

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2410515
Decision Date:	09/19/2024	Hearing Date:	08/12/2024
Hearing Officer:	Marc Tonaszuck		

Appearance for Appellant:



Appearance for MassHealth:

Joan Rivera



*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	Issue:	Long Term Care – Excess Assets
Decision Date:	09/19/2024	Hearing Date:	08/12/2024
MassHealth's Rep.:	Joan Rivera	Appellant's Rep.:	
Hearing Location:	Springfield MassHealth Enrollment Center	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 06/26/2025, MassHealth informed the appellant, a nursing home resident, that it decided she was not eligible for MassHealth long term care (LTC) benefits because she has more countable assets than MassHealth benefits allow (see 130 CMR 520.001, 520.028, 520.003, 520.004 and Exhibit 1). The appellant filed this appeal in a timely manner on 07/08/2024 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth LTC benefits because her assets exceed the program limits.

Issue

The appeal issue is whether MassHealth was correct in determining that the appellant is not eligible for MassHealth LTC benefits because her assets exceed the program limits.

Summary of Evidence

Exhibits 1-4 were admitted into evidence. Parties participated in the fair hearing telephonically.

The MassHealth representative testified that the appellant was admitted to the skilled nursing facility on [REDACTED] and applied for MassHealth LTC benefits on 03/28/2024. MassHealth requested verification of certain eligibility criteria on 05/02/2024. On 06/12/2024, MassHealth approved the appellant's LTC benefits.

The MassHealth representative testified that she is relatively new at her job and a supervisor reviewed this case. Upon review, MassHealth determined that the appellant and her husband transferred real estate valued at \$1,093,777.92 into a trust on 03/11/2019, which, MassHealth asserted, is one-day into the 60-month look-back period. MassHealth determined that the transfer was a disqualifying transfer of resources, so a denial notice was issued on 06/26/2024.¹ The MassHealth representative testified that the timing of the transfer shows that the appellant's intent by making the transfer was to apply for and qualify for MassHealth benefits. She concluded that if the value of the real estate is not to be counted, the appellant would be eligible for LTC benefits.

The appellant's representative appeared at the fair hearing and testified telephonically that, at the time of the transfer, the appellant and her husband were living in the community. They were healthy and, at the time the trust was established, they had no intention of applying for MassHealth benefits. The real estate that was placed into the trust has a \$97,000.00 mortgage and the husband remains in the home. Prior to her admission to the skilled nursing facility, the appellant suffered a fall and went to the hospital for rehabilitation. The goal was, and still is, to bring her home. Her institutionalization was "never something they thought would happen."

Findings of Fact

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

1. The appellant was admitted to the skilled nursing facility on [REDACTED] (Testimony).
2. The appellant applied for MassHealth LTC benefits on 03/28/2024, seeking 04/11/2024 as a MassHealth start date (Testimony).
3. On 06/12/2024, MassHealth approved the appellant's LTC benefits for the date requested

¹ The 06/26/2024 MassHealth denial notice references assets only, not a disqualifying transfer or period of ineligibility. The MassHealth worker asserted that the case was denied for the transfer of the real estate into the trust, which MassHealth determined was a disqualifying transfer.

(Testimony; Exhibit 5).

4. Upon review of the case by a MassHealth supervisor, MassHealth determined that the appellant and her husband transferred real estate valued at \$1,093,777.92 into a trust on 03/11/2019.
5. Through a notice dated 06/26/2024, MassHealth informed the appellant that it decided she was not eligible for MassHealth long term care (LTC) benefits because she has more countable assets than MassHealth benefits allow (Testimony).
6. MassHealth determined that the value of the real estate transferred into the trust on 03/11/2019 was an excess asset (Exhibit 1).
7. At the fair hearing, the MassHealth representative testified that the transfer of the real estate into the trust on 03/11/2019 was a disqualifying transfer because the appellant intended to qualify for MassHealth benefits (Testimony).
8. The transfer of the real estate into the trust was made 60 months and one day prior to the appellant's admission to the skilled nursing facility².
9. The appellant filed this appeal in a timely manner on 07/08/2024 (Exhibit 2).
10. A fair hearing was held on 08/12/2024. Both parties appeared telephonically (Exhibit 3).

Analysis and Conclusions of Law

MassHealth regulations at 130 CMR 520.005(A) address ownership of assets as follows:

Assets owned exclusively by an applicant or member and the spouse are counted in their entirety when determining eligibility for MassHealth, except when assessing assets in accordance with 130 CMR 520.016.

