

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2417866
Decision Date:	03/28/2025	Hearing Date:	12/9/2024 and 3/18/2025
Hearing Officer:	Kimberly Scanlon	Record Open to:	2/10/2025

Appearances for Appellant:



Appearances for MassHealth:

Stephanie Mowles-Quincy MEC

(12/9/2024 only)

Jenny Chan-Quincy MEC (3/18/2025 only)



*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:	03/28/2025	Hearing Date:	03/18/2025
MassHealth's Reps.:	Stephanie Mowles; Jenny Chan	Appellant's Reps.:	
Hearing Location:	Quincy Harbor South 6 (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 October 24, 2024, MassHealth denied the appellant's application for MassHealth benefits because it determined that the appellant had given away or sold assets to become eligible for MassHealth long-term care services. (130 CMR 520.018; 520.019; Exhibit 1). The appellant filed this appeal in a timely manner on or about November 20, 2024. (130 CMR 610.015(B); Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032). A fair hearing took place on December 9, 2024. After the hearing, the record was left open for the submission of additional documentation and reconvened for additional testimony on March 18, 2025.

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth benefits because it determined that the appellant had given away or sold assets to become eligible for MassHealth long-term care services.

Issue

The appeal issue is whether MassHealth was correct in determining that the appellant had given away or sold assets to become eligible for MassHealth long-term care services.

Summary of Evidence

At the hearing held on December 9, 2024, the MassHealth representative and the appellant's representatives appeared at the hearing telephonically. The record establishes the following: the appellant is over the age of 65 and she was admitted to a nursing facility on [REDACTED]. On June 12, 2024, MassHealth received the appellant's long-term care application, with a requested start date of May 13, 2024. On October 1, 2024, MassHealth denied the appellant's long-term care application for failure to submit verifications. On October 21, 2024, MassHealth received some of the appellant's outstanding verifications, which prompted the reapplication process. MassHealth preserved the appellant's original application date. On October 24, 2024, MassHealth denied the appellant's long-term care application because it determined that the appellant had given away or sold assets to become eligible for MassHealth long-term care services. (Exhibit 1). MassHealth's Asset Verification System reported joint ownership of a property located in Florida that the appellant and her son purchased jointly in 2018. (Exhibit 5, pp. 10-33). A quitclaim deed dated December 16, 2023 indicates that the appellant transferred her share of the property to her son. (Exhibit 5, pp. 34-35). At the time of the transfer, valuation of the property was \$563,320.00. (Exhibit 5, p. 38). The appellant's share of the property was valued at \$281,660.00. MassHealth calculated a period of ineligibility from May 13, 2024 to February 22, 2026 by dividing \$281,660.00 by the private pay facility rate of \$433 per day.

The appellant's attorney testified that the property in question was in the appellant's name solely for creditworthiness purposes. She explained that she provided a closing statement to MassHealth which shows that there was a down payment made at that time (cash to close) of \$110,994.12. Additionally, she provided the following documents to MassHealth: a statement from the financial account of the appellant's son showing that he paid for the down payment of the property in full, monthly statements (from 2018 up to present) from the bank account of the appellant's son showing that he paid the mortgage, and an affidavit from the appellant's son which indicates that the appellant did not make any gifts to him, other than her name being taken off of the property. (Exhibits 6A, 6B).¹ The appellant paid nothing for the property in question, nor did she contribute anything. The appellant's attorney explained that like a bank account that has contributions from another party, the appellant's name was simply being taken off the real estate because she did not have an interest in the property, other than having been there to allow the financing to occur. She stated that she provided proof of every payment related to the property in question to

¹ The appellant's representatives stated that at the hearing that a copy of this submission was sent to the Board of Hearings (BOH) on December 6, 2024. As of the date of the December 9th hearing, the hearing officer did not receive it. The record was left open until December 10, 2024. On or about December 10th, the hearing officer received copies from the appellant's attorney and from the BOH.

MassHealth. The appellant's attorney explained that she was not initially made aware of the property in question, which is why it was not listed on the appellant's long-term care application. She explained that none of the appellant's family members viewed it as her property. She stated that some of the appellant's family members were not even aware that this transaction occurred. The property in question was never controlled, used, or paid for by the appellant.

