

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2512621
<b>Decision Date:</b>	12/04/2025	<b>Hearing Date:</b>	09/29/2025
<b>Hearing Officer:</b>	Thomas J. Goode	<b>Record Open to:</b>	12/2/2025

**Appearance for Appellant:**



**Appearance for MassHealth:**

Christina Prunier, Tewksbury 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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Long Term Care- Excess Assets
<b>Decision Date:</b>	12/04/2025	<b>Hearing Date:</b>	09/29/2025
<b>MassHealth's Rep.:</b>	[REDACTED]	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Remote	<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 July 29, 2025, MassHealth denied Appellant's application for MassHealth benefits for failure to give MassHealth the information it needs to decide eligibility within the required time frame (130 CMR 515.008 and Exhibit 2). On July 31, 2025, MassHealth issued a notice that informed Appellant she is not eligible for Long Term-Care Services because assets exceed program limits (130 CMR 520.003 and Exhibit 1). Appellant's representative timely filed appeals of both notices on August 29, 2025 (130 CMR 610.015(B) and Exhibit 2). The appeal of the July 29, 2025 verification denial was withdrawn because the issues on appeal resolved and MassHealth preserved the June 4, 2025 application date (See Exhibit 6, p. 21). Denial of assistance is valid grounds for appeal (130 CMR 610.032). Following a hearing held on September 29, 2025, the hearing record remained open until October 13, 2025 to allow Appellant to provide evidence that assets were reduced (Exhibit 5). Extensions of the record-open period were requested by Appellant and allowed. The hearing record closed on December 2, 2025.

### Action Taken by MassHealth

MassHealth denied Appellant's application for MassHealth benefits because it determined that assets exceed program limits.

### Issue

The appeal issue is whether MassHealth correctly denied Appellant's MassHealth application for long-term care benefits because assets exceed program limits.

## Summary of Evidence

The MassHealth representative testified that Appellant was admitted to a skilled nursing facility on [REDACTED]. A long-term care application was submitted to MassHealth on June 4, 2025, seeking eligibility effective July 3, 2025. A request for verifications issued on June 24, 2025. On July 29, 2025, MassHealth denied the application for failure to provide verifications within allowable timeframes. MassHealth then received all outstanding verifications and issued a denial for excess assets on July 31, 2025. MassHealth testified that it preserved the application dated June 4, 2025 which resolved all issues related to the July 29, 2025 verification denial. MassHealth determined that assets held in two [REDACTED] bank accounts total \$11,474.64 and exceed program limits for a single individual by \$9,474. During a hearing record open period, Appellant submitted a funeral contract totaling \$3,525 and a receipt for \$2,900 for junk removal which were considered allowable asset reductions by MassHealth (Exhibits 8, 11). However, MassHealth determined that a previously undisclosed [REDACTED] account showed a running balance of \$1,600.78, and a \$4,500 transfer to [REDACTED] account [REDACTED] which is a retainer account held by Appellant's Conservator (Exhibit 10). As of December 2, 2025, and following a review of invoices submitted by Appellant's Conservator, [REDACTED] [REDACTED] totaled \$1,600.78 and assets held in [REDACTED] [REDACTED] the conservator-retainer account, totaled \$1,751.25, resulting in \$3,352.03 total assets and \$1,352.03 excess assets (Exhibits 6, 7). MassHealth argued that the asset limit for a single individual is \$2,000 and pursuant to 130 CMR 520.007, standard bank accounts and conservator-held funds are considered countable assets accessible to Appellant and there is no applicable exclusion under 130 CMR 520.006 that makes either account non-countable to Appellant.

