

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2515556
Decision Date:	12/31/2025	Hearing Date:	11/19/2025
Hearing Officer:	Emily Sabo	Record Open:	12/15/2025

Appearances for Appellant:



Appearance for MassHealth:

Rhiannon Wojick, 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

Appeal Decision:	Denied	Issue:	Long Term Care; Coverage Start Date; Disqualifying Transfer
Decision Date:	12/31/2025	Hearing Date:	11/19/2025
MassHealth's Rep.:	Rhiannon Wojick	Appellant's Reps.:	Power of attorney, neighbor
Hearing Location:	Tewksbury MassHealth Enrollment Center (Virtual)	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 August 28, 2025, MassHealth denied the Appellant's application for Long-Term-Care Services in a nursing facility, on the grounds that she gave away or sold assets for less than fair market value. 130 CMR 520.018, 130 CMR 520.019, and Exhibit 1. MassHealth stated that it calculated a period of ineligibility from August 18, 2025 to November 12, 2025, and that on November 12, 2025, MassHealth would re-determine the Appellant's eligibility. Exhibit 1.¹ The Appellant's representative filed this appeal in a timely manner on October 23, 2025, arguing that payments for services were at fair market value. 130 CMR 610.015(B) and Exhibit 2. Denial of an application is valid grounds for appeal. 130 CMR 610.032.

¹ The notice also stated that the Appellant was approved for the Medicare Savings Plan, effective May 1, 2025. Exhibit 1.

Action Taken by MassHealth

MassHealth denied the Appellant's application for Long-Term-Care Services in a nursing facility, and calculated a period of ineligibility from August 18, 2025, to November 12, 2025.

Issue

The appeal issue is whether MassHealth was correct in denying the Appellant's long-term-care application and calculating an ineligibility period from August 18, 2025, to November 12, 2025.

Summary of Evidence

As part of the fair hearing request, the Appellant's representative, who is the Appellant's power of attorney submitted a detailed narrative and supporting documentation.² The fair hearing request states that the Appellant:

incurred fees for paralegal and care services which were billed at fair market value at a standard paralegal rate and a standard care provider rate, and were necessary and reasonable for the continued health and well being of the Applicant, to afford financial management and oversight and to provide the Applicant an opportunity to reside in her home without government assistance for the longest period of time possible.

Exhibit 2 at 3. The Appellant's representative explained that she had a valid general service agreement with the Appellant, dated May 1, 2023, and with adjustment on January 1, 2024, and that as the Appellant's power of attorney, she entered into, on the Appellant's behalf, a general service agreement with the Appellant's neighbor ■■■ dated May 7, 2023, and modified on November 11, 2023. The Appellant's representative also cited 42 USC § 1396p(c)(1)(A), 130 CMR 520.019(C), CMS State Medicaid Manual § 3258.1(A), *Forman v. Director of the Office of Medicaid*, 79 Mass. App. Ct. 218 (2011), and Board of Hearings decisions in appeal nos. 2205571 and 2418440 as support. *Id.* at 6-7.⁴

The durable power of attorney instrument was signed by the Appellant on ■■■ 2023, and states:

That I, [Appellant], of ■■■ Massachusetts, do hereby make,

² The Appellant's representative was, until her retirement in 2019, a licensed attorney in ■■■ Exhibits 2 and 6.

³ Initials used for privacy.

⁴ The Appellant's representative distinguished the present case from the circumstances in *Forman* and the Board of Hearings decisions. Exhibit 2 at 6-7.

constitute and appoint [Appellant's representative], my true, and lawful attorney for me and in my name, place and stead to act under the following provisions:

1. General Powers. To exercise or perform any act, power, duty, right or obligation, whatsoever that I now have or may hereafter acquire, relating to any person, matter, transaction or property, real or personal, tangible or intangible, now owned or hereafter acquired by me, including but without limitation, the specifically enumerated powers granted below. I further grant to my said attorney full power and authority to do everything necessary in exercising any of the powers herein granted as fully as I might or could do if personally present.
2. To commence and prosecute, or to defend, all actions or proceedings involving any matter in which I have or may have any interest or concern; to demand, collect, compromise, recover and receive all debts, moneys, property interests, claims and demands whatsoever, now due or that may hereafter be or become due to me; to execute and deliver on my behalf and in my name, any and all endorsements, releases, receipts, or discharges for the same.
3. To make, execute, deliver and endorse notes, drafts, checks, certificates of deposit and orders for the payment of money or other property from or to me or in order of my name; the right to make deposits or withdrawals on any accounts in banks or other financial institutions on my behalf.
4. To borrow such sums of money as may be necessary or desirable and to execute notes from time to time in my name, giving such security as my said attorney may determine.
5. To sell and dispose of any real and/or personal property which I own or in which I have any interest to such person or persons, for such amount, and on such terms as my said attorney may determine; in my name to execute and deliver deeds, releases, instruments of transfer and assignment of every nature to convey my interest in said property.
6. To purchase or acquire any real or personal property which my said attorney may determine to be in my interest and for such amount and on such terms as my said attorney may determine; in my name, to execute and deliver any consideration, documents or instruments of transfer which may be required to purchase or acquire said property.
7. To have full authority to deal with any policies of insurance on my life, including but not limited to the right to make irrevocable assignments thereof, to surrender, borrow against, or convert any such policies and to change the beneficiaries thereof, to surrender, borrow against, or convert any such policies and to change the beneficiaries thereof, or to take any other action with respect to such policies as my said attorney shall deem proper, including, but not limited to, the purchase of additional insurance, and exercise of any options available with respect to said policies.
8. To have access to my safe deposit boxes, whether in my name alone or held jointly with others.

