

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2506352
<b>Decision Date:</b>	8/7/2025	<b>Hearing Date:</b>	06/17/2025
<b>Hearing Officer:</b>	Christine Therrien	<b>Record Open to:</b>	06/20/2025

**Appearance for Appellant:**



**Appearance for MassHealth:**

Elizabeth Kittiphane, Quincy



*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>	LTC – Disqualifying Transfers
<b>Decision Date:</b>	8/7/2025	<b>Hearing Date:</b>	06/17/2025
<b>MassHealth’s Rep.:</b>	Elizabeth Kittiphane	<b>Appellant’s Rep.:</b>	
<b>Hearing Location:</b>	Quincy Harbor South Telephonic		

### Authority

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

### Jurisdiction

The appellant received a notice dated 3/17/25, stating: MassHealth has reviewed your application for MassHealth long-term care services, which you filed on 3/12/25.<sup>1</sup> You are not eligible for MassHealth because you recently gave away or sold assets to become eligible for MassHealth. We have calculated a period of ineligibility from 7/4/24 to 4/30/2025. (130 CMR 520.018, 520.019 and Exhibit 1). The appellant filed this appeal timely on 4/4/25. (130 CMR 610.015(B) Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth denied the appellant long-term care benefits until 4/30/25, due to a disqualifying transfer.

---

<sup>1</sup> The denial notice stated the application was received on 3/12/25, which is a typo, as the application was actually received on 7/11/24.

## Issue

Is MassHealth correct in determining that the appellant's spouse's purchase of an annuity contract was a disqualifying transfer?

## Summary of Evidence

The MassHealth representative testified that the appellant is [REDACTED] and married. The MassHealth representative testified that a Long-Term Care application was received on 7/11/24. The MassHealth representative testified that the appellant was admitted to the facility on [REDACTED] with a requested start date of [REDACTED]. The MassHealth representative testified that a request for information was sent out on 7/24/24. The MassHealth representative testified that the application was denied on 11/4/24 for missing verifications. The MassHealth representative testified that an appeal was requested on the 11/4/24 notice. The MassHealth representative testified that the re-application date is 1/6/25 after some verifications were received. A request for information was sent on 1/22/25. The MassHealth representative testified that the application was denied again on 2/26/25 for missing verifications. The MassHealth representative testified that an appeal was requested on the 2/26/25 notice. The MassHealth representative testified that all verifications were received and processed on 3/17/25.

The MassHealth representative testified that MassHealth determined there was a resource transfer of \$130,000 on 7/2/24, from the appellant's joint bank account, which was used to purchase an annuity for \$127,263.83. The MassHealth representative testified that the annuitant/payee/owner is the appellant's community spouse. The MassHealth representative testified that the annuity has an effective date of 7/7/24, with two payouts for \$63,632.71 each. The MassHealth representative testified that the first payout was on 7/17/24 and the second payout was on 8/17/24 and was deposited into the community spouse's bank account. The MassHealth representative testified that the community spouse purchased the annuity at the age of [REDACTED]. MassHealth determines an annuity is sound if the total payout is more than the amount of the resource transfer. The MassHealth representative testified that MassHealth's calculation for a sound annuity is the monthly payout amount (\$63,632.71) x 12 months x life expectancy (6.07 years in this case) = the total payout amount. The total payout amount would be \$4,635,006.60, according to MassHealth, which is more than the total resource transfer amount.

MassHealth calculates the period of ineligibility by dividing the disqualifying transfer amount by the average cost to a person paying privately for nursing facility services in the Commonwealth; \$130,000 (transfer amount) divided by \$433.00 (average daily nursing home rate) = 300.23 = 300 Days. The resulting new start date is 5/1/25.

