

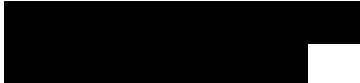
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	DENIED	Appeal Number:	2506618
Decision Date:	08/23/2025	Hearing Date:	06/30/2025
Hearing Officer:	Sharon Dehmand	Record Open to:	08/18/2025

Appearance for Appellant:




Appearance for MassHealth:

Stacy Kirby, Taunton 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

Appeal Decision:	DENIED	Issue:	Long Term Care; Excess Assets
Decision Date:	08/23/2025	Hearing Date:	06/30/2025
MassHealth's Rep.:	Stacy Kirby	Appellant's Rep.:	
Hearing Location:	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 February 27, 2025, MassHealth denied the appellant's application for MassHealth long-term benefits because MassHealth determined that the appellant was over the asset limit to qualify. See 130 CMR 520.003 and Exhibit 5. Through a subsequent notice dated March 1, 2025, MassHealth denied the appellant's application for MassHealth long-term care benefits because the appellant passed away.¹ See 130 CMR 503.002; 130 CMR 517.002; and Exhibit 1. A personal representative of the appellant's estate filed this appeal in a timely manner on April 25, 2025. See 130 CMR 610.015(B) and Exhibit 2. Denial of assistance is valid grounds for appeal before the Board of Hearings. See 130 CMR 610.032(A)(1).

Action Taken by MassHealth

MassHealth denied the appellant's application for long-term care benefits.

Issue

¹ The sole issue on this appeal is the appellant's excess assets.

Whether MassHealth was correct in determining that the appellant was over the asset limit to qualify for MassHealth benefits. See 130 CMR 520.003; 130 CMR 520.006; 130 CMR 520.007.

Summary of Evidence

All parties participated telephonically. MassHealth was represented by a worker from the Taunton MassHealth Enrollment Center. The appellant was represented by an attorney and his paralegal who verified her identity. Both parties submitted documents that were incorporated into the hearing record. See Exhibit 4 and Exhibit 5. The following is a summary of the testimony and evidence provided at the hearing:

The MassHealth representative testified that the appellant is over the age of 65. She was admitted to a long-term care facility on [REDACTED]. A MassHealth long-term care application was submitted on the appellant's behalf on September 25, 2024, seeking coverage as of September 24, 2024. The initial request for information was sent out on November 24, 2024 which was due back on December 12, 2024. The MassHealth representative stated that the application was denied on December 18, 2024 for missing verifications. Subsequently some verifications were received. On January 29, 2025, the case was "re-apped" and a new request for information was sent out. On February 27, 2025, MassHealth determined that the appellant was not eligible for MassHealth benefits due to assets that exceeded the program limits. MassHealth found that the appellant owned a life estate in her primary residence as well as in a second piece of property. She added that pursuant to 130 CMR 520.007(G), MassHealth will not count the appellant's life estate in the primary residence as a countable asset, but the appellant's life estate in the second piece of property is a countable asset. The total assets put the member over the asset limit by \$49,750.76. This figure includes the value of the appellant's life insurance, bank account, and the value of the life estate in the second property minus \$2,000.00 that the appellant is allowed to keep (\$661.57 + \$35.09 + \$51,054.10 - \$2,000.00). She stated that the second property is a piece of land which was valued at \$188,100.00. The value of the life estate was determined to be \$51,054.10.

The appellant's attorney agreed that the appellant conveyed her remainder interest in both her primary residence and a vacant lot to her children granting a life estate to herself. See Exhibit 5, p. 16. He stated that the appellant did not have the legal right to sell either property without the remaindermen's consent. The appellant's son (one of the remaindermen) corroborated this statement and testified that the remaindermen did not and do not intend to sell the property. Based on this testimony, the appellant's attorney argued that the appellant's life estate should be deemed inaccessible indefinitely. As such, it is a noncountable asset. In support of this argument, counsel referenced a letter submitted by the conveyance attorney in which he states that "[the appellant] could not sell the property or force the sale of the property without the signatures of the remaindermen (her children)." *Id.*, p. 18. The MassHealth representative responded that the appellant had access to the value of her life estate and that she was able to sell her life estate.

The appellant's attorney argued that in 2015, the appellant only had the right to use and occupy. He added that while the appellant had the right to receive a share of the proceeds from the sale of the property, she did not have the right to sell her interest in her life estate. He stated that the Supreme Judicial Court has deemed a life estate inaccessible because the applicant is unable to sell the property in which she holds a life estate. He added that the Court did not make a distinction whether this life estate was retained in a primary residence or another property.

