

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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|-------------------------|----------------|------------------------|------------|
| Appeal Decision: | DENIED | Appeal Number: | 2504249 |
| Decision Date: | 08/19/2025 | Hearing Date: | 04/18/2025 |
| Hearing Officer: | Sharon Dehmand | Record Open to: | 07/10/2025 |

Appearance for Appellant:



Appearance for MassHealth:

Gloria Medeiros, Taunton 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

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|---------------------------|-----------------|--------------------------|---|
| Appeal Decision: | DENIED | Issue: | Long Term Care; Coverage start date; Disqualifying transfer |
| Decision Date: | 08/19/2025 | Hearing Date: | 04/18/2025 |
| MassHealth's Rep.: | Gloria Medeiros | Appellant's Rep.: | [REDACTED] |
| Hearing Location: | Remote | 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 24, 2025, MassHealth approved the appellant for long-term care coverage with a start date of October 5, 2024. MassHealth determined that the appellant was not eligible for benefits for the period of September 10, 2024, to October 4, 2024, because of a disqualifying transfer of resources. See 130 CMR 520.004; 130 CMR 520.018; and Exhibit 1. The appellant filed a timely appeal on March 14, 2025. See 130 CMR 610.015(B) and Exhibit 2. Any MassHealth agency action to suspend, reduce, terminate, or restrict a member's assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032(A)(3).

Action Taken by MassHealth

MassHealth approved the appellant for long-term care services with a coverage start date of October 5, 2024.

Issue

Whether MassHealth was correct in determining the appellant's coverage start date of October 5, 2024. See 130 CMR 520.004; 130 CMR 520.007; 130 CMR 520.018; and 130 CMR 520.019.

Summary of Evidence

All parties participated telephonically. MassHealth was represented by a worker from the Taunton MassHealth Enrollment Center. The appellant was represented by an attorney who verified her identity. The following is a summary of the testimony and evidence provided at the hearing:

The MassHealth representative testified that the appellant was admitted to a long-term care facility on [REDACTED], after a hospital stay. A MassHealth long-term care application was submitted on the appellant's behalf on July 15, 2024, seeking coverage start date of August 26, 2024, to cover bed hold days. See Exhibit 5. The MassHealth representative stated that bed hold days are only covered if the member's MassHealth benefits are active which they were not. The MassHealth representative stated that the nursing facility is seeking a coverage start date of September 10, 2024, for room and board. She added that MassHealth calculated the coverage start date based on a penalty period. She said that the appellant surrendered a life insurance policy in the amount of \$35,783.37 on October 25, 2024, and a check was issued on November 11, 2024. MassHealth received verifications that a funeral home contract was established in the amount of \$23,018.31 and that \$802.00 was paid towards the conservatorship fees. MassHealth disregarded an additional \$1,500.00 from the life insurance proceeds for burial expenses and recalculated the remaining funds as \$10,463.06 (\$35,783.37-\$23,018.31-\$802.00-\$1,500.00). Based on this amount, MassHealth calculated the penalty period of 24 days by dividing \$10,463.06 by the average daily nursing home rate of \$433.00 per night. The start coverage date was determined to be October 5, 2024.

The appellant's attorney stated that an independent conservator was appointed by the court because the appellant's daughter was financially abusing her. She stated that after the appointment of a conservator, the family was able to obtain financial records. She agreed that the appellant's life insurance policy was surrendered for the amount of \$35,783.37 but disagreed with the penalty period. She stated that the appellant's son spent more than the surrender value of the policy for the appellant's funeral expenses.¹ As such, no penalty period should be imposed. In support of this position, the appellant's attorney offered two arguments. First, she argued that the appellant's son established this life insurance policy on behalf of the appellant in 2007. He paid for the premiums which totaled \$55,980.00 out of his own funds and counsel referenced the son's address on the policy as proof that he established and paid for the life insurance policy. She also referenced the son's affidavit submitted as part of the record as additional support for this contention. See Exhibit 8. Second, she argued that the appellant's son paid for the transportation of the appellant's body from Massachusetts to [REDACTED] and bought plane tickets for all her family

¹ The appellant passed away on [REDACTED]. See Exhibit 8.

members to attend her services in [REDACTED] in compliance with the appellant's specific wishes. Thus, he used all the proceeds from the life insurance policy for the benefit of the appellant.

The MassHealth representative responded that the owner of the insurance policy was the appellant. The appellant's bank statements reflected transfers to the son's account in the amount of \$300.00 every month which is the equivalent to the amount of the policy premiums. See Exhibit 5, pp. 4, 6, 8, 10. The appellant's attorney responded that as reflected in the appellant's son's affidavit, he started transferring funds to pay the premiums for the 20-month period preceding the appellant's passing but that he paid for the policy for more than 15 years. See Exhibit 8.

