

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2515012
<b>Decision Date:</b>	11/19/2025	<b>Hearing Date:</b>	11/13/2025
<b>Hearing Officer:</b>	Amy B. Kullar, Esq.		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Linah Kunobwa, Charlestown MassHealth  
Enrollment Center



*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; Disqualifying Transfer
<b>Decision Date:</b>	11/19/2025	<b>Hearing Date:</b>	11/13/2025
<b>MassHealth's Rep.:</b>	Linah Kunobwa	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Charlestown MassHealth Enrollment Center - Room 1 (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 September 17, 2025, MassHealth approved the appellant's application for Long-Term Care (LTC) benefits with a coverage start date of July 25, 2025, after a 45-day period of ineligibility from June 9, 2025-July 24, 2025, due to a disqualifying transfer of resources during the lookback period. *See* 130 CMR 520.018 and 130 CMR 520.019 and Exhibit 1. The appellant filed this appeal in a timely manner on October 13, 2025, because the appellant disagreed with the imposition of a period of ineligibility. *See* 130 CMR 610.015(B) and Exhibit 2. Limitations on the scope or amount of assistance are valid grounds for appeal. *See* 130 CMR 610.032.

## Action Taken by MassHealth

MassHealth approved the appellant's application for long-term care benefits and calculated a 45-day penalty period of ineligibility for long-term care coverage due to a disqualifying transfer of resources during the lookback period.

## Issue

The appeal issue is whether MassHealth correctly determined that the appellant has a 45-day period of ineligibility for long-term care coverage due to a disqualifying transfer of resources during the lookback period.

## Summary of Evidence

The appellant is a single adult who is over the age of 65, and she currently resides in a long-term care facility. The appellant was represented at hearing by her brother/health care agent; he appeared telephonically and verified the appellant's identity. MassHealth was represented by a worker from the Charlestown MassHealth Enrollment Center; she also appeared via the telephone. The following is a summary of the testimony and documentary evidence presented at hearing:

The MassHealth representative opened her testimony by giving background information on the history of the appellant's LTC application at MassHealth. An application for LTC benefits was submitted on behalf of the appellant on May 13, 2025, requesting coverage as of June 10, 2025. On September 17, 2025, the approval notice on appeal was issued to the appellant. The appellant is ineligible for the period of June 9, 2025 through July 24, 2025 due to disqualifying transfers of resources within the lookback period. Testimony. The MassHealth representative stated that MassHealth found one transaction to be disqualifying. On February 22, 2022, the appellant wrote a check to her brother in the amount of nineteen thousand six hundred ninety-six (\$19,696.00) dollars. This check was cashed on February 28, 2022. *See* Exhibit 5. The only explanation that MassHealth received from the appellant regarding this check was that the appellant's brother was entitled to these funds because they had previously belonged to the appellant's deceased mother, and they were a part of his inheritance from his mother's estate.

MassHealth determined this check written to the appellant's brother was a non-exempt transfer of resources, as no evidence was provided that the appellant's brother was legally entitled to the funds. The check was drawn from the appellant's bank account. No corroborating evidence, such as the Last Will & Testament of the deceased mother, or a probate proceeding that named the appellant's brother as an heir of the deceased mother's estate, had been provided to MassHealth during the application process. Without evidence supporting the appellant's assertion of the validity of the transfer to her brother, MassHealth considers the entire transfer to the appellant's brother, the check dated February 22, 2022, in the amount of \$19,696.00, to be a gift to the appellant's brother and therefore, a disqualifying transfer of resources during the lookback period. Testimony.

The MassHealth representative included the explanations for the check that the appellant's representative submitted to MassHealth during the application process and prehearing period as

part of her prehearing submission. The first was an email the appellant's brother sent to MassHealth on August 26, 2025:

In reference to [REDACTED] Feb 22, 2022 made out to me. [Appellant] was on our mother's bank account. Our Mother passed away on [REDACTED]. The \$19,696 was half of what was left of our mothers account after her final expenses were taken care of. I fully intended for [Appellant] to keep that money, however life circumstances in the form of major house repairs forced me to have a need for those funds.

Exhibit 5 at 8.

The second explanation was an emailed letter that the appellant's representative submitted prehearing to MassHealth and the Board of Hearings on October 23, 2025.

I am writing on behalf of my sister [Appellant] and myself in reference to the period of ineligibility for Mass Health (*sic*), from June 9, 2025 to July 24, 2025. This is also to explain check #579 written in the amount of \$19,696.00. The funds in question are half of what remained of our mothers estate after she had passed away [REDACTED], and after her final arrangements and any other expenses were taken care of.

