

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2419279
Decision Date:	04/22/2025	Hearing Date:	01/21/2025
Hearing Officer:	Christopher Jones	Record Open to:	02/28/2025

Appearance for Appellant:



Appearance for MassHealth:

Yissel Medina – Tewksbury 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

Appeal Decision:	Approved in part; Denied in part	Issue:	Long term care; Disqualifying Transfer
Decision Date:	04/22/2025	Hearing Date:	01/21/2025
MassHealth's Rep.:	Yissel Medina	Appellant's Rep.:	
Hearing Location:	Telephonic	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 November 4, 2024, MassHealth approved the appellant's application for long-term-care benefits, but imposed a period of ineligibility running from January 24, 2024, to July 18, 2024. (Exhibit 1.) The appellant filed this appeal in a timely manner on December 18, 2024. (Exhibit 2; 130 CMR 610.015(B).) Limitation of assistance is valid grounds for appeal (130 CMR 610.032.)

The hearing record was left open until February 28, 2025, for the appellant to submit additional evidence regarding the intention of the transferred funds, and for MassHealth to review and respond.

Action Taken by MassHealth

MassHealth imposed a 176-day period of ineligibility based upon \$75,172.75 that was transferred to the appellant's power of attorney during the two years prior to his institutionalization.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.018, 520.019, in determining that the appellant transferred resources for less than fair-market value and for the purpose of qualifying for MassHealth.

Summary of Evidence

MassHealth's representative testified that the appellant is over the age of 65, and he entered the nursing facility in the early spring of [REDACTED]. A long-term-care application was received on October 31, 2023. The nursing facility is seeking long-term-care coverage as of January 24, 2024. MassHealth imposed a period of ineligibility arising from checks totaling \$75,172.75, written to the appellant's niece:

1. 10/07/2022 – \$37,716.50 check used to purchase a replacement car;
2. 02/19/2023 – \$3,000.00 check used to purchase a second replacement car;
3. 02/22/2023 – \$18,456.25 check used to purchase the second replacement car;
4. 04/30/2023 – \$10,000.00 check to the appellant's niece; and
5. 02/29/2024 – \$6,000.00 check to the appellant's niece.

MassHealth divided the total of these checks by \$427, which was the average daily rate for nursing facility care in Massachusetts used in processing long-term-care applications received before November 1, 2023. This equaled 176 days, and MassHealth imposed this period of ineligibility from the benefits request date through July 18, 2024.

The appellant's niece is his power of attorney. She submitted an affidavit and additional exhibits that explained that the appellant moved in with her in [REDACTED]. While the appellant lived with his niece, the appellant's niece managed their household and did all the appellant's chores for him. There was no documented financial arrangement around this living situation, but the appellant and his power of attorney shared a checking account, and both contributed to household expenses.

In [REDACTED] was totaled. The appellant's niece received \$16,060.28 from her insurance, and she deposited these proceeds into the joint checking account. This was the household's only vehicle. The appellant's niece purchased a [REDACTED] [REDACTED] for \$38,716.56. This vehicle had a roof leak, so the appellant's niece traded this vehicle in on [REDACTED]. The purchase price for this car was \$48,450.94, but the total out-of-pocket cost for the second car was \$21,450.94, after the trade-in allowance for the first car. The appellant's niece submitted an affidavit providing much of this information and also averring that the cars were used for the appellant's benefits. A second affidavit was submitted from a home-health nurse who averred that the car was used by homecare workers to bring the appellant to doctor's appointments or to run errands with the appellant. The appellant's niece also averred that the appellant had difficulty getting into smaller cars because he had a brace and used a cane. The appellant argues that the car was always intended to be for the appellant's use, and he should be considered a co-owner of the vehicle.

The appellant's representative acknowledged that the \$6,000 check on February 29, 2024, was a disqualifying transfer. MassHealth's representative acknowledged that the \$10,000 check on April

30, 2023, had been cured as being used for the appellant's purposes. MassHealth also agreed to reduce the disqualifying transfer amount by \$16,060.28, to reflect the insurance proceeds the appellant's niece deposited into the joint account prior to purchasing the first replacement car.¹ MassHealth's representative agreed to reduce the disqualifying transfer amount by half of the value of the second car, if the appellant were added to the title to reflect that the appellant is a co-owner of the vehicle.

The hearing record was left open for the appellant's representative to add the appellant to the title, and the appellant accepted that the appeal would be resolved if this disqualifying transfer amount was reduced by half the car's value. MassHealth acknowledged that the car would not be countable as an asset because it would be the only car in the appellant's household.

Ultimately, the appellant's power of attorney was unable to add the appellant to the title of the vehicle because he does not have a valid driver's license, and he is uninsurable as a driver. The appellant submitted proof that the insurance company refused to add the appellant to the policy, and that the appellant could not be added to the title as a non-driver. MassHealth's representative refused to allow the partial cure without adding the appellant to the title.

