

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in part; Denied in part	<b>Appeal Number:</b>	2418575
<b>Decision Date:</b>	2/27/2025	<b>Hearing Date:</b>	01/06/2025
<b>Hearing Officer:</b>	Christopher Jones		

**Appearances for Appellant:**



**Appearances for MassHealth:**  
Riana Malik – Tewksbury Intake  
Karen Ryan – Intake Supervisor



*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 in part; Denied in part	<b>Issue:</b>	Long Term Care; Disqualifying transfer
<b>Decision Date:</b>	2/27/2025	<b>Hearing Date:</b>	01/06/2025
<b>MassHealth's Reps.:</b>	Karen Ryan; Riana Malik	<b>Appellant's Reps.:</b>	[REDACTED]
<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 November 7, 2024, MassHealth disqualified the appellant from long-term-care eligibility from July 30, 2024, through April 25, 2025, because MassHealth determined that the appellant gave away assets in order to qualify for benefits. (Exhibit 1; 130 CMR 520.018-520.019.) The appellant filed this timely appeal on December 5, 2024. (Exhibit 3; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

### Action Taken by MassHealth

MassHealth imposed a period of ineligibility because the appellant transferred assets to her grandson to purchase a house in which she could reside with his family.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that the appellant transferred assets for less than fair-market value with the intention of qualifying for Medicaid.

## Summary of Evidence

The appellant is under [REDACTED] she entered the nursing facility in the summer of [REDACTED] though an application for long-term-care benefits had been filed on May 2, 2024. The appellant is seeking long-term-care benefits starting on July 30, 2024. On September 16, 2019, the appellant wired \$80,150 to a bank. Between September 4, 2019, and September 24, 2019, the appellant wrote three checks totaling \$20,100 to her grandson. On November 7, 2020, the appellant wrote a check for \$1,000 to her daughter. On August 2, 2019, the appellant paid \$5,125 to a paving company. The appellant paid a construction company \$2,450 on February 26, 2021, and \$2,300 on April 1, 2021.

At the hearing, MassHealth's representatives testified that these transfers totaling \$111,125, when divided by the average nursing facility daily rate of \$433, resulted in a period of ineligibility of 257 days, running from July 30, 2024, through April 13, 2025.<sup>1</sup>

The appellant's family testified that the appellant had lived on her own in [REDACTED]. She was getting older, but she was still in good health. The appellant planned to move in with her grandson so that she could live with family and have a more accessible living situation as she continued to age. The appellant's grandson agreed to purchase a new home with an accessible in-law unit, toward which the appellant would contribute \$100,000. The appellant's grandson purchased the home on June 19, 2019. The appellant did not have any money until she sold her home in August 2019. The appellant received \$298,501.52 from the sale of her home, and she wired \$80,150 to pay down the mortgage on the house her grandson bought in June. The appellant's grandson testified that the three checks totaling \$20,100 were reimbursements for renovations that they made to the in-law unit after they had purchased the home. The check to the paving company was to convert the entry into the in-law unit so that it had a walkway, instead of stairs. The remaining two checks were paid to a construction company in order to remedy code violations that had not been apparent at the time the property was purchased. This issue arose after the appellant moved in, and while the issue was being remediated, the appellant lived upstairs with her grandson and his family. The only expense she bore was to pay for any food she wanted in her own apartment, when not eating with her family.

The appellant's family testified that the appellant was in good mental and physical health when she moved in. The appellant suffered a stroke in [REDACTED] which is when her health began to decline. The appellant's primary care physician wrote a letter of support documenting that the appellant had showed no signs of cognitive decline at the time she moved in with her grandson, and that she was living independently with no indication of needing long-term-care. A medical history was attached, showing that the appellant had a transient ischemic attack in [REDACTED] at which time she started

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<sup>1</sup> MassHealth's disqualifying transfer notice originally found 269 days of ineligibility. Prior to the appeal, the appellants had documented \$5,500 in cash withdrawals, and MassHealth agreed that they were not disqualifying transfers.

to have difficulty communicating. In [REDACTED] she suffered a stroke and a myocardial infarction.

The remaining transfer of \$1,000 to the appellant's daughter in November 2020, was identified as an early Christmas present. The appellant's daughter testified that the gift was because she needed help to buy new tires for her car at that time, so her mother gave her a large Christmas gift early. The appellant's daughter conceded that this gift was out of the ordinary, and she could not submit proof of similar gifts being given to other family members in the past.

