

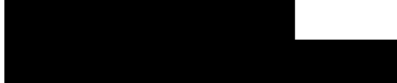
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2504565
Decision Date:	5/1/2025	Hearing Date:	04/10/2025
Hearing Officer:	Christopher Jones		

Appearances for Appellant:




Appearance for MassHealth:

Victoria Ragbir - Charlestown Intake



*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:	5/1/2025	Hearing Date:	04/10/2025
MassHealth's Rep.:	Victoria Ragbir	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 March 11, 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 520.018 and 520.019.) The appellant filed this appeal in a timely manner on March 20, 2025. (Exhibit 1; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth imposed a 279-day period of ineligibility from October 7, 2024, to July 12, 2025, based on a transfer of \$120,393.22 used to pay credit card bills.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.018 and 520.019, in determining that the appellant is ineligible for MassHealth benefits for 279 days because the appellant's daughter moved money from a joint bank account.

Summary of Evidence

MassHealth's representative testified that an application for long-term-care benefits was submitted on September 26, 2024. On March 11, 2025, MassHealth denied long-term-care eligibility from October 7, 2024, through July 12, 2025. The appellant and her daughter held joint checking and savings accounts. MassHealth submitted an exhibit showing \$120,393.22 was withdrawn in six transactions across 2024 from the joint savings account. MassHealth divided the total of these transactions by the average daily nursing home rate of \$441. The result was a 279-day period ineligibility for long-term-care benefits.

The transactions were:

- On March 11, 2024, \$20,557.45 was used to pay a credit card bill that was solely in the appellant's daughter's name;
- On April 9, 2024, \$20,926.06 was used to pay a credit card bill that was solely in the appellant's daughter's name;
- On May 9, 2024, \$25,903.72 was used to pay a credit card bill that was solely in the appellant's daughter's name;
- On July 15, 2024, \$34,000.00 was transferred to another bank account in the appellant's daughter's name alone;
- On December 30, 2024, \$1,072 was sent through Venmo to the appellant's daughter.

MassHealth's exhibit also shows \$90,000 being deposited by the appellant's daughter into the joint savings account through 4 deposits between January 17, 2024, and May 6, 2024.

A few days before the hearing, the appellant's representatives submitted additional documentation. Included were invoices from home health agencies that provided services to the appellant in the community. MassHealth did not consider these invoices to be cures for the disqualifying transfers. MassHealth's representative argued that, in order for the disqualifying transfers to be cured, the money from the appellant's account needs to be connected to the invoices paid. The submitted evidence did not connect the money withdrawn from the joint bank account to the payment to the home health agencies.

The appellant's daughter holds the appellant's power of attorney. Through an affidavit and testimony, the appellant's representatives explained the appellant has been disabled by Multiple Sclerosis since 1978. The appellant has resided with her daughter since 1997. The appellant's daughter has financially supported the appellant since 1997. The appellant had no income of her own until she turned [REDACTED] and started receiving a small Social Security benefit. In 2020, the appellant's ex-husband died. The appellant's Social Security benefit increased to a survivor's

benefit. In 2024, the appellant received \$2,039 per month from Social Security. This income was deposited into the joint savings account held with the appellant's daughter.

Prior to 2023, the appellant's daughter directly deposited a portion of her income into both of the joint accounts. The direct deposits into the savings account totaled between \$6,000 and \$9,000 per month. An additional \$3,000 to \$6,000 was deposited into the checking account. There are also several large deposits made into the accounts during this time from the appellant's daughter's assets. The appellant's daughter stopped the direct deposits in December 2022. From this time on, the only income deposited was the appellant's Social Security benefits. The appellant's daughter deposited \$40,000 into the checking account in 2023, before it was closed in April 2023. Between July 2023 and May 2024, the appellant's daughter deposited a total of \$165,000 into the joint savings account. The appellant's daughter averred that all of the appellant's income was used for the appellant's benefit. The appellant's daughter's credit card paid for the household's living expenses, including the appellant's care. The other transfers out of the account were reimbursing the appellant's daughter for expenses she paid on the appellant's behalf. The appellant has been diagnosed with dementia, and she is unable to provide any testimony regarding the arrangement for herself.

MassHealth's representative testified that: the appellant's only income was from Social Security benefits; the appellant did not have any other assets; and the appellant's expenses exceeded her income. MassHealth's representative agreed that most of the money deposited into these accounts came from the appellant's daughter's income or assets. MassHealth's representative agreed that there did not appear to be any intent to qualify for MassHealth benefits with regards to these transfers. MassHealth's representative agreed that these transfers occurred solely because the appellant and her daughter's finances were entangled because they lived together.

The appellant's hearing exhibit included spreadsheets showing cashflow into and out of the joint bank accounts. The exhibit includes invoices for home health care expenses incurred by the appellant in 2023. These invoices roughly average \$670 per week. This expense alone was more than the appellant's income. A letter from a financial advisor confirmed that the appellant's annual income had been insufficient to trigger tax filing since at least 2019.¹ Finally, the appellant's attorney argued that money is fungible. Therefore, curing a disqualifying transfer can be done with any money. The money does not need to be tracked from the applicant's account out and back again. Any money used to pay for home health services should cure any transfer, even if it came from a different source than the appellant's account.

