

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in Part; Denied in Part	<b>Appeal Number:</b>	2401080
<b>Decision Date:</b>	5/8/2024	<b>Hearing Date:</b>	02/23/2024
<b>Hearing Officer:</b>	Mariah Burns	<b>Record Open to:</b>	04/26/2024

**Appearance for Appellant:**



**Appearance for MassHealth:**

Jenny Chan, Quincy MassHealth Enrollment  
Center



*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 in Part; Denied in Part	<b>Issue:</b>	Long-Term Care; Eligibility; Start Date
<b>Decision Date:</b>	5/8/2024	<b>Hearing Date:</b>	02/23/2024
<b>MassHealth's Rep.:</b>	Jenny Chan	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	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 December 11, 2023, MassHealth approved the appellant's application for MassHealth long-term care benefits with an effective start date of August 5, 2023. *See* Exhibit 1. The appellant filed this appeal challenging the start date in a timely manner on January 22, 2024. *See* 130 CMR 610.015(B) and Exhibit 2. An agency determination regarding scope and amount of assistance is valid grounds for appeal. *See* 130 CMR 610.032.

### Action Taken by MassHealth

MassHealth approved the appellant's application for long-term care benefits with a start date of August 5, 2023.

### Issue

The appeal issue is whether MassHealth correctly calculated the appellant's start date for long-term care benefits.

## Summary of Evidence

The appellant is an adult over the age of 65 who has resided in a long-term care facility since [REDACTED] 2023. She was represented at hearing by her attorney. MassHealth was represented by a worker from the Quincy MassHealth Enrollment Center. All parties appeared by telephone. The following is a summary of the testimony and evidence provided at hearing:

On July 14, 2023, the appellant submitted an application for MassHealth long-term care benefits requesting a benefit start date of June 6, 2023. On that application, she reported that she intended to return to her primary residence upon discharge from the facility. MassHealth evaluated the application, and on December 11, 2023, approved the appellant for long-term care benefits with a start date of August 5, 2023. The notice stated "MassHealth has decided that you are eligible for MassHealth Standard benefits to cover your care in a nursing facility. Your eligibility begins on 08/05/2023." See Exhibit 1. No further explanation as to how the start date was calculated was contained within the notice.

At hearing, the MassHealth representative reported that the reason for the August 5 start date was because on [REDACTED] 2023, the appellant's primary residence was sold, and \$351,814.07 from the proceeds of that sale were deposited into the appellant's bank account on that day. A cashier's check was purchased on August 5, 2023, and the funds were transferred to a pooled disability trust that MassHealth determined to be noncountable. Thus, MassHealth deemed the appellant to be under the asset limit to qualify for long-term care benefits the day that the proceeds from the sale of the home were transferred into the appellant's pooled trust.

When asked about the appellant's eligibility status prior to the sale of the home, the MassHealth representative pointed to two checks each totaling \$6,000 for legal fees that were written on May 30, 2023, and cleared the appellant's bank account on [REDACTED] 2023. She reported that MassHealth requested an itemized invoice of how the money was spent to show proper proof of spenddown. The appellant's representative testified that the reason the \$12,000 is a flat fee charged to all clients to assist with Medicaid applications and eligibility. \$6,000 goes to the law firm portion of the business to pay for any legal fees associated with the cost of the application, and the remaining \$6,000 goes to the elder services company affiliated with the firm to cover the additional costs. The MassHealth representative expressed skepticism that this was fair market value for services rendered, but did not provide any evidence to support this, nor did she rely on a particular MassHealth regulation in her assertion that an itemized bill was required to account for all \$12,000.

The appellant's representative argued that the appellant was entitled to a nine-month exemption for the sale of her primary residence without it being considered a countable asset for purposes of MassHealth eligibility. He further argued that, because the aforementioned checks were written on May 30, 2023, that they should be considered noncountable as of that date.

A review of the documents submitted by both MassHealth and the appellant reveals the following: on May 30, 2023, the appellant's power of attorney wrote two checks for \$6,000, one to [REDACTED] and one to the [REDACTED]. Those checks cleared the appellant's bank account on June 30, 2023. On June 6, 2023, the appellant's bank account balance was \$15,604.47, including the \$12,000 in checks toward legal fees and the appellant's monthly social security benefits of \$1876.00. When the checks cleared on June 30, 2023, the account balance was \$2862.00, or \$986.00 if the appellant's social security income is discounted. The appellant's bank account balance remained under \$2000 (not withstanding the social security payments) until [REDACTED] 2023, when \$360,129.91 was deposited into the account, reportedly as proceeds from the sale of the appellant's home. Those funds remained in the account until August 7, 2023, but the appellant purchased a cashier's check on August 5, 2023, for \$351,814.07 made payable to the appellant's pooled trust. The remaining proceeds from the sale of the home appear to have been paid towards the appellant's patient paid amount at the facility, and those checks cleared on August 9, 2023.

