

*Via telephone*



**Appearance for MassHealth:**


*Via telephone*

Irma Hernandez  
Elizabeth Landry



*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

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Eligibility; Over 65; Long-term care; Asset transfer
<b>Decision Date:</b>	02/29/2024	<b>Hearing Date:</b>	01/02/2024
<b>MassHealth's Reps.:</b>	Irma Hernandez; Elizabeth Landry	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Taunton MassHealth Enrollment Center Room 2 (Remote)	<b>Aid Pending:</b>	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 November 8, 2023, MassHealth denied the appellant's application for MassHealth long-term care (hereinafter "LTC") benefits because MassHealth determined that the appellant recently gave away or sold assets to become eligible for LTC benefits (130 CMR 520.018; 520.019; Exhibit 1). The appellant filed this appeal in a timely manner on November 29, 2023 (130 CMR 610.015(B); Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032). The hearing was initially scheduled for December 20, 2023 but was rescheduled once at the appellant's request (Exhibits 7 and 8).

### Action Taken by MassHealth

MassHealth denied the appellant's application because the appellant recently gave away or sold assets to become eligible for LTC benefits.

### Issue

The appeal issue is whether MassHealth was correct in determining that the appellant transferred resources for less than fair market value and whether a period of ineligibility should be imposed.

## Summary of Evidence

The MassHealth representatives and appellant's representatives all appeared at the hearing telephonically. The MassHealth representatives testified as follows: the appellant is a single individual and a MassHealth member over the age of 65. (Testimony; Exhibit 3). On July 11, 2023, the appellant applied for LTC benefits, with a requested start date of May 3, 2023. MassHealth denied the appellant's LTC application on November 8, 2023 due to a transfer of assets and calculated a period of ineligibility from May 3, 2023 to April 10, 2024. (Exhibit 1). MassHealth determined that the appellant transferred money to her children in 2021 through 2023, totaling \$146,542.05. (Testimony; Exhibit 11). Specifically, the appellant transferred \$28,964.95 to her daughter (Daughter Three) in April of 2021 and \$14,500.00 in August of 2022. She also transferred \$13,238.55 to her daughter (Daughter Two) in April of 2021 and \$14,500.00 in August of 2022. The appellant transferred \$15,000.00 to her daughter (Daughter One) and \$15,000.00 to her son-in-law in April of 2021 and in August of 2022. In April of 2021, the appellant transferred \$13,238.55 to her son. In January of 2023, the appellant transferred \$2,100.00 to her granddaughter. (Exhibit 11, pp. 13-22). The MassHealth representatives testified that the total amount of transfers made (\$146,542.05) was divided by the average cost of \$433.00. MassHealth determined that the appellant's earliest start date is April 11, 2024.

A conversation between the parties prior to the hearing revealed that the appellant transferred \$30,000.00 to her son-in-law and not to her son. Further, the appellant's daughter (Daughter One) has been deemed disabled. (Testimony; Exhibit 10, pp. 22-24). The MassHealth representatives testified that MassHealth was able to cure the amount of \$30,000.00, upon learning this information. Therefore, \$30,000.00 was subtracted from \$146,542.05, for a total of \$116,542.05, and MassHealth determined that the appellant's earliest start date is now January 30, 2024. (Testimony). The appellant submitted several letters to MassHealth regarding the ailments of her other children (Exhibit 10). However, except for Daughter One, there was no proof of permanent and total disability submitted for the appellant's other children, in accordance with 130 CMR 520.019(D)(3). (Testimony).