The MassHealth representative stated that according to pertinent regulations, the appellant's name was on the property in question, which is a financial interest and therefore considered as a countable asset. Further, once the appellant took her name off the deed to the property, MassHealth considers that to be a disqualifying transfer of resources.

The appellant's attorney argued that she recently had a similar case with MassHealth which involved the same facts as here. She stated that in the other case, the property was in another state-the property was paid for entirely by the son and the funds were commingled with the applicant for creditworthiness purposes. She explained that once the signed deed was submitted to MassHealth in the other case, MassHealth did not deem it as a disqualifying transfer because the applicant never contributed to that property. She stated that similarly in this case, the appellant did not transfer her interest in the property to qualify for MassHealth benefits. She noted that the appellant did not make large gifts, nor did she pay her son's mortgage as part of her spend-down. Rather, the appellant made the transfer solely to remove her name from her son's credit application.

Following the hearing the record was left open for the appellant to submit additional documentation. (See, footnote 1 above). The hearing officer ordered the parties to submit legal memoranda briefing their respective arguments.² A hearing was reconvened on March 18, 2025 to obtain additional testimony.

At the reconvened hearing, the MassHealth representative testified to the following: after reviewing the additional documentation submitted by the appellant's representatives, MassHealth notified the appellant on January 31, 2025 that she was approved for long-term care benefits beginning on October 5, 2024, with a monthly Patient Paid Amount (PPA) assessed. (Exhibit 8, pp. 3-6). The January 31st notice further informed the appellant that MassHealth calculated a period of ineligibility from May 13, 2024 through October 4, 2024 because of a transfer of assets. (Exhibit 8, p. 3). MassHealth determined the period of ineligibility due to a resource transfer the appellant made in the amount of \$62,718.28 to her son on December 16, 2023. MassHealth calculated this period of ineligibility by taking the amount that was transferred (\$62,718.28) and dividing it by the average nursing home daily rate of \$433.00, which resulted in the penalty period described above.

The appellant's attorney argued that MassHealth should not have imposed a penalty period because when the appellant signed the deed, transferring her interest in the Florida property to

² See 130 CMR 610.065(B)(12).

her son, she was acting for a purpose exclusively other than qualifying for MassHealth. The appellant's son purchased the property - the appellant simply lent her credit rating to her to make him credit worthy to purchase it. She argued that MassHealth should look at this transfer in substance over form, citing 130 CMR 520.019(F)(1). (Exhibit 6C, p. 3).

The appellant's attorney stated that even if MassHealth determines, contrary to the evidence presented, that the transfer was completed with intent to qualify the appellant for MassHealth benefits, proportional ownership principles must be considered, citing 130 CMR 520.005. (Exhibit 6C, p. 4). She stated that the exclusive financial contributions and control over the property establish that the appellant has no substantive interest in the property and therefore her interest in said property should be determined proportionately to the financial contributions. Given that the appellant's joint ownership of the property existed solely to allow her son to obtain ownership, her true interest in the property was effectively zero. (Exhibit 6C, p. 5). She argued that 130 CMR 520.005 requires that ownership of the property be assessed based on the reality of financial contributions and control rather than legal title alone. (Exhibit 6C, p. 4).

Next, the appellant's attorney argued that a prior application involved nearly identical circumstances, as she explained at the December 9th hearing. (Exhibit 6C, p. 5). She argued that although prior cases are not precedential, a prior case with essentially the same facts and an opposite result arises from an inconsistent application of MassHealth regulations, which evidences arbitrary and capricious decision making. *Id.*

Finally, the appellant's attorney argued that in reliance with federal law and the Social Security Program Operations Manual System (POMS), litigation is not required to obtain access to an asset.³ She stated that when she contacted the appellant's son, he flat out refused to return his property to the appellant because it was his property, that he made all payments towards. He quickly terminated her telephone call. The appellant's attorney stated that given his reaction, it is expected that the appellant's son will not comply with any further conversations or requests, thereby leaving the appellant with no option other than a legal action of questionable validity. Additionally, her son's contributions to the acquisition and maintenance of the property would be credited to him in any division of the property value. Thus, it would make it difficult, if not impossible, to retain litigation counsel nor does the appellant have the financial means to support litigation in Florida. (Exhibit 6C, p. 6). The appellant's attorney argued that MassHealth may not apply a more restrictive methodology than is employed by the SSI program.⁴