Regulations at 130 CMR 520.019 address transfer of resources occurring on or after August 11, 1993, as follows:

(A) Payment of Nursing-facility Services. The MassHealth agency applies the provisions of 130 CMR 520.018 and 520.019 to nursing-facility residents as defined at 130 CMR 515.001: Definition of Terms requesting MassHealth agency payment for nursing facility services provided in a nursing facility or in any institution for a level of care equivalent to

² See

<https://www.timeanddate.com/date/durationresult.html?m1=03&d1=11&y1=2019&m2=03&d2=12&y2=2024>
(last seen 09/19/2024).

that received in a nursing facility or for home- and community-based services provided in accordance with 130 CMR 519.007(B): Home- and Community-based Services Waiver Frail Elder.

(B) Look-back Period. 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. The 60-month look-back period will begin to be phased in on February 8, 2009. Beginning on March 8, 2009, applicants will be asked to provide verifications of their assets for the 37 months prior to the application. As each month passes, the look-back period will increase by one month until the full 60 months is reached on February 8, 2011. (3) For transfers of resources from or into trusts, the look-back period is described in 130 CMR 520.023(A).

(C) Disqualifying Transfer of Resources. 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). 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.

(D) Permissible Transfers. The MassHealth agency considers the following transfers permissible. Transfers of resources made for the sole benefit of a particular person must be in accordance with federal law...

Regulations at 130 CMR 520.023 address trusts or similar legal devices created on or after August 11, 1993, as follows:

The trust and transfer rules at 42 U.S.C. 1396p apply to trusts or similar legal devices created on or after August 11, 1993, that are created or funded other than by a will.

Generally, resources held in a trust are considered available if under any circumstances described in the terms of the trust, any of the resources can be made available to the individual.

(A) Look-back Period for Transfers into or from Trusts.

(1) Look-back Period.

(a) For transfers made before February 8, 2006, the look-back period is 36 months for trusts where all or any portion of the income or principal of an irrevocable trust can be paid to or for the benefit of the nursing-facility resident, but is paid instead to someone else.

(b) The look-back period is 60 months

1. for transfers made on or after February 8, 2006, subject to the phase-in described in 130 CMR 520.019(B)(2), if all or any portion of the income or principal of a trust can be paid to or for the benefit of the nursing-facility resident, but is instead paid to someone else;

2. if payments are made from a revocable trust to other than the nursing-facility resident and are not for the benefit of the nursing-facility resident; or

3. if payments are made into an irrevocable trust where all or a portion of the trust income or principal cannot under any circumstances be paid to or for the benefit of the nursing-facility resident.

(2) Period of Ineligibility Due to a Disqualifying Transfer. The MassHealth agency determines the amount of the transfer and the period of ineligibility for payment of nursing facility services in accordance with the rules at 130 CMR 520.019(G)

The appellant and her husband transferred a piece of real estate that they owned into a trust on 03/11/2019, 60 months and one day prior to the appellant's admission to the skilled nursing facility. First, the appellant and her husband no longer have a legal ownership interest in the real estate valued at \$1,093,777.92. Thus, the real estate held by the trust is not a countable asset for the purpose of MassHealth eligibility. MassHealth incorrectly counted the real estate as an asset³.

Second, MassHealth asserted at the fair hearing that the transfer was made during the relevant look-back period, which warranted a denial of the appellant's LTC benefits. However, a simple date calculation shows that the transfer was made prior to the 60-month look back period. MassHealth incorrectly determined that the transfer of the real estate valued at \$1,093,077.92 was a disqualifying transfer.

Because MassHealth incorrectly counted as an asset the real estate transferred by the appellant and her husband to a trust prior to the relevant look-back period, MassHealth erred in denying

³ At no time did MassHealth make an argument that the principal of the trust was accessible by the appellant or her husband. In fact, MassHealth did not submit the trust document into the hearing record and the language of the trust was not raised as an issue by MassHealth.

the appellant's application for LTC benefits. MassHealth originally approved the appellant for LTC benefits with a benefit start date of 04/11/2024, the date requested. The MassHealth representative testified that, other than the real estate at issue in this appeal, the appellant would be eligible for benefits. Accordingly, MassHealth incorrectly counted the real estate as an asset and/or a disqualifying transfer, and therefore the appellant is eligible for LTC benefits.

Order for MassHealth

Rescind the denial notice date 06/26/2024. Inform the appellant that she her application for LTC benefits is approved for 04/11/2024. Inform the appellant of the PPA and include appeal rights.

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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

CC:

[REDACTED]

[REDACTED]

[REDACTED]

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104