Findings of Fact

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

- 1) The appellant is an individual over the age of 65, who entered a nursing facility in the early spring of 2023. A long-term-care application was filed on [REDACTED], and the nursing facility is seeking MassHealth coverage as of January 24, 2024. (Exhibit 7.)
- 2) Through a notice dated November 4, 2024, MassHealth approved the appellant's application for long-term-care benefits, effective July 19, 2024. MassHealth imposed a period of ineligibility from January 24, 2024, through July 18, 2024. (Exhibit 1.)
- 3) This period of ineligibility was based upon 5 checks written to the appellant's niece, totaling \$75,172.75. The dates and amounts of these checks are:
 - a. 10/07/2022 – \$37,716.50;
 - b. 02/19/2023 – \$3,000.00;
 - c. 02/22/2023 – \$18,456.25;
 - d. 04/30/2023 – \$10,000.00; and

¹ The resulting transfer amount is \$49,111.87, which would result in a 115-day period of ineligibility.

e. 02/29/2024 – \$6,000.00. (Exhibit 7.)

- 4) The appellant moved in with his niece in [REDACTED]. The appellant and his niece did not document their living arrangement, but they shared a checking account, and the appellant's niece managed their household. The appellant's niece's car was used, in part, for the appellant's needs, and the appellant's other caregivers used the car to take him to appointments or to run errands. (Exhibit 4; Exhibit 7.)
- 5) In [REDACTED] the appellant's niece's [REDACTED] was totaled, and she deposited \$16,060.28 from her insurance into the checking account she shared with the appellant. The appellant's niece purchased a used car on [REDACTED], for \$38,716.56. This vehicle had a roof leak, and she traded it in on [REDACTED], for [REDACTED]. The purchase price for the second car was \$48,450.94, but the total out-of-pocket cost for the second car was \$21,450.94, after the trade-in allowance for the first car. (Exhibit 4.)
- 6) The appellant accepts that the February 29, 2024, \$6,000 check is a disqualifying transfer. (Testimony by the appellant's representative.)
- 7) MassHealth accepted the April 30, 2023, \$10,000 check was cured, and accepts the \$16,060.28 deposit from the insurance proceeds as a partial cure. The remaining disqualifying transfer amount is \$49,111.87. (Testimony by MassHealth's representative.)
- 8) Following the hearing, the appellant's niece attempted to add the appellant to the title of her car. The appellant cannot be added to the title of the car because he does not have a valid Massachusetts driver's license. (Exhibit 8.)

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])."² (130 CMR 520.019(C).) Permissible transfers are made to

² 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

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 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)).)

For transfers occurring on or after February 8, 2006, the MassHealth agency adds the value of all the resources transferred during the look-back period and divides the total by the average monthly cost to a private patient receiving long-term-care services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency. The result will be a single period of ineligibility beginning on the first day of the month in which the first transfer was made or the date on which the individual is otherwise eligible for long-term-care services, whichever is later.

(130 CMR 520.019(G)(i).)

The timeline of this appeal is troubling. These cars were purchased shortly before the appellant entered a long-term-care facility. However, the appellant's only form of transportation had been totaled, which created an immediate need for replacement regardless of the appellant's potential need for government assistance. I am convinced by submitted affidavits and the other supporting

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.

documents that the appellant' participated in purchasing the replacement vehicle with the intention of benefitting from that vehicle. As such, I find that the appellant intended to receive valuable consideration when he reimbursed his niece for that vehicle's purchase. It is not a requirement that an applicant for MassHealth benefits make frugal purchases, only that their intention be to receive fair and valuable consideration in the transaction. The appellant intended to be co-owner of the car, but he could not be on the title due to his lack of driver's license. Ideally, this arrangement could be documented through some security interest held by the appellant, but the absence of the documentation does not disprove the intention to receive value.

Furthermore, MassHealth does not argue that it would substantively gain anything by having the appellant's joint ownership of the car formally documented. MassHealth is willing to exclude the vehicle from the appellant's countable assets, pursuant to 130 CMR 520.007(F)(2), and a jointly held vehicle should pass outside of the appellant's probate estate, see M.G.L. c.90D, § 15A. The appellant's ownership of the vehicle would not prevent his eligibility, nor would it create a lien-able or recoverable asset from the appellant's estate. Therefore, the appellant is deemed to have cured half of the value of the final car purchased, and this appeal is APPROVED in part. The value of the car at the time of purchase was \$48,450.94, half of which is \$24,225.47.

The remaining transferred resources, \$24,886.40, are disqualifying transfers as they were not for value.³ The appeal is DENIED in part with the remainder of the assets transferred to the appellant's niece. This results in a 59-day period of ineligibility, which runs from January 24, 2024, through March 23, 2024; the appellant is eligible for long-term-care services starting March 24, 2024.

Order for MassHealth

Reduce the disqualifying transfer amount to \$24,886.40 and approve benefits accordingly.

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

³ The disqualifying transfer amount at the end of the hearing was \$49,111.87 - \$24,225.47 = \$24,886.40. This includes the \$6,000 transfer made on February 29, 2024.

address on the first page of this decision.

Christopher Jones
Hearing Officer
Board of Hearings

[REDACTED]

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