Findings of Fact

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

³ See, SI 01120.010.C.2

⁴ See, 42 U.S.C.A. §1396(a)(10)(C)(i)

1. The appellant is over the age of 65 and she was admitted to a nursing facility on [REDACTED]
2. An application for long-term care benefits was submitted on June 12, 2024 seeking eligibility effective May 13, 2024.
3. On October 1, 2024, MassHealth denied the appellant's long-term care application for failure to submit verifications.
4. On October 21, 2024, MassHealth received some of the appellant's outstanding verifications, which prompted the reapplication process.
5. On October 24, 2024, MassHealth denied the appellant's long-term care application because it determined that the appellant had given away or sold assets to become eligible for MassHealth long-term care services. A period of ineligibility from May 13, 2024 to February 22, 2026 was calculated by dividing \$281,660.00 transferred by the private pay facility rate of \$433 per day.
6. During the record-open period, the appellant submitted updated mortgage statements which reduced a portion of the penalty period.
7. On or about January 31, 2025, MassHealth notified the appellant that she was eligible for long-term care benefits effective October 5, 2024, with a period of ineligibility from May 13, 2024 through October 4, 2024 due to a \$62,718.28 transfer made on December 16, 2023.
8. MassHealth calculated the May 13, 2024 through October 4, 2024 ineligibility period by dividing \$62,718.28 transferred by the private pay facility rate of \$433 per day.
9. At the reconvened hearing, MassHealth maintained that the otherwise eligible date for coverage to begin is October 5, 2024, based on a \$62,718.28 transfer made on December 16, 2023.
10. The appellant timely appealed this MassHealth action.

Analysis and Conclusions of Law

This case concerns the appellant's application for MassHealth long-term care benefits. MassHealth denied the application 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.

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).⁵ 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).

⁵ 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).

MassHealth lists “Permissible Transfers” at 130 CMR 520.019(D):

- (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 initially determined that the appellant was ineligible for MassHealth long-term care coverage for the period from May 13, 2024 to February 22, 2026 because she transferred her share of a Florida property to her son on December 16, 2023, which was valued at \$281,660.00. Upon review of the appellant’s submission of additional documentation, MassHealth subsequently informed the appellant that she is eligible for MassHealth Standard benefits to cover her long-term care beginning on October 5, 2024, with a PPA assessed. MassHealth further informed the appellant that she had a period of ineligibility for the time period of May 13, 2024 through October 4, 2024 due to a resource transfer the appellant made in the amount of \$62,718.28. The appellant’s attorney agreed that the appellant is eligible for long-term care benefits, she argued that a period of ineligibility should not be imposed at all.

The first issue is whether the appellant has demonstrated that she received fair market value for the transferred resource. The parties agree that the appellant did not receive any cash proceeds following the transfer. The appellant argues, *inter alia*, that she simply lent her credit rating to her son to make him credit worthy to purchase the property. Based on this assertion, I find that the appellant did not receive fair market value for the transferred resource and none of the regulatory exemptions fit the circumstances here.

The analysis then turns to whether the appellant has demonstrated that a penalty period should not be assessed because the resources were transferred exclusively for a purpose other than to qualify for MassHealth (130 CMR 520.019(F)). Here, I find that the appellant testified credibly regarding the purpose behind the appellant’s 2018 purchase, as evidenced by the documentation submitted. However, the record does not support an argument that MassHealth eligibility was not a consideration at the time of the appellant’s December 16, 2023 transfer. Notably, the transfer to the son was made approximately 2 months prior to the appellant’s admission to the facility - 5 years after the property was purchased. Though she had not yet applied for MassHealth long-term care benefits at the time of the transfer, her need to do so was reasonably foreseeable. Under these circumstances, it is not convincing to argue that the purpose of this transfer was exclusively for a purpose other than to qualify for MassHealth.

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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

cc:

[REDACTED]

MassHealth Representative: Quincy MEC, Attn: Appeals Coordinator, 100 Hancock Street, 6th Floor, Quincy, MA 02171