

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2504273
Decision Date:	7/1/2025	Hearing Dates:	04/14/2025; 05/14/2025
Hearing Officer:	Amy B. Kullar, Esq.	Record Open:	05/14/2025

Appearance for Appellant:



Appearance for MassHealth:

Yous Khieu, Charlestown 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:	Approved	Issue:	Long-Term Care; Disqualifying transfer
Decision Date:	7/1/2025	Hearing Dates:	04/14/2025; 05/14/2025
MassHealth's Rep.:	Yous Khieu	Appellant's Rep.:	[REDACTED]
Hearing Location:	Charlestown MassHealth Enrollment Center - Room 1 (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 January 17, 2025, MassHealth denied the appellant's application for Long-Term Care (LTC) benefits and imposed a 213-day period of ineligibility due to disqualifying transfers of resources during the lookback period. *See* 130 CMR 520.018 and Exhibit 1. The appellant filed this appeal in a timely manner March 14, 2025. *See* 130 CMR 610.015(B) and Exhibit 2. Denial of assistance is valid grounds for appeal. *See* 130 CMR 610.032.

A hearing was scheduled and held on April 14, 2025. *See* Exhibit 3. During the April 14, 2025 hearing, it was determined that a second hearing would be scheduled to take testimony from the appellant's spouse. *See* Exhibits 7 and 8. A second hearing was held on May 14, 2025. *See* Exhibit 8.

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 213-day period of ineligibility due to disqualifying transfers of resources during the lookback period.

Summary of Evidence

The appellant is a married adult who is over the age of 65 and currently resides in a long-term care facility; he was represented at both hearings by his attorney. MassHealth was represented at both hearings by a worker from the Charlestown MassHealth Enrollment Center. All parties appeared by telephone. The following is a summary of the testimony and documentary evidence presented at the hearings:

The MassHealth representative opened his testimony by giving background information on the history of the appellant's LTC application at MassHealth. The appellant is a married individual who entered a long-term care facility in [REDACTED] 2023. An application for LTC benefits was submitted on behalf of the appellant on November 30, 2023, and the appellant is seeking coverage for his stay on [REDACTED] 2023. Testimony; Exhibit 5. MassHealth issued the denial notice on appeal on January 17, 2025, which imposed a 213-day period of ineligibility due to disqualifying transfers of resources during the lookback period.

The MassHealth representative testified that after pre-hearing discussions with the appellant's attorney, the issue at this hearing is that the appellant is ineligible for LTC MassHealth for a 70-day time period beginning on October 26, 2023 due to disqualifying transfers of resources within the lookback period. Testimony; Exhibit 5. The MassHealth representative then explained that MassHealth had initially issued the denial notice to the appellant in January 2025 because MassHealth had found that the appellant had transferred the sum of sixty-three thousand (\$63,000.00) to his sister-in-law on November 29, 2024; however, during his pre-hearing discussion with the appellant's attorney, that transfer had been verified as reimbursement to the appellant's sister-in-law for expenditures she had made on behalf of the appellant and his spouse, and the sum of the disqualifying transfers is now thirty thousand (\$30,000.00) dollars. Testimony.

The MassHealth representative testified that based upon the information provided prior to hearing, MassHealth found six transactions during the lookback period to be disqualifying or unverified. Between April 2022 and August 2023, on six separate occasions, the appellant or his spouse made large cash withdrawals from their [REDACTED] bank account (each withdrawal was between \$4,000.00-\$6,000.00).¹ The sum total of the unverified cash withdrawals is thirty

¹ The unverified cash withdrawals from the appellant's [REDACTED] bank account are as follows: (i) 4/4/2022, \$4,000.00; (ii) 4/8/2022, \$5,000.00; (iii) 5/3/2022, \$5,000.00; (iv) 5/5/2022, \$4,000.00; (v) 7/5/2023, \$6,000.00; and (vi) 8/3/2023, \$6,000.00; Total: \$30,000.00.

thousand (\$30,000.00) dollars. The appellant did not provide an explanation or reasons for the withdrawals, and therefore the entire amount of the six withdrawals, \$30,000.00, constitutes the amount of the disqualifying transfer. Testimony.

The appellant's representative responded to MassHealth's testimony by stating that although he agreed that there were a lot of cash withdrawals, the six withdrawals in question are part of a lifelong pattern of behavior by the appellant and his wife. The appellant and his wife had been living an isolated, cash-based life in their [REDACTED] apartment until the appellant's health crisis in September 2023, when he was hospitalized. The appellant's representative stated that the appellant and his wife did not use or own credit cards or debit cards, and that they had lived off regular cash withdrawals for decades. Testimony.

