

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2506451
<b>Decision Date:</b>	10/16/2025	<b>Hearing Date:</b>	07/28/2025
<b>Hearing Officer:</b>	Christine Therrien	<b>Record Open to:</b>	09/05/2025

**Appearances for Appellant:**



**Appearances for MassHealth:**

Kim McAvinchey, Tewksbury  
Lawrence Perchick, Esq., Legal Department  
Yvette Prayor, RN, DES



*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>	Denied	<b>Issue:</b>	LTC –Disqualifying Transfers
<b>Decision Date:</b>	10/16/2025	<b>Hearing Date:</b>	07/28/2025
<b>MassHealth’s Reps.:</b>	Kim McAvinchey, Lawrence Perchick, Esq., Yvette Prayor, RN	<b>Appellant’s Reps.:</b>	
<b>Hearing Location:</b>	Tewksbury MassHealth Enrollment Center Telephonic		

## 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 the appellant's application for MassHealth Long Term Care (LTC) benefits because the appellant recently gave away or sold assets for less than fair market value. MassHealth calculated a period of ineligibility from 11/4/24 to 7/13/46 (130 CMR 520.018 and Exhibit 1). The appellant filed this appeal in a timely manner on 4/23/25. (130 CMR 610.015(B) and Exhibit 2). Determination of a coverage start date is valid grounds for appeal (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth denied the appellant’s LTC application and calculated a period of ineligibility from 11/4/24 to 7/13/46.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 516.006, in determining that the appellant is ineligible for LTC benefits and has a period of ineligibility from 11/4/24 to 7/13/46.

## Summary of Evidence

The MassHealth representative testified that the appellant was admitted to a long-term-care facility on [REDACTED]. The MassHealth representative testified that the appellant was [REDACTED] when she died on [REDACTED]. The MassHealth representative testified that MassHealth received an application for long-term care on 5/16/24, seeking a coverage start date of 3/1/24. The MassHealth representative testified that on 2/26/25, MassHealth denied the appellant's application due to a transfer of assets and imposed an ineligibility period from 11/4/24 to 7/13/46. The MassHealth representative testified that on 3/8/24, the appellant created the [REDACTED] (the Trust) for the benefit of her daughter. The MassHealth representative testified that the Trust was funded with various transfers on 03/14/2024 and 03/18/2024, in the total amount of \$3,420,343.50. The MassHealth representative testified that on 11/04/2024, the appellant gifted an additional \$9,813.33 directly to her daughter to complete asset reduction. (Exhibit 5). MassHealth calculated a period of ineligibility because of the disqualifying transfers totaling \$3,430,156.82.<sup>1</sup> The period of ineligibility was calculated by dividing the disqualifying transfer amount by the average daily nursing home private pay rate of \$433.00, which equals 7,922 days of ineligibility, thus establishing a start date of 7/14/46 ( $\$3,430,156.82 / \$433.00 = 7,921.8 = 7,922$  days).

The MassHealth representative testified that the funding of the trust is not a permissible transfer because it does not meet the criteria set out in 130 CMR 520.019(D)(3): first, there is no proof of the daughter's disability at the time the trust was created and funded, and second, the trust does not meet the "sole benefit" requirement. Section 4.1 of the Trust, entitled, Distribution upon death of [the trust beneficiary] reads, "This trust shall terminate upon the death of [the trust beneficiary], at which time the trustee shall pay the trust principal and undistributed income to [the trust beneficiary's] estate." The MassHealth legal department submitted a brief more thoroughly outlining MassHealth's position, to which the MassHealth attorney deferred and did not provide additional testimony. The MassHealth attorney testified that he did not write the brief that was submitted. The MassHealth attorney testified to what the MassHealth legal brief outlined, which is that 130 CMR 520.019(D)(3) states, "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*

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<sup>1</sup> Amount to fund the trust \$3,420,343.50 plus the transfer to the appellant's daughter of \$9,813.33.

child.” (*Id.*). The MassHealth attorney testified that the MassHealth brief further states that at the time the trust was created and funded, the appellant’s daughter had not been determined disabled by MassHealth Disability Evaluation Services (DES). The DES representative testified that DES determined the appellant’s daughter to be disabled as of 4/23/24.<sup>2</sup> The trust was created on 3/8/24. (*Id.*). The MassHealth brief discusses the second issue with the trust at length as follows:

Under 130 CMR 520.019(D)(3), in accordance with federal law at 42 USC 1396p(c)(2)(B)(iii), there is an exception to the otherwise disqualifying transfer rule where the transfer is made for a trust solely for the benefit of a disabled child.

a. Exception

130 CMR 520.019(D) states:

**“(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 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. 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*.

(3) 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 ■ years old at the time the trust was created or funded. ....”

This rule provides an exception to an applicant’s otherwise disqualifying transfer to a Trust and permits either a “*sole benefit*” *Trust, Special Needs Trust or Pooled Trust* as exceptions to the disqualifying transfer rule.

b. Meaning of Sole Benefit

In the recent Supreme Court Case, Dermody v. Exec. Office of Health and Human Services. 491 Mass. 223 January 27, 2023 the court reviewed the “*sole*

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<sup>2</sup> The DES representative did not have the appellant’s daughter’s case file and could not testify to the findings in the DES decision.

*benefit*” requirement found under the law above in the context of an annuity that was purchased by the spouse for the *sole benefit* of the spouse himself [See 130 CMR 520.019(D)1 and (D)2 above]. The court stated that the purchase of annuities are (*sic*) the traditional way that the *sole benefit rule* has been effectuated in its discussion of the requirement. The court also held that the annuity Medicaid payback requirements found under federal law at 42 USC 1396p(c)(1)(F) and MH regulations at 130 CMR 520.007(J)(2) apply to annuity payments made for the *sole benefit* of an individual found under the transfer exception above at 130 CMR 520.019(D).

At the end of its decision the court also took up the plaintiff’s claim that the state’s Medicaid estate recovery rules obstructed the application of the annuity Medicaid payback requirement above. (States have some options regarding how broad to implement estate recovery). The court stated that the federal law preempts state law and that a requirement under federal law is not conflated with nor obstructed by a state’s Medicaid estate recovery rules and option choices. The payback rules found in the federal law apply.

