# Office of Medicaid
# BOARD OF HEARINGS

**Appellant Name and Address:**

[redacted]

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| **Appeal Decision:** | Approved in part; Denied in part | **Appeal Number:** | 2506418 |
| **Decision Date:** | 11/24/2025 | **Hearing Dates:** | 6/27/2025 & 08/01/2025 |
| **Hearing Officer:** | Casey Groff, Esq. | **Record Closed** | 08/03/2025; Re-opened 10/31/2025 – 11/12/25 |

**Appearance for Appellant:**

[redacted]

**Appearance for MassHealth:**
Elizabeth Kittiphane, Benefits Eligibility & Referral Social Worker, Quincy 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

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| **Appeal Decision:** | Approved in part; Denied in part | **Issue:** | Long Term Care; Disqualifying Transfer |
| **Decision Date:** | 11/24/2025 | **Hearing Date:** | 08/01/2025 |
| **MassHealth's Rep.:** | Elizabeth Kittiphane | **Appellant's Rep.:** | [redacted] |
| **Hearing Location:** | Board of Hearings, Remote | **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 2/26/25, MassHealth denied Appellant's application for long-term care benefits based on its determination that she made disqualifying resource transfers totaling $656,803.53 and was subject to a 1,517-day period of ineligibility. *See* 130 CMR §§ 520.018, 520.019; Exh. 1. Appellant filed this appeal in a timely manner on 4/24/25. *See* 130 CMR 610.015(B) and Exhibit 2. On 6/25/25, after accounting for cures, MassHealth updated the transfer amount to $633,828.27 which adjusted the period of ineligibility to 1,464 days.[1] *See* Exh. 19. Denial of assistance is valid grounds for appeal. *See* 130 CMR 610.032.

The Board of Hearings (BOH) scheduled a hearing on the matter for 5/30/25. *See* Exh. 5. On 5/20/25, Appellant, through counsel, requested the matter be continued. *See* Exh. 5. Upon finding good cause, BOH granted the request and rescheduled the hearing for 6/27/25. *See* Exh. 8.[2] After the hearing on 6/27/25, the matter was continued to 8/1/25 for the presentation of additional evidence. The record closed on 8/3/25 but was subsequently re-opened between 10/31/25 through 11/12/2025 for the parties to submit additional evidence.

[1] The 6/25/25 notice was, accordingly, consolidated with this appeal.
[2] On 6/6/25, counsel for Appellant submitted a second request to reschedule the hearing, which had been set for 6/27/25, however, BOH denied this request. *See* Exh. 9.

## Action Taken by MassHealth

MassHealth denied Appellant's application for MassHealth long-term-care benefits because it determined that she and/or her spouse made disqualifying transfers of resources totaling $633,828.27 and therefore imposed a 1,464-day period of ineligibility.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR §§ 520.018, 520.019, in denying Appellant's LTC application on the basis that she or her spouse made $633,828.27 in disqualifying transfers.

## Summary of Evidence

A MassHealth eligibility representative appeared at the hearing and, through documentary submissions and oral testimony, presented the following evidence: Appellant is over the age of [redacted] and resides in a nursing facility. On 9/3/24, a long-term care (LTC) application was submitted to MassHealth on Appellant's behalf. At the time of application, Appellant was married with her spouse residing in the community. On 2/26/25, MassHealth denied Appellant's application based on its determination that she and/or her spouse (collectively "the couple") made disqualifying resource transfers totaling $656,803.53. (Exh. 1). Dividing this amount by the average daily nursing home rate of $433, MassHealth imposed a 1,517-day period of ineligibility from 8/1/24 through 9/25/28. (*Id*.) Appellant filed a timely appeal of the 2/26/25 notice. (Exh. 2). Prior to the scheduled hearing on the appeal, MassHealth received verification that $22,975.20 had been cured, reducing the total disqualifying transfer amount to **$633,828.27**. As a result, MassHealth adjusted the ineligibility period to 1,464 days starting on 8/1/24 and ending on 8/3/28. A revised notice dated 6/25/25 was issued to reflect the updates. (Exh. 19).

The total resource transfer amount of $633,828.27 is comprised of numerous withdrawals made from six of the couple's bank accounts which MassHealth determined were unverified and/or made for less than fair market value, with the following resource transfer totals for each account:

1. [redacted]
2. [redacted]
3. [redacted]
4. [redacted]

[3] MassHealth clarified that [redacted] shortly after the Bank-1 CD-1 and checking accounts were opened. For purposes of this Decision, references to "Bank 1" include accounts that were originally opened under [redacted] and later converted to [redacted] The numbers for each account remained the same despite the merger.

5. [redacted]
6. [redacted]

The MassHealth representative testified that Appellant's spouse, who had been actively involved in submitting verifications for Appellant's LTC application, passed away on [redacted] Before his passing, the spouse made several statements to the MassHealth representative concerning transactions reflected in the bank records being produced. In a 10/15/24 email, the spouse wrote "*Also I need to talk to you by phone (PRIVATELY) about some of my expenditures - personal in nature. Will raise your hair.*" (Exh. 14(C), Doc. 8). The MassHealth representative testified that during the scheduled call, which took place on 10/20/24, the spouse advised her of large withdrawals reflected in the bank statements, which, he alleged, were made to repay gambling debts owed by one of the couple's three sons. The MassHealth representative noted that the spouse's statements were unprompted given that, at the time of the call, MassHealth had not yet initiated a resource transfer review. In response, the MassHealth representative informed the spouse that any such transfers may result in a penalty period. According to the MassHealth representative, following their conversation, the spouse changed his explanation, asserting the withdrawals were related to his own gambling activities, not his son's. In another conversation, the spouse claimed that he had been advised to spend down his assets after Appellant (his wife) had been hospitalized.