9. To purchase, sell or exchange any bonds or shares of stock now held by me or which I may thereafter acquire; to act as my proxy with power of substitution; to vote all stocks or other securities in my name in relation to any individual or corporate action, to deposit any stocks or other securities in connection with any plans or protective or reorganizational committees, to purchase, accept or exercise rights to subscribe for securities and to sell same, to endorse securities or any agreements relating thereto, on my behalf.
10. To receive and receipt for all rents and income to which I am or may become entitled, pay therefrom all necessary expenses for the maintenance, upkeep, care and protection of my property, deduct therefrom her own reasonable compensation and pay the net income from time to time to me or in such manner as I shall direct, or in the absence of such payment to me or such direction, to invest the same in her judgment.
11. Use of Funds for My Care. In the event of my illness, incapacity or other emergency, to incur and pay and satisfy such expenses and obligations for my comfort, benefit and care, and obligations of a nature customarily incurred by me, as in her judgment she may consider necessary or desirable to consistent with my wishes.
12. Powers as to Taxes. To prepare, execute and file federal or state income, gift, or other tax returns and other real and personal property tax returns or statements and to pay or compromise any or all such taxes or apply for and collect any refunds due.
13. Transfers to Trusts and Other Entities. To transfer any or all property, tangible, intangible or real, in which I may have any interest, into a trust or trusts, whether created by me or my said attorney on my behalf, or to any other form of entity or ownership, including any form of co-tenancy, under such terms and with such provisions as my attorney deems in the best interest of myself and my family. In this regard, the fact that my said attorney may be a co-tenant, remainderman or a beneficiary in connection with any such transfer hereunder shall not effect the validity thereof, nor, by itself, constitute a breach of her fiduciary duty hereunder.
14. To give any of my assets to persons of natural affection to whom I would normally consider making such gifts, having in mind the ultimate objective of such gifts being the reduction of state and federal estate and inheritance taxes in my estate.
15. To apply to the Social Security Administration to become representative payee of my social security benefit payments, and to then act as my representative payee in accordance with applicable law.
16. To make any and all applications to state or federal programs for benefits to which I may be entitled.
17. To consent to my placement in a hospital, nursing home or other health care facility.
18. Third Party Reliance. Any party dealing with my said attorney hereunder may rely absolutely on the authority granted herein and need not look to the application of any proceeds nor the authority of my said attorney as to any action taken hereunder. In this regard, no person who may in good faith act in reliance upon the representations of my agent or the authority granted hereunder shall incur any

liability to me or my estate as a result of such act.

19. Guardianship. In the event a petition is filed in any court for the appointment of a guardian or a conservator to care for me or my estate, then I nominate said [Appellant's representative] as such appointee. In the event she ceases or is unable to so serve, then I nominate [REDACTED] in her stead.⁵ Nothing in this part shall be construed as a direction that such a petition be filed or such appointment be made, and it is my express wish that such action be taken only when and if absolutely necessary.
20. Successor Attorneys in Fact. In the event the said [Appellant's representative] for any reason ceases or is unable to act under this power, then I grant the same aforesaid powers in every respect to said [REDACTED]. A witness statement by the said [REDACTED], as to the cessation or inability of said [Appellant's representative] to serve shall be conclusive evidence of such fact, and any third party may rely upon the same in dealing with him under this power.
21. Reliance on Copies of this Power. A photostatic copy of this power, as executed, may be treated as an original power by any third party dealing with my attorney in fact.
22. Disability or Incompetence. This Power of Attorney in the said [Appellant's representative] or in the said [REDACTED] as the case may be, shall not be affected by my subsequent disability or incapacity.
23. I authorize my attorney for me and in my name to execute and acknowledge any and all instruments necessary or proper to carry out the foregoing powers.
24. This Power of Attorney is established in the Commonwealth of Massachusetts and shall be governed, construed and administered in all respects in accordance with the laws of Massachusetts, except with respect to such assets as are required by law to be governed by the laws of some other jurisdiction.
25. And I hereby for myself, my heirs, executors, administrators and assigns ratify and confirm, and agree to ratify and confirm, whatever my said attorney shall do by virtue of these presents.
Exhibit 2 at 60-62.

