

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2502766
Decision Date:	3/28/2025	Hearing Date:	March 13, 2025
Hearing Officer:	Brook Padgett		

Appellant Representative:




MassHealth Representatives:

Riana Malik, Tewksbury MEC
Karen Ryan, Tewksbury 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

Appeal Decision:	Denied	Issue:	Long Term Care Excess Assets 130 CMR 520.007
Decision Date:	3/28/2025	Hearing Date:	March 13, 2025
MassHealth Reps.:	R. Malik K. Ryan	Appellant Rep.:	
Hearing Location:	Tewksbury MEC		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

The Appellant received a notice dated December 17, 2024 stating: MassHealth as reviewed your application for MassHealth long term care benefits which you filed on October 15, 2024. You are not eligible for MassHealth long term care services because you have more countable assets than MassHealth benefits allow. The regulations used in reaching these decisions are 130 CMR: 520.003, 520.004. (Exhibit 1). The Appellant filed this appeal timely on February 18, 2025. (130 CMR 610.015(B); Exhibit 2). Determination of eligibility is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

The Appellant has been denied long term care services due to excess assets.

Issue

Is the Appellant over the asset limits for MassHealth long term care eligibility?

Summary of Evidence

MassHealth testified the Appellant is an [REDACTED]-year old individual, who was admitted to a Nursing Facility on [REDACTED]. On October 15, 2024, an application for MassHealth Long-Term Care services was received on the Appellant's behalf with a request date for services of July 16, 2024. The Appellant's application was denied on December 17, 2024 for excess assets. (130 CMR 520.003 and 520.004). At the time of application MassHealth determined the Appellant's had countable assets consisting of two bank accounts totaling \$1,179.51 and real estate located [REDACTED], NY valued at \$673,000.00. MassHealth stated the Appellant's total assets of \$674,179.51 is over the \$2,000.00 asset limit for MassHealth eligibility. MassHealth argued the NY property is a countable asset in accordance with 130 CMR 520.007(G); however if the Appellant provided a signed agreement to sell and proof the property is listed on the market for fair market value, MassHealth can exempt the value of the property for up to nine months. (130 CMR 520.007(G)(2)). MassHealth submitted into evidence: Appellant's denial notice, [REDACTED] November 2024 statements for accounts [REDACTED] and [REDACTED], deed to property, Zillow listing indicating value (Exhibit 4), RiverSource Life Insurance Company of New York (RSLIC) contract dated October 15, 1991 (Exhibit 5A), RSLIC Long Term Care Insurance benefit payment letter dated September 27, 2019 (Exhibit 5B) and RSLIC Long Term Care Insurance exhaustion letter dated August 02, 2021 (Exhibit 5C).

The Appellant's representative argued the Appellant's residence in NY should be exempt from MassHealth asset calculation as the Appellant purchased long term care insurance to protect her home. The representative maintained 130 CMR 515.014 the so called "home protection exemption" exempts the value of a home when qualifying for a long term care benefits. Further the Appellant privately paid an additional \$584,655.00 to the Nursing Facility for her care prior to application. The Appellant believed she had a valid long term care exemption on her home as did her son who has been personally paying all the expenses regarding the Appellant's residence since July 24, 2024. The representative questioned if MassHealth determined the appellant asset as countable because her home is located outside of the Commonwealth. The Appellant submitted into evidence: Appellant's brief, affidavit of the Appellant's son (JB), Appellant's nursing facility financial statement, cancelled checks and bank transactions. (Exhibit 6).

MassHealth responded that the property is being counted in accordance with 130 CMR 520.007(G)(8)(c) because the applicant has no intention to return home and (d) because she didn't meet the requirements of 130 CMR 515.014 since she was not covered under an active long term care insurance policy at time of application. MassHealth stated the fact the Appellant's home is in NY has no bearing on whether MassHealth treats the home as a countable asset. The Appellant's home in NY has been discussion point relative to estate recovery and the Appellant's intent to return home, but not with regard to its countability as an asset effecting her initial eligibility.

Findings of Fact

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

1. On [REDACTED], the Appellant was admitted to a Nursing Facility. (Exhibit 4).
2. On October 15, 2024, the Appellant completed a MassHealth long term care application with a request for services beginning July 16, 2024. (Testimony).
3. On December 17, 2024, the Appellant's long term care application was denied for excess assets. (130 CMR 520.003 and 520.004). (Exhibit 1).
4. The Appellant has countable assets of totaling \$674,179.51 including a former home. (Exhibit 4).
5. On October 15, 1991, the Appellant obtained a long term care insurance contract with RSLIC. (Exhibit 4A).
6. On September 27, 2019, the Appellant's RSLIC long term care insurance policy began making payments to the Appellant's nursing facility. (Exhibit 4B).
7. On August 02, 2021, the Appellant exhausted her RSLIC benefits associated with her long term care insurance contract. (Exhibit 4C).
8. The Appellant has no living spouse. (Testimony)
9. The Appellant's adult child currently lives in the Appellant's former residence. (Testimony).
10. The Appellant does not intend to return home. (Testimony).