Appellant's representatives argued that the funds held in the conservator-retainer account should not be countable as the regulations make clear that any transfers/payments for future services shall be classified as disqualifying transfers under 130 CMR 520.007(J)(4) ("Any transaction that involves a promise to provide future payments or services to an applicant, member, or spouse, including but not limited to transactions purporting to be annuities, promissory notes, contracts, loans, or mortgages, is considered to be a disqualifying transfer of assets. . ."). MassHealth is obligated to calculate a period of ineligibility for any disqualifying transfers under 130 CMR 520.019(G), ("If the MassHealth agency has determined that a disqualifying transfer of resources has occurred, the MassHealth agency will calculate a period of ineligibility."). Appellant's representative argued that the retainer account should be treated as a transfer of assets not an asset that is accessible to the applicant as it is not held in the applicant's name nor is it accessible to the applicant individually. Appellant's representative asserted that there are exceptions within the regulations if the transaction is embodied in a legally enforceable contract. Appellant's representative argued that as conservator, there is a fiduciary responsibility

to act in the best interests of the respondent/applicant which includes holding funds for closure of the conservatorship and statutory obligations to provide payment for a Guardian ad Litem to review the accounting to ensure the conservator acted within the applicant's best interests. Appellant's representative also argued that retainer funds are not to pay the client's bills. They are to pay for guardianship services (Exhibit 6).

MassHealth countered that it does not agree that Appellant lacks access to the funds in the retainer account. MassHealth maintained that the funds in a retainer account are so that the conservator and attorney can pay Appellant's invoices on her behalf from this account. The funds still belong to Appellant, are countable to Appellant, and can be spent down on her behalf by the conservator. Countable assets are all assets that must be included in the eligibility determination and include assets to which the applicant would be entitled whether or not those assets are actually received when failure to receive such assets results from the action or inaction of the applicant or person acting on his or her behalf. The assets that the MassHealth agency considers include cash in the possession of or available to the applicant. 130 CMR 520.007. Per MassHealth regulations, holding funds are considered countable assets. Eligibility determinations are based on current available resources not anticipated future expenditures. MassHealth argued that it does offer allowances from the patient-paid amount for guardianship and certain medical expenses, should Appellant require them. The process for requesting such allowances is outlined in 130 CMR 520.026(E)(3).

## Findings of Fact

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

1. Appellant was admitted to a skilled nursing facility on [REDACTED].
2. A long-term care application was submitted to MassHealth on June 4, 2025, seeking eligibility effective July 3, 2025.
3. There is no community spouse.
4. A request for verification issued on June 24, 2025. On July 29, 2025, MassHealth denied the application for failure to provide verifications within allowable timeframes. MassHealth then received all outstanding verifications and issued a denial for excess assets on July 31, 2025.
5. MassHealth preserved the application dated June 4, 2025 which resolved all issues related to the July 29, 2025 verification denial.
6. MassHealth determined that assets totaled \$11,474.64 and exceed program limits for a single individual by \$9,474.

7. During a hearing record open period, Appellant submitted a funeral contract totaling \$3,525 and a receipt for \$2,900 for junk removal which were considered allowable asset reductions by MassHealth.
8. MassHealth determined that a previously undisclosed [REDACTED] account showed a running balance of \$1,600.78, and a \$4,500 transfer to [REDACTED] account [REDACTED] which is a retainer account held by Appellant's Conservator.
9. As of December 2, 2025, and following a review of invoices forwarded by Appellant's representatives, assets held in [REDACTED] totaled \$1,600.78 and assets held in [REDACTED] the conservator retainer account totaled \$1,751.25, resulting in \$3,352.03 total assets and \$1,352.03 excess assets.

## **Analysis and Conclusions of Law**

### 130 CMR 520.003: Asset Limit

(A) The total value of countable assets owned by or available to individuals applying for or receiving MassHealth Standard, Family Assistance, or Limited may not exceed the following limits:

- (1) for an individual — \$2,000; and
- (2) for a couple living together in the community where there is financial responsibility according to 130 CMR 520.002(A)(1) — \$3,000.

### 130 CMR 520.004: Asset Reduction

(A) Criteria.