The agreement ("Agreement 1") between the Appellant ("the Client") and the Appellant's representative ("the Contractor"), signed [REDACTED] 2023, states that:

The Client agrees to engage the Contractor to provide the Client with the following 'services': Contractor will provide financial management services to the Client on an as needed basis, including but not limited to such services that may arise under the appointment of the Contractor as the "Agent" under a Durable (Financial) Power of Attorney executed by the Client on [REDACTED] 2023, including but not limited to arranging for the preparing, listing and sale of Client's residence at . . . , including consultations with the real estate broker, listing and sale negotiations, review and execution of all documents relating to the sale and closing of the real estate;

⁵ Initials used for privacy.

management of all financial accounts, including determining the investment of proceeds of real estate sale, review and analysis of all financial assets and client's personal and financial information including mail and all bank and financial statements; payment of outstanding debts and continuing financial obligations, establishing automatic payments of various accounts, payment of monthly bills as well as extraordinary expenses; negotiating placement with assisted care facility and nursing home facilities and payment for same; arrangement for filing income tax returns, both federal and Commonwealth of Massachusetts, and collecting all data for same, including capital gains tax calculations; applications for additional financial support for Client, including VA claims and Massachusetts Health claims, review and verification of end of life expenses and generally including, but not limited to, all financial matters which relate to the Client. The services will also include all other financial tasks which the parties may agree on.

Exhibit 2 at 24. Agreement 1 states that it ends upon the earlier of the death of the Appellant or mutual agreement to terminate with five days written notice to the other party. *Id.* at 24-25. Agreement 1 states that the Contractor will be paid \$75 per hour and will "maintain time records detailing the time spent and services provided." *Id.* at 25. Agreement 1 also specifies that the Contractor's rate will increase to \$100 per hour after January 1, 2025. *Id.* The Appellant's representative submitted records of the dates and amount of time as well as services performed. The records state that the \$75 rate was based on a blend of \$50-65 hourly for bookkeeping services and \$125 hourly rate for paralegal services. *Id.* at 26.

The agreement between the Appellant and [REDACTED] ("Agreement 2") states that the Appellant agrees to engage [REDACTED] to provide services consisting of:

Personal services care to [Appellant] on as needed basis including but not limited to, such of the following services, or the like, as may be needed: transferring personal items such as clothing, medication and food from [Appellant's] residence to any and all care facilities where [Appellant] is then located, as may be needed and on such occasions as [REDACTED] deem necessary; providing financial information, negotiating contracts for admission to assisted care facility; arranging for additional nursing care, occupational therapy and physical therapy services as may be needed; serving as liaison with housekeeper and dog walker and working on obtaining backup support for both. [REDACTED] and Appellant] acknowledge that not all services will be needed on a continuing basis, and some other services relating to the personal care of [Appellant] may also be included, with the agreement of [REDACTED]

Id. 10-11. Agreement 2 states that it may be terminated at any time by mutual agreement of the parties. *Id.* at 11. Agreement 2 states that the Appellant will compensate [REDACTED] at the rate of \$500.00 per week, payable every two weeks. *Id.* at 12. On November 24, 2023, Agreement 2 was modified to state that as of November 1, 2023, services provided by [REDACTED] "relate specifically to the scheduling,

monitoring, evaluating various appointments including assisting in scheduling, but not providing, transportation and escort services to and from the appointments for [Appellant], including medical, dental, eye and related health appointments.” *Id.* at 16. Agreement 2 was also modified to reflect that as of November 1, 2023, compensation would be for \$50.00 per week and that the compensation “will be payable on a periodic basis as mutually agreed to . . . with the first payment no later than January 10, 2024 to reflect services through December 31, 2023 with the next payment within 10 days of the close of the next quarter, ending on March 31, 2024 and quarterly thereafter, so that payments are made within 10 days of the close of the quarter on June 30, 2024, September 30, 2024 and December 31, 2024 and continuing thereafter.” *Id.*

The hearing was held virtually. The MassHealth representative testified that the Appellant is over the age of [REDACTED] and was admitted to the nursing facility on [REDACTED] 2025. The MassHealth representative testified that MassHealth received a long-term-care application on May 23, 2025, and issued a request for verifications on June 4, 2025. On July 10, 2025, MassHealth issued a denial notice for missing verifications. The MassHealth representative testified that MassHealth received verifications on July 24, 2025, and the case was reactivated with July 24, 2025 as the controlling application date. The MassHealth representative testified that the SC-1 Form requested a coverage start date of August 18, 2025. The MassHealth representative testified that, on August 28, 2025, MassHealth issued a denial notice for a disqualifying transfer within the lookback period. The MassHealth representative testified that the Appellant was ineligible between August 18, 2025, to November 12, 2025, due to disqualifying transfers during the lookback period, which totaled \$38,001.84, and was divided by \$441.00 (the daily nursing home private pay rate) to arrive at an 87-day penalty period. *See also* Exhibit 5. MassHealth included the following transactions as disqualifying transfers:

To the Appellant’s representative:

September 21, 2023	\$8,517.65
May 1, 2024	\$6,694.98
August 21, 2024	\$2,512.30
October 1, 2024	\$2,281.93
January 13, 2025	\$1,150.00
April 21, 2025	\$3,344.98
Total	\$22,219.91

