

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in part; Denied in part	<b>Appeal Number:</b>	2419625
<b>Decision Date:</b>	05/23/2025	<b>Hearing Dates:</b>	01/24/2025 03/28/2025
<b>Hearing Officer:</b>	Thomas J. Goode	<b>Record Open:</b>	05/02/2025

**Appearance for Appellant:**




**Appearance for MassHealth:**

Eileen Smith, Charlestown 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- Disqualifying Transfer
<b>Decision Date:</b>	05/23/2025	<b>Hearing Dates:</b>	01/24/2025 03/28/2025
<b>MassHealth's Rep.:</b>	Eileen Smith	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Remote	<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 December 13, 2024, MassHealth approved the Appellant for MassHealth Standard community benefits effective October 1, 2024; MassHealth further determined that Appellant was not eligible for Long Term Care benefits because she had recently given away or sold assets to become eligible for MassHealth long-term-care services resulting in a period of ineligibility from October 13, 2022 to March 20, 2025 (130 CMR 520.019 and Exhibit 1). Appellant's conservator filed this appeal in a timely manner on December 24, 2024 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032). A hearing was held on January 24, 2025. The hearing was continued on March 28, 2025, and the hearing record remained open for MassHealth to submit a legal memorandum by April 18, 2025 which was timely received (Exhibit 8). The hearing record remained open until May 2, 2025 to allow Appellant's representative to submit a response to the legal memorandum. On April 12, 2025, Appellant's representative submitted a response stating that an update would be submitted following a court hearing on April 16, 2025 (Exhibit 9). No additional documentation was submitted by Appellant's representative and the hearing record closed on May 2, 2025.

## Action Taken by MassHealth

MassHealth approved the Appellant for MassHealth Standard community benefits effective October 1, 2024, and denied Long Term Care benefits because Appellant had recently given away or sold assets to become eligible for MassHealth long-term-care services resulting in a period of ineligibility from October 13, 2022 to March 20, 2025.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019 in determining that Appellant had recently given away or sold assets to become eligible for MassHealth long-term-care services resulting in a period of ineligibility from October 13, 2022 to March 20, 2025.

## Summary of Evidence

At the first hearing, the MassHealth representative testified that Appellant was admitted to a skilled nursing facility on [REDACTED]. The controlling application date for long-term care is dated December 28, 2022, which was denied on April 12, 2023 for failure to provide verification of eligibility. The denial was appealed, and the application date was preserved. On November 29, 2023, the application was denied for excess assets, which was also appealed and MassHealth preserved the application date.<sup>1</sup> Based on a December 28, 2022 application date, a retroactive coverage start date of September 1, 2022 is the earliest start date of eligibility. Appellant was receiving MassHealth benefits from January 1, 2019 through April 2, 2021. Appellant privately paid for her nursing facility stay through August 31, 2022. MassHealth determined that Appellant's assets exceeded program limits by \$18,302 on September 1, 2022. The MassHealth representative stated that based on the nursing facility's private pay rate of \$430 a day, the excess assets of \$18,302 would cover the appellant's nursing facility expenses from September 1, 2022 through October 12, 2022, resulting in an earliest possible MassHealth start date of October 13, 2022 (Exhibit 5, pp. 7-10).

The MassHealth representative stated further that the Appellant's property was sold on [REDACTED] by her son and power of attorney, with gross sales proceeds of \$900,750.89, and net proceeds of \$640,713.19 (Exhibit 5, p. 15). The nursing facility<sup>2</sup> reported that Appellant had been receiving MassHealth benefits until the sale of Appellant's property and MassHealth recovered \$121,121.43 from the sale to cover services paid up to that date. The remaining assets resulted in termination

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<sup>1</sup> The hearing was continued in part to probe the controlling application date of December 28, 2022 and potential retroactive start date of September 1, 2022 despite issuance of a hearing decision in Appeal No. 2313423 which upheld a MassHealth denial dated November 28, 2023 for excess assets on an application dated February 8, 2023 (See Exhibit 10). At the continued hearing, the MassHealth representative explained that MassHealth agreed to preserve the application date to resolve a Chapter 30A appeal filed by Appellant.

