Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Approved in part; Denied in part	**Appeal Number:**	2401649
Decision Date:	6/14/2024	**Hearing Date:**	03/05/2024
Hearing Officer:	Alexandra Shube	**Record Open to:**	04/19/2024

Appearances for Appellant:

[redacted]

Appearances for MassHealth:
Via telephone:
Elizabeth Landry, Taunton MEC
Carmen Sola, Taunton MEC

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

APPEAL DECISION

Appeal Decision:	Approved in part; Denied in part	**Issue:**	Long Term Care – disqualifying transfer
Decision Date:	6/14/2024	**Hearing Date:**	03/05/2024
MassHealth's Reps.:	Elizabeth Landry; Carmen Sola	**Appellant's Reps.:**	[redacted]
Hearing Location:	Taunton MassHealth Enrollment Center Remote	**Aid Pending:**	No

Authority

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

Jurisdiction

Through a notice dated December 4, 2023, MassHealth denied the appellant's application for MassHealth benefits because MassHealth determined that the appellant gave away assets to become eligible for MassHealth and calculated a period of ineligibility from June 29, 2023 to July 25, 2024 (Exhibit 1). The appellant filed this appeal in a timely manner on February 1, 2024 (see 130 CMR 610.015(B) and Exhibit 2). Denial or limitation of assistance is valid grounds for appeal (see 130 CMR 610.032).

At the request of the appellant, the record in this appeal was held open until April 19, 2024.

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth benefits because MassHealth determined that the appellant gave away assets to become eligible for MassHealth long-term care benefits and calculated a period of ineligibility from June 29, 2023 to July 25, 2024.

Issue

The appeal issue is whether MassHealth was correct in determining that the appellant improperly transferred or gave away assets to qualify for MassHealth benefits.

Summary of Evidence

The appellant's representatives (her attorney and daughter) and MassHealth representatives all appeared at the hearing via telephone. The MassHealth representatives testified as follows: the appellant is over the age of [redacted] and has a household size of one. She was admitted to the facility on [redacted] 2023 and MassHealth received a long-term care application on her behalf on June 22, 2023, with a requested start date of June 29, 2023. MassHealth mailed an information request to the appellant on June 29, 2023. It received all requested documentation, and on December 4, 2023, it issued the notice under appeal which informed the appellant she was not eligible for MassHealth benefits because she gave away or sold assets to become eligible for MassHealth long-term care services. MassHealth calculated a period of ineligibility from June 29, 2023 to July 25, 2024 due to a transfer of assets totaling $167,715.80. MassHealth divided that amount by the daily nursing facility rate of $433[1] to arrive at a 387-day period of ineligibility.

The appellant sold her home on July 2, 2020 and received $548,394.97 in proceeds. MassHealth determined the transfer amount of $167,715.80 from those proceeds based on rent the appellant paid to her daughter from 2018 through October 31, 2021, when she entered an assisted living facility. In a September 25, 2023 letter from the appellant's daughter to MassHealth documenting expenses for the appellant, the daughter stated the following:

> Rent
> [The appellant] was living with [the daughter] in [the daughter's home] for 1/1/2018 – 11/1/2021, or 46 months at the rate of $4,000 per month to include utilities and meals = $184,000.
>
> [The appellant's husband] lived with [the daughter] in [the daughter's home] from 3/1/2020 – 9/9/2020. Additional charge of $500.00 per month or $6 [*sic*] months * $500 or $3,000.00.

This letter, which was provided in MassHealth's pre-hearing submission, included a summary of the disposition of the funds from the sale of the appellant's home and was created by the

[1] According to MassHealth Eligibility Operations Memo 23-25 issued in November 2023, at the time of her application in June 2023, the applicable average daily nursing home rate in Massachusetts was $427.00, not $433.00. The Eligibility Operations Memo states that for applications received before November 1, 2023, use $427. For applications received on or after November 1, 2023, use $433. See MassHealth Eligibility Operations Memo 23-25 (Nov. 2023).