To [REDACTED]:

September 25, 2023	\$9,500.00
October 4, 2023	\$1,000.00
November 10, 2023	\$1,000.00

November 10, 2023	\$1,000.00 ⁶
April 7, 2025	\$1,000.00
June 27, 2025	\$1,050.00
Total	\$14,550.00

MassHealth also included a transaction on August 14, 2025, for \$1,842.65 but stated that the check was not provided.⁷

The MassHealth representative testified that MassHealth considered these transactions to be disqualifying transfers because they were not fair market value. The MassHealth representative testified that MassHealth believed that because the Appellant was in an assisted living facility in 2023 to 2025, some of the services were not needed. The MassHealth representative also testified that the fair market rate for personal care attendant services is \$20.00/hour. The MassHealth representative also testified that the payments do not match up with the service agreements.

The Appellant's representative represented the Appellant at the hearing and verified the Appellant's identity. ■ also appeared at the hearing. The Appellant's representative testified that neither she nor ■ is directly related to the Appellant. The Appellant's representative testified that ■ was the Appellant's neighbor, and that the Appellant's late husband was the uncle of the Appellant's representative's husband. The Appellant's representative testified that the Appellant had used her home equity and a reverse mortgage to try and stay out of a nursing facility and not apply for MassHealth. The Appellant's representative testified that she handled the Appellant's financial and legal affairs as the Appellant's power of attorney because of her background in trusts and estates law. The Appellant's representative testified that she spent a fair amount of time working with the organization ■ and the ■ which resulted in a payment of a \$14,000.00 lump sum to the Appellant and an additional \$1,500.00/month in income to the Appellant.

The Appellant's representative explained that finding the Appellant an appropriate assisted living facility was complicated because the Appellant had a dog that she wanted to keep with her. The Appellant's representative testified that Agreement 1 and Agreement 2 were enforceable contracts, and that she and ■ were paid for their time like the Appellant's veterinarian or dentist. The Appellant's representative testified that she had negotiated with the Appellant's assisted living facility, ■ and oversaw paying the Appellant's bills and the closing for the sale of the Appellant's home. The Appellant's representative explained that, because of staffing shortages at ■ the Appellant might still be in her pajamas at 11 AM and that the Appellant would call ■ to help, and that ■ was also a point of contact with ■

⁶ There are two \$1,000.00 payments listed on November 10, 2023. Exhibit 5 at 2.

⁷ From my review of the record, I do not see an explanation for the payment of this amount or this date.

On the day of the hearing, the Appellant's representative also submitted an affidavit from [REDACTED] who is the president of the [REDACTED] law firm where the Appellant's representative worked as an attorney for [REDACTED] years until retiring in 2019. Exhibit 6. The affidavit states that, in 2019, the Appellant's representative's hourly rate for her legal services was \$300.00. *Id.* The affidavit states that the firm generally charged \$150.00/hour for paralegal services from May 2023 to January 2024, and that the Appellant's representative's services at \$75.00 and after January 2024 at \$100.00/hour reflect a discount from the prevailing market rate. *Id.*

The hearing officer reopened the record to request additional information from the parties. Exhibit 7. As relevant here, the Appellant's representative responded that, between May 7, 2023 and November 1, 2023, [REDACTED] provided the following services at the rate of \$500.00/week:

[REDACTED] was the chief contact for all interactions between the buyer of [Appellant's] house and the property between the date the Purchase and Sale agreement was signed and the closing. [REDACTED] researched and traveled to numerous assisted care facilities in [REDACTED] and surrounding towns to tour the facilities and meet with management of each facility and then report back to [Appellant] in an effort to obtain satisfactory living arrangements since a care facility which would allow [Appellant] to keep her dog was a priority. Upon the determination that a unit at [REDACTED] would be the most appropriate for [REDACTED] undertook to obtain all necessary furniture and furnishings for the apartment, arranged for movers, arranged for further set-up of the apartment and the transfer of [Appellant] to the new apartment, and also addressed all follow-up concerns raised by [Appellant] with respect to the furnishing of the apartment. Following [Appellant's] move, and pending the closing on the sale of [Appellant's] home, scheduled for [REDACTED] 2023, [REDACTED] at the direction of [Appellant], was the contact person with any relatives who were interested in any remaining contents of [Appellant's] home. [REDACTED] then organized the balance of the household contents to be sold, gifted, or removed prior to the closing, and spent numerous hours reviewing all files and paperwork of [Appellant's] to determine documents to be retained. [REDACTED] met with nursing and management staff at [REDACTED] at various times to complete the application process, which included arranging additional medical evaluations of [Appellant], as well as testing, inoculations and completing of medical documents and verifying the supply and transfer of all prescriptions. [REDACTED] was also the contact person for coordinating all continuing arrangements and care for [Appellant] at [REDACTED] including confirming that all care services as outlined in the [REDACTED] plan were provided and to respond to all comments and complaints raised by [Appellant] regarding [REDACTED] services. [REDACTED] also managed all offsite medical appointments and arranged for the support person (independent of [REDACTED] staff) to accompany [Appellant], as required. In the initial months of [Appellant's] lease, there were numerous adjustments made

⁸ Initials used for privacy.

to services for [Appellant], from arranging satisfactory transport to the dining room from [Appellant's] apartment, to scheduling morning dressing and bathing activities, scheduling nighttime routine, adjustment of apartment window blinds, etc.

