

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2504576
<b>Decision Date:</b>	6/2/2025	<b>Hearing Date:</b>	05/05/2025
<b>Hearing Officer:</b>	Thomas J. Goode		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Riana Malik, 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

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Long Term Care- Disqualifying Transfer
<b>Decision Date:</b>	6/2/2025	<b>Hearing Date:</b>	05/05/2025
<b>MassHealth's Rep.:</b>	Riana Malik, Tewksbury MEC	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Remote	<b>Aid Pending:</b>	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 5, 2025, MassHealth approved Appellant's application for MassHealth long-term care benefits effective November 29, 2024 and determined a 69-day period of ineligibility from September 21, 2024 through November 28, 2024, due to resource transfers (130 CMR 520.019 and Exhibit 1). An appeal was filed in a timely manner on March 20, 2025 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth approved Appellant's application for MassHealth long-term care benefits effective November 29, 2024 and determined a 69-day period of ineligibility from September 21, 2024 through November 28, 2024 due to resource transfers.

### Issue

The appeal issue is whether MassHealth correctly approved Appellant's application for MassHealth long-term care benefits effective November 29, 2024 and determined a 69-day period of ineligibility from September 21, 2024 through November 28, 2024 due to resource transfers.

## Summary of Evidence

The parties appeared by telephone. The MassHealth representative testified that Appellant was admitted to a nursing facility on [REDACTED] 2020.<sup>1</sup> Appellant does not have a spouse in the community. A long-term care application was submitted to MassHealth on November 29, 2024, requesting an eligibility start date of September 21, 2024. On January 17, 2025, MassHealth issued a denial for failure to submit verifications. The application dated November 29, 2024 was preserved following an appeal. On March 5, 2025, MassHealth issued an approval notice for long-term care benefits effective November 29, 2024 and determined a 69-day period of ineligibility from September 21, 2024 through November 28, 2024, due to resource transfers. At issue is a resource transfer that occurred on January 31, 2025 when Appellant's great nephew and power of attorney transferred \$30,018.49 to himself from Appellant's [REDACTED] account held jointly with the great nephew/POA. MassHealth explained that the resource transfer was discovered through MassHealth's asset verification process that showed Appellant owned a CD valued at \$30,018.49 that was transferred to her niece on February 4, 2020 within the 5-year look back period (Exhibit 6, p. 10). On January 30, 2025, Appellant's niece returned the funds to Appellant's bank account held jointly with the great nephew/POA. On January 31, 2025, the great nephew/POA transferred \$30,018.49 to himself as reimbursement for resources he expended from his own funds to pay for Appellant's nursing facility care. A private pay letter from the nursing facility shows an [REDACTED] 2020 admission date and private pay totaling \$674,685 from [REDACTED] 2020 through September 20, 2024. MassHealth records show that Appellant's great nephew/POA transferred to Appellant's account \$314,660, and that \$274,600 was transferred from Appellant's resources to the great nephew/POA leaving a difference of \$40,060 owed to the great nephew/POA (See Exhibit 6). The MassHealth representative clarified that MassHealth does not dispute that Appellant's nephew transferred his resources to Appellant's account held jointly with himself and reimbursed himself for the nursing facility expenses paid on Appellant's behalf (See Id., p. 9). MassHealth testified that Appellant was asset eligible for MassHealth long-term care coverage on September 21, 2024. MassHealth acknowledged that the great nephew/POA paid from his own resources approximately \$40,000 in nursing facility costs for Appellant in August 2024 and September 2024. However, when \$30,018.49 was returned to Appellant's account on January 30, 2025, the resources were considered available to pay for Appellant's nursing facility care because a MassHealth application was already in process. Pursuant to 130 CMR 520.018, and 520.019, MassHealth determined that the transfer to Appellant's great nephew on January 31, 2025 was a transfer exclusively for the purpose of becoming MassHealth eligible regardless of approximately \$40,000 in payments made by Appellant's great nephew/POA from his own resources for Appellant's nursing facility care in August 2024 and September 2024.

Appellant's great nephew/POA testified that he was responsible for liquidating Appellant's assets to pay for her nursing facility care. He stated that Appellant's home and adjacent house lot was sold

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<sup>1</sup> MassHealth initially testified to an admission date of [REDACTED] 2022, and later revised the date to [REDACTED] 2020 in a written submission into evidence (See Exhibit 5 and Exhibit 6, p. 1).