appellant's daughter. In addition to the rent, it included over $196,000 in paid debts associated with the following: reimbursement to the daughter for creating a second master bedroom suite for the appellant in the appellant's home;[2] reimbursement to the daughter for property taxes on the appellant's home paid to the city ($9,132.18); reimbursement to the daughter for financial analysis and legal consultation on the adult son's home ($82,710.00); reimbursement to the daughter for purchases made on behalf of the appellant and her spouse from May 14, 2017 to June 22, 2019 ($64,396.83; this amount is not broken down in the letter); junk removal for the appellant's home ($950 and $700); bath/hot tub for the appellant ($4,247.00); junk removal, clean out, dumpster rentals, carpentry/repairs for the appellant's home ($9,955); repayment of personal loan for work on the appellant's home ($8,000); and mobility-related construction ($5,407). It included an estimated $12,000 in unpaid debts owed to the nursing facility. In addition, it included $284,928.54 in healthcare expenses paid between February 1, 2020 to February 15, 2023 to various individuals, including the daughter, home health care agencies, and an assisted living facility. It also included over $55,487 in unspecified "spending transactions" between January 1, 2020 to December 31, 2020 incurred for the benefit of the appellant and her spouse.[3]

MassHealth explained that the appellant was charged $4,000 per month in rent but only received about $350 per month in income. As a result, MassHealth subtracted her income from the rent and multiplied that difference for each month to determine the transfer amount by year. For example, in 2018 the appellant's Social Security was $343: $4,000 – $343 = $3,657 x 12 = $43,884. Following the same calculation, MassHealth determined the transfer amount for 2019 was $43,770 (income of $352.50); for 2020, $43,696.80 (income of $358.60); and 2021, $36,365 (income of $363.50 and only ten months). The transfers calculated for 2018 through October 2021 totaled $167,715.80. The remainder of the proceeds from the sale of the home were spent down appropriately and placed in a trust, according to MassHealth.

The appellant's daughter and attorney explained that, while they received the transfer of assets notice, this is the first time that they are learning of the amount of the transfer MassHealth assessed and why it was deemed to have been given away. The appellant's daughter explained that the $4,000 per month was from both her mother and father's combined income.[4] Her mother also received about $900 per month from a pension.[5] Her father received about $3,000 per month

[2] This space was created in June 2010 at a cost of $10,000 in order to give the appellant a safe space in her home. In a separate table, the appellant's daughter notes that the appellant's spouse agreed to pay back the daughter when the house was sold. See Exhibit 8.

[3] Prior to hearing, the appellant's attorney submitted over 100 pages of receipts, invoices, banking records, and copies of deposited checks in support of some of those expenses. Some of the pages are duplicates within that 100 pages and it is not always clear what invoices and bills were paid from whose account. Additionally, the appellant's attorney submitted a table and spreadsheet created by the appellant's daughter detailing expenses and dates paid.

[4] According to the September 25, 2023 letter provided by the daughter, the appellant's spouse lived with the daughter from March 1, 2020 to September 9, 2020 and she charged an additional $500 per month for this.

[5] MassHealth did not submit any evidence to corroborate this fact.

from Social Security. She said the $4,000 rent was for their portion of rent, food, utilities, insurance, and taxes, but it did not cover all their expenses. Her parents could not live together safely, and she was paying for both her house and her parents' house and helping them with everything. She tried in-home care for her parents, but it was very expensive and difficult to manage. When Covid hit in March 2020, she moved her parents into her home full time. Her father passed away on [redacted] 2020.

The appellant's daughter also explained that, in 2013, she learned that her parents, in addition to paying for their own home, had been supporting their adult son (who had been hit by a drunk driver in 1995 and became permanently disabled), his children, and ex-wife, and the fixed costs for his house. The adult son and his then teenage children lived with his parents for many years, while his parents continued to pay for his home where the son's ex-wife lived. From 2013 into 2017, the appellant and her spouse were paying for both their own home and their adult son's home. There was an expensive court process to evict the adult son's ex-wife from his home. By 2017, her parents had exhausted their retirement savings and liquid assets and needed financial support from their daughter.[6]

The record in the appeal was held open until April 5, 2024 for the appellant to provide proof of the appellant's pension and documentation of the spend down of the proceeds from the sale of the appellant's home. MassHealth was given until April 19, 2024 to review and respond to the appellant's submission.

