

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved in part;
Denied in part

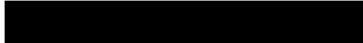
Appeal Number: 2506276

Decision Date: 7/23/2025

Hearing Date: 5/20/2025

Hearing Officer: David Jacobs

Appearance for Appellant:



Appearance for MassHealth:

Yisell Medina, Taunton MEC



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Approved in part; Denied in part	Issue:	Long-term care eligibility
Decision Date:	7/23/2025	Hearing Date:	5/20/2025
MassHealth's Rep.:	Yisell Medina	Appellant's Rep.:	
Hearing Location:	Board of Hearings (Remote)		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through notice dated 3/21/2025, MassHealth notified the appellant that her long-term care application was approved with a 385-day penalty period which runs from 11/16/2023 to 12/5/2024 due to a sale of real property \$170,000 below fair market value (Exhibit 1). The appellant filed this appeal in a timely manner on 4/22/2025 (130 CMR 610.015(B) and Exhibit 2). Determination of a penalty period is a valid ground for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified the appellant that her application was approved with a 385-day penalty period which runs from November 16, 2023 to December 5, 2024 due to a sale of real property \$170,000 below fair market value

Issue

The appeal issue is whether MassHealth was correct in the application of the 385-day penalty period.

Summary of Evidence

A MassHealth worker appeared telephonically at hearing and testified as follows: A MassHealth long-term care application was filed on the appellant's behalf on 9/25/2023 with a requested start date of 11/16/2023 (Exhibit 7). The application was approved on 3/21/2025 with a 385-day penalty period which runs from 11/16/2023 to 12/5/2024 due to a sale of real property \$170,000 below fair market value (Exhibit 1).

The facility representative appeared telephonically on behalf of the appellant and responded as follows: In 2020, the appellant and her husband resided in an apartment of a three-tenement home. On 12/14/2020, facing financial difficulties, the appellant and her husband entered into an arrangement with their grandson whereby he purchased the entire three-tenement home for \$600,196.49. As part of this transaction, the grandson allegedly received \$170,000 in "gift equity", with an alleged verbal understanding that these funds would also be used, at least in part, for necessary home repairs to the home and in lieu of rent as she and her husband intended to remain living there. Documentary evidence shows the grandson subsequently spent \$43,399.44¹ repairing the roof and replacing three boilers in the property (Exhibit 6, pgs. 16-17). The representative explained that due to the interconnected nature of the three tenements, repairs made to benefit the appellant would also have to benefit the entire property (Exhibit 6). The representative argues that further electrical work and accessibility repairs were also done to the home, however, no documentation for the cost of these repairs could be found for submission (Exhibit 8). Photos were submitted to show examples of some of the repair work done (Exhibit 9).

In addition to the repair work, the appellant representative also argues that \$144,000 of the transfer should be forgiven as the amount the appellant would have paid to the grandson based on a \$3,000 a month rent for four years. The representative submitted a rental agreement showing as such, but it appears this is for illustrative purposes only and the intent was for the appellant and her spouse to live in the home rent free² (Exhibit 6, pgs. 25-41). However, there is evidence that the appellant's husband was paying the grandson some form of rent in the form of checks with the words "rent" in the description (Exhibit 8, pgs. 3-5). However, the representative alleges these were fake checks the husband was having the grandson cash so he could hide that he was spending the money on gambling. The representative submitted affidavits from the husband alleging checks from 2020 to 2023 were in fact for gambling, as well as affidavits from the grandson confirming at least two instances of checks to him for rent were cashed and given back to the husband (Exhibit 8 pg. 2 and pgs. 7-10).

The record was held open after the hearing for the representative to obtain additional

¹ \$16,767.44 for the boilers and \$26,632.00 for the roof (Exhibit 6, pgs. 16-17)

² In her email the representative writes "The rental contracts were only submitted to show this is what they would have paid if their grandson were to charge them to live in their home." (Exhibit 10, pg. 3)

documentation of the repairs performed on the home (Exhibit 10). The only additional documentation submitted were the affidavits mentioned above, summaries of the appellant's position, and photos of some of the repair work allegedly done (Exhibits 8 and 9).

