

# Office of Medicaid

## BOARD OF HEARINGS

Appellant Name and Address:

[REDACTED]

|                         |                                      |                        |           |
|-------------------------|--------------------------------------|------------------------|-----------|
| <b>Appeal Decision:</b> | Approved, in part<br>Denied, in part | <b>Appeal Number:</b>  | 2506742   |
| <b>Decision Date:</b>   | 9/8/2025                             | <b>Hearing Date:</b>   | 6/09/2025 |
| <b>Hearing Officer:</b> | Patrick Grogan                       | <b>Record Open to:</b> | 7/25/2025 |

Appearances for Appellant:

[REDACTED]

Appearance for MassHealth:

Alexsandra DeJesus, MassHealth Taunton

Interpreter:

N/A



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

## APPEAL DECISION

|                           |                                      |                           |   |
|---------------------------|--------------------------------------|---------------------------|---|
| <b>Appeal Decision:</b>   | Approved, in part<br>Denied, in part | <b>Issue:</b>             | Disqualifying<br>Transfer, Period of<br>Ineligibility |
| <b>Decision Date:</b>     | 9/8/2025                             | <b>Hearing Date:</b>      | 6/09/2025   |
| <b>MassHealth's Rep.:</b> | Alexsandra DeJesus                   | <b>Appellant's Reps.:</b> | [REDACTED]  |
| <b>Hearing Location:</b>  | Remote (Tel)                         | <b>Aid Pending:</b>       | 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 April 17, 2025, MassHealth denied the Appellant's application for Long-Term-Care services because MassHealth determined that the Appellant had given away or sold assets for less than fair market value (see 130 CMR 520.018, 130 CMR 520.019, and Exhibit 1). The Appellant filed this Appeal on April 29, 2025 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal. (see 130 CMR 610.032)

### Action Taken by MassHealth

MassHealth denied the Appellant's application for Long-Term-Care services because MassHealth determined that the Appellant had given away or sold assets for less than fair market value. (see 130 CMR 520.018, 130 CMR 520.019, and Exhibit 1)

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.018 and 130 CMR 520.019, in denying the Appellant Long-Term-Care services since MassHealth determined that Appellant made disqualifying transfers during the look-back period and in calculating the period of ineligibility.

## **Summary of Evidence**

The Appellant is a MassHealth member under the age of [REDACTED] who sought and was denied Long-Term-Care services, because MassHealth determined that the Appellant had given away or sold assets for less than fair market value. (Testimony, Exhibit 1) From this determination, the Appellant appeals.

MassHealth testified that the Appellant's Long-Term-Care application, dated February 28, 2025, was received by MassHealth. (Testimony, Exhibit 1) MassHealth stated that the Appellant was denied because MassHealth determined that the Appellant had given away or sold assets for less than fair market value. (Testimony, Exhibit 1) MassHealth was provided a deed, indicating that the Appellant had a 1/5 interest in the Appellant's parents' property located in [REDACTED] [REDACTED] (Testimony, Exhibit 10) The Appellant's parents' property sold for \$465,000. (Testimony, Exhibit 10) MassHealth calculated the Appellant's portion of the sale at the amount of \$93,000. (Testimony, Exhibit 10) No HUD statement, nor any proof of where the sale proceeds were deposited was provided to MassHealth. (Testimony). No information explaining how the Appellant's portion of the proceeds was spent was provided to MassHealth. (Testimony)

MassHealth calculated a disqualifying period based upon this amount. (Testimony, Exhibit 10) MassHealth divided the total amount of the Appellant's portion of the sale, \$93,000, by the average [REDACTED] nursing home rate estimated by the Office of Medicaid (\$411) to arrive at a 211-day period of ineligibility. (Testimony, Exhibit 10) Based upon this figure, MassHealth calculated a disqualifying period from April 11, 2025 through November 7, 2025. (Exhibit 1) MassHealth issued a denial notice, dated April 17, 2025. (Exhibit 1)

The Appellant, through a letter faxed on June 3, 2025 sent from the Attorney-in-Fact who is the Appellant's sister, stated they had sold the parents' home in [REDACTED] after the Appellant was diagnosed with Alzheimer's. The letter stated that the Appellant had received approximately \$50,000 for his portion of the proceeds. The letter continued: "there is no record of the check deposited into a bank account or cashed. My brother spent his money on a few things but there is no paper trail. The list my brother spent his money on is attached. My brother was married and divorced his ex-wife who is entitled to that money, but there is no confirmation his ex-wife received money and she will not cooperate." (Exhibit 9, pgs. 2-3) No list was attached. (Exhibit 9)