In conducting a five-year lookback, MassHealth reviewed the marital accounts to determine whether there was a history or pattern of large withdrawals consistent with gambling. The MassHealth representative testified that she found no such pattern prior to 12/29/2020, which is the date the spouse gifted funds to his children. It was not until after this date that MassHealth observed large withdrawals being made from the account.

Prior to the hearing, MassHealth provided copies of verification submissions, written explanations by the spouse, and a summary spreadsheet prepared by the MassHealth representative itemizing the individual transfers that were deemed "disqualifying" within each bank account. (Exh. 14(A)-14(N)); Exh. 20). Specifically, the spreadsheet identifies the source account, withdrawal date and amount, the portion verified (if any), and rationale for the disqualifying transfer determination. (Exh. 14(D), Doc. 9). The MassHealth representative testified that not all disqualifying transfers identified were attributed to gambling; some were large monetary gifts to the son, or the result of the couple's failure to provide documentation – such as receipts, invoices, or account statements – to substantiate how the transferred funds were spent. The MassHealth representative testified that all documented cures were applied to reduce the total disqualifying transfer amount and are reflected in the spreadsheet. The evidence in the record, along with MassHealth's testimony, indicates, in summary, the following:

**1.** [redacted]

Appellant's spouse and one of his sons opened the [redacted] account on 1/13/21 (Exh. 14(M),

Doc. 18, p. 14). On 1/13/23, the CD was closed, and the account balance of $270,276.40 was withdrawn,[4] resulting in a closing balance of $0.00. (Exh. 14(E), Doc. 10). During the application process, the spouse submitted a written explanation stating that, at the time of closing, $250,000.00 was placed into a new CD account at [redacted] (Exh. 14(M), Doc. 18, p. 4) and $20,000.00 was redeposited into his [redacted] checking account. The spouse submitted underlying bank records, including a CD deposit slip and account statements verifying that $250,000.00 was deposited into the new CD-2 on 1/13/23 (*id*. at 17; Exh. 14(G), p. 1) and that $20,276.40 was withdrawn via check, $20,000.00 of which was redeposited into the Bank-2 checking account on the same day (Exh. 14(D), Doc. 9; Exh. 14(M), Doc. 18, p. 15; Exh. 14(F), Doc. 11, p. 75).

MassHealth received verification that the $20,000.00 from Bank-1 CD was transferred to the Bank-2 checking account on 1/13/23. MassHealth's spreadsheet notes that although the spouse reported that $5,000.00 of the 1/13/23 withdrawal was used for driveway repairs, no supporting documentation was provided. Consequently, MassHealth deemed this portion of the total withdrawal amount as a disqualifying transfer.

**2. Bank-1 CD-2 – Total Disqualifying Transfers: $12,000.00.**

This account, which was owned by the spouse jointly with a named trust ("Trust"), was opened on 1/13/23, and funded with $250,000.00 transferred from the remaining balance in Bank-1 CD-1. (Exh. 14(G), Doc. 12, p. 1). Based on MassHealth's testimony, the spreadsheet, and the underlying verifications submitted into evidence, the total disqualifying transfer amount of $12,000 is based on the following transactions, which represent the portions of withdrawn funds for which Appellant could not provide adequate documentation.

- ***6/7/23: $8,000 Disqualifying Transfer***. This is based on two withdrawals the spouse made on 6/7/23 in the amounts of $4,313.52 and $21,150.65, totaling $25,464.17. Of this amount, MassHealth imposed no penalty on $10,000.00 which was attributed to "cash" and $7,000 which was traced to deposits into another account. The remaining $8,000 could not be verified and therefore was deemed disqualifying.

- ***9/15/23: $4,000 Disqualifying Transfer***. This is based on two withdrawals made on 9/15/23 in the amounts of $2,624.52 and $22,877.54, totaling $25,502.06. Of this amount, MassHealth imposed no penalty on $5,000 which was attributed to "cash" and $16,000.00 which was redeposited into another account. The remaining $4,000.00 was unaccounted for and therefore was deemed disqualifying.

**3. Bank-1 Checking – Total Disqualifying Transfers: $21,500.00**

[4] MassHealth's spreadsheet references a withdrawal amount of $270,267.51, which according to the closing statement, is the balance prior to a $8.89 interest credit. Therefore, the entire balance as of the closing, and thus the entire amount withdrawn on 1/13/23, was $270.276.40. (Exh. 14(E), Doc. 10).

The spouse and Trust are listed as the owners of the Bank-1 checking account. MassHealth identified eight separate withdrawals made between July and October of 2024 by cash or check (payable to "cash") in amounts ranging from $1,500.00 to $5,000.00. (Exh. 14(D), Doc. 9; Exh. 14(I), Doc. 14). Copies of the checks appear to be signed by the spouse. (*Id.*). No documentation or verification was submitted to substantiate the purpose or disposition of these withdrawals. As a result, MassHealth deemed the combined total of $21,500.00 a disqualifying transfer. (Exh. 14(D), Doc. 9).

**4. Bank-2 Checking – Total Disqualifying Transfers: $271,328.27**

Appellant and her spouse were joint owners of the Bank-2 checking account. (Exh. 14(F), Doc. 11). MassHealth determined that, from this account, the couple made disqualifying transfers totaling **$271,328.27** consisting of various transactions between 12/23/20 and 5/3/24. (Exh. 14(D), Doc. 9; Exh. 14(F), Doc. 11). Based on the information contained in the spreadsheet, the Bank-2 checking account transfers can be summarized under the following categories:

- ***Gifts to Children****:* There are nine line-items in the spreadsheet for Bank-2 which are attributed to checks made payable to the couple's children between 12/29/20 and 10/26/21 and which total **$71,000.00**.[5] The spreadsheet and underlying bank records show that each of the couple's three sons received $10,000.00 in August of 2021. All other transfers were made to the couple's oldest and youngest sons. MassHealth initially identified two gifts made on 12/29/20, each in the amount of $29,000.00, representing separate transfers to the Appellant's oldest and youngest sons. Each received two checks of $14,500.00, for a combined total of $58,000.00 in gifts transferred on 12/29/20. However, one of the two $29,000.00 gifts was cured after one of the sons returned the gifted amount the couple on 10/28/24. Therefore, only one of the two $29,000.00 gifts remained included in the net disqualifying transfer amount. (Exh. 19; Exh. 14(D)).

