

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2409075

**Decision Date:** 8/12/2024

**Hearing Date:** 07/08/2024

**Hearing Officer:** David Jacobs

**Appearances for Appellant:**



**Appearance for MassHealth:**

Rhiannon Wojick, Tewksbury 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>	Denied	<b>Issue:</b>	Long-term care eligibility
<b>Decision Date:</b>	8/12/2024	<b>Hearing Date:</b>	07/08/2024
<b>MassHealth's Rep.:</b>	Rhiannon Wojick	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Board of Hearings (Remote)		

### Authority

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

### Jurisdiction

Through notice dated May 1, 2024, MassHealth notified the appellant that her long-term care application was approved with a 264-day penalty period which runs from June 10, 2023 to February 29, 2024, due to a sale of real property \$113,000 below fair market value (Exhibit 1). The appellant filed this appeal in a timely manner on June 7, 2024 (130 CMR 610.015(B) and Exhibit 2). Determination of a penalty period is a valid ground for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth notified the appellant that her application for MassHealth Standard for long term care residents was approved with a 264-day penalty period which runs from June 10, 2023 to February 29, 2024, due to a sale of real property \$113,000 below fair market value

### Issue

The appeal issue is whether MassHealth was correct in the application of the 264-day penalty period.

## Summary of Evidence

A MassHealth worker appeared at the hearing and testified as follows: Appellant was admitted to a long-term care facility on [REDACTED]. A MassHealth long-term care application was filed on her behalf on May 9, 2023. The application was approved on May 1, 2024 with a start date of March 1, 2024. MassHealth determined a penalty period that runs from June 10, 2023 to February 29, 2024, due to sale of real property that was valued at \$343,000 in [REDACTED] (Exhibit 10) but was sold for \$230,000 (Exhibit 7). The \$113,000.00 difference was divided by \$367.21 (average daily nursing home rate) to equal a 308-day penalty period (Exhibit 1). The MassHealth worker gave the wrong amount for the [REDACTED] daily rate for nursing facility care. Such amount is actually \$427 and results in a 264 day penalty period from June 10, 2023 to February 29, 2023 ( $\$113,000/\$427 = 264$ ). Counting forward 264 days from June 10, 2023, results in a period ending February 29, 2024.

The nursing facility officer manager appeared on behalf of the appellant and responded as follows: The appellant representative concedes the facts as summarized by MassHealth but argues that the property was not sold at below market value. She argues that the property was in poor condition when it was sold and could only be sold at a lower “tear down” value of \$230,000. However, she concedes that the documentation on record do not show this. Therefore, the record was held open until July 22, 2024 for the appellant to submit documents and until July 29, 2024 for MassHealth to review them (Exhibit 8). The record was then extended to July 29, 2024 for Appellant to submit documents and until August 8, 2024 for MassHealth to review them (Exhibit 13).

On July 29, 2024, the appellant representative submitted three new pieces of evidence into the record. The first is a letter from the attorney who represented the appellant in the property sale (Exhibit 9). In summary, it states that the attorney toured the home and in his 25 years of experience found that the property could only be sold as a tear down (Exhibit 9). He claims two brokers he works with frequently agreed with his assessment (Exhibit 9). He then spoke with a builder, unfamiliar to the appellant and who does many teardowns, who agreed to buy the property for a tear down sale value of \$230,000 (Exhibit 9).

The second was a list of property in the same town that the appellant representative claims were sold below market value due to the home’s being in poor condition (Exhibit 11). The list includes:

1. The sale of a property on [REDACTED] that was valued at \$309,700 but sold for \$209,000.
2. The sale of a property on [REDACTED] that was valued at \$373,900 but sold for \$240,500.
3. The sale of a property on [REDACTED] that was valued at \$332,800 but sold for \$225,000.
4. The sale of a property on [REDACTED] that was valued at \$310,000 but sold for

\$240,000.

5. The sale of a property on [REDACTED] that was valued at \$219,600 and sold for \$235,000.

(Exhibit 11)

Some of the property descriptions mention their condition and one mentions specifically that its being sold for tear down value (Exhibit 11, pg. 4). Lastly, the appellant representative submitted copies of deeds for those other properties (Exhibit 12).