(1) An applicant whose countable assets exceed the asset limit of MassHealth Standard, Family Assistance, or Limited may be eligible for MassHealth

(a) 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 at 130 CMR 520.019(F); or

(b) as of the date, described in 130 CMR 520.004(C), the applicant incurs medical bills that equal the amount of the excess assets and reduces the assets to the allowable asset limit within 30 days after the date of the notification of excess assets.

(2) In addition, the applicant must be otherwise eligible for MassHealth.

(B) Evaluating Medical Bills. The MassHealth agency does not pay that portion of the medical bills equal to the amount of excess assets. Bills used to establish eligibility

(1) cannot be incurred before the first day of the third month prior to the date of

application as described at 130 CMR 516.002: *Date of Application*; and  
(2) must not be the same bills or the same portions of the bills that are used to meet a deductible based on income.

(C) Date of Eligibility. The date of eligibility for otherwise eligible individuals described at 130 CMR 520.004(A)(1)(b) is the date that his or her incurred allowable medical expenses equaled or exceeded the amount of his or her excess assets.

(1) If after eligibility has been established, an individual submits an allowable bill with a medical service date that precedes the date established under 130 CMR 520.004(C), the MassHealth agency readjusts the date of eligibility.

(2) In no event will the first day of eligibility be earlier than the first day of the third month before the date of the application, if permitted by the coverage type.

(D) Verification. The MassHealth agency requires the applicant to verify that he or she incurred the necessary amount of medical bills and that his or her excess assets were reduced to the allowable asset limit within required timeframes.

#### 130 CMR 520.005: Ownership of Assets

(A) General. Assets owned exclusively by an applicant or member and the spouse are counted in their entirety when determining eligibility for MassHealth, except when assessing assets in accordance with 130 CMR 520.016.

#### 130 CMR 520.006: Inaccessible Assets

(A) Definition. An inaccessible asset is an asset to which the applicant or member has no legal access. The MassHealth agency does not count an inaccessible asset when determining eligibility for MassHealth for the period that it is inaccessible or is deemed to be inaccessible under 130 CMR 520.006.

(B) Examples of Inaccessible Assets. Inaccessible assets include, but are not limited to  
(1) property, the ownership of which is the subject of legal proceedings (for example, probate and divorce suits); and  
(2) the cash-surrender value of life-insurance policies when the policy has been assigned to the issuing company for adjustment.

(C) Date of Accessibility. **The MassHealth agency considers accessible to the applicant or member all assets to which the applicant or member is legally entitled**

(1) from the date of application or acquisition, whichever is later, if the applicant or member does not meet the conditions of 130 CMR 520.006(C)(2)(a) or (b); or

**(2) from the period beginning six months after the date of application or acquisition, whichever is later, if**

**(a) the applicant or member cannot competently represent his or her**

**interests, has no guardian or conservator capable of representing his or her interests, and the authorized representative (which may include a provider) of such applicant or member is making a good-faith effort to secure the appointment of a competent guardian or conservator;** or

(b) the sole trustee of a Medicaid Qualifying Trust, under 130 CMR 520.022(B), is one whose whereabouts are unknown or who is incapable of competently fulfilling his or her fiduciary duties, and the applicant or member, directly or through an authorized representative (which may include a provider), is making a good-faith effort to contact the missing trustee or to secure the appointment of a competent trustee (emphasis added).

130 CMR 520.007: Countable Assets

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. The applicant or member and the spouse must verify the total value of countable assets. However, if he or she is applying solely for MassHealth Senior Buy-In for Qualified Medicare Beneficiaries (QMB) as described in 130 CMR 519.010: *MassHealth Senior Buy-In for Qualified Medicare Beneficiaries (QMB)* or MassHealth Buy-In for Specified Low Income Medicare Beneficiaries (SLMB) or MassHealth Buy-In for Qualifying Individuals (QI) both as described in 130 CMR 519.011: *MassHealth Buy-In*, verification is required only upon request by the MassHealth agency. 130 CMR 520.007 also contains the verification requirements for certain assets. The assets that the MassHealth agency considers include, but are not limited to, the following.

(A) Cash.