At the end of the letter, the Attorney-in-Fact/Sister stated, "I can only provide you with the background of what my brother did after he was diagnosed, and he wasn't in the right state of mind at the time he received the funds. He spent his money on what he wanted and didn't disclose everything he did with it. I can't provide a paper trail for his transactions, but I know he bought and visited those locations for that amount of time." (Exhibit 9)

At Hearing, the Appellant's Attorney-In-Fact, Appeal Representative, and witness restated the information in the letter and stated that the information was accurate. (Testimony, Exhibit 9) The Appeal Representative requested a Record Open period to provide information related to the sale of the Appellant's parents' house. The parties were informed that this would likely prompt a new determination. The parties agreed, in the interests of administrative economy, that the new determination, and any MassHealth calculation, would be consolidated within the instant Appeal.

Accordingly, the hearing officer allowed a Record Open period. The Appellant had until July 11, 2025 to submit information to MassHealth related to the parents' property, and until July 25, 2025 for MassHealth to review, issue a new determination, and provide the updated calculations for incorporation into this Administrative Record. (Exhibit 11) Additional information was provided to MassHealth. (Exhibit 12). The Appellant received \$54,107.65 from the sale of the parents' home. (Exhibit 12, pg. 10) Based upon the information provided, MassHealth recalculated a period of ineligibility of 123 days, until August 11, 2025. (Exhibit 13, Exhibit 13, pg. 5)

## **Findings of Fact**

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

1. The Appellant is a MassHealth member under the age of █ who sought and was denied Long-Term-Care services, because MassHealth determined that the Appellant had given away or sold assets for less than fair market value. (Testimony, Exhibit 1)
2. MassHealth received a deed, indicating that the Appellant had a 1/5 interest in the Appellant's parents' property located in █ (Testimony, Exhibit 10) The Appellant's parents' property sold for \$465,000 in █ (Testimony, Exhibit 10) MassHealth calculated the Appellant's portion of the sale at the amount of \$93,000. (Testimony, Exhibit 10)
3. No HUD statement, nor any proof of where the sale proceeds were deposited was provided to MassHealth. (Testimony). No information explaining how the Appellant's portion of the proceeds was spent was provided to MassHealth. (Testimony, Exhibit 10)

4. MassHealth divided the total amount of the Appellant's portion of the sale, \$93,000, by the average [REDACTED] nursing home rate estimated by the Office of Medicaid (\$411) to arrive at a 211-day period of ineligibility. (Testimony, Exhibit 10)
5. The Appellant, through a letter faxed on June 3, 2025, stated that the Appellant had received approximately \$50,000 for his portion of the proceeds. (Exhibit 9) No HUD statement was provided to MassHealth. (Testimony, Exhibit 10) There is no record of the check deposited into a bank account or cashed. (Exhibit 9).
6. In accordance with the Record Open (Exhibit 11), additional information was provided to MassHealth after Hearing. (Exhibit 12)
7. The Appellant received \$54,107.65 from the sale of the parents' home. (Exhibit 12, pg. 10)
8. MassHealth recalculated a period of ineligibility of 123 days, until August 11, 2025. (Exhibit 13, Exhibit 13, pg. 5)

## **Analysis and Conclusions of Law**

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998).

In accordance with 130 CMR 519.006(A)(4), to qualify for MassHealth Standard coverage as a resident of a long-term care facility, an individual must have countable assets of \$2,000 or less. MassHealth considers any transfer of a resource owned by a nursing facility resident for less than fair market value during the appropriate look-back period to be a disqualifying transfer unless the transfer in question is permitted or exempted under the regulations. Specifically, 130 CMR 520.018(B) states that MassHealth "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 look-back period for transfers of resources occurring on or after February 8, 2006 is 60 months. 130 CMR 520.019(B)(2).

According to 130 CMR 520.019(C), set forth in pertinent part,

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.

130 CMR 520.0019(G) states:

Where the MassHealth has determined that a disqualifying transfer of resources has occurred, the MassHealth 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 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.

