

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in part; Denied in part	<b>Appeal Number:</b>	2408614
<b>Decision Date:</b>	8/28/2024	<b>Hearing Date:</b>	06/27/2024
<b>Hearing Officer:</b>	Rebecca Brochstein, BOH Deputy Director	<b>Record Open Date:</b>	08/31/2024

**Appearances for Appellant:**



**Appearances for MassHealth:**

Sandy Xie, Quincy MEC



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

## APPEAL DECISION

<b>Appeal Decision:</b>	Approved in part; Denied in part	<b>Issue:</b>	Long-term care (Disqualifying transfer; PPA)
<b>Decision Date:</b>	8/28/2024	<b>Hearing Date:</b>	06/27/2024
<b>MassHealth's Rep.:</b>	Sandy Xie, Quincy MEC	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Board of Hearings (Telephonic)		

### Authority

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

### Jurisdiction

Through a notice dated May 13, 2024, MassHealth approved the appellant for long-term care coverage effective March 14, 2024, with a patient-paid amount of \$1,020.90 per month starting in May 2024. MassHealth determined that the appellant is ineligible for benefits for the period of November 1, 2023, to March 13, 2024, because of disqualifying transfers of resources (Exhibit 1). The appellant filed a timely appeal on May 31, 2024 (Exhibit 2). After hearing on June 27, 2024, the record was reopened for additional information (Exhibit 6). Determination of a disqualifying transfer is a valid basis for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth approved the appellant for long-term care coverage effective March 14, 2024, with a patient paid amount of \$1,020.90 per month. MassHealth denied coverage for the period of November 1, 2023, to March 13, 2024, due to disqualifying transfers of resources.

### Issue

The issues on appeal are (1) whether MassHealth properly determined that the appellant

transferred resources for less than fair-market value, resulting in a period of disqualification; and (2) whether MassHealth correctly calculated the appellant's patient-paid amount.

### **Summary of Evidence**

A MassHealth caseworker from the Quincy MassHealth Enrollment Center appeared at the hearing telephonically and offered the following information through testimony and documentary evidence: The appellant has been a resident of a long-term care facility since January 2022. On December 12, 2023, a MassHealth long-term care application was filed on her behalf, seeking coverage as of November 1, 2023. On March 27, 2024, MassHealth denied the application for failure to provide all the verifying documents that it had requested. The appellant filed a timely appeal, and the matter was subsequently resolved with MassHealth preserving the application date of December 12, 2023.

In processing the application, MassHealth determined that the appellant had transferred resources for less than fair-market value during the regulatory look-back period. The transfers, which were in form of checks to family members, were as follows:

3/1/2019: \$2,500 check to son  
7/24/2019: \$2,500 check to son  
1/8/2020: \$3,000 check to son  
4/9/2020: \$5,000 check to son  
8/3/2020: \$25,000 check to son  
12/29/2020: \$15,000 check to son  
4/19/2022: \$5,000 check to nephew

MassHealth determined that due to these transfers, which totaled \$58,000, the appellant was not eligible for long-term care coverage for the period of November 1, 2023 (the requested start date) through March 13, 2024. She was approved for coverage as of March 14, 2024.

In the long-term care approval notice dated May 13, 2024, MassHealth set the appellant's patient-paid amount (PPA) at \$1,020.90 per month. MassHealth arrived at this figure by taking the appellant's gross monthly income of \$1,331.70 and deducting \$72.80 for a personal needs allowance and \$238.00 for a health insurance premium. The MassHealth caseworker testified that while the appellant has a spouse in the community,<sup>1</sup> she is not eligible for a spousal maintenance needs deduction from the PPA because the spouse's income is too high. The MassHealth representative testified that the community spouse has monthly income totaling \$11,516.82, comprised of payments from two annuities in the combined amount of \$9,079.73; \$2,187.70 from Social Security; and \$249.39 from a pension. As the spouse's income exceeds the community spouse's minimum monthly maintenance needs allowance (MMMNA) of \$3,853.50, there is no

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<sup>1</sup> The spouse lives in an assisted living facility.

spousal maintenance needs deduction from the PPA. See Exhibit 4.<sup>2</sup>

The appellant was represented by an attorney, who appeared telephonically. As to MassHealth's determination of disqualifying resource transfers, the attorney argued, pursuant to 130 CMR 520.019(F), that these transfers were made exclusively for a purpose other than to qualify for MassHealth. He explained that in 2019, when the appellant and the community spouse were both healthy, they made cash gifts to their son to help him with a move and other expenses. In 2020, in the context of the Covid pandemic, they made several additional cash gifts to their son to support him after he was furloughed from his job as a [REDACTED]. The attorney maintained that the appellant did not have serious medical issues until she suffered a fall in 2022, which eventually led to her need for long-term care. He argued that the transfers to the son were made before this time, and that the purpose was to help him through a difficult time.

