

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in part; Denied in part	<b>Appeal Number:</b>	2419496
<b>Decision Date:</b>	5/1/2025	<b>Hearing Date:</b>	01/22/2025
<b>Hearing Officer:</b>	Emily Sabo	<b>Record Open to:</b>	03/12/2025

**Appearance for Appellant:**



**Appearance for MassHealth:**

Lynn Bloomquist, Tewksbury 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

<b>Appeal Decision:</b>	Approved in part; Denied in part	<b>Issue:</b>	Long-Term Care; Coverage Start Date; Disqualifying Transfer
<b>Decision Date:</b>	5/1/2025	<b>Hearing Date:</b>	01/22/2025
<b>MassHealth's Rep.:</b>	Lynn Bloomquist	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Tewksbury MassHealth Enrollment Center (Telephone)	<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 October 29, 2024, MassHealth determined the Appellant was eligible for long-term care services in a nursing facility, effective February 28, 2024. MassHealth determined that the Appellant was ineligible for the time period of January 28, 2024 to February 27, 2024, due to a transfer of assets. 130 CMR 520.019 and Exhibit 1. The Appellant's representative filed this appeal in a timely manner on December 18, 2024. 130 CMR 610.015(B) and Exhibit 2. Denial of assistance is valid grounds for appeal. 130 CMR 610.032.

### Action Taken by MassHealth

MassHealth approved the Appellant for long-term care services in a nursing facility, with a transfer penalty period of January 28, 2024 to February 27, 2024.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that the Appellant had a transfer penalty period from January 28, 2024 to February 27, 2024.

## Summary of Evidence

The hearing was held by telephone. The MassHealth representative testified that the Appellant is over the age of [REDACTED] and was admitted to a nursing facility on [REDACTED]. The MassHealth representative testified that the Appellant submitted an application to MassHealth for long-term care on February 6, 2024, seeking a start date of January 28, 2024. The MassHealth representative explained that MassHealth approved the Appellant's application with a transfer penalty period from January 28, 2024 to February 27, 2024, due to five transfers that the Appellant made to [REDACTED] in 2023, totaling \$13,300.00.<sup>1</sup> The MassHealth representative explained that at a \$433.00 daily private pay rate, MassHealth assessed a 31-day penalty.

The Appellant's representative verified the Appellant's identity. The Appellant's representative testified that [REDACTED] is the Appellant's granddaughter, who had set up a funeral contract for the Appellant. The record was held open for the Appellant's representative to submit evidence of the funeral and burial contracts. Initially, after the Appellant's record open submission, the MassHealth representative asked that the hearing officer issue a decision because the submission did not cure the \$13,300.00 transfer. Exhibit 8. The Appellant's representative responded:

The [Appellant] gave her granddaughter funds to purchase a burial contract and that is what she did. We provided bank statements and confirmation that the burial is irrevocable.

The life insurance policy is for \$12,838 which is what the burial was for. The plot was \$4,248. The granddaughter pays every month towards the plot from the funds provided to her by the [Appellant]. The funeral and plot were more than the [Appellant] could afford so the only way her granddaughter could purchase these items was to place the funds into the account and make monthly payments. All the funds go towards the burial and are directly debited from the account by the funeral home.

We are more than happy to provide you with anything else needed. The [Appellant] does not have any additional money to pay this penalty and the money given to the granddaughter is tied up with the funeral expenses.

Exhibit 9 at 1.

The Appellant's representative further explained:

---

<sup>1</sup> Initials are used to preserve confidentiality.

[Appellant's granddaughter] has purchased a Life Insurance Policy with [REDACTED] for the funeral contract. As of 12/16/2024, she had paid \$5,705.76 by having \$356.61 electronically drafted from her account monthly. She has put a down payment of \$446.50 on the cemetery contract and has paid an additional \$887.04 as of 11/4/2024 by having a monthly payment of \$63.36 electronically drafted from her account.

[Granddaughter's] intention is to provide a funeral for her grandmother that will cost more than the \$13,300 her grandmother gave her to purchase it with. The cost of the funeral contract and cemetery contract total \$17,085.25. [Granddaughter] put the funds from her grandmother into an interest-bearing account hoping to make some interest on the money to help pay for the additional \$3,500 she was going to need to pay.