¹ This is as far back as the accounting went. This letter also identifies a Family Trust associated with the appellant. MassHealth does not alleged that this trust could be countable as the appellant's.

Findings of Fact

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

- 1) The appellant has been disabled by Multiple Sclerosis since 1978, and she has resided with her daughter since 1997. (Testimony by the appellant's daughter; Exhibit 8, pp. 5-6.)
- 2) The appellant is over the age of ■■■. An application for long-term-care benefits was submitted for the appellant on September 26, 2024. (Testimony by MassHealth's representative; Exhibit 7.)
- 3) On March 11, 2025, MassHealth denied coverage for long-term-care benefits for 279 days, from October 7, 2024, through July 12, 2025. This period of ineligibility arises from six transactions across 2024 totaling \$120,393.22. The period of ineligibility was calculated by dividing the total transferred amount by the average daily nursing home rate of \$441. (Testimony by MassHealth's representative; Exhibit 7.)
- 4) The appellant's only income is from Social Security benefits. The appellant did not have any assets other than bank accounts she held jointly with her daughter. (Testimony by MassHealth's representative.)
- 5) The appellant's expenses surpassed her income. (Testimony by MassHealth's representative; testimony by the appellant's representatives; Exhibit 8, pp. 11-26, 145.)
- 6) Prior to 2023, the appellant's daughter deposited between \$9,000 and \$12,000 per month into the joint bank accounts. Between January 2023 and May 2024, the appellant's daughter deposited \$205,000 of her own assets into the joint bank accounts. (Exhibit 8, pp. 11-27.)
- 7) The money transferred out of the joint savings account was used to pay the appellant's expenses and not to qualify for Medicaid. (Testimony by MassHealth's representative; testimony by the appellant's representatives; Exhibit 8.)

Analysis and Conclusions of Law

The purpose of Medicaid is to provide medical assistance to those "whose income and resources are insufficient to meet the costs of necessary medical services." (42 USC § 1396-1 (2014).) To limit benefits to those who truly do not have the resources to provide for their care, MassHealth requires an individual over the age of sixty-five to have countable assets less than \$2,000. (130 CMR 520.003.) The applicant becomes eligible for long-term-care benefits "as of the date the applicant reduces his or her excess assets to the allowable asset limit without violating the transfer of resource provisions for nursing-facility residents ... or ... as of the date ... the applicant incurs

medical bills that equal the amount of the excess assets and reduces the assets to the allowable asset limit.” (130 CMR 520.004(A)(1)(a)-(b).)

MassHealth counts funds in a bank account “only to the extent that the applicant or member has both ownership of and access to such funds. The MassHealth agency determines the ownership of and access to the funds in accordance with 130 CMR 520.005 and 520.006.” (130 CMR 520.007(B)(2).) The entire amount on deposit in a joint bank account is considered available to the applicant (130 CMR 520.005(C)(2)), unless documentation shows “reasonable evidence of ownership” by someone else (130 CMR 520.005(D)). Reasonable evidence can include “documents establishing ownership of joint bank accounts that demonstrate the following”:

- (a) the origin of the funds in a joint bank account, who opened the account, or whose money was used to open the account;
- (b) federal and state tax records as to which joint account holders pay the tax on interest credited to the account as income;
- (c) records of who makes deposits and withdrawals and, if appropriate, how withdrawn funds are spent;
- (d) any evidence of written or oral agreements made between the parties at the time of the creation of the account;
- (e) evidence of age, relationship, physical or mental condition, or place of residence of the co-holders when the applicant or member states that he or she does not own the account but is listed as a co-holder solely as a convenience to the other co-holder to conduct bank transactions on his or her behalf; and
- (f) why the applicant or member is listed on the account;

(130 CMR 520.005(D)(3).)

If an applicant or member has transferred countable resources for less than fair-market value, 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.) “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).)

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.

For transfers occurring on or after February 8, 2006, the MassHealth agency adds the value of all the resources transferred during the look-back period and divides 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. The result will be a single 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.

(130 CMR 520.019(G)(i).)

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 also affects 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)).)

The appellant has submitted comprehensive documentation establishing the appellant's daughter deposited most of the money into the joint accounts. The evidence also shows "relationship, physical or mental condition, [] place of residence of the co-holders [to the establish the applicant was] listed as a co-holder solely as a convenience to the other co-holder to conduct bank transactions on" the applicant's behalf. It is irrelevant that the appellant's daughter paid her personal credit card statement with money from these accounts. The appellant and her daughter

lived together and shared expenses. The appellant's home health care expenses exceeded her income. All other living expenses were paid by the appellant's daughter. The appellant has proven the transferred resources did not come from the appellant's assets. Therefore, they cannot give rise to a disqualifying transfer.

Even if the assets could have been counted as the appellant's, MassHealth concedes the transfers were made "exclusively for a purpose other than to qualify for MassHealth." Transfers made without the intent to qualify for Medicaid are exempt from being found disqualifying transfers. There is no basis for MassHealth to count these transactions as disqualifying transfers, and this appeal is APPROVED in full.

Order for MassHealth

Redetermine the appellant's eligibility without imposing a disqualifying transfer.

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.

Christopher Jones
Hearing Officer
Board of Hearings

cc:

[REDACTED]

[REDACTED]

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