Additionally, the state Medicaid manual HCFA Transmittal 64 also describes the “Sole Benefit ” requirement. The HCFA Transmittal defines a Trust *solely for the benefit* of a disabled child at 3257.6 as follows:

**“6. For the Sole Benefit of.--A transfer is considered to be for *the sole benefit* of a spouse, blind or disabled child, or a disabled individual if the transfer is arranged in such a way that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future. *Similarly, a trust is considered to be established for the sole benefit of a spouse, blind or disabled child, or disabled individual if the trust benefits no one but that individual, whether at the time the trust is established or any time in the future. However, the trust may provide for reasonable compensation, as defined by the State, for a trustee or trustees to manage the trust, as well as for reasonable costs associated with investing or otherwise managing the funds or property in the trust. In defining what is reasonable compensation, consider the amount of time and effort involved in managing a trust of the size involved, as well as the prevailing rate of compensation, if any, for managing a trust of similar size and complexity.* A transfer, transfer instrument, or trust that provides for funds or property to pass to a beneficiary who is not the spouse, blind or disabled child, or disabled individual is not considered to be established for the sole benefit of one of these individuals.**

In order for a transfer or trust to be considered to be for the *sole benefit* of one of these individuals, the instrument or document must provide for the spending of the funds involved for the benefit of the individual *on a basis that is actuarially sound based on the life expectancy of the individual involved*. When the instrument or document does not so provide, any potential exemption from penalty or consideration for eligibility purposes is void.

An exception to this requirement exists for trusts discussed in §3259.7. [Aside 3259.7 describes: Special Needs Trusts and Pooled Trusts] **Under these exceptions, the trust instrument must provide that any funds remaining in the trust upon the death of the individual must go to the State, up to the amount of Medicaid benefits paid on the individual's behalf.**

When these exceptions require that the trust be for the sole benefit of an individual, the restriction discussed in the previous paragraph does not apply when the trust instrument designates the State as the recipient of funds from the trust. Also, the trust may provide for disbursement of funds to other beneficiaries, provided the trust does not permit such disbursements until the State's claim is satisfied. ...."

[Aside: For guidance on actuarially sound payments indicated above, see section 3258.9 at B. Annuities, of the State Medicaid Manual, HCFA Transmittal 64 which discusses actuarially sound lifetime Annuity payments.]

A special needs trust and pooled trust *each require a payback clause* under federal and state law:

See 42 USC 1396p(d)(4)(A) and (C) which state:

This subsection shall not apply to any of the following trusts:

**(A)** A [special needs] trust containing the assets of an individual under age 65 who is disabled (as defined in section 1382c(a)(3) of this title) and which is established for the benefit of such individual by the individual, a parent, grandparent, legal guardian of the individual, or a court *if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this subchapter.*

**(B)**.....

**(C)** A [ pooled] trust containing the assets of an individual who is disabled (as defined in section 1382c(a)(3) of this title) that meets the following conditions:

**(i)** The trust is established and managed by a non-profit association.

(ii) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(iii) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in section 1382c(a)(3) of this title) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.

(iv) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, *the trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State plan under this subchapter.*

**1. The Trust is not a Sole Benefit Trust under law:**

Accordingly, the State Medicaid Manual, like the federal and state law provision above, and the Dermody case, all discussed above, hold that the *sole benefit rule* means actuarial (*sic*) sound annuity payments under a trust or instrument with a payback clause for the remainder beneficiary. However there is an exception which provides that a Special Needs Trust or Pooled Trust, with its Medicaid payback clause, could also be a "sole benefit" trust. (Again See 130 CMR 520.019(D)(3) above).

In this case, the second amendment to the [Trust] submitted by the [appellant] does not cure the Trust as a trust solely for the benefit of a disabled child under federal and state law because:

- 1) The Child was not SSI or SSDI disabled on the date of the transfer to the trust as required under the federal and state law transfer exception above. [The DDU unit determined her disability onset date to be 4/23/24.]
- 2) Additionally, the transfer to the Trust is not solely for the benefit of a disabled Child, since
  - The Trust does not provide for actuarially sound payments to the child from the Trust during her lifetime with payback to the State (Dermody), or;
  - The Trust does not satisfy the requirements of an SNT (if the child was under ■ at the time the Trust was established) because it does not have a payback clause, or;
  - The Trust is not a Pooled Trust and does not contain a payback

clause.

The clause in this Trust providing for payment to the child's estate as earlier proposed by the [appellant], does not satisfy the sole benefit rule under any statutory, regulatory, or sub-regulatory rule. The applicant is conflating a "payback" clause as required under federal and state law, with a Trust clause for payment to the child's estate. This argument conflates federal payback requirements regarding sole benefit Trusts or instruments with a Trust estate recovery clause, - contradicts the requirements of federal law - and is preempted. (See Dermody.)

The appellant's attorney submitted a response that reads in part:

The [Trust] was created on March 8, 2024, by declaration of trust for the exclusive benefit of [the appellant's daughter], the permanently and totally disabled child of [the appellant]. See Exhibit 1, The Trust, and see Exhibit 15, First Administrative Amendment to The Trust, and see Exhibit 23, Second Administrative Amendment to The Trust.<sup>3</sup> That same month, financial assets belonging to [the appellant] were transferred to the Trust. See Exhibit 2, Denial Notice Dated 2/26/2025.

.....

In September 2024, MassHealth issued a denial notice, stating that "[f]or proof of disability for the applicant's child, she must be federally disabled through SSA. Send proof of SSA disability." See Exhibit 6, First Denial Notice. An Adult Disability Supplement (the "Disability Supplement") for [the appellant's daughter] was submitted to UMass Disability Evaluation Services ("DES") on October 16, 2024, with the specific note that it was submitted per MassHealth's request to prove [the appellant's daughter's] disabled status for [the appellant's] application.

...