- ***Unverified "Gambling" Withdrawals*****:** MassHealth identified 79 "cash withdrawal" transactions totaling **$184,100.00.**[6] The individual withdrawals, which ranged in amounts

[5] The figure is based on the following transfers: 10.26.21 $2,000-Check 3109; 8.9.21 $10,000.00-Check 3083; 8.9.21 $10,000.00-Check 3085; 8.7.21 $10,000.00-Check 3084; 6.21.21 $4,000.00 Check 3061; 6.18.21 $4,000.00-Check 3062; 6.18.21 $2,000.00 Check 3060; 12.29.20 $14,500.00 Check 2985; 12.29.20 $14,500.00 Check 2984.

[6] This figure is based on the following transfers: 5.3.24-$2,000.00; 5.29.24-$3,000.00; 4.26.24-$3,000.00; 3.14.24-$2,000.00; 3.1.24-$3,000.00; 2.23.24-$3,000.00; 2.7.24-$2,000.00; 2.1.24-$2,000.00; 1.16.24-$2,100.00; 12.26.23-$2,000.00; 12.22.23-$2,000.00; 12.12.23-$2,000.00; 11.22.23-$2,000.00; 11.4.23-$3,000.00; 10.28.23-$3,000.00; 10.23.23-$3,000.00; 10.16.23-$3,000.00; 9.29.23-$3,000.00; 9.22.23-$3,000.00; 8.25.23-$3,000.00; 8.18.23-$2,000.00; 7.22.23-$2,000.00; 7.15.23-$3,000.00; 5.18.23-$3,000.00 4.21.23-$2,000.00; 4.12.23-$2,000.00; 3.24.23-$2,000.00; 3.18.23-$2,000.00; 3.9.23-$3,000.00; 3.3.23-$2,000.00; 2.10.23-$3,000.00; 2.3.23-$2,000.00; 1.25.23-$3,000.00; 1.20.23-$3,000.00; 1.12.23-$2,000.00; 12.9.22-$3,000.00; 11.28.22-$3,000.00; 11.16.22-$3,000.00; 11.9.22-$3,000.00; 10.22.22-$3,000.00; 9.16.22-$3,000.00; 9.1.22-$2,000.00; 8.19.22-$3,000.00; 7.16.22-

between $2,000.00 and $3,000.00, had been specifically flagged by the spouse as being used for "gambling." (*Id.).* Because no receipts, betting slips, or other documentation was submitted to verify the expenditures, they were deemed disqualifying resource transfers.

- ***Miscellaneous Unverified Transfers*:** The remaining disqualifying transfer amount of **$45,228.27**[7] consisted of numerous cash withdrawals, which had not been designated for any particular use by the spouse, as well as two check withdrawals; specifically, a 5/3/24 check in the amount of $1,528.27 payable to the town in which the couple resided and a 1/5/21 check of $19,500.00 that the spouse alleged was used to purchase a new truck but lacked supporting documentation. (*Id.*).

**5. Bank-3 MM – Total Disqualifying Transfers: $24,000.00**

The couple jointly owned the Bank-3 MM account. (Exh. 14(K), Doc. 16). According to the MassHealth spreadsheet and underlying records, the total disqualifying transfer amount of $24,000.00 consisted of the following:

- ***Gift to Son**:* A **$10,000.00** cash withdrawal on 3/1/21 which the spouse explained was given as a "gift to son." (Exh. 14(D), Doc. 9; Exh. 14(K), Doc 16, p. 13).

- ***Unverified Withdrawals for Gambling*: $10,000.00** in cash withdrawals based on the following three transactions: $5,000.00 on 5/10/21, $3,000.00 on 6/17/21, and $2,000.00 on 7/21/21. (Exh. 14(D), Doc. 9; Exh. 14(K), Doc 16). The spouse claimed that he used these funds for "gambling" but that he was "unable to provide proof of [his] gambling losses [as] nobody keeps old Keno slips." (Exh. 14(K), Doc. 16, p. 11).

- ***Misc. Unverified Withdrawals*: $4,000.00** in unaccounted cash withdrawals, which were based on the following transactions:
  (1) On 4/23/21, the spouse withdrew $25,000.00; of this amount, $23,000.00 was deposited into the couple's Bank-2 checking account; the spouse explained that the

$2,000.00; 6.3.22-$2,000.00; 5.9.22-$2,000.00; 5.2.22-$2,000.00; 4.25.22-$2,000.00; 4.19.22-$2,000.00; 4.8.22-$2,000.00; 3.28.22-$2,000.00; 3.21.22-$2,000.00; 3.10.22 $2,000.00; 3.4.22-$2,000.00; 2.11.22-$2,000.00 ;2.4.22-$2,000.00; 1.27.22- $2,000.00; 1.21.22-$2,000.00; 1.6.22-$2,000.00; 12.28.21-$2,000.00; 12.18.21-$2,000.00; 12.14.21-$2,000.00; 12.3.21-$2,000.00; 11.30.21-$2,000.00; 11.23.21-$2,000.00; 11.17.21-$2,000.00; 11.8.21-; $2,000.00; 11.1.21-$2,000.00; 10.25.21-$2,000.00; 10.18.21-$2,000.00; 10.7.21-$3,000.00;10.5.21-$2,000.00; 9.30.21-$3,000.00; 9.28.21-$2,000.00; 9.16.21-$2,000.00; 8.3.21-$2,000.00; 7.26.21-$2,000.00; 7.7.21-$2,000.00; 6.21.21-$2,000.00.