Exhibit 10 at 1.

The record open period was extended until March 5, 2025, for the Appellant, and until March 12, 2025, for MassHealth's review and response. Exhibit 11. The Appellant's representative explained that the Appellant made five transfers to her granddaughter:

- 6/1/2023--\$500
- 6/9/2023--\$2,000
- 7/6/2023--\$7,000
- 8/15/2023--\$3,000
- 9/15/2023--\$800

These funds were to be used for her grandmother's funeral and burial. [Granddaughter] put the funds into an interest-bearing account as the burial contract came to more than what she had received. She did this to earn interest to help pay for the additional funds needed. She felt having a [life insurance policy] and cemetery plot that she could pay monthly would help cut down on the personal cost to her.

The Funeral Contract came to: \$12,837.25

The Burial Contract came to: \$4,248.00.

Exhibit 12 at 12.

The Appellant's representative also submitted information indicating that the Granddaughter's deposit and payments towards the burial plot have totaled \$1,586.98, and her deposit and payments toward the funeral contract have totaled \$6,062.37. Exhibit 13 at 42-43.

The MassHealth representative responded that "MassHealth had reviewed the [A]ppellant's submission and the agency's position is that there was a partial cure to the transfer penalty as follows: \$7,554.46 is verified as paid to the burial contract. The remaining balance of \$5,745.54 in [Granddaughter's bank account] is still considered a transfer as it remains in an account not owned

by the [appellant].” Exhibit 15 at 1. On March 12, 2025, the Appellant’s representative responded that

Although what [Granddaughter] is doing is unorthodox in the way funeral and burial contracts are opened and paid for, she is a single parent of two and she could not afford the extra \$4,000 to pay for them. She placed the funds her grandmother sent for her burial wishes into an interest-bearing account. She was hoping to gain some interest on the money to help pay for the overage she was going to need to pay off the balance of the contracts.

The funeral and burial contracts are irrevocable, and she cannot get the funds back even if she tried. The money in her [bank] account is electronically drafted (*sic*) by [REDACTED] every month until the funds are gone. I ask that you reconsider the remaining transfer penalty and grant approval for the total of the \$13,300 transfer penalty assessed.

Exhibit 16 at 1.<sup>2</sup>

## Findings of Fact

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

1. The Appellant is over the age of [REDACTED] Testimony and Exhibit 4.
2. The Appellant was admitted to a nursing facility on [REDACTED] Testimony and Exhibit 5.
3. The Appellant applied to MassHealth for long-term care services, on February 6, 2024, seeking a payment start date of January 28, 2024. Testimony and Exhibit 5.
4. On October 29, 2024, MassHealth determined the Appellant was eligible for long-term care services in a nursing facility, effective February 28, 2024. MassHealth determined that the Appellant was ineligible for the time period of January 28, 2024 to February 27, 2024, due to a transfer of assets. Exhibit 1.
5. The Appellant’s representative filed a timely appeal with the Board of Hearings on December 18, 2024. Exhibit 2.
6. Between June and September 2023, the Appellant transferred \$13,300.00 to her granddaughter, [REDACTED] Testimony and Exhibits 5-16.

---

<sup>2</sup> After the closure of the record open period, the Appellant’s representative sent another email requesting that the transfer penalty be reversed. Exhibit 17 at 1.

7. The \$13,300.00 was to be spent toward the Appellant's funeral and burial costs. Testimony and Exhibit 10.
8. The Granddaughter intended to provide a funeral for the Appellant that would cost more than the \$13,300 transferred to her by the Appellant. Exhibit 10.
9. The MassHealth representative testified that MassHealth calculates a \$433/daily rate, when determining a transfer penalty. Testimony.
10. The Appellant's Granddaughter's deposit and payments towards the burial plot have totaled \$1,586.98 and her deposit and payments toward the funeral contract total \$6,062.37, for a combined total of \$7,649.35. Exhibit 13.

