

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2507551
<b>Decision Date:</b>	8/8/2025	<b>Hearing Date:</b>	06/20/2025
<b>Hearing Officer:</b>	Amy B. Kullar, Esq.	<b>Record Open to:</b>	07/21/2025; 08/04/2025

Appearance for Appellant:



Appearance for MassHealth:

Karen Redman, MassHealth Eligibility Policy  
Unit



*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>	Long-Term Care; Hardship Waiver of Period of Ineligibility
<b>Decision Date:</b>	8/8/2025	<b>Hearing Date:</b>	06/20/2025
<b>MassHealth's Rep.:</b>	Karen Redman	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Quincy Harbor South 2 (Telephone)	<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 March 20, 2025, MassHealth denied Appellant's request for a hardship waiver of the period of ineligibility from April 12, 2024 – November 4, 2024. *See* 130 CMR 520.019(L) and Exhibit 1. The appellant filed this appeal in a timely manner on May 14, 2025. *See* 130 CMR 610.015(B) and Exhibit 2. Denial of a hardship waiver request from a period of ineligibility is valid grounds for appeal. *See* 130 CMR 610.032.

### Action Taken by MassHealth

MassHealth denied Appellant's request for a hardship waiver of a period of ineligibility from April 12, 2024 – November 4, 2024.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019(L), in denying Appellant's request for a hardship waiver for the period of ineligibility from April 12, 2024 – November 4, 2024.

## Summary of Evidence

The appellant is a married adult male who is over the age of 65 and a resident of a skilled nursing facility. MassHealth was represented by a member of the MassHealth Eligibility Policy Unit; she appeared via telephone. The appellant was represented by a Medicaid consultant; she also appeared telephonically and verified the appellant's identity. The parties' testimony and record evidence are summarized as follows:

The MassHealth representative testified that on February 28, 2025, the appellant was sent a notice that he was approved for MassHealth long-term care (LTC) benefits, but with a period of ineligibility imposed from April 12, 2024, through November 4, 2024, due to a disqualifying transfer of resources. The appellant did not appeal this notice.<sup>1</sup> She then testified that to prepare for this hearing she spoke with the MassHealth caseworker who processed the appellant's LTC application, and she learned that the period of ineligibility was due to a disqualifying transfer of resources by the appellant during the look-back period. The appellant jointly owned property with his spouse; this property was transferred to a third party for less than fair market value, and MassHealth determined that the appellant's ownership interest in the property transfer was \$89,800.00. The appellant then filed a hardship waiver request with MassHealth on March 17, 2025. The hardship waiver request was reviewed by the MassHealth Eligibility Policy Unit, and the denial of the hardship waiver request was issued by notice dated March 20, 2025. Testimony and Exhibit 1.

The MassHealth representative then explained the basis for MassHealth denial of the hardship waiver; she gave three reasons. The first was due to the timeliness of the request; the appellant's hardship waiver request was not received within 15 days of the date of the notice that imposed the penalty period. This is considered an administrative reason for denial. The second reason that the request was denied was that it was not signed by the appellant; his typed name was printed on the form, but it did not have his signature. The third reason for the denial is that the request was not accompanied by the documentation that is required under 130 CMR 520.019(L). She stated, "Per our regulations, in order to approve a hardship, [the appellant] has to meet all of those factors." Testimony.

The MassHealth representative then reviewed the four required criteria for a hardship waiver under 130 CMR 520.019(L)(1)(a)-(d). She stated that the first criterion concerns the health and

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<sup>1</sup>Here, the MassHealth representative asked if the appellant had appealed the February 28, 2025 approval notice that imposed the period of ineligibility. The appellant's representative responded she was not aware of any appeals of the February 28, 2025 notice being filed. The Hearing Officer then reviewed Board of Hearings records database and did not find any records that indicated that the appellant had appealed the February 28, 2025 notice. The MassHealth representative stated that normally this notice should be appealed before a hardship waiver request is filed and noted that it is unusual that this appellant did not appeal the approval notice that imposed the period of ineligibility. Testimony.