[Appellant] was co-owner on our mothers [Bank Name] bank account. Our mother was co-owner on my sister [Appellant's] [Bank Name] bank account. At this time, late [REDACTED], our mother was given 3 weeks to 3 months to live and a was put in hospice care which my sister and I did ourselves. On April 27th, [the Appellant] removed our mother as co-owner on her account, and I, [Appellant's Brother], was put on [Appellant's] account as co-owner.

I am co-owner of the the (*sic*) account where the \$19,696.00 check was drawn from. Our mother did not have much when she left this world, a total of \$39,392.00, in which \$19,696.00 was rightfully mine.....not a penny more. I am not trying to take advantage of or take anything that did not belong to me. I have a debit card to this account. I guess I should have just withdrawn the money myself. For records purposes I just thought that it would be easier for [Appellant] to write me a check for my half. I have bank statements showing it was mine and my sister's account.

I sincerely hope we can clear this up. That check was my money, from an account of mine and my sister's owned together. This should be clear now.

*Id.* at 9.

The MassHealth representative then explained that the penalty period was calculated by dividing the amount of the disqualifying transfer by the average daily cost to a person paying privately for nursing facility services in the Commonwealth of \$441.00 at the time of application ( $\$19,696.00/\$441.00 = 44.66$ , or 45, days.)<sup>1</sup> At the time of the September 17, 2025 notice on appeal, the appellant was not eligible for MassHealth long-term care services from June 9, 2025, through July 24, 2025 because the appellant gave away assets for less than fair market value, and the appellant has a 45-day period of ineligibility for MassHealth benefits. Testimony and Exhibit 5.

The MassHealth representative concluded her testimony by stating that in order to change its determination in this case, MassHealth requires legal proof that Appellant's brother was entitled to the \$19,696.00, such as a Last Will & Testament, probate filing, or other estate documents. The Hearing Officer clarified the status of the bank account that the check was written from; the MassHealth representative referred to her prehearing submission; the account documentation did not list Appellant's brother as a joint owner, and MassHealth confirmed that the account belongs to the appellant only. The appellant's brother is listed on the account as an "in trust for" beneficiary of the account. Testimony; Exhibit 5 at 10.

The appellant's representative responded to the MassHealth representative's testimony. He insisted that he was the co-owner of the appellant's bank account. That bank account had previously only belonged to his mother and his sister; when their mother died in [REDACTED] the appellant added him as a co-owner to the account. The appellant's brother then confirmed that his deceased mother left no Last Will & Testament and that a probate proceeding was never opened for her estate. Furthermore, the appellant is suffering from advanced dementia and she cannot provide an affidavit to corroborate the appellant's brother's testimony. He serves as her health care agent; her health care proxy is invoked. Testimony. The appellant's brother stated that his prehearing submissions explain the entire situation.

## Findings of Fact

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

1. The appellant is over the age of 65, a resident of a nursing facility, and filed an application for MassHealth long-term care benefits on May 13, 2025, with a requested benefit start date of June 10, 2025. Testimony.
2. On February 22, 2022, the appellant wrote a check in the amount of \$19,696.00 to her brother. Testimony and Exhibit 5.

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<sup>1</sup> See also, MassHealth Eligibility Operations Memo 24-07, "Average Cost of Nursing Facility Services" (November, 2024).

3. As of the application date, the average daily private rate for nursing home care in Massachusetts was \$441.00. MassHealth Eligibility Operations Memo 24-07 (November, 2024).
4. On September 17, 2025, MassHealth approved the appellant's application for LTC benefits, and also imposed a 45-day period of ineligibility from June 9, 2025-July 24, 2025, based on a determination that appellant made a disqualifying transfer of resources in the amount of \$19,696.00.
5. The appellant filed a timely appeal of the September 17, 2025 notice with the Board of Hearings on October 13, 2025.
6. The appellant's deceased mother did not leave a Last Will & Testament or other estate documents, and no probate proceeding was ever commenced to determine legal ownership her assets after her death in 2021. Testimony.

## **Analysis and Conclusions of Law**

The issue in this appeal is that the appellant wrote a check in the amount of \$19,696.00 to her brother during the lookback period. MassHealth determined that the funds in question belonged solely to the appellant, and therefore that the \$19,696.00 check written from the appellant's bank account during the lookback period, constitutes a disqualifying transfer of resources. The appellant's representative, her brother/health care agent, asserted that the funds in the appellant's bank account had previously belonged to their deceased mother and that he was legally entitled to half of the funds in the appellant's bank account as it was his "inheritance" from his mother's estate.

