

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2507120
Decision Date:	7/21/2025	Hearing Date:	06/03/2025
Hearing Officer:	Christopher Jones		

Appearance for Appellant:



Appearance for MassHealth:

Elizabeth Kittiphane – Quincy Intake



*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; Disqualifying transfer
Decision Date:	7/21/2025	Hearing Date:	06/03/2025
MassHealth's Rep.:	Elizabeth Kittiphane	Appellant's Rep.:	[REDACTED]
Hearing Location:	Telephonic	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 March 6, 2025, MassHealth approved the appellant for community benefits, but denied long-term care benefits from April 27, 2024, through July 4, 2025, based upon assets that were given away for less than fair market value. (Exhibit 1; 130 CMR 520.018 – 520.019.) The appellant filed this timely appeal on May 6, 2025. (Exhibit 1; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth denied the appellant's long-term care eligibility for 434 days based upon \$187,795.35 that was withdrawn from her bank accounts by her daughter within the relevant lookback period.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.018 – 520.019, in determining that the appellant violated the transfer of resource provisions in order to qualify for Medicaid.

Summary of Evidence

The appellant is over the age of [REDACTED] and she entered the nursing facility in the [REDACTED]. An application for long-term care benefits was filed on May 6, 2024, and the appellant is seeking long-term care coverage as of April 27, 2024. After a lengthy process of verifying the appellant's assets, MassHealth issued the appealed decision on March 6, 2025. In the years immediately prior to entering the nursing facility, the appellant had several bank accounts. Following the verification of assets, it was determined that the appellant's daughter withdrew a total of \$187,795.35 of the appellant's money from 4 different accounts within the five years prior to entering the nursing facility.

The parties agree to the dollar amounts, and the appellant's representative concedes that the money was simply taken by the appellant's daughter without valuable consideration.¹ The appellant's representative testified that the money was in the account as the result of the sale of real property, but that the money appears to have been spent. The appellant's representative is an attorney who was hired by the nursing facility to pursue this appeal, and he was authorized to appear at the hearing by the appellant's power of attorney.

The appellant's representative argued that the appellant herself did not transfer the money with the intention of qualifying for Medicaid. However, prior to losing competency, the appellant had instructed her power of attorney not to press charges against her daughter for taking the money. The appellant's attorney was unaware of any complaints of elder abuse or fraud being filed against the appellant's daughter. The appellant's representative accepted that the money should be treated as a disqualifying transfer, but he said MassHealth requires disqualifying transfers go through a fair hearing before they will entertain a hardship waiver from the nursing facility.

Findings of Fact

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

- 1) The appellant entered the nursing facility in the [REDACTED]. An application for long-term care benefits was filed on May 6, 2024, and the appellant is seeking long-term care coverage as of April 27, 2024. (Testimony by MassHealth's representative.)
- 2) The appellant verified her assets, which showed that her daughter had withdrawn \$187,795.35 of the appellant's money during the lookback period. (Testimony by the appellant's and MassHealth's representatives.)

¹ MassHealth's notice states that the relevant average daily nursing home rate was \$441. However, the applicable average daily rate for applications filed prior to November 1, 2024, is \$433 per day. (EOM 24-07 (Nov. 2024).) The 434-day penalty period is correct if divided by \$433 per day.

- 3) No action has been taken to attempt to recover the money from the appellant's daughter, in part because the appellant instructed her power of attorney to not pursue the money. (Testimony by the appellant's representative.)

Analysis and Conclusions of Law

The purpose of Medicaid is to provide medical assistance to those “whose income and resources are insufficient to meet the costs of necessary medical services.” (42 USC § 1396-1 (2014).) To limit benefits only to those who truly do not have the resources to provide for their care, MassHealth requires an individual over the age of [REDACTED] to have less than \$2,000 in assets to qualify for benefits. (130 CMR 520.003.)

The applicant becomes eligible for long-term care benefits “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 . . . or . . . as of the date . . . the applicant incurs medical bills that equal the amount of the excess assets and reduces the assets to the allowable asset limit.” (130 CMR 520.004(A)(1)(a)-(b).)

The transfer of resource provisions allow MassHealth to see whether an applicant has given away assets within the previous five years in order to qualify – this is referred to as the “lookback period.” (See 130 CMR 520.019(B); 130 CMR 520.023(A).) A disqualifying transfer may include

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).^[2] 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. Action taken to avoid receiving a resource may include, but is not limited to, waiving the right to receive a resource, not accepting a resource, agreeing to the diversion of a resource, **or failure to take legal action to obtain a resource**. In determining whether or not failure to take legal action to receive a resource is reasonably considered a transfer by the individual, the MassHealth agency considers the specific circumstances involved. A

² As published, the last cross-reference is to subsection (J) and is a typographical error. Subsection (J) specifically **includes** as disqualifying transfers of home equity loans and reverse mortgages if transferred for less than fair market value. Subsection (K), however, **exempts** listed transactions from the period of ineligibility.

disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available.

(130 CMR 520.019(C) (emphasis added.) Permissible transfers are made to benefit a community spouse or a disabled relative. Exempted transfers are cured in some manner after the fact.

The applicant's intent can affect whether a transfer of resources results in a period of ineligibility:

(F) Determination of Intent. In addition to the permissible transfers described in 130 CMR 520.019(D), the MassHealth agency will not impose a period of ineligibility for transferring resources at less than fair-market value if the nursing-facility resident or the spouse demonstrates to the MassHealth agency's satisfaction that

(1) the resources were transferred exclusively for a purpose other than to qualify for MassHealth; or

(2) the nursing-facility resident or spouse intended to dispose of the resource at either fair-market value or for other valuable consideration. Valuable consideration is a tangible benefit equal to at least the fair-market value of the transferred resource.

(130 CMR 520.019(F) (emphasis added).) Federal guidance requires an applicant to make a heightened evidentiary showing on this issue: "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." (Gauthier v. Dir., Office of Medicaid, 80 Mass. App. Ct. 777, 785 (2011) (citing State Medicaid Manual, Health Care Financing Administration Transmittal No. 64, § 3258.10(C)(2)).) Essentially, there is a presumption that transfers made within the look-back period were intended to preserve assets from being used to pay for an individual's care.

The appellant's representative concedes that the appellant's daughter withdrew \$187,795.35 from the appellant's accounts within the lookback period. There is no evidence regarding whether this money was taken with the appellant's permission, or if it was potentially for some valuable consideration. The only evidence of intent in the record is that the appellant instructed her Power of Attorney to not take legal action against her daughter to recover the money. Because the appellant has specifically inhibited legal action to recover the funds herself, MassHealth was correct to treat the amount as a disqualifying transfer, and this appeal is DENIED.

The appellant may proceed to apply for a hardship waiver within 15 days of the date of this decision in accordance with 130 CMR 520.019(L)(3)-(4).

Order for MassHealth

Allow the appellant/nursing facility to apply for a hardship waiver in accordance with 130 CMR 520.019(L), as if this decision were the MassHealth denial notice.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Christopher Jones
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104