Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	DENIED	**Appeal Number:**	2512597
Decision Date:	11/5/2025	**Hearing Date:**	10/16/2025
Hearing Officer:	Sharon Dehmand	**Record Open to:**	10/30/2025

Appearance for Appellant:
[redacted] Nursing Facility

Appearance for MassHealth:
Kathleen Racine, Policy Implementation 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

Appeal Decision:	DENIED	**Issue:**	Long Term Care; Disqualifying transfer; Undue hardship waiver
Decision Date:	11/5/2025	**Hearing Date:**	10/16/2025
MassHealth's Rep.:	Kathleen Racine	**Appellant's Rep.:**	[redacted]
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 June 26, 2025, MassHealth denied the appellant's request for waiver of the period of ineligibility based on a claim of undue hardship because it determined that not all provisions of the applicable MassHealth regulation were met. See 130 CMR 520.019(L) and Exhibit 1. The appellant filed this appeal in a timely manner on August 29, 2025. See 130 CMR 610.015(B); Exhibit 2. An agency determination regarding the scope or amount of assistance is valid grounds for appeal before the Board of Hearings. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied the appellant's request for waiver of the period of ineligibility based on a claim of undue hardship.

Issue

Whether MassHealth was correct in denying the appellant's request for waiver of the period of

ineligibility based on a claim of undue hardship. See 130 CMR 520.019(L).

Summary of Evidence

All parties participated telephonically. MassHealth was represented by a worker from the Policy Implementation Unit (PIU). The appellant was represented by the nursing facility and an attorney who verified her identity. Both parties submitted documents that were incorporated into the hearing record. See Exhibit 5 and Exhibit 6. 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 and was admitted to a long-term care facility on [redacted] 2024. A MassHealth long-term care application was submitted on the appellant's behalf on March 5, 2025, seeking coverage as of February 6, 2025. MassHealth determined that the appellant was not eligible for coverage from February 6, 2025 through November 4, 2025, because the appellant transferred assets in the amount of $119,661.00 within the regulatory look-back period. The MassHealth representative testified that this amount was from the proceeds of the sale of her property in [redacted] 2020. This amount was deposited into one of the appellant's bank accounts. On December 11, 2020, this amount was withdrawn from her account, and the bank account was closed but the appellant failed to provide documentation to show how this amount was disbursed or spent.

Based on this information, on May 21, 2025, MassHealth issued a notice denying the appellant's long-term care application with a period of ineligibility from February 6, 2025 through November 4, 2025. See Exhibit 6, pp. 3-4. The MassHealth representative explained that the appellant's period of ineligibility was calculated by taking the amount that was transferred and dividing it by the average nursing home daily rate of $441.00 ($119,661.00/$441.00), which resulted in a 272-day penalty period. The appellant did not appeal MassHealth's determination.

On June 2, 2025, MassHealth's PIU received the appellant's request for a hardship waiver. See Exhibit 6. As part of that application, the appellant's daughter submitted a letter explaining how the appellant spent the funds. The letter stated that the funds were spent on a donation to church, helped pay for the appellant's granddaughter's wedding, Christmas gifts to her grandchildren each year, numerous vacations, purchase of furniture, and other household expenses. See Exhibit 6, p. 13.

On June 26, 2025, MassHealth's PIU denied the appellant's request because her hardship waiver request did not meet all the requirements listed at 130 CMR 520.019(L)(1). See Exhibit 1. The MassHealth representative explained that the appellant's request was denied in whole because she did not satisfy the following requirements:

(a) There is insufficient, inadequate, or no independent documentary evidence

showing that the imposed period of ineligibility deprives or would deprive the nursing facility resident of medical care such that their 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.

Regarding this requirement, the MassHealth representative stated that the letter submitted from the administrator of the facility was insufficient because it was not based on the appellant's clinical needs. Additionally, the letter submitted from a physician dated May 2025, was not sufficient because it stated that the physician last saw the appellant in 2023. As such, the appellant's current clinical condition has not been substantiated by any documentary evidence from a clinician. See Exhibit 6.