The parties agree that the appellant was under assets and eligible for MassHealth long-term care benefits on August 5, 2023.

## Findings of Fact

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

1. The appellant is an adult over the age of 65 who was resided in a long-term care facility since [REDACTED] 2023. Testimony, Exhibit 4, Exhibit 6 at 17.
2. On July 14, 2023, the appellant applied for MassHealth long-term care benefits, requesting a start date of June 6, 2023. Testimony, Exhibit 6 at 17. On that application, she reported her intention to return to her primary residence upon discharge from the facility. Testimony.
3. On December 11, 2023, MassHealth approved the appellant's application for benefits and allowed a start date of August 5, 2023. Exhibit 1. The notice stated "MassHealth has decided that you are eligible for MassHealth Standard benefits to cover your care in a nursing facility. Your eligibility begins on 08/05/2023." See Exhibit 1. No further explanation as to how the start date was calculated was contained within the notice.
4. The appellant submitted a timely request for fair hearing on January 22, 2024. Exhibit 2.
5. On May 30, 2023, the appellant's power of attorney wrote two checks for \$6,000 each, one made payable to [REDACTED] and one to the [REDACTED]. Exhibit 5 at 51. It is the practice of the law firm and the company to charge a flat fee for their respective

services which include assistance with the navigation of the Medicaid application process and any legal fees associated with it. Testimony, Exhibit 6 at 8-12. The checks totaling \$12,000 cleared the appellant's bank account on June 30, 2024. Exhibit 5 at 49, Testimony.

6. After those checks cleared on June 30, 2024, the appellant's bank account balance was \$2862.47. Exhibit 5 at 39.

7. The appellant receives \$1876.00 in monthly social security benefits. Exhibit 5 at 46, 49, and 52, Exhibit 1.

8. From June 30, 2023, until July 27, 2023, the appellant's bank account balance remained under \$2000.00 when subtracting the appellant's social security income. Exhibit 5 at 49 and 52.

9. On [REDACTED] 2023, the appellant's primary residence was sold, and the proceeds of \$360,129.91 were deposited into the appellant's bank account. Exhibit 5 at 52.

10. On August 5, 2023, the appellant purchased a cashier's check in the amount of \$351,814.07 to be made payable to a pooled disability trust MassHealth deemed to be noncountable. Exhibit 5 at 49. It was this transaction that MassHealth relied upon in determining that the appellant was eligible for long-term care benefits. Testimony.

11. The appellant is eligible for long-term care benefits from August 5, 2023, onward. Testimony, Exhibit 1.

## **Analysis and Conclusions of Law**

MassHealth administers and is responsible for delivery of healthcare benefits to MassHealth members. See 130 CMR 515.002. Eligibility for MassHealth benefits differs depending on an applicant's age. 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for non-institutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, and certain Medicare beneficiaries. 130 CMR 515.002(B). As the appellant is over 65 years old and an institutionalized person, she is subject to the requirements of the provisions of Volume II. 130 CMR 515.002.

Long-term care residents are eligible for MassHealth Standard coverage if they meet the following requirements:

- (1) be younger than 21 years old or 65 years of age or older or, for individuals 21 through 64 years of age meet Title XVI disability standards or be pregnant;
- (2) be determined medically eligible for nursing facility services by the

MassHealth agency or its agent as a condition for payment, in accordance with 130 CMR 456.000: Long Term Care Services;

(3) contribute to the cost of care as defined at 130 CMR 520.026: Long-term-care General Income Deductions;

(4) have countable assets of \$2,000 or less for an individual and, for married couples where one member of the couple is institutionalized, have assets that are less than or equal to the standards at 130 CMR 520.016(B): Treatment of a Married Couple's Assets When One Spouse Is Institutionalized; and

(5) not have transferred resources for less than fair market value, as described at 130 CMR 520.018: Transfer of Resources Regardless of Date of Transfer and 520.019: Transfer of Resources Occurring on or after August 11, 1993.