The MassHealth representative testified that MassHealth believes the purchase of the annuity was done with the intent to reduce assets for the appellant to qualify for long-term care benefits. The MassHealth representative testified that the appellant's community spouse took 2 annuity payouts totaling \$127,265.42. The MassHealth representative testified that the appellant's spouse had \$123,010.14 in assets, and the appellant had \$5,549.38 in assets on the requested start date of 7/4/24. The MassHealth representative testified that the appellant would have qualified for MassHealth on 7/4/25, and MassHealth would have given the appellant 90 days to reduce her assets to the \$2,000 limit. The MassHealth representative testified that MassHealth determined that the intent of purchasing the annuity, two payments effective two days before the appellant's requested start date, was to qualify for MassHealth. The annuity is irrevocable and nonassignable. (Exhibit 2). The primary remainder beneficiary of the annuity is MassHealth, with the estate of the community spouse listed as the contingent beneficiary. (*Id.*).

The appellant's attorney submitted a brief and testified to the intent of the appellant's spouse for purchasing the annuity.

[T]he community spouse purchased the single premium immediate annuity effective [REDACTED] [The appellant], was at that time a resident of [the LTC facility] and had been paying privately for her care since her admission on [REDACTED] [REDACTED] Prior to her admission, she had always resided in the marital home with [the community spouse], who was her sole caretaker since the beginning of her diagnosis with dementia. Shortly before [the appellant] entered [the LTC facility] on [REDACTED] [the community spouse] unexpectedly fell seriously ill on April 14, 2024 and was admitted to the hospital. He was diagnosed with myasthenia gravis, an autoimmune disease which causes a breakdown in the interaction of nerves and muscles in the body, resulting in muscle weakness and difficulty speaking, swallowing and walking. This is a chronic condition and not curable. [The community spouse] was unable to swallow solid foods and had IV transfusions to suppress his immune system from fighting itself. [The community spouse] was discharged home after two weeks but had developed short-term memory loss and appeared depressed due to the dual trauma of his wife moving into the nursing home and the onset of his chronic illness, both at the same time. On [REDACTED] [the community spouse] was admitted to the psychiatric unit at [a hospital] [REDACTED] After several weeks in the hospital, it was determined that it was likely [REDACTED] [The community spouse] was placed on medication for depression and discharged home with home health care services. Due to muscle weakness caused by his illness, since that time [the community spouse] has needed assistance at home at the cost of \$3,000 per month with activities of daily living such as hygiene care, meal prep, laundry, transportation to the senior center for

exercise, physical therapy and social interactions plus transport for visits to [the appellant] at [the LTC facility], and an additional \$176 per month for housekeeping services, grocery shopping services and assistance from a visiting nurse with medications. He has been paying these monthly costs since June 2024. During the period beginning with his illness in April 2024, [the community spouse] became extremely fearful over his medical future and the significant unexpected increase in the cost of his own daily care needs. Given his recently diagnosed chronic illness, short-term memory loss, age and inability to care for himself independently at home, he did not know if home health care would be sufficient for him to remain at home alone or if he would need to move to assisted living at the minimum cost of \$8,000 per month, given the level of care services he would need there. The monthly costs of assisted living far exceeded his monthly income of \$3,490. This monthly income left him with very little income with which to pay his regular household, personal and food expenses after his home health provider fees were paid. He feared that the purchase of a longer-term annuity would leave him without sufficient liquid funds to pay for the uncertain medical costs of his immediate future. This was the sole cause of [the community spouses'] decision to purchase the annuity for a period of two months.

(Exhibit 2).

The appellant's attorney further argued that the 130 CMR 520.018(B) states that MassHealth will deny a LTC application if there is a disqualifying transfer, which is defined in the regulations as transfers of countable resources for less than fair market value during or after the period of time referred to as the lookback period.