(b) There is insufficient, inadequate, or no independent documentary evidence showing 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 in part, to the nursing facility resident or the nursing facility.

The MassHealth representative stated that no documentation was submitted regarding any attempts to retrieve funds.[1]

(c) There is insufficient, inadequate, or no independent documentary evidence to show that the nursing facility notified the nursing facility resident of the intent to initiate a discharge of the resident because the resident has not paid for their institutionalization.

The MassHealth representative testified that this requirement has been met by the submitted documentation. See Exhibit 6.

(d) There is insufficient, inadequate, or no independent documentary evidence to show that there are no less costly noninstitutional alternatives available to meet the nursing facility resident's needs.

The MassHealth representative stated that the letter authored by the nursing facility is insufficient to meet this requirement. A clinical letter from a clinician is required to substantiate the claim that the appellant's needs can only be met in a skilled nursing facility. See Exhibit 6.

[1] It became clear during the hearing that MassHealth had not received the appellant's submission which was incorporated into the record as Exhibit 5.

The appellant's representatives confirmed that the appellant did not appeal MassHealth's determination on May 21, 2025. Instead, they submitted a request for hardship waiver on behalf of the appellant which is the subject of this appeal.

During the hearing, the appellant's attorney referenced the memorandum submitted as part of this appeal. See Exhibit 5. He argued that it is well documented that the appellant suffers from Alzheimer's disease and multiple other medical conditions that require 24-hour care in a skilled nursing facility. The attorney referred to the memorandum as evidence of the appellant's health conditions.

The attorney also referenced what he described as "the demand letter" that had been served on both appellant's daughters, suggesting possible litigation in the event of any misappropriation of funds. In response, the daughters submitted affidavits explaining that their mother withdrew the funds from her bank account in cash and "kept [the cash] in a safety deposit box under [her] sole control…." See Exhibit 5, pp. 37, 39.

In their affidavits, the daughters stated that the appellant used the funds to pay for "costs and expenses associated with her housing, such as rent, utilities (heating, cooling, electricity, water, and sewer), internet and cable, and toiletries," as well as food, dining out, gas, and transportation costs. Id. The attorney acknowledged that the letter previously submitted to MassHealth does not list the same expenses as those identified in the affidavits but argued that both documents should be considered together. He further stated that he was unaware of the amounts contributed to the wedding, church, or other expenditures and that no receipts were provided by the appellant's daughters.

The appellant's attorney confirmed that there is no litigation currently pending against the appellant's daughters and that there are no present plans to pursue legal action. However, he noted that the nursing facility may consider future action, depending on the outcome of this appeal.

Finally, the attorney reiterated that the appellant's serious and well-documented medical conditions prevent her family from providing the 24-hour care she requires. He argued that placement in a skilled nursing facility is the only viable option to ensure that the appellant receives appropriate care.

Since it became clear during the hearing that MassHealth had not received the memorandum and documents submitted on behalf of the appellant, the record was held open until October 30, 2025, for MassHealth to review the appellant's submission and for the appellant's representatives to submit any additional supporting evidence. See Exhibit 7.

On October 24, 2025, the appellant's attorney submitted a letter from the appellant's primary care

physician, dated [redacted] 2025, attesting to her clinical need for 24-hour care. See Exhibit 8.

On October 27, 2025 and October 31, 2025, MassHealth responded to the appellant's submissions and maintained its denial of the hardship waiver. The MassHealth representative stated that the appellant had not met all criteria under 130 CMR 520.019(L). She stated that after reviewing the appellant's submission, MassHealth determined that the appellant had provided sufficient documentary evidence to satisfy provisions (a) and (d) of the MassHealth regulation at 130 CMR 520.019(L)(1). However, regarding provision (b), the MassHealth representative noted that the "letter sent by [redacted] to the appellant's daughters, does not request the return of the funds or repayment and does not indicate any other attempts to seek repayment…..The letter does not clearly and plainly request or demand the return or repayment of the $119,661 in question. The letter references payment of an outstanding balance of $68,027.48 due to the nursing facility." The MassHealth representative also argued that the "affidavits signed by the appellant's daughters on [July 31, 2025] provide information about where the funds went that contradicts the information provided to the original case worker in May 2025." See Exhibit 9.