<sup>2</sup> The nursing facility where Appellant had resided closed [REDACTED] and she is residing in a different facility.

of MassHealth benefits on September 30, 2020. Beginning October 1, 2020, Appellant paid the facility privately through July 21, 2022 while she received skilled care under Medicare. On July 31, 2022, skilled care ended, and Appellant paid privately from August 1, 2022 through August 31, 2022. Private payments to the facility amounted to \$261,580, with no payments made toward patient paid amount. On February 28, 2023, the facility requested coverage effective September 1, 2022. (Exhibit 5, p. 14).

The MassHealth representative stated that the \$261,580.00 paid to the nursing facility was deducted from the net sale proceeds of \$640,713.19, resulting in \$379,133.00 in unaccounted for assets. The MassHealth representative stated that additionally there is a total of \$6,115.00 in assets unaccounted for from the appellant's pension. The MassHealth representative stated that MassHealth determined that a total of \$385,248 (\$379,133 + \$6,115) was transferred for less than fair market value. The transferred amount was divided by the average daily nursing facility cost in effect at the time of the application, \$433.00, resulting in an ineligibility period of 889 days (\$385,248/\$433 = 889). The MassHealth representative stated that the ineligibility period began on October 13, 2022 and ran through March 20, 2025.

The second hearing was held on March 28, 2025 and during the hearing the conservator requested a last-minute hardship waiver under 130 CMR 520.019(L), which failed as untimely. The conservator submitted documentation pertaining to the request for hardship which was sent to MassHealth and was not received by the enrollment center until after the hearing.<sup>3</sup> The documentation the conservator sent included a copy of the Subpoena Duces Tecum she served on the son's closing attorney along with several back-and-forth emails from the attorney with the final being a refusal on his part to produce documents based on attorney-client privilege without a court order. The material also included the conservator's petition for Motion to Compel the attorney, filed in the Suffolk Probate Court on December 16, 2024 as well as the sale closing documents, the POAs, the 2020 Superior Court Case, and other related material (Exhibit 4). The conservator also submitted selected [REDACTED] bank statements which show a money market, savings and checking account opened by the son after the home sale with several hundred thousand worth of fund deposits and large personal cash withdrawals by the son. The account numbers on the [REDACTED] check payments to the nursing facility do not match up with the [REDACTED] account numbers on the statements submitted by the conservator.

At the March 28, 2025 hearing, it was noted that the application upon which the December 13, 2024 MassHealth notice is based is dated October 9, 2024. Upon questioning by the Hearing Officer, the MassHealth representative stated that MassHealth Legal asked MassHealth to reopen and process the appellant's December 28, 2022 application after appeal decision 2313423<sup>4</sup> was appealed to Superior Court under MGL chapter 30A. Appellant's representative

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<sup>3</sup> MassHealth submitted a response during the first hearing indicating that the hardship waiver was not timely (Exhibit 6).

<sup>4</sup> This appeal concerned a denial for excess assets totaling \$22,858.17 upheld by a Board of Hearings decision.

stated that the 30A appeal of 2313423 is still pending at Superior Court<sup>5</sup>.

The hearing record remained open for MassHealth to submit a legal memorandum by April 18, 2025 and until May 2, 2025 to allow Appellant's representative to submit a response to the legal memorandum. (Exhibit 8). MassHealth timely submitted a legal memorandum, and on April 12, 2025, Appellant's representative submitted a response stating that an update would be submitted following a court hearing on April 16, 2025 (Exhibit 9). No additional documentation was submitted by Appellant's representative and the hearing record closed on May 2, 2025.