The record was left open until May 19, 2025, for the appellant's attorney to provide MassHealth with supportive documents proving that the proceeds from the life insurance policy were spent on the appellant's funeral arrangements. The record was further left open until May 27, 2025, for MassHealth to review the submissions from the appellant and to respond. See Exhibit 6.

Through emails dated May 19, 2025, and June 2, 2025, the appellant's attorney requested two subsequent extensions to the record open which were granted. See Exhibit 7. Through emails on May 19, 2025, June 20, 2025, and June 30, 2025, the appellant's attorney submitted additional documents, namely: memorandum in support of MassHealth eligibility; affidavit from the appellant's son; invoice regarding conservatorship services; funeral contract; email exchange with the insurance company; and payment transaction information from the insurance company for July 2023 to September 2024 showing premium payments from the son's bank account. See Exhibit 8.

Through an email on May 30, 2025, the MassHealth representative acknowledged that the payments for the life insurance premiums were being deducted from the appellant's son's bank account from July 2023 to September 2024. However, she responded that the same monthly amount was being transferred from the appellant's bank account to the son's bank account. She added that the applicant was the owner of the life insurance policy, and that she had access to the cash surrender value at any time during her lifetime. See Exhibit 9.

Findings of Fact

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

1. The appellant was admitted to a long-term care facility on [REDACTED], after a hospital stay. (Testimony and Exhibit 5).
2. A MassHealth long-term care application was submitted on the appellant's behalf on July 15, 2024, seeking coverage start date of August 26, 2024, to cover bed hold days. (Testimony and Exhibit 5).

3. The appellant did not have active MassHealth benefits on August 26, 2024. (Testimony and Exhibit 4).
4. The nursing facility is seeking a coverage start date of September 10, 2024, for room and board. (Testimony and Exhibit 5).
5. The appellant surrendered a life insurance policy in the amount of \$35,783.37 on October 25, 2024. (Testimony and Exhibit 5).
6. The appellant passed away on [REDACTED]. (Exhibit 8).
7. A check was issued on November 11, 2024. (Testimony).
8. A funeral contract was established for the appellant in the amount of \$23,018.31. (Testimony; Exhibit 5; and Exhibit 8).
9. The amount of \$802.00 was paid towards the conservatorship fees. (Testimony; Exhibit 5; and Exhibit 8).
10. MassHealth allowed a \$1,500.00 disregard for burial expenses. (Testimony and 130 CMR 520.008(F)).
11. MassHealth calculated the remaining funds as \$10,463.06 (\$35,783.37-\$23,018.31-\$802.00-\$1,500.00). (Testimony and Exhibit 5).
12. Based on this amount, MassHealth calculated the penalty period of 24 days by dividing \$10,463.06 by the average daily nursing home rate of \$433.00 per night. (Testimony and Exhibit 5).
13. Through a notice dated February 24, 2025, MassHealth approved the appellant for long-term care coverage with a start date of October 5, 2024. MassHealth determined that the appellant was not eligible for benefits for the period of September 10, 2024 to October 4, 2024, because of disqualifying transfer of resources. (Testimony and Exhibit 1).
14. The appellant filed a timely appeal on March 14, 2025. (Exhibit 2).
15. The record was left open until May 27, 2025, for the appellant's attorney to provide MassHealth with supportive documents proving that the proceeds from the life insurance policy were spent on the appellant's funeral arrangements and for MassHealth to review the submissions from the appellant and to respond. (Exhibit 6).

16. Through emails dated May 19, 2025 and June 2, 2025, the appellant's attorney requested two subsequent extensions to the record open which were granted. (Exhibit 7).
17. The appellant's attorney submitted additional documents, namely: memorandum in support of MassHealth eligibility; affidavit from the appellant's son; invoice regarding conservatorship services; funeral contract; email exchange with the insurance company; and payment transaction information from the insurance company for July 2023 to September 2024 reflecting payments from the appellant's son's bank account. (Exhibit 8).
18. The appellant's son started transferring funds from the appellant's bank account to pay for the premiums for the 20-month period preceding the appellant's passing (Testimony, Exhibit 8, and Exhibit 9).

Analysis and Conclusions of Law

MassHealth administers, and is responsible for, the delivery of healthcare benefits to MassHealth members. See 130 CMR 515.002. Eligibility for MassHealth benefits differs depending on an applicant's age. 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for non-institutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, and certain Medicare beneficiaries. See 130 CMR 515.002(B). Since the appellant was an institutionalized person, she is subject to the requirements of the provisions of Volume II. See 130 CMR 515.002.