MassHealth issued a denial notice in January 2025, on the basis that [the appellant] had more countable assets than allowable (specifically, the Trust) and claimed that a provision of the Trust allowed for principal to be paid to or for the benefit of [the appellant]. See Exhibit 14, Denial dated 1/21/2025. Without acknowledging the accuracy of the claim, the Trust was administratively amended by removing that section in its entirety. See Exhibit 15, First Administrative Amendment to The Trust... Subsequently, [the MassHealth representative] sent an email instructing [the appellant's attorney's associate]

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<sup>3</sup> For clarity, all of the exhibits cited in the appellant's attorney's memo are contained within Exhibit 6 of the appeal file and can be read as Exhibit 6.1-44

that additional administrative amendments were needed to the Trust, including the addition of a payback provision.

...

Another denial notice was issued by MassHealth on the basis that [the appellant] “recently gave away or sold assets for less than fair market value.” [The appellant’s attorney] responded to [the MassHealth representative’s] email regarding the required administrative amendments, advising that all would be made except the addition of a payback provision, and noting that because the Trust is not a (d)(4)(A) trust, the inclusion of a payback provision was not required.<sup>4</sup>

...

[The MassHealth representative] responded that the “other option [in lieu of including a payback provision] would be for the Trust to provide for spending for the child on a basis that is actuarially sound based on the life expectancy of the child.” Her email referred to HCFA Transmittal 64 § 3257B.6 and § 3258.9B. (Exhibit 6). A second administrative amendment was made to the Trust, incorporating all of MassHealth’s requested changes, other than the addition of a payback provision, which is not required by law. The Trust already contained language providing for spending for [the appellant’s daughter] on a basis that is actuarially sound based on her life expectancy, so no additional language was added in this regard. (Id.).

On May 7, 2025, [the appellant’s daughter] was informed by DES that the decision on the determination of her disabled status had been faxed to MassHealth. See Exhibit 25, MassHealth Subpoena Response. In anticipation of the hearing scheduled for May 21, 2025, [the appellant’s attorney’s associate] reached out to MassHealth numerous times to request a copy of the determination. No copy of the determination was provided.

After the hearing on May 21, 2025, had already begun, and in violation of 130 CMR 610.050(A), 130 CMR 610.061, and 130 CMR 610.062, MassHealth provided a five-page legal opinion in support of their position (the “Opinion”). Accordingly, [the appellant’s attorney] requested a continuance of the hearing, which Hearing Officer Therrien granted.

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<sup>4</sup> A (d)(4)(A) trust is defined at 42 USC 1396p(d)(4) as follows: This subsection shall not apply to any of the following trusts: (A) A trust containing the assets of an individual under age ■ who is disabled (as defined in section 1382c(a)(3) of this title) and which is established for the benefit of such individual by the individual, a parent, grandparent, legal guardian of the individual, or a court if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this subchapter.

MassHealth's Opinion referenced the determination of [the appellant's daughter's] disability, noting that DES found the onset date of [the appellant's daughter's] disability to be April 23, 2024, but a copy of that determination was not provided, in violation of 130 CMR 610.050(A), 130 CMR 610.061, and 130 CMR 610.062. This alleged onset date was a matter of weeks after the transfer of funds to the Trust, and MassHealth used this to assert that [the appellant's daughter] was not disabled on the date of the transfer, making it a disqualifying event. No basis or explanation was provided for this alleged onset date.

During the hearing, [the appellant's attorney] requested a copy of the determination, but it was not provided...[the appellant's attorney] submitted a request that [the] Hearing Officer issue a subpoena to MassHealth's legal department, requiring the production of the documentation which should have been provided in advance of the hearing. See Exhibit 35, Subpoena Request to Board of Hearings. [The] Hearing Officer issued said subpoena the following day, and MassHealth complied the following week, providing a full copy of [the appellant's daughter's] file. See Exhibit 36, Subpoena Duces Tecum, and see Exhibit 24, MassHealth Subpoena Response. A continued hearing date in this appeal was scheduled for July 3, 2025.<sup>5</sup>

The transfer of assets to the Trust is not a disqualifying event, since the Trust exists for the sole benefit of the Applicant's child who was permanently and totally disabled according to SSI standards on the date of the transfer. Records produced and relied upon by MassHealth prove that [the appellant's daughter] was disabled according to SSI standards long prior to the transfer of funds to the Trust, and MassHealth's assertion that April 23, 2024, is the onset date of [the appellant's daughter's] disability is not only baseless, but is in direct conflict with their own records and findings. The Trust, in its current form, fully satisfies the criteria for a sole benefit trust. Nonetheless, MassHealth continues to attempt the forced inclusion of a provision for payback to the Commonwealth, which is not required by law. Throughout the application and appeal process, MassHealth has refused to comply with their legal obligations to the Applicant and the Board of Hearings, has relied upon and presented inaccurate statements of fact, and has grossly misinterpreted or misrepresented state and federal law, in a pattern of improper conduct hovering between undue interference and outright bad faith. There is no legitimate legal basis for MassHealth's denial of [the appellant's] application, and that denial must be reversed.

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<sup>5</sup> The hearing scheduled for July 3, 2025 was rescheduled until 7/28/25 to ensure a representative from DES could attend.

**I. [THE APPELLANT'S DAUGHTER] WAS PERMANENTLY AND TOTALLY DISABLED PRIOR TO THE TRANSFER OF FUNDS TO [THE TRUST]**

[The appellant's daughter's] [REDACTED] has prevented her from engaging in substantial gainful activity since [REDACTED] rendering her permanently and totally disabled according to 130 CMR 501.001. Her condition was confirmed based on her medical history and brain imaging prior to the date on which the transfer of funds to the Trust occurred, and prior to MassHealth's alleged onset date of April 23, 2024. See Exhibit 8, Adult Disability Supplement, and see Exhibit 9, 37, [doctor's note]. MassHealth's unsubstantiated assertion that [the appellant's daughter's] [REDACTED] began on [REDACTED] is arbitrary at best, and made in bad faith at worst.