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 (FMV). If the individual or their spouse has made a transfer for less than FMV, the applicant, even if "otherwise eligible," may be subject to a period of disqualification in accordance with its transfer rules at 130 CMR §§520.018 and 520.019. MassHealth's "strict limitations on asset transfers," which were adopted pursuant to federal law, are intended to "prevent individuals from giving away their assets to their family and friends and forcing the government to pay for the cost of nursing home care." See Gauthier v. Dir. of the Office of Medicaid, 80 Mass. App. Ct. 777, 779 (2011) (*citing Andrews v. Division of Med. Assistance*, 68 Mass. App. Ct. 228, 229 (2007)).

Next, pursuant to 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.

Bank accounts are countable assets according to 130 CMR 520.007(B), which states:

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.

Turning to 130 CMR 520.005(B)(7), "Verifications:", with emphasis added:

Individual or joint ownership of any countable asset must be verified by a written document providing reasonable evidence of ownership. **The MassHealth agency determines whether a verification is acceptable in accordance with 130 CMR 520.007(B)(3) and 130 CMR 520.005(D).** Acceptable verification includes, but is not limited to, the following:

- (1) a title;
- (2) a purchase contract;
- (3) documents establishing ownership of joint bank accounts that demonstrate the following:
  - (a) the origin of the funds in a joint bank account, who opened the account, or whose money was used to open the account;
  - (b) federal and state tax records as to which joint account holders pay the tax on interest credited to the account as income;
  - (c) records of who makes deposits and withdrawals and, if appropriate, how withdrawn funds are spent;
  - (d) any evidence of written or oral agreements made between the parties at the time of the creation of the account;

- (e) evidence of age, relationship, physical or mental condition, or place of residence of the co-holders when the applicant or member states that he or she does not own the account but is listed as a co-holder solely as a convenience to the other co-holder to conduct bank transactions on his or her behalf; and
  - (f) why the applicant or member is listed on the account;
- (4) certification of ownership;
  - (5) financial-institution records indicating the establishment of an account that accurately reflect the ownership interest of funds from the joint account;
  - (6) other documentation that indicates ownership, asset value, and restrictions on access;
  - (7) a notarized affidavit, sworn to under penalty of perjury, signed by all owners of the asset, and attesting to the distribution of ownership; or
  - (8) the self-declaration of the individual who 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*, provided that the MassHealth agency may use electronic data sources to verify eligibility, and at its discretion, request additional verification from the individual.

At hearing, the appellant's brother asserted that all of the \$19,696.00 that he received via check in February 2022 was legally his property because it was his portion of an inheritance from their mother's estate. MassHealth verified the bank account to be the appellant's sole asset, and the appellant's brother did not provide any evidence of ownership beyond his assertions. No sworn statement, under the penalty of perjury, signed by all owners of the asset, no probate filings, and no Last Will & Testament of the appellant's deceased mother, were provided to corroborate the existence of the inheritance.

With respect to transfers of resources, regardless of the date of transfer, MassHealth provides the following, in relevant part:

The MassHealth agency will deny payment for nursing facility services to an otherwise eligible nursing-facility resident ... 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 "look back period", referred to in § 520.018(B), above, is sixty months, or 5 years, before the first date the individual is both a nursing facility resident *and* has applied for, or is receiving,

MassHealth Standard.<sup>2</sup> See 130 CMR 520.019(B). MassHealth will deem the individual to have made a “disqualifying transfer” if it finds that during the look-back period, the individual (or their spouse) transferred resources for less than FMV, or, if they have taken any action “to avoid receiving a resource to which the resident or spouse would be entitled if such action had not been taken.” 130 CMR 520.019(C). 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).<sup>3</sup>

In determining whether the check for \$19,696.00 that the appellant wrote to her brother was a disqualifying transfer, the first question is whether the appellant made a transfer of resources for less than FMV. In requiring state Medicaid agencies to adopt the federally mandated transfer regulations, the Centers for Medicare & Medicaid Services (CMS), formerly the Health Care Financing Administration Transmittal (HCFA), published mandatory instructions, now compiled in the federal agency’s State Medicaid Manual (SMM) which included the following instruction for making determinations on whether a transfer was made for less than FMV:

For an asset to be considered transferred for fair market value or to be considered to be transferred for valuable consideration, the compensation received for the asset must be in a tangible form with intrinsic value.