(1) Definition. Cash is defined as currency, checks, and bank drafts in the possession of or available to the applicant, member, or spouse.

(2) Verification. The applicant's or member's declaration on the application or redetermination form stating the amount of cash available to him or her is sufficient verification.

(B) Bank Accounts.

(1) Definition. Bank accounts are defined as deposits in a bank, savings and loan institution, credit union, or other financial institution. Bank accounts may be in the form of savings, checking, or trust accounts, term certificates, or other types of accounts.

(2) Determination of Ownership and Accessibility. The MassHealth agency considers funds in a bank account available only to the extent that the applicant or member has both ownership of and access to such funds. **The MassHealth agency determines the ownership of and access to the funds in accordance with 130 CMR 520.005 and 520.006** (emphasis added).

(3) Verification of Account Balances. The MassHealth agency requires verification of the current balance of each account at application, during eligibility review, and at times of reported change.

(a) Noninstitutionalized individuals excluding the individuals described at 130 CMR 519.007(B): *Home- and Community-based Services Waiver-Frail Elder* must verify the amount on deposit by bank books or bank statements that show the bank balance within 45 days of the date of application or the date that the eligibility review is received in a MassHealth Enrollment Center or outreach site.

(b) Nursing-facility residents as described at 130 CMR 515.001: *Definition of Terms* must verify the amount on deposit by bank books or bank statements that show the current balance and account activity during the look-back period.

(c) If during an eligibility review the member states either orally or in writing that an account other than a checking account contains a balance of \$25 or less, the MassHealth agency does not require verification provided that, in combination with other countable assets, it would not affect continued eligibility.

(d) If lack of either access to or ownership of funds in an account is verified, the MassHealth agency will not consider the funds a countable asset.

Appellant is a single individual who was admitted to a skilled nursing facility on [REDACTED]. A long-term care application was submitted to MassHealth on June 4, 2025, seeking eligibility effective July 3, 2025. MassHealth determined that assets held in two [REDACTED] bank accounts total \$11,474.64 and exceed program limits for a single individual by \$9,474. During a hearing record open period, Appellant submitted a funeral contract totaling \$3,525 and a receipt for \$2,900 for junk removal which were considered allowable asset reductions by MassHealth and showed that [REDACTED] accounts were closed (Exhibit 14). MassHealth determined that a previously undisclosed [REDACTED] account showed a running balance of \$1,600.78, and a \$4,500 transfer to [REDACTED] which is a retainer account held by Appellant's Conservator. As of December 2, 2025, and following a review and deductions for invoices forwarded by Appellant's representatives, assets held in [REDACTED] totaled \$1,600.78 and assets held in [REDACTED], the conservator-retainer account, totaled \$1,751.25, resulting in \$3,352.03 total assets and \$1,352.03 excess assets.

First, regarding accessibility of the assets held in the conservator-retainer account, the definition of inaccessibility at 130 CMR 520.006 establishes that having a conservator capable of representing an applicant's interest renders assets accessible to the applicant (130 CMR 520.006(C)(2)(a)). The assets in question are not the subject of legal proceedings and are not the cash value of a life insurance policy. Appellant has a conservator and therefore has legal access

to the assets in the retainer account. MassHealth is correct in that there is nothing in the countable asset regulations that designates funds held in a conservator-retainer account as non-countable to an applicant for long-term care benefits.

130 CMR 520.007(J)(4)

(4) Transactions Involving Future Performance. Any transaction that involves a promise to provide future payments or services to an applicant, member, or spouse, including but not limited to transactions purporting to be annuities, promissory notes, contracts, loans, or mortgages, is considered to be a disqualifying transfer of assets to the extent that the transaction does not have an ascertainable fair-market value or if the transaction is not embodied in a valid contract that is legally and reasonably enforceable by the applicant, member, or spouse. This provision applies to all future performance whether or not some payments have been made or services performed (emphasis added).