Analysis and Conclusions of Law

Pursuant to 130 CMR 520.007(G)(8), when a member moves out of their home to enter a medical institution, MassHealth considers the former home a countable asset.

The Appellant's representative argues 130 CMR 515.014 exempts the value of a home when qualifying for a long term care benefits if the applicant had a long term care insurance policy at the time of admission to the facility. MassHealth contends an applicant's property is countable in accordance with 130 CMR 520.007 if the applicant has no intention to return home and the home doesn't meet the requirements of 130 CMR 515.014 at time of application.

130 CMR 520.007: Countable Assets

(G) Real Estate.

(8) Former Home of an Institutionalized Individual. If an applicant or member moves out of his or her home to enter a medical institution, the MassHealth agency considers the former home a countable asset that is subject to 130 CMR 520.007(G)(2), provided all of the following conditions are met. If the former home of a nursing-facility resident as defined in 130 CMR 515.001: *Definition of Terms* is placed in a trust, the MassHealth agency will apply the trust rules in accordance with 130 CMR 520.021 through 520.024.

- (a) The individual is institutionalized as defined in 130 CMR 515.001: *Definition of Terms*.
- (b) None of the following relatives of the individual is living in the property:
 - (i) a spouse;
 - (ii) a child who is younger than 21 years old or who is blind or permanently and totally disabled;
 - (iii) a sibling who has a legal interest in the home and who was living there for a period of at least one year immediately before the applicant's or member's admission to the medical institution;
 - (iv) a son or daughter who was living in the applicant's or member's home for a period of at least two years immediately before the date of the applicant's or member's admission to the medical institution, and who establishes to the satisfaction of the MassHealth agency that he or she provided care to the applicant or member that permitted him or her to live in the home rather than in a medical institution; or
 - (v) a dependent relative. A dependent relative is any of the following who has any kind of medical, financial, or other dependency: a child, stepchild, or grandchild; a parent, stepparent, or grandparent; an aunt, uncle, niece, or nephew; a brother, sister, stepbrother, or stepsister; a half-brother or half-sister; a cousin; or an in-law.
- (c) The applicant or member (and spouse, if any) moves out of his or her home without the intent to return.**
- (d) The applicant or member does not own long-term-care insurance with coverage that meets the requirements of 130 CMR 515.014: *Long-Term-Care Insurance Minimum Coverage Requirements for MassHealth Exemptions* and the Division of Insurance regulations at 211 CMR 65.09(1)(e)(2). (Emphasis added).**

130 CMR 515.014: Long-term-care Insurance Minimum Coverage Requirements for MassHealth Exemptions For purposes of the financial eligibility exemption under 130 CMR 520.007(G)(8)(d), concerning treatment of the former home as an asset, and the exemption under 130 CMR 515.011(B) and 515.012(C), concerning repayment of assistance provided for nursing facility and other long-term-care services (hereafter

collectively referred to as "MassHealth exemptions"), a long-term-care insurance policy must provide certain minimum coverage requirements as determined by the Division of Insurance.

(A) Under Division of Insurance regulations at 211 CMR 65.09(1)(e)(2), to qualify for the MassHealth exemptions, an individual must be a covered person under an individual, group, or employment-based group policy issued on or after March 15, 1999, that meets the individual policy minimum standards of 211 CMR 65.05: Minimum Standards for Individual Policies and all of the following requirements.

- (1) Scope of Benefits. The policy must cover nursing and custodial care in a nursing facility licensed by the Department of Public Health.
- (2) Daily Dollar Benefits. The policy must have available benefits of at least \$125 per coverage day in a nursing facility, except where the actual expense incurred is less, regardless of whether accrued benefits are measured in terms of days or dollar amount.
- (3) Nursing Facility Coverage Days: Lifetime Benefit Period. The policy must have benefits available sufficient to cover at least 730 days in a nursing facility.
- (4) Elimination Period. No policy may have an elimination period (days on which services are provided to an insured before the policy begins to pay benefits) longer than 365 days in a nursing facility. The application of more than one elimination period is not allowed, unless the insured has received no benefits for a period of at least 180 consecutive days. In lieu of an elimination period, the policy may have a deductible of no more than \$54,750.

