

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2501964
Decision Date:	3/10/2025	Hearing Date:	02/26/2025
Hearing Officer:	Christopher Jones		

Appearances for Appellant:




Appearances for MassHealth:

Kim McAvinchey – Tewksbury Intake
Lynn Bloomquist – observing



*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:	3/10/2025	Hearing Date:	02/26/2025
MassHealth's Reps.:	Kim McAvinchey; Lynn Bloomquist	Appellant's Reps.:	
Hearing Location:	Telephonic	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 January 27, 2025, MassHealth denied the appellant's application for long-term care benefits because the appellant "recently gave away or sold assets for less than fair market value." (Exhibit 1; 130 CMR 520.108; 520.109.) The appellant filed this appeal in a timely manner on January 31, 2025. (Exhibit 2; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth imposed a period of ineligibility because the appellant sold her home to her granddaughter for less than fair-market value and gifted her the remaining equity in the home.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that the appellant transferred assets for less than fair-market value within 5 years of applying for MassHealth.

Summary of Evidence

The appellant entered the skilled-nursing facility in the fall of 2024, applied for MassHealth benefits on October 10, 2024, and she is seeking long-term care coverage as of September 27, 2024. MassHealth imposed a 208-day period of ineligibility for long-term care benefits, running from September 27, 2024, to April 22, 2025, based upon a \$90,000 disqualifying transfer and an average daily rate for skilled-nursing facility services of \$433. This transfer arises from the appellant's sale of her home in August 2021.

An appraisal of the appellant's home was completed on June 24, 2024. This appraisal identifies the sale as a "family sale" and states "Non-arms length sale; Subject is under contract for \$290,000. Sale is non-arms length between family members." (Exhibit 7, p. 1.) The appraisal found that the fair-market value of the home was \$320,000, and the closing document identified a "gift of equity" from the seller to the buyer of \$60,000. MassHealth's representative testified that this \$60,000 gift would have been the appellant's net proceeds from the sale, and that the appellant only realized a net profit of \$884.59.¹ The \$90,000 disqualifying transfer arises from the \$30,000 difference between the appraised price and the sale plus, plus the \$60,000 "gift of equity."

During the verification process, the appellant submitted \$90,329 in invoices for improvements made to the property by the buyers, including \$27,405 for a new septic system, and the remainder for windows, insulation, siding, and roofing. MassHealth's representative highlighted that the appraisal states there are "no functional or physical inadequacies," and the \$320,000 valuation was for an "as is" sale with "no conditions or repairs required." (Exhibit 7, pp. 1-2.) MassHealth views these improvements as optional and not required to bring the home up to the appraised value. MassHealth argued the improvement costs do not cure the difference between in the appraisal price and the price paid by the buyer, because the appraisal price was determined based upon the price of the home sold without improvements.

The appellant's son testified that the appellant had intended to live with his daughter's family after the sale, and she had expected to live there for many years. At the time of the sale, the appellant was in her mid-70s and had been diagnosed as having early-onset dementia. The appellant's son testified that the appellant underwent a hip replacement surgery around the time of the sale. When the appellant came out of surgery, it was apparent that the anesthesia had significantly worsened her dementia, and she moved to a retirement home instead of her granddaughter's home. The appellant's son testified that they were not considering the need for Medicaid at the time because the appellant intended to live with her granddaughter, and they had already

¹ The \$884.59 was owed by the seller at closing, not due to the seller. The closing disclosure in evidence only includes the Seller's Transaction Summary. Included in the seller's costs are the "gift of equity," closing costs of \$1,746.90, a mortgage payoff of \$191,208.53, a seller credit of \$3,000, and \$34,322.43 identified as a savings account. Without the entire closing document, it is impossible to verify the nature of the seller's other expenses. (Exhibit 6.)

determined that the appellant could afford to live at the retirement home on just her income. When her condition worsened to the degree that she could not live with her granddaughter, they planned for the appellant to move to the retirement home.

Regarding the repairs, the appellant's representatives argued that much of the house was in significant disrepair. The appellant's son testified that the septic system required replacement according to Title 5, and the remainder of the repairs were necessary to make the house more livable. The appellant's son noted the photographs in the appraisal show that there were several rooms that were gutted and unfinished. The appellant's son testified that the only way his daughter could afford to make the necessary repairs was for the appellant to gift the cost of those repairs as part of the sale. The appellant's representatives conceded that the appraisal valuation of \$320,000 was an "as-is" appraisal, and that prior to the appraisal, the assessed value of the property was \$415,000.

The appellant's son agreed that the appraised value was \$95,000 less than the assessed value based on the "as-is" status of the sale. The appellant's son testified that his daughter could not afford to buy the house if the appellant had not reduced the price and contributed the equity for the necessary repairs. The appellant's son argued that by keeping the property in the family, the appellant could continue to live there. The appellant's son also felt that the appraiser's comments regarding the condition of the property were inaccurate or "lazy" in their descriptions, as they did not reflect to the true condition of the property.

The appellant's dementia in 2021 only resulted in her having momentary memory gaps regarding people's names, and similar lapses. When she came out of surgery, it was much worse, and she required some physical assistance around the home. The appellant's son testified that the appellant continued to drive until 2023 and retained a significant degree of independence. The appellant's son testified that the appellant never lived with her granddaughter in the same home. The appellant's son testified that his daughter had helped the appellant regularly for the 10 years prior to buying the house.