A transfer may be cured if the full value or a portion of the full value of the transferred resources is returned to the applicant. 130 CMR 520.019(K)(2)(b). Additionally, per 130 CMR 520.019(F), MassHealth will not impose a period of ineligibility for transferring resources at less than fair market value if the resident demonstrates to MassHealth's satisfaction that

- (1) the resources were transferred exclusively for a purpose other than to qualify for MassHealth; or
- (2) the nursing-facility resident or spouse intended to dispose of the resource at either fair-market value or for other valuable consideration. Valuable consideration is a tangible benefit equal to at least the fair-market value of the transferred resource.

The federal Health Care Finance Administration (HCFA) Transmittal No. 64, Section 3258.10 sets forth the following guidance to transfers exclusively for a purpose other than qualifying for Medicaid:

Transfers Exclusively for a Purpose Other Than to Qualify for Medicaid.--Require the individual to establish, to your satisfaction, that the asset was transferred for a purpose other than to qualify for Medicaid. Verbal assurances that the individual was not considering Medicaid when the asset was disposed of are not sufficient. Rather, convincing evidence must be presented as to the specific purpose for which the asset was transferred.

In the instant appeal, the Appellant, through the Attorney-in-Fact, offered arguments in support of the appeal of the denial and the disqualifying period assessed by MassHealth. The Appellant has provided updated information regarding the portion of the parents' property disbursed to him. However, this record is bereft of any documentary evidence in support of the statements within the letter submitted, indicating how that disbursement was spent.

The guidance from the controlling caselaw in this area does not aid the Appellant in the quest to appeal the assessed disqualifying period. In Gauthier v. Director of the Office of Medicaid, 80 Mass. App. Ct. 777, 785-786 (2011) The Massachusetts Appeals Court held, inter alia, that the Hearing Officer correctly affirmed MassHealth's decision that applicant made a disqualifying transfer of resources during the application look-back period; where the applicant had failed to show that the transfer was made exclusively for a purpose other than to qualify for MassHealth, because the applicant did not present convincing evidence as the specific purpose for which the asset was transferred, as is required under federal law. Here, the Appellant has furnished argument, with no corroboration, to explain the transfers at issue.

Additionally, in Kaptchuk v. Directory of the Office of Medicaid, 83 Mass. App. Ct. 1134 (2013) (Rule 1:28 Decision) the Court held, in part "[Appellant] bore the burden to prove by convincing evidence that the money was transferred for an exclusive purpose other than to qualify for Medicaid, and verbal assurances...were insufficient to satisfy that burden." Here, the Appellant, through the Appeal Representative, has offered verbal assurances, merely reduced to writing, in the attempt to satisfy the burden of providing MassHealth convincing evidence related to the transfers. As noted above, verbal assurances are insufficient to provide convincing evidence under the Regulations and controlling caselaw.

The Appellant's request to reduce the penalty period does not invalidate that administrative determination by MassHealth which comports with the explicit dictates of 130 CMR 520.019 and the controlling case law. Without documentation in support of the testimony, the Appellant, through the Attorney-in-Fact, has not provided convincing evidence as required by the Regulations and applicable caselaw. The letter submitted by the Attorney-in-Fact was signed, however the letter was not signed under the pains and penalties of perjury. (Exhibit 9). Even had the letter been signed under the pains and penalties of perjury, witnesses in MassHealth Appeal Hearings are likewise sworn prior to testimony. By submitting this letter, the Appellant has merely reduced verbal assurances to writing, which does not render the assertions any more compelling than verbal assurances, even had the assurances been offered under oath. As noted above, verbal assurances are insufficient to provide convincing evidence under the Regulations and controlling caselaw.

Based upon the specific evidence presented in this appeal, the Appellant has met the burden, by a preponderance of evidence, to show the invalidity of MassHealth administrative determination, in part. I find that MassHealth's recalculation of the period of ineligibility based upon the additional information provided after Hearing is accurate. The Appellant had received

\$54,107 from the sale of the real property and a period of ineligibility of 123 days, until August 11, 2025 is accurate. (Exhibit 12, Exhibit 12, pg. 5). Accordingly, this appeal is APPROVED, IN PART. The Appellant is assessed a 123-day period of ineligibility. The remainder of the Appeal is DENIED.

## **Order for MassHealth**

Adjust the Appellant's period of ineligibility to 123 days.

## **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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Patrick Grogan  
Hearing Officer  
Board of Hearings

cc: [REDACTED]  
[REDACTED]  
[REDACTED]

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616