Institutionalized individuals may establish eligibility for MassHealth Standard coverage subject to the following requirements:

- (1) be younger than 21 years old or 65 years of age or older or, for individuals 21 through 64 years of age meet Title XVI disability standards or be pregnant;
- (2) be determined medically eligible for nursing facility services by the MassHealth agency or its agent as a condition for payment, in accordance with 130 CMR 456.000: Long Term Care Services;
- (3) contribute to the cost of care as defined at 130 CMR 520.026: Long-term-care General Income Deductions;
- (4) have countable assets of \$2,000 or less for an individual and, for married couples where one member of the couple is institutionalized, have assets that are less than or equal to the standards at 130 CMR 520.016(B): Treatment of a Married Couple's Assets When One Spouse Is Institutionalized; and
- (5) not have transferred resources for less than fair market value, as described at 130 CMR 520.018: Transfer of Resources Regardless of Date of Transfer and 520.019: Transfer of Resources Occurring on or after August 11, 1993.

See 130 CMR 519.006(A).

Countable assets are all assets that must be included in the determination of eligibility. Countable assets include assets to which the applicant or member or his or her spouse would be entitled whether or not these assets are actually received when failure to receive such assets results from the action or inaction of the applicant, member, spouse, or person acting on his or her behalf. In determining whether or not failure to receive such assets is reasonably considered to result from such action or inaction, the MassHealth agency considers the specific circumstances involved. See 130 CMR 520.007.

The assets that the MassHealth agency considers as countable assets include, but are not limited to, cash, bank account balances, IRAs, Keough plans, pension funds, securities, cash surrender value of life-insurance policies, certain vehicles, certain real estate, certain SSI and RSDI benefits, trusts, and annuities, promissory notes, loans, mortgages, and similar transactions. See 130 CMR 520.007(A)-(J). The cash-surrender value of a life-insurance policy is the amount of money, if any, that the issuing company has agreed to pay the owner of the policy upon its cancellation. An individual may adjust the cash-surrender value of life insurance to meet the asset limit. The MassHealth agency will consider the cash-surrender-value amount an inaccessible asset during the adjustment period. See 130 CMR 520.007(E).

Noncountable assets are those assets exempt from consideration when determining the value of assets. See 130 CMR 520.008. In addition to the noncountable assets described in 130 CMR 520.006 and 520.007, a separately identifiable amount not to exceed \$1,500 expressly reserved for funeral and burial expenses is considered noncountable. See 130 CMR 520.008(F)(1)(b)(1).

The MassHealth agency denies payment for nursing-facility services to an otherwise eligible nursing-facility resident as defined in 130 CMR 515.001, 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 denial of payment for nursing-facility services does not affect the individual's eligibility for other MassHealth benefits. See 130 CMR 520.018(C).

Pursuant to 130 CMR 520.019(C), "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).² The MassHealth agency may

² The reference to 130 CMR 520.019(J) – which pertains to home equity loans and reverse mortgages, and does not include any language about exemptions from transfer penalties –

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. Action taken to avoid receiving a resource may include, but is not limited to, waiving the right to receive a resource, not accepting a resource, agreeing to the diversion of a resource, or failure to take legal action to obtain a resource. In determining whether or not failure to take legal action to receive a resource is reasonably considered a transfer by the individual, the MassHealth agency considers the specific circumstances involved. A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available.”

Per 130 CMR 520.019(B), the look-back period is determined as follows:

(B) Look-back Period. Transfers of resources are subject to a look-back period, beginning on the first date the individual is both a nursing-facility resident and has applied for or is receiving MassHealth Standard.

(1) For transfers occurring before February 8, 2006, this period generally extends back in time for 36 months.

(2) For transfers of resources occurring on or after February 8, 2006, the period generally extends back in time for 60 months. The 60-month look-back period will begin to be phased in on February 8, 2009. Beginning on March 8, 2009, applicants will be asked to provide verifications of their assets for the 37 months prior to the application. As each month passes, the look-back period will increase by one month until the full 60 months is reached on February 8, 2011.

(3) For transfers of resources from or into trusts, the look-back period is described in 130 CMR 520.023(A).