welfare of the appellant and that MassHealth would need the opinion of a clinician that states the appellant's health and safety would be endangered if this hardship waiver were denied; she stated the appellant's hardship waiver request did not include this documentation. Instead, it only had a letter from a regional business manager at the appellant's long-term care facility.<sup>2</sup> Secondly, MassHealth did not receive any documentary evidence for review with the hardship waiver request that showed that there has been some attempt to get some of the transferred funds back to the appellant. Lastly, MassHealth did not receive any documentation that indicated that there was no less costly noninstitutional alternative at which the appellant could receive care; this should be attested to by a clinician, according to the MassHealth representative. She acknowledged that one of the four criteria had been satisfied by the appellant's hardship waiver request; the hardship waiver request was accompanied by a Notice of Intent to Discharge for Nonpayment from the appellant's long term care facility<sup>3</sup>. Testimony.

The appellant's representative responded to MassHealth's testimony. She explained that she had recently returned from medical leave and that the approval notice and hardship waiver request had been processed and submitted by her colleague. She offered background information on the appellant's situation. The appellant's representative wanted to clarify the facts surrounding the disqualifying transfer; she stated that the appellant had jointly owned the now transferred real property with his spouse. During the lookback period, the appellant transferred his ownership interest in the real property to his spouse, and then his spouse transferred the real property to an unrelated third party, when the plan had always been to transfer the real property to the appellant's spouse's son. The appellant's representative stated that it appears the appellant's spouse was "scammed" by the unrelated third party that she transferred the property to, although she is allegedly still living at the transferred property with the unrelated third party. The appellant's representative believes that "the family has gotten the police involved, but there's no official police report at this point." Testimony. The appellant wants the opportunity to attempt to obtain further medical and mental health evidence to show that the appellant's spouse lacked the capacity to contract when she transferred the real property to the unrelated third party. Testimony. She then stated that at this point, she would like to get more of the documentary evidence from the family and the appellant to satisfy the criteria in the regulations for the hardship waiver, and she would appreciate more time to do so.

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<sup>2</sup> This letter was included as part of MassHealth's post-hearing submission, it was dated 3/10/2025 and it states: "[Appellant] has been a resident at [Nursing Facility] since [REDACTED]. We are unable to discharge him home at this time due to appeal process and if he were to lose this appeal it would be medically unsafe to discharge him home. He is unable to transfer himself from a bed or chair and is unable to provide his own ADL's or meal prep. His healthcare proxy has been invoked since 11/20/2024 and is unable to make his own medical decisions." The title of the signatory to the letter is Regional Office Business Manager at the appellant's nursing facility. See Exhibit 7.

<sup>3</sup> The Hearing Officer located the Board of Hearings record for the appeal concerning the Nursing Home Notice of Intent to Discharge Resident for Non-Payment during the hearing; this appeal was dismissed by the Board of Hearings because the appeal request was signed by the appellant; but was also accompanied by the appellant's invoked health care proxy documentation, and no appeal request was received at the Board of Hearings from anyone with the authority to legally act on behalf of the appellant. See Appeal No. 2504430.

There was then a discussion between the parties, and it was agreed that the appellant would have 30 days from the date of the hearing to submit the following documentation: (i) a hardship waiver request signed by the appellant, or someone with the legal authority to act on his behalf; (ii) documentation that shows that all appropriate attempts to retrieve the transferred resource have been exhausted and that the resource or other adequate compensation cannot be obtained to provide payment, in whole or part, to the appellant or the nursing facility; and (iii) a letter from a clinician at the appellant's nursing facility that a denial of hardship waiver would deprive the appellant of medical care such that his health or life would be endangered, or that the appellant would be deprived of food, shelter, clothing, or other necessities such that he would be at risk of serious deprivation and put appellant's safety at risk. The hearing concluded shortly thereafter, and the record was held open until July 21, 2025 for appellant submissions; MassHealth would then have until July 28, 2025 to respond. Exhibit 6.