Appellant argues that the funds held in the conservator-retainer account are analogous to annuities and should be treated as a transaction involving future performance under 130 CMR 520.007(J)(4), i.e., paying future conservator fees necessary to close the conservatorship and provide payment for a Guardian ad Litem to review the accounting to ensure the conservator acted within the applicant's best interests. The argument is not persuasive in that setting aside funds for future guardianship services is not analogous to financial instruments such as annuities, promissory notes, contracts, loans, or mortgages identified in the regulation. While application of the regulation is "not limited to" these financial instruments or transactions, Appellant's interpretation of the regulation to include future guardianship fees is overly broad because the regulations are not otherwise silent on the treatment of guardianship fees and expenses which are accounted for at length in 130 CMR 520.026(E) and are generally deducted from a member's income.<sup>1</sup> Therefore, MassHealth is not

---

<sup>1</sup> See 130 CMR 520.026(E)(3) below with relevant emphasis added:

Guardianship Fees and Related Expenses. The MassHealth agency allows deductions from a member's income for guardianship fees and related expenses when a guardian is essential to enable an incompetent applicant or member to gain access to or consent to medical treatment, as provided below.

**(a) Expenses Related to the Appointment of a Guardian.**

**1. The MassHealth agency allows a deduction for fees and expenses related to the appointment of a guardian if the guardian's appointment is made for the purpose of a. assisting an incompetent applicant to gain access to medical treatment through MassHealth; or b. consenting to medical treatment on behalf of a MassHealth member.**

**2. The MassHealth agency allows a deduction for reasonable costs, including attorney fees, as approved by the probate court, not to exceed \$500 for the appointment, except as provided in 130 CMR 520.026(E)(3)(a)3.**

**3. The MassHealth agency may allow a deduction, as approved by the probate court, of up to \$750 for the appointment when the medical issues before the court are more complex. An example of such complexities includes providing evidence of the need for anti-psychotic medications.**

**4. The deduction is made from the member's monthly patient-paid amount over a 12-month period.**

**(b) Guardianship Services Related to the Application Process.**

- 
- 1. The MassHealth agency allows a deduction for fees for guardianship services related to the MassHealth application process when the guardian has been appointed by the probate court to assist an incompetent person with the MassHealth application when the securing of MassHealth benefits is essential for the member to gain access to medical treatment.**
  - 2. The MassHealth agency allows a deduction for reasonable costs related to the MassHealth application process, as approved by the probate court, not to exceed \$500. In cases where an administrative hearing is held, the total deduction may not exceed \$750 for the costs related to the application process and hearing.**
  - 3. The deduction is made from the member's monthly patient-paid amount over a 12-month period.**

(c) Guardianship Services Related to the Redetermination Process.

- The MassHealth agency allows a deduction for fees for guardianship services related to the MassHealth redetermination process when the guardian has been appointed by the probate court to assist an incompetent person with securing continued access to medical treatment.
- The MassHealth agency allows a deduction for reasonable costs related to the MassHealth redetermination process, as approved by the probate court, not to exceed \$250. In cases where an administrative hearing is held, the total deduction may not exceed \$375 for the costs related to the redetermination process and hearing.
- The deduction is made from the member's monthly patient-paid amount over a 12-month period.

(d) Monthly Guardianship Services.

- The MassHealth agency allows a deduction for monthly fees for a guardian to the extent the guardian's services are essential to consent to medical treatment on behalf of the member.
- The MassHealth agency allows a deduction, as approved by the probate court, for up to 24 hours per year at a maximum of \$50 per hour for guardianship services.
- The MassHealth agency allows the deduction only if the guardianship services provided include the attendance and participation of the guardian in quarterly care meetings held by the nursing facility where the member lives.
- The MassHealth agency allows this deduction only if each year the guardian submits to the MassHealth agency a copy of the affidavit that describes the guardianship services provided to the member.
- The deduction is made from the member's monthly patient-paid amount over a 12-month period.

(e) Expenses Incurred by the Guardian in Connection with Monthly Guardianship Services.