and nearly \$700,000 was paid for her care since Appellant's nursing facility admission in [REDACTED] 2020. Appellant's great nephew/POA testified that in August 2024, Appellant's resources were exhausted, so he transferred his own money to the joint account he held with Appellant and paid approximately \$40,000 to the nursing home to pay for Appellant's care. When MassHealth discovered through its asset verification process the \$30,000 CD that was transferred to his mother nearly 5 years ago, he asked his mother (Appellant's niece) about the resource transfer which she confirmed. Appellant's great nephew/POA explained that his mother was the primary caregiver for Appellant, and Appellant gifted the money to her to repay her for years of care. He added that he was previously unaware of the CD account and the resource transfer. When MassHealth discovered the CD, Appellant's great nephew/POA directed his mother to return the funds to Appellant's joint account, which she reluctantly did on January 30, 2025. On January 31, 2025, Appellant's great nephew/POA transferred \$30,018.49 to himself as partial repayment for the \$40,000 he spent on Appellant's nursing facility care for August 2024 and September 2024. He testified that he paid for Appellant's care without knowing that \$30,018 would be returned to Appellant; however, since the funds were returned to Appellant, the funds should be available to him as partial reimbursement for the \$40,060 in payments he made for Appellant's nursing facility care which MassHealth acknowledges he made from his own resources in August 2024 and September 2024.

## Findings of Fact

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

1. Appellant was admitted to a nursing facility on [REDACTED] 2020. A private pay letter from the nursing facility shows private pay totaling \$674,685 from [REDACTED] 2020 through September 20, 2024.
2. Appellant does not have a spouse in the community.
3. A long-term care application was submitted to MassHealth on November 29, 2024, requesting an eligibility start date of September 21, 2024.
4. On January 17, 2025, a denial issued for failure to submit verifications. The application dated November 29, 2024 was preserved following an appeal.
5. On March 5, 2025, MassHealth issued an approval notice for long-term care benefits effective November 29, 2024 and determined a 69-day period of ineligibility from September 21, 2024 through November 28, 2024 due to resource transfers. MassHealth divided \$30,018.49 by the average daily nursing home rate of \$433 per day.
6. MassHealth discovered through its asset verification process that Appellant owned a CD valued at \$30,018.49 that was transferred to her niece on February 4, 2020 within the 5-year

look back period and almost 5 years prior to the application.

7. On January 30, 2025, Appellant's niece returned the funds to Appellant's bank account held jointly with the great nephew/POA.
8. On January 31, 2025, the great nephew/POA transferred \$30,018.49 to himself as reimbursement for resources he expended from his own funds to pay for Appellant's nursing facility care.
9. MassHealth records show that Appellant's great nephew/POA transferred to Appellant's account \$314,660, and \$274,600 was transferred from Appellant's resources to the great nephew/POA as reimbursement, leaving a difference of \$40,060 owed to the great nephew/POA.
10. It is undisputed that in August 2024, Appellant's resources were exhausted, and Appellant's great nephew/POA paid with his own money approximately \$40,000 to the nursing home to pay for Appellant's care.

## Analysis and Conclusions of Law

### 130 CMR 520.018: Transfer of Resources Regardless of Date of Transfer

(A) The provisions of 42 U.S.C. 1396p apply to all transfers of resources. In the event that any portion of 130 CMR 520.018 and 520.019 conflicts with federal law, the federal law supersedes.

(B) The MassHealth agency denies payment for nursing-facility services to an otherwise eligible nursing-facility resident as defined in 130 CMR 515.001: *Definition of Terms* 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.

(C) The denial of payment for nursing-facility services does not affect the individual's eligibility for other MassHealth benefits.

(D) Circumstances giving rise to disqualifying transfers of resources are also described at 130 CMR 520.007(J).<sup>2</sup>

A disqualifying transfer of resources is defined at 130 CMR 520.019<sup>3</sup>:

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<sup>2</sup> 130 CMR 520.007(J) does not apply to the instant circumstances and directs the analysis to 130 CMR 520.018 and 520.019.

<sup>3</sup> (D) Permissible Transfers. The MassHealth agency considers the following transfers permissible. Transfers of resources made for the sole benefit of a particular person must be in accordance with federal law. (1) The resources were transferred to the spouse of the nursing-facility resident or to another for the sole benefit of the spouse. A

(C) Disqualifying Transfer of Resources. 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). The MassHealth agency may 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 will consider the specific circumstances involved. A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available.

Regulation 130 CMR 520.019(G)(3), effective February 8, 2006, provides in pertinent part:

Begin Date. For transfers occurring before February 8, 2006, the period of ineligibility will begin on the first day of the month in which resources have been transferred for less than fair-market value. For transfers occurring on or