On April 5, 2024, the appellant's attorney submitted the following: expanded timeline of events and expenses created by the appellant's daughter; a summary of expenses (previously provided); and a declaration signed under the penalties of perjury by the appellant's daughter regarding how her mother's assets were used for her care over the last seven years. The attorney stated that the daughter managed her parents' affairs to the best of her ability for a long time. Her main goal was to keep her parents safe and cared for at home as long as she could. To that end, she used her own resources when necessary and her parents' resources when available. She kept track of as much as she could while she managed multiple households, but, he argued, it is clear from the copious documentation that there was no intent to plan for Medicaid at any time.

The daughter's declaration provided a more accurate timeline and clarified testimony at hearing.[7] She stated that, by 2017, her parents had spent all of their liquid assets and their health was rapidly declining. She began paying for in-home care for both parents at that time by using their fixed income and her own to keep them in their home. Between 2017 to 2018,

[6] According to documentation submitted by the appellant during the record open period, most of the expenses related to the adult son's home and court process were incurred between 2013 to 2017. The adult son's home was sold in 2017 at a loss.

[7] Additionally, this hearing officer re-opened the record via email on May 29, 2024 for further clarification on some issues. For clarity of the timeline, that information is included in this section as well.

her father suffered a series of strokes and her mother's dementia began to advance substantially. Due to these factors, beginning in 2018 and until she moved into the daughter's home permanently in March, 2020, the appellant would move between her home and her daughter's home when necessary to provide care and safety in response to her spouse's acute mental and physical health issues. The appellant's spouse was not tolerant of her dementia and was angry at the loss of his own health.

Beginning in 2017, the appellant's daughter was largely paying for her parents care out of her own assets.[8] The daughter offered her own adult children "care shifts" and she promised to pay them later. The daughter borrowed from friends and got labor done on an IOU. She also set up live-in arrangements for caregivers to keep costs down. Her father was born in the same home he shared with the appellant, and his one request was to die there; however, when Covid hit, it was too difficult to maintain home health care and that was when the appellant and her spouse moved in full time to the daughter's home and the decision was made to sell the appellant's home. The house required eleven dumpsters to be emptied out, and the daughter worked on the house every weekend for months to prepare it for sale. The appellant was a hoarder and due to her and her spouse's declining health, the home required a lot of repairs and maintenance before it could be sold. It was sold on July 2, 2020.

The daughter cared for her mother in her home with the help of home health aides until October, 2021, at which point a tree branch had fallen and damaged the roof of the daughter's home and she needed emergency respite care for the appellant. The appellant stayed at the assisted living facility for a year and a half and paid over $169,000 for her care there from the proceeds of the sale of her home. At that point, the appellant's health had deteriorated enough that she could not return home and she entered the skilled nursing facility in [redacted], 2023, after falling and breaking her hip. The appellant has spent down the remainder of her assets, and most of her daughter's assets, to pay for her care at the facility.

The daughter averred that there was never any intent to plan for the receipt of MassHealth long-term care benefits for either the appellant or her spouse. The daughter worked hard to keep her parents at home, using her own assets and those of the appellant and her spouse. The proceeds from the appellant's home were used to settle significant debt obligations incurred before the sale of the home to take care of the appellant and her spouse. The remaining proceeds were spent caring for the appellant and her spouse until the assets were completely spent. She stated that she did not maintain a strict delineation between her assets and the appellant's during this time because it was overwhelming to manage it all. She found it easier to use her own funds and repay herself at a later date. It was also complicated by the fact that the daughter was changing her name back to her maiden name after her divorce and banks would

[8] While the appellant provided spreadsheets and tables, there are no invoices, copies of checks, or other verification for all the expenses outlined in the tables and spreadsheets, making it difficult to determine what funds were paid directly with proceeds from the sale of the home, from the appellant's own account, or from the daughter's account on behalf of the appellant.

not recognize her POA to open accounts or pay bills until the process was completed. Her intent and that of the appellant's was always to remain at home until they passed away.