A. [The appellant's daughter] is totally and permanently disabled. To be eligible for MassHealth Standard coverage, a nursing home resident must have countable assets of \$2,000 or less. 130 CMR 519.006(A)(4). While a nursing facility resident "who transfers...countable resources for less than fair-market value during or after the period of time referred to as the look-back period" is generally ineligible for coverage of nursing-facility services as a result of those transfers pursuant to 130 CMR 520.018(B), when such a transfer is made to the nursing facility resident's "permanently and totally disabled...child or to a trust, a pooled trust, or a special-needs trust created for the sole benefit of such child," the transfer is permissible and will not disqualify the nursing facility resident from eligibility, provided it is in accordance with federal law. 130 CMR 520.019(D)(3), in accordance with 42 USC 1396p(c)(2)(B)(iii). When it is alleged that a transfer was made to or for the benefit of a totally and permanently disabled person, MassHealth "must determine that the individual in fact meets the definitions of blindness or disability used by the SSI program...or under the State plan programs established under title XVI or under the title II program." Health Care Financing Administration ("HCFA," now Centers for Medicare & Medicaid Services) Transmittal 64 § 3258.10 (B)(2). A determination of disability by SSI is evidence of the individual's disability. *Id.* However, "if the individual is not receiving SSI and/or Medicaid, [MassHealth] must make a separate determination of blindness or disability." *Id.* According to 130 CMR 501.001, an adult is permanently and totally disabled if they are unable to engage in any kind of substantial gainful activity due to an impairment that has lasted or can be expected to last for at least 12 consecutive months.

[The appellant's daughter] has been unable to work due to her [REDACTED] [REDACTED]. This information was noted in [the appellant's daughter's] Disability Supplement, and in doctors' notes obtained by MassHealth as part of making their determination ("[the appellant's daughter] is no longer working...as it was felt this was no longer safe to do, given her cognitive impairments."). See

Exhibit 8, Adult Disability Supplement, and see Exhibit 37, Dr. notes. DES found that [the appellant's daughter] "does not have the mental capacity to perform basic, unskilled work activity in the competitive labor market" based on the Mental RFC Worksheet completed as part of the disability determination process. See Exhibit 38, Disability Determination Review Form For Adults. MassHealth does not dispute that [the appellant's daughter] is totally and permanently disabled.

B. MassHealth's own records prove that [the appellant's daughter] was permanently and totally disabled prior to the transfer of assets to the Trust.

According to the Mental RFC Worksheet upon which DES based their determination of [the appellant's daughter's] disability, an "amyloid PET scan confirmed the presence of [REDACTED]" and [the appellant's daughter] "has been unable to work...due to this disease." See Exhibit 39, Mental RFC Worksheet. This amyloid PET scan occurred in December 2023. See Exhibit 37, [REDACTED] [REDACTED]. This inescapably means that the latest possible onset date was December 2023, when the condition preventing [the appellant's daughter] from working was confirmed. In all likelihood, the true onset date was much earlier. [The appellant's daughter] first presented to [REDACTED] in November of 2023 for concerns about her symptoms, at which time a brain MRI showed "too numerous to count" instances of bleeding in her brain (see Exhibit 37, [REDACTED] [REDACTED]), but as noted above, she was forced to stop working in 2020 due to her condition, and she first experienced symptoms in 2015 (see Exhibit 39, Mental RFC Worksheet). Clearly, though the latest possible onset date is December 2023, the true onset date could have been as early as 2015. No matter what, it is impossible for "onset date" to be later than the date as of which [the appellant's daughter's] condition prevented her from engaging in substantial gainful activity.<sup>6</sup> Even if MassHealth takes the position that [the appellant's daughter's] impairment was not "medically determined" prior to the PET scan which confirmed her diagnosis, there is no basis to allege an onset date any later than December 2023. Regardless, MassHealth has taken the inexplicable position that the onset date of [the appellant's daughter's] disability was April 23, 2024. Conveniently for MassHealth, this date falls mere weeks prior to the transfer of funds to the Trust.<sup>7</sup> This date appears only twice in [the appellant's daughter's] File. The first is on the MassHealth Disability Determination Tracking Form (the "Tracking Form"), where it is listed as the onset date with no explanation or context, and the second is in [REDACTED] records, where it appears as the date of

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<sup>6</sup> The Social Security Act defines "disability" as the inability to engage in any substantial gainful activity as a result of a medically determinable physical or mental impairment that is expected to result in death or has lasted or is expected to last for a continuous period of at least 12 months. 42 USC 1382c(a)(3).

<sup>7</sup> The appellant's daughter's disability onset date actually fell after the transfer of funds to the Trust.

an appointment with [the appellant's daughter]. See Exhibit 40, MassHealth Disability Determination Tracking Form, and see Exhibit 37, [REDACTED]. The reference in the Tracking Form is an unmistakable error. This date is not only unsupported as the alleged onset date - it is in direct conflict with the contents of [the appellant's daughter's] File. Notably, DES' correspondence to [the appellant's daughter's] doctors, requesting medical records, was sent on April 22, 2025, and specifically requested only the prior 12 months of records. See Exhibit 41, Requests for Medical Records. The alleged onset date is 364 days prior to that correspondence. If the alleged onset date is based on the date DES requested the records from [the appellant's daughter's] medical providers, then it is a direct product of their ongoing delay and refusal to process the Disability Supplement.

### **THE TRUST SATISFIES THE STANDARDS FOR A SOLE BENEFIT TRUST IN FEDERAL AND STATE LAW**

The Trust is a sole benefit trust within the meaning of 130 CMR 520.019(D)(3), in accordance with 42 USC 1396p(c)(2)(B)(iii). The Trust was created exclusively for [the appellant's daughter's] benefit over the remainder of her life, and prohibits use of the Trust for the benefit of any other individual during [the appellant's daughter's] life and after her death. MassHealth has accepted and approved identical trusts as sole benefit trusts in the past. See Exhibit 42, The [DD] Sole Benefit Trust and Approval Notice dated 5/8/2020, and see Exhibit 43, The [AM] Sole Benefit Trust and Approval Notice dated 11/12/2021, and see Exhibit 44, The [LAM] Sole Benefit Trust and Approval Notices dated 6/11/2024 and 6/24/2024 and 7/1/2024 and 7/24/2024. MassHealth's legal department has invented and presented arguments inconsistent with MassHealth regulations, Massachusetts case law, and federal law, in what is at best an arbitrary determination of what constitutes a sole benefit trust, and is at worst a bad faith attempt to find any means of denying [the appellant's] application.

