

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2419618
Decision Date:	05/01/2025	Hearing Date:	03/11/2025
Hearing Officer:	Marc Tonaszuck		

Appearance for Appellant:




Appearance for MassHealth:

Jennifer Carroll



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

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Long Term Care – Disqualifying Transfer
Decision Date:	05/01/2025	Hearing Date:	03/11/2025
MassHealth's Rep.:	Jennifer Carroll	Appellant's Rep.:	
Hearing Location:	Taunton MassHealth Enrollment Center	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 12/16/2024, MassHealth informed the appellant that it denied his application for Long Term Care (LTC) benefits. Through the same notice, MassHealth informed the appellant that it calculated a period of ineligibility from the requested start date of 08/01/2024 to 10/14/2025 because he recently gave away or sold assets to become eligible for MassHealth long term care services (130 CMR 520.018, 520.019; Exhibit 1). A request for a fair hearing was filed in a timely manner on the appellant's behalf on 12/24/2024 (130 CMR 610.015; Exhibit 2). Individual MassHealth agency determinations regarding scope and amount of assistance (including, but not limited to, level-of-care determinations) are valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth long term care benefits and imposed a period of ineligibility from 08/01/2024 to 10/14/2025.

Issue

Was MassHealth correct in denying the appellant's application for LTC benefits and imposing a period of ineligibility from 08/01/2024 to 10/14/2025?

Summary of Evidence

The MassHealth representative testified that on 10/30/2024, an application for long term care (LTC) benefits was submitted on behalf of the appellant, seeking 08/01/2024 as a benefit start date. In reviewing the appellant's application, MassHealth verified that the appellant was one of two beneficiaries who inherited the proceeds from the sale of home on [REDACTED] previously owned by the appellant's late father. The appellant's brother is the other beneficiary. According to the father's will, both brothers stood to inherit 50% of the estate, which totaled \$380,438.40. The appellant's share of the inheritance is \$190,219.20.

According to the documentation received by MassHealth, the appellant did not receive his share of the inheritance. His brother took the entire inheritance. Because the appellant has not exercised his right to his share of the inheritance, MassHealth considers it a transfer of resources, resulting in a period of ineligibility. To calculate the period of ineligibility, MassHealth divided the disqualifying transfer amount of \$190,219.20 by the average private daily rate for a nursing facility in Massachusetts, \$441.00. The resulting period of ineligibility begins the date the appellant is otherwise eligible for LTC benefits, or 08/01/2024, the date requested by the skilled nursing facility, and it ends in 431 days on 10/14/2025.

The appellant was represented at the fair hearing by an attorney and a representative from [REDACTED]. They testified that the appellant's share of the inheritance was to be distributed to a supplemental needs trust in the appellant's name. Instead, the appellant's brother did not make the distribution and bought property for himself in [REDACTED]. The skilled nursing facility representatives have attempted to reach out to the appellant's brother; however, he has either not responded, or has declined to assist the appellant. In an affidavit, the appellant stated that he fears retribution from his brother if he finds out that the appellant has reported his misappropriation of the estate's assets (Exhibit 6).

Findings of Fact

Based on a preponderance of the evidence, I find:

1. The appellant, a single man, is a resident of a skilled nursing facility (Testimony; Exhibit 5).
2. An application for long term care (LTC) benefits was submitted on behalf of the appellant on

10/30/2024, seeking a benefit start date of 08/01/2024 (Testimony; Exhibit 5).

3. MassHealth determined that there was a disqualifying transfer of resources totaling \$190,219.20 during the 60-month look back period (Testimony; Exhibit 5).
4. By a notice dated 12/16/2024, MassHealth informed the appellant that it denied his application for long term care (LTC) benefits and calculated a period of ineligibility of 431 days because he recently gave away or sold assets to become eligible for MassHealth long term care services. MassHealth calculated a period of ineligibility from 08/01/2024 and ending on 10/14/2025 (Testimony; Exhibits 1 and 5).
5. A timely appeal was filed by the appellant on 12/24/2024 (Testimony; Exhibits 2 and 4).
6. A fair hearing took place before the Board of Hearings on 03/11/2025. The appellant was represented at the fair hearing by an attorney and a representative from [REDACTED] (Exhibits 2 and 3).
7. The transfer at issue in this appeal involves the sale of real estate owned by the appellant's late father. The real estate was sold on 0 [REDACTED] and the proceeds totaled \$380,438.40.
8. According to the appellant's father's will, the estate was to be left to the appellant and his brother in shares of 50%.
9. The appellant's share of the inheritance is \$190,219.20.
10. The appellant's brother did not make the distribution of 50% of the inheritance to the appellant; instead, he used the entire inheritance for his own use. The appellant received none of the proceeds.
11. The appellant and his representatives have reached out to the appellant's brother by telephone but have not been successful in having him return the appellant's share to him (Exhibit 6).
12. The average private daily rate for a skilled nursing facility in Massachusetts is \$441.00.
13. The appellant was otherwise eligible for MassHealth LTC benefits on 08/01/2024, the date requested by the skilled nursing facility for MassHealth benefits (Testimony).
14. MassHealth calculated a period of ineligibility from 08/01/2024 to 10/14/2025 (Testimony; Exhibit 1).
15. The appellant did not dispute the amount of the transfer, the dates of the transfer, the average daily private rate, MassHealth's calculation of the period of ineligibility, or the date the appellant