According to the appellant's daughter, when her parents first moved into her home, she was paying $3,420 per month for her mortgage, insurance, and real estate taxes. In 2021, the daughter moved to a smaller home with her mother and she was paying $1,070 per month for her mortgage, insurance, and real estate taxes. She had to remodel the new home at a cost of $23,648 to make it accessible for the appellant. She clarified that the $4,000 per month was to cover the appellant and her spouse's expenses, not just rent. The spouse's Social Security was paid to the daughter contemporaneously at the time he was living there. The appellant's pension income and small Social Security amount of about $350 were also paid contemporaneously. The appellant did not testify to, nor provide, other documentation of any agreement, oral or written, regarding payment for rent, living expenses, or other care needs.

Additionally, the appellant's representatives verified the appellant's pension during the record open period. For 2019, her gross payment was $9,833.76 (or $819.48 per month); for 2020, $10,128.78 (or $844.06 per month); for 2021, $10,432.68 (or $869.39 per month); and no documentation was provided for 2018.

MassHealth reviewed the documentation and stated that it was unable to remove the penalty period. Based on the daughter's declaration, the appellant was ill for quite some time and needed extensive care for years. MassHealth argued that, although it was not her intention to enter a nursing facility, it would be reasonable for someone who needed that level of care to expect to need nursing home placement and the appellant needed to use her funds to support herself. The MassHealth representative stated that it appears the appellant used her funds to support other family members, specifically her grown grandchildren and former daughter-in-law who are not disabled.

Findings of Fact

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

1. The appellant is over the age of [redacted] and was admitted to a nursing facility on [redacted], 2023 (Testimony and Exhibit 4).

2. On June 22, 2023, MassHealth received a long-term care application on behalf of the appellant (Testimony and Exhibit 5).

3. On December 4, 2023, MassHealth informed the appellant that she was not eligible for MassHealth benefits because MassHealth determined that the appellant gave away assets to become eligible for MassHealth and calculated a period of ineligibility from June 29, 2023 to

July 25, 2024 (Testimony and Exhibit 1).

4. On February 1, 2024, the appellant timely appealed the December 4, 2023 notice (Exhibit 2).

5. The appellant sold her home on July 2, 2020 and received $548,394.97 in proceeds (Testimony and Exhibit 5).

6. MassHealth determined the transfer amount of $167,715.80 from those proceeds to the appellant's daughter based on rent the appellant paid to her daughter from 2018 through October 31, 2021 (Testimony and Exhibit 5).

7. In a letter from the appellant's daughter dated September 25, 2023 and provided to MassHealth on September 27, 2023, the appellant's daughter stated that the appellant lived with her from January 1, 2018 to November 1, 2021, or for 46 months at the rate of $4,000 per month, including utilities and meals (Testimony and Exhibit 5).

8. The appellant only received about $350 per month from Social Security and, at the time of the MassHealth determination, had was no other verified income (Testimony and Exhibit 5).

9. To arrive at the disqualifying transfer amount, MassHealth subtracted the appellant's income from the rent she was charged and multiplied that difference for each month to determine the transfer amount by year (Testimony).

10. During the record open period, the appellant verified her pension for 2019 through 2023, which averaged about $845 per month for the relevant years of 2019, 2020, and 2021 (Exhibit 9).

11. The appellant's daughter was paying $3,420 per month for her mortgage, insurance, and real estate taxes when her parents first began living with her in 2018. In 2021, the daughter moved to a smaller home with her mother and she was paying $1,070 per month for her mortgage, insurance, and real estate taxes. (Exhibit 9).

12. The appellant's daughter submitted an affidavit and a spreadsheet and table documenting the timeline of events and summarizing expenses. She also submitted 100 pages of bills, invoices, and banking information (with some pages duplicated), but those did not support all the expenses described in the spreadsheet and table. (Exhibits 6, 8 and 9).

Analysis and Conclusions of Law

To qualify for MassHealth long-term care coverage, the assets of the institutionalized applicant cannot exceed $2,000.00. See 130 CMR 520.016(A). In determining whether an applicant qualifies for benefits, MassHealth will assess whether he or she has transferred any resources for less than fair market value (FMV). If the individual or their spouse has made a transfer for less than FMV, the applicant, even if "otherwise eligible," may be subject to a period of disqualification in accordance with its transfer rules at 130 CMR §§520.018 520.019. MassHealth's "strict limitations on asset transfers," which were adopted pursuant to federal law, are intended to "prevent individuals from giving away their assets to their family and friends and forcing the government to pay for the cost of nursing home care." See Gauthier v. Dir. of the Office of Medicaid., 80 Mass. App. Ct. 777, 779 (2011) (citing Andrews v. Division of Med. Assistance, 68 Mass. App. Ct. 228, 229, (2007).