A. The Trust was created for the sole benefit of [the appellant's daughter].

A transfer of assets to a trust for a nursing facility resident's permanently and totally disabled child does not disqualify a nursing facility resident from eligibility for MassHealth provided that the trust was "created for the sole benefit of such child." 130 CMR 520.019(D)(3), in accordance with 42 USC 1396p(c)(2)(B)(iii). Neither federal nor state law outlines specific language necessary for a trust to be for the "sole benefit" of the child. HCFA Transmittal 64 ("Transmittal 64") § 3257(B)(6) provides guidance on how the term "sole benefit" may be analyzed (emphasis added):

**[A] trust is considered to be established for the sole benefit of a...blind or disabled child...if the trust benefits no one but that individual, whether at the time the trust is established or any time in the future.** However, the trust may provide for reasonable compensation, as defined by the State, for a trustee or trustees to manage the trust, as well as for reasonable costs associated with investing or otherwise managing the funds or property in the trust. A transfer, transfer instrument, or trust that provides for funds or property to pass to a beneficiary who is not the spouse, blind or disabled child, or disabled individual is not considered to be established for the sole benefit of one of these individuals. **In order for a transfer or trust to be considered to be for the sole benefit of one of these individuals, the instrument or document must provide for the spending of the funds involved for the benefit of the individual on a basis that is actuarially sound based on the life expectancy of the individual involved.** When the instrument or document does not so provide, any potential exemption from penalty or consideration for eligibility purposes is void. The terms of The Trust require it be used “solely on the basis of [the appellant’s daughter’s] needs, without regard to the interests of the remaindermen.” See Exhibit 1, The Trust, p. 4. It exists to provide supplemental assistance to [the appellant’s daughter] during her life. It is irrevocable, and terminates upon her death, at which time the Trust assets pass to her estate, not to a contingent beneficiary. There are no clauses that would allow another party to benefit from the Trust, either during [the appellant’s daughter’s] life or after her death. The direction of Trust assets to [the appellant’s daughter’s] estate after her death cannot be deemed to benefit a party other than [the appellant’s daughter]. This flawed logic has been rejected as an “acontextual approach to statutory interpretation.” *Hughes v. McCarthy* 734 F.3d 473, 483 (2013) (rejecting the same logic in the context of annuities, noting that “[t]o extend the sole benefit requirement past [] death is nonsensical” because “the presence of contingent beneficiaries is a certainty under the law whether the beneficiaries are designated” in the relevant instrument, or under state intestacy statute). In the simplest of terms, it would make no sense for a transfer to the disabled child outright to be permissible, but for a transfer to a trust for the same child’s benefit to fail on the basis that the assets pass to that child’s estate after they die.

B. There is no mandatory language or standard for determining the actuarial soundness of a sole benefit trust. Transmittal 64 § 3257(B)(6) provides in part that “[i]n order for a transfer or trust to be considered to be for the sole benefit of [a disabled child], the instrument or document must provide for the spending of the funds involved for the benefit of the individual on a basis that is actuarially sound based on the life expectancy of the individual involved.” Transmittal 64 does not elaborate on the meaning of “actuarially sound” in the context of trusts. MassHealth points to Transmittal 64 § 3258.9(B) for guidance in this regard. But MassHealth ignores the fact that Transmittal 64 goes out of its way to clarify that §

3258.9(B) applies only to annuities, and not to other types of transfers such as transfers to trusts. To start, §3258.9 is named “Treatment of **Certain Kinds** of Transfers for Less Than Fair Market Value” (emphasis added), and states that “[c]ertain financial transactions or purchases may constitute a transfer of assets for less than fair market value. Treat **the following** as described.” (emphasis added). In the span of a header and one sentence, Transmittal 64 takes three opportunities to drive home the fact that §3258.9 is intended to be applied *only* to the specific types of transfers enumerated thereafter. Transfers to a trust are not included. Section 3258.9(B) of Transmittal 64, explicitly titled “Annuities,” does acknowledge that “the term ‘trust’ includes an annuity to the extent and in such manner as the Secretary specifies. This subsection describes how annuities are treated under the trust/transfer provisions.” The inclusion of annuities in the broader category of trusts, to any extent or in any manner, cannot be twisted into requiring that all trusts be treated as annuities. If the two were to be treated the same, Transmittal 64 would state as much. If this definition of actuarial soundness was intended to apply to *all* transfers, it would not be contained in a subsection of Transmittal 64 which opens with five different mentions of the limited context to which the section can be applied. If there were any room for doubt as to Transmittal 64’s intent at this point, it is quickly dispelled as the section continues by taking an entire paragraph to explain what an annuity is, and then providing a method for determining the actuarial soundness *of an annuity*. The standard for actuarial soundness of annuities cannot be applied to trusts simply for the sake of convenience. Unlike annuities, there is no set standard of conditions or language that must be included in a sole benefit trust in order for it to be deemed to provide for the spending of the trust funds for the benefit of the trust beneficiary on a basis that is actuarially sound give (*sic*) that beneficiary’s life expectancy. The purpose of The Trust, as stated in 2.2 of the Trust, is to supplement “whatever benefits and services [the appellant’s daughter] may from time to time be eligible to receive by reason of age, disability, or other factors, from federal, state, and local governmental and charitable sources. At the same time, the trust shall be used in ways that will best enable [the appellant’s daughter] to lead as normal, comfortable, and fulfilling a life as possible.” See Exhibit 1, The Trust, p. 3. The trustee is directed in section 3.1 to “conserve and accumulate the trust estate to the extent feasible, due to the unforeseeability of [the appellant’s daughter’s] future needs,” and to determine the accumulation or use of the trust “solely on the basis of [the appellant’s daughter’s] needs, without regard to the interests of the remaindermen.” See Exhibit 1, The Trust, p. 4. The plain language of the Trust provides for the spending of the funds involved for [the appellant’s daughter’s] benefit, on a basis that ensures the Trust continues for her benefit, for the duration of her life. This language satisfies the broad requirement in Transmittal 64 § 3257(B)(6) that the trust “provide for the spending of the funds involved for the benefit of the individual on a basis that is actuarially sound based on the life

expectancy of the individual involved.”<sup>8</sup>

C. A payback provision is not required to satisfy the Sole Benefit rule.

Transmittal 64 states that:

