

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2419800
Decision Date:	2/26/2025	Hearing Date:	01/31/2025
Hearing Officer:	Amy B. Kullar, Esq.	Record Open to:	02/07/2025; 02/14/2025

Appearance for Appellant:



Appearance for MassHealth:

Andrea Pelczar, Tewksbury MassHealth
Enrollment Center



*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; Coverage start date
Decision Date:	2/26/2025	Hearing Date:	01/31/2025
MassHealth's Rep.:	Andrea Pelczar	Appellant's Rep.:	
Hearing Location:	Tewksbury MassHealth Enrollment Center Room 2 (Telephone)	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 October 28, 2024, MassHealth approved the appellant's application for Long-Term Care (LTC). Exhibit 1. The appellant filed this appeal in a timely manner on December 27, 2024, because the appellant disagreed with the start date of her benefits. *See* 130 CMR 610.015(B) and Exhibit 2. Challenging agency determinations regarding scope and amount of assistance is valid grounds for appeal. *See* 130 CMR 610.032(5).

Action Taken by MassHealth

MassHealth approved the appellant's long-term care benefit with a start date of September 10, 2023.

Issue

The appeal issue is whether MassHealth correctly determined the appellant's benefit start date to be September 10, 2023.

Summary of Evidence

At the time of her application for MassHealth LTC benefits, the appellant was an adult over the age of [REDACTED] residing in a skilled nursing facility¹. The appellant passed away on [REDACTED]. The appellant's estate was represented at hearing by an attorney. MassHealth was represented by a worker from the Tewksbury MassHealth Enrollment Center. All parties appeared by telephone. The following is a summary of the testimony and documentary evidence presented at hearing:

MassHealth testified that the appellant was admitted to the nursing facility on [REDACTED]. The appellant applied for MassHealth on July 24, 2023, requesting a benefit start date of July 25, 2023. On October 28, 2024, MassHealth approved the application with a 38-day period of ineligibility, resulting in a coverage start date of September 10, 2023.

The MassHealth representative explained that to calculate the start date of coverage, MassHealth uses a Haley² calculation. Upon applying for MassHealth, a member must be asset eligible at the time of the decision, on the requested start date of coverage, and throughout the process.

MassHealth reviewed how the appellant spent down her funds and deducted allowable payments from the total asset amount. On July 25, 2023, the appellant had \$13,960.00 in two bank accounts. MassHealth deducted \$8,848.00 for a funeral contract and \$2,000.00 for the allowable asset limit. The total excess asset amount after these deductions was \$3,112.00. Using the nursing facility private pay daily rate of \$405, MassHealth calculated that based on her assets, the appellant's eligibility for long-term care benefits would begin on August 2, 2023, 8 days after the requested start date. Testimony and Exhibit 5.

The MassHealth representative testified that while MassHealth determined that the appellant was otherwise eligible for LTC MassHealth coverage on August 2, 2023, it then determined that she is ineligible for the time period of August 2, 2023 through September 9, 2023, due to a transfer of assets. The MassHealth representative referred to her pre-hearing submission, which contained a worksheet of her calculations. See Exhibit 5. MassHealth testified that it considers the following transactions to be disqualifying:

- Bank Account One: on July 10, 2023, a check in the amount of \$11,000.00 written to the appellant's daughter; no explanation was provided for this transaction;
- Bank Account One: on December 8, 2023, an unverified cash withdrawal in the amount of \$2,500.00;

¹ The appellant died on [REDACTED] the long-term care facility that she resided in at the time of her death filed a petition for Formal Probate on [REDACTED] and their nominated representative, [REDACTED] was appointed as Personal Representative of the estate on May 30, 2024. [REDACTED]

- Bank Account One was closed on May 1, 2024 and the closing balance of \$947.68 was never verified;
- Bank Account Two was closed on May 1, 2024 and the closing balance of \$1,903.87 was never verified.

The sum total of the disqualifying transactions is \$16,351.55. MassHealth divided this amount by the average cost to a person paying privately for nursing facility services in the Commonwealth (\$433.00 per day) and determined that the appellant had a 38-day total period of ineligibility for LTC MassHealth. Testimony and Exhibit 5.³ As of the date of hearing, MassHealth has not received proof that any of the disqualifying transfers have been cured, nor has MassHealth received any medical bills or burial expenses to support an adjustment to the Haley calculation start date. Testimony.