In response, MassHealth refused to forgive any additional amount of the transfer as there is no documentation that the roofing and boiler work were necessary or done as part of an agreement (Exhibit 10, pgs. 5 and 9). Moreover, these repairs mostly benefited the grandson and not the appellant *id.* As for the potential rent, MassHealth argues that it cannot consider the appellant's gambling payments and any other living expenses as part of that \$170,000 transfer *id.* The \$170,000 dollars was never in the appellant's possession and could not be used for these expenses *id.* Furthermore, MassHealth has already made exceptions for the living expenses and gambling money *id.*

The appellant representative responded several times by trying to clarify her position (Exhibit 10, pgs. 1-7). Therefore, the hearing officer extended the record open period so that appellant representative could submit a legal brief to properly state her position (Exhibit 10, pgs. 1-3). However, the facility attorney declined to write a brief, and the record closed *id.*

Findings of Fact

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

1. The appellant and her spouse lived in an apartment of a three-tenement house.
2. On 12/14/2020, the appellant and her spouse sold the three-tenement house to their grandson for \$600,196.49. This amount was \$170,000 below market value so the grandson could retain that amount in "gift equity."
3. The appellant and her spouse continued to live in the house.
4. The grandson performed \$43,399.44 in repairs to the home for a new roof and three new boilers. \$16,767.44 for the boilers and \$26,632.00 for the roof
5. There are several checks that the appellant or her spouse wrote that contain language on them that suggest they were made for rent payments.
6. On 9/25/2023, the appellant applied for MassHealth Long Term Care Benefits.
7. On 3/21/2025, the appellant was approved for MassHealth benefits with a 385-day penalty period which runs from 11/16/2023 to 12/5/2024 due to a sale of real property \$170,000 below fair market value.

8. On 4/22/2025, the appellant appealed the notice.

Analysis and Conclusions of Law

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) (130 CMR 520.019(C)). A disqualifying transfer may include any action taken which would result in making a formerly available asset no longer available (130 CMR 520.019(C)).

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)).

Here it is undisputed that the appellant sold their 3-tenement home for \$170,000 below the fair market value. However, the appellant argues this amount was verbally agreed to be used for necessary repairs for the home and in lieu of rent payments. I will take each argument in turn.

First, as far as the repairs are concerned, the appellant is able to show that \$43,399.44 was spent on roof repairs and replacement of three boilers (Exhibit 6, pgs. 16-17). The representative concedes that these repairs did not only benefit the appellant's apartment, but the house as a whole. However, she argues that due to the structure of the home there is no way to perform these repairs without them benefiting the other two units as well. MassHealth refuses to accept these repairs as potential cures for the transfer as there is no documentation supporting that they were necessary or done as part of an agreement with the grandson for allowing the gift equity.

I find that the appellant has persuasively argued that repairs to the roof and replacement of a boiler are necessary repairs to allow the appellant to comfortably live in their home. However, it is also true that the repairs also benefited the parts of the house where the appellant and her husband did not live. Therefore, I find that one third of the repairs will be considered to be performed on the appellant's behalf in the amount of \$14,466.48. As for the further electrical and accessibility improvements to the house, the appellant has not submitted any documentation showing the cost of those repairs and thus a potential cure cannot be calculated.

Therefore, the appeal is APPROVED IN-PART to cure \$14,466.48 of the transfer amount.

Second, as far as the rent is concerned the appellant has not met her burden. The appellant representative argues that potentially \$144,000 can be cured of the transfer penalty due to the free rent the appellant and her spouse enjoyed while living in their home. However, the evidence on record is not sufficient to prove that amount to be cured. There is no documentation on record showing any of the agreements the appellant had with her grandson. The lease agreement on record appears to be for illustrative purposes only and there is no basis to consider \$3,000 appropriate rent (Exhibit 6, pgs. 25-41). Indeed, the submitted checks from the appellant's spouse allegedly written fraudulently to support a gambling habit do not have consistent amounts to even estimate what the parties may have considered potential rent to be (Exhibit 8, pgs. 3-5). Moreover, the existence of these checks for rent undermine the appellant's argument that the \$170,000 gift equity was in lieu of rent. The appellant is adamant that these checks were fraudulently written to support a gambling habit. However, the submitted affidavits supporting that argument are by the appellant's family who have an interest in the outcome of these proceedings and are not convincing. Therefore, I find that the appellant has not met their burden to show that the gift equity was in lieu of rent and even if it was, the appellant has not met their burden to show how much that rent should have been. The purpose of the remainder of the \$170,000 gift equity not cured above is unknown.

This part of the appeal is DENIED.

The appeal is APPROVED IN-PART and DENIED IN-PART.

Order for MassHealth

Cure the transfer penalty amount by \$14,466.48 and determine a new start date; there are no appeal rights on the new start date notice as the transfer issue has been adjudicated here.

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.

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.

David Jacobs
Hearing Officer
Board of Hearings

cc:

Taunton MEC