The MassHealth legal memorandum addressed the question of whether the transfer penalty exemption under 130 CMR 520.019(F) should apply and concluded that the conservator has submitted sufficient documentation which could support a finding by the Hearing Officer that the penalty period exemption under 130 CMR 520.019(F) applies in this case. MassHealth asserts that this would be a credibility determination by the Hearing Officer. The MassHealth legal memorandum provided the following discussion of the submitted documentation, analysis of the exemption rule, as well as possible additional areas for consideration. Appellant entered the nursing facility on or about [REDACTED]. In 2019, her stepdaughter filed a MassHealth application on her behalf and Appellant received MassHealth benefits beginning on January 2, 2019. On March 6, 2020, Appellant appointed her son as her power of attorney (POA), thereby replacing her stepdaughter who had previously been appointed on March 8, 2016 by Appellant and her now deceased husband. On August 28, 2020 the daughter filed a Complaint in Suffolk Superior Court against her stepbrother's POA appointment and his planned sale of the home alleging fraud, misrepresentation, and conversion and claiming he obtained the POA on false pretenses, using the funds for his own unjust enrichment and not for Appellant's benefit. In a decision dated October 8, 2020, the Superior Court judge ruled in favor of the son, finding that Appellant was lucid at the time she appointed her son as POA, but also stating that she did later deteriorate with a neurological disorder and that by July 11, 2020, she had become mentally unfit and was unable to make life decisions. The judge also ruled that the son should proceed with the home sale, pay Appellant's outstanding debts and liens, and then place the net proceeds into an interest-bearing account for Appellant's care. The judge ordered the son to provide quarterly accountings to the stepdaughter, who was a joint devisee under Appellant's will. The house was sold on or about [REDACTED], with net proceeds of \$640,713.19 after payment of the closing costs, taxes, mechanic liens, and MassHealth lien of \$121,121.48. After the sale, Appellant was over assets for MassHealth, however because of the COVID freeze her MassHealth eligibility was protected until April 2, 2021. The son/POA then used some of the sale proceeds to privately pay the nursing home through August 31, 2022, with his payments totaling \$261,580. He then stopped making payments, resulting in a disqualifying transfer of the remaining funds. MassHealth calculated that the diverted sale proceeds and diverted pension funds amounted to \$385,248. The appeal stems from a MassHealth application filed on December 28, 2022 by the

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<sup>5</sup> Neither party addressed how the outcome of the 30A appeal concerning excess assets would affect the outcome of this appeal, and I do not address such issue here.

conservator requesting benefits to restart retroactive to September 1, 2022. The conservator had been appointed as temporary on December 9, 2022 and was made permanent on February 2, 2023. The application was denied with a disqualifying transfer running from October 13, 2022 to March 20, 2025 and then went to appeal. Currently, the penalty period has expired, the conservator has not filed an additional application to restart the benefits from the expiration date.

The MassHealth legal memorandum provides the following legal analysis:

A. Intention to Transfer for FMV

According to the Superior Court judge in the October 2020 decision, Appellant's home had been damaged by fire in [REDACTED] and the home was unrentable, uninhabitable and subject to tax and mechanic liens. She was living in a nursing facility and would have had ongoing health care needs. The judge held that Appellant was of clear mind when she appointed her son as power of attorney, although she declined shortly after, and that the power of attorney instrument allowed for a sale of her home. MassHealth determined that it is reasonable to infer that Appellant would have intended that any sale of her home would be for FMV in order to provide sufficient additional funding for her ongoing care. As far as nursing home payments, the evidence indicates that the son initially paid the nursing home and did not misappropriate the funds for several years after the sale when Appellant was mentally unfit and would not reasonably have awareness or control of his fraudulent actions. Further, his actions cannot be attributed to her, where he was in breach of his fiduciary obligations under the instrument in diverting her funds and placing his interests above her needs. Gagnon v. Coombs, 39 Mass. App Ct. 14 (1995). Based on these documented circumstances, it is reasonable to infer that the Appellant intended her home to be sold for FMV and not as a vehicle to hide funds from MassHealth and enrich her son.