The appellant's representatives testified as follows: the appellant previously resided in Florida and moved to Massachusetts to live with her daughter (Daughter One) in [REDACTED] 2020, due to the pandemic. At that time, the appellant was independent with all activities of daily living. Throughout the remainder of 2020, the appellant remained healthy and active. In [REDACTED] 2021, the appellant sold her house in Florida and received \$88,257.83 in proceeds (Exhibit 10, p. 7). The appellant gave the proceeds to her children in varying amounts. At the time the appellant made these monetary gifts, she was of sound mind with no concerns. At some point in 2022, the

appellant became more forgetful (Testimony; Exhibit 10, p. 41-44). The appellant was taken to a neurologist in [REDACTED] 2022 whereupon she was diagnosed with Alzheimer's disease with late onset. (Exhibit 10, pp. 41-44). Notwithstanding, the appellant remained healthy and active throughout the remainder of 2022. In early [REDACTED] 2023, the appellant's behavior noticeably changed as her mental status began to rapidly decline. Daughter One took the appellant back to her neurologist in [REDACTED] 2023. It was suggested by the appellant's neurologist that as her sole caregiver, Daughter One should start looking into nursing facilities for the appellant. Daughter One and her siblings conversed and determined that it would be in the appellant's best interests to reside in a nursing facility. They began searching for nursing homes in [REDACTED] 2023 and the appellant was accepted into one quickly thereafter.

The appellant's daughter (Daughter Two) testified that she resides outside of Massachusetts. She visited the appellant throughout 2020 and 2021 and had no concerns about the appellant's physical or mental status. In 2022, she noticed that the appellant started to become forgetful. However, it was not until February of 2023, when Daughter Two noticed that the appellant's mental status rapidly declined. With respect to the transfers made by the appellant in 2021 and 2022 to Daughter Two, she testified that she was diagnosed with end stage renal disease and requires daily dialysis. Moreover, she has been rendered disabled by her physician. The appellant transferred Daughter Two money to assist with her increasing medical expenses.

The appellant's daughter (Daughter Three) testified that the appellant transferred money to her in 2021 and 2022 because she was diagnosed with breast cancer and required a double mastectomy. The appellant transferred money to assist Daughter Three with the increasing medical expenses that she incurred. During that timeframe, there was no discussion amongst Daughter Three and her siblings regarding nursing facilities because the appellant was active, happy, and healthy. Daughter Three spoke to the appellant several times every week and the appellant seemed happy and healthy. In 2023 however, Daughter Three noticed a remarkable decline in the appellant's memory during their telephone conversations.

The appellant's son testified that the appellant gave him money once in 2021 because he was not employed at that time and fell behind on his bills. During 2021 and 2022, the appellant was healthy and active. He stated that previously remarked to his siblings how impressed he was with the appellant's health, given her age. He testified that he was proud of the appellant and was blessed that she remained so healthy for so long.

The MassHealth representatives stated that in 2021, the appellant was elderly so it was reasonable to expect that she may have needed extensive care within the next 5 years. MassHealth has a 5-year look-back period. The appellant's attorney argued that the MassHealth regulations clearly state there will be no period of ineligibility if the resource was transferred exclusively for purposes other than to qualify for MassHealth. Moreover, there can be no room for speculation as to whether the appellant may need nursing care in the future. Indeed, many people live long lives without ever needing nursing care. Thus, MassHealth cannot create a period of ineligibility simply

due to a person's age. Rather, other factors must be considered, such as the appellant's intent. The appellant transferred money to her children at a time that she was healthy and alert. Further, the appellant assisted her children in 2021 and 2022 for specific purposes, such as medical and housing expenses. She transferred \$2,100 to her granddaughter in January of 2023 to assist her with a broken water pipe in her home. The appellant was not simply giving away money to qualify for MassHealth.