130 CMR 519.006(A). The MassHealth regulations provide three categories of assets by which an applicant's financial eligibility is evaluated. Those include countable assets, noncountable assets, and inaccessible assets. *See generally*, 130 CMR 520.006-008. An asset is considered inaccessible when the applicant has "no legal access" to it. 130 CMR 520.006(A). This can include instances where ownership of property is subject to legal proceedings such as probate or divorce suits, or when the cash-surrender value of the life insurance has been reassigned for adjustment. *Id.* at 520.006(B).

Countable assets are defined as follows:

Countable assets include assets to which the applicant or member or his or her spouse would be entitled whether or not these assets are actually received when failure to receive such assets results from the action or inaction of the applicant, member, spouse, or person acting on his or her behalf. In determining whether or not failure to receive such assets is reasonably considered to result from such action or inaction, the MassHealth agency considers the specific circumstances involved.

130 CMR 520.007. These can include, but are not limited to, cash, bank account balances, IRAs, Keough plans, pension funds, securities, cash surrender value of life-insurance policies, certain vehicles, certain real estate and proceeds from sale thereof, certain SSI and RSDI benefits, trust values, and annuities. *Id.* Noncountable assets are expressly defined as "those assets exempt from consideration when determining the value of assets." 130 CMR 520.008. The only assets considered noncountable are the applicant's home, assets of an SSI recipient, business and nonbusiness property, any loan or grant, funeral or burial arrangements, veteran's payments, and balances of special-needs, pooled, and/or ICF/MR trusts. *Id.* The specific regulations related to certain real estate and proceeds from the sale of a home and how they are accounted for will be discussed further, *infra*.

Applicants have an opportunity to show a reduction of assets to the allowable limit to establish eligibility. *See generally* 130 CMR 520.004. In such instances, “MassHealth...requires the applicant to verify that...[their] excess assets were reduced to the allowable asset limit within the required timeframes.” *Id.* at 520.004(D). This reduction of assets is colloquially known as a “spenddown.” An applicant “whose countable assets exceed the asset limit of MassHealth Standard...may be eligible for MassHealth...as of the date the applicant reduces his or her excess assets to the allowable asset limit without violating the transfer of resource provisions for nursing facility residents at 130 CMR 520.019(F).”

An appellant bears the burden of proof at fair hearings “to demonstrate the invalidity of the administrative determination.” *Andrews v. Division of Medical Assistance*, 68 Mass. App. Ct. 228, 231 (2006). The fair hearing decision, established by a preponderance of evidence, is based upon “evidence, testimony, materials, and legal rules, presented at hearing, including the MassHealth agency’s interpretation of its rules, policies and regulations.” In requesting a long-term care benefits start date of June 6<sup>1</sup>, the appellant argues three points: First, that MassHealth did not give proper notice of the reason for delay of the appellant’s start date; second, that the appellant’s home was a countable asset subject to the nine-month exemption allowed by 130 CMR 520.007(G)(2); and third, that because the two \$6,000 checks in question were written on May 30, 2023, that they should be considered noncountable as of that date.

For the reasons stated herein, I find that the appellant’s bank account was over the asset limit until the \$12,000 in fees to the appellant’s counsel and the Senior Resource Center (hereinafter “legal fees”) cleared the appellant’s bank account on June 30. I further find that the home in question was the appellant’s noncountable primary residence until it was sold on [REDACTED] and that the proceeds from the sale of that property were countable assets from [REDACTED] until August 5.

#### **I. Sufficiency of MassHealth’s Notice Imposing Later Start Date.**

At hearing and in her memorandum of law, the appellant argues that the MassHealth notice did not give proper notice of the reason for its decision to consider the \$12,000 legal fees as countable assets in its December 11 approval letter. It is true that the MassHealth regulations require any notice “concerning an intended appealable action...to be in writing and contain...the reasons for the intended action.” 130 CMR 610.026(3). This is based on federal regulations which require Medicaid agencies to include “a clear statement of the specific reasons supporting the intended action.” 42 C.F.R. §431.210(b).

In support of this argument, the appellant included a 2018 Superior Court Decision *Maas v. Sudders*, 35 Mass. L. Rptr. 150. Exhibit 6 at 48 – 69. This decision allowed the plaintiff’s motion for declaratory judgement that MassHealth’s notice regarding the counting of trust funds as countable assets as insufficient when MassHealth listed them merely as “Other.” *Maas*, 35 Mass.

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<sup>1</sup> All dates referenced hereinafter are from 2023 unless otherwise specified.