An exception to [the sole benefit] requirement exists for trusts discussed in §3259.7.5. **Under these exceptions**, the trust instrument must provide that any funds remaining in the trust upon the death of the individual must go to the State, up to the amount of Medicaid benefits paid on the individual’s behalf. **When these exceptions require that the trust be for the sole benefit of an individual**, the restriction discussed in the previous paragraph does not apply when the trust instrument designates the State as the recipient of funds from the trust. Also, the trust may provide for disbursement of funds to other beneficiaries, provided the trust does not permit such disbursements until the State’s claim is satisfied...” (emphasis added).

The inclusion of a payback provision in a trust is undeniably identified as an exception to the sole benefit requirement, specific to the types of trusts addressed in §3259.7 of Transmittal 64 - not as a part of the sole benefit requirement itself. While the above language in Transmittal 64 contemplates the possibility that a trust could *both* 1) fall under one of these exceptions; *and* 2) be required to exist for the sole benefit of an individual, it does not conflate the two. MassHealth asserts in their legal Opinion that “a special needs trust and pooled trust,” citing to 42 USC 1396p(d)(4)(A) and (C), “each require a payback clause under federal and state law.” No state law is cited or referenced. We agree with MassHealth that so-called (d)(4)(A) and (d)(4)(C) trusts require a payback clause. We also note that [The Trust] is neither a (d)(4)(A) nor a (d)(4)(C) trust, and so this assertion by MassHealth, though correct, is clearly irrelevant. MassHealth incorrectly interprets the Court's ruling in the recent Supreme Judicial Court case, *Dermody v. Massachusetts Executive Office of Health and Human Services*, as supporting their misunderstanding that a payback provision is a necessary part of the sole benefit rule, stating in their Opinion “[t]he court also held that the annuity Medicaid payback requirements found under federal law at 42 USC 1396p(c)(1)(F) and MH regulations at 130 CMR 520.007(J)(2) apply to annuity payments made for the *sole benefit* of an individual found under the transfer exception above at 130 CMR 520.019(D).” In fact, the word “payback” does not appear a single time in the *Dermody* opinion, because *Dermody* did not deal with payback provisions. Rather, the Court in *Dermody* analyzed the unique intersection of two statutory provisions, one of which imposes the sole benefit requirement (referred to by the Court as “the sole benefit provision”), and the second of which imposes a requirement to name the State as the remainder beneficiary on an annuity (referred to by the

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<sup>8</sup> §3259.7 deals specifically with so-called (d)(4)(A) and (d)(4)(C) trusts.

Court as “the beneficiary naming provision”). The Court did not intend for its examination of the latter to be applied to trusts, stating “1396p(c)(1)(F)(i) [the beneficiary naming provision] applies **only to annuity purchases.**” *Dermody v. Exec. Office of Health and Human Services*, 491 Mass. 223, 230-231, January 27, 2023 (emphasis added).

D. MassHealth has historically approved sole benefit trusts without the terms they seek to require in this matter. MassHealth has previously approved multiple trusts which are identical to the one in this case, well after Transmittal 64. If sole benefit trusts truly required the provisions MassHealth claims are required in the matter at hand, these previous trusts would not have been approved. MassHealth is attempting to reimagine Transmittal 64, to fit their purposes in the matter at hand. In the matter of [RD’s] application for MassHealth coverage of nursing facility care (the “[RD] Matter”), a trust was submitted which is identical in substance to the sole benefit trust at issue here. See Exhibit 42, The [DD] Sole Benefit Trust and Approval Notice dated 5/8/2020. The sole benefit trust in the [RD] Matter contains no payback provision, and provides that after the beneficiary’s death, any remaining trust assets will pass to the beneficiary’s estate. The sole benefit trust in the [RD] Matter contains no language regarding ‘actuarial soundness’ which is not found in [The Trust]. However, MassHealth approved the sole benefit trust in the [RD] Matter. In the matter of [FM’s] application for MassHealth coverage of nursing facility care (the “[M] Matter”), a trust was submitted which is identical in substance to the sole benefit trust at issue here. See Exhibit 43, The [AM] Sole Benefit Trust and Approval Notice dated 11/12/2021. The sole benefit trust in the [M] Matter contains no payback provision, and provides that after the beneficiary’s death, any remaining trust assets will pass to the beneficiary’s estate. The sole benefit trust in the [M] Matter contains no language regarding ‘actuarial soundness’ which is not found in [The Trust]. However, MassHealth approved the sole benefit trust in the [M] Matter. In the matter of [DD’s] application for MassHealth coverage of nursing facility care [REDACTED] a trust was submitted which is identical in substance to the sole benefit trust at issue here. See Exhibit 44, [REDACTED] and Approval Notices dated 6/11/2024 and 6/24/2024 and 7/1/2024 and 7/24/2024. The sole benefit trust in the [REDACTED] contains no payback provision, and provides that after the beneficiary’s death, any remaining trust assets will pass to the beneficiary’s estate. The sole benefit trust in the [REDACTED] contains no language regarding ‘actuarial soundness’ which is not found in The Trust. However, MassHealth approved the sole benefit trust in the [REDACTED] four times over. MassHealth’s entire argument for the mandatory inclusion of a payback provision in the case at hand either hinges on the misapplication of irrelevant federal law, and a gross misunderstanding of *Dermody*, or is made in bad faith in an attempt at coercive and improper conduct, seeking to force the inclusion of a legally unnecessary

provision. Their position in the matter at hand is in direct conflict with their approval of identical trusts in the past, for other applicants. Not only are MassHealth's claims baseless as a matter of law, but their actions are arbitrary and capricious, and will be reversible under M.G.L. c. 30A.