The appellant's representative testified that the appellant and his wife resided together in their home up until the appellant's hospitalization in September 2023. The appellant and his wife always paid for their daily costs and expenses with cash. He acknowledged that bank statements from January 2022 through August 2023 identify some direct withdrawals from their account from vendors, but these are limited to expenses such as doctor's visits, a utility bill, and some Amazon payments. The charges from the bank statements indicate they were direct bank withdrawals, and not credit or debit card withdrawals. Testimony. The appellant's representative stated the bank statements were representative of their long pattern of living off their cash withdrawals. The patterns of cash withdrawals were justified by the fact that the appellant and his wife only use cash to pay for their daily expenses. The bank statements did not show any payments for groceries, restaurants, home supplies, clothes, or furnishings. Moreover, when the appellant was hospitalized in September 2023, it was discovered that he had at least \$60,535.00 in cash at his home. To pay his bill for his hospitalization, *the appellant brought \$23,235.00 in cash with him to the hospital.* It was only after the appellant had been hospitalized, and after his spouse and sister-in-law had met with his attorney, that the \$60,535.00 in cash that was found in the home was deposited into the appellant's bank account.² Testimony.

On October 10, 2023, the sum of \$23,435.00 in cash was deposited into the appellant's bank account. On October 23, 2023, the sum of \$37,100.00 was deposited into a joint bank account of the appellant and his spouse. Testimony. The appellant's representative stated that the "unverified withdrawals" that are at issue here today were part of the cash that the appellant's sister-in-law/attorney-in-fact found in the appellant's home after the appellant's hospitalization and these unexplained cash withdrawals were redeposited into the appellant's bank accounts on

² After the appellant was hospitalized in September 2023, the appellant's sister-in-law (his wife's sister), arrived in town to assist the appellant's spouse in the community. The appellant's sister-in-law serves as the attorney-in-fact for both the appellant and his spouse. The appellant's sister-in-law is the person who located and documented the large amounts of cash in the appellant's home. Testimony. After meeting with the appellant's attorney in early October 2023, the appellant's sister-in-law deposited the cash that she found in the home in the appellant's [REDACTED] bank account. Testimony.

October 10, 2023 and October 23, 2023 by the appellant's sister-in-law. The appellant's representative testified that during his pre-hearing discussions with MassHealth, he believed that MassHealth had accepted the explanation that the unverified withdrawals were a portion of the cash that the appellant's sister-in-law had discovered in the appellant's home in September 2023, which had been deposited into the appellant's bank account on the two October 2023 dates.

The appellant's representative further stated that there are no facts nor evidence to indicate that the appellant or his spouse had transferred their money to any other person. The appellant and his spouse had no intention of protecting assets for themselves or gifting assets to any family members. The appellant has two adult children, but does not financially support the children and there is no other evidence of gifting. Furthermore, there is no local family in the area. The withdrawals of cash were solely for the appellant and his spouse's use. Testimony.

After this testimony, it remained the position of the MassHealth representative that the six withdrawals in question needed to be verified, and that MassHealth would be standing on its determination. The Hearing Officer questioned the appellant's representative about the availability of the appellant's spouse to either provide an affidavit or testimony regarding their use of cash in their daily lives. After discussion, it was agreed that a second hearing would be scheduled so that the appellant's spouse could provide her testimony. The record was held open for thirty days following the first hearing, and a second hearing was scheduled on May 14, 2025. Exhibits 7 and 8. Prior to the second hearing, the appellant's representative emailed a memorandum to the Hearing Officer and the MassHealth representative. Exhibit 9.

On May 14, 2025, at the second hearing, the MassHealth representative summarized MassHealth's position, which remained unchanged since the first hearing. MassHealth needs the six withdrawals of cash between April 2022 and August 2023 to be explained in more detail by the appellant; otherwise, the total of all the withdrawals, \$30,000.00, will be considered disqualifying transfers by the appellant during the lookback period. Testimony. After questioning by the Hearing Officer, it was confirmed that the appellant was seeking a coverage start date of October 26, 2023 from MassHealth.

The appellant's representative responded to MassHealth's testimony by stating that the appellant stands on his pre-hearing memorandum as to the facts of the case and he maintains that the alleged disqualifying transfers were actually part of the regular cash withdrawals the appellant and his spouses habitually made to pay for their daily living expenses. It was then learned that appellant's spouse was not available to testify at the hearing due to a health issue, and the second hearing concluded shortly thereafter.