L. Rptr. 150 at 3-4. While the same legal reasoning could certainly be applied in this case, not just to the issue of the fees, but to the entire delay of the start date, the appellant provides no guidance as to a proper remedy that can be imposed by the Board of Hearings. Further, as a Superior Court decision that did not receive further appellant review, it confers only persuasive authority in this case. Although the court found that MassHealth's ability to cure any deficiencies in the notice "cannot excuse their failure to give a clear statement of the specific reasons for the denial at the outset," the court merely allowed the plaintiff's motion for declaratory judgment and provided no other relief. *Id.* at 4. The appellant referenced no additional case law interpreting MassHealth's notice regulations, nor could this hearing officer find any relevant guidance.

As I must render my fair, independent, and impartial decision in accordance with the law, and I must give due consideration to MassHealth's interpretation of its regulations, I am seemingly without authority to grant a remedy for a violation of federal or state notice regulations in this instance. See 130 CMR 610.065(A)(7) and 610.082(C). For the reasons stated *infra*, I find that the appellant is not financially eligible for MassHealth long-term care benefits until June 30. Thus, approval for benefits on a date which I find the appellant is not financially eligible would be contrary to my obligation to render a decision within the confines of the law. There further is no direct injury to the appellant for failure to have adequate notice, as the appellant's representative was given ample opportunity to address MassHealth's rationale behind the imposition of the start date in question.

The only logical way to treat this issue is to consider MassHealth's standard, boilerplate approval notices as an interpretation of its regulation to which I must give deference. Therefore, any challenge to the sufficiency of the notice provided by MassHealth in this case cannot be ruled on by this hearing officer and must be subject to judicial review in accordance with 130 CMR 310.092. See 130 CMR 610.082(C)(2).

For those reasons, this decision will address the merits of the arguments raised at hearing.

## **II. Spenddown of the Appellant's Bank Account.**

The appellant argues that she was under the asset limit required to qualify for benefits on June 6. She relies on the fact that the checks were written on May 30 and were never cancelled and maintains that this is evidence of her intent to spenddown her account on that date. This argument is without merit.

Although the checks were written, the money did not clear the account until June 30. There is no evidence that it was legally inaccessible pursuant to 130 CMR 520.006. The appellant has provided no regulatory language that supports her conclusory argument that any personal checks already written should not be countable toward the balance of a bank account in determining the amount of countable assets. In fact, the regulations clearly state that MassHealth "considers funds in a bank account available only to the extent that the applicant or member has both ownership of an



access to such funds.” 130 CMR 520.007(B). Until the check cleared the appellant’s account, she had both ownership of and access to those funds. That she ultimately did not cancel the checks is without consequence, as she still possessed the ability to. Thus, the appellant’s bank account was not under the asset limit until the two \$6000 checks for legal fees cleared her account on June 30. That is, therefore, the earliest date that she can be considered eligible for MassHealth long-term care benefits.

The MassHealth representative raised at hearing that the payment totaling \$12,000 could be considered an impermissible transfer of resources pursuant to 130 CMR 520.019(D). Any transfers of resources “are subject to a [60 month] 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.” *Id.* at 520.019(B)(2). Any such transfer by the nursing facility resident “for less than fair-market value” is considered a disqualifying transfer unless it is otherwise considered permissible or exempted. *Id.* at 520.019(C). Additionally, MassHealth “will not impose a period of ineligibility for transferring resources at less than fair-market value if the nursing facility resident demonstrates...that...the resources were transferred exclusively for a purpose other than to qualify for MassHealth; or...the nursing facility resident...intended to dispose the resource at either fair-market value or for other valuable consideration.” *Id.* at 520.019(D).

The record does not support MassHealth’s implication that the \$12,000 in legal fees should be considered a disqualifying transfer of resources. There is no evidence that the sum in question is not fair market value for the services provided by [REDACTED] and the [REDACTED]. MassHealth’s assertion that an itemized accounting of the workers time spent on the appellant’s case is without regulatory support. However, even if the fees were not fair market value, there is no evidence that the appellant gave this money away to qualify for MassHealth, nor that she did not believe she was receiving fair market value of the cost of the company’s services. It is perfectly reasonable to retain counsel and elder services companies to navigate the complicated process of applying for Medicaid benefits. I credit the appellant’s counsel’s representations as to his firm’s business model. That the appellant chose to hire a law firm that imposed a flat fee rather than contingent or billable hours is not evidence that she did so solely for the purpose of trying to get under the asset limit to qualify for MassHealth. As such, I find no evidence of a disqualifying transfer of resources and will not impose a penalty period on the appellant’s start date for long-term care benefits.