The record was held open for the appellant and MassHealth to submit memoranda of law in support of their positions regarding whether an applicant's interest in a second life estate is deemed a countable asset. See Exhibit 6. On July 28, 2025, the appellant's attorney provided a legal memorandum and exhibits which were entered into the record as Exhibit 7. On August 12, 2025, MassHealth provided its legal memorandum which was entered into the record as Exhibit 8.

Findings of Fact

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

1. The appellant is over the age of 65 and was admitted to a long-term care facility on [REDACTED] (Testimony).
2. A MassHealth long-term care application was submitted on the appellant's behalf on September 25, 2024, seeking coverage as of September 24, 2024. (Testimony and Exhibit 4).
3. The initial request for information was sent out on November 24, 2024, which was due back on December 12, 2024. (Testimony).
4. On December 18, 2024, MassHealth denied the appellant's application due to missing verifications. (Testimony and Exhibit 4).
5. On January 29, 2025, after receiving some of the verifications requested, the case was "re-apped." (Testimony).
6. On February 27, 2025, MassHealth determined that the appellant was not eligible for MassHealth benefits due to assets that exceeded the program limits. (Testimony and Exhibit 4).
7. Through a subsequent notice dated March 1, 2025, MassHealth denied the appellant's application for MassHealth long-term care benefits because the appellant passed away. (Testimony and Exhibit 1).
8. A representative of the appellant's estate filed this appeal in a timely manner on April 25,

2025, contesting MassHealth's February 27, 2025 excess asset determination. (Exhibit 2).

9. In 2015, the appellant conveyed her remainder interest in both her primary residence and a vacant lot to her children granting a life estate to herself. (Testimony and Exhibit 5).
10. MassHealth will not count a life estate in the primary residence as countable asset. (Testimony; Exhibit 8).
11. The appellant is over the allowed asset limit by \$49,750.76. (Testimony and Exhibit 4).

Analysis and Conclusions of Law

MassHealth administers and is responsible for delivery of healthcare benefits to MassHealth members. See 130 CMR 515.002. Eligibility for MassHealth benefits differs depending on an applicant's age. 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for non-institutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, and certain Medicare beneficiaries. See 130 CMR 515.002(B). Since the appellant was an institutionalized person, she is subject to the requirements of the provisions of Volume II. See 130 CMR 515.002.

Institutionalized individuals may establish eligibility for MassHealth Standard coverage subject to the following requirements:

- (1) be younger than 21 years old or 65 years of age or older or, for individuals 21 through 64 years of age meet Title XVI disability standards or be pregnant;
- (2) be determined medically eligible for nursing facility services by the MassHealth agency or its agent as a condition for payment, in accordance with 130 CMR 456.000: Long Term Care Services;
- (3) contribute to the cost of care as defined at 130 CMR 520.026: Long-term-care General Income Deductions;
- (4) have countable assets of \$2,000 or less for an individual and, for married couples where one member of the couple is institutionalized, have assets that are less than or equal to the standards at 130 CMR 520.016(B): Treatment of a Married Couple's Assets When One Spouse Is Institutionalized; and
- (5) not have transferred resources for less than fair market value, as described at 130 CMR 520.018: Transfer of Resources Regardless of Date of Transfer and 520.019: Transfer of Resources Occurring on or after August 11, 1993.

See 130 CMR 519.006(A).

Countable assets are all assets that must be included in the determination of eligibility. Countable assets include assets to which the applicant or member or his or her spouse would be entitled whether or not these assets are actually received when failure to receive such assets results from the action or inaction of the applicant, member, spouse, or person acting on his or her behalf. In determining whether or not failure to receive such assets is reasonably considered to result from such action or inaction, the MassHealth agency considers the specific circumstances involved. See 130 CMR 520.007.

The assets that the MassHealth agency considers as countable assets include, but are not limited to, cash, bank account balances, IRAs, Keough plans, pension funds, securities, cash surrender value of life-insurance policies, certain vehicles, real estate with the exception of the principal place of residence, certain SSI and RSDI benefits, trusts, and annuities, promissory notes, loans, mortgages, and similar transactions. See 130 CMR 520.007(A)-(J).

