

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2417573
Decision Date:	4/30/2025	Hearing Date:	12/16/2024
Hearing Officer:	Kimberly Scanlon	Record Open to:	04/23/2025

Appearance for Appellant:



Appearance for MassHealth:

Victoria Ragbir-Charlestown MEC



*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:	Denied	Issue:	Eligibility; Over 65; Resource Transfer
Decision Date:	4/30/2025	Hearing Date:	12/16/2024
MassHealth's Rep.:	Victoria Ragbir	Appellant's Rep.:	
Hearing Location:	Charlestown MassHealth Enrollment Center - Room 1 (Remote)	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 September 17, 2024, MassHealth notified the appellant that she is eligible for long-term care coverage beginning on August 16, 2024, with a monthly patient paid amount (PPA) assessed beginning on October 1, 2024 (Exhibit 1). The notice further stated that the appellant had a period of ineligibility from November 1, 2023 to August 15, 2024 because MassHealth determined that the appellant had given away or sold assets. *Id.* The appellant filed this appeal in a timely manner on or about November 15, 2024 (130 CMR 610.015(B); Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032). After the hearing, the record was left open for the submission of additional documentation (Exhibit 8).

Action Taken by MassHealth

MassHealth notified the appellant that she is eligible for long-term care coverage beginning on August 16, 2024, with a period of ineligibility assessed from November 1, 2023 to August 15, 2024.

Issue

The appeal issue is whether MassHealth was correct in determining that the appellant was eligible for long-term care coverage beginning on August 16, 2024, with a period of ineligibility assessed from November 1, 2023 to August 15, 2024.

Summary of Evidence

The MassHealth representative and the appellant's representative appeared at the hearing telephonically. The record establishes the following: the appellant is over the age of [REDACTED] and she was admitted to a nursing facility on [REDACTED]. On November 3, 2023, MassHealth received the appellant's long-term care application, with a requested start date of November 1, 2023. On September 17, 2024, MassHealth notified the appellant that she is eligible for long-term care coverage beginning on August 16, 2024, with a monthly patient paid amount (PPA) assessed beginning on October 1, 2024 (Exhibit 1). The notice further stated that the appellant had a period of ineligibility from November 1, 2023 to August 15, 2024 because MassHealth determined that the appellant had given away or sold assets. *Id.*

The MassHealth representative testified that it initially identified the following disqualifying resource transfers, each represented as a "debit transfer" on the appellant's bank statement to an account owned by the appellant's power of attorney (POA):

10/24/2023	\$3,000
10/23/2023	\$700
10/3/2023	\$16,000
9/25/2023	\$950
8/29/2023	\$22,873
8/1/2023	\$30,000
6/28/2023	\$25,000
6/24/2023	\$750
5/30/2023	\$9,500
4/30/2023	\$10,000
3/28/2023	\$10,000
2/27/2023	\$9,000
1/28/2023	\$9,000
1/24/2023	\$750
1/19/2023	<u>\$289.15</u>
	\$147,812.15 (total transfer amount)

(Exhibit 7).

MassHealth also determined that the appellant had partially “cured” the transfer by showing that funds had been deposited back into her account, or that some of the funds were used to pay legitimate expenses of hers, as follows:

\$3,000	[REDACTED]
\$10,000	[REDACTED]
\$2,800	[REDACTED]
\$3,000	[REDACTED]
<hr/>	
\$129,012.15 (revised total transfer amount)	

(Exhibit 7).

MassHealth included in its submission a computer screen printout that identifies the total transfer amount as \$124,817.67, a penalty period of 289 days, and a penalty end date of August 15, 2024 (Exhibit 7).¹

The appellant’s representative testified that she has been waiting for MassHealth’s list of transfers since September 2024. She stated that she did not receive MassHealth’s breakdown until December 13, 2024. She stated that her submission of additional documentation to MassHealth was provided well in advance of the hearing and given the fact that she just received MassHealth’s submission, she would need additional time to review MassHealth’s breakdown prior to submitting additional documentation.

The appellant’s representative explained that the funds transferred to the POA were either used to pay the appellant’s bills or represent payment to the POA for services the POA performed for the appellant. She explained that she would submit additional documentation (i.e. spreadsheets) from the appellant’s POA who is also the appellant’s friend. According to the POA, the appellant paid the POA in 2022 and 2023 to compensate her for services rendered during this time. According to the POA, she and the appellant had a verbal agreement whereby the POA would perform various services for the appellant and would be paid \$50 per hour for these services. The services included assistance with finances, grocery shopping, other errands, transportation, and helping to empty out the appellant’s apartment in preparation for her move to an assisted living facility. The POA contends that she documented 472.5 hours of service in 2022 and 2023, at \$50 per hour, which results in a total for services rendered of \$23,637.50. The POA submitted an affidavit that provides in relevant part as follows:

On or about August 22, 2022, [appellant] and I had a verbal agreement I would help take care of her finances and daily affairs for \$50 an hour. I was responsible for getting rid of all her belongings in her apartment, cleaning out her apartment,

¹ There is no clear explanation as to why the two transfer amounts (\$129,012.15 vs. \$124,817.67) are different.

setting appointments for assisted living, moving her to assisted living, doctor appointments, cleaning, laundry, paying and monitoring bills, bringing her to all appointments, grocery shopping, medication, etc. Over the years I did create spreadsheets that are included. The money transferred from [appellant] to Myself was for [appellant's] bills or to pay me for the care and services I was providing. She did not transfer money to me to render herself eligible for MassHealth.