Immediately after the hearing, the MassHealth representative emailed the Hearing Officer and the appellant's representative three documents that were meant to be submitted by MassHealth prior to the hearing.<sup>4</sup> On July 28, 2025, the appellant's representative emailed the Hearing Officer requesting additional time to submit the outstanding documentation. Exhibit 8. Although not timely, this request was granted and the record open period was extended to August 4, 2025. On August 4, 2025, the appellant's representative sent an email with two PDF attachments to the Hearing Officer and the MassHealth representative. The email stated:

I received the following 2 verifications from [Appellant's Spouse]'s son. 1<sup>st</sup> is a medical letter explaining her diagnosis.<sup>5</sup> 2<sup>nd</sup> is a promissory note stating that [Son] is to pay [Appellant's Spouse] \$70,000 - if you can please accept this as proof that he ended up paying her for the property and not just \$1 as stated on the deed.<sup>6</sup> At

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<sup>4</sup> The first document is ten pages and it contains the Hardship Waiver request submitted by the appellant to MassHealth on March 17, 2025; the same file also contains the Notice of Intent to Discharge Resident with 30 Days' Notice dated March 5, 2025, a signed Authorized Representative Designation, and the 3/10/2025 letter from the business manager at the appellant's nursing facility. The second document is a blank MassHealth Request for a Hardship Waiver of Period of Ineligibility. The third document is a copy of Eligibility Operations Memo 24-06, Process For Requesting A Hardship Waiver For A Period Of Ineligibility Due To A Disqualifying Transfer Of Resources. See Exhibit 7.

<sup>5</sup> This is an undated, 1 page letter, signed by a licensed clinical social worker; it states that the appellant's spouse sought treatment for depression in August 2023 due to "the feeling of being scammed out of her house." She was then diagnosed with Depressive Disorder and Post Traumatic Stress Disorder, received mental health counseling for approximately one year, and discontinued treatment due to requiring skilled nursing care. There is no mention in this letter of the appellant's spouse being diagnosed with any form of cognitive impairment. See Exhibit 9.

<sup>6</sup> The Promissory Note is a two-page document dated 9/13/2021; the appellant's spouse is identified as the Lender; the appellant's step-son is the Borrower. The sum of \$70,000.00 was loaned to the Borrower by the Lender; the time period of the note is 120 months; payments of \$584 per month are due from the Borrower to the Lender on the 15<sup>th</sup> of each month through the term of the note. The last page contains the notarized signatures of Borrower and Lender. The Promissory Note does not mention the transfer or conveyance of any real property. See Exhibit 9.

this time, this is what I was able to get from the family. If you feel this is sufficient then please go ahead with a decision.

Exhibit 9.

On August 6, 2025, MassHealth responded to the appellant's record open submission via an emailed statement:

After reviewing the documentation submitted by [the appellant's] legal representatives, it has been determined that the submission does **not satisfy any of the requirements** outlined in 130 CMR 520.019(L). Accordingly, MassHealth upholds the decision to deny the hardship waiver request. [The appellant's] legal representatives have not demonstrated compliance with the provisions of this regulation.

Exhibit 10 (emphasis in original).

The MassHealth record open response statement gives the reasons for upholding the hardship waiver denial. Specifically, it is MassHealth's position that (i) current documentation, signed by a clinical professional, was not provided to support the position that a discharge would pose a threat to the appellant's health and safety; (ii) the documentation submitted does not show any attempts to retrieve the asset determined to be a disqualifying transfer; instead, the documents appear to attempt to address the imposition of the disqualifying transfer penalty and to argue that the resources were transferred for a purpose other than to qualify for MassHealth; and (iii) no documentation was provided to demonstrate that a less costly noninstitutional placement is unavailable for the appellant. Additionally, the statement also noted that no current nursing home discharge notice was provided. *Id.*

Having received the MassHealth response to the appellant's record open submissions, the Hearing Officer closed the administrative record on August 6, 2025.

## Findings of Fact

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

1. The appellant is a married adult who is over the age of 65 and resides in a skilled nursing facility. Testimony, Exhibit 4.
2. On February 28, 2025, MassHealth approved the appellant for MassHealth long-term care (LTC) benefits, but with a period of ineligibility imposed April 12, 2024 – November 4, 2024, due to a disqualifying transfer of resources. The appellant did not appeal this notice. Testimony.

