

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in part, Denied in part	<b>Appeal Number:</b>	2500073
<b>Decision Date:</b>	5/8/2025	<b>Hearing Date:</b>	2/28/2025
<b>Hearing Officer:</b>	Patrick Grogan	<b>Record Open to:</b>	3/21/2025

**Appearance for Appellant:**



**Appearance for MassHealth:**

Stacy Kirby, MassHealth Taunton

**Interpreter:**

N/A



*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>	Disqualifying Transfer, Period of Ineligibility
<b>Decision Date:</b>	5/8/2025	<b>Hearing Date:</b>	02/28/2025
<b>MassHealth's Rep.:</b>	Stacy Kirby	<b>Appellant's Reps.:</b>	[REDACTED]
<b>Hearing Location:</b>	Remote (Tel)	<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 approved the Appellant's application for MassHealth Standard long term care benefits, beginning on August 11, 2024. (see 130 CMR 520 and Exhibit 1). MassHealth calculated a period of ineligibility from August 1, 2024 through August 10, 2024. (see 130 CMR 520 and Exhibit 1). The Appellant filed this Appeal on January 2, 2025<sup>1</sup>. (see 130 CMR 610.015(B) and Exhibit 2). Imposition of a coverage date is valid grounds for appeal (see 130 CMR 610.032).

### Action Taken by MassHealth

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<sup>1</sup> There are 64 days between the October 29, 2024 notice and the Request for Fair Hearing, received by MassHealth on January 2, 2025. (See Exhibit 1, Exhibit 2) Pursuant to 130 CMR 610.015: Time Limits, "(B) Time Limitation on the Right of Appeal. The date of request for a fair hearing is the date on which BOH receives such a request in writing. BOH must receive the request for a fair hearing within the following time limits: (1) 60 days after an applicant or member receives written notice from the MassHealth agency of the intended action. Such notice must include a statement of the right of appeal and the time limit for appealing. In the absence of evidence or testimony to the contrary, it will be presumed that the notice was received on the fifth day after mailing;" In an abundance of fairness to the Appellant, and pursuant to 130 CMR 610.015(B)(1), I find that this appeal is timely, presuming "that the notice was received on the fifth day after mailing."

MassHealth approved the Appellant's application for MassHealth Standard long term care benefits, beginning on August 11, 2024. (see 130 CMR 520 and Exhibit 1) MassHealth calculated a period of ineligibility from August 1, 2024 through August 10, 2024. (see 130 CMR 520 and Exhibit 1).

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.018 and 130 CMR 520.019, in determining that Appellant made disqualifying transfers during the look-back period and in calculating the period of ineligibility.

## Summary of Evidence

The Appellant is a MassHealth member over the age of [REDACTED] who sought and was approved for MassHealth Standard to cover long-term-care costs, with a period of ineligibility attributed. (Testimony, Exhibit 1) From this determination, the Appellant appeals.

MassHealth testified the Appellant's Long Term Care application was received by MassHealth on August 6, 2024. (Testimony) MassHealth stated that the Appellant was approved for MassHealth with a calculated period of ineligibility from August 1, 2024 through August 10, 2024. (Testimony, Exhibit 1, Exhibit 6) MassHealth calculated the disqualifying period based upon the total of expenditures of \$4,000. (Testimony, Exhibit 6) MassHealth, in its submission and testimony, noted the following expenditures: 1) October 13, 2023 – check [REDACTED] for \$1,500, 2) January 18, 2024 – check [REDACTED] for \$1,500, and 3) April 24, 2024 – check [REDACTED] for \$1,000. (Testimony, Exhibit 6,) Based upon these transfers, MassHealth calculated a period of disqualification. MassHealth added the amounts to arrive at the total of \$4,000. (Testimony, Exhibit 6). MassHealth then divided the total amount, \$4,000, by the average Massachusetts nursing home rate estimated by the Office of Medicaid (\$442) to arrive at a 10-day period of ineligibility. (Testimony, Exhibit 6)

The Appellant stated, through a letter from the Attorney-in-Fact, dated October 8, 2024, that approximately 10-12 years prior to the Hearing, the Attorney-in-Fact had paid for furniture for the Appellant in the approximate amount of \$8,000, and that the Appellant had agreed to reimburse the Attorney-in-Fact. (Exhibit 6, pg. 11) The letter continues that the checks from October 13, 2023 and January 18, 2024 were reimbursement, and that the Attorney-in-Fact has retained no receipts related to the purchase of the furniture. (Exhibit 6, pg. 11). Nothing in the letter addresses the April 24, 2024 check. (Exhibit 6, pg. 11)