B. Transfer Exclusively For a Purpose Other Than to Qualify for MassHealth

Given the case facts MassHealth determined that it is reasonable to infer that the proceeds were transferred by the son to unjustly enrich himself and exclusively for a purpose other than gaining MassHealth eligibility. Appellant was already in the nursing facility and on MassHealth at the time she gave her son the power of attorney. The home would have remained noncountable had she retained ownership of it. The sale of the home and transfer of the proceeds resulted in excess assets, a transfer penalty and Appellant losing eligibility. While the power of attorney did grant the son the ability to make gifts to himself or others, there was no language in the instrument providing for gifts which could enrich the son to the detriment of Appellant. With Appellant having been on MassHealth since 2019, it is even possible that the son was aware of the transfer rules which can disqualify eligibility. The son's actions exposed Appellant to loss of coverage, loss of funds for her living and health care needs and the possibility of lawsuits by other family members or the nursing facility. The son's actions appear to have breached his fiduciary duty as her attorney-in-fact by unjustly enriching himself to her detriment. Gagnon. Under these facts, the Hearing Officer could reasonably find credible evidence that the home proceeds were

transferred solely to unjustly enrich the son without Appellant's consent, and for a purpose other than obtaining MassHealth within 130 CMR 520.019(F).

The MassHealth legal memorandum concludes that there is sufficient evidence to support a finding by the Hearing Officer, that Appellant credibly satisfies the exemption at 130 CMR 520.019(F) and that she intended that her son manage her assets, with power to sell her home for FMV if needed for her care. Further, there is sufficient information that the Hearing Officer could credibly find that Appellant's son subverted her funds, without her consent, for his own enrichment and exclusively for a purpose other than MassHealth eligibility.<sup>6</sup>

Appellant's representative testified at the first hearing that Appellant met requirements for a hardship waiver. At the reconvened hearing, Appellant's representative testified that given the misappropriation of funds by Appellant's son, the evidence shows that Appellant did not intend to give away resources that would have been available to pay for her care.

## Findings of Fact

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

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<sup>6</sup> The legal memorandum also includes a section entitled Additional Considerations which proposes that many of the documents described above were submitted by the conservator near the end of the appeal for purposes of a hardship waiver as discussed earlier. Given the current review under 130 CMR 520.019(F) there are some open questions the conservator may consider addressing/documenting in any followup and which the Hearings Officer may consider reviewing in his credibility determinations:

- 1) The submitted information does not contain information on conservator outreach to the son. Has the son provided any information as to where the funds are located and how he has used the funds? Conservator indicated at the hearing that the son purchased a home with the missing funds. Is conservator in contact with the son, does she have a copy of the deed and any other information on his use of the funds? Has the conservator taken any actions in order to obtain information from the son and regain assets from him? Has the conservator revoked the son's POA?
- 2) The conservator submitted selected Santander statements evidencing personal withdrawals by the son, from presumably a complete set she obtained. Do any sale proceeds currently remain in Santander accounts and is there information on how withdrawn funds were spent?
- 3) Has the conservator contacted the stepdaughter regarding the court ordered accountings? Has conservator obtained any quarterly accountings from her? Has conservator filed any actions to obtain information regarding quarterly accountings and information on missing funds? Does the conservator know whether the daughter filed any action or police reports regarding the theft? Does the conservator know whether the daughter has received any of the missing funds?
- 4) The conservator filed a motion to compel against the son's closing attorney on December 16, 2024. Has there been a ruling on this motion? Has additional information been obtained which may help track or regain funds?

