

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2512952
Decision Date:	01/09/2026	Hearing Date:	01/08/2026
Hearing Officer:	Christopher Jones		

Appearances for Appellant:



Appearances for MassHealth:

K'eisha McMullen – Springfield 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:	Approved	Issue:	Long Term Care; Trusts
Decision Date:	01/09/2026	Hearing Date:	01/08/2026
MassHealth's Rep.:	K'eisha McMullen	Appellant's Reps.:	Nancy Sgariglia; David Dupont, Esq.
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 July 21, 2025, MassHealth denied the appellant's application for MassHealth benefits because MassHealth determined that the appellant had more countable assts than MassHealth benefits allow. (Exhibi1 1; 130 CMR 520.003.) The appellant filed this appeal in a timely manner on September 5, 2025. (Exhibit 1; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

The appellant passed away prior to the original hearing date. This appeal was placed on hold until a personal representative for the estate could be appointed. Once the personal representative was appointed, this matter was rescheduled for hearing. (See Exhibits 4 – 8.)

Action Taken by MassHealth

MassHealth denied the appellant's long term care application because it counted assets held in a revocable trust settled by the applicant's sister.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.022, in determining that assets in a trust settled by someone other than the applicant or her spouse are

countable assets.

Summary of Evidence

The appellant filed an application for long term care benefits on May 6, 2025, and the nursing facility is seeking MassHealth payment as of May 1, 2025. The applicant had 2 bank accounts with a total of \$1,950.15. Additionally, the applicant and her spouse were the beneficiaries of a trust that was established by the applicant's sister in [REDACTED]. This trust was funded with real property that was the applicant's primary residence while she was in the community. MassHealth valued the real property at \$272,000.

MassHealth cited 130 CMR 520.022(B) as grounds for counting the value of the trust's principal as an asset in determining the appellant's Medicaid eligibility. MassHealth argued that this regulation makes all revocable trusts countable assets.

During the lifetimes of the applicant and her spouse, the trust directs the trustee to

pay to them or apply for their benefit so much of the net income hereof together with such amount or amounts of principal as the Trustees shall in their sole discretion determine advisable for their comfort, maintenance, support, and happiness, even to the point of reducing or gradually distributing the entire trust property if it appears to them appropriate to do so.

(Exhibit 12, p. 1.)

Upon the death of the last surviving beneficiary, the trust principal was to be distributed to the children of the beneficiaries. (Exhibit 12, p. 1.) The appellant's representatives testified that the appellant's spouse had predeceased her.

The appellant's attorney noted that the settlor of this trust died in [REDACTED] at which point the trust became irrevocable, citing MGL Ch. 203E, § 602. The appellant's attorney also noted that 130 CMR 520.022(A) only applies to trusts settled with the "assets and income of an individual or spouse." The trust in question was settled by a third-party, therefore the majority of Medicaid trust rules did not apply to it. MassHealth's representative confirmed that she had not checked with MassHealth's legal department regarding the applicability of the cited regulation to the trust. She was unpersuaded by the appellant's arguments regarding the applicability of the cited regulations, and she asked that a fair hearing decision be issued in order to determine whether this trust was countable.

Findings of Fact

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

- 1) The appellant filed an application for long term care benefits on May 6, 2025, and the nursing facility is seeking MassHealth payment as of May 1, 2025. (Testimony by MassHealth's representative; Exhibit 10.)
- 2) As of the benefits start date, the applicant had bank accounts holding a total of \$1,950.15. (Exhibit 10.)
- 3) The applicant's sister settled a revocable trust in [REDACTED] and funded it with real property. The current value of the trust's holdings is \$272,000. (Exhibit 10; Exhibit 12.)
- 4) The trust vested the trustee with discretion to pay income or principal to the applicant or her husband during their lifetimes. Upon the death of the last lifetime beneficiary, the remaining principal is to be distributed to the applicant's living children. (Exhibit 12.)
- 5) The applicant's sister died in [REDACTED] (Exhibit 11; testimony by the appellant's representatives.)

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.) To accomplish this purpose, MassHealth is only available to individuals over the age of sixty-five if they have less than \$2,000 in assets. (130 CMR 520.003.) An 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" (130 CMR 520.004(A)(1)(A).) Furthermore, a five-year "lookback period" allows the agency to review the applicant's financial records to see whether assets were given away in order to qualify. (See 130 CMR 520.019(B); 130 CMR 520.023(A).)

Congress found that people were artificially impoverishing themselves through the use of trusts and created rules for reviewing trusts to determine whether the applicant had truly given away their resources before the look-back period. (See Cohen v. Comm'r of the Div. of Med. Asst., 423 Mass. 399, 402-403 (1996).) These rules allowed Medicaid agencies to count resources held in trust if the trustee had the discretion to distribute those assets to the Medicaid applicant. However, these rules were only written to apply to "a so-called self-settled trust"; "the Medicaid statute only reaches trusts created by the grantor (or spouse)." (Cohen, 423 Mass. at 403, 414 n.21 (citing 42 U.S.C. § 1396a(k)(2)).)

Most of MassHealth's regulations governing trusts are inapplicable to "trusts established by other than the individual or spouse."

130 CMR 520.021 through 520.024 explains how to treat the principal of and payments from a revocable or irrevocable trust established by the individual

or by the spouse. **130 CMR 520.024(A)** also includes trusts established by **other than the individual or spouse** and trusts whether or not established by will. In the event that a portion of 130 CMR 520.021 through 520.024 conflicts with federal law, the federal law supersedes.

(130 CMR 520.021 (emphasis added); see also 130 CMR 520.022(A) (“The assets and income **of an individual or spouse** in a revocable trust are countable.”).)¹

The applicable regulation states:

130 CMR 520.024 applies to trusts whether or not established by will and **whether or not established by the individual or spouse**.

(A) Irrevocable Trust.

(1) The assets and income held in an irrevocable trust established by the individual or spouse that the trustee is required to distribute to or for the benefit of the individual are countable.

(2) Payments from the income or principal of an irrevocable trust established by the individual or spouse to or for the benefit of the individual are countable.

(3) The assets and income held in an irrevocable trust **established by other** than the individual or spouse **that the trustee is required to distribute** to the individual are countable.

(4) **Payments** from the income or the principal of an irrevocable trust **established by other** than the individual or spouse to the individual are countable.

(130 CMR 520.024(A) (emphasis added).)

It is clear that principal held in the trust is not countable. The trust became irrevocable when the settlor of the trust died. (MGL Ch. 203E, § 602.) More importantly, the trust was established by the applicant’s sister, and the trustee was not required to distribute principal. Therefore, MassHealth erred in counting the assets of the trust, and this appeal is APPROVED. MassHealth shall continue processing the May 2025 application, excluding the trust’s assets.

¹ The trust under review was settled prior to 1993, therefore 130 CMR 520.023 is inapplicable. Even if it were applicable, the federal statute referenced therein clarifies that when “determining an individual’s eligibility for [Medicaid benefits] the rules specified in paragraph (3) shall apply to a trust **established by such individual.**” (42 USC 1396p(d)(1) (emphasis added).)

Order for MassHealth

Exclude the trust's assets from countability; continue processing the May 2025 application.

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

[REDACTED]

[REDACTED]

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 243 Cottage Street, Springfield, MA 01104