was otherwise eligible for payment of MassHealth benefits (Testimony).

16. Any transfer during the look-back period for less than fair-market value is a disqualifying transfer unless listed as permissible in 130 CMR 520.019(D).

Analysis and Conclusions of Law

The intent of any transfer within the look back period is always subject to review and within MassHealth's purview in an eligibility determination.

130 CMR 520.016: Long-Term Care: Treatment of Assets

130 CMR 520.016 describes the treatment of countable assets when one member of a couple is institutionalized, the post-eligibility transfer of assets, and the allowable income deductions for applicants and members who are residents of a long-term-care facility.

- (A) Institutionalized Individuals. The total value of assets owned by an institutionalized single individual or by a member of an institutionalized couple must not exceed \$2,000.

MassHealth 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).

MassHealth 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. A disqualifying transfer may include any action taken which would result in making a formerly available asset no longer available (130 CMR 520.019(C)).

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

- (A) Payment of Nursing-Facility Services. The MassHealth agency will apply the provisions of 130 CMR 520.018 and 520.019 to nursing-facility residents as defined at 130 CMR 515.001 requesting MassHealth 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).

(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. This period generally extends back in time for 36 months. For transfers of resources occurring on or after February 8, 2006, the period extends back in time for 60 months. The look-back period for transfers of resources from a revocable trust to someone other than the nursing-facility resident, or transfers of resources into an irrevocable trust where future payment to the nursing-facility resident is prevented, is 60 months.

(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).¹ ***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 will consider 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 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.

¹ 130 CMR 520.019(J) involves home equity loans and reverse mortgages and are not at issue in the instant appeal.

(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 under 65 years of age 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 under age 21, 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.

(F) Determination of Intent. In addition to the permissible transfers described in 130 CMR 520.019(D) MassHealth 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.

(Emphasis added.)

MassHealth determined that there was a disqualifying transfer of resources totaling \$190,219.20 during the 60-month look back period; specifically, that the appellant was a 50% beneficiary of his father's estate, which totaled \$380,438.40. The appellant's late father left the estate to the appellant and his brother; however, the appellant's brother never made the appropriate distribution to the appellant, instead keeping the entire proceeds for his own use. According to the appellant's representatives, he has been unable to convince his brother to return to the appellant his share of the inheritance.

By failing to take all appropriate actions to receive his share of the inheritance, the appellant has taken action to avoid receiving it. There is no evidence that the appellant has pursued any legal or administration action against his brother. The testimony advanced by the appellant's representatives is contradictory. Specifically, the appeal representatives stated the appellant has been unable to reach his brother or has not been successful in convincing him that his share should be returned. Other testimony was that the appellant had not been able to reach his brother. Additionally, the appellant states he "fears" his brother; however, the appellant is in a skilled nursing facility in Massachusetts and his brother presumably lives in [REDACTED]. Consequently, MassHealth correctly determined that the appellant's inaction to recover his share of the inheritance is a disqualifying transfer of \$190,219.20. MassHealth also correctly imposed a period of ineligibility based on the amount of the disqualifying transfer divided by the average private daily rate for a skilled nursing facility in Massachusetts, \$441.00. Since the appellant did not contest the amount of the proceeds from the sale of the property, or the calculation used by MassHealth to determine the period of ineligibility, MassHealth's action is supported by the material facts and the relevant regulations. This appeal is therefore denied.

Order for MassHealth

None.

Notification of Your Right to Appeal to Court

If you disagree with this decision, in part or whole, 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

Marc Tonaszuck
Hearing Officer
Board of Hearings

[REDACTED]

[REDACTED]

[REDACTED]

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780