## Analysis and Conclusions of Law

MassHealth regulations provide the following:

### 130 CMR 515.001: Definition of Terms

The terms listed in 130 CMR 515.001 have the following meanings for purposes of MassHealth, as described in 130 CMR 515.000 through 522.000: MassHealth: *Other Division Programs*.

....

Burial Trust – a trust established by an individual solely for funeral expenses, burial expenses, or both.

....

Curing of a Transfer – the return, following the transfer for less than fair-market value of a portion of, or the full uncompensated value of, a resource to the individual.

....

Fair-market Value – an estimate of the value of a resource if sold at the prevailing price. For transferred resources, the fair-market value is based on the prevailing price at the time of transfer.

....

Look-back Period – a period of consecutive months that the MassHealth agency may review for transfers of resources to determine if a period of ineligibility for payment of nursing-facility services should be imposed.

....

Period of Ineligibility – the period of time during which the MassHealth agency denies or withholds payment for nursing-facility services because the individual has transferred resources for less than fair-market value.

....

Uncompensated Value – the difference between the fair-market value of the resource or

interest in the resource at the time of transfer less any outstanding debts and the actual amount the individual received for the resource. The MassHealth agency uses the uncompensated value in the calculation of the period of ineligibility.

130 CMR 515.001.

130 CMR 519.006: Long-term-care Residents

(A) Eligibility Requirements. Institutionalized individuals may establish eligibility for MassHealth Standard coverage subject to the following requirements. They must

- (1) be younger than [REDACTED] or older or, for individuals [REDACTED] years of age meet Title XVI disability standards or be pregnant;
- (2) be determined medically eligible for nursing facility services by the MassHealth agency or its agent as a condition for payment, in accordance with 130 CMR 456.000: *Long Term Care Services*;
- (3) contribute to the cost of care as defined at 130 CMR 520.026: *Long-term-care General Income Deductions*;
- (4) have countable assets of \$2,000 or less for an individual and, for married couples where one member of the couple is institutionalized, have assets that are less than or equal to the standards at 130 CMR 520.016(B): *Treatment of a Married Couple's Assets When One Spouse Is Institutionalized*; and
- (5) not have transferred resources for less than fair market value, as described at 130 CMR 520.018: *Transfer of Resources Regardless of Date of Transfer* and 520.019: *Transfer of Resources Occurring on or after August 11, 1993*.

130 CMR 519.006(A).

130 CMR 520.018: Transfer of Resources Regardless of Date of Transfer

(A) The provisions of 42 U.S.C. 1396p apply to all transfers of resources. In the event that any portion of 130 CMR 520.018 and 520.019 conflicts with federal law, the federal law supersedes.

(B) The MassHealth agency denies payment for nursing-facility services to an otherwise eligible nursing-facility resident as defined in 130 CMR 515.001: *Definition of Terms* who transfers or whose spouse transfers countable resources for less than fair-market value during or after the period of time referred to as the look-back period.

(C) The denial of payment for nursing-facility services does not affect the individual's eligibility for other MassHealth benefits.

(D) Circumstances giving rise to disqualifying transfers of resources are also described at 130 CMR 520.007(J).

130 CMR 520.018.

130 CMR 520.007: Countable Assets

Countable assets are all assets that must be included in the determination of eligibility. Countable assets include assets to which the applicant or member or his or her spouse would be entitled whether or not these assets are actually received when failure to receive such assets results from the action or inaction of the applicant, member, spouse, or person acting on his or her behalf. In determining whether or not failure to receive such assets is reasonably considered to result from such action or inaction, the MassHealth agency considers the specific circumstances involved. The applicant or member and the spouse must verify the total value of countable assets. However, if he or she is applying solely for MassHealth Senior Buy-In for Qualified Medicare Beneficiaries (QMB) as described in 130 CMR 519.010: *MassHealth Senior Buy-In for Qualified Medicare Beneficiaries (QMB)* or MassHealth Buy-In for Specified Low Income Medicare Beneficiaries (SLMB) or MassHealth Buy-In for Qualifying Individuals (QI) both as described in 130 CMR 519.011: *MassHealth Buy-In*, verification is required only upon request by the MassHealth agency. 130 CMR 520.007 also contains the verification requirements for certain assets. The assets that the MassHealth agency considers include, but are not limited to, the following.

