

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2503727
Decision Date:	4/8/2025	Hearing Date:	04/01/2025
Hearing Officer:	Amy B. Kullar, Esq.	Record Open to:	04/02/2025

Appearance for Appellant:



Appearance for MassHealth:

Rhiannon Wojick, 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; Disqualifying Transfer
Decision Date:	4/8/2025	Hearing Date:	04/01/2025
MassHealth's Rep.:	Rhiannon Wojick	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 February 21, 2025, MassHealth denied the appellant's application for Long-Term Care (LTC) benefits and imposed a 1028-day period of ineligibility due to the disqualifying transfer of resources during the lookback period. *See* 130 CMR 520.018 and 130 CMR 520.019 and Exhibit 1. The appellant filed this appeal in a timely manner on March 6, 2025, because the appellant disagreed with the imposition of a period of ineligibility. *See* 130 CMR 610.015(B) and Exhibit 2. Denial of assistance is valid grounds for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied the appellant's application for long-term care benefits due to a disqualifying transfer of resources within the lookback period.

Issue

The appeal issue is whether MassHealth correctly determined that the appellant has a 1028-day

period of ineligibility due to a disqualifying transfer of resources during the lookback period.

Summary of Evidence

The appellant is an adult who is over the age of 65, and he currently resides in a long-term care facility. The appellant was represented at hearing by a Medicaid consultant. 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:

The MassHealth representative opened her testimony by giving background information on the history of the appellant's LTC application at MassHealth. The appellant is a single individual who entered a long-term care facility in [REDACTED] of 2023¹. An application for LTC benefits was submitted on behalf of the appellant on June 26, 2024, requesting coverage as of March 1, 2024. An initial request for information was issued to the appellant on July 9, 2024; this request was not satisfied timely, and MassHealth issue a denial notice to the appellant on October 15, 2024. Additional information was received from the appellant and processed by MassHealth on October 16, 2024, and on the same day, a second request for additional information was then issued to the appellant. On November 21, 2024, MassHealth issued a second denial notice for missing verifications to the appellant. On December 30, 2024, an appeal was heard and the issue of missing verifications was resolved during a record open period following the hearing². Finally, on February 21, 2025, the denial notice on appeal was issued to the appellant due to a disqualifying transfer of resources. The MassHealth representative stated that MassHealth determined that pursuant to MassHealth regulations, the appellant is ineligible for the time period of 3/1/2024 through 12/23/2026 due to the disqualifying transfer of resources within the lookback period.

The MassHealth representative then explained that MassHealth found one transaction during the lookback period to be disqualifying: the appellant sold real property with a tax-assessed value of \$1,115,100.00 for \$670,000.00.³ MassHealth subtracted the sale price of the real property from the tax-assessed value of the real property and determined that the amount of the disqualifying transfer is \$445,100.00 (\$1,115,100.00 - \$670,000.00 = \$445,100.00.) The penalty period was calculated by dividing the amount of the disqualifying transfer by the average daily cost to a person paying privately for nursing facility services in the Commonwealth of \$433.00

¹ The appellant entered his current long-term care facility in [REDACTED] 2024. Testimony and Exhibit 7.

² See Appeal No. 2418236

³ MassHealth's pre-hearing submission contains the documentation that MassHealth received from the appellant regarding the sale of the real property; it includes a Property Tax schedule of previous tax assessments on the real property from 1988-2025, a copy of a recorded deed dated [REDACTED] 2023 transferring the real property from the appellant to the Buyer with the stated consideration of "\$670,000.00," and the HUD settlement statement for the sale of the real property. See Exhibit 5 at 2-6.

(\$445,100.00/\$433.00 = 1027.94, or 1028, days.)⁴ The appellant is not eligible for MassHealth long-term care services because the appellant sold assets for less than fair market value to become eligible for MassHealth, and the appellant has a 1,028 day period of ineligibility for MassHealth benefits from March 1, 2024, through December 23, 2026. Testimony.

The appellant's representative did not dispute MassHealth's testimony regarding the timeline of the appellant's application at MassHealth, nor the amount of the disqualifying transfer as calculated by MassHealth. The appellant's representative stated that she would like the Hearing Officer to consider the appellant's state of mind and his intent when he transferred the real property for less than fair market value. She testified that when the appellant entered his current long-term care facility, his overall health was very poor due to a series of falls and the appellant's own failure to take care of himself when he lived in the community. The appellant was dealing with major financial issues as well, and the stress of these issues caused his health to deteriorate significantly. Testimony. The appellant's representative stated that the appellant had been sued by a tenant and had filed for bankruptcy.