### **III. Countability of Appellant’s Former Home Prior to its Sale.**

Real estate is generally considered to be a countable asset for purposes of MassHealth eligibility, subject to certain exceptions and exemptions. *See generally* 130 CMR 520.007(G). Specifically at issue in this appeal is whether the appellant’s former home should be considered her noncountable principal place of residence pursuant to 130 CMR 520.007(G)(1), or her countable former home of an institutionalized individual pursuant to 130 CMR 520.007(G)(8), which provides as follows:

(8) Former Home of an Institutionalized Individual. If an applicant or member moves out of his or her home to enter a medical institution, the MassHealth agency considers the former home a countable asset that is subject to 130 CMR 520.007(G)(2), provided all of the following conditions are met. If the former home of a nursing-facility resident as defined in 130 CMR 515.001: Definition of Terms is placed in a trust, the MassHealth agency will apply the trust rules in accordance with 130 CMR 520.021 through 520.024.

(a) The individual is institutionalized as defined in 130 CMR 515.001: Definition of Terms.

(b) None of the following relatives of the individual is living in the property:

1. a spouse;
2. a child who is younger than 21 years old or who is blind or permanently and totally disabled;
3. a sibling who has a legal interest in the home and who was living there for a period of at least one year immediately before the applicant's or member's admission to the medical institution;
4. a son or daughter who was living in the applicant's or member's home for a period of at least two years immediately before the date of the applicant's or member's admission to the medical institution, and who establishes to the satisfaction of the MassHealth agency that he or she provided care to the applicant or member that permitted him or her to live in the home rather than in a medical institution; or
5. a dependent relative. A dependent relative is any of the following who has any kind of medical, financial, or other dependency: a child, stepchild, or grandchild; a parent, stepparent, or grandparent; an aunt, uncle, niece, or nephew; a brother, sister, stepbrother, or stepsister; a half brother or half sister; a cousin; or an in-law.

(c) The applicant or member (and spouse, if any) *moves out of his or her home without the intent to return.*

(d) The applicant or member does not own long-term-care insurance with coverage that meets the requirements of 130 CMR 515.014: Long-term-care Insurance Minimum Coverage Requirements for MassHealth Exemptions and the Division of Insurance regulations at 211 CMR 65.09(1)(e)(2).

*(Emphasis added).* As there is no evidence that anyone was living in the home at the time that the appellant was admitted to the nursing facility, the question remains as to whether the appellant moved out of the house and into the facility without the intention to remove home upon discharge.

MassHealth expresses skepticism that the appellant ever intended to return home, because

although she stated on her July 14 application that she intended to return home, the property was sold two weeks later. The testimony was unclear, but it would be reasonable to infer that MassHealth's position is that the appellant never intended to return home, and that therefore the home should be treated as a countable asset under 520.007(G)(8) until it was sold, leading to the August 5 approved start date.

However, this position is not supported by the plain meaning of the regulation, which refers to the applicant's intent upon moving out of the home. See 130 CMR 520.008(G)(8). Thus, the question is not whether an individual intends to return home at the time of their application for MassHealth benefits, but instead is of their intent at the time that they leave their home to be institutionalized. As the appellant in this case was admitted into the nursing facility on [REDACTED] 2023, it is perfectly reasonable to credit that she intended to return home at that time.

For those reasons, I find that, until the home was sold on [REDACTED] it should have been considered the appellant's primary residence and a non-countable asset under 130 CMR 520.008(A).

#### **IV. Countability of the Proceeds from the Sale of the Home.**

Typically, proceeds from the sale of real estate are countable assets "after the payments of loans, liens, or other encumbrances, and expenses of sale." 130 CMR 520.007(G)(5). However, the appellant argues that she is entitled to the nine-month exemption for the sale of real estate, which, in relevant part, states that "[t]he value of such real estate is exempt for nine calendar months after the date of notice by the MassHealth agency, provided that the individual signs an agreement with the MassHealth agency within 30 days after the date of notice to dispose of the property at fair-market value." *Id.* at 520.007(G)(2). This argument does not comport with a fair and contextual reading of the regulations.

520.007(G)(2) refers directly back to "such real estate" described in (G)(1), which deems any real estate *not* the applicant's principal residence to be a countable asset. It is notable that these regulations also apply to determination of eligibility for community-based applicants over 65 in addition to institutionalized residents. MassHealth does not require its community-based applicants to sell their homes within nine months of approval for benefits, as this would be counterintuitive to the mission of MassHealth itself. The regulations here provide no distinction between community versus institutionalized applicants, and therefore a fair reading of 520.007(G)(2) is that it applies only to real estate that is not an applicant's primary residence. Therefore, contrary to the appellant's argument, she is not entitled to such an exemption for the proceeds of the real estate in question.