Exhibit 8 at 1-2.

Regarding the services provided by [REDACTED] after November 1, 2023, for the rate of \$50.00/week, they included helping the Appellant with her cellphone as the Appellant had difficulty using it and would accidentally turn it off, causing family members to be concerned and the [REDACTED] staff would not assist the Appellant with it. Other services provided by [REDACTED] include:

Arranged all medical and dental appointments and off site treatments for care, including arranging for the transport van and the required support person to accompany [Appellant] to all such visits;

Arranged various therapies for [Appellant] to be provided at [REDACTED] including Physical Therapy, Occupational Therapy and wound care by skilled nursing assistance. Provided intermittent dog care for [Appellant's dog] and arranged for care and placement of [Appellant's dog] when [Appellant] was hospitalized and upon the decision that [Appellant] could not return to [REDACTED]

Responded to numerous requests from [Appellant] for additional food, clothing and furnishing including takeout food, occasional groceries, clothing, multiple arrangements for acceptable shoes and returning items rejected, equivalent to approximately 3-4 round trips per week between [REDACTED] home and [REDACTED] at 20 minutes per roundtrip.

At a minimum of 3 trips per week, [REDACTED] expended 1 hour per week solely in travel time. The additional services, even if estimated at the low end of 30 minutes per trip, account for an additional 1.5 hours per week, and [REDACTED] spent additional time at home making multiple phone calls per week to address various concerns relating to [Appellant's] care at [REDACTED] and her other health and wellbeing concerns. The lowest possible estimate of the time [REDACTED] provided various services to [Appellant] is 2.5 hours per week which equals a rate of pay of \$20/hour.

As agent under Healthcare Power of Attorney, [REDACTED] served as principal contact between [Appellant] and [REDACTED] healthcare workers, the head nurse and nursing and management staff to address repeated requests from [Appellant] and frequent re-assessments of level of care provided by [REDACTED]

[REDACTED] served as the primary contact for all hospital admissions and doctors' recommendations with respect to tests and treatments and was responsible for collecting and delivering to [Appellant] any items requested during her hospital stays.

Upon the decision that [Appellant] could not return to [REDACTED] undertook the principal role of reviewing all nursing home options for Appellant, both in and around [REDACTED] made arrangements for her room at [REDACTED]

██████████ and then undertook duties to remove all belongings from [Appellant's] apartment unit at ██████████, including all furniture, furnishings and clothing and transfer appropriate items to [Appellant's] room at ██████████

Id. at 2-3.

The MassHealth representative responded that “MassHealth does not consider either of the service agreements to be valid because they are not reasonably enforceable. They were created by the POA, and it is unlikely that the POA would take action against herself, or others, if the obligations outlined in the agreements were not met.” Exhibit 11 at 1. The hearing officer had also asked whether MassHealth considered rates for clerical or administrative tasks and whether MassHealth considered any of the tasks enumerated as performed for fair market value. *Id.* The MassHealth representative further responded that:

Regulation 130 CMR 520.007 (J)(4) states 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.

The applicant lived at ██████████ intermittently from ██████████ 2023, through ██████████ 2023. She then moved to ██████████ on ██████████ 2023, and later entered the ██████████ facility on ██████████ 2025. It is presumed that she was receiving personal-care services at each of these facilities.

[Appellant's representative] also serves as the applicant's Power of Attorney—and therefore already has fiduciary obligations for which she may not charge a fee—billed paralegal services at a rate of \$500 per hour. These same tasks could have been performed by a personal-care assistant at approximately \$20 per hour. MassHealth therefore considers the \$500 hourly charge to be more than fair market value.

Id.

The hearing officer asked for clarification on the billing rate issue, and the MassHealth representative responded:

This general contract agreement ██████████ at a flat fee of \$500 per week and indicates on an “as needed basis”, and the amendment for \$50 per week, still on an “as needed basis”. Without evidence (records) of dates/times descriptions of services

performed on a weekly basis, the actual hourly wage cannot be established, and fair market has not been ascertained, resulting in agency determination of Disqualifying transfer.

The agreement with [Appellant's representative] is also on an as needed basis also (sic) and is \$75 per hour for 2023 then \$100 per hour for 2024 Includes better record keeping, however, services (and records) in agreement appear duplicative as compared to responsibilities listed in POA document naming [Appellant's representative] as lawful attorney. Also, Resulting in agency determination of Disqualifying transfer.

Exhibit 13 at 2.