The appellant's representative closed her testimony by asking the Hearing Officer to consider the following facts when issuing a decision: at the time of his application for LTC MassHealth, the appellant was being sued by his previous nursing home; he had filed for bankruptcy in August 2022; and the property in question was his primary residence and investment property. At the time, the appellant was only selling his residence "to put out fires." She would like the Hearing Officer to consider that the appellant sold his real property to a non-relative and that the sale was approved by a bankruptcy court. The Hearing Officer questioned the appellant's representative about whether the appellant was currently diagnosed with, or had ever been diagnosed with, cognitive impairment and if the appellant's Health Care Proxy had been invoked. The appellant's representative stated that the appellant was not diagnosed with a cognitive impairment and his Health Care Proxy had not been invoked. She does not know why the appellant sold the real property for less than fair market value. Testimony.

The Hearing Officer was willing to consider additional medical documentation that might provide a clearer picture of the appellant's state of mind at the time of the sale of the property. After discussion among the parties, it was agreed that the appellant would have one day to submit medical documentation to MassHealth that would support the appellant's intent as to the sale of his real property and that MassHealth would provide a written response to this submission by April 4, 2025. Exhibit 6. On April 1, 2025, after the hearing, the appellant's representative submitted the appellant's "Admitting Facesheet," dated March 8, 2024, which contains a list of the diagnoses that the appellant was suffering from on the date he entered his current long term care facility. Exhibit 7. On April 2, 2025, MassHealth responded to all parties via email: "After reviewing the documentation provided, MassHealth's position of a transfer for less than fair market value stands.

⁴ See also, MassHealth Eligibility Operations Memo 24-07, "Average Cost of Nursing Facility Services" (November, 2024).

MassHealth has not received sufficient supporting documentation as to why this property was sold for \$445,100 less than fair market value when the property was only listed for two months.” Exhibit 8.

Findings of Fact

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

1. The appellant is over the age of 65 and filed an application for MassHealth long-term care benefits on June 26, 2024, with a requested benefit start date of March 1, 2024.
2. In November, 2023, the appellant sold real property with a tax-assessed value of \$1,115,100.00 for \$670,000.00. Testimony and Exhibit 5.
3. As of the application date, the average daily private rate for nursing home care in Massachusetts was \$433.00. MassHealth Eligibility Operations Memo 24-07 (November, 2024).
4. On February 21, 2025, MassHealth denied the appellant’s application for LTC benefits, based on a determination that appellant made a disqualifying transfer of resources in the amount of \$445,100.00, based on the difference between the tax-assessed value of the real property of \$1,115,100.00 less the sale price of the real property of \$670,000.00.
5. As a result of the disqualifying transfer, MassHealth calculated a period of ineligibility beginning on the requested start date of March 1, 2024, through December 23, 2026, or 1028 days.

Analysis and Conclusions of Law

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.” *See Gauthier v. Dir. of the Office of Medicaid*, 80 Mass. App. Ct. 777, 779 (2011) (*citing Andrews v. Division of Med. Assistance*, 68 Mass. App. Ct. 228, 229, (2007)).

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.⁵ 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 or 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, the only possible applicable exception, and the sole regulatory exception raised by appellant at hearing, is found in 130 CMR 520.019(F), which states, the following:⁶

....

(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***

⁵ 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).

⁶ Appellant's representatives did not argue that that the transfer was either “permissible” under 130 CMR 520.019(D) or “exempted” under 130 CMR 520.019(J), nor was any evidence presented to suggest these exceptions would apply to the transfer at issue.

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 (emphasis added)

In this case, MassHealth imposed a period of ineligibility based on the sale of real property by the appellant for less than its fair market value. The sale of the real property occurred in November of 2023 and is well within the 5-year look-back period. The only explanation for the disqualifying transfer that was offered is that at the time of the transfer, the appellant was under stress due to the circumstances surrounding his declining health and his financial difficulties. Testimony.