Here, there is no dispute that the appellant surrendered a life insurance policy in the amount of \$35,783.37 on October 25, 2024. The appellant is requesting that MassHealth coverage start on September 10, 2024.³ As such, the resource transfer occurred within the 60-month look-back

appears to be an error, a possible holdover from an earlier version of the regulations. The proper reference is likely 130 CMR 520.019(K), Exempting Transfers from the Period of Ineligibility. That provision provides an exemption from the penalty period where an applicant takes steps to reverse the actions that led to the disqualifying transfer finding (e.g., by revising a trust or by curing the transfer).

³ The appellant requested coverage start date of August 26, 2024, to cover bed hold days. As the MassHealth representative stated and the appellant’s attorney did not contest, the appellant was not eligible for bed hold days because she did not have active MassHealth coverage during this time. See 101 CMR 512.000(Medicaid bed hold day is described as “[a] patient day for which the primary payer is either MassHealth or a non-Massachusetts Medicaid program, including patient days paid for by a Senior Care Organization (SCO), One Care, the Program for All-inclusive Care for the Elderly (PACE), or a MassHealth affiliated Accountable Care Organization

period. The only disagreement is regarding the penalty period.

MassHealth received verifications that a funeral home contract was established in the amount of \$23,018.31 and \$802.00 was paid towards the conservatorship fees. MassHealth disregarded an additional \$1,500.00 from the life insurance proceeds for burial expenses and recalculated the remaining funds as \$10,463.06 (\$35,783.37-\$23,018.31-\$802.00-\$1,500.00). Permissible transfer of benefits includes resources transferred “to a separately identifiable burial account, burial arrangement, or a similar device for the nursing facility resident...in accordance with 130 CMR 520.008(F).” See 130 CMR 520.019(D)(7); 130 CMR 516.002(excluding assets from countability under 130 CMR 520.004 if they are used to fund funeral or burial arrangements). Based on this amount, MassHealth calculated the penalty period of 24 days by dividing \$10,463.06 by the average daily nursing home rate of \$433.00 per night. The start coverage date was determined to be October 5, 2024.

The appellant’s attorney stated that the appellant’s son spent far more than the surrender value of the policy for the appellant’s funeral expenses. As such, no penalty period should be imposed. In support of this position, the appellant’s attorney offered two arguments.

One, she posits that since the appellant’s son established the life insurance policy and paid for its premiums there was no transfer of resources. To support this argument, the counsel submitted payment transaction documents from the insurance company showing premium payments from the son’s bank account from July 2023 to September 2024. See Exhibit 8. Additionally, the appellant’s son submitted an affidavit in which he stated that “from May 4, 2007 until approximately 20 months before [the appellant’s] death I made all the payments for [the] policy...” See Exhibit 8, p. 6. I find this argument unpersuasive and the submitted documents without an evidentiary value for the following reasons.

First, there is no dispute that the owner of the policy was the appellant. As such, the appellant would have had access to the cash surrender value at any time prior to her passing. Second, the appellant’s bank statements reflected transfers in the amount of \$300.00 to her son’s account for majority of the months reflected on the payment transaction document submitted by the appellant. Additionally, the appellant’s son admitted that he was transferring funds for the premium payments from his mother’s bank account for the 20-month period preceding her death. An appellant bears the burden of proof at fair hearings “to demonstrate the invalidity of the administrative determination.” See Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228, 231 (2006). See Craven v. State Ethics Comm’n, 390 Mass. 191, 200 (1983)(“[p]roof by a preponderance of the evidence is the standard generally applicable to administrative proceedings”). The appellant has failed to meet this burden as the appellant’s attorney did not present any evidence to substantiate this claim.

(ACO). Medicaid bed days include patient days of individuals who elect hospice care for which Medicaid pays for room and board”).

Two, the appellant's attorney argued that the appellant's son paid for the transportation of the appellant's body from Massachusetts to California and bought plane tickets for all her family members to attend her services in California in compliance with the appellant's specific wishes. Thus, he used all the proceeds from the life insurance policy for the benefit of the appellant. The record was left open for the appellant's attorney to provide evidence proving that the proceeds from the life insurance policy were spent on the appellant's funeral arrangements. No such evidence was submitted by counsel. The appellant bears the burden of proof by the preponderance of the evidence to establish that the appellant's son spent the remaining proceeds on the appellant's funeral expenses. See Andrews v. Division of Medical Assistance, supra. The appellant failed to meet this burden.

In the absence of any convincing evidence, it is not possible to determine the specific purpose of the transfer, especially given the proximity of the date of transfer to the date of the application. Therefore, the appellant has not met her burden to show by the preponderance of the evidence that MassHealth's determination was in error.

For the foregoing reasons, 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.

Sharon Dehmand, Esq.
Hearing Officer
Board of Hearings

[REDACTED]

[REDACTED]

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