The attorney also addressed the calculation of the patient-paid amount and MassHealth's determination that the appellant is not entitled to a spousal maintenance needs deduction. He pointed out that the community spouse pays a monthly fee of \$5,951 to the assisted living facility where he lives, and that the appellant is seeking a spousal allowance to help them afford this expense. He stated that most of the spouse's income is from annuity payments, which he will only have for a limited time (through November 2025), and that he will eventually run out money to pay the ALF fees.

In support of the appellant's position, the attorney submitted an affidavit from the son regarding the transfers. It includes the following:

1. I am the son and durable power of attorney of the applicant and applicant's spouse. . . .
2. Over the past five years, the applicant and spouse made several transfers, all of which were exclusively made for a purpose other than qualifying for MassHealth. Specifically, the transactions were as follows:
3. On April 19, 2022, the applicant and spouse wrote a check to [their nephew]. Around this time, their nephew had recently moved into a new home. This check was to assist [the nephew] financially, as he and his partner were settling into their new home. At the time, neither the applicant nor spouse were receiving long-term care.
4. During 2019 and early 2020 the applicant and spouse wrote bank checks to me. At or around this time I had received Lasik surgery and they wished to assist me financially for that procedure. It was also during this time that I changed my [career] and moved to a

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<sup>2</sup> MassHealth's Spousal Maintenance Needs Allowance Worksheet indicates that the spouse's MMMNA, as originally calculated, was \$8,201.50; this was then reduced to the maximum of \$3,853.50. See Exhibit 4 and 130 CMR 520.017.

different state, the applicant and spouse wished to assist me financially as my income was lower than it had previously been. At the time, neither the applicant nor spouse were receiving long term care; they made these transfers to me for the sole purpose of providing financial aid to me. Specifically, these amounts were: \$2,500 on March 1, 2019; \$2,500 on July 24, 2019; \$3,000 on January 8, 2020; and \$5,000 on April 9, 2020.

5. During 2020, the applicant and spouse transferred assets to me on two occasions, namely, on August 3<sup>rd</sup>, 2020, and on December 29, 2020, they transferred \$25,000 and \$15,000 to me, respectively. These transfers were made to me for the purpose of helping me, their son, financially, as I was working for the [REDACTED] industry at the time and was out of work due to the global pandemic. At the time, neither the applicant nor spouse were receiving long term care; they made this for the sole purpose of providing financial aid to me while I was out of work.

Attached to the son's affidavit were two letters from his employer [REDACTED] dated [REDACTED] 2020, and [REDACTED] 2021, indicating that he would be furloughed from his job for a period. The appellant's attorney also submitted a multi-page receipt from the community spouse's assisted living facility showing a total of \$82,573.53 had been paid through April 2024. See Exhibit 5.

### **Findings of Fact**

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

1. The appellant was admitted to a nursing facility in January 2022.
2. The appellant has a spouse in the community who lives in an assisted living facility.
3. On December 12, 2023, a MassHealth long-term care application was filed on the appellant's behalf, seeking long-term care coverage as of November 1, 2023.
4. On March 27, 2024, MassHealth denied the application for failure to provide all requested verifications. The appellant filed a timely appeal, and the matter was subsequently resolved with MassHealth preserving the application date of December 12, 2023.
5. During the regulatory look-back period, the appellant and her spouse made a series of payments to their son and nephew, as follows:

3/1/2019:	\$2,500 check to son
7/24/2019:	\$2,500 check to son
1/8/2020:	\$3,000 check to son
4/9/2020:	\$5,000 check to son
8/3/2020:	\$25,000 check to son

12/29/2020: \$15,000 check to son  
4/19/2022: \$5,000 check to nephew

6. The appellant's son had Lasik surgery and moved out of state in or around 2019 to early 2020. He was involuntarily furloughed from his job in the [REDACTED] industry for periods in 2020 and 2021 due to the Covid pandemic.
7. On May 13, 2024, MassHealth approved the appellant's long-term care application effective March 14, 2024. MassHealth found she was ineligible for coverage for the period of November 1, 2023, through March 13, 2024, due to the transfers that occurred during the look-back period.
8. MassHealth set the appellant's patient-paid amount at \$1,020.90 per month.
  - a. MassHealth calculated the PPA by taking the appellant's gross monthly income of \$1,331.70 and deducting \$72.80 for a personal needs allowance and \$238.00 for a health insurance premium.
  - b. MassHealth did not allow a spousal maintenance needs deduction from the PPA because of the community spouse's income.
  - c. The community spouse has income totaling \$11,516.82 from two annuities, Social Security benefits, and a pension.
  - d. MassHealth calculated the spouse's minimum monthly maintenance needs allowance (MMMNA) at \$8,201.50 and then reduced it to the cap of \$3,853.50.
  - e. The spouse's income exceeds the MMMNA.