The Appellant's representative submitted a rebuttal stating that:

the contracts were between the Principal, [Appellant], and the Agents—[REDACTED] and separately [Appellant's representative]. The Principal personally signed each of the contacts and she is not incapacitated.⁹ [Appellant] has the authority to enforce the terms of both contracts, and could bring an action against either of the agents if she felt the terms of the contract were not met and therefore the contracts are enforceable. . . . Regardless of where [Appellant] was living at the time, [REDACTED] or [REDACTED] the services provided by [REDACTED] and Appellant's representative] were different and separate from the services provided by either of the institutions. A review of the description of the services provided by [REDACTED] and Appellant's representative] makes that clear. For example, there is no one at either care facility who would have provided services to move [Appellant] and her furniture and furnishings, clear out [Appellant's] house and set up her apartment at [REDACTED] as [REDACTED] did, and no one at either of the facilities would have had the authority of the ability to handle [Appellant's] financial affairs as [Appellant's representative] did, including, but not limited to, the sale of her house, the application for [REDACTED] benefits, filing of her tax returns and the management of her bills.

Exhibit 12 at 1.

Findings of Fact

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

⁹ The evidence submitted indicates that the Appellant's representative signed the agreements with [REDACTED] as the Appellant's power of attorney. Exhibit 2 at 15-16. The Appellant signed the agreement with the Appellant's representative. *Id.* at 25.

1. The Appellant is over the age of [REDACTED]. Testimony, Exhibit 4.
2. The Appellant was admitted to a nursing facility on [REDACTED] 2025. Testimony, Exhibit 5.
3. On May 23, 2025, the Appellant applied for MassHealth Long-Term-Care. Exhibits 1 & 5.
4. On June 4, 2025, MassHealth issued a request for verifications. Testimony.
5. On July 10, 2025, MassHealth issued a denial notice for missing verifications. Testimony.
6. MassHealth received verifications on July 24, 2025, and the case was reactivated with July 24, 2025 as the controlling application date. Testimony.
7. The SC-1 Form requested a coverage start date of August 18, 2025. Testimony.
8. On August 28, 2025, MassHealth issued a denial notice for a disqualifying transfer within the lookback period. The MassHealth representative testified that the Appellant was ineligible between August 18, 2025, to November 12, 2025, due to disqualifying transfers during the lookback period, which totaled \$38,001.84, and was divided by \$441.00 (the daily nursing home private pay rate) to arrive at an 87-day penalty period. Testimony, Exhibits 1 and 5.
9. The Appellant's representative filed this appeal in a timely manner on October 23, 2025 with the Board of Hearings. Exhibit 2.
10. I take administrative notice of the documentation quoted above in the Summary of Evidence.

Analysis and Conclusions of Law

MassHealth regulations provide the following:

130 CMR 515.001: Definition of Terms

The terms listed in 130 CMR 515.001 have the following meanings for purposes of MassHealth, as described in 130 CMR 515.000 through 522.000: MassHealth: *Other Division Programs*.

....

Curing of a Transfer – the return, following the transfer for less than fair-market value of a portion of, or the full uncompensated value of, a resource to the individual.

....

Fair-market Value – an estimate of the value of a resource if sold at the prevailing price. For transferred resources, the fair-market value is based on the prevailing price at the time of transfer.

....

Look-back Period – a period of consecutive months that the MassHealth agency may review for transfers of resources to determine if a period of ineligibility for payment of nursing-facility services should be imposed.

....

Period of Ineligibility – the period of time during which the MassHealth agency denies or withholds payment for nursing-facility services because the individual has transferred resources for less than fair-market value.

....

Uncompensated Value – the difference between the fair-market value of the resource or interest in the resource at the time of transfer less any outstanding debts and the actual amount the individual received for the resource. The MassHealth agency uses the uncompensated value in the calculation of the period of ineligibility.

130 CMR 515.001.

130 CMR 519.006: Long-term-care Residents

(A) Eligibility Requirements. Institutionalized individuals may establish eligibility for MassHealth Standard coverage subject to the following requirements. They must

- (1) be younger than 21 years old or 65 years of age or older or, for individuals 21 through 64 years of age meet Title XVI disability standards or be pregnant;
- (2) be determined medically eligible for nursing facility services by the MassHealth agency or its agent as a condition for payment, in accordance with 130 CMR 456.000: *Long Term Care Services*;
- (3) contribute to the cost of care as defined at 130 CMR 520.026: *Long-term-care General Income Deductions*;
- (4) have countable assets of \$2,000 or less for an individual and, for married couples where one member of the couple is institutionalized, have assets that are less than or equal to the standards at 130 CMR 520.016(B): *Treatment of a Married Couple's Assets When One Spouse Is Institutionalized*; and
- (5) not have transferred resources for less than fair market value, as described at 130 CMR 520.018: *Transfer of Resources Regardless of Date of Transfer* and 520.019: *Transfer of Resources Occurring on or after August 11, 1993*.

130 CMR 519.006(A).

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.
- (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.

(C) Individual Retirement Accounts, Keogh Plans, and Pension Funds.

(1) Individual Retirement Accounts. An Individual Retirement Account (IRA) is a tax-deductible savings account that sets aside money for retirement. Funds in an IRA are counted as an asset in their entirety less the amount of penalty for early withdrawal.