In determining whether the sale of the real property was a disqualifying transfer, the first question is whether Appellant made a transfer of resources for less than FMV. In requiring state Medicaid agencies to adopt the federally mandated transfer regulations, the Centers for Medicare & Medicaid Services (CMS), formerly the Health Care Financing Administration Transmittal (HCFA), published mandatory instructions, now compiled in the federal agency's State Medicaid Manual (SMM) which included the following instruction for making determinations on whether a transfer was made for less than FMV:

For an asset to be considered transferred for fair market value or to be considered to be transferred for valuable consideration, the compensation received for the asset must be in a tangible form with intrinsic value.

See SMM, Department of Health and Human Services (DHHS) HCFA, Transmittal No. 64, § 3258.1(A) (11-94).⁷

When applying MassHealth's transfer regulations and the federal mandatory instructions to the present case, appellant has not successfully demonstrated that MassHealth erred in concluding the sale of the property, for \$445,100.00 less than its tax-assessed value, was made for less than FMV. See 130 CMR 520.018(B) and 520.019(B). Here, MassHealth correctly determined that appellant's sale of real property for \$445,100.00 less than its tax-assessed value was a transfer for less than FMV.

The appellant's representative's main argument was that the appellant should not be penalized for the sale of the property because he meets the "intent" exceptions listed 130 CMR 520.019(F); specifically, that the transfer was made exclusively for a purpose other than to qualify for MassHealth, or that he intended to dispose of the resource at either FMV or for other valuable consideration. CMS has published instructions to assist agencies in interpreting and applying this

⁷ The SMM is a compilation of federal resources and procedural material needed by States to administer the Medicaid Program. The instructions provided therein are CMS's "official interpretations of the law and regulations, and, as such, are binding on Medicaid State agencies." See SMM, Foreword § B(1); see also 130 CMR 515.002(B).

specific exemption from the disqualifying transfer rules, which the appellant's representative called attention to during the hearing:

2. 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.***

See SMM, DHHS-HCFA, Transmittal No. 64, § 3258.10(C).

Citing the above provision, the Massachusetts Appeals Court has recognized that “federal law mandates a heightened evidentiary showing on [the issue of demonstrating intent when making a transfer for less than fair market value].” See, Gauthier, 80 Mass. App. Ct. at 785-786.

Appellant has not sufficiently demonstrated that the sale of his real property was made exclusively for reasons other than to qualify for MassHealth. See 130 CMR 520.019(F)(1). The appellant's representative testified that the appellant had been residing in a different long-term care facility the previous year, but he is not suffering from cognitive impairment, nor has his Health Care Proxy been invoked. The appellant was able to engage attorneys and participate in other court proceedings in the year prior to his application to MassHealth. It is unclear from the record why the appellant never sought the counsel of an attorney who could assist him with the sale of the real property and who could also assist him with qualifying for MassHealth; such attorneys exist in the Commonwealth of Massachusetts. The only evidence provided regarding the appellant's state of mind surrounding the sale of his real property for less than FMV is the testimony of the appellant's representative. It is credible to believe that the appellant was under stress based upon the circumstances surrounding his health and finances, but it does not follow that the appellant would not have been acutely aware of the need to pay for his long-term care at the time of the sale of his real property – the appellant's representative testified that he was being sued by his previous nursing home for non-payment. Furthermore, MassHealth regulations do not provide any exemption due to stress or poor health. The facts and record show that the transfer was made for less than FMV, and absent evidence that the transfer met one of the exceptions, MassHealth correctly determined that appellant made a disqualifying transfer of resources.

Once it has been established that an applicant has made a disqualifying transfer of resources, MassHealth calculates the period of ineligibility by adding “the value of all the resources transferred during the look-back period and divid[ing] the total by the average monthly cost to a private patient receiving long-term-care services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency.” See 130 CMR 520.019(G)(2). MassHealth then applies the period of ineligibility “beginning on the first day of the month in

which the first transfer was made or the date on which the individual is otherwise eligible for long-term care services, whichever is later.” *Id.*

Based on the above, the disqualifying transfer amount is \$445,100.00. At the time of his application in June, 2024, the average monthly nursing home rate in Massachusetts was \$433.00. See MassHealth Eligibility Operations Memo 24-07. In accordance with 130 CMR 520.019(G)(2)(i), MassHealth correctly imposed a 1028-day period of ineligibility (445,100.00/433) beginning on Appellant’s otherwise eligible date of March 1, 2024 and lasting until December 23, 2026.

As the appellant did not demonstrate by a preponderance of the evidence that MassHealth erred in imposing a period of ineligibility for a disqualifying transfer of resources, this appeal is 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

[REDACTED]

[REDACTED]

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