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

This case concerns the appellant's application for MassHealth long-term care benefits. MassHealth approved the application effective March 14, 2024, with a patient-paid amount of \$1,020.90 per month. In her appeal, the appellant contests MassHealth's imposition of a period of disqualification due to transfers of resources within the regulatory look-back period, and also argues for an additional deduction from her PPA for maintenance of her spouse in the community.

#### **Disqualifying transfers**

The MassHealth agency considers any transfer during the appropriate look-back period by the nursing-facility resident or spouse of a resource, or interest in a resource, owned by or available

to the nursing-facility resident or the spouse (including the home or former home of the nursing-facility resident or the spouse) for less than fair-market value a disqualifying transfer unless listed as permissible in 130 CMR 520.019(D), identified in 130 CMR 520.019(F), or exempted in 130 CMR 520.019(J).<sup>3</sup> The MassHealth agency may consider as a disqualifying transfer any action taken to avoid receiving a resource to which the nursing-facility resident or spouse is or would be entitled if such action had not been taken. Action taken to avoid receiving a resource may include, but is not limited to, waiving the right to receive a resource, not accepting a resource, agreeing to the diversion of a resource, or failure to take legal action to obtain a resource. In determining whether or not failure to take legal action to receive a resource is reasonably considered a transfer by the individual, the MassHealth agency considers the specific circumstances involved. A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available. 130 CMR 520.019(C).

Pursuant to 130 CMR 520.019(B), transfers of resources are subject to a look-back period, beginning on the first date the individual is both a nursing-facility resident and has applied for or is receiving MassHealth Standard. (1) For transfers occurring before February 8, 2006, this period generally extends back in time for 36 months. (2) For transfers of resources occurring on or after February 8, 2006, the period generally extends back in time for 60 months. . . . (3) For transfers of resources from or into trusts, the look-back period is described in 130 CMR 520.023(A).

MassHealth lists “Permissible Transfers” at 130 CMR 520.019(D):

- (1) The resources were transferred to the spouse of the nursing-facility resident or to another for the sole benefit of the spouse. A nursing-facility resident who has been determined eligible for MassHealth agency payment of nursing-facility services and who has received an asset assessment from the MassHealth agency must make any necessary transfers within 90 days after the date of the notice of approval for MassHealth in accordance with 130 CMR 520.016(B)(3).
- (2) The resources were transferred from the spouse of the nursing-facility resident to another for the sole benefit of the spouse.
- (3) The resources were transferred to the nursing-facility resident’s permanently and totally disabled or blind child or to a trust, a pooled trust, or a special-needs trust created for the sole benefit of such child.
- (4) The resources were transferred to a trust, a special-needs trust, or a pooled trust

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<sup>3</sup> The reference to 130 CMR 520.019(J) – which pertains to home equity loans and reverse mortgages, and does not include any language about exemptions from transfer penalties – appears to be an error, a possible holdover from an earlier version of the regulations. The proper reference is likely 130 CMR 520.019(K), *Exempting Transfers from the Period of Ineligibility*. That provision provides an exemption from the penalty period where an applicant takes steps to reverse the actions that led to the disqualifying transfer finding (e.g., by revising a trust or by curing the transfer).

created for the sole benefit of a permanently and totally disabled person who was younger than 65 years old at the time the trust was created or funded.

- (5) The resources were transferred to a pooled trust created for the sole benefit of the permanently and totally disabled nursing-facility resident.
- (6) The nursing-facility resident transferred the home he or she used as the principal residence at the time of transfer and the title to the home to one of the following persons: (a) the spouse; (b) the nursing-facility resident's child who is younger than 21 years old, or who is blind or permanently and totally disabled; (c) the nursing-facility resident's sibling who has a legal interest in the nursing-facility resident's home and was living in the nursing-facility resident's home for at least one year immediately before the date of the nursing-facility resident's admission to the nursing facility; or (d) the nursing-facility resident's child (other than the child described in 130 CMR 520.019(D)(6)(b)) who was living in the nursing-facility resident's home for at least two years immediately before the date of the nursing-facility resident's admission to the institution, and who, as determined by the MassHealth agency, provided care to the nursing-facility resident that permitted him or her to live at home rather than in a nursing facility.
- (7) The resources were transferred to a separately identifiable burial account, burial arrangement, or a similar device for the nursing-facility resident or the spouse in accordance with 130 CMR 520.008(F).

In addition to the permissible transfers described at 130 CMR 520.019(D), MassHealth will not impose a period of ineligibility for transferring resources at less than fair market value if the resident demonstrates to MassHealth's satisfaction that the resources were transferred exclusively for a purpose other than to qualify for MassHealth, or the resident intended to dispose of the resource at either fair market value or for other valuable consideration. 130 CMR 520.019(F).