(Exhibit 9).

The POA submitted a spreadsheet of services rendered between 2022 and 2023. Below is an excerpt from the spreadsheet detailing the types of tasks performed:

08/15/2022 – 10/31/2022

Monitored [appellant's] apartment, disposed of items in apartment; Met with people who bought couch and chair, delivered couch and table to resident who asked for it, removed and disposed of food, waste, rubbish and clothing, cleaned apartment and restored to proper working order \$1,875

02/08/2023 Grocery shopping and errands for [appellant] 2.00

02/09/2023 Got wine and snacks for [appellant's] request for her party on Saturday, removed chairs and donated, spoke with lawyer 3.50

02/10/2023 Spoke with [REDACTED] regarding [appellant's] participation in the party booze not necessary, snacks not necessary re-evaluated [appellant's] progress 1.50

02/11/2023 Went to [REDACTED] to get [appellant] money at her request; signed [appellant] up for future activities reprogrammed her phone 2.00

02/13/2023 Went to [REDACTED] for [appellant], supplies, food health etc, called [REDACTED] to fix cable box issues 2.00

02/16/2023 Review documents for insurance claim spoke with lawyer 1.50

02/17/2023 [REDACTED] for [appellant] 1.50

02/20/2023 Discussion with [REDACTED] and [appellant's] progress and goals 1.50

02/22/2023 Discussion with [REDACTED] regarding financials, pay bills 1.00

02/23/2023 [REDACTED] [appellant's] nails 2.50

02/23/2023 Banking, shopping 3.50

02/27/2023 Spoke with [REDACTED] regarding [appellant's] case. Followed up with [appellant] who said he didn't stop by 1.00

(Exhibit 9).

Following the hearing, the record was left open for MassHealth and the appellant's representative to submit and review additional documentation. MassHealth subsequently responded that upon review of the appellant's submission, MassHealth had identified additional resource transfers, as well as additional cures, as follows:

2022

12/27/2022	\$8,000
11/28/2022	\$1,000
11/28/2022	\$7,100
9/27/2022	\$2,700
8/29/2023	\$22,873
8/25/2022	\$1,500
8/30/2022	<u>\$6,000</u>
	\$26,300

2023 \$147,812.15

2022 \$26,300

	\$174,112.15
- \$3,000	[REDACTED]
- \$10,000	[REDACTED]
- \$2,800	[REDACTED]
- <u>\$3,000</u>	[REDACTED]
	\$155,312.15
- \$38,858	[REDACTED]
- <u>\$77,666.13</u>	[REDACTED]
	\$38,788.02 (revised transfer total)

MassHealth indicated that the revised transfer total of \$38,788.02 results in a penalty period of 90 days, and an adjusted coverage start date of January 30, 2024 (Exhibit 10). The appellant's representative responded that she provided a statement from the appellant's POA explaining that the POA had a verbal service agreement with the appellant and that her spreadsheets track her work and show that an additional \$23,637.50 has been cured. (Exhibit 11).

Findings of Fact

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

1. The appellant is over the age of [REDACTED] and she was admitted to a nursing facility on [REDACTED].
2. An application for long-term care benefits was submitted on November 3, 2023 seeking eligibility effective November 1, 2023.
3. On September 17, 2024, MassHealth approved the appellant for long-term care services, beginning on August 16, 2024, with a monthly PPA amount assessed. MassHealth imposed a period of ineligibility from November 1, 2023 August 15, 2024 because it determined that the appellant had given away or sold assets.
4. MassHealth initially calculated that the appellant's disqualifying transfers totaled \$147,812.15, but subsequently identified additional transfers totaling \$26,300, for an adjusted total of \$174,112.15.
5. MassHealth subsequently determined that the appellant had partially "cured" the transfer by showing that funds had been deposited back into her account, or that some of the funds were used to pay legitimate expenses of hers. These cures included two checks made payable to third parties, a deposit to the appellant's account, an electronic bill paid from the appellant's account, and two large payments to an assisted living facility. These cures total \$135,324.13.
6. After deducting the cures from the total transfer amount, MassHealth determined that the appellant's disqualifying transfers totaled \$38,788.02, which resulted in a revised eligibility start date of January 30, 2024.
7. The appellant argues that all the funds transferred to the POA were either used to pay the appellant's bills or represent payment to the POA for services the POA performed for the appellant.
8. The appellant argues that she therefore received fair-market value for all the transferred funds.
9. The appellant's POA alleges that in 2022, she entered into a verbal agreement with the appellant whereby, for \$50 per hour, the POA would assist with various tasks such as handling her finances, closing up her apartment, providing transportation, and running errands for her.

