

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved; Remand	Appeal Number:	2418718
Decision Date:	3/5/2025	Hearing Date:	01/08/2025
Hearing Officer:	Rebecca Brochstein	Record Closed:	01/29/2025

Appearances for Appellant:




Appearances for MassHealth:

Maria Piedade, Taunton MEC



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

APPEAL DECISION

Appeal Decision:	Approved; Remand	Issue:	Long-Term Care; Disqualifying Transfer
Decision Date:	3/5/2025	Hearing Date:	
MassHealth's Rep.:	Maria Piedade	Appellant's Reps.:	
Hearing Location:	Taunton MassHealth Enrollment Center (Telephonic)		

Authority

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

Jurisdiction

Through a notice dated November 27, 2024, MassHealth approved the appellant for long-term care coverage as of July 25, 2024. MassHealth determined that the appellant was ineligible for benefits for the period of June 1 through July 24, 2024, because of a disqualifying transfer of resources (Exhibit 1). The appellant filed a timely appeal on December 6, 2024. (Exhibit 2). After hearing on January 8, 2025, the record was held open for additional documentation (Exhibits 5-7). Determination of a disqualifying transfer is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the appellant's application for long-term care benefits effective July 25, 2024. MassHealth determined that the appellant was ineligible for benefits for the period of June 1 through July 24, 2024, because of a disqualifying transfer of resources.

Issue

The issue on appeal is whether MassHealth properly determined that the appellant transferred

resources for less than fair-market value.

Summary of Evidence

A caseworker from the Taunton MassHealth Enrollment Center appeared telephonically and testified on behalf of the agency. She testified that the appellant, who is in his [REDACTED] is a resident of a nursing facility. He had been coded as a short-term patient through [REDACTED]. A MassHealth long-term care conversion application was filed on his behalf on July 23, 2024, seeking long-term care coverage as of June 1, 2024.

In processing the application, MassHealth determined that the appellant had been due to receive funds from the [REDACTED] sale of a house in which he owned a half-interest. The caseworker testified that the settlement statement indicated the sellers were due approximately \$46,140 at closing, and that the appellant was due half of this amount (\$23,070). Because the appellant did not verify how these funds were used, MassHealth considered this to be a disqualifying transfer of assets.

On November 27, 2024, MassHealth notified the appellant that he was approved for long-term care coverage effective July 25, 2024, but was ineligible for coverage for the period of June 1 through July 24, 2024, because he had transferred assets during the regulatory lookback period. The caseworker stated that MassHealth calculated the penalty period by taking the figure due to the appellant (\$23,070) and dividing by the average daily nursing home rate of \$433, resulting in 53 days of ineligibility. See Exhibit 4.

The appellant was represented by his nurse case manager as well as the case manager's supervisor, both of whom appeared telephonically. The case manager testified that the appellant has a history of homelessness as well as mental health and substance abuse issues. He owned the property in question with his brother and, according to family members, he used the proceeds from the sale to rent an apartment and purchase furnishings. The case manager stated that the appellant "blew through the money" and left no paper trail of how or where he spent it. The supervisor added that the appellant is a double amputee and has "massively infected wounds." She reiterated that the appellant used the money from the sale to secure new housing but was unable to sustain it and ended up back on the street. She stated that the facility admitted him and has provided him care "on good faith."

The record was held open after the hearing for the appellant's representatives to provide affidavits from family members with personal knowledge about the appellant's use of the sale proceeds. They subsequently submitted affidavits from the appellant's daughter and brother. The daughter's affidavit states in relevant part as follows:

. . . My Father came into a small inheritance in the year [REDACTED]. My Father lived most of his life chronically homeless and suffered from alcoholism. He was a Veteran who served in the [REDACTED]. My Father has chronically suffered from depression and PTSD.

Due to my Fathers' [sic] chronic issues with alcohol and homelessness, when he came into money (approximately \$23,000.00) he tried to set up a home for himself and rented an apartment. This of course required a large chunk of the monies to go to first, last and security. In addition he had to start from scratch with furniture and household items like bed, blankets, towels, couch, etc., food and clothing. My Father was trying to create a stable lifestyle.