Findings of Fact

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

1. The appellant is over the age of 65 and she was admitted to a nursing facility on [redacted] 2024. (Testimony and Exhibit 4).

2. On March 5, 2025, MassHealth received the appellant's long-term care application seeking coverage as of February 6, 2025. (Testimony).

3. On May 21, 2025, MassHealth issued a notice denying the appellant's long-term care application with a period of ineligibility from February 6, 2025 through November 4, 2025 because the appellant transferred assets in the amount of $119,661.00. (Testimony and Exhibit 6).

4. The appellant's period of ineligibility was calculated by taking the amount that was transferred and dividing it by the average nursing home daily rate of $441.00 ($119,661.00/$441.00), which resulted in a 272-day penalty period. (Testimony).

5. The appellant sold her property in [redacted] 2020 and deposited the amount of $119,661.00 from the proceeds of the sale in her bank account. (Testimony).

6. On December 11, 2020, this amount was withdrawn from her account, and the bank account was closed. (Testimony).

7. The appellant did not provide documentary evidence to show how this amount was disbursed or spent. (Testimony).

8. On June 2, 2025, MassHealth's PIU received the appellant's request for a hardship waiver. (Testimony and Exhibit 6).

9. On June 26, 2025, MassHealth's PIU denied the appellant's request for waiver of the period of ineligibility based on a claim of undue hardship because it determined that not all provisions of the applicable MassHealth regulation were met. (Testimony and Exhibit 1).

10. The appellant filed this appeal in a timely manner on August 29, 2025. (Exhibit 2).

11. The record was held open until October 30, 2025, for MassHealth to review the appellant's submission and for the appellant's representatives to submit any additional supporting evidence. (Exhibit 7).

12. On October 24, 2025, the appellant's attorney submitted a letter from the appellant's primary care physician, dated [redacted] 2025, attesting to her clinical need for 24-hour care. (Exhibit 8).

13. MassHealth determined that the appellant provided sufficient documentary evidence to meet the requirements as set forth in 130 CMR 520.019(L)(1)(a), (c), and (d). (Exhibit 5, Exhibit 8, and Exhibit 9).

14. The appellant did not submit sufficient documentary evidence showing that all appropriate attempts were made to retrieve the transferred resources as set forth in 130 CMR 520.019(L)(1)(b). (Testimony, Exhibit 5, and Exhibit 9).

Analysis and Conclusions of Law

At the outset it should be noted that the provisions of 42 U.S.C. §1396p apply to all transfers of resources. In the event that any portion of 130 CMR 520.018 and 520.019 conflicts with federal law, the federal law supersedes. See 130 CMR 520.018(A).

To qualify for MassHealth long-term care coverage, the assets of the institutionalized applicant cannot exceed $2,000.00. See 130 CMR 520.016(A). In determining whether an applicant qualifies for benefits, MassHealth will assess whether he or she has transferred any resources for less than fair market value. See 130 CMR 520.018. The MassHealth agency denies payment for nursing-facility services to an otherwise eligible nursing-facility resident as defined in 130 CMR 515.001, 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. See 130 CMR 520.018(B).

The denial of payment for nursing-facility services does not affect the individual's eligibility for other MassHealth benefits. See 130 CMR 520.018(C).

Per 130 CMR 520.019(B), the look-back period is determined 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.
>
> (1) For transfers occurring before February 8, 2006, this period generally extends back in time for 36 months.
>
> (2) For transfers of resources occurring on or after February 8, 2006, the period generally extends back in time for 60 months. The 60-month look-back period will begin to be phased in on February 8, 2009. Beginning on March 8, 2009, applicants will be asked to provide verifications of their assets for the 37 months prior to the application. As each month passes, the look-back period will increase by one month until the full 60 months is reached on February 8, 2011.
>
> (3) For transfers of resources from or into trusts, the look-back period is described in 130 CMR 520.023(A).