....

(E) Cash-surrender Value of Life-insurance Policies.

(1) The cash-surrender value of a life-insurance policy is the amount of money, if any, that the issuing company has agreed to pay the owner of the policy upon its cancellation. An individual may adjust the cash-surrender value of life insurance to meet the asset limit. The MassHealth agency will consider the cash-surrender-value amount an inaccessible asset during the adjustment period.

(2) If the total face value of all countable life-insurance policies owned by the applicant, member, or spouse exceeds \$1,500, the total cash-surrender value of all policies held by that individual is countable. The MassHealth agency does not count the face value of burial insurance and the face value of life-insurance policies not having cash-surrender value (for instance, term insurance) in determining the total face value of life-insurance policies. Burial insurance is insurance whose terms specifically provide that the proceeds can be used only to pay the burial expenses, funeral expenses, or both of the insured.

130 CMR 520.007(E).

130 CMR 520.008: Noncountable Assets

Noncountable assets are those assets exempt from consideration when determining the value of assets. In addition to the noncountable assets described in 130 CMR 520.006 and 520.007, the following assets are noncountable.

....

(F) Funeral or Burial Arrangements.



(1) The following funeral or burial arrangements for the applicant, member, or spouse are considered noncountable assets:

(a) *any burial space, including any burial space for any immediate family member;*

(b) one of the following:

1. a separately identifiable amount not to exceed \$1,500 expressly reserved for funeral and burial expenses; or

2. life-insurance policies designated exclusively for funeral and burial expenses with a total face value not to exceed \$1,500;

(c) the cash-surrender value of burial insurance; and

(d) *prepaid irrevocable burial contracts or irrevocable trust accounts designated for funeral and burial expense.*

(2) Appreciated value or interest earned or accrued and left to accumulate on any contracts, accounts, or life insurance is also noncountable. If the applicant, member, or spouse uses any of these assets, including the interest accrued, for other than funeral or burial arrangements of the applicant, member, or spouse, the MassHealth agency considers the asset available and countable under the provisions of 130 CMR 520.007, 520.018, and 520.019.

(3) The applicant, member, or spouse has the right to establish a burial arrangement or change the designation of his or her funds to a burial arrangement described in 130 CMR 520.008(F). If such arrangement is made within 60 days after the date that the applicant or member was notified of his or her right to do so, then the MassHealth agency considers the arrangement to have been in existence on the first day of the third month before the application.

130 CMR 520.008(F) (emphasis added).

130 CMR 520.018: Transfer of Resources Regardless of Date of Transfer

(A) The provisions of 42 U.S.C. 1396p apply to all transfers of resources. In the event that any portion of 130 CMR 520.018 and 520.019 conflicts with federal law, the federal law supersedes.

(B) The MassHealth agency denies payment for nursing-facility services to an otherwise eligible nursing-facility resident as defined in 130 CMR 515.001: *Definition of Terms* who transfers or whose spouse transfers countable resources for less than fair-market value during or after the period of time referred to as the look-back period.

(C) The denial of payment for nursing-facility services does not affect the individual's eligibility for other MassHealth benefits.

(D) Circumstances giving rise to disqualifying transfers of resources are also described at 130 CMR 520.007(J).

130 CMR 520.018.

130 CMR 520.019: Transfer of Resources Occurring on or after August 11, 1993

(A) Payment of Nursing-facility Services. The MassHealth agency applies the provisions of 130 CMR 520.018 and 520.019 to nursing-facility residents as defined at 130 CMR 515.001: *Definition of Terms* requesting MassHealth agency payment for nursing-facility services provided in a nursing facility or in any institution for a level of care equivalent to that received in a nursing facility or for home- and community-based services provided in accordance with 130 CMR 519.007(B): *Home- and Community-based Services Waiver-Frail Elder*.

(B) Look-back Period. 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. The 60-month look-back period will begin to be phased in on February 8, 2009. Beginning on March 8, 2009, applicants will be asked to provide verifications of their assets for the 37 months prior to the application. As each month passes, the look-back period will increase by one month until the full 60 months is reached on February 8, 2011.