With respect to transfers of resources, regardless of the date of transfer, MassHealth provides the following, in relevant part:

> The MassHealth agency will deny 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.

See 130 CMR 520.018(B)

The "look back period", referred to in § 520.018(B), above, is sixty months, or 5 years, before the first date the individual is *both* a nursing facility resident *and* has applied for, or is receiving, MassHealth Standard.[9] See 130 CMR 520.019(B). MassHealth will deem the individual to have made a "disqualifying transfer" if it finds that during the look-back period, the individual (or their spouse) transferred resources for less than FMV, or, if they have taken any action "to avoid receiving a resource to which the resident or spouse would be entitled if such action had not been taken." 130 CMR 520.019(C). If it is determined that a resident or spouse made a disqualifying transfer or resources, MassHealth will calculate a period of ineligibility in accordance with the methodology described in 130 CMR 520.019(G).

The transfer provisions also have several exceptions to the general rule governing disposition of assets, which are detailed in § 520.019(D) (permissible transfers), § 520.019(J) (exempted transfers), and § 520.019(F) (exemptions based on intent). See 130 CMR 520.019(C). In the instant case, the only applicable exception, and the sole regulatory exception raised by the appellant at

[9] Effective February 8, 2006, the look-back period for transfer of assets was extended from 36 months to 60 months and the beginning date for a period of ineligibility will be the date the applicant would otherwise be eligible or the date of the transfer, whichever is later. See MassHealth Eligibility Letter 147 (July 1, 2006)

hearing, is found in 130 CMR 520.019(F), which states, the following: [10]

....

(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.

130 CMR 520.019 (emphasis added)

Under Federal law, an applicant must make a heightened evidentiary showing on this issue: "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." Gauthier v. Dir. of Office of Medicaid, 80 Mass.App.Ct. 777, 785 (2011) (citing State Medicaid Manual, Health Care Financing Administration Transmittal No. 64, § 3258.10(C)(2)).

In this case, MassHealth imposed a period of ineligibility based on transfers totaling $167,715.80 from the proceeds of the sale of the appellant's home to her daughter for "rent" paid for 2018 through October 2021. MassHealth imposed transfers beginning in January 2018; however, evidence indicated that the five-year look-back period should have started on June 22, 2018 – the date by which Appellant was both a resident of a nursing facility *and* had already applied for MassHealth benefits (her application was received on June 22, 2023). Thus, transfers of resources made starting in June 2018 (not January 2018) are within the five-year look-back period. As such, before going any further in the analysis, the transfer amount for 2018 according to the calculation used by MassHealth should be $25,599, not $43,884. That would reduce the disqualifying transfer amount to $149,430.80. Additionally, the appellant's representatives verified the appellant's pension during the record open period. For 2019, her gross payment was $9,833.76 (or $819.48 per month); for 2020, $10,128.78 (or $844.06 per month); for 2021, $10,432.68 (or $869.39 per month); and no documentation was provided for 2018. But, if this updated income is considered, it would also reduce the disqualifying transfer to $120,774.42, according to the calculation MassHealth used. Therefore, I find that

[10] The appellant's representatives did not argue that that the transfer was either "permissible" under 130 CMR 520.019(D) or "exempted" under 130 CMR 520.019(J), nor was any evidence presented to suggest these exceptions would apply to the transfer at issue.

MassHealth incorrectly determined the amount of the disqualifying transfer. For the remainder of the analysis, the disqualifying transfer amount will be referenced as $120,774.42, not the original $167,715.80.

While the appellant initially categorized the $4,000 per month as rent, it is clear from testimony and documentation that the appellant intended that amount to be considered not just for the appellant's actual rent, but also her complete living expenses and personal and medical care needs. The MassHealth "rent" calculation seems arbitrary and did not fully consider the documented expenses for which the appellant received FMV and that her daughter paid on her behalf.