Analysis and Conclusions of Law

This case concerns MassHealth's determination that the appellant transferred assets for less than fair-market value. As a result of this determination, MassHealth imposed a period of ineligibility from November 1, 2023 through January 29, 2024 on the basis that appellant had given away or sold assets to become eligible for MassHealth long-term care services. In her appeal, the appellant contests MassHealth's imposition of a period of disqualification due to a transfer of resources within the regulatory look-back period, arguing that she received fair-market value for all the transferred funds.

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).² 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):

² 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).

- (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 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 the present case, MassHealth has determined that the appellant is ineligible for MassHealth long-term care coverage for a 90-day period from November 1, 2023 to January 29, 2024 based on a series of resource transfers in 2022 and 2023. Specifically, the appellant made numerous debit transfers to her POA during this period, totaling \$174,112.15. MassHealth concedes that the appellant has demonstrated that of these funds, \$135,324.13 has now been cured. Specifically, \$3,000 has been returned, \$15,800 was used to pay expenses of the appellant, and \$116,524.13 was paid to the appellant’s assisted living facility. MassHealth argues that the appellant has not demonstrated that a penalty period should not be imposed for the transfer of the remaining funds (\$38,788.02).

The appellant argues that she received fair-market value for at least \$23,637.50 of the transferred funds. This argument is based on an alleged verbal agreement between the appellant and her POA. According to the POA, she and the appellant had a verbal agreement whereby the POA would perform various services for the appellant and would be paid \$50 per hour for these services. The services included assistance with finances, grocery shopping, other errands, transportation, and helping to empty out the appellant’s apartment in preparation for her move to an assisted living facility. The POA contends that she documented 472.5 hours of service in 2022 and 2023, at \$50 per hour, which results in a total for services rendered of \$23,637.50.

The appellant has not met her burden to show that she received fair-market value for this portion of the transferred funds. It is undisputed that the parties never put the alleged agreement into writing or otherwise memorialized the appellant’s agreement to pay her POA to oversee her financial and daily affairs. The affidavit and spreadsheets, while providing some detail as to the nature of the tasks performed by the POA, do not constitute sufficient evidence to demonstrate fair-market value. Rather, the spreadsheets, created by the POA at some unknown point in time, are not relevant to a determination of whether the appellant consented to the terms of the agreement, nor do these documents offer evidence of the appellant’s intention when making the various transfers at issue. Absent a written agreement setting forth the terms of the contract, or other reliable evidence to establish that this was an arrangement agreed upon by both parties, MassHealth correctly determined that the appellant has not demonstrated that she received fair-market value for the transferred funds.³

³ Further, pursuant to 130 CMR 520.007(J)(4), any transaction that involves a promise to provide future payments or services to an applicant, including but not limited to transactions purporting to be annuities, promissory notes, contracts, loans, or mortgages, is considered to be a disqualifying transfer of assets to the extent that the transaction does not have an ascertainable fair-market value or if the

The appellant argues alternatively that while the funds at issue may have been transferred for less than fair-market value, they were transferred for a purpose completely unrelated to her MassHealth eligibility (130 CMR 520.019(F)(1)). Specifically, the appellant's POA argues that the money transferred to her was unrelated to qualifying for MassHealth, but rather its purpose was to compensate the POA for her time spent tending to the appellant's needs - moving her into an assisted living facility, getting her to doctor appointments, paying and monitoring bills, doing cleaning and laundry, grocery shopping, and overseeing medication, etc. Looking at appellant's circumstances at the time of the transfers, however, the appellant's argument - that she did not foresee the possibility that she might need long-term care benefits in the near future - is not persuasive. The documentation submitted from the appellant's POA indicates that on August 14, 2022, approximately 10 days prior to the date the appellant's POA alleges a verbal agreement was made, that she spoke with the appellant's entire team of doctors, nurses, and social workers to determine the appellant's diagnosis and future following the appellant's hospitalization. Additionally, at the time of some of the later transfers, the appellant had transitioned to an assisted living facility. The appellant has not shown the resource transfers at issue here satisfy the requirements of 130 CMR 520.019(F)(1).

I find that appellant has not demonstrated by a preponderance of the evidence that MassHealth improperly calculated a penalty period. The appeal is denied.

transaction is not embodied in a valid contract that is legally and reasonably enforceable by the applicant. This provision applies to all future performance whether or not some payments have been made or services performed. Here, the POA discusses a promise to provide future services to the appellant. Because it was a verbal agreement and not embodied in a valid contract that is legally and reasonably enforceable, it is considered a disqualifying transfer of assets (130 CMR 520.007(J)(4)).

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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

CC:

[REDACTED]

MassHealth Representative: Thelma Lizano, Charlestown MassHealth Enrollment Center, 529 Main Street, Suite 1M, Charlestown, MA 02129