

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2416231
<b>Decision Date:</b>	1/27/2025	<b>Hearing Date:</b>	11/19/2024
<b>Hearing Officer:</b>	Radha Tilva	<b>Record Open to:</b>	12/17/2024

**Appearance for Appellant:**



**Appearance for MassHealth:**

Liz Landry, Taunton MEC Rep.



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

## APPEAL DECISION

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	LTC – Excess Assets – Power of Appointment Retained in Deed
<b>Decision Date:</b>	1/27/2025	<b>Hearing Date:</b>	11/19/2024
<b>MassHealth's Rep.:</b>	Liz Landry	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Springfield MEC (telephonic)	<b>Aid Pending:</b>	No

### Authority

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

### Jurisdiction

Through a notice dated October 9, 2024, MassHealth denied the appellant's application for MassHealth benefits because MassHealth determined that appellant is over the asset limit (Exhibit 1). The appellant filed this appeal in a timely manner on October 22, 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 reviewed appellant's MassHealth long-term care application which was filed on December 1, 2023, and determined that appellant was not eligible for MassHealth long-term-care services because they had more countable assets than MassHealth benefits allows.

### Issue

The appeal issue is whether MassHealth was correct in determining that appellant is over the asset limit?

## Summary of Evidence

The MassHealth representative that appeared at hearing testified to the following: appellant applied for MassHealth long-term care services on December 1, 2023 after entering the facility on May 31, 2023. The requested eligibility start date is December 1, 2023. The MassHealth representative explained that the case was initially denied and then approved, but it was approved in error. The information was incorrectly entered into the system which she learned when she went to place a lien on the property. She was unable to do so, thus prompting the October 9, 2024 notice which denied appellant MassHealth benefits because he was over the asset limit. The assets putting the appellant over MassHealth's limit amounted to \$140,000, the value of a property in appellant's name which was transferred to her son by quitclaim deed for consideration of \$1.00 on April 25, 2000 (Exhibit 5). MassHealth counted the value of the home because the deed reserved "superpowers" to the appellant which MassHealth deemed were a countable asset under 130 CMR 520.019(I)(1). The MassHealth representative stated that the creation of this superpower is treated like a Trust for MassHealth countability purposes. The MassHealth representative agreed that there was no life estate retained in the property by the appellant.

The deed states the following:

THE GRANTOR RESERVES THE POWER TO APPOINT, IN WHOLE OR IN PART, THE PROPERTY CONVEYED HEREUNDER TO OR FOR THE BENEFIT OF ANY ONE OR MORE OF THE GRANTOR'S ISSUE IN SUCH PROPORTIONS, OUTRIGHT OR UPON SUCH TRUST, TERMS AND CONDITIONS AS THE GRANTOR MAY SPECIFY BY A WRITING EXECUTED AND ACKNOWLEDGED DURING THE GRANTOR'S LIFETIME AND RECORDED IN THE [REDACTED] COUNTY [REDACTED] REGISTRY OF DEEDS WITHIN SIXTY (60) DAYS OF THE DATE OF SUCH EXERCISE, OR BY HER LAST WILL OR CODICIL MAKING SPECIFIC REFERENCE HERETO...

IT IS THE INTENTION OF THE GRANTOR, THAT THE GRANTEE'S ESTATE IN THE PROPERTY CONVEYED HEREUNDER SHALL VEST IN FEE SIMPLE ABSOLUTE, SUBJECT ONLY TO THE RESERVED POWER OF APPOINTMENT SET FORTH ABOVE, THREE (3) YEARS AND TWO (2) DAYS AFTER THE RECORDING OF THIS DEED.

The appellant was represented by an attorney at hearing. A post-hearing memorandum was also submitted and entered into evidence. The appellant's attorney argued that the appellant's deed neither reserved a life estate, nor a power to sell or mortgage the property; thus, the regulation that MassHealth is relying upon does not apply. Furthermore, the identical limited power of appointment language to appoint all or part of the property to one or more of the appellant's issue has been determined by the courts to not constitute a power of sale or mortgage to deem the property as countable. The attorney argued at hearing that he has done deeds like this in the

past and MassHealth has never found them countable. The appellant has no interest in the property other than the limited power of appointment that allows her to convey the property to any of her issue (appellant testimony). The attorney submitted an electronic copy of federal regulations, a relevant Board of Hearings decision, his memorandum, a deed, and case law post-hearing (Exhibit 7).