The appellant's attorney did not dispute MassHealth's testimony, MassHealth's Haley calculation or MassHealth's calculation of the 8/2/23-9/9/23 period of ineligibility. The issue here, according to the attorney, is that the appellant's daughter took the funds from the appellant's bank account and she was not authorized to do so. Testimony. The daughter did not have the legal authority to withdraw the money from the appellant's bank account in [REDACTED] because the appellant was already deceased at that time. Testimony. The appellant's attorney stated that the appellant's estate would like the hearing officer to issue a decision that says that the appellant's daughter needs to pay back the estate. The hearing officer pointed out that the appellant's attorney was describing a crime – the theft of funds from the appellant's bank account – and that this sounds like a criminal matter, not an issue for a fair hearing decision.

After discussion between the parties, it was determined that the appellant could submit paperwork that shows MassHealth that a theft occurred and that the appellant was a victim of a crime. MassHealth is willing to receive a police report and other documentation that shows the appellant is attempting to recover the allegedly stolen funds. The hearing officer agreed to keep the record open after the hearing so that the estate could pursue criminal charges against the appellant's daughter for the purported theft of the funds from the appellant's bank account, and provide legal documentation that would support MassHealth changing its determination as to the start date of coverage.

The record was held open until February 7, 2025. Exhibit 6. On February 6, 2025, the appellant's attorney submitted a 33-page document consisting of the nursing facility's Admission Agreement, and the appellant's outstanding balance owed to the nursing facility. On February 7, 2025, via email, the appellant's attorney notified all parties that the personal representative of the estate had gone to the local police department to speak with a detective about pursuing criminal charges for theft against the appellant's daughter. Exhibit 7. The record open period was extended until

³ See, MassHealth Eligibility Operations Memo 23-25, "Average Cost of Nursing Facility Services" (November, 2023).

February 14, 2025, so that additional information could be provided. Exhibit 8. On February 14, 2025, the appellant's attorney emailed an "Incident Report" that summarized the local police department's position on the issue of the theft in this appeal: "this case is civil in nature and the [Police Department] would not be investigating the information she provided." Exhibit 9. MassHealth was given one week to review the appellant's record open submissions. On February 19, 2025, a supervisor from MassHealth emailed all parties: "After review of the documents submitted, Masshealth (*sic*) position has not changed and respectfully requests the hearing officer issue a decision." Exhibit 10. On February 19, 2025, the hearing officer closed the administrative record.

Findings of Fact

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

1. An application for LTC MassHealth was submitted on the appellant's behalf on July 24, 2023. At the time of her application, the appellant was over the age of [REDACTED] and was a resident of a long-term care facility. Testimony.
2. The appellant requested a coverage start date of July 25, 2023. Testimony and Exhibit 5.
3. Through a notice dated October 28, 2024, MassHealth notified the appellant that she was approved for long-term care services with an effective start date of September 10, 2023, but also made a determination that she made a disqualifying transfer of resources in the amount of \$16,351.55. Testimony and Exhibit 1.
4. On July 10, 2023, a check in the amount of \$11,000.00 was written to the appellant's daughter. The appellant's estate has not explained the purpose of this check. Testimony.
5. On December 8, 2023, the appellant's daughter allegedly made an unverified cash withdrawal in the amount of \$2,500.00 from one of the appellant's bank accounts. Testimony.
6. As a result of the disqualifying transfers, MassHealth calculated a period of ineligibility beginning on the "otherwise eligible" start date of August 2, 2023, through September 9, 2023.

Analysis and Conclusions of Law

An individual applying for MassHealth long-term-care benefits must have countable assets below \$2,000. (130 CMR 520.003(A)). If an otherwise eligible applicant's assets exceed the limit for MassHealth Standard, they may become eligible "as of the date the applicant reduces his or her

excess assets to the allowable asset limit without violating the transfer of resource provisions for nursing-facility residents at 130 CMR 520.019;" or "as of the date, described in 130 CMR 520.004(C), the applicant incurs medical bills that equal the amount of the excess assets and reduces the assets to the allowable asset limit within 30 days after the date of the notification of excess assets." (130 CMR 520.004(A)(1).)

(C) Date of Eligibility. The date of eligibility for otherwise eligible individuals described at 130 CMR 520.004(A)(1)(b) is **the date that his or her incurred allowable medical expenses equaled or exceeded the amount of his or her excess assets**.