(3) For transfers of resources from or into trusts, the look-back period is described in 130 CMR 520.023(A).

(C) Disqualifying Transfer of Resources. 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). 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.

(D) Permissible Transfers. The MassHealth agency considers the following transfers permissible. Transfers of resources made for the sole benefit of a particular person must be in accordance with federal law.

- (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) Effective until sixty days after the end of the maintenance of effort and continuous eligibility provisions of Section 6008 of the Families First Coronavirus Response Act (Public Law No. 116-127), the resources were transferred to a pooled trust created for the sole benefit of the permanently and totally disabled nursing-facility resident. Effective sixty days after the end of the maintenance of effort and continuous eligibility provisions of Section 6008 of the Families First Coronavirus Response Act (Public Law No. 116-127), this transfer is no longer permissible.
- (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).

(E) Repayment of Financial and Medical Assistance. A nursing-facility resident who has received or will be receiving payment from a third party as a result of an accident, injury, or other loss must

first repay the MassHealth agency for medical assistance under M.G.L. c. 118E, § 22 and 42 U.S.C. 1396a(a)(25)(A) and (B) and the Department of Transitional Assistance for financial assistance under M.G.L. c. 18, § 5G, before the MassHealth agency will consider whether a transfer of such third-party payments may be permissible under 130 CMR 520.019(D), (F), or (J).

(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.

(G) Period of Ineligibility Due to a Disqualifying Transfer.

(1) Duration of Ineligibility. If the MassHealth agency has determined that a disqualifying transfer of resources has occurred, the MassHealth agency will calculate a period of ineligibility. The number of months in the period of ineligibility is equal to the total, cumulative, uncompensated value as defined in 130 CMR 515.001: *Definition of Terms* of all resources transferred by the nursing-facility resident or the spouse, divided by the average monthly cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency.

(2) Determination of the Period of Ineligibility in Special Circumstances. The MassHealth agency determines the periods of ineligibility in the following situations.

(a) Transfers in the Same Month. When a number of resources have been transferred in the same month, the MassHealth agency calculates the period of ineligibility by dividing the total value of the transferred resources by the average monthly cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency. The period of ineligibility begins on the first day of the month in which the resources were transferred.

(b) Periods of Ineligibility That Overlap. When transfers of resources result in periods of ineligibility that overlap, the MassHealth agency adds the value of all the transferred resources and divides the total by the average monthly cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency. The result is a single period of ineligibility beginning on the first day of the month in which the first transfer was made.

(c) Periods of Ineligibility That Do Not Overlap. In the case of multiple transfers where the periods of ineligibility for each transfer do not overlap, the MassHealth agency considers each transfer as a separate event with its own period of ineligibility. For non-overlapping multiple transfers occurring on or after February 8, 2006, see 130 CMR

520.019(G)(2)1.

(d) Periods of Ineligibility of Less Than One Month. If the calculated period of ineligibility is less than one month, the MassHealth agency imposes a partial-month period of ineligibility and does not round down or disregard any fractional period of ineligibility.

(e) Transfer of Lump-sum Income. When income has been transferred as a lump sum, the MassHealth agency calculates the period of ineligibility on the lump-sum value.

(f) Transfer of Stream of Income. When a stream of income has been transferred, the MassHealth agency calculates the period of ineligibility for each income payment that is periodically transferred. The MassHealth agency may impose partial-month periods of ineligibility.

(g) Transfer of the Right to a Stream of Income. When the right to a stream of income has been transferred, the MassHealth agency calculates the period of ineligibility based on the total amount of income expected to be transferred during the nursing-facility resident's life, according to the life-expectancy tables as determined by the MassHealth agency.

(h) Transfer by the Spouse. When a transfer by the spouse results in a period of ineligibility for the nursing-facility resident, and the spouse later becomes institutionalized and applies for MassHealth agency payment of nursing-facility services, the MassHealth agency apportions the remaining period of ineligibility equally between the spouses. If both spouses become nursing-facility residents in the same month, the MassHealth agency divides the period of ineligibility equally between them. When one spouse is no longer subject to a penalty, any remaining penalty must then be imposed on the remaining nursing-facility-resident spouse.