Findings of Fact

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

1. The appellant is over the age of 65, married, and filed an application for MassHealth long-term care benefits on November 30, 2023. Testimony.
2. On January 17, 2025, MassHealth denied the appellant's application for LTC benefits, based on the determination that the appellant made disqualifying transfers of resources, and MassHealth calculated a period of ineligibility beginning on the otherwise eligible date of October, 26, 2023, through May 26, 2024, or 213 days. Exhibit 1.
3. The appellant filed a timely appeal of the January 17, 2025 notice with the Board of Hearings on March 14, 2025. Exhibit 3.
4. After prehearing discussions with the appellant's representative, MassHealth resolved the 213-day period of ineligibility imposed in the January 17, 2025 notice, and at hearing, instead asked the appellant to explain six (6) cash withdrawals, which total \$30,000.00, and occurred between April 2022 and August 2023. Testimony.
5. After the appellant was hospitalized in September 2023, cash in the amount of \$60,535.00 was discovered in the appellant's home by the appellant's sister-in-law/attorney-in-fact; this cash was deposited into the appellant's bank account in October 2023. Testimony and Exhibit 9.
6. The appellant and his spouse do not own a credit card or a debit card. Testimony.
7. The cash withdrawals in question are representative of a pattern by which the appellant and his spouse have lived their lives, as they habitually use cash for nearly every necessity in life; the alleged disqualifying transfers were part of the sum of cash found at the appellant's home after his hospitalization in September 2023, and therefore, were part of the cash deposits into the appellant's bank account in October 2023. Testimony and Exhibit 9.

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.³ 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 of 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:⁴

....

(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-***

³ 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).

⁴ Appellant's representatives did not argue 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.

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 (emphasis added)

In this case, MassHealth imposed a period of ineligibility based on 6 unverified withdrawals totaling \$30,000.00, which constitute a disqualifying transfer of assets. These transfers occurred between April 2022 and August 2023, and all are well within the 5-year look-back period. The explanation for the disqualifying transfers that was offered is that at the time of the transfers, the appellant and his spouse only used cash for their daily expenses and upon the appellant's hospitalization, these withdrawals made up a portion of the cash that was found in the appellant's home and then re-deposited into his bank account in October 2023.

In determining whether the transfers of funds 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 (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).⁵

When applying MassHealth's transfer regulations and the federal mandatory instructions to the present case, the appellant has successfully demonstrated that MassHealth erred in concluding that the transfer of \$30,000.00 was made for less than FMV. See 130 CMR 520.018(B) and 520.019(B). Here, MassHealth incorrectly determined that appellant's transfer of funds was a transfer for less than FMV.

⁵ 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).

The appellant's representative's main argument was that the appellant should not be penalized for transfers of \$30,000.00 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 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, *supra*, 80 Mass. App. Ct. at 785-786.

The appellant has demonstrated that the six alleged "disqualifying transfers" totaling \$30,000.00 were not transfers of assets at all and therefore were made exclusively for reasons other than to qualify for MassHealth. See 130 CMR 520.019(F)(1). I strongly credit the testimony and documentary evidence provided by the appellant's representative to support the argument that the appellant did not seek to qualify for MassHealth at the time he or his spouse made the six cash withdrawals totaling \$30,000.00 between April 2022 and August 2023. Rather, I am convinced by the explanation that the appellant and his spouse had habitually lived off cash throughout their marriage; their bank account history confirms this claim, and further documents that they do not use a debit or credit card for any of their daily expenses. The fact that the appellant brought over \$20,000.00 *in cash* with him to the hospital in September 2023 in order to pay his bill for his hospitalization is one of many examples in the record evidence that confirms the appellant and his spouse lived a cash-only existence.

Furthermore, there is no evidence to indicate that the appellant or his spouse had transferred their money to any other person. Over \$60,000.00 in cash was located in the appellant's home after he was hospitalized in September 2023; all of these funds were subsequently deposited in the appellant's bank account in October 2023. The appellant and his spouse clearly had no intention of protecting assets for themselves or gifting assets to any family members. The appellant has two adult children but does not financially support these children and there is no other evidence of gifting. Furthermore, there is no local family in the area. The withdrawals of cash

were solely for the appellant and his spouse's use, and not for the purpose of qualifying for MassHealth.

Thus, I conclude that the appellant has demonstrated by a preponderance of evidence and presented *convincing evidence* that MassHealth erred in imposing a period of ineligibility for a disqualifying transfer of resources; this appeal is APPROVED.


Order for MassHealth

Rescind the January 17, 2025, notice and determine the appellant's LTC MassHealth eligibility without a resource transfer penalty. If otherwise eligible, send notice of eligibility to the appellant, including coverage start-date.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Amy B. Kullar, Esq.
Hearing Officer
Board of Hearings



cc: MassHealth Representative: Thelma Lizano, Charlestown MassHealth Enrollment Center,
529 Main Street, Suite 1M, Charlestown, MA 02129