[7] This figure is based on the following individual transfers: 5.3.24 $1,528.27 (check - payable to town); 4.22.24 $2,000.00; 4.6.24 $1,200.00; 3.25.24 $2,000.00-; 1.3.24 $1,000.00; 1.30.23 $3,000.00; 12.30.22 $3,000.00; 11.1.22 $3,000.00; 1.15.22 $1,500.00; 8.9.21 $2,000.00; 6.29.21 $2,000.00; 6.25.21 $2,000.00; 1.5.21 $19,500.00 (check - new truck); and 12.23.20 $1,500.00.

remaining **$2,000.00** was taken out in cash and used for "gambling" however, no receipts or betting slips were provided. (*Id*. at 15).

(2) On 6/7/21, the spouse withdrew $22,000; of this amount $20,000.00 was deposited into the couple's Bank-2 checking account; the spouse explained that the remaining **$2,000** was taken out in cash; however, he provided no evidence to verify how these funds were used. (*Id*. at 17).

**6. Bank-3 CD – Total Disqualifying Transfer: $300,000.00**

The couple jointly held a CD account at Bank-3. (Exh. 14(M), Doc. 18). On 1/11/21, the couple closed this account and withdrew the full balance of $305,535.26. (*Id*. at 19). Through a written submission provided to MassHealth, the spouse explained that the withdrawn funds were distributed as follows: $300,000.00 was used to open and fund the Bank-1 CD-1 account; $500.00 was used to open and fund a related checking account at Bank-1; and $5,035 was withdrawn in cash and used to purchase a heating and air conditioning replacement.

MassHealth determined that, of the total amount withdrawn on 1/11/21, $300,000.00 was disqualifying, as the spouse did not provide underlying documentation that traced the movement of funds from Bank-3 to Bank-1. MassHealth did not take issue with the remaining $5,535.26 based on verification showing the couple's purchase of the heating and air conditioning installation of this amount. (*Id*. at 22).

Additional verifications the spouse submitted related to the Bank-3 and Bank-1 CD closing and opening, include the following:

- A closing statement for the Bank-3 CD account dated 1/11/21 showing a $305,535.26 closeout and $0.00 balance after the withdrawal. (*Id*. at 20; Exh. 14(J), Doc. 15, p. 18).
- A Bank-3 CD withdrawal slip dated 1/9/21 showing a $305,535.26 withdrawal on 1/11/21 (with the spouse's handwritten notes explaining the alleged disbursements, described above, including the funding of a new CD and checking account at Bank-1, and remaining cash withdrawal). (Exh. 14(M), Doc. 18, p. 21).
- A Bank-3 MM account statement showing a $305,535.26 credit/deposit on 1/11/21. and, on the same date (1/11/21) withdrawals of $300,000.00 and $5,535.26. (Exh. 14(J), Doc. 15, p. 57).
- A Bank-1 account detail page indicating that the spouse and son opened the Bank-1 CD-1 and checking accounts on 1/13/21. (Exh. 14(M), Doc. 18, p. 14)
- A $500.00 deposit on 1/13/21 to fund the checking account. (Exh. 21).
- A Bank-1 summary-of-accounts page dated 2/10/21 showing a current Bank-1 CD balance of $300,000.00 and a related checking account balance of $500.00 with a handwritten note from the spouse stating, "*I don't have an earlier statement for January*" which would have reflected the deposit. (*Id*. at 5, 23).

- A Bank-1-CD account "Time Deposit Statement" for January 2021 through December 2021 showing a $300,000.00 deposit on 1/13/21, which is the account opening date. (Exh. 22).[8]

**Appellant's Evidence**

Over the course of two hearing days, counsel for Appellant presented testimony from three witnesses: Appellant's son ("Son"), a Medicaid Specialist from the nursing facility, and Appellant's treating physician ("Physician").

Appellant's Son testified that he is the second of Appellant's three children. He testified that his father (Appellant's spouse) had a long-standing gambling problem dating back several decades, which had been "kept in check" by Appellant until her health declined following a stroke in 2017. The Son recalled that, during his childhood, Appellant had threatened to divorce her husband over his gambling, and that, because of her efforts, his gambling addiction was brought under control. The Son testified that, once Appellant's health deteriorated, his father resumed his gambling habit, in which he routinely spent approximately $1,000 per day on Keno. The Son described that this was a "dark side" of his father that he did not personally know, but that he was aware of his reputation of being a major Keno player. The Son testified that, despite having limited knowledge of his father's finances, he believed that in his final years, his father either sold or lost his valuable possessions, including jewelry, to cover his gambling debts. The Son indicated that he was unable to produce gambling receipts as these were not kept.

The Medicaid Specialist from the nursing facility where Appellant resides testified that the facility had been in contact with Appellant's spouse and, later, with her attorneys regarding the outstanding balance owed for Appellant's care. The Specialist testified that Appellant was admitted to the facility in [redacted] following multiple prior short-term admissions, and that she remains at risk for discharge for nonpayment if found ineligible for MassHealth long-term care benefits.

Appellant's Physician testified that she is the attending physician at the nursing facility and, in this capacity, has been the primary care physician for Appellant since her admission. The Physician testified that Appellant has vascular dementia and significant cognitive impairment. On admission, Appellant scored an 8 on a mental status evaluation (moderate impairment) and has since declined to a score of 4 (severe impairment). The Physician further testified that Appellant's health care proxy was activated in 2022 and that, over the past five years, Appellant has exhibited mid- to moderate-stage cognitive impairment, with documented dementia since at least 2020.