(i) Multiple Transfers Occurring on or after February 8, 2006. 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.

(3) Begin Date. For transfers occurring before February 8, 2006, the period of ineligibility begins on the first day of the month in which resources have been transferred for less than fair-market value. For transfers occurring on or after February 8, 2006, the period of ineligibility begins on the first day of the month in which resources were transferred for less than fair-market value or the date on which the individual is otherwise eligible for MassHealth agency payment of long-term-care services, whichever is later. For transfers involving revocable trusts, the date of transfer is the date the payment to someone other than the nursing-facility resident or the spouse is made. For transfers involving irrevocable trusts, the date of transfer is

(a) the date that the countable trust resources are transferred to someone other than

the nursing-facility resident or spouse; or

(b) the latest of the following:

1. the date that payment to the nursing-facility resident or the spouse was foreclosed under the terms of the trust;
2. the date that the trust was established; or
3. the date that any resource was placed in the trust.

(H) Transfers of Jointly Held Resources. The MassHealth agency will determine the amount of the nursing-facility resident's ownership interest of jointly held resources as defined in 130 CMR 515.001: *Definition of Terms* in accordance with the ownership rules at 130 CMR 520.005. The MassHealth agency will consider as a transfer any action taken by any person that reduces or eliminates the nursing-facility resident's ownership or control of the resource. The MassHealth agency then will determine whether the transfer was made at less than fair-market value in accordance with the transfer rules.

(I) Transfer of Life-estate and Remainder Interest. The rules pertaining to transfer of life-estate and remainder interest apply in instances involving remainder interest of property including life estates, annuities, wills, and trusts.

(1) The MassHealth agency considers a transfer of property with the retention of a life estate, as defined in 130 CMR 515.001: *Definition of Terms*, to be a transfer of resources. The difference between the fair-market value of the entire asset and the value of the life estate is called the remainder interest. The remainder interest is the amount considered to be transferred at less than fair-market value. The MassHealth agency will calculate the values of the remainder interest and the life estate in accordance with the life-estate tables, as determined by the MassHealth agency. If the language of the document creating the life estate explicitly states that the owner of the life estate has the power to sell the entire property (not simply the life estate), then the creation of this type of life estate will be treated as a trust.

(2) If the nursing-facility resident's or the spouse's life-estate interest or property including the life-estate interest is sold or transferred, the value of the life-estate interest at the time of the sale or transfer is calculated in accordance with the life-estate tables, as determined by the MassHealth agency. The MassHealth agency will attribute the value of the life-estate interest at the time of the sale or transfer to the person selling or transferring the life estate.

(3) The MassHealth agency considers the purchase of a life estate in another individual's home made on or after April 1, 2006, a disqualifying transfer, unless the purchaser resides in the home for a period of at least one year after the date of the purchase.

(J) Home Equity Loans and Reverse Mortgages. Proceeds from a home equity loan or a reverse mortgage that are transferred in the month of receipt will be considered a disqualifying transfer of resources if transferred for less than fair-market value.

(K) Exempting Transfers from the Period of Ineligibility.

(1) During the Eligibility Process. To avoid the imposition of a period of ineligibility, the nursing-facility resident may take action during the determination of eligibility before the issuance of a notice of a period of ineligibility as follows.

(a) Revising a Trust. During the eligibility process, the nursing-facility resident may revise a trust to comply with the criteria of a special-needs trust or a pooled trust, as defined in 130 CMR 515.001: *Definition of Terms*. The use of resources to create these trusts are permissible transfers, in accordance with 130 CMR 520.019(D). The MassHealth agency will use the original application date if during the eligibility process the nursing-facility resident provides proof that the trust has been revised accordingly.

(b) Curing a Transfer. During the eligibility process, the full value or a portion of the full value of the transferred resources may be returned to the nursing-facility resident. The MassHealth agency will use the original application date and consider the transfer to have been eliminated or adjusted. The MassHealth agency will apply the countable assets rules at 130 CMR 520.007 and the countable income rules at 130 CMR 520.009 to the returned resources in determining eligibility.