Even if (G)(2) were interpreted to be applied to an applicant's primary residence, however, the appellant would still not meet its requirements. The exemption is for nine months "after the date of notice" *and* "provided that" the applicant has entered into an agreement with MassHealth within thirty days of that notice. 130 CMR 520.007(G)(2). As no notice issued in this case prior to

December 2023, the appellant's sale of her home in July 2023 would not entitle her to the nine-month exemption. The proceeds of the sale of the appellant's home are therefore countable assets pursuant to 130 CMR 520.007(G)(5). The question remains as to the date on which the proceeds begin to be a countable asset.

Common sense would dictate that the proceeds from the sale of a home cannot be considered a countable asset until the home has been sold and the proceeds have been accessibly deposited into an applicant's bank account. The language of 130 CMR 520.007(G)(5) states that such proceeds "are a countable asset in the month received and in subsequent months." This could, theoretically, be read to mean that the proceeds are countable for the entire month in which they are received. However, this interpretation flies in the face of the preceding asset regulations, which count any asset that is or should be accessible to an applicant. *See generally*, 130 CMR 520.007.

Specifically in this case, the appellant had no access to the proceeds of the sale of the home before she sold it. This is not a question of these being assets "to which the applicant...would be entitled whether or not the assets are actually received when failure to receive such assets results from the action or inaction of the applicant..." *Id.* Plainly put, the appellant was not entitled to proceeds from the sale of her home before it was sold on [REDACTED]. It is not reasonable for the sale of her home on [REDACTED] to disqualify her for the entire month of July when she was otherwise under the asset limit as of June 30.

A far fairer and more reasonable interpretation of the "asset in the month received" language is to distinguish proceeds from the sale of a home from lump-sum payments as defined by 130 CMR 520.009(E). Under this rule, lump-sum payments are "counted as unearned income in the calendar month received and as an asset in subsequent months." *Id.* Proceeds from the sale of a home are specifically excluded from this provision, which clearly seeks to distinguish between how these funds are accounted for, not on which date. *See Id.* at (1)(c).

Therefore, I find that the proceeds from the sale of the appellant's home are a countable asset, but only from the day of the sale on [REDACTED] until MassHealth deemed them noncountable upon purchase of the cashier's check to the pooled trust on August 5.

#### **V. Determination of the Start Date.**

The start date of MassHealth senior benefits "may be retroactive to the first day of the third calendar month before the month of application, if covered medical services were received during such period, and the applicant or member would have been eligible at the time services were provided." 130 CMR 516.006(A)(2). Typically, an applicant "whose countable assets exceed the asset limit...may be eligible for MassHealth...as of the date the applicant reduces his or her excess assets to the allowable asset limit without violating the transfer of resource provisions for nursing-facility residents..." 130 CMR 520.004(A)(1)(a).

In this case, MassHealth reports that it does not approve intermittent eligibility, an argument which seems counter to its Continuing Eligibility requirements under 130 CMR 516.007, the imposition of disqualifying transfer penalty periods under 130 CMR 520.019(F), and, most notably, the obligation of members to report any changes to their income or assets to MassHealth within ten days under 130 CMR 515.008(B). For that reason, I do not credit MassHealth's representation that it cannot approve its members for intermittent eligibility if they demonstrate that they meet the financial requirements for some of the requested time (provided that it falls within the appropriate time set forth at 130 CMR 516.006(A)(2)), but not all of it. Further, I see no regulations, nor did MassHealth cite any, that support this claim.

For each of the foregoing reasons, I find that the appellant is eligible for MassHealth long-term care benefits from June 30, 2023, until July 27, 2023, which is the day before the sale of the appellant's primary residence. I further find that she is ineligible for eight days from [REDACTED] 2023, until August 4, 2023, and she should be eligible as of August 5, 2023. Thus, the appeal is hereby APPROVED IN PART and DENIED IN PART.

## **Order for MassHealth**

Approve the appellant for long-term care benefits from June 30, 2023, through July 27, 2023. Impose a period of ineligibility from [REDACTED] 2023, through August 4, 2023. Approve the appellant for benefits from August 5, 2023 onward.

## **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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Mariah Burns  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Quincy MEC, Attn: Appeals Coordinator, 100 Hancock Street, 6th Floor, Quincy, MA 02171

[REDACTED]