- The MassHealth agency allows a deduction up to, but not exceeding, the member's monthly patient-paid amount for filing and court fees incurred by the guardian in connection with monthly guardianship services that are essential to consent to medical treatment for the member.
- If monthly guardianship services are provided, these expenses are included in the affidavit of services required under 130 CMR 520.026(E)(3)(d)4.
- The deduction is made from the member's monthly patient-paid amount in the month following receipt of the affidavit of services.

(f) Hardship.

- If exceptional circumstances exist that make the deductions allowed under 130 CMR 520.026(E) insufficient to cover the expenses required for a guardian to provide essential guardianship services needed to gain access to or consent to medical treatment, the guardian, on behalf of the member, may appeal to the Office of Medicaid Board of Hearings for an increased deduction.
- A hearing officer may allow for an increased deduction for guardianship expenses only in circumstances where the issues surrounding the member's need to gain access to or consent to medical treatment are extraordinary.

obligated to calculate a period of ineligibility due to a disqualifying transfer as defined below at 130 CMR 520.019: (G). In the case at hand, MassHealth has allowed conservator expenses already paid to reduce assets under 130 CMR 520.004. However, there is no regulatory support for Appellant's approach to paying future conservator/guardianship fees from an applicant's available assets by setting aside in advance a retainer amount that approximates the funds needed to pay for guardianship services in the future, here \$4,500, while also exempting those funds from an asset eligibility determination making an applicant asset eligible. In theory, any amount could be set aside in advance under the pretense of paying future guardianship fees to skirt the \$2,000 asset limit and establish eligibility, which is not supported in the applicable regulations outlined above. The funds held in the conservator-retainer account are accessible to Appellant; there is no disqualifying transfer based on a transaction for future performance because 130 CMR 520.007(J)(4) does not apply to future guardianship fees which are accounted for elsewhere in the regulations; and the assets held in the conservator-retainer fund are countable to Appellant in assessing asset eligibility under 130 CMR 520.007. Funds held in the conservator-retainer account coupled with other

---

3. Extraordinary circumstances may exist when

- a. there is a need for a guardian to consistently spend more than 24 hours per year providing guardianship services to appropriately consent to medical treatment needed by the member; or
- b. the circumstances of a MassHealth member cause the guardian appointment or application process to be particularly complex and significantly more costly than the deduction allowed at 130 CMR 520.026(E)(3)(a) or (b).

(g) Guardianship Services and Expenses That are not Deductible. The following

fees and costs are not allowed as a deduction under 130 CMR 520.026(E):

**1. amounts that are also used to reduce a member's assets under 130 CMR 520.004;**

2. amounts that are also used to meet a deductible or any other deduction allowed under MassHealth regulations;
3. expenses related to the appointment of a guardian for an applicant when the appointment is made more than six months before submission of a MassHealth application;
4. expenses related to the appointment of a guardian for an applicant or member when the applicant or member does not request a deduction for the appointment within six months of the date of application or date of appointment, whichever is later. However, these expenses may be used as allowed pursuant to 130 CMR 506.009: *The One-time Deductible* or 520.032 to meet a deductible;
5. expenses, fees, or costs for expenses that are not essential to obtain medical treatment for the ward including financial management, except when the management is necessary to accurately complete a MassHealth application or redetermination form;
6. expenses, fees, or costs for transportation or travel time.
7. attorney fees, except when payment of the fees is required for the appointment of the guardian; and
8. fees for guardianship services provided by a parent, spouse, sibling, or child, even if appointed by the probate court. However, the MassHealth agency allows a deduction for guardianship expenses in accordance with 130 CMR 520.026(E)(3)(a) and (e).

available assets total \$3,352.03, and result in \$1,352.03 excess assets. Therefore, the appeal is DENIED subject to the order below.

## **Order for MassHealth**

Preserve the June 4, 2025, application date for 30 days from the date of this decision to allow Appellant to spend down excess assets.

## **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.

---

Thomas J. Goode  
Hearing Officer  
Board of Hearings

  
MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center