3. On March 17, 2025, the appellant filed a Request for a Hardship Waiver from a Period of Ineligibility with MassHealth. Testimony and Exhibit 7.
4. On March 20, 2025, MassHealth issued a Transfer of Resources Hardship Waiver Denial Notice. It states that the hardship waiver is denied because “you have not met the requirements of 130 CMR 520.019(L).” Testimony and Exhibit 1.
5. On May 14, 2025, the appellant filed a timely appeal of the March 20 hardship waiver denial notice with the Board of Hearings. Exhibit 2.
6. The appellant made a disqualifying transfer in the amount of \$89,800.00 which resulted from the transfer of real property he owned during the lookback period. Testimony and Exhibit 8.
7. Following the appeal hearing, the appellant’s representative requested that the record be kept open until July 21, 2025 for submission of missing documentation, which was granted. Testimony, Exhibit 6.
8. On July 28, 2025, the appellant’s representative requested that the record be kept open until August 4, 2025 for submission of missing documentation, which was granted. Exhibit 8.
9. In support of his request for a hardship waiver, the appellant submitted a letter from the nursing facility’s business office manager; a letter from his spouse’s therapist, and a promissory note between the appellant’s spouse and her son that does not mention the appellant nor the transferred real property, and is for the repayment of a \$70,000.00 loan. Testimony and Exhibits 7, 9 and 10.
10. No statement or attestation of a clinical professional was submitted by the appellant to support the position that a discharge from his skilled nursing facility would pose a threat to the appellant’s health and safety. Testimony and Exhibit 10.
11. No documentation was submitted by the appellant that shows that all appropriate attempts to retrieve the transferred resource have been exhausted and that the resource or other adequate compensation cannot be obtained to provide payment, in whole or part, to the appellant or the nursing facility. Testimony and Exhibit 10.

## **Analysis and Conclusions of Law**

Regulation 130 CMR 520.019 provides in relevant part with emphasis added:

(L) Waiver of the Period of Ineligibility Due to Undue Hardship. In addition to revising a trust and curing a transfer, the nursing-facility resident may claim undue hardship in order to eliminate the period of ineligibility.

(1) The MassHealth agency may waive a period of ineligibility due to a disqualifying transfer of resources if ineligibility would cause the nursing-facility resident undue hardship. The MassHealth agency may waive the entire period of ineligibility or only a portion when all of the following circumstances exist.

(a) The denial of MassHealth would deprive the nursing-facility resident of medical care such that his or her health or life would be endangered, or the nursing-facility resident would be deprived of food, shelter, clothing, or other necessities such that he or she would be at risk of serious deprivation.

(b) Documentary evidence has been provided that demonstrates to the satisfaction of the MassHealth agency that all appropriate attempts to retrieve the transferred resource have been exhausted and that the resource or other adequate compensation cannot be obtained to provide payment, in whole or part, to the nursing-facility resident or the nursing facility.

(c) The institution has notified the nursing-facility resident of its intent to initiate a discharge of the resident because the resident has not paid for his or her institutionalization.

(d) There is no less costly noninstitutional alternative available to meet the nursing-facility resident's needs.

(2) Undue hardship does not exist when imposition of the period of ineligibility would merely inconvenience or restrict the nursing-facility resident without putting the nursing-facility resident at risk of serious deprivation.

(3) Where the MassHealth agency has issued a notice of the period of ineligibility due to a disqualifying transfer of resources, the nursing-facility resident may request a hardship waiver. For transfers occurring on or after February 8, 2006, nursing facilities may apply for a hardship waiver on behalf of a resident, with the consent of the nursing-facility resident or the resident's authorized representative.

**(4) If the nursing-facility resident feels the imposition of a period of ineligibility would result in undue hardship, the nursing-facility resident must submit a written request for consideration of undue hardship and any supporting documentation to the MassHealth Enrollment Center listed on the notice of the period of ineligibility within 15 days after the date on the notice. Within 30 days after the date of the nursing-facility resident's request, the MassHealth agency will inform the nursing-facility resident in writing of the undue-hardship decision and of the right to a fair hearing. The MassHealth agency will extend this 30-day period if the MassHealth agency requests additional documentation or if extenuating circumstances as determined by the MassHealth agency require**



**additional time.**<sup>7</sup>

(5) The nursing-facility resident may appeal the MassHealth agency's undue-hardship decision and the imposition of a period of ineligibility by submitting a request for a fair hearing to the Office of Medicaid Board of Hearings within 30 days after the nursing-facility resident's receipt of the MassHealth agency's written undue-hardship notice, in accordance with 130 CMR 610.000: *MassHealth: Fair Hearing Rules*.