The Appellant's Appeal Representative and Attorney-In-Fact restated the information in the letter, dated October 8, 2024, and stated that the information was accurate. (Testimony)

The Appeal Representative had reached out to MassHealth to see if money allocated to the currently existing burial account would decrease any penalty period. MassHealth confirmed that additional money allocated could decrease the penalty period, as long as the limits within the Regulations for burials accounts were followed. (Testimony). The Appeal Representative requested a Record Open period issue. The Appellant was informed that this would likely prompt a new determination. The parties agreed, in the interests of administrative economy, that the new determination, and any MassHealth recalculation, would be consolidated within the instant appeal.

Accordingly, a Record Open period issued. (Exhibit 7) The Appellant had until March 14, 2025 to submit information to MassHealth related to an increase in the burial account, and until March 21, 2025 for MassHealth to review, issue a new determination, and provide the updated calculations for incorporation into this Administrative Record. On March 12, 2025, the Appellant submitted additional information. (Exhibit 8) The information included verification of \$1500 utilized for burial expenses and photographs<sup>2</sup>. (Exhibit 8) On March 15, 2025, MassHealth responded that the updated information had decreased the disqualifying period by 4 days. (Exhibit 9)

## Findings of Fact

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

1. The Appellant is a MassHealth member over the age of [REDACTED] who sought and was approved for MassHealth Standard to cover long-term-care costs, with an effective date of August 11, 2024. MassHealth calculated a period of ineligibility from August 1, 2024 through August 10, 2024. (Testimony, Exhibit 1)
2. MassHealth calculated the disqualifying period based upon the total of expenditures, \$4,000. (Testimony, Exhibit 6) MassHealth noted the following expenditures: 1) October 13, 2023 – check [REDACTED] for \$1,500, 2) January 18, 2024 – check [REDACTED] for \$1,500, and 3) April 24, 2024 – check [REDACTED] for \$1,000. (Testimony, Exhibit 6,)
3. Based upon these transfers, MassHealth calculated a period of disqualification. MassHealth added the amounts to arrive at the total of \$4,000. (Testimony, Exhibit 6). MassHealth then divided the total amount, \$4,000, by the average Massachusetts nursing home rate estimated by the Office of Medicaid (\$442) to arrive at a 10-day period of ineligibility. (Testimony, Exhibit 6)
4. The Appellant stated, through a letter from the Attorney-in-Fact, dated October 8, 2024,

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<sup>2</sup> The Record had not been left open for the submission of photographs. The photographs depict various pieces of furniture. No receipts for the furniture were included. (Exhibit 8)

that approximately 10-12 years prior to the Hearing, the Attorney-in-Fact had paid for furniture for the Appellant in the approximate amount of \$8,000. (Exhibit 6, pg. 11) The Appellant had agreed to reimburse the Attorney-in-Fact. (Exhibit 6, pg. 11) The letter continues that the checks from October 13, 2023 and January 18, 2024 were reimbursement, and that the Attorney-in-Fact has retained no receipts related to the purchase of the furniture. (Exhibit 6, pg. 11). Nothing in the letter addresses the April 24, 2024 check. (Exhibit 6, pg. 11)

5. The Appeal Representative relied on the testimony at Hearing and the letter submitted to MassHealth. No additional documents supporting the Appellant's argument were offered at Hearing.
6. The Appeal Representative had reached out to MassHealth to see if money allocated to the currently existing burial account would decrease any penalty period. MassHealth confirmed that additional money allocated could decrease the penalty period, as long as the limits in the Regulations for burials accounts were followed. (Testimony).
7. The parties agreed, in the interests of administrative economy, that a new determination, and any MassHealth calculation would be consolidated within the instant appeal.
8. A Record Open period issued. (Exhibit 7) The Appellant had until March 14, 2025 to submit information to MassHealth related to an increase in the burial account, and until March 21, 2025 for MassHealth to review, issue a new determination, and provide the updated calculations for incorporation into this Administrative Record.
9. On March 12, 2025, the Appellant submitted additional information. (Exhibit 8)
10. On March 15, 2025, MassHealth responded that the updated information had decreased the disqualifying period by 4 days. (Exhibit 9)

## **Analysis and Conclusions of Law**

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998).