Unfortunately, he did end up losing his housing and once again returned to living on the streets. The inheritance went very quickly over a period of 12 months and he was unable to keep up with his rent obligations.

My Father's health was very poor, he had very extensive non-healing leg wounds resulting in double leg amputation. My Father is also diabetic.

I ask that you please look at the big picture of my Father's financial and health issues. The amount of money was not significant as he had no income coming in and relied solely on this small inheritance for all living expenses.

Please also take into consideration that the year [REDACTED] was the height of the COVID outbreak and my Father was desperately trying to get off the "streets" and secure housing and this is where a large portion of his monies went.

To the very best of my knowledge this is where the funds went. I submit the above statement under pain and penalties of perjury.

The second affidavit, from the appellant's brother, states in relevant part the following:

. . . To the best of my knowledge in [REDACTED] my brother and myself inherited a home from my Father who passed away in [REDACTED]. The house was in poor condition and required a good amount of work. We split the proceeds of approximately 46,000.00 (23,000 to [appellant])

I know my brother had very little money at the time and used this money to try and get back on his feet and secure housing.

To the very best of my knowledge this is where the funds went and what they were used for. I submit the above statement under the pans and penalties of perjury.

See Exhibit 7.

After reviewing the appellant's post-hearing submission, the MassHealth representative reported that MassHealth was upholding its original decision regarding the transfer determination and

would need a decision from BOH to reverse the penalty. See Exhibit 8.

Findings of Fact

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

1. The appellant, who is in his [REDACTED] is a resident of a nursing facility.
2. The appellant had been coded as a short-term patient through [REDACTED]
3. On July 23, 2024, a MassHealth long-term care conversion application was filed on the appellant's behalf, seeking coverage as of June 1, 2024.
4. On November 27, 2024, MassHealth approved the application with a start date of July 25, 2024.
5. On December 6, 2024, the appellant filed a timely appeal of the approval notice.
6. MassHealth determined the appellant is not eligible for coverage between June 1 and July 24, 2024, because of a disqualifying resource transfer.
7. The appellant previously owned property jointly with his brother. In [REDACTED] they sold the property to a third party and were due a total of approximately \$46,140 at closing.
8. The appellant has a history of chronic homelessness as well as mental health and substance abuse issues. He used his share of the sale proceeds (\$23,070) over a one-year period to secure housing and to cover furnishings and other living expenses. He did not have any other income at the time.

Analysis and Conclusions of Law

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).¹ The MassHealth agency may consider as a disqualifying

¹ 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

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):

- (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 [REDACTED] years old, or who is blind or permanently and totally disabled; (c) the nursing-facility

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).

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 her 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." [REDACTED]

In this case, MassHealth found that the appellant was ineligible for MassHealth long-term care coverage for 53 days because he transferred resources for less than fair market value. Specifically, MassHealth found that the appellant, who had held a joint interest in real estate with his brother, did not adequately verify his use of funds that were due to him from the [REDACTED] sale of the property. Because he did not verify how these funds were spent, MassHealth found that he had transferred the full amount he received for less than fair-market value.

The appellant's representatives do not dispute that he received the funds at issue and that he cannot produce any documentation to show how they were used. However, they argue that he in fact used the money on legitimate and necessary expenses, specifically related to his efforts to secure and maintain housing after a significant period of homelessness. This argument is persuasive. The appellant's daughter and brother offered compelling accounts of the appellant's history of physical and mental health issues and of his desire to secure stable housing during the Covid-19 pandemic. Their statements that he used the sale proceeds for rent, apartment furnishings, and other necessary expenses is credible, particularly at a time

when he had no other income to meet these needs. Given the time that has passed since the sale, as well as the fact that he became homeless again shortly thereafter, it is also understandable that the appellant would not be able to furnish receipts or other documentation of his expenditures from that time. The record supports the appellant's position that he used the [REDACTED] sale proceeds to support his own needs and that he did not transfer resources for less than fair-market value. Accordingly, no penalty period is warranted.

This appeal is approved and remanded.

Order for MassHealth

Rescind the notice dated November 27, 2024, and deem the appellant not to have made any disqualifying transfers of resources during the look-back period. Redetermine his long-term care eligibility in accordance with 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.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Taunton MEC

[REDACTED]