The appellant bears the burden of establishing intent to the agency's satisfaction and, under federal law, 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. Director of Office of Medicaid, 80 Mass. App. Ct. 777, 788-89 (2011), citing the State Medicaid Manual, Health Care Financing Administration Transmittal No. 64, s. 3258.10(C)(2).

In this case, MassHealth determined that the appellant was ineligible for MassHealth long-term care coverage for the period of November 1, 2023, through March 13, 2024, due to a series of disqualifying transfers of resources totaling \$58,000.<sup>4</sup> Six of these transfers were payments to the appellant's son between March 2019 and August 2020. According to the son's affidavit, the first four were to assist him financially with an out-of-state move and other expenses; the other

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<sup>4</sup> The appellant did not contest MassHealth's methodology for calculating the penalty period.



two payments, made in August and December 2020, were larger checks intended to support the son as he faced furloughs from his [REDACTED] job during the Covid pandemic.

The appellant does not dispute that these payments were gifts and that she did not receive fair-market value in return. However, the record supports the appellant's position that the six transfers to the son were made exclusively for a purpose other than to qualify for MassHealth, pursuant to 130 CMR 520.019(F). Importantly, these transfers occurred well before the appellant's admission to a nursing facility and at least three years before she applied for MassHealth long-term care coverage. Further, the appellant presents a persuasive argument that the payments to the son were solely for the purpose of supporting him through various life transitions, including his move and his loss of employment income during the pandemic. The appellant has demonstrated that these six transfers were made without her future MassHealth eligibility in mind.

In contrast, the \$5,000 gift to the appellant's nephew does not meet this standard. Regardless of whether the appellant and spouse genuinely wished to support their nephew in the purchase of his new home, the suggestion that MassHealth eligibility was not a consideration at that time is not credible. The transfer to the nephew was made in April 2022, when the appellant had already been a resident of the nursing facility for three months.<sup>5</sup> Though she had not yet applied for MassHealth long-term care benefits, her need to do so was reasonably foreseeable. Under these circumstances, it is not convincing to argue that the purpose of this transfer was exclusively for a purpose other than to qualify for MassHealth.

#### Patient-paid amount

Under 130 CMR 520.026, general income deductions must be taken in the following order: a personal-needs allowance; a spousal-maintenance-needs allowance; a family-maintenance-needs allowance for qualified family members; a home-maintenance allowance; and health-care coverage and incurred medical and remedial-care expenses. These deductions are used in determining the monthly patient-paid amount.

The spousal maintenance needs deduction is described at 130 CMR 520.026(B), as follows:

If the community spouse's gross income is less than the amount he or she needs to live in the community (minimum-monthly-maintenance-needs allowance, MMMNA) as determined by the MassHealth agency, the MassHealth agency may deduct an amount from the institutionalized spouse's countable-income amount to meet this need. This amount is the spousal-maintenance-needs deduction. 130 CMR 520.026(B) applies to the first month of eligibility in an institution and terminates the first full calendar month in which the spouse is no longer in an institution or no longer has a spouse in the

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<sup>5</sup> The parties agree that the appellant was admitted to the nursing facility in January 2022.

community. This deduction is the amount by which the minimum-monthly-maintenance-needs allowance exceeds the community spouse's gross income.

The appellant seeks a spousal maintenance needs deduction from her patient-paid amount to assist her spouse with payments to his assisted living facility. She notes that his income is primarily from annuity payments that will terminate by the end of 2025, leaving him with no resources to cover this expense. However, the regulations do not allow for a spousal maintenance needs deduction when the community spouse's income exceeds the minimum monthly maintenance needs allowance.<sup>6</sup> In this case, the spouse's current income of \$11,516.82 is well over the MMMNA cap of \$3,853.50.<sup>7</sup> Accordingly, MassHealth was correct not to apply a spousal maintenance needs deduction.

This appeal is approved in part and denied in part.

### **Order for MassHealth**

Deem the six payments to the son to be non-disqualifying pursuant to 130 CMR 520.019(F). Recalculate the penalty period in accordance with this decision and notify the appellant of the new coverage effective date.

### **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 hereon, you should contact your MassHealth Enrollment Center. If you experience further 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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<sup>6</sup> The appellant did not specifically argue for an increase to the MMMNA due to exceptional circumstances, but such a claim would not have prevailed here. The appellant's argument is based not on the community spouse's inability to meet his *current* needs, but rather on the potential *future* hardship that he may face once the annuity payments end more than a year from now. There is nothing in the regulations that would allow for such considerations. See 130 CMR 520.017(D).

<sup>7</sup> It is also significantly over the MMMNA as originally calculated at \$8,201.50 (before accounting for the regulatory cap).

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Rebecca Brochstein  
Deputy Director  
Board of Hearings

cc: Quincy MEC