Here, the appellant's property was sold in [redacted] 2020. The appellant deposited the proceeds of the sale of her property in one of her bank accounts. On December 11, 2020, this amount was withdrawn from her account, and the bank account was closed. The appellant is requesting that the MassHealth coverage start on February 6, 2025. As such, the resource transfer occurred within the 60-month look-back period.

If it is determined that a resident or spouse made a disqualifying transfer of resources, MassHealth will calculate a period of ineligibility in accordance with the methodology described in 130 CMR 520.019(G). Pursuant to 130 CMR 520.019(C), "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)[2], identified in 130 CMR 520.019(F), or exempted in 130 CMR 520.019(J).[3] The MassHealth agency

[2] 130 CMR 520.019(D) provides a list of permissible transfers.

[3] The reference to 130 CMR 520.019(J) – which pertains to home equity loans and reverse mortgages, and does not include any language about exemptions from transfer penalties – appears to be an error, a possible holdover from an earlier version of the regulations. The proper reference is likely 130 CMR 520.019(K), Exempting Transfers from the Period of Ineligibility. That provision provides an exemption from the penalty period where an applicant takes steps to reverse the actions that led to the disqualifying transfer finding (e.g., by revising a trust or by curing the transfer).

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

Although the appellant's representatives did not dispute the calculation of the period of ineligibility, the issue will be addressed for the sake of completeness. MassHealth calculated the appellant's period of ineligibility by taking the amount that was transferred and dividing it by the average nursing home daily rate of $441.00 ($119,661.00/$441.00), which resulted in a 272-day penalty period. As such, MassHealth correctly calculated the period of ineligibility in accordance with the methodology described in 130 CMR 520.019(G).

It should be noted that 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. 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 MassHealth 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.

See 130 CMR 520.019(L)(1)(emphasis added).

The MassHealth representative contended that the appellant had not satisfied the regulatory

requirement to demonstrate that all reasonable and appropriate attempts were made to retrieve the transferred resource. See 130 CMR 520.019(L)(1)(b). In support of its position, the MassHealth representative referenced the July 23, 2025 correspondence sent by [redacted] to the appellant's daughters and argued that the letter does not request the return of the transferred funds or repayment of any portion thereof. Rather, the letter sought responses from the daughters to "discuss a reasonable agreement" regarding the outstanding balance owed to the nursing facility. The appellant's counsel asserted that the correspondence was a "demand letter" and argued that as such it satisfied the regulatory requirement. I find that the record does not support the fact that the steps taken constitute a clear or sufficient demand for repayment, nor do they reflect exhaustive efforts to secure the return of the transferred resources for the following reasons.

One, the appellant's counsel confirmed that there is no litigation currently pending against the appellant's daughters and that there are no present plans to pursue legal action. Two, while the letter references potential legal avenues, it does not plainly or expressly demand repayment of the $119,661.00 at issue. Instead, the letter identifies a $68,027.48 outstanding balance due to the nursing facility and expresses concern regarding possible misappropriation. Significantly, the letter concludes by requesting contact to "discuss a reasonable agreement to resolve the matter," but makes no actual demand for repayment and does not request return of the transferred funds. See Exhibit 5, pp. 20-21. The plain language of 130 CMR 520.019(L) places the burden on the applicant to prove 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" before MassHealth "may" grant a hardship waiver. See Massachusetts Broken Stone Co. v. Weston, 430 Mass. 637, 640(2000)(plain and ordinary meaning is given to the statute in light of its clear language).

The record therefore establishes only that a letter was sent notifying the appellant's daughters of the facility's concern regarding the ineligibility period imposed due to the transfer of assets and inviting discussion of a resolution. Such communication, absent a clear and direct demand for repayment or demonstrated follow-through in pursuing recovery such as litigation does not meet the regulatory requirement. Accordingly, based on the foregoing reasons, 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

[redacted]

Respondent Representative: Kathleen Racine, MassHealth Member Policy Implementation Unit, 100 Hancock Street, 6th Floor, Quincy, MA 02171, 999-999-9999
Respondent Representative: Karen Redman, MassHealth Member Policy Implementation Unit, 100 Hancock Street, 6th Floor, Quincy, MA 02171, 999-999-9999