## Findings of Fact

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

- 1) In June 2019, the appellant's grandson purchased a home with an in-law unit, with the intention of having the appellant move into the home with his family. The appellant agreed to contribute around \$100,000 toward the cost of this home. (Testimony by the appellant's representatives.)
- 2) In August 2019, the appellant sold her home, from which she received \$298,501.52. (Exhibit 9, pp. 3-10.)
- 3) On September 16, 2019, the appellant wired \$80,150 to a bank to pay down her grandson's mortgage on the home he purchased in June 2019. (Exhibit 8, p. 27; testimony by the appellant's representatives.)
- 4) Between September 4, 2019, and September 24, 2019, the appellant wrote three checks totaling \$20,100 to her grandson, as reimbursements for costs the appellant's grandson bore for renovating the in-law unit prior to the appellant's moving in. (Exhibit 9, pp. 27-29, 32-36; testimony by the appellant's representatives.)
- 5) On August 2, 2019, the appellant paid \$5,125 to a paving company to convert a stairwell into the basement into a walkway. (Exhibit 9, p. 33; testimony by the appellant's representatives.)
- 6) On November 7, 2020, the appellant wrote a check for \$1,000 to her daughter to pay for her daughter's new car tires. This was an unusual gift for the appellant to make. (Exhibit 8, p. 28; testimony by the appellant's representatives.)
- 7) The appellant paid a construction company \$2,450 on February 26, 2021, and \$2,300 on April 1, 2021, to remediate code violations in the in-law unit in which she resided. (Exhibit 9, pp. 30-31; testimony by appellant's representatives.)

- 8) The appellant showed no signs of cognitive decline at the time she moved in with her grandson, and that she was living independently with no indication of needing long-term-care. (Exhibit 8, p. 3.)
- 9) The appellant suffered a transient ischemic attack in [REDACTED] at which time she started to have difficulty communicating. In [REDACTED] she suffered a stroke and a myocardial infarction. (Exhibit 8, p. 4.)
- 10) The appellant entered the nursing facility in the summer of [REDACTED]. An application for long-term-care benefits had been filed on May 2, 2024. The appellant is seeking long-term-care benefits starting on July 30, 2024. (Testimony by MassHealth's representative; Exhibit 6.)
- 11) MassHealth initially imposed a 269-day period of ineligibility. At the hearing, MassHealth reduced this period of ineligibility to 257 days. (Exhibit 1; Exhibit 6; testimony by MassHealth's representative.)

## Analysis and Conclusions of Law

An applicant for MassHealth benefits has the burden to prove his or her eligibility, including that a transfer of resources was legitimate, not gratuitous, or for less than fair market value. (130 CMR 515.001, 520.007; and MGL Ch. 118E, § 20.) If an applicant or member has transferred resources for less than fair-market value, MassHealth long-term-care benefits may not be paid until a period of ineligibility has been imposed and expires. (See 42 USC §1396p(c)(1)(A); MGL Ch. 118E, § 28.) The federal law is reflected in MassHealth regulations 130 CMR 520.018 and 520.019, which provide that a disqualifying transfer exists where an applicant transfers an interest during the appropriate look-back period for less than fair-market value. "A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available," unless the transfer is "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 person. Exempted transfers are cured in some manner after the fact.

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

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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.

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."

[REDACTED]

I am convinced by the appellant grandson's sworn testimony, supported by the submitted medical, legal, and financial documents, that the appellant transferred \$110,125 to her grandson and to contractors regardless of her potential need for Medicaid benefits in the future. These transfers were made at a time when the appellant was mentally healthy, and she had no expectation of needing nursing-facility care. The appellant's transfers were an investment in her living situation, which is supported by the fact that the renovations were made with an eye toward making the in-law apartment accessible. Furthermore, the appellant lived with her family, even when the in-law apartment could not be lived in due to building code violations.

The appellant's eventual institutionalization arose following an acute medical event in [REDACTED] a stroke, after which she returned to the community home she shared with her grandson. The appellant did not enter the skilled-nursing facility until her mental wellbeing began to deteriorate sufficiently such that she could no longer safely reside with her family. The medical evidence supports that the appellant had no reason to anticipate her precipitous decline at the time she decided to move in with her grandson's family. The facts and circumstances surrounding this transaction establish these transfers were both exclusive of intent to qualify for Medicaid and for valuable consideration. Therefore, the appeal is APPROVED with regards to the money the appellant paid toward living with her grandson.

The heightened evidentiary burden is not met regarding the Christmas gift to the appellant's daughter. There was no evidence that this gift was in line with the appellant's typical behavior, and the appellant's daughter acknowledged that it was unusual. Nor was there evidence that car tires were purchased by the appellant's daughter around this time. Therefore, the appellant has not met their evidentiary burden with regards to the \$1,000 gift to the appellant's daughter. Therefore, this appeal is DENIED in part with regards to the \$1,000 gift. This reduces the period of ineligibility from 257 days to 3 days.

## Order for MassHealth

Allow the appellant 30 days from the date of this decision to cure the remaining disqualifying transfer. Recalculate the appellant's disqualifying transfer amount to \$1,000, if not cured.

## 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.

## 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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Christopher Jones  
Hearing Officer  
Board of Hearings

CC: [REDACTED]

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957

[REDACTED]