

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2417340
<b>Decision Date:</b>	03/11/2025	<b>Hearing Date:</b>	12/11/2024
<b>Hearing Officer:</b>	Christopher Jones	<b>Record Open to:</b>	02/06/2024

**Appearance for Appellant:**



**Appearance for MassHealth:**

Maria Piedade – Taunton Intake



*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>	Denied	<b>Issue:</b>	LTC; Disqualifying Transfer
<b>Decision Date:</b>	03/11/2025	<b>Hearing Date:</b>	12/11/2024
<b>MassHealth's Rep.:</b>	Maria Piedade	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	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 2, 2024, MassHealth approved the appellant's application for long-term-care benefits effective February 27, 2024, imposing a period of ineligibility from January 12, 2024, to February 26, 2024. (Exhibit 1.) The appellant filed this appeal in a timely manner on November 11, 2024. (Exhibit 1; 130 CMR 610.015(B).) Limitation of assistance is valid grounds for appeal. (130 CMR 610.032.)

The hearing record was left open until December 18, 2024, for the appellant to submit additional documentation regarding the community spouse's financial transactions. The record was then reopened until February 6, 2025.

### Action Taken by MassHealth

MassHealth imposed a period of ineligibility based upon two unverified transfers made by the community spouse.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.016 and 520.018-.019, in finding that the appellant's community spouse violated the transfer of resource provisions, and did not provide evidence to rebut that finding.

## Summary of Evidence

The appellant is [REDACTED], and he was admitted to a nursing facility in late [REDACTED]. An application for long-term-care benefits was submitted on his behalf on April 22, 2024, and he is seeking MassHealth coverage as of January 12, 2024. The appellant has a community spouse who is [REDACTED]. The appellant and his spouse keep separate bank accounts. MassHealth initially denied the appellant's application on September 9, 2024, because verifications had been requested and not provided. All verifications were received on September 16, 2024, and MassHealth processed the appellant's April 2024 application.

On October 2, 2024, MassHealth approved the appellant's application, but imposed a 45-day period of ineligibility, from January 12, 2024, to February 26, 2024. On July 27, 2020, the community spouse withdrew \$15,000 from her bank account, and on August 18, 2020, she withdrew an additional \$4,500. MassHealth divided the total unexplained transfer amount of \$19,500 by the average daily rate for nursing facility care in Massachusetts, \$433, to determine the penalty period.

In 2020, the appellant [REDACTED] and he had been covered by Partial Health Safety Net. MassHealth infers that these withdrawals were made to reduce the appellant's countable assets to below \$3,000, which is the asset cap for a married individual [REDACTED] to be eligible for MassHealth benefits. The appellant was approved for community MassHealth benefits in September 2021.

The appellant's representative testified that the appellant and the community spouse appear to have always kept separate bank accounts. The community spouse had told the appellant's representative that they were trying to buy a house in 2020, and the appellant and his spouse did not have cash for a down payment. The appellant and his spouse had borrowed money from their daughter, and after this home purchase fell through, the community spouse believed this \$15,000 withdrawal was returned to their daughter. The community spouse's mother was also hospitalized around this time. The appellant's representative guessed that the \$4,500 withdrawal was used for either the community spouse's mother's medical expenses or rent.

The parties agree that these withdrawals were taken from the account solely in the community spouse's name, and that the community spouse would be well within the community spouse asset allowance if she still had this money. The hearing record was left open until December 18, 2024, for the appellant's representative to submit any documentation that the community spouse might be able to find regarding these transactions, including letters from the community spouse and her daughter. Nothing was submitted and the hearing record was reopened until February 6, 2025, to allow a letter from the community spouse to be submitted.

A handwritten letter signed by the community spouse was submitted. This letter states that the community spouse lost her job in [REDACTED] and the appellant had very little income. The community spouse's mother also died around this time. The appellants' daughter helped them pay their rent

and other bills. Their daughter also paid for the community spouse's airfare to get to her mother's funeral. The letter concludes that the community spouse repaid her daughter in 2 or 3 transactions, but she did not have any specific information about dates. The community spouse's letter does not explain where the money came from to repay their daughter. No financial records were submitted to clarify this question either.

## Findings of Fact

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

- 1) The appellant is an institutionalized spouse who is [REDACTED] The community spouse is under the age of 65. (Testimony by MassHealth's representative.)
- 2) The appellant entered the nursing facility in late [REDACTED] and an application for long-term-care benefits was submitted on April 22, 2024, requesting benefits start on January 12, 2024. (Exhibit 4, p. 1.)
- 3) The institutionalized and community spouses kept separate bank accounts. (Testimony by MassHealth's and the appellant's representatives.)
- 4) On July 27, 2020, the community spouse withdrew \$15,000 from her bank account, and on August 18, 2020, she withdrew an additional \$4,500. (Exhibit 5, p. 20.)
- 5) At the time the appellant was covered by Partial Health Safety Net, over a year later he was approved for MassHealth Standard. (Testimony by MassHealth's representative; Exhibit 4.)
- 6) The appellant's community spouse wrote a letter that this money was used to repay her daughter. (Exhibit 6.)