[T]he purchase of an annuity will be considered a disqualifying transfer of assets unless the following apply: (1) the Commonwealth of Massachusetts is named as the remainder beneficiary in the first position after the spouse; (2) is irrevocable and non-assignable; (3) provides for equal monthly payments and (4) the term of the annuity cannot surpass the annuitant's life expectancy per actuarial tables. Therefore, in order to not be considered a disqualifying transfer of assets, the annuity purchase has to be for fair market value. 130 CMR 520.18. If it is not for fair market value, only at that point does intent become an issue and MassHealth has to determine that the intent behind the purchase was exclusively for a purpose other than to qualify for MassHealth. 130 CMR 520.019. MassHealth's denial of [the appellant's] eligibility due to its suspicion that the intent of the annuity purchase was solely to qualify for benefits is erroneous where the annuity purchase was not for less than fair market value but is actuarially sound and therefore for fair market value and as such is not a disqualifying transfer. Therefore, the issue of intent does not apply.

(Exhibit 2).

## Findings of Fact

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

1. The appellant is [REDACTED] and married.
2. On [REDACTED] the appellant was admitted to the nursing facility.
3. On 7/11/24, the appellant submitted a Long-Term Care application to MassHealth.
4. The application requested coverage start date is [REDACTED]
5. On 7/24/24, MassHealth sent out a request for information to the appellant.
6. On 11/4/24, MassHealth denied the application for missing verifications.
7. The appellant filed an appeal of the notice of 11/4/24.
8. The MassHealth re-application date is 1/6/25, and a request for information was sent on 1/22/25.
9. On 2/26/25, the application was denied again for missing verifications.
10. The appellant filed an appeal of the notice of 2/26/25.
11. On 3/17/25, all verifications were received and processed.
12. MassHealth determined there was a resource transfer of \$130,000 on 7/2/24, from the appellant's joint bank account, which was used to purchase an annuity for \$127,263.83.
13. The annuitant/payee/owner is the appellant's community spouse.
14. The annuity has an effective date of 7/7/24 and with two payouts for \$63,632.71 each.
15. The first payout was on 7/17/24, and the second payout was on 8/17/24 and was deposited into the community spouse's bank account.
16. The appellant's community spouse purchased the annuity at the age of [REDACTED]

17. MassHealth determines an annuity is sound if the total payout is more than the amount of the resource transfer.
18. MassHealth's calculation for a sound annuity is the monthly payout amount (\$63,632.71) x 12 months x life expectancy (6.07 years in this case) = the total payout amount. The total payout amount would be \$4,635,006.60, which is more than the total resource transfer amount.
19. The appellant's community spouse took two annuity payouts totaling \$127,265.42.
20. The annuity is irrevocable and nonassignable, and the primary remainder beneficiary is MassHealth.
21. The appellant's community spouse had \$123,010.14 in assets, and the appellant had \$5,549.38 in assets on the requested start date of 7/4/24.
22. MassHealth calculates the period of ineligibility by dividing the disqualifying transfer amount by the average cost to a person paying privately for nursing facility services in the Commonwealth; \$130,000 (transfer amount) divided by \$433.00 (average daily nursing home rate) = 300.23 = 300 Days. The new starting coverage date is [REDACTED]
23. The appellant would have qualified for MassHealth on 7/4/24, as the appellant and the community spouse were under the marital asset limit of \$156,140.00.
24. The appellant's attorney submitted a brief and testified to the intent of the appellant's spouse for purchasing the annuity.

[T]he community spouse purchased the single premium immediate annuity effective July 3, 2025. [The appellant], was at that time a resident of [the LTC facility] and had been paying privately for her care since her admission on [REDACTED]. Prior to her admission, she had always resided in the marital home with [the community spouse], who was her sole caretaker since the beginning of her diagnosis with dementia. Shortly before [the appellant] entered [the LTC facility] on [REDACTED] [the community spouse] unexpectedly fell seriously ill on April 14, 2024 and was admitted to the hospital. He was diagnosed with myasthenia gravis, an autoimmune disease which causes a breakdown in the interaction of nerves and muscles in the body, resulting in muscle weakness and difficulty speaking, swallowing and walking. This is a chronic condition and not curable. [The community spouse] was unable to swallow solid foods and had IV transfusions to suppress his immune system from fighting itself. [The community spouse] was discharged home after two

weeks but had developed short-term memory loss and appeared depressed due to the dual trauma of his wife moving into the nursing home and the onset of his chronic illness, both at the same time. On [REDACTED]