(6) The nursing-facility resident's request for consideration of undue hardship does not limit his or her right to request a fair hearing for reasons other than undue hardship.

Here, MassHealth did not err when it denied the appellant's request for Waiver of the Period of Ineligibility Due to Undue Hardship. It was undisputed at hearing that the submission of the request for the hardship waiver was not received at MassHealth within 15 days of the date of the denial notice, and a denial solely on this basis would be proper. However, the appellant's representative argued that the appellant should not be penalized because his representatives failed to timely submit the request, and after listening to the testimony of the appellant's representative at hearing, MassHealth agreed to a thirty-day record open period to give the appellant extra time to provide the required documentary evidence of undue hardship.

Pursuant to 130 CMR 520.019(L), the nursing-facility resident may claim undue hardship in order to eliminate the period of ineligibility. MassHealth may waive a period of ineligibility due to a disqualifying transfer of resources if ineligibility would cause the nursing-facility resident undue hardship. MassHealth may waive the entire period of ineligibility or only a portion when all the following circumstances exist:

(a) The denial of MassHealth would deprive the nursing-facility resident of medical care such that his or her health or life would be endangered, or the nursing-facility resident would be deprived of food, shelter, clothing, or other necessities such that he or she would be at risk of serious deprivation.

(b) Documentary evidence has been provided that demonstrates to the satisfaction of the MassHealth agency that all appropriate attempts to retrieve the transferred resource have been exhausted and that the resource or other adequate compensation cannot be obtained to provide payment, in whole or part, to the nursing-facility resident or the nursing facility.

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<sup>7</sup> See also Exhibit 7, MassHealth Request for a Hardship Waiver of a Period of Ineligibility submitted by Appellant, which also outlines these timeframes under the heading Submission Process.

(c) The institution has notified the nursing-facility resident of its intent to initiate a discharge of the resident because the resident has not paid for his or her institutionalization.

(d) There is no less costly noninstitutional alternative available to meet the nursing-facility resident's needs.

Undue hardship does not exist when imposition of the period of ineligibility would merely inconvenience or restrict the nursing-facility resident without putting the nursing-facility resident at risk of serious deprivation (130 CMR 520.019(L)(2)).

At issue here is MassHealth's denial of the appellant's request for an undue hardship waiver pursuant to 130 CMR 520.019(L). The appellant contends that MassHealth should waive the period of ineligibility because he meets the four-prong test in the regulation. MassHealth maintains that the appellant has not satisfied three of the four prongs of the regulation, and I agree with this determination.

On this record, the appellant has not demonstrated that he has met the requirements of 130 CMR 520.019(L). Despite ample extra time to supplement the written record, no current documentation signed by a clinical professional with knowledge of the appellant's medical condition was provided to support the position that a discharge would pose a threat to the appellant's health and safety. The documentation that was submitted purporting to explain the transfer of the real property by the appellant's spouse does not show any attempts to retrieve the real property, and at hearing, although it was alleged that the appellant's spouse transferred the real property because of undue influence or fraud, no evidence was provided to support that assertion beyond the testimony of the appellant's representative. There was also no documentation provided that demonstrates that a less costly noninstitutional placement is unavailable for the appellant. There was very little information provided about the appellant's finances beyond the amount of the disqualifying transfer, and no evidence that the transfer would be or could be cured. All of the prongs of 130 CMR 520.019(L)(1)(a)-(d) must be satisfied in order for a hardship waiver to be granted to an applicant. Here, the evidence shows that the appellant has failed to satisfy this requirement.

MassHealth correctly determined that the appellant has not met all of the requirements of 130 CMR 520.019(L) to qualify for a hardship waiver of the period of ineligibility.

This appeal is therefore 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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Amy B. Kullar, Esq.  
Hearing Officer  
Board of Hearings

cc: [REDACTED]

cc: Respondent Representative: Karen Redman, MassHealth Member Policy Implementation Unit, 100 Hancock Street, 6th Floor, Quincy, MA 02171

cc: Respondent Representative: Kathleen Racine, MassHealth Member Policy Implementation Unit, 100 Hancock Street, 6th Floor, Quincy, MA 02171