(B) All policies issued prior to March 15, 1999, need only comply with the minimum standards of 211 CMR 65.05: Minimum Standards for Individual Policies, and the limitations and exclusion provision of 211 CMR 65.06: Mandatory Benefit Offers for Individual Policies, which were effective from April 1, 1989, through September 2, 1999. (C) Exception. **No recovery for nursing facility or other long-term-care services may be made under 130 CMR 515.012(B) if the member**

- (1) was institutionalized;
- (2) notified the MassHealth agency that he or she had no intention of returning home; and
- (3) **on the date of admission to a long-term-care institution, had long-term-care insurance that, when purchased, or at any time thereafter, met the requirements of 130 CMR 515.014 and the Division of Insurance regulations at 211 CMR 65.09(1)(e)2.**

The Estate Recovery and Real Estate Lien regulations¹ at 130 CMR 520.014 concern the

¹ 130 CMR 515.014: Long-term-care Insurance Minimum Coverage Requirements for MassHealth Exemptions For purposes of the financial eligibility exemption under 130 CMR 520.007(G)(8)(d), concerning treatment of the former

repayment of assistance provided for nursing facility and other long-term-care services. This regulation allows MassHealth long term care members who have an active long term care insurance policy at the time of their nursing home admission not to be subject to estate or lien recovery. 130 CMR 515.014 does not apply to the issue in this appeal, which is the exemption of a former home from countable assets in an eligibility determination.

130 CMR 520.007(G)(8)(d) controls and states that the former home of an applicant or member is a countable asset provided the applicant or member does not own long-term-care insurance. This regulation states that a MassHealth applicant or member must own long-term care insurance at the time of their application and must continue to own the long term care insurance throughout the nursing facility admission in order to be eligible for the exemption of the former residence. Regulations at 130 CMR 520.007(G) are silent about owning long-term insurance on the date of admission to the nursing facility as referenced in 130 CMR 515.011(B) and 130 CMR 515.012(C).

At the time of application the Appellant as a single individual had no intention to return home and was no longer covered by her RSLIC long term care insurance policy as she exhausted her benefits and RSLIC cancelled her policy on August 02, 2021. As a result, the Appellant former home is countable for MassHealth eligibility purposes.

The total value of countable assets owned by or available to an individual applying for MassHealth Standard may not exceed \$2,000.00.² The Appellant is currently over the \$2,000.00 asset limit for MassHealth eligibility as her NY property is a countable asset in accordance with 130 CMR 520.007(G)(8) and this appeal is DENIED.

The value of the Appellant's real estate may be exempt for nine calendar months, provided the Appellant signs an agreement to sell the property at fair-market value within 30 days.³

home as an asset, and the exemption under 130 CMR 515.011(B) and 515.012(C), concerning repayment of assistance provided for nursing facility and other long-term-care services (hereafter collectively referred to as "MassHealth exemptions"), a long-term-care insurance policy must provide certain minimum coverage requirements as determined by the Division of Insurance.

130 CMR 515.011 Estate Recovery (B) Exceptions. (1) Long-term-care Insurance Exception. No recovery for nursing facility or other long-term-care services may be made from the estate of any person who meets the following requirements. (a) The member was institutionalized; and (b) The member notified the MassHealth agency that he or she had no intent of returning home; and (c) On the date of admission to the long-term-care institution, the member had long-term-care insurance that, when purchased, or at any time thereafter, met the requirements of 130 CMR 515.014 and the Division of Insurance regulations at 211 CMR 65.09(1)(e)(2).

130 CMR 515.012 Real Estate Lien (C) Exception. No recovery for nursing-facility or other long-term-care services may be made under 130 CMR 515.012(B) if the member (1) was institutionalized; (2) notified the MassHealth agency that he or she had no intention of returning home; and (3) on the date of admission to a long-term-care institution had long-term-care insurance whose coverage met the requirements of 130 CMR 515.014 and the Division of Insurance regulations at 211 CMR 65.09(1)(e)(2). (*Emphasis added*).

² 130 CMR 520.003.

³ 130 CMR 520.007: Countable Assets (G)(2) Nine-month Exemption. The value of such real estate is exempt for nine

Order for MassHealth

None, other than to provide the Appellant with an agreement to sell form to complete.

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.

Brook Padgett
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Tewksbury MEC

[REDACTED]

calendar months after the date of notice by the MassHealth agency, provided that the individual signs an agreement with the MassHealth agency within 30 days after the date of notice to dispose of the property at fair-market value. The MassHealth agency will extend the nine-month period as long as the individual or the spouse continues to make a good-faith effort to sell, as verified in accordance with 130 CMR 520.007(G)(4).