(2) After Issuance of the Notice of the Period of Ineligibility. After the issuance of the notice of the period of ineligibility, the nursing-facility resident may avoid imposition of the period of ineligibility in the following instances.

(a) Revising a Trust. If the nursing-facility resident revises a trust to comply with the criteria of a special-needs trust or a pooled trust as defined in 130 CMR 515.001: *Definition of Terms* and exempted in 130 CMR 520.019(D), the MassHealth agency will rescind the period of ineligibility as follows.

1. The MassHealth agency will use the original application date if within 60 days after the date of the notice of the period of ineligibility, the nursing-facility resident provides proof that the trust has been revised to comply with the criteria of a special-needs trust or a pooled trust. The MassHealth agency may extend the original 60-day period for an additional 120 days, if court action is required to revise the trust, as long as the court action is filed within the 60-day period after the date of the notice of the period of ineligibility.

2. If after the 60th day after the date of the notice of the period of ineligibility, the nursing-facility resident provides proof that the trust has been revised to comply with the criteria of a special-needs trust or a pooled trust, the MassHealth agency will consider the trust revised as of the date the trust has been both revised and notarized.

(b) Curing a Transfer. If the full value or a portion of the full value of the transferred resources is returned to the nursing-facility resident, the MassHealth agency will rescind or adjust the period of ineligibility and will apply the countable-assets rules at 130 CMR 520.007 and the countable-income rules at 130 CMR 520.009 to the returned resources in the determination of eligibility. The MassHealth agency will rescind or adjust the period of ineligibility as follows.

1. The MassHealth agency uses the original application date if the nursing-facility resident provides proof within 60 days after the date of the notice of the period of

ineligibility that the transfer has been fully or partially cured. In the case of a partial cure, the MassHealth agency recalculates the period of ineligibility based on the transferred amount remaining after deducting the cured portion, beginning with the date of transfer or, for cures of transfers occurring on or after February 8, 2006, the later of the date of transfer or the date on which the individual would have otherwise been eligible.

2. If the nursing-facility resident provides proof later than the 60<sup>th</sup> day after the date of the notice of a period of ineligibility that the transfer has been fully or partially cured, the nursing-facility resident must reapply. The MassHealth agency recalculates the period of ineligibility based on the amount of the transfer remaining after the cure, beginning with the date of transfer or, for cures of transfers occurring on or after February 8, 2006, the later of the date of transfer or the date on which the individual would have otherwise been eligible.

(L) Waiver of the Period of Ineligibility Due to Undue Hardship. In addition to revising a trust and curing a transfer, the nursing-facility resident may claim undue hardship in order to eliminate the period of ineligibility.

(1) The MassHealth agency may waive a period of ineligibility due to a disqualifying transfer of resources if ineligibility would cause the nursing-facility resident undue hardship. The MassHealth agency may waive the entire period of ineligibility or only a portion when all of the following circumstances exist.

(a) The denial of MassHealth would deprive the nursing-facility resident of medical care such that his or her health or life would be endangered, or the nursing-facility resident would be deprived of food, shelter, clothing, or other necessities such that he or she would be at risk of serious deprivation.

(b) Documentary evidence has been provided that demonstrates to the satisfaction of the MassHealth agency that all appropriate attempts to retrieve the transferred resource have been exhausted and that the resource or other adequate compensation cannot be obtained to provide payment, in whole or part, to the nursing-facility resident or the nursing facility.

(c) The institution has notified the nursing-facility resident of its intent to initiate a discharge of the resident because the resident has not paid for his or her institutionalization.

(d) There is no less costly noninstitutional alternative available to meet the nursing-facility resident's needs.

(2) Undue hardship does not exist when imposition of the period of ineligibility would merely inconvenience or restrict the nursing-facility resident without putting the nursing-facility resident at risk of serious deprivation.

(3) Where the MassHealth agency has issued a notice of the period of ineligibility due to a disqualifying transfer of resources, the nursing-facility resident may request a hardship waiver. For transfers occurring on or after February 8, 2006, nursing facilities may apply for a hardship waiver on behalf of a resident, with the consent of the nursing-facility resident or



the resident's authorized representative.