## Findings of Fact

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

1. The appellant transferred property, valued at \$140,000, to her son by quitclaim deed for consideration of \$1.00 on April 25, 2000.
2. Appellant applied for MassHealth long-term care services on December 1, 2023 after entering the facility on May 31, 2023.
3. The case was initially denied by MassHealth, but subsequently approved.
4. The MassHealth representative determined that this was in error as she was unable to place a lien on the property.
5. MassHealth issued the notice on appeal on October 9, 2024 finding the appellant over the asset limit, *to wit*, the value of the appellant's former property.
6. MassHealth counted the value of the home because the deed reserved "superpowers" to the appellant which MassHealth deemed were a countable asset under 130 CMR 520.019(I)(1).
7. Under the quitclaim deed, the appellant (grantor) reserves the power to appoint, in whole or in part, the property conveyed to or for the benefit of any one or more of the appellant's issue.

## Analysis and Conclusions of Law

MassHealth administers and is responsible for the delivery of health-care services to MassHealth members (130 CMR 515.002). The regulations governing MassHealth at 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for noninstitutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by M.G.L. c. 118E, and certain Medicare beneficiaries (130 CMR 515.002). The appellant in this case is an institutionalized person. Therefore, the regulations at 130 CMR 515.000 through 522.000 apply to this case (130 CMR 515.002).

The MassHealth representative stated that 130 CMR 520.019(I)(1) allows for MassHealth to count the transfer of the property as countable. 130 CMR 520.019(I)(1) states the following:

(I) Transfer of Life-estate and Remainder Interest. ***The rules pertaining to transfer of life-estate and remainder interest*** apply in instances involving remainder interest of property including life estates, annuities, wills, and trusts.

(1) The MassHealth agency considers a transfer of property with the retention of a life estate, as defined in 130 CMR 515.001: Definition of Terms, to be a transfer of resources. The difference between the fair-market value of the entire asset and the value of the life estate is called the remainder interest. The remainder interest is the amount considered to be transferred at less than fair-market value. The MassHealth agency will calculate the values of the remainder interest and the life estate in accordance with the life-estate tables, as determined by the MassHealth agency. ***If the language of the document creating the life estate explicitly states that the owner of the life estate has the power to sell the entire property (not simply the life estate), then the creation of this type of life estate will be treated as a trust.***

(Emphasis added)

This regulation, however, is not applicable in this case, as it is uncontested that there is no life estate reserved by the appellant. Moreover, the language in the deed does not provide appellant with the ability to sell the entire property. The language relied upon by the agency in determining that the appellant holds such an interest clearly indicates that the appellant can only appoint property to her issue. However, this is not equivalent to an individual retaining a legal interest for which they will receive a share of the proceeds from a sale. Thus, the language in the deed providing appellant with a superpower cannot be treated as a trust.

A power of appointment does not make an asset available to the grantor when the power specifies the parties to whom the grantor can appoint the assets. In this case, those parties are the appellant's issue, not the appellant. While the court decisions in Heyn v. Director of the Office of Medicaid and Fournier v. the Secretary of the Executive Office of Health and Human Services address such powers in determining whether property held in trust is countable, the same principles can be utilized in determining whether this power provides an individual with an interest in real property that would entitle them to any proceeds from a sale of the property. If such powers do not make trust property available to a grantor, it is not clear as to how they could make real property available to a grantor. A power of appointment is one that restricts to whom the property can be conveyed, and does not include by implication the donee of the limited power (Fournier v. the Secretary of the Executive Office of Health and Human Services, 488 Mass. 43, 170 (2021)).

Based on the above analysis, MassHealth has erred in determining that the superpower retained by appellant by deed makes the value of the home countable a countable asset. The appellant has transferred the home well outside the lookback period to her son and has not retained any interest in the property.

This appeal is, therefore, APPROVED.

## **Order for MassHealth**

Rescind notice dated October 9, 2024 finding the value of the home a countable asset and redetermine eligibility based on the analysis above.

## **Implementation of this Decision**

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

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Radha Tilva  
Hearing Officer  
Board of Hearings

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