See SMM, Department of Health and Human Services (DHHS) HCFA, Transmittal No. 64, § 3258.1(A) (11-94).<sup>4</sup>

When applying MassHealth’s transfer regulations and the federal mandatory instructions to the present case, the appellant has not successfully demonstrated that MassHealth erred in concluding the appellant’s check she wrote to her brother, for \$19,696.00, was made for less than FMV. See 130 CMR 520.018(B) and 520.019(B). Here, MassHealth correctly determined that appellant’s transfer of funds to her brother was a transfer for less than FMV.

Fair hearings exist to give an appellant the opportunity to present evidence regarding why they believe MassHealth’s decision was in error. See, 130 CMR 610.061. A hearing officer must facilitate the orderly presentation of evidence at the hearing, can consider evidence’s effect on a member’s eligibility as of the date it existed, and afford the parties the opportunity to respond to evidence

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<sup>2</sup> Effective February 8, 2006, the look-back period for transfer of assets was extended from 36 months to 60 months and the beginning date for a period of ineligibility will be the date the applicant would otherwise be eligible or the date of the transfer, whichever is later. See MassHealth Eligibility Letter 147 (July 1, 2006).

<sup>3</sup> The transfer provisions also have several exceptions to the general rule governing disposition of assets, which are detailed at 130 CMR 520.019(D) (permissible transfers), 130 CMR 520.019(K) (exempted transfers), and 130 CMR 520.019(F) (exemptions based on intent). See, 130 CMR 520.019(C). In the instant case, there are no applicable exceptions, and no regulatory exceptions were raised by appellant at hearing.

<sup>4</sup> The SMM is a compilation of federal resources and procedural material needed by States to administer the Medicaid Program. The instructions provided therein are CMS’s “official interpretations of the law and regulations, and, as such, are binding on Medicaid State agencies.” See SMM, Foreword § B(1); see also 130 CMR 515.002(B).

first presented at a hearing. *See*, 130 CMR 610.065; 130 CMR 610.071. An applicant for MassHealth benefits has the burden to prove his or her eligibility. *See*, 130 CMR 515.001, 520.004; and G.L. ch. 118E, § 20.

In this case, on February 22, 2022, the appellant wrote a check to her brother in the amount of \$19,696.00. She received nothing in return for this transfer and MassHealth determined this check to the appellant's brother was a non-exempt transfer of resources, as no evidence was provided that the appellant's brother was legally entitled to the funds. The check was drawn from the appellant's bank account. No corroborating evidence, such as the Last Will & Testament of the deceased mother, or evidence of a probate proceeding that named the appellant's brother as an heir of the deceased mother's estate has been provided to MassHealth during the application or fair hearing process. At hearing, the only evidence that was presented to support the assertion that the appellant should not be penalized for this transfer is the testimony of the recipient of the funds. The appellant's representative asserted that he is entitled to those funds legally because they once belonged to his deceased mother. No other evidence beyond the appellant's representative's uncorroborated testimony and written statements is available to explain the motivation for the transfer of assets.

While I empathize with the appellant's brother's position, MassHealth requires more evidence than what he has offered as the basis for the transfer of assets during the lookback period by the appellant. The regulations are quite clear, and as the appellant did not verify that the transferred funds were in fact the legal inheritance of the appellant's brother, MassHealth did not err in determining that when the appellant wrote the \$19,696.00 check to her brother, the appellant transferred a countable resource for less than fair market value during the look-back period.

Once it has been established that an applicant has made a disqualifying transfer of resources, MassHealth calculates the period of ineligibility by adding "the value of all the resources transferred during the look-back period and divid[ing] the total by the average monthly cost to a private patient receiving long-term-care services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency." *See* 130 CMR 520.019(G)(2). MassHealth then applies the period of ineligibility "beginning on the first day of the month in which the first transfer was made or the date on which the individual is otherwise eligible for long-term care services, whichever is later." *Id.*

Based on the above, the disqualifying transfer amount is \$19,696.00. At the time of her application in May, 2025, the average daily nursing home rate in Massachusetts was \$441.00. *See* MassHealth Eligibility Operations Memo 24-07. In accordance with 130 CMR 520.019(G)(1), MassHealth correctly imposed a 45-day period of ineligibility ( $\$19,696/\$441$ ) beginning on the appellant's "otherwise eligible" date of June 9, 2025 and lasting until July 24, 2025.

As the appellant did not demonstrate by a preponderance of the evidence that MassHealth erred in imposing a period of ineligibility for a disqualifying transfer of resources, 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.

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Amy B. Kullar, Esq.  
Hearing Officer  
Board of Hearings



cc: MassHealth Representative: Thelma Lizano, Charlestown MassHealth Enrollment Center,  
529 Main Street, Suite 1M, Charlestown, MA 02129