[8] This document was submitted by counsel post-hearing, after the record was reopened, and therefore was presumably not reviewed as part of MassHealth's original disqualifying-transfer determination.

Prior to the second hearing on 8/1/25, Appellant's attorney submitted sworn written statements from individuals with firsthand knowledge of the spouse's excessive gambling habits and related spending, which, counsel asserted, corroborated the Son's prior testimony and prior general statements that the unexplained cash withdrawals were likely spent by the spouse to maintain his all-consuming gambling addiction. (Exhs. 16, 17, 18). All statements were signed by the individual on various dates in July of 2025.

The first submission consisted of eight statements signed by friends, club managers, bartenders, and business owners who were often present while the spouse gambled for hours on end. (Exh. 16). These individuals, who attested to having known Appellant's spouse for years or decades, described him as being a habitual high-volume Keno player; he would play at multiple locations, including local clubs, bars, gas stations, and variety stores - where he would also purchase lottery tickets; he often wagered hundreds, if not thousands of dollars in a single visit and would play for extended periods; and he had a reputation as being one of the largest players. (*Id*.)

In addition, counsel produced affidavits from the couple's three adult sons. (Exh. 17). In their written statements, each son rejected the alleged statements made by their late father, that he withdrew the funds to pay their gambling debts. The sons unanimously asserted that none of them had a gambling problem. Rather, they each recalled the longstanding and destructive nature of their father's gambling addiction; they each denied being involved in, or benefiting from, their father's gambling-related withdrawals. In addition, the sons explained that their father had occasionally assisted the eldest son financially due to ongoing medical issues, which have caused him difficulty meeting his mortgage payments, and that any funds they received from their parents were limited to legitimate family support or small gifts.

The final affidavit was from an attorney who previously represented the spouse in an unrelated matter. (Exh. 18). It was first noted that the personal representative of the spouse's estate had released attorney-client privilege to allow the attorney to disclose communications, including a 10/29/24 conversation during which the spouse admitted that the cash withdrawals and expenditures were the result of his own gambling activities; he expressed embarrassment of this fact and indicated that he previously misrepresented the purpose of the transactions as gifts or loans to repay his sons' gambling debts; he disclosed that he alone had incurred extensive gambling losses totaling hundreds of thousands of dollars. (*Id.*).

Counsel argued that MassHealth should not impose a penalty period on the transfers at issue because (1) Appellant's spouse, who made most, if not all the withdrawals, is deceased, and Appellant, due to her incapacity, cannot procure the necessary verifications, (2) penalizing Appellant for her inability to obtain verifications would constitute discrimination under the federal Americans with Disabilities Act; (3) the funds were not transferred for the purpose of qualifying for Medicaid but were instead lost due to the spouse's longstanding gambling addiction; and (4) use of funds on gambling is not a transfer for less than fair market value; as it

provides some value in the form of entertainment or satisfaction; and cited *Gauthier v. Dept. of Medicaid* for the proposition that it is unreasonable to assign zero value to such expenditures.

Counsel also argued that MassHealth failed to conduct a spousal assessment. Had this been done, the portion of assets that could be treated as the Community Spouse Resource Allowance (CSRA) would be attributed to the spouse. In this event, the spousal share would be set aside from the disqualifying transfer and not used to impose a penalty against Appellant. Counsel maintained that the assets in question are not just Appellant's but her spouse's as well which he would have been using until his death, and that Appellant should not be penalized for transfers she could not make or consent to given her incapacitated status. Counsel requested that, at the very least, MassHealth reduce the disqualifying transfer amount by half to account for the fact that they both owned the assets.

In response to counsel's argument regarding the CSRA assessment, the MassHealth representative clarified that disqualifying transfers are treated separately from CSRA determinations. MassHealth only assesses disqualifying transfers *after* it determines that an LTC applicant is asset eligible, which, for a married applicant, includes a maximum of $157,000.00 that the community spouse would be allowed to keep as a resource allowance. Here, the couple had a total marital asset amount of $143,000.00, which is below the standard CSRA. Therefore, a CSRA assessment was not necessary.

# Findings of Fact

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

1. Appellant is aged [redacted] or older; resides in a nursing facility; and has a diagnosis of vascular dementia, with documented dementia since at least 2020.

2. On 9/3/24, Appellant filed an application seeking MassHealth LTC benefits; at the time the application was filed, Appellant was married, and her spouse was living in the community.

3. Appellant's community spouse, who helped provide MassHealth with requested verifications needed to process Appellant's LTC application, died on [redacted]

4. MassHealth denied Appellant's LTC application on 2/26/25 finding that Appellant and/or her spouse made disqualifying resource transfers totaling $656,803.53. (Exh. 1).

5. On 6/25/25, MassHealth adjusted the total disqualifying transfers amount to $633,828.27, resulting in a 1,464-day ineligibility period from 8/1/24 through 8/3/28. (Exh. 19).

6. The disqualifying transfer total is comprised of withdrawals made from six bank accounts

held by Appellant and/or her spouse.

**Bank-3 CD Account Transfer**

7. On 1/11/21, the couple closed their Bank-3 CD account and withdrew the full balance of $305,535.26. (Exh. 14(M), Doc. 18.; Exh. 14(J), Doc. 15).

8. On 1/11/21, a $305,535.26 deposit was made into the couple's Bank-3 MM account and, immediately thereafter, same day withdrawals of $300,000.00 and $5,535.26 were taken out of the MM account. (Exh. 14(J), Doc. 15, p. 57).