1. Appellant was admitted to a skilled nursing facility on [REDACTED]
2. In 2019, Appellant's stepdaughter filed a MassHealth application on her behalf and Appellant received MassHealth benefits beginning on January 2, 2019.
3. On March 6, 2020, Appellant appointed her son as her power of attorney (POA), thereby replacing her stepdaughter who had previously been appointed on March 16, 2016 by the applicant and her now deceased husband.
4. On August 28, 2020 the stepdaughter filed a Complaint in Suffolk Superior Court against her stepbrother's POA appointment and his planned sale of the home alleging fraud, misrepresentation, and conversion and claiming he obtained the POA on false pretenses, using the funds for his own unjust enrichment and not for Appellant.
5. In a decision dated October 8, 2020, the Superior Court judge ruled in favor of the son, finding that Appellant was lucid at the time she appointed her son as POA, but also stating that she did later deteriorate with a neurological disorder and that by July 11, 2020, she had become mentally unfit and was unable to make life decisions. The judge also ruled that the son should proceed with the home sale, pay the applicant's outstanding debts and liens, and then place the net proceeds into an interest-bearing account for applicant's care. The judge ordered the son to provide quarterly accountings to the stepdaughter, who was a joint devisee under the applicant's will. See Exhibit 4, pp. 35-36.
6. Appellant's property was sold on [REDACTED] 20 by her son and power of attorney, with gross sales proceeds of \$900,750.89, and net proceeds of \$640,713.19 after paying the closing costs, tax and mechanic liens, and MassHealth lien of \$121,121.48.
7. After the sale, Appellant was over assets for MassHealth, however because of the COVID freeze her MassHealth eligibility was protected until April 2, 2021; the son/POA then used some of the sale proceeds to privately pay the nursing home through August 31, 2022, with his payments totaling \$261,580.
8. MassHealth determined that Appellant's assets exceeded program limits by \$18,302 on September 1, 2022, which, when divided by the private nursing home rate of \$430 per day, would cover her nursing facility expenses from September 1, 2022 through October 12, 2022. See Exhibit 5, p. 1.
9. Appellant's conservator filed an application for long-term care on December 28, 2022, seeking a September 1, 2022 start date; the application was denied on April 12, 2023 for failure to provide verification of eligibility. The denial was appealed, and the application date was preserved by MassHealth.



10. On November 29, 2023, Appellant's application was denied for excess assets; the notice was appealed and BOH upheld the denial on appeal (appeal 2313423).
11. Appellant appealed the denial of 2313423 to Superior Court under MGL chapter 30A.
12. Based on the 30A appeal, MassHealth legal preserved the application date of December 28, 2022.<sup>7</sup>
13. By notice dated December 13, 2024, MassHealth approved eligibility for Standard community benefits with a start date of October 1, 2024, but denied Long Term Care benefits due to a disqualifying transfer resulting in an ineligibility period running from October 13, 2022 to March 20, 2025.
14. The nursing facility where Appellant had resided closed in [REDACTED] and she is residing in another nursing facility.
15. The conservator requested a last-minute hardship waiver under 130 CMR 520.019(L), which failed as untimely. See Exhibit 6.
16. MassHealth determined that is reasonable to infer that Appellant would have intended that any sale of her home would be for fair market value in order to provide sufficient additional funding for her ongoing care and not as a vehicle to hide funds from MassHealth and enrich her son. See Exhibit 8.
17. MassHealth determined that Appellant's son's actions cannot be attributed to Appellant, where he was in breach of his fiduciary obligations under the POA instrument in diverting her funds and placing his interests above her needs. See Exhibit 8.
18. MassHealth determined that there is sufficient evidence that Appellant credibly satisfies the exemption at 130 CMR 520.019(F) and that she intended that her son manage her assets, with power to sell her home for fair market value if needed for her care. Further, there is sufficient information showing that Appellant's son subverted her funds, without her consent, for his own enrichment and exclusively for a purpose other than MassHealth eligibility. See Exhibit 8.

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<sup>7</sup> See fn. 1.

## Analysis and Conclusions of Law

A disqualifying transfer of resources is defined at 130 CMR 520.019<sup>8</sup>:

(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 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.

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<sup>8</sup> (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 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. (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).

Regulation 130 CMR 520.019(G)(3), effective February 8, 2006, provides in pertinent part:

Begin Date. For transfers occurring before February 8, 2006, the period of ineligibility will begin 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 will begin 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 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.

Regulation 130 CMR 520.019(F)<sup>9</sup> follows:

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.