The explanation for the transfer offered by the appellant's representatives is through the appellant's daughter's recollection of the appellant's situation, care needs, and expenses, as well as a spreadsheet and table created by the daughter and some receipts, invoices, and banking information.

In determining whether the adjusted transfer amount of $120,774.42 was a disqualifying transfer, the first question is whether the appellant made a transfer of resources for less than fair market value (FMV). In requiring state Medicaid agencies to adopt the federally mandated transfer regulations, the Centers for Medicare & Medicaid Services (CMS), formerly Health Care Financing Administration Transmittal (HCFA), published mandatory instructions, now complied in the federal agency's State Medicaid Manual (SMM) which included the following instruction for making determinations on whether a transfer was made for less than FMV:

> For an asset to be considered transferred for fair market value or to be considered to be transferred for valuable consideration, the compensation received for the asset must be in a tangible form with intrinsic value. ***A transfer for love and consideration, for example, is not considered a transfer for fair market value. Also, while relatives and family members legitimately can be paid for care they provide to the individual, [CMS] presumes that services provided for free at the time were intended to be provided without compensation. Thus, a transfer to a relative for care provided for free in the past is a transfer of assets for less than fair market value. However, an individual can rebut this presumption with tangible evidence that is acceptable to the State. For example, you may require that a payback arrangement had been agreed to in writing at the time services were provided.***

See SMM, Department of Health and Human Services (DHHS) HCFA, Transmittal No. 64, § 3258.1(A) (11-94) (emphasis added).[11]

[11] The SMM is a compilation of federal resources and procedural material needed by States to administer the Medicaid Program. The instructions provided therein are CMS's "official interpretations of the law and regulations,

It is the appellant's burden to show that the MassHealth determination was in error. In applying MassHealth's transfer regulations and the federal mandatory instructions to the present case, the appellant has only partially demonstrated that MassHealth erred in concluding the transfer of $120,774.42 was made for less than FMV. See 130 CMR §§ 520.018(B), 520.019(B). Here, there was no evidence to establish that $4,000 per month was the FMV for rent, especially given that the appellant's daughter's combined mortgage, insurance, and real estate taxes were $3,420 (during the period 2018 through 2020) and $1,070 (during the period 2021 through early 2023). The appellant's representatives did not establish that $4,000 per month was a FMV rate; however, there are documented expenses for the appellant's own medical care and personal expenses for which she received FMV, but for which her daughter paid. The following expenses paid for by the appellant's daughter on behalf of the appellant were sufficiently documented and should not be considered as part of the disqualifying transfer because the appellant received FMV for them: $9,132.18 for property taxes paid to the city on the appellant's home and $23,648 for work on the daughter's home to make it accessible for the appellant. In total, the appellant's representatives have shown that the appellant received FMV for the $32,780.18 paid to the appellant's daughter to reimburse for the above-listed expenses.

While there were other legitimate medical, living, and care expenses incurred for the appellant's care, the appellant's representatives have not provided sufficient, clear documentation to show that the daughter paid for them and could be reimbursed for them at FMV. For example, some of the expenses, such as over $169,000 for an assisted living facility from October 2021 to February 2023, was paid for directly from proceeds of the sale of the appellant's home, not by the appellant's daughter. For other expenses, such as in-home care provided by various agencies and home health aides, there are some checks showing payment directly from the appellant's own account. There is also the September 25, 2023 letter from the appellant's daughter stating that $284,928.54 in health care expenses was paid for by the proceeds of the sale of the home. The documentation provided is not clear on what in-home care was paid for by the appellant's daughter. Some of that in-home care was also provided by the appellant's daughter and grandchildren with a note in the table "to be paid someday." As discussed above, CMS presumes that services provided by family members for free at the time were intended to be provided without compensation. Other expenses listed, such as $10,000 paid by the appellant's daughter for creating a second master suite in the appellant's home in 2010, occurred prior to the five-year look back period in question and, again, there is no indication that there was any payback arrangement other than in the table created by the appellant's daughter stating that her dad would pay her back when the house sold. The table, while helpful in detailing the timeline of events, does not constitute "tangible" evidence as contemplated by CMS. The financial analysis and legal consultation relating to the adult son's home in the amount of $82,710 was for the benefit of the adult son and cannot be considered a bill incurred on behalf of the appellant. As to the $64,396.83 in spending transactions from May

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and, as such, are binding on Medicaid State agencies." See SMM, Foreword § B(1); see also 130 CMR § 515.002(B).