9. The spouse opened a new Bank-1 CD account on 1/13/21 and funded the account that day with a $300,000.00 deposit. (Exh. 14(M), Doc. 18, p. 14; Exh. 22).

10. MassHealth treated **$300,000.00** of the original $305,535.26 withdrawal from the Bank-3 CD account as a disqualifying transfer because there was no documentation to trace it as being deposited into the Bank-1 CD account.

**Bank-3 MM Account Transfers**

11. Appellant and her spouse's Bank-3 MM account reflect (1) a $10,000 cash withdrawal on 3/1/21 which the spouse explained was given as a "gift to son;" (2) three cash withdrawals totaling $10,000.00 made between May 2021 and July 2021; and (3) $4,000.00 in unverified withdrawals made on 4/23/21 and 6/7/21. (Exh. 14(D), Doc. 9).

12. Appellant's spouse explained to MassHealth that he used most of the cash withdrawals for gambling but did not keep receipts or Keno slips to verify his expenditures. (Exh. 14(K), Doc. 16, p. 11).

13. MassHealth determined that the combined total of **$24,000.00** withdrawals were disqualifying transfers. (Exh. 14(D), Doc. 9; Exh. 14(K), Doc 16).

**Bank-1 CD-1 Account Transfers**

14. On 1/13/23, the spouse closed the Bank-1 CD-1 account, withdrawing the account balance of $270,276.40; of this amount, the spouse deposited $250,000.00 into a newly opened Bank-1 CD-2 account and withdrew the remaining $20,276.40 via check, $20,000 of which was redeposited into the Bank-2 checking account on the same day. (Exh. 14(D); Exh. 14(M); Exh. 14(F); Exh. 14(E); Exh. 14(G)).

15. From the 1/13/23 withdrawal MassHealth imposed a penalty on **$5,000.00** which the spouse alleged to have used for driveway repairs but did not submit supporting documentation.

**Bank-1 CD-2 Account Transfers**

16. MassHealth determined that from the Bank-1 CD-2 account, Appellant's spouse made **$12,000.00** in disqualifying transfers based upon the portion of funds that were withdrawn on various dates between 6/7/23 and 9/15/23, and which lacked verification to demonstrate how the funds were spent.

**Bank-1 Checking Account Transfers**

17. MassHealth determined that Appellant's spouse made **$21,500.00** in disqualifying transfers based on eight separate withdrawals between July and October of 2024 in amounts ranging from $1,500.00 to $5,000.00 and which lacked verification to demonstrate how the funds were spent. (Exh. 14(D), Doc. 9; Exh. 14(I), Doc. 14).

**Bank-2 Checking Account Transfers**

18. MassHealth determined that Appellant and/or her spouse made disqualifying resource transfers from their jointly owned Bank-2 checking account totaling $271,328.27 consisting of various transactions occurring between 12/23/20 and 5/3/24, including $71,000.00 in monetary gifts to the couple's three sons; and numerous withdrawals of $1,000.00 or more which lacked sufficient documentation to demonstrate how the funds were spent. (Exh. 14(D), Doc. 9; Exh. 14(F), Doc. 11).

# 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). Consistent with federal law, MassHealth imposes "strict limitations on asset transfers made by applicants before applying for these benefits, in order 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)). When MassHealth determines that an applicant (or spouse) made a "disqualifying transfer" during the five-year lookback period, MassHealth must impose a period of ineligibility before the applicant can receive benefits. *Id.*

The governing transfer rules are set forth in 130 CMR §§ 520.018 and 520.019, and state, in relevant part, the following:

> The MassHealth agency denies 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 five years, preceding the date the individual is both a nursing facility resident *and* has applied for, or is receiving, MassHealth Standard. *See* 130 CMR 520.019(B). In the present case, the look back period spans back five years from 9/3/24.

Under 130 CMR 520.019, a disqualifying transfer of resources is described as follows:

> (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 … 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)…

Here, MassHealth determined that Appellant (through her spouse) made transfers totaling **$633,828.27** for less than fair market value, resulting in a **1,464-day** period of ineligibility beginning on 8/1/24. (Exh. 19). The disqualifying transfer amount consisted of numerous withdrawals over $1,000.00 from six accounts that the couple owned, either individually or jointly. (Exh. 14(D), Doc. 9). The transfers, according to MassHealth, were either (1) unverified as fair-market value purchases, or (2) monetary gifts to the couple's children.

There is no dispute that all the challenged transactions - which span between 1/11/20 and 10/10/24 - fall within the look-back period. Appellant argues, however, that the withdrawals were not "disqualifying transfers" within the meaning of 130 CMR 520.019 because (1) they were, in fact, made for fair market value, or (2) they were "transferred exclusively for a purpose other than to qualify for MassHealth..." and thus fall within the intent exceptions under 130 CMR 520.019(F). *Id*. As the moving party, Appellant bears the burden of proving that MassHealth's determination was invalid. *See Andrews*, 68 Mass. App. Ct. at 231.

1. **Bank-1 CD-1: $5,000.00**

The record shows that the spouse closed the Bank-1 CD-1 account on 1/13/23 withdrawing $270,276.40. (Exh. 14(E), Doc. 10). MassHealth treated $5,000 of this amount as a disqualifying transfer, based on the spouse's statement that it was used for driveway repairs, without providing supporting documentation.

However, the evidence establishes that all but $276.40 of the withdrawn funds were redeposited into other accounts owned by the couple. Specifically, a check for $20,276.40 was issued on the closing date, $20,000.00 of which was verified as redeposited into the couple's Bank-2 checking account, and the remaining $250,000.00 was transferred into the spouse's newly opened Bank-1 CD-2 account. Because nearly all the funds that were withdrawn on 1/13/23 were accounted

for within the couple's other accounts, any portion thereof, including the $5,000.00, should not be penalized. Based on the foregoing, this portion of the appeal is APPROVED.