(2) Keogh Plans. A Keogh Plan is a retirement plan established by a self-employed individual. A Keogh Plan may be established for the self-employed individual alone or for the self-employed individual and his or her employees. If the Keogh Plan was established for the self-employed individual alone, the funds in the Plan are counted as an asset in their entirety less the amount of penalty for early withdrawal. If the Keogh Plan was established for employees other than the spouse of the applicant or member, the MassHealth agency does not count the funds as an asset.

(3) Pension Funds. A pension fund is a retirement plan established by an employer to provide benefit payments to employees upon retirement or disability. Pension funds that are being set aside by an individual's current employer are not countable as an asset. Pension funds from an individual's former employer are countable in their entirety less any penalties for withdrawal provided such funds are accessible. (See 130 CMR 520.006.)

(D) Securities. Securities include, but are not limited to, stocks, bonds, options, futures contracts, debentures, mutual funds including money-market mutual funds, and other financial instruments. Tradable securities are valued at the most recent closing-bid price, and nontradable securities are valued at current equity value. A security for which there is no market value or that is inaccessible in accordance with 130 CMR 520.006 is noncountable.

(E) Cash-surrender Value of Life-insurance Policies.

(1) The cash-surrender value of a life-insurance policy is the amount of money, if any, that the issuing company has agreed to pay the owner of the policy upon its cancellation. An individual may adjust the cash-surrender value of life insurance to meet the asset limit. The MassHealth agency will consider the cash-surrender-value amount an inaccessible asset during the adjustment period.

(2) If the total face value of all countable life-insurance policies owned by the applicant, member, or spouse exceeds \$1,500, the total cash-surrender value of all policies held by that individual is countable. The MassHealth agency does not count the face value of burial insurance and the face value of life-insurance policies not having cash-surrender value (for instance, term insurance) in determining the total face value of life-insurance policies. Burial insurance is insurance whose terms specifically provide that the proceeds can be used only to pay the burial expenses, funeral expenses, or both of the insured.

(F) Vehicles as Countable Assets.

(1) Requirements. In determining the assets of an individual (and the spouse, if any), the countability of a vehicle is determined as follows.

(a) One vehicle per household is noncountable regardless of its value if it is for the use

of the eligible individual or couple or a member of the eligible individual's or couple's household.

(b) The equity value of all other vehicles is a countable asset.

(2) Exemption.

(a) Three-month Exemption. The MassHealth agency does not count the value of nonexempt vehicles exceeding the asset limit for three calendar months provided the applicant or member signs an agreement with the MassHealth agency to dispose of the vehicles at fair-market value.

(b) Additional Exemption for Good Cause. The MassHealth agency may grant an additional three-month extension if the disposition was prevented by an event beyond the control of the individual who was making a good-faith effort to dispose of the property during the initial three-month period.

(c) Proceeds. The proceeds from the sale of the vehicle after payment of loans or other encumbrances and expenses of sale such as taxes, fees, and advertising costs are a countable asset in the month received and in subsequent months. The equity value of a vehicle that has not been sold three calendar months after the date of the written agreement (or six calendar months after the date of the written agreement if an extension has been granted) is a countable asset.

(d) Equity Value. Equity value is determined by subtracting the balance of any loans, liens, encumbrances, and expenses of sale, such as taxes, fees, and advertising costs, from the fair-market value of the vehicle.

(e) Fair-market Value. Fair-market value is the price for which the vehicle will sell on the open market. (f) Verification. The applicant or member must verify the fair-market value and equity value of all vehicles. Verification must be a written document providing reasonable evidence of value. Acceptable verification includes, but is not limited to, the following:

1. the wholesale value (for cars and trucks) and finance value (for recreational vehicles) tables in the most recent vehicle valuation book that is used by the MassHealth agency;

2. the low value in an older car valuation book (for cars and trucks). If the car or truck is too old to be listed in an older car valuation book, the MassHealth agency will assign a value of \$250;

3. the written appraisal of a licensed automobile dealer who deals with classic, custom-made, or antique vehicles, if the vehicle is considered a classic, custom-made, or antique; or

4. for recreational vehicles, the projected loan value as quoted by a bank or other lending institution; documents showing the value of the vehicle for insurance purposes; or a written estimate of the cash value of the vehicle from a licensed recreational vehicle dealer.

(g) Specially Equipped Vehicles. Special equipment for the handicapped, other optional equipment, or low mileage do not increase the value of the vehicle.

(G) Real Estate.

(1) Real Estate As a Countable Asset. All real estate owned by the individual and the spouse, with the exception of the principal place of residence as described in 130 CMR 520.008(A), is a countable asset. The principal place of residence is subject to allowable limits as described in 130 CMR 520.007(G)(3). Business or nonbusiness property as described in 130 CMR 520.008(D) is a noncountable asset.

(2) Nine-month Exemption. The value of such real estate is exempt for nine calendar months after the date of notice by the MassHealth agency, provided that the individual signs an agreement with the MassHealth agency within 30 days after the date of notice to dispose of the property at fair-market value. The MassHealth agency will extend the nine-month period as long as the individual or the spouse continues to make a good-faith effort to sell, as verified in accordance with 130 CMR 520.007(G)(4).