(4) If the nursing-facility resident feels the imposition of a period of ineligibility would result in undue hardship, the nursing-facility resident must submit a written request for consideration of undue hardship and any supporting documentation to the MassHealth Enrollment Center listed on the notice of the period of ineligibility within 15 days after the date on the notice. Within 30 days after the date of the nursing-facility resident's request, the MassHealth agency will inform the nursing-facility resident in writing of the undue-hardship decision and of the right to a fair hearing. The MassHealth agency will extend this 30-day period if the MassHealth agency requests additional documentation or if extenuating circumstances as determined by the MassHealth agency require additional time.

(5) The nursing-facility resident may appeal the MassHealth agency's undue-hardship decision and the imposition of a period of ineligibility by submitting a request for a fair hearing to the Office of Medicaid Board of Hearings within 30 days after the nursing-facility resident's receipt of the MassHealth agency's written undue-hardship notice, in accordance with 130 CMR 610.000: *MassHealth: Fair Hearing Rules*.

(6) The nursing-facility resident's request for consideration of undue hardship does not limit his or her right to request a fair hearing for reasons other than undue hardship.

(M) Fraudulent Transfer or Sale. If a nursing-facility resident whose estate would be subject to a claim under 130 CMR 515.011: *Estate Recovery* transfers or sells any property including a home or an interest in the property for less than fair-market value, the MassHealth agency may consider the transfer or sale that does not meet the conditions of 130 CMR 520.019(D)(6) to be fraudulent under the Uniform Fraudulent Conveyance Act (M.G.L. c. 109(A)) and take appropriate legal action to set aside the transfer or sale.

(N) No Double Penalty. In the event that application of the transfer rules and the trust rules in 130 CMR 520.000 results in a nursing-facility resident being subject to a transfer penalty twice for actions involving the same resource, the trust rules will supersede the transfer rules in the determination of eligibility.

130 CMR 520.019.

Here, the main issue in dispute is whether MassHealth correctly assessed a 31-day transfer penalty period when it approved the Appellant for long-term care services in a nursing facility, with an effective start date of February 28, 2024. The Appellant's representative provided evidence, credited by the MassHealth representative as a partial cure, that the Appellant intended to use the transferred funds toward her funeral and burial arrangements. 130 CMR 520.008(F); Exhibit 15.

Under 130 CMR 520.008(F), funeral and burial arrangements are not considered countable assets. However, the regulation specifies that it includes "*prepaid* irrevocable burial contracts or irrevocable trust accounts designated for funeral and burial expense." 130 CMR 520.008(F)(1)(d) (emphasis added). I understand that the value of the funeral and burial contracts that the

Granddaughter entered into on behalf of the Appellant are more than \$13,300.00, but the full amount due on the contract has not yet been paid. If the Granddaughter does not continue making payments on the burial contract, it will be revoked. Exhibits 12 and 13. The funeral contract is irrevocable. Exhibits 12 and 13. The deposit and payments towards the burial plot total \$1,586.98 and the deposit and payments toward the funeral contract total \$6,062.37, for a combined total of \$7,649.35. Exhibit 13. The Appellant's representative has provided evidence that the \$7,649.35 paid for the funeral and burial contracts should not be considered as a transfer penalty. Subtracting that amount from \$13,300.00 results in \$5,650.65, in funds that the Appellant transferred to her Granddaughter, and which has not yet been paid toward either the funeral or burial contract. Dividing that amount by the \$433/daily rate testified to by MassHealth, results in 13.05. This equals a fourteen-day penalty period, as the regulations specify for those periods that are less than a month to not round down. 130 CMR 520.019(G)(2)(d). This results in a start date of February 11, 2024, instead of February 28, 2024.<sup>3</sup> Accordingly, the appeal is approved in part, and denied in part.

## **Order for MassHealth**

Amend October 29, 2024 notice, and/or issue new notice to reflect that the Appellant became eligible for long-term care services on February 11, 2024, if she was otherwise eligible.

## **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.

---

<sup>3</sup> Under 130 CMR 520.019(L), the Appellant could also consider applying for a hardship waiver. 130 CMR 520.019(L).

Emily Sabo  
Hearing Officer  
Board of Hearings

[REDACTED]

[REDACTED]

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