**2. Bank-3 CD: $300,000.00**

MassHealth treated $300,000.00 of the 1/11/21 Bank-3 CD closeout as a disqualifying transfer because the Appellant and spouse were unable to produce a deposit slip or related document that traced the funds into the Bank-1 CD, which was opened two days later.

Although there was no document that explicitly tracks the movement of funds from the Bank-3 CD into the Bank-1 CD, the totality of the evidence, when considered together, sufficiently corroborates the spouse's explanation that this portion of the Bank-3 CD closeout was, in fact, used to open the new Bank-1 CD. The Bank-3 CD closing documents show a full withdrawal of $305,535.26 on 1/11/21. Additionally, the Bank-3 MM account statement reflects a same-day credit of $305,535.26, immediately followed by same-day withdrawals of $300,000.00 and $5,535.26 – suggesting that the CD proceeds were temporarily routed through the MM account. Two days later, on 1/13/21, a Bank-1 CD time deposit statement shows a $300,000.00 deposit to open the new account. Based on the sequence of the transactions, i.e., the CD withdrawal, an immediate redeposit into the MM account, followed by same-day withdrawals totaling the CD's full balance, and the subsequent $300,000.00 deposit to open the new CD at Bank-1 – it is reasonable to infer that the funds from the Bank-3 CD closeout remained within the couple's possession, and were not transferred. Because the evidence demonstrates that the couple retained the funds, the $300,000 does not constitute a disqualifying transfer under 130 CMR 520.019(C). Based on the foregoing, this portion of the appeal is APPROVED.

**3. Remaining Transfers**

The remaining transfer amount of $328,828.27 consists of (1) $81,000.00 in gifts given to the couple's children;[9] and (2) $247,828.27 in unverified withdrawals, primarily alleged to have been spent by the spouse on gambling. Unlike the previous transfers discussed above, the remaining transfers were not redeposited into other marital accounts but rather were transferred out of the couple's ownership. Appellant must therefore demonstrate that either (1) the transfers were made for fair market value, or (2) an exception under 130 CMR 520.019(C) applies.

***a. Fair Market Value***

Appellant has not demonstrated that any portion of the remaining funds were made for fair market value. The Center for Medicare & Medicaid Services (CMS), defines fair market value as "an estimate of the value of an asset, if sold at the prevailing price at the time it was actually

[9] This is based on the $71,000 in gifts transferred from the couple's Bank-2 checking account and $10,000 from their Bank-3 MM account.

transferred." *See State Medicaid Manual* (*SMM*), (CMS Pub. 45); § 3258.1(A). [10] CMS requires that states adhere to the following guidance when making such determinations:

> 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. A transfer for love and consideration, for example, is not considered a transfer for fair market value…

The gifts to the children were, by definition, transfers made without compensation and therefore not considered transfers for fair market value. It is also noted that the gifts were not insignificant, but rather, consisted of multiple transfers of several thousand dollars to each child, including amounts as high as $29,000.00 to a single child on a single day. With respect to the cash withdrawals, Appellant submitted multiple witness statements confirming the spouse's long-standing gambling habits. While credible, the statements provided only general information and did not provide any transaction-specific information related to the withdrawals at issue. The record contains no concrete transactional documentation – such as receipts, betting or Keno slips, or other verifications – to show what portion of the withdrawn funds were used for gambling, how much was spent in each instance, what gambling purchases were made, or whether any such purchases were made at fair market value.

Counsel's reliance on *Gauthier v. Dept. of Medicaid* to assert that MassHealth erred in assigning zero value to the spouse's gambling expenditures, is misplaced. In *Gauthier*, the court acknowledged that while payments the applicant made pursuant to a "care agreement" were not made in exchange for services at full fair market value, there was verifiable evidence showing some measurable benefit to the applicant (such as caregiving services and home improvements to make appellant's living area handicap-accessible). As counsel correctly asserts, gambling may indeed involve exchanges for fair market value – such as the entertainment or satisfaction it brings the individual; however, unlike *Gauthier*, the record in this case lacks the underlying transaction records to provide any objective or itemized information about the alleged gambling expenditures. As such, MassHealth correctly determined that the withdrawals lacked sufficient proof to determine any portion thereof were transferred at fair market value.

***b. Disqualifying Transfer Exceptions***

Additionally, there is insufficient evidence to demonstrate that any of the remaining transfers fell within a recognized exception, specifically, transfers that are "permissible under 130 CMR

[10] The *State Medicaid Manual* is a compilation of federal resources and procedures 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).

520.019(D), identified in 130 CMR 520.019(F), or exempted in 130 CMR 520.019(J)." *See* 130 CMR 520.019(C).[11]

Under § 520.019(D), MassHealth permits transfers that are made to, or for the sole benefit, of a particular individual such as the resident's spouse or "permanently and totally disabled or blind child," as well as certain transfers of the resident's home and transfers that are used to fund a burial account. The regulation, states, in pertinent part, the following:

> (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…
>
> (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 younger than 65 years old at the time the trust was created or funded.
>
> …[12]

Although the evidence suggests that some of the funds were gifted to the son due to his health-related financial difficulties, there is no evidence that the son was "permanently and totally disabled" or blind under subsection (D)(3), above. Transfers to family members for general financial support, while understandable, are outside the scope of the permissible transfer exception. Additionally, while transfers can be made *to* a nursing facility resident's spouse without penalty under § 520.019(D)(1)-(2), it does not exempt transfers the spouse later makes for less than fair market value. On a related note, counsel's argument that Appellant should not be penalized for her spouse's unilateral spending, over which she had not control, is unavailing. The governing regulations make no distinction between transfers made by the nursing facility resident and those made by the resident's spouse. The fact that the spouse, rather than Appellant herself, disposed of assets for less than fair market value, is not a material distinction under MassHealth transfer rules.[13]

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[11] Subsection (J) exempts transfers of resources that are proceeds from a home equity loan or reverse mortgage and therefore is inapplicable to the present case.