## **CONCLUSION**

MassHealth claims that The Trust does not qualify as a trust solely for the benefit of a disabled child. This claim is based in part on their assertion that [the appellant's daughter] was not disabled until April 23, 2024, and therefore was not disabled on the date funds were transferred to the Trust. However, they have provided no basis for this alleged onset date, and the evidence in [the appellant's daughter's] File proves that prior to the transfer of funds to the Trust, she was unable to engage in substantial gainful activity due to a medically determinable physical or mental impairment that is expected to last for a continuous period of at least 12 months. MassHealth further concludes that the Trust does not qualify as trust solely for the benefit of a disabled child for one of three possible reasons, each of which is based in part on the lack of a payback provision in the Trust. The Trust is not a (d)(4)(A) or (d)(4)(C) trust, and therefore no payback provision is required. Transfers to a trust for the sole benefit of a nursing home resident's permanently and totally disabled child do not disqualify that resident from eligibility for MassHealth. A person is permanently and totally disabled if they are unable to engage in substantial gainful activity due to a medically determinable physical or mental impairment that is expected to last for a continuous period of at least 12 months. A trust exists for a person's sole benefit if the trust benefits no one but that person, whether at the time the trust is established or any time in the future, and provides for the spending of trust funds for the benefit of the person on a basis that is actuarially sound based on their life expectancy. [The appellant's daughter] is a child of [the appellant's], who was permanently and totally disabled according to the definition in the preceding paragraph prior to the date on which funds were transferred to The Trust. [The Trust] benefits no one but [the appellant's daughter], historically, presently, or at any time in the future, and provides for the spending of trust funds for [the appellant's daughter's] benefit on a basis that is actuarially sound based on her life expectancy. The Trust satisfies the sole benefit requirement for trusts, and [the appellant's daughter] was permanently and totally disabled on the date funds were transferred to the Trust. The transfer of assets to The Trust did not render [the appellant] ineligible for MassHealth, and in order for the decision in this appeal to be rendered in accordance with the law, there is no possible option other than the reversal of MassHealth's denial.

MassHealth requested that the record be left open until 9/5/25 to respond to the appellant's brief, and the appellant's attorney asked for additional time, until 8/19/25, to respond to MassHealth's response. Neither party submitted anything during the record open period.

## Findings of Fact

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

1. On [REDACTED] the appellant was admitted to a long-term-care facility.
2. On [REDACTED] the appellant died at the age of [REDACTED].
3. On 5/16/24, MassHealth received an application for long-term-care from the appellant, seeking a coverage start date of 3/1/24.
4. On 3/8/24, the appellant created the [REDACTED] (the Trust) for the benefit of her daughter.
5. The trust was funded with various transfers on 03/14/2024 and 03/18/2024 totaling \$3,420,343.50.
6. The appellant reduced her assets on 11/4/24 when she gifted an additional \$9,813.33 directly to her daughter.
7. On 2/26/25, MassHealth denied the appellant's application due to disqualifying transfers of assets and imposed an ineligibility period from 11/4/24 to 7/13/46.
8. MassHealth calculated a period of ineligibility because of the disqualifying transfers totaling \$3,430,156.82. The period of ineligibility was calculated by dividing the disqualifying transfer amount by the average daily nursing home private pay rate of \$433.00, which equals 7,922 days of ineligibility, thus establishing a start date of 7/14/46 ( $\$3,430,156.82 / \$433.00 = 7,921.8 = 7,922$  days).
9. At the time the trust was created and funded, appellant's daughter had not been determined disabled by SSA, nor by DES.
10. DES determined the appellant's daughter to be disabled as of 4/23/24.
11. Per the Trust terms at Section 4.1., "Distribution upon death of [the trust beneficiary]: This trust shall terminate upon the death of [the trust beneficiary], at which time the trustee shall pay the trust principal and undistributed income to [the trust beneficiary's] estate."
12. MassHealth requested that the record be left open until 9/5/25 to respond to the appellant's brief, and the appellant's attorney asked for additional time, until 8/19/25, to

respond to MassHealth's response. Neither party submitted anything during the record open period.

## Analysis and Conclusions of Law

"The total value of countable assets owned by or available to individuals applying for or receiving MassHealth Standard, Family Assistance, or Limited may not exceed" \$2,000 for an individual. (130 CMR 520.003(A)(1)). MassHealth regulation, 130 CMR 520.007, lists the assets that MassHealth deems countable; included in this list are certain trusts. 130 CMR 520.007(l) states that MassHealth counts the value of the principal and income of a revocable or irrevocable trust in accordance with 130 CMR 520.021 through 520.024. 130 CMR 520.023(D)(1) lists Special-needs Trusts and Pooled Trusts as exempt under federal trust exemption regulations at 42 U.S.C. 1396(p)(d)(4). 130 CMR 515.001 defines special-needs trusts and pooled trusts. A special-needs trust is defined as a trust that meets all the following criteria, as determined by the MassHealth agency:

- (1) The trust was created for a disabled individual younger than 65 years old.<sup>9</sup>
- (2) (a) The trust was created for the sole benefit of the individual, by the individual, on or after December 13, 2016; or  
(b) The trust was created for the sole benefit of the individual by the individual's parent, grandparent, legal guardian, conservator, or a court.
- (3) The trust provides that the Commonwealth of Massachusetts will receive amounts remaining in the account upon the death of the individual up to the amount paid by the MassHealth agency for services to the individual.
- (4) When the member has lived in more than one state, the trust must provide that the funds remaining upon the death of the member or early termination of the trust are distributed to each state in which the member received Medicaid based on each state's proportionate share of the total amount of Medicaid benefits paid by all states on the member's behalf.
- (5) The trust must include provisions that the trustee will promptly provide written notice of the death of the individual, proposed early termination, and any other changes, such as the appointment of another trustee, as well as accountings or other documents of the administration of the trust to the MassHealth agency or its designee.

130 CMR 515.001 defines a Pooled Trust as a trust that meets all the following criteria, as determined by the MassHealth agency:

- (1) The trust was created by a nonprofit organization.

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<sup>9</sup> EOM 24-08 (December 2024) revised regulation 130 CMR 515.001(1) to allow transfers into valid pooled trust accounts to be made before and after the permanently and totally disabled individual turns [REDACTED] without assessing a penalty period.