[REDACTED] [The community spouse] was placed on medication for depression and discharged home with home health care services. Due to muscle weakness caused by his illness, since that time [the community spouse] has needed assistance at home at the cost of \$3,000 per month with activities of daily living such as hygiene care, meal prep, laundry, transportation to the senior center for exercise, physical therapy and social interactions plus transport for visits to [the appellant] at [the LTC facility], and an additional \$176 per month for housekeeping services, grocery shopping services and assistance from a visiting nurse with medications. He has been paying these monthly costs since June 2024. During the period beginning with his illness in April 2024, [the community spouse] became extremely fearful over his medical future and the significant unexpected increase in the cost of his own daily care needs. Given his recently diagnosed chronic illness, short-term memory loss, age and inability to care for himself independently at home, he did not know if home health care would be sufficient for him to remain at home alone or if he would need to move to assisted living at the minimum cost of \$8,000 per month, given the level of care services he would need there. The monthly costs of assisted living far exceeded his monthly income of \$3,490. This monthly income left him with very little income with which to pay his regular household, personal and food expenses after his home health provider fees were paid. He feared that the purchase of a longer-term annuity would leave him without sufficient liquid funds to pay for the uncertain medical costs of his immediate future. This was the sole cause of [the community spouse's] decision to purchase the annuity for a period of two months.

## **Analysis and Conclusions of Law**

To qualify for MassHealth long-term care coverage, the assets of the institutionalized applicant cannot exceed \$2,000.00 (130 CMR 520.016(A)). If resources in excess of the program limit are available to the applicant, MassHealth must determine if there are any disqualifying transfers of those resources. If the applicant has purchased an annuity, then 130 CMR 520.007(J) governs whether the annuity was a disqualifying transfer.



130 CMR 520.007(J) states:

(1) Treatment of Annuities Established Before February 8, 2006. Payments from an annuity are countable income in accordance with 130 CMR 520.009. If the annuity can be converted to a lump sum, the lump sum, less any penalties or costs of converting to a lump sum, is a countable asset. Purchase of an annuity is a disqualifying transfer of assets for nursing facility residents as defined at 130 CMR 515.001: Definition of Terms in the following situations:

- (a) when the beneficiary is other than the applicant, member, or spouse;
- (b) when the beneficiary is the applicant, member, or spouse and when the total present value of projected payments from the annuity is less than the value of the transferred asset (purchase price). In this case, the MassHealth agency determines the amount of the disqualifying transfer based on the actuarial value of the annuity compared to the beneficiary's life expectancy using the life-expectancy tables as determined by the MassHealth agency, giving due weight to the life-expectancy tables of institutions in the business of providing annuities;
- (c) when the terms of the annuity postpone payment beyond 60 days, the MassHealth agency will treat the annuity as a disqualifying transfer of assets until the payment start date; or
- (d) when the terms of the annuity provide for unequal payments, the MassHealth agency may treat the annuity as a disqualifying transfer of assets. Commercial annuity payments that vary solely as a result of a variable rate of interest are not considered unequal payments under 130 CMR 520.007(J)(1)(d).

(2) Treatment of Annuities Established on or after February 8, 2006. In addition to the requirements in 130 CMR 520.007(J)(1), the following conditions must be met.