Findings of Fact

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

- 1) The appellant is over the age of 65, and she entered a skilled-nursing facility in the fall of 2024. The appellant is seeking long-term-care coverage as of September 27, 2024. (Exhibit 5.)
- 2) In August 2021, the appellant sold her home to her granddaughter for \$290,000. (Exhibit 4; Exhibit 6.)

- 3) The appellant's former home had been assessed as being worth \$415,000, but an appraisal determined the as-is value was \$320,000. (Exhibit 7; Testimony by the appellant's representatives.)
- 4) In addition to the discounted sale price, the appellant gifted her granddaughter \$60,000 in equity that she would have otherwise received. (Exhibit 6.)
- 5) Without this gift of equity and discounted sales price, the appellant's granddaughter could not have afforded to buy the home. (Testimony by the appellant's representative.)
- 6) At the time of sale, the appellant was in her mid-70s and had been diagnosed with early-onset dementia. The appellant intended to reside in the home with her granddaughter after the sale, but she had also identified a retirement home that she could afford for when her condition deteriorated to the point that she could no longer live with her granddaughter. (Testimony by the appellant's representative.)
- 7) Around the time of the sale, the appellant underwent a hip replacement. When the appellant came out of anesthesia, her dementia had progressed significantly. The appellant never lived with her granddaughter; rather, she moved into the retirement home. (Testimony by the appellant's representative.)
- 8) Through a notice dated January 27, 2025, MassHealth denied the appellant's application for long-term care benefits because the appellant "recently gave away or sold assets for less than fair market value." MassHealth imposed a 208-day period of ineligibility for long-term care benefits, running from September 27, 2024, to April 22, 2025, based upon a \$90,000 disqualifying transfer and an average daily rate for skilled-nursing facility services of \$433. (Exhibit 1; testimony by MassHealth's representative.)

Analysis and Conclusions of Law

An applicant for MassHealth benefits has the burden to prove his or her eligibility, including that a transfer of resources was legitimate, not gratuitous, or for less than fair market value within the "look-back" period. (130 CMR 515.001, 520.007; 520.019; and MGL Ch. 118E, § 20.) If an applicant or member has transferred resources for less than fair-market value during the look-back period, MassHealth long-term-care benefits may not be paid until a period of ineligibility has been imposed and expires. (See 42 USC §1396p(c)(1)(A); MGL Ch. 118E, § 28.) The look-back period is 60 months, or 5 years. (130 CMR 520.019(B).)

The federal law is reflected in MassHealth regulations 130 CMR 520.018 and 520.019, which provide that a disqualifying transfer exists where an applicant transfers an interest during the appropriate look-back period for less than fair-market value. "A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available," unless the transfer is "listed as permissible in 130 CMR 520.019(D), identified in 130 CMR 520.019(F), or

exempted in 130 CMR 520.019([K]).”² (130 CMR 520.019(C).) Permissible transfers are made to benefit a community spouse or a disabled person. Exempted transfers are cured in some manner after the fact.

The applicant’s intent can affect whether a transfer of resources results in a period of ineligibility:

(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.

(130 CMR 520.019(F) (emphasis added).) Federal guidance requires an applicant to make a heightened evidentiary showing on this issue: “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.” (Gauthier v. Dir., Office of Medicaid, 80 Mass. App. Ct. 777, 785 (2011) (citing State Medicaid Manual, Health Care Financing Administration Transmittal No. 64, § 3258.10(C)(2)).) Essentially, there is a presumption that transfers made within the look-back period were intended to preserve assets from being used to pay for an individual’s care.

The appellant has not met this heightened evidentiary burden. The appellant anticipated her inability to reside in the community in the near future. The appellant hoped to be able to remain in the community long enough to make it past the lookback period, even if this is not how she would have thought of it. However, this anticipation supports the conclusion that the appellant acted with the intention of preserving her assets for her family instead of using them to pay for her own medical care. The fact that appellant and her family had identified a retirement home that the appellant could afford out of her income also supports this conclusion.

Nor did the appellant intend to receive fair-market value for her home. The appellant’s son testified that the appraisal valuation was approximately \$95,000 less than the assessed value of

² As published, the last cross-reference is to subsection (J) and is a typographical error. Subsection (J) specifically **includes** as disqualifying transfers of home equity loans and reverse mortgages if transferred for less than fair market value. Subsection (K), however, **exempts** listed transactions from the period of ineligibility. A corrected version of this regulation is pending publication.

the home had been. This reduction almost perfectly equates to the actual costs incurred to renovate the house. This equivalence supports that the appraisal accurately determined the as-is value of the home to \$320,000. The additional \$30,000 reduction in cost below the appraised value was a reduction below the amount the appellant could have received if she had sold the property in an arms-length transaction. Adding the \$60,000 gift of equity that the appellant would have received from a fair-market transaction, MassHealth correctly determined the disqualifying transfer to be \$90,000.³ For these reasons, this appeal is DENIED.

Because the appellant disputed MassHealth's determination that this transaction resulted in a disqualifying transfer, the appellant shall be allowed 60 days to cure the transfer. (See 130 CMR 520.019(K).)

Order for MassHealth

Allow the appellant 60 days from the date of this decision to cure the \$90,000 disqualifying transfer.

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.

Christopher Jones
Hearing Officer
Board of Hearings

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

³ As noted above, it is possible that the appellant had actually provided an even greater discount depending on the nature of the \$34,322.43 cost to the seller on the closing disclosure just identified as a savings account. There is insufficient evidence in the hearing record to increase the transfer amount. Thus the \$90,000 transfer determination is confirmed.