## Findings of Fact

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

1. The appellant is a MassHealth member over the age of 65.
2. The appellant applied for MassHealth LTC coverage in July of 2023, with a requested start date of May 3, 2023.
3. On November 8, 2023, MassHealth denied the appellant's application due to a transfer of assets and calculated a period of ineligibility from May 3, 2023 through April 10, 2024.
4. The appellant timely appealed on November 29, 2023.
5. MassHealth determined that the appellant made monetary transfers in 2021 through 2023 totaling \$146,542.05.
6. The appellant previously resided in Florida and moved to Massachusetts to live with her daughter in [REDACTED] 2020.
7. The appellant sold her house in Florida in 2021 and received \$88,257.83 in proceeds.
8. The appellant transferred \$ 28,964.95 to Daughter Three in April of 2021 and \$14,500.00 in August of 2022.
9. Daughter Three was diagnosed with breast cancer which resulted in a double mastectomy.
10. The appellant transferred \$13,238.55 to Daughter Two in April of 2021 and \$14,500.00 in August of 2022.
11. Daughter Two was diagnosed with end stage renal disease and rendered disabled by her physician.
12. The appellant transferred \$15,000.00 to Daughter One and \$15,000.00 to her son-in-law in

April of 2021 and in August of 2022.

13. A conversation between the parties prior to hearing revealed that Daughter One is disabled.
14. MassHealth cured \$30,000.00 and recalculated the appellant's period of ineligibility from May 3, 2023 through January 29, 2024.
15. The appellant transferred \$13,238.55 to her son in April of 2021.
16. The appellant's son was unemployed at that time due to the pandemic and fell behind on his bills.
17. The appellant transferred \$2,100.00 to her granddaughter in January of 2023 to assist her with fixing a broken water pipe in her home.
18. The appellant was healthy and active throughout the time the transfers were made.
19. The appellant's mental status began to noticeably decline in [REDACTED] 2023.

## **Analysis and Conclusions of Law**

Pursuant to 130 CMR 519.006(A)(4), to qualify for MassHealth Standard coverage as a resident of a long-term care facility, an individual must have countable assets of \$2,000.00 or less. MassHealth considers any transfer of a resource owned by a nursing facility resident for less than fair market value during the appropriate look-back period to be a disqualifying transfer unless the transfer in question is permitted or exempted under the regulations. Specifically, 130 CMR 520.018(B) states that "the MassHealth agency denies payment for nursing-facility services to an otherwise eligible nursing-facility resident...who transfers or whose spouse transfers countable resources for less than fair-market value during or after the period of time referred to as the look-back period." The look-back period for transfers of resources occurring on or after February 8, 2006 is 60 months. (See, 130 CMR 520.019(B)(2)).

Further, 130 CMR 520.019(C) states in pertinent part, as follows:

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 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.

In accordance with 130 CMR 520.019(G), "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."

Additionally, 130 CMR 520.019(K)(2)(b) states in pertinent part as follows: "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."

Per 130 CMR 520.019(F), 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's 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 fair-market value of the transferred resource.

The federal Health Care Finance Administration (HCFA) Transmittal No. 64, 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.

In the present case, MassHealth found the appellant was ineligible for LTC benefits for 343 days because of payments that were made to her children following the sale of her former home during the lookback period totaling \$146,542.05. At hearing, MassHealth testified that \$30,000.00 from said amount was cured after learning additional information. The appellant has the burden of demonstrating that the remaining transfers were made for fair market value or that the transfers were permissible or exempted. Alternatively, the appellant could establish that the transfer was made exclusively for a purpose other than to qualify for MassHealth and must meet this burden by providing convincing evidence of the specific purpose for which the asset was transferred.

The record shows that the remaining transfers occurred during the five-year lookback period. However, the record further shows that the appellant was in good health at the time said transfers were made. Moreover, at the time of the transfers, the record shows that the appellant's specific purpose was to assist her children with various medical complexities and bills. The appellant's representatives presented credible evidence that the appellant continued to be in good health (despite her diagnoses of late onset Alzheimer's in [REDACTED] 2022) until late January of 2023. The record supports that but for the sudden rapid decline of the appellant's mental status in 2023, the appellant would and could have continued to reside in the community with her daughter. As such, I find the appellant has met her burden by providing convincing evidence of the specific purpose for which the asset was transferred. Accordingly, this appeal is approved.

## **Order for MassHealth**

Rescind the notice dated November 8, 2023 and issue a new notice approving Long-term care as of May 3, 2023.

## **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.

## **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.

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Kimberly Scanlon  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21



Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616

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