- (2) A separate account is maintained for each beneficiary of the trust, but the assets of the trust are pooled for investment and management purposes.
- (3) The account in a pooled trust was created for the sole benefit of the individual by the individual, the individual's parents or grandparents, or by a legal guardian or court acting on behalf of the individual.
- (4) The trust provides that the Commonwealth of Massachusetts will receive amounts remaining in the account upon the death of the individual and, if applicable, early termination of the account up to the amount paid by the MassHealth agency for services to the individual. The trust may retain reasonable and appropriate amounts as determined by the MassHealth agency.
- (5) The individual was disabled at the time his or her account in the pool was created and funded.
- (6) The trust must include provisions that the trustee will promptly provide written notice of the death of the individual, proposed early termination or transfer of the account, and trust accountings to the MassHealth agency or its designee.

On its face, the Trust does not meet the definition of a Pooled Trust, because it was not created by a non-profit, as required in the definition of Pooled Trust, at section (1), above. Further, the Trust does not meet the definition of a Special-Needs Trust or a Pooled Trust because it does not meet the requirement of item (4) of 130 CMR 515.001, providing that MassHealth receives the remaining trust funds upon the death of the beneficiary "up to the amount paid by the MassHealth agency for services to the individual." The Trust clause 4.1 Distribution upon death of [appellant's daughter], states that "[t]his trust shall terminate upon the death of [appellant's daughter], at which time the trustee shall pay the trust principal and undistributed income to [the appellant's daughter's] estate." The failure to meet item (4), which MassHealth calls a "payback clause," makes this Trust not for "the sole benefit" of the appellant's daughter because the trust proceeds would revert to the estate of the appellant's daughter, the beneficiary, upon her death. Moreover, the Trust failed to meet the requirement that it was created for a disabled individual. On the date the Trust was created, the appellant's daughter was not deemed disabled by MassHealth. The issue of the appellant's disability determination onset date may be appealed separately on the appellant's daughter's behalf to DES.

The appellant's attorney's argument that prior identical trusts have been accepted by MassHealth is not persuasive because it requires MassHealth to maintain a position based upon past actions. There was no MassHealth policy in place that states the language in clause 4.1 makes it a valid Special-Needs Trust. Facts found and issues decided by the hearing officer in each case are binding on the parties to that case only (130 CMR 610.085(A)(2)). The appellant's attorney's argument that Transmittal 64 does not require a payback clause to make the trust for "the sole benefit" of the appellant's daughter fails to recognize that the MassHealth regulations plainly state that a Special-Needs Trust or Pooled Trust must provide "that the Commonwealth of Massachusetts will receive amounts remaining in the account upon the death of the individual and, if applicable, early termination of the account up to the amount paid by the MassHealth agency for services to the

individual.” Therefore, the issue of whether the trust is for the sole benefit of the appellant’s daughter is largely irrelevant, as the Trust does not meet even the basic requirements laid out in 130 CMR 515.001.

130 CMR 520.018(B) states “[t]he MassHealth agency will deny 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.”

The relevant parts of 130 CMR 520.019(B) and (C) (“Transfer of Resources Occurring on or after August 11, 1993”) read as follows:

- (B) Look-Back Period. Transfers of resources are subject to a look-back period, beginning on the first date the individual is both a nursing-facility resident and has applied for or is receiving MassHealth Standard. This period generally extends back in time for 36 months. For transfers of resources occurring on or after February 8, 2006, the period extends back in time for 60 months. ...
  
- (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. ...

(Emphasis added)

The transfers fall squarely within the look-back period described above. 130 CMR 520.019(D)(1) through (5) do not apply as the transfers were neither for the benefit of the appellant’s spouse, nor for a permanently disabled child, nor for a permanently disabled person under the age of [REDACTED]<sup>10</sup>

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<sup>10</sup> 130 CMR 520.019(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 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

The appellant's daughter was not considered disabled by MassHealth at the time of the transfers.

If the MassHealth agency has determined that a disqualifying transfer of resources has occurred, the MassHealth agency will calculate a period of ineligibility under 130 CMR 520.019(G)(1).

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.

If an applicant for LTC benefits has more than \$2,000 in assets, they may reduce their assets and achieve eligibility per 130 CMR 520.004. 130 CMR 520.004(A) reads in part as follows:

#### 130 CMR 520.004: Asset Reduction

##### (A) Criteria.

(1) An applicant whose countable assets exceed the asset limit of MassHealth Standard, Family Assistance, or Limited may be eligible for MassHealth

**(a) as of the date the applicant reduces his or her excess assets to the allowable asset limit without violating the transfer of resource provisions for nursing-facility residents at 130 CMR 520.019(F); or**

**(b) as of the date, described in 130 CMR 520.004(C), the applicant incurs medical bills that equal the amount of the excess assets and reduces the assets to the allowable asset limit within 30 days after the date of the notification of excess assets.**

(2) In addition, the applicant must be otherwise eligible for MassHealth.

(Emphasis added)

The appellant reduced her assets as of 11/4/24, by making another non-trust disqualifying

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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. (5) Effective until sixty days after the end of the maintenance of effort and continuous eligibility provisions of Section 6008 of the Families First Coronavirus Response Act (Public Law No. 116-127), the resources were transferred to a pooled trust created for the sole benefit of the permanently and totally disabled nursing-facility resident. Effective sixty days after the end of the maintenance of effort and continuous eligibility provisions of Section 6008 of the Families First Coronavirus Response Act (Public Law No. 116-127), this transfer is no longer permissible.

transfer of assets directly to her daughter.

Based on all of the above, the appellant transferred \$3,430,156.82 for less than fair market value, and MassHealth correctly determined an ineligibility period of 7,922 days ( $\$3,430,156.82 / \$433.00 = 7,921.8 = 7,922$ ) from 11/4/24 to 7/13/46.

This appeal is **denied**.

## **Order for MassHealth**

None.

## **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.

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Christine Therrien  
Hearing Officer  
Board of Hearings

[REDACTED]

[REDACTED]

cc: MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center