(1) If after eligibility has been established, an individual submits an allowable bill with a medical service date **that precedes the date** established under 130 CMR 520.004(C), the MassHealth agency readjusts the date of eligibility.

(2) In no event will the first day of eligibility be earlier than the first day of the third month before the date of the application, if permitted by the coverage type.

(130 CMR 520.004(A), (C) (emphasis added).)

This manner of reducing assets is referred to as a "Haley calculation." [REDACTED]

To qualify for MassHealth long-term care coverage, the assets of the institutionalized applicant cannot exceed \$2,000.00. See 130 CMR 520.016(A). In determining whether an applicant qualifies for benefits, MassHealth will assess whether he or she has transferred any resources for less than fair market value (FMV). If the individual or their spouse has made a transfer for less than FMV, the applicant, even if "otherwise eligible," may be subject to a period of disqualification in accordance with its transfer rules at 130 CMR 520.018 and 520.019. MassHealth's "strict limitations on asset transfers," which were adopted pursuant to federal law, are intended to "prevent individuals from giving away their assets to their family and friends and forcing the government to pay for the cost of nursing home care." [REDACTED]

With respect to transfers of resources, regardless of the date of transfer, MassHealth provides the following, in relevant part:

The MassHealth agency will deny payment for nursing facility services to an otherwise eligible nursing-facility resident ... 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.

See, 130 CMR 520.018(B)

The “look back period,” referred to in § 520.018(B), above, is sixty months, or 5 years, before the first date the individual is both a nursing facility resident *and* has applied for, or is receiving, MassHealth Standard.⁴ See, 130 CMR 520.019(B). MassHealth will deem the individual to have made a “disqualifying transfer” if it finds that during the look-back period, the individual (or their spouse) transferred resources for less than FMV, or, if they have taken any action “to avoid receiving a resource to which the resident or spouse would be entitled if such action had not been taken.” 130 CMR 520.019(C). If it is determined that a resident or spouse made a disqualifying transfer of resources, MassHealth will calculate a period of ineligibility in accordance with the methodology described in 130 CMR 520.019(G).

The transfer provisions also have several exceptions to the general rule governing disposition of assets, which are detailed at 130 CMR 520.019(D) (permissible transfers), 130 CMR 520.019(J) (exempted transfers), and 130 CMR 520.019(F) (exemptions based on intent). See, 130 CMR 520.019(C). In the instant case, there are no applicable exceptions, and no regulatory exceptions were raised by Appellant at hearing.

Fair hearings exist to give an appellant the opportunity to present evidence regarding why they believe MassHealth’s decision was in error. See, 130 CMR 610.061. A hearing officer must facilitate the orderly presentation of evidence at the hearing, can consider evidence’s effect on a member’s eligibility as of the date it existed, and afford the parties the opportunity to respond to evidence first presented at a hearing. See, 130 CMR 610.065; 130 CMR 610.071. An applicant for MassHealth benefits has the burden to prove his or her eligibility. See, 130 CMR 515.001, 520.004; and G.L. ch. 118E, § 20.

Here, the appellant did not dispute MassHealth’s determination that the appellant was ineligible for LTC MassHealth benefits for a 38-day period. Rather, the appellant’s attorney argues that the appellant should not be penalized for either of the disqualifying transfers because they were not authorized by the appellant. Unfortunately, the appellant’s position is not supported by the regulations or the facts of this appeal. The appellant did not attempt to cure the disqualifying transfers until the record open period after the fair hearing, and there is no regulatory exception that will provide the appellant with the remedy that she seeks. The appellant has not shown how MassHealth made an error in determining the appellant’s eligibility for MassHealth.

MassHealth did not err when it calculated the appellant’s long-term care benefit start date of September 10, 2023.

⁴ Effective February 8, 2006, the look-back period for transfer of assets was extended from 36 months to 60 months and the beginning date for a period of ineligibility will be the date the applicant would otherwise be eligible or the date of the transfer, whichever is later. See MassHealth Eligibility Letter 147 (July 1, 2006).

For the foregoing reasons, this appeal is hereby DENIED.

Order for MassHealth

None.

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.

Amy B. Kullar, Esq.
Hearing Officer
Board of Hearings

cc: [REDACTED]
[REDACTED]
[REDACTED]

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