- (a) The purchase of an annuity will be considered a disqualifying transfer of assets unless
  1. the Commonwealth of Massachusetts is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the institutionalized individual;
  2. the Commonwealth of Massachusetts is named as such a remainder beneficiary in the second position after the community spouse, or minor or disabled children; or
  3. the Commonwealth of Massachusetts is named as such a remainder beneficiary in the first position if the community spouse or the representative of any minor or disabled children in 130 CMR 520.007(J)(2)(a)2 disposes of any such remainder for less than fair-market value.
- (b) The purchase of an annuity is considered a disqualifying transfer of assets unless the annuity satisfies 130 CMR 520.007(J)(1) and (J)(2)(a) and is irrevocable and nonassignable, or unless the annuity satisfies 130 CMR 520.007(J)(2)(c).<sup>2</sup>

---

<sup>2</sup> 130 CMR 520.007(J)(2)(c) The purchase of an annuity is considered a disqualifying transfer of assets unless the annuity satisfies 130 CMR 520.007(J)(2)(b), or unless the annuity names the Commonwealth of Massachusetts as a beneficiary as required under 130 CMR 520.007(J)(2)(a) and the annuity is 1. described in section 408(b) or (q) of

The purchase of an annuity is considered a disqualifying transfer of assets when the total present value of projected payments from the annuity is less than the value of the purchase price. The regulations require MassHealth to determine the amount of a disqualifying transfer based on the actuarial value of an annuity compared to the beneficiary's life expectancy using the life-expectancy tables as determined by MassHealth, giving due weight to the life-expectancy tables of institutions in the business of providing annuities.

MassHealth has given due weight to the life-expectancy tables of institutions in the business of providing annuities and has determined through the Social Security Actuarial Life Table that the life expectancy of an [REDACTED] On 7/7/24, at the age of [REDACTED] the appellant annuitized a 2-month annuity contract, which he purchased for \$127,263.83. Since the appellant has a life expectancy of [REDACTED] the total value of projected payments from the annuity is \$4,635,006.60, according to MassHealth, which is more than the value of the transferred asset. The annuity contract is actuarially sound. MassHealth does not dispute the soundness of the annuity, but instead disputes the intent of the asset transfer. The annuity satisfies 130 CMR 520.007(J)(1) and (J)(2)(a); therefore, it may not be deemed a disqualifying transfer of assets.

If MassHealth has determined that an asset was transferred for less than fair-market value, the agency will consider the intent of the transfer before imposing a period of ineligibility.<sup>3</sup> 130 CMR 520.017(F). The annuity is actuarially sound; thus, it was not purchased for less than fair-market value.

MassHealth's notice states that the assets were given away to qualify for MassHealth. 130 CMR 520.017(F)(1).<sup>4</sup> I disagree. The appellant's attorney provided credible testimony that the annuity was exclusively for the purpose of subsidizing the care provided to the appellant's ailing community spouse. The annuity purchase was not a disqualifying transfer, as it was not purchased for less than fair-market value, and it was not purchased for the purpose of

---

the Internal Revenue Code of 1986; 2. purchased with the proceeds from an account or trust described in section 408(a), (c), or (p) of the Internal Revenue Code of 1986; 3. purchased with the proceeds from a simplified employee pension described in section 408(k) of the Internal Revenue Code of 1986; or 4. purchased with the proceeds from a Roth IRA described in section 408A of the Internal Revenue Code of 1986.

<sup>3</sup> 130 CMR 520.019(G) Period of Ineligibility Due to a Disqualifying Transfer. (1) Duration of Ineligibility. If the MassHealth agency has determined that a disqualifying transfer of resources has occurred, the MassHealth agency will calculate a period of ineligibility. The number of months in the period of ineligibility is equal to the total, cumulative, uncompensated value as defined in 130 CMR 515.001: Definition of Terms of all resources transferred by the nursing-facility resident or the spouse, divided by the average monthly cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency.

<sup>4</sup> 130 CMR 520.019(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.

qualifying the appellant for MassHealth.

This appeal is APPROVED.

## **Order for MassHealth**

Rescind the 3/17/25 notice and redetermine the appellant's eligibility without regard to the annuity purchase.

## **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.

---

Christine Therrien  
Hearing Officer  
Board of Hearings

[REDACTED]

[REDACTED]

cc: MassHealth Representative: Quincy MEC, Attn: Appeals Coordinator, Cassandra Moura