14, 2017 to June 22, 2019, there is nothing provided to show what those purchases were and whether the appellant received FMV for them.

As such, there is insufficient documentation or evidence for the remainder of the transfer ($87,994.24) to demonstrate that the resources were transferred for FMV or exclusively for a purpose other than to qualify for MassHealth.

In accordance with the federal instruction, MassHealth must presume that services provided by family members for free at the time were intended to be provided without compensation. To rebut this presumption, the individual must provide tangible evidence, such as a payback arrangement in writing, at the time the services were provided. See SMM, § 3258.1(A). Here, no such evidence exists. The appellant's daughter never testified to any agreement, written or oral, between her and the appellant to pay rent or pay the appellant's daughter and/or her grandchildren for care or services. Moreover, the oral agreement to pay back the grandchildren for care was an agreement between the appellant's daughter and the grandchildren, not between the appellant and the grandchildren.[12] Additionally, the spreadsheet and table, while helpful in assisting the daughter detail the events and timeline, do not constitute "tangible" evidence as contemplated by CMS. Rather, it is a document that has little probative value as to whether the appellant consented to the "rent" or terms of payback. The spreadsheet and table also do not offer evidence of the appellant's intention when she received the proceeds of the sale of the home and made the transfer. The spreadsheet and table document expenses, but do not show whether they were paid by the appellant directly, through proceeds from the sale of the home, or by her daughter, and that information is also not clearly shown in the invoices and receipts provided. Absent a written payback agreement, MassHealth correctly determined that the remaining portion of the appellant's transfer to the daughter was a transfer for less than FMV.

It is not solely the absence of a written agreement that is problematic, however, but also the lack of any clear payback agreement at all. There were no details indicating the appellant and her daughter entered any rent or caretaker agreement, what the terms would be, or how much the appellant agreed to pay back if she potentially was to come into money. It is for this reason that MassHealth deems a resource transfer made by an applicant in exchange for a future performance a "disqualifying transfer" as such agreements lack an ascertainable fair market value. See 130 CMR 520.007 (J)(4).[13] In one spreadsheet, the appellant's daughter documents that she is owed $11,800

[12] One of the grandchildren is a registered nurse and another, a certified nursing assistant, which, were there more tangible evidence, might help rebut the presumption that services provided by family for free at the time were intended to be provided without compensation; however, the September 25, 2023 letter summarizing the disposition of funds from the sale of the appellant's home show that the grandchildren were paid for the care they provided directly from those funds (not by the appellant's daughter who would then be looking for reimbursement from the appellant) and those transfers are not at issue.

[13] This provision states in full that "any transaction that involves a promise to provide future payments or services to an applicant, member, or spouse, including but not limited to transactions purporting to be annuities, promissory notes, contracts, loans, or mortgages, is considered to be a disqualifying transfer of assets to the extent that the transaction does not have an ascertainable fair-market value or if the transaction is not embodied in a

for trying to correct an issue about her mother's Social Security benefits. She came to this amount based on spending 118 hours over three years at $100 per hour. Even if this did not fall under the guidance at SMM, § 3258.1(A) that services provided by family members for free at the time were intended to be provided without compensation, there is nothing in the appellant's testimony or documentation to establish that $100 per hour is the FMV for such services.

The appellant has also failed to demonstrate that she *intended* to dispose of assets for FMV *or other valuable consideration*. According to CMS, "valuable consideration" means that "an individual receives in exchange for his or her right or interest in an asset some act, object, service, or other benefit which has a tangible and/or intrinsic value to the individual that is roughly equivalent to or greater than the value of the transferred asset." See SMM § 3258.1(A)(2). This exception allows applicants to avoid a disqualifying period for a transfer for less than FMV, *if* the individual demonstrates that their intention was to transfer assets at FMV or other valuable consideration and there has been satisfactory evidence to show the circumstances that caused the transfer. As stated above, there was no tangible corroboration to establish that the appellant agreed to pay "rent," nor was there documentation that the appellant agreed to pay her daughter or grandchildren for caretaking services, as detailed in the spreadsheet and table created by the daughter. Here, there was no evidence provided beyond the "verbal statements" of the daughter to explain the appellant's intent in making the transfer.[14] The evidence submitted did not satisfy the heightened evidentiary requirement to show the transaction in question was not a "disqualifying transfer" of resources.