On August 7, 2024, MassHealth responded to the submitted documents with their findings (Exhibit 13, pg. 3). MassHealth argued that none of the proffered documents prove the state of the property at issue at the time of sale (Exhibit 13, pg. 3). The letter from the attorney and the list of similar properties are insufficient to show this (Exhibit 13, pg. 3). The following day the appellant representative responded, repeating the argument laid out in the letter from the attorney (Exhibit 13, pg. 2). She argued that the attorney is experienced in the value of homes and the buyer was not known to the appellant and thus had no reason to buy the property at below market value (Exhibit 13, pg. 2). The representative offered to submit additional documentation, but MassHealth declined to accept it as the record open period for submitting documents was closed (Exhibit 13, pg. 1).

### **Findings of Fact**

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

1. In [REDACTED] the appellant owned a property that was valued at \$343,000.
2. On [REDACTED] the appellant's property was sold for \$230,000.
3. On [REDACTED] the appellant was admitted to a long-term care facility.
4. On May 9, 2023, the appellant submitted a MassHealth long term care application.
5. On May 1, 2024, the appellant's MassHealth long term care application as approved with a 264-day penalty period which runs from June 10, 2023 to February 29, 2024 due to a sale of real property \$113,000 below fair market value
6. On June 7, 2024, appellant filed a timely appeal of the denial.

## Analysis and Conclusions of Law

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

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(F)).

Here, it is undisputed that the property in question was valued at \$343,000 in [REDACTED] and was sold for \$230,000. However, the appellant representative argues that \$230,000 should be considered the property's true market value as the property was in such poor condition that it only could be sold for its "tear down" value.

Pursuant to 130 CMR 520.007(G)(3), the fair-market value of real estate is established as follows:

- (a) The applicant or member must verify the fair-market value by a copy of the most recent tax bill or the property tax assessment that was most recently issued by the taxing jurisdiction, provided that this assessment is not one of the following:
  - (i) a special purpose assessment;
  - (ii) based on a fixed-rate-per-acre method; or
  - (iii) based on an assessment ration or providing only a range.
- (b) In the event that a current property-tax assessment is not available or the applicant or member wishes to rebut the fair-market value determined by the MassHealth agency, a comparable market analysis or a written appraisal of the value of the property from a knowledgeable source will establish the fair-market value. A knowledgeable source is a licensed real-estate agent or broker, a real-estate appraiser, an official of a bank, a savings-and-loan association, or a similar lending organization, or an official of the local real-estate tax jurisdiction.

MassHealth utilized the [REDACTED] property tax assessment to determine the value of appellant's home (and the total transfer amount) (Exhibit 10). In order to rebut this determination, appellant would have had to submit a comparable market analysis or a written appraisal from a knowledgeable source (130 CMR 520.007(G)(3)(b)). Here, the appellant has not met her burden. The submitted letter from the appellant's attorney is not a market analysis or an appraisal. Moreover, it is not credible as it comes from the appellant's own representative. As for the other property sale records they are not persuasive enough to meet the appellant's burden. The records only have brief descriptions of the properties, only one mentions that it is a tear down, and the last property actually sold for more than it's assessed value (Exhibit 10). Furthermore, there is no assessment on record of the condition of the property at issue to even properly compare its condition to those other property descriptions. Although the appellant representative offered to submit additional documentation, the record was closed at that time and the hearing officer declined to reopen it to accept such additional documents (Exhibit 13, pg. 1). 130 CMR 610.004 provides it is entirely within the discretion of the hearing officer whether to allow a record open period. Therefore, I find that the appellant has not met their burden to rebut MassHealth's determination.

Appellant has not demonstrated by a preponderance of the evidence that MassHealth improperly calculated the penalty period.

The appeal is DENIED.

## **Order for MassHealth**

None.

## 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.

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David Jacobs  
Hearing Officer  
Board of Hearings

cc:

Tewksbury MEC