## Analysis and Conclusions of Law

The purpose of Medicaid is to provide medical assistance to those "whose income and resources are insufficient to meet the costs of necessary medical services." (42 USC § 1396-1 (2014).) To limit benefits only to those who truly do not have the resources to provide for their care, MassHealth requires an individual over the age of sixty-five to have less than \$2,000 in assets to qualify for benefits. (130 CMR 520.003.) For applicants with spouses in the community, the community spouse may keep an additional \$154,140.00.<sup>1</sup> (130 CMR 520.016(B)(2)(a)(i).)

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<sup>1</sup> In regulation, the limit is \$109,560; however, the Centers for Medicaid and Medicare Services ("CMS") regularly update this amount on their website. (See <https://www.medicaid.gov/federal-policy-guidance/downloads/cib05222024.pdf> (last visited Jan. 30, 2025).)

The applicant becomes eligible for long-term-care benefits “as of the date the applicant reduces his or her excess assets to the allowable asset limit without violating the transfer of resource provisions for nursing-facility residents ... or ... as of the date ... the applicant incurs medical bills that equal the amount of the excess assets and reduces the assets to the allowable asset limit.” (130 CMR 520.004(A)(1)(a)-(b).)

(2) Determination of Eligibility for the Institutionalized Spouse. **At the time that the institutionalized spouse applies for MassHealth Standard**, the MassHealth agency must determine the couple's current total countable assets, regardless of the form of ownership between the couple, and the amount of assets allowed for the community spouse as follows. **The community spouse's asset allowance is not considered available to the institutionalized spouse when determining the institutionalized spouse's eligibility for MassHealth Standard.**

(a) Deduct the community spouse's asset allowance, based on countable assets **as of the date of the beginning of the most recent continuous period of institutionalization of the institutionalized spouse, from the remaining assets.** The community spouse's asset allowance is the greatest of the following amounts:

1. the combined total countable assets of the institutionalized spouse and the community spouse, not to exceed \$109,560;

(130 CMR 520.016(B)(2) (emphasis added).)

The transfer of resource provisions allow MassHealth to see whether an applicant has given away assets within the previous five years in order to qualify – this is referred to as the “lookback period.” (See 130 CMR 520.019(B); 130 CMR 520.023(A).) A disqualifying transfer may include

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** ... for less than fair-market value ... unless listed as permissible in 130 CMR 520.019(D), identified in 130 CMR 520.019(F), or exempted in 130 CMR 520.019([K]).<sup>[2]</sup>

(130 CMR 520.019(C).) Permissible transfers are made to benefit a community spouse or a disabled relative. Exempted transfers are cured in some manner after the fact.

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<sup>2</sup> As published, the last cross-reference is to subsection (J) and is a typographical error. Subsection (J) specifically **includes** as disqualifying transfers of home equity loans and reverse mortgages if transferred for less than fair market value. Subsection (K), however, **exempts** listed transactions from the period of ineligibility. A corrected version of this regulation is pending publication.

The applicant's intent can affect whether a transfer of resources results in a period of ineligibility:

(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(F) (emphasis added).)

Federal guidance requires an applicant to 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., 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)).) Essentially, there is a presumption that transfers made within the look-back period were intended to preserve assets from being used to pay for an individual's care.

The appellant has not satisfied their burden of proof that these transfers were made permissibly or without the intention of qualifying for Medicaid benefits or with the intention of receiving fair market value. It is understandable that the appellant and his spouse may not recall the exact details of these transactions that occurred years before entering a nursing facility, but no documentation was submitted to show where the money came from that was used to repay their daughter. If they had the money to begin with, why was it borrowed. If they did not, where did it come from. Many innocent explanations can be created for these financial situations, but the legal standard places the burden of proving the explanation on the appellant, and it requires some evidence beyond the party's assertion to support the reason for the financial transactions. For these reasons, this appeal must be DENIED.

Because the appellant disputed MassHealth's determination that this transaction resulted in a disqualifying transfer, the appellant shall be allowed 60 days to cure the transfer. (See 130 CMR 520.019(K).)

## Order for MassHealth


Allow the appellant 60 days from the date of this decision to cure the disqualifying transfer.

## 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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Christopher Jones  
Hearing Officer  
Board of Hearings



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