In accordance with 42 CFR 416.1201(a), any real or personal property that an individual owns and could convert to cash has to be used for her support and maintenance. "If the individual has the right, authority or power to liquidate the property or his or her share of the property, it is considered a resource. If a property cannot be liquidated, the property will not be considered a resource of the individual (or spouse)". See 42 CFR 416.1201(a)(1).

A life estate is established when all of the remainder legal interest in a property is transferred to another, while the legal interest for life rights to use, occupy, or obtain income or profits from the property is retained. See 130 CMR 515.001. The MassHealth agency considers a transfer of property with the retention of a life estate, as defined in 130 CMR 515.001: Definition of Terms, to be a transfer of resources. The difference between the fair-market value of the entire asset and the value of the life estate is called the remainder interest. The remainder interest is the amount considered to be transferred at less than fair-market value. The MassHealth agency will calculate the values of the remainder interest and the life estate in accordance with the life-estate tables, as determined by the MassHealth agency. See 130 CMR 520.019(I)(1).

Here, there is no dispute that the appellant established a life estate when she conveyed her legal interest in both her primary residence and a parcel of land to her children in September 2015 while retaining the legal interest for life for herself. See 130 CMR 515.001. MassHealth did not consider the value of the appellant's life estate in her primary residence as countable asset. MassHealth determined that the value of the appellant's life estate in the parcel of land to be \$51,054.10. Since MassHealth did not consider the value of the appellant's life estate in her primary residence as countable asset, the only question remaining in this appeal is whether the value of the appellant's life estate in the parcel of land (second property) is a countable asset in accordance with the regulations and applicable laws.

The appellant's attorney posits that the value of any life estate is not a countable asset because

a life tenant such as the appellant does not have the ability to sell the property without the consent of the remaindermen. (Emphasis added). As such, this asset should be deemed inaccessible indefinitely. In support of this position, the appellant's attorney advanced three arguments.

One, he stated that the appellant only had the right to use and occupy. He added that while the appellant had the right to receive a share of the proceeds from the sale of the property, she did not have the right to sell her interest in her life estate. Two, he stated that the Supreme Judicial Court has deemed a life estate inaccessible because the applicant is unable to sell the property in which she holds a life estate. Three, in holding that a life estate is inaccessible, the Court did not make a distinction between a life estate in a primary residence or any other property.

The appellant's arguments fail for the following reasons. First, "a life estate is alienable by the life tenant, and [she] can accordingly convey [her] estate to a third person, or mortgage it, or lease it for a term of years." See H.J. Alperin & L.D. Shubow, Summary of Basic Law § 17.15, at 586 (3d ed. 1996) (Alperin & Shubow); Hershman-Tcherepnin v. Tcherepnin, 452 Mass. 77, 88 n. 20 (2008). The appellant's attorney is correct in his contention that the appellant would have had a right to receive a portion of the sale proceeds. See §12:3. Advance long-term care planning—Life estate, 56 Mass. Prac., Elder Law § 12:3 (2024)("sale proceeds would generally be distributed proportionally to the life tenant and the remaindermen based on the age of the life tenant at the time of sale, and according to an actuarial table"); see also 130 CMR 520.019(l)(2). However, he is mistaken in his assertion that the appellant did not have the right to sell her interest in her life estate as it is directly contrary to governing case law as outlined above. Equally unpersuasive is a letter submitted by the appellant's conveyance attorney supporting the contention that the appellant "did not have the right to sell her life interest" which runs afoul of the holdings by the Supreme Judicial Court and ruling authorities. See Daley v. Sec'y of Exec. Off. of Health & Hum. Servs., 477 Mass. 188, 203-204(2017)(life estate is an asset of the applicant that can be sold, mortgaged, or leased); Exhibit 7, p. 55.

Second, the appellant's reliance on Guilfoil v. Sec'y of Exec. Off. of Health & Hum. Servs., 486 Mass. 788 (2021), in support of her contention that the Supreme Judicial Court has deemed a life estate inaccessible because the applicant is unable to sell the property in which she holds a life estate, is misplaced. The main issue as stated by the Supreme Judicial Court in its decision in Guilfoil was "whether the entire interest in a property transferred into a nominee trust is a countable asset in an individual's Medicaid eligibility determination where the individual has retained a life estate in the property." See id. at 789. In Guilfoil, as here, the applicant retained a life interest in the property, while her children had a remainder interest. However, in Guilfoil, unlike here, this interest was created through a trust. Regardless, in both cases upon conveyance of the property, an immediate property interest vested in the applicant's children and the applicant did not retain any rights of ownership of the property itself. Id. at 797. However, the holding in Guilfoil, is of little benefit to the appellant since the question addressed in Guilfoil was whether or not the entire value of the property was a countable asset to the life estate holder.