Next, the appellant has also not sufficiently demonstrated that she made the transfer "exclusively" for reasons other than to qualify for MassHealth. See 130 CMR 520.019(F)(1). The element of "exclusivity" under this provision, means that the possibility of needing public assistance for medical care must not have weighed at all upon the appellant's mind at the time the decision was made. The appellant's representatives argued that they always intended to keep the appellant at home and did not expect to need long-term care or MassHealth. According to the appellant's daughter, the appellant's health had been declining significantly since 2017. By 2018, the appellant was living with the daughter at least part-time and by 2020, she was living with the daughter full-time and had significant home health care needs. Once again, the federal instruction requires a convincing level of evidence, i.e., evidence beyond "verbal assurances," to show the individual was not considering Medicaid at the time the asset

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valid contract that is legally and reasonably enforceable by the applicant, member, or spouse. This provision applies to all future performance whether or not some payments have been made or services performed." 130 CMR 520.007(J)(4).

[14] The appellant's daughter's testimony and the spreadsheet and table provided show the breadth of care the daughter provided, which included rent, hours of caretaking services, making the home physically accessible, and purchases on behalf of the appellant. It does not go unrecognized that the appellant's daughter committed significant time and resources to ensuring the appellant was well taken care of; however, even if the totality of care provided in a general sense amounted to "valuable consideration," the appellant would still have to provide satisfactory evidence to demonstrate her intent at the time of the transfer. There was no evidence beyond verbal assurances to demonstrate the appellant's intent in making the transfer of resources.

was disposed. Id. at § 3258.10(C). The appellant's representatives did not provide convincing evidence that long-term care planning was not a consideration when the appellant made the transfer. The appellant was almost [redacted] years old when she received the proceeds from the sale of her home and she was in declining health and far from independent at that time. Essentially, the verbal assurances offered by the appellant's representatives did not rise to the level of convincing evidence that is necessary to demonstrate the transfer was made "*exclusively* for a purpose other than to qualify for MassHealth." 130 CMR 520.019(F)(1) (emphasis added). Because the transfer was made for less than FMV and absent evidence that the transfer met one of the exceptions, MassHealth correctly determined that the appellant made a disqualifying transfer of resources for the remaining $87,994.24.

Once it has been established that an applicant has made a disqualifying transfer of resources, MassHealth calculates the period of ineligibility by adding "the value of all the resources transferred during the look-back period and divid[ing] the total by the average monthly cost to a private patient receiving long-term-care services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency." See 130 CMR 520.019(G)(2). MassHealth then applies the period of ineligibility "beginning on the first day of the month in which the first transfer was made or the date on which the individual is otherwise eligible for long-term-care services, whichever is later." Id.

Based on the above, the disqualifying transfer amount is $87,994.24. According to the relevant MassHealth Eligibility Operations Memo issued in November 2023, for an application received in June 2023, the applicable average daily nursing home rate in Massachusetts was $427.00, not $433.00, as testified by MassHealth. See MassHealth Eligibility Operations Memo 23-25 (Nov. 2023).[15] In accordance with 130 CMR 520.019(G)(2)(i), there should be a 206-day period of ineligibility ($87,994.24/427) beginning on the appellant's otherwise eligible date of June 29, 2023.

For these reasons, the appeal is approved-in-part and denied-in-part.

Order for MassHealth

Rescind the MassHealth notice dated December 4, 2023 and re-determine eligibility in accordance with this decision based on a disqualifying transfer amount of $87,994.24 and an average daily nursing home rate of $427.

[15] The Eligibility Operations Memo states when calculating the period of ineligibility for a disqualifying transfer of resources, use the date that MassHealth received the application to determine which amount should be used. For applications received **before November 1, 2023**, use $427. For applications received on or after November 1, 2023, use $433. See MassHealth Eligibility Operations Memo 23-25 (Nov. 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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780
cc: [redacted]
cc: [redacted]