The State Medicaid Manual (HCFA Transmittal letter 64) at Section 3258.10 sets forth the following guidance to transfers exclusively for a purpose other than qualifying for Medicaid:

Transfers Exclusively for a Purpose Other Than to Qualify for Medicaid.--Require the individual to establish, to your satisfaction, that the asset was transferred for a purpose other than to qualify for Medicaid. 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.<sup>10</sup>

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<sup>9</sup> See also 42 U.S.C. §1396p(c)(J)(2)(C)(i-iii).

<sup>10</sup> See also 20 C.F.R. § 416.1246(e) *Presumption that resource was transferred to establish SSI or Medicaid eligibility.* Transfer of a resource for less than fair market value is presumed to have been made for the purpose of establishing SSI or Medicaid eligibility unless the individual (or eligible spouse) furnishes convincing evidence that the resource was transferred exclusively for some other reason. Convincing evidence may be pertinent documentary or non-

There is no provision in MassHealth regulations or the Fair Hearing regulations precluding the MassHealth agency from applying its own regulations during the hearing process, including the provisions of 130 CMR 520.019(F).<sup>11</sup> Here, it is clear in the MassHealth legal memorandum and analysis of MassHealth regulation 130 CMR 520.019(F) that MassHealth determined that: (1) Appellant would have intended that any sale of her home would be for fair market value in order to provide sufficient additional funding for her ongoing care and not as a vehicle to hide funds from MassHealth and enrich her son; (2) that Appellant's son's actions in misappropriating Appellant's funds cannot be attributed to Appellant, where the son was in breach of his fiduciary obligations under the POA instrument in diverting her funds and placing his interests above her needs; and (3) that there is sufficient factual evidence that Appellant credibly satisfies the exemption at 130 CMR 520.019(F) and that she intended that her son manage her assets, with power to sell her home for fair market value if needed for her care, and that there is sufficient information that Appellant's son subverted her funds, without her consent, for his own enrichment and exclusively for a purpose other than establishing MassHealth eligibility. Credibility findings are not required beyond the facts documented in court filings and decisions in the hearing record which MassHealth concurs are convincing evidence that funds were not used for the purpose of establishing MassHealth eligibility and that the exemptions under 130 CMR 520.019(F) apply (See Exhibits 4, 8). Pursuant to MassHealth's review and analysis, and the clarity of the facts in the hearing record, there is no dispute that Appellant has carried the burden of proof in meeting criteria outlined at 130 CMR 520.019(F). The appeal is therefore APPROVED insofar as there should be no penalty period imposed for the transfer of \$385,248.00.

Appellant did not dispute, nor provide any evidence to refute MassHealth's determination that Appellant had excess assets totaling \$18,302.00 on September 1, 2022, which would have covered Appellant's nursing facility stay through October 12, 2022. Accordingly, the earliest possible start date for MassHealth coverage is October 13, 2022, if Appellant was otherwise eligible on that date, not taking into consideration the disqualifying transfer ineligibility period. The appeal is DENIED in that the start date can be no earlier than October 13, 2022.

## **Order for MassHealth**

Rescind the December 13, 2024 notice and the period of ineligibility from October 13, 2022 to March 20, 2025, and determine eligibility retroactive to October 13, 2022 if otherwise eligible.

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documentary evidence which shows, for example, that the transfer was ordered by a court, or that at the time of transfer the individual could not have anticipated becoming eligible due to the existence of other circumstances which would have precluded eligibility. The burden of rebutting the presumption that a resource was transferred to establish SSI or Medicaid eligibility rests with the individual (or eligible spouse).

<sup>11</sup> The only exception is found in 130 CMR 520.017(D) involving the determination of Exceptional Circumstances which requires the hearing officer to make specific findings, which has no bearing in this case.

## **Notification of Your Right to Appeal to Court**

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

## **Implementation of this Decision**

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

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Thomas J. Goode  
Hearing Officer  
Board of Hearings

[REDACTED]

MassHealth Representative: Thelma Lizano, Charlestown MassHealth Enrollment Center, 529 Main Street, Suite 1M, Charlestown, MA 02129