Here, MassHealth did not count the value of the entire property against the appellant but only the value of the life estate.

Third, the appellant's counsel is mistaken in his contention that the Guilfoil Court excluded the value of all life estates for Medicaid eligibility purposes regardless of whether or not the interest is in the applicant's primary residence or any other property. It is important to note that in Guilfoil citing Daley,² the Court concluded that "[b]ecause a life estate does not permit an individual to sell the home and distribute the proceeds, we conclude that the retention by an applicant of a life estate in his or her primary residence does not render the property a countable asset." See Guilfoil, 486 Mass. at 800. (Emphasis added). In fact, this is the same quote used by the appellant's conveyance attorney as submitted by counsel as part of the record in this appeal. See Exhibit 5, p. 18, Exhibit 7, p. 52, 54; see also Groce v. Director, Ark. Dept't of Human Services, 82 Ark. App. 447, 453-454 (2003)(life estate excluded for purposes of Medicaid eligibility if applicant's principal place of residence).

Lastly, although not contested during the hearing but argued for the first time in his memorandum of law, counsel disputes the valuation of the life estate. The appellant's counsel argued that since the land in question was vacant and the appellant was not healthy, her remaining lifetime had no significant or marketable value because of her dire medical prognosis. See Exhibit 7, pp.9-10. This argument is unpersuasive.

It should be noted that "...the value of the life-estate interest is calculated in accordance with the life-estate tables, as determined by the MassHealth agency. The MassHealth agency will attribute the value of the life-estate interest at the time of the sale or transfer to the person selling or transferring the life estate." See 130 CMR 520.019(l)(2).

MassHealth has determined that in order to calculate the value of life estates and remainder interests, it will use the Section 7520 Interest Rate Tables referenced in the Federal Regulations, 26 CFR 20.2031-7. The Tables use actuarial factors to determine present values based on publications by the Internal Revenue Service (IRS). The Social Security Administration (SSA) Life Estate and Remainder Interest Table in Section SI 01140.120 of the Program Operations Manual System (POMS), referenced by the Centers for Medicare & Medicaid Services (CMS) State Medicaid Manual, also cites to the Federal Regulations, 26 CFR 20.2031-7. See Eligibility Operations Memo (EOM) 23-12 (April 2023). Following the procedural steps as set forth in the same EOM, MassHealth calculates the value of the life estate by considering the following: 1) the interest rate that is applicable to the month and year the real estate was transferred or sold; 2) obtaining the life estate and remainder factors from the IRS actuarial tables; and 3) multiplying the appropriate life estate or remainder interest factor by the fair market value as of the date of the transfer.

² The Daley Court did not decide the noncountability of the life estate in an applicant's primary residence but rather relied on MassHealth's decision not to consider it for Medicaid eligibility purposes. See Daley, 477 Mass. at 204.

In this case, the MassHealth representative testified that the land was valued at \$188,100.00. The life estate was valued at \$51,054.10. The appellant's attorney did not dispute this calculation during the hearing, nor did he provide an alternative calculation in his memorandum of law. Rather, he offers only a conclusory assertion that given the appellant's age and health prognosis, her life estate held no significant value. Counsel, however, did not provide any evidence to support this assertion. "The burden of proof is on the appealing party to show that the order appealed from is invalid, and we have observed that this burden is heavy." See Massachusetts Inst. of Tech. v. Department of Pub. Utils., 425 Mass. 856, 867 (1997); see also Craven v. State Ethics Comm'n, 390 Mass. 191, 200 (1983)(proof by a preponderance of the evidence is the standard generally applicable to administrative proceedings). The appellant has failed her burden to provide any proof that MassHealth calculation was erroneous.

For the foregoing reasons, I find that the appellant's life estate interest in the parcel of land is a countable asset in accordance with the regulations and applicable law. As such, MassHealth correctly denied the appellant's application on the basis that her assets exceeded regulatory limits. Accordingly, 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.

Sharon Dehmand, Esq.
Hearing Officer
Board of Hearings



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