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nursing-facility resident who has been determined eligible for MassHealth agency payment of nursing-facility services and who has received an asset assessment from the MassHealth agency must make any necessary transfers within 90 days after the date of the notice of approval for MassHealth in accordance with 130 CMR 520.016(B)(3). (2) The resources were transferred from the spouse of the nursing-facility resident to another for the sole benefit of the spouse. (3) The resources were transferred to the nursing-facility resident's permanently and totally disabled or blind child or to a Trust, a pooled Trust, or a special-needs Trust created for the sole benefit of such child. (4) The resources were transferred to a Trust, a special-needs Trust, or a pooled Trust created for the sole benefit of a permanently and totally disabled person who was under 65 years of age at the time the Trust was created or funded. (5) The resources were transferred to a pooled Trust created for the sole benefit of the permanently and totally disabled nursing-facility resident. (6) The nursing-facility resident transferred the home he or she used as the principal residence at the time of transfer and the title to the home to one of the following persons: (a) the spouse; (b) the nursing-facility resident's child who is under age 21, or who is blind or permanently and totally disabled; (c) the nursing-facility resident's sibling who has a legal interest in the nursing-facility resident's home and was living in the nursing-facility resident's home for at least one year immediately before the date of the nursing-facility resident's admission to the nursing facility; or (d) the nursing-facility resident's child (other than the child described in 130 CMR 520.019(D)(6)(b)) who was living in the nursing-facility resident's home for at least two years immediately before the date of the nursing-facility resident's admission to the institution, and who, as determined by the MassHealth agency, provided care to the nursing-facility resident that permitted him or her to live at home rather than in a nursing facility. (7) The resources were transferred to a separately identifiable burial account, burial arrangement, or a similar device for the nursing-facility resident or the spouse in accordance with 130 CMR 520.008(F).

after February 8, 2006, the period of ineligibility will begin on the first day of the month in which resources were transferred for less than fair-market value or the date on which the individual is otherwise eligible for MassHealth payment of long-term-care services, whichever is later. For transfers involving revocable Trusts, the date of transfer is the date the payment to someone other than the nursing-facility resident or the spouse is made.

Regulation 130 CMR 520.019(F)<sup>4</sup> follows:

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.

The State Medicaid Manual (HCFA Transmittal letter 64) at Section 3258.10 sets forth the following guidance to transfers exclusively for a purpose other than qualifying for Medicaid:

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 (Emphasis added).<sup>5</sup>

Regulation 130 CMR 520.019 (K)(1)(b) states that during the eligibility process, the full value or a portion of the full value of the transferred resources may be returned to the nursing-facility resident. The MassHealth agency will use the original application date and consider the transfer

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<sup>4</sup> See also 42 U.S.C. §1396p(c)(J)(2)(C)(i-iii).

<sup>5</sup> See also 20 C.F.R. § 416.1246(e) *Presumption that resource was transferred to establish SSI or Medicaid eligibility.* Transfer of a resource for less than fair market value is presumed to have been made for the purpose of establishing SSI or Medicaid eligibility unless the individual (or eligible spouse) furnishes convincing evidence that the resource was transferred exclusively for some other reason. Convincing evidence may be pertinent documentary or non-documentary evidence which shows, for example, that the transfer was ordered by a court, or that at the time of transfer the individual could not have anticipated becoming eligible due to the existence of other circumstances which would have precluded eligibility. The burden of rebutting the presumption that a resource was transferred to establish SSI or Medicaid eligibility rests with the individual (or eligible spouse).

to have been eliminated or adjusted. The MassHealth agency will apply the countable assets rules at 130 CMR 520.007 and the countable income rules at 130 CMR 520.009 to the returned resources in determining eligibility.

Here, MassHealth discovered through asset verification that Appellant had owned a CD valued at \$30,018.49 that was transferred to her niece on February 4, 2020, within the 5-year look back period and almost 5 years prior to the application. The transfer was cured on January 30, 2025, when Appellant's niece (Appellant's great nephew's mother) returned the funds to Appellant's bank account held jointly with the great nephew/POA. On January 31, 2025, the great nephew/POA transferred \$30,018.49 to himself as reimbursement for resources he expended from his own funds to pay for Appellant's nursing facility care. It is undisputed that in August 2024, Appellant's resources were exhausted, and Appellant's great nephew/POA transferred his own money to the joint account he held with Appellant and paid approximately \$40,000 to the nursing home to pay for Appellant's care through September 20, 2024. Appellant has privately paid \$647,685 for her nursing facility care since her admission in [REDACTED] 2020, and had the \$30,018.49 of Appellant's resources not been transferred nearly 5 years earlier and were available to Appellant, it is presumable on these facts that the resources would have been expended on Appellant's nursing facility care for August 2024 and September 2024. Further, Appellant received fair market value for the \$30,018.49 returned to her by her niece, and transferred to her great nephew/POA who had already paid for her nursing facility care from his own funds. Appellant has presented convincing and undisputed evidence to rebut the presumption that the \$30,018.49 transferred to her great nephew/POA on January 31, 2025 was intended to establish MassHealth eligibility, and has shown that the resources were transferred for the exclusive purpose of reimbursement for the nursing facility payments in August and September 2024. Therefore, Appellant has carried the burden of showing the invalidity of the MassHealth action calculating a 69-day period of ineligibility from September 21, 2024 through November 28, 2024 due to the \$30,018.49 resource transfer to Appellant's great nephew/POA on January 31, 2025.

The appeal is APPROVED in accordance with the order below.

## **Order for MassHealth**

Rescind the notice dated March 5, 2025, and begin long-term care eligibility effective September 21, 2024.

## **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.



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Thomas J. Goode  
Hearing Officer  
Board of Hearings

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