[12] The remaining subsections are inapplicable as they pertain to transfers to a pooled trust that were made no later than 60 days after the end of the Covid-19 public health emergency, transfers of the nursing home resident's home, and transfers to purchase a burial account.

[13] Counsel also contends that MassHealth erred by failing to conduct a Community Spouse Resource Allowance (CSRA) assessment, and that, had such an assessment been performed, some or all of the disputed funds would not have been subject to a disqualifying transfer review. This argument is misplaced. As MassHealth explained at

Lastly, the evidence does not establish that any of the remaining transfers fall within the intent exception set forth in 130 CMR 520.019(F). Under this provision, MassHealth will not penalize a transfer made for less than fair market value *if* the nursing facility resident or spouse makes a *satisfactory showing* to MassHealth 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).

With respect to the first prong of the intent exception, federal CMS guidance states that "verbal assurances that the individual was not considering Medicaid when the asset was disposed of are not sufficient [proof to meet this exception]." *See SMM* § 3258.10(C). Rather, "***convincing*** evidence must be presented as to the ***specific purpose for which the asset was transferred***." *Id.* (emphasis added). In applying this guidance, the Massachusetts Appeals Court emphasized that "federal law mandates a heightened evidentiary showing [to satisfy the intent exception under § (F)(1), above]." *See Gauthier*, 80 Mass. App. Ct. at 785-786.

The medical evidence indicates that Appellant's dementia was documented as early as 2020 – the same period when large withdrawals and gifts began. While counsel asserts that the spouse resumed gambling when, due to Appellant's decline, she could no longer "keep him in check," the same timeline supports the reasonable inference that the couple was aware Appellant's deteriorating health and the potential need for long-term care. The element of "exclusivity" under § 520.019(F), means that the possibility of needing public assistance for medical care must not have weighed at all upon the individual's mind at the time the transfer was made. Based on the foregoing, Appellant has not presented *convincing* evidence to demonstrate the Medicaid eligibility played no role at all in the transfer decisions to meet the exception under § 520.019(F)(1).

Likewise, there is insufficient evidence to establish that the second prong of the intent exception (F)(2) has been met. In determining whether an individual intended to dispose of assets for fair market value or for other valuable consideration, the individual must show, to the agency's

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hearing, the CSRA analysis is separate and applies only when the combined countable marital assets exceed the maximum spousal resource allowance of $157,000, in which case MassHealth will apportion a protected share for the community spouse. Here, the parties combined countable assets were below the CSRA threshold. Therefore, no CSRA calculation was required, and the spouse was permitted to retain all countable assets beyond Appellant's $2,000 resource limit. Only after financial eligibility is established does MassHealth assess whether the marital assets that were held within the look back period were transferred for less than fair market value.

satisfaction, "the circumstances which caused him or her to transfer the asset for less than fair market value." *SMM* § 3258.10(C)(1). According to federal CMS guidance, "verbal statements alone generally are not sufficient [to make this showing];" rather, the individual must provide "written evidence of attempts to dispose of the asset for fair market value, as well as evidence to support the value (if any) at which the asset was disposed." *Id.* As explained above, the gifts to the couple's children, by definition, did not involve the receipt of any valuable consideration, and the remaining cash withdrawals are unsupported by objective documentation of how the funds were spent. The evidence in the record does not meet the heightened evidentiary standard that is required to prove that any of the transfers fell within either of the intent exceptions under 130 CMR 520.019(F).

**4. Adjusted Period of Ineligibility**

After excluding the $300,000.00 and $5,000.00 transfers, the remaining disqualifying transfer amount is $328,828.27. To calculate the corresponding penalty period, MassHealth divides the total disqualifying transfer amount by the average cost to a private patient receiving long-term-care services in Massachusetts at the time the LTC application was received. *See* 130 CMR 520.019(G)(2). As of 9/3/24, the average daily rate was $433.00.[14] MassHealth then applies the 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." *Id*. Dividing the adjusted disqualifying transfer amount of $328,828.27 by the average daily nursing home rate of $433.00, results in a 759-day period of ineligibility (328,828.27/433) beginning on Appellant's otherwise eligible date of 8/1/24 and lasting through 8/30/26.

Based on the foregoing, this appeal is APPROVED in part with respect to the $300,000.00 and $5,000.00 transfers and DENIED in part with respect to the remaining transfer amount of $328,828.27.

To the extent that counsel asserts that imposition of a penalty period for spousal transactions, which cannot be verified by the spouse (due to death) or Appellant (due to her disabling medical condition), constitutes discrimination under the Americans with Disabilities Act, that argument challenges the legality of the governing regulations themselves and is therefore outside the scope of the hearing officer's authority to adjudicate under 130 CMR 610.000. Counsel may, however, raise the claim on any subsequent appeal to the Superior Court under G.L. c. 30A.

# Order for MassHealth

Adjust the total disqualifying transfer amount to $328,828.27 and impose a 759-day period of ineligibility to begin on 8/1/24; redetermine Appellant's eligibility on 8/30/26.

[14] *See* MassHealth Eligibility Operations Memo 23-25 (Nov. 2023).

## 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.

Casey Groff, Esq.
Hearing Officer
Board of Hearings

cc: [redacted]

MassHealth Representative: Quincy MEC, Attn: Appeals Coordinator, 100 Hancock Street, 6th Floor, Quincy, MA 02171