In accordance with 130 CMR 519.006(A)(4), to qualify for MassHealth Standard coverage as a resident of a long-term care facility, an individual must have countable assets of \$2,000 or less.

MassHealth considers any transfer of a resource owned by a nursing facility resident for less than fair market value during the appropriate look-back period to be a disqualifying transfer unless the transfer in question is permitted or exempted under the regulations. Specifically, 130 CMR 520.018(B) states that MassHealth “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.” The look-back period for transfers of resources occurring on or after February 8, 2006 is 60 months. 130 CMR 520.019(B)(2).

According to 130 CMR 520.019(C), set forth in pertinent part,

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.

130 CMR 520.0019(G) states:

Where the MassHealth has determined that a disqualifying transfer of resources has occurred, the MassHealth 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 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.

A transfer may be cured if the full value or a portion of the full value of the transferred resources is returned to the applicant. 130 CMR 520.019(K)(2)(b). Additionally, per 130 CMR 520.019(F), MassHealth will not impose a period of ineligibility for transferring resources at less than fair market value if the resident demonstrates to MassHealth’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 federal Health Care Finance Administration (HCFA) Transmittal No. 64, 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.

In the instant appeal, the Appellant, through the Appeal Representative, offered arguments in support of the appeal of the disqualifying period assessed by MassHealth. The Appellant has provided no documentary corroboration, beyond a letter without supporting documentation of purchases, to support the argument against the assessment of a period of disqualification.

The guidance from the controlling caselaw in this area does not aid the Appellant in the quest to appeal the assessed disqualifying period. In Gauthier v. Director of the Office of Medicaid, 80 Mass. App. Ct. 777, 785-786 (2011) The Massachusetts Appeals Court held, inter alia, that the Hearing Officer correctly affirmed MassHealth's decision that applicant made a disqualifying transfer of resources during the application look-back period; where the applicant had failed to show that the transfer was made exclusively for a purpose other than to qualify for MassHealth, because the applicant did not present convincing evidence as to the specific purpose for which the asset was transferred, as is required under federal law. Here, the Appellant has furnished argument, with no corroboration, to explain the transfers at issue.

Additionally, in Kaptchuk v. Directory of the Office of Medicaid, 83 Mass. App. Ct. 1134 (2013) (Rule 1:28 Decision) the Court held, in part "[Appellant] bore the burden to prove by convincing evidence that the money was transferred for an exclusive purpose other than to qualify for Medicaid, and verbal assurances...were insufficient to satisfy that burden." Here, the Appellant, through the Appeal Representative, has offered verbal assurances, merely reduced to writing, in the attempt to satisfy the burden of providing MassHealth convincing evidence related to the transfers. The Appellant had submitted photographs of various pieces of furniture. No receipts were included with the photographs. As noted above, verbal assurances are insufficient to provide convincing evidence under the Regulations and controlling caselaw. The photographs, submitted purportedly to bolster the proffered testimony, without accompanying receipts, do not provide convincing evidence as required by the Regulations and case law.

The Appellant's request to reduce the penalty period does not invalidate that administrative determination by MassHealth which comports with the explicit dictates of 130 CMR 520.019 and the controlling case law. Without documentation in support of the Testimony, the Appellant, through the Appeal Representative, has not provided convincing evidence as required by the Regulations and applicable caselaw. Although the letter submitted by the Attorney-in-Fact was signed, it was not signed under the pains and penalties of perjury. (Exhibit 6, pg. 11). Even had the letter been signed under the pains and penalties of perjury, witnesses in MassHealth Appeal Hearings are likewise sworn prior to testimony. By submitting this letter, the Appellant has merely reduced verbal assurances to writing, which does not render the assertions any more compelling than verbal assurances, even had the assurances been offered under oath. As noted above, verbal assurances are insufficient to provide convincing evidence under the Regulations and controlling caselaw. Based upon the specific evidence presented in this appeal, the Appellant has not met his burden, by a preponderance of evidence, to show the invalidity of MassHealth administrative determination. Accordingly, this appeal is approved, in part, and denied in part. This Appeal is APPROVED, in part, such that the Appellant's disqualifying period is reduced to 6 days, due to the recalculation MassHealth made during the Record Open period. The appellant's new MassHealth start date is August 7, 2024. The remainder of this appeal is DENIED.

## **Order for MassHealth**

Approve the Appellant for MassHealth Standard long term care benefits, coverage effective August 7, 2024.

## **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.

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Patrick Grogan  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616