(3) Fair-market Value and Equity Value. The fair-market value and equity value of all countable real estate owned by the individual and the spouse must be verified at the time of application and when it affects or may affect eligibility. For applications received on or after January 1, 2006, equity interest in the principal place of residence exceeding \$750,000 renders an individual ineligible for payment of nursing facility and other long-term-care services, unless the spouse of such individual or the individual's child who is younger than 21 years old or who is blind or permanently and totally disabled resides in the individual's home. The allowable equity interest amount will be adjusted annually, beginning in January 2011. The adjustment will be based year-to-year on the percentage increase in the Consumer Price Index.

(a) The applicant or member must verify the fair-market value by a copy of the most recent tax bill or the property tax assessment that was most recently issued by the taxing jurisdiction, provided that this assessment is not one of the following:

1. a special purpose assessment;
2. based on a fixed-rate-per-acre method; or
3. based on an assessment ration or providing only a range.

(b) In the event that a current property-tax assessment is not available or the applicant or member wishes to rebut the fair-market value determined by the MassHealth agency, a comparable market analysis or a written appraisal of the value of the property from a knowledgeable source will establish the fair-market value. A knowledgeable source is a licensed real-estate agent or broker, a real-estate appraiser, an official of a bank, a savings-and-loan association, or a similar lending organization, or an official of the local real-estate tax jurisdiction.

(c) A copy of the loan instruments or other binding documents that show evidence of the payment schedule and the outstanding balance of the loan will verify the equity value of the property.

(d) The MassHealth agency may waive the period of ineligibility due to excess equity value in real estate if the individual meets the conditions described at

130 CMR 520.007(G)(13).

(4) Good-faith Effort to Sell Real Estate. The individual or the spouse must verify his or her good-faith effort to dispose of countable real estate by evidence such as advertisements or documentation of the listing of the real estate with licensed real-estate agents or brokers, including a report of any offer from prospective buyers. The MassHealth agency will terminate eligibility if, at any time, the individual rejects a reasonable offer to buy the real estate. An offer to buy real estate is considered reasonable if it is at least two-thirds of the fair-market value, unless the individual proves otherwise to the MassHealth agency's satisfaction.

(5) Proceeds from the Sale of Real Estate. The proceeds from the sale of the real estate, after the payment of loans, liens, or other encumbrances, and expenses of sale such as taxes, fees, and advertising costs, are a countable asset in the month received and in subsequent months.

(6) Right to Recovery. If a member fails to report the acquisition of real estate within 10 days after taking title to the real estate and the equity value of the real estate, when added to all other countable assets, exceeds the MassHealth asset standard, the MassHealth agency has the right to recover overpayment in accordance with 130 CMR 515.010: *Recovery of Overpayment of Medical Benefits* and to initiate any and all other legal remedies available.

(7) Former Home of a Community-based Individual. If an applicant or member (or spouse, if any) moves out of his or her home for reasons other than institutionalization without the intent to return, the home, whether or not held in trust, becomes a countable asset because it is no longer used as the individual's principal place of residence. The former home is subject to the requirements described in 130 CMR 520.007(G)(2).

(8) Former Home of an Institutionalized Individual. If an applicant or member moves out of his or her home to enter a medical institution, the MassHealth agency considers the former home a countable asset that is subject to 130 CMR 520.007(G)(2), provided all of the following conditions are met. If the former home of a nursing-facility resident as defined in 130 CMR 515.001: *Definition of Terms* is placed in a trust, the MassHealth agency will apply the trust rules in accordance with 130 CMR 520.021 through 520.024.

(a) The individual is institutionalized as defined in 130 CMR 515.001: *Definition of Terms*.

(b) None of the following relatives of the individual is living in the property:

1. a spouse;
2. a child who is younger than 21 years old or who is blind or permanently and totally disabled;
3. a sibling who has a legal interest in the home and who was living there for a period of at least one year immediately before the applicant's or member's admission to the medical institution;

4. a son or daughter who was living in the applicant's or member's home for a period of at least two years immediately before the date of the applicant's or member's admission to the medical institution, and who establishes to the satisfaction of the MassHealth agency that he or she provided care to the applicant or member that permitted him or her to live in the home rather than in a medical institution; or
5. a dependent relative. A dependent relative is any of the following who has any kind of medical, financial, or other dependency: a child, stepchild, or grandchild; a parent, stepparent, or grandparent; an aunt, uncle, niece, or nephew; a brother, sister, stepbrother, or stepsister; a half brother or half sister; a cousin; or an in-law.

(c) The applicant or member (and spouse, if any) moves out of his or her home without the intent to return.

(d) The applicant or member does not own long-term-care insurance with coverage that meets the requirements of 130 CMR 515.014: *Long-term-care Insurance Minimum Coverage Requirements for MassHealth Exemptions* and the Division of Insurance regulations at 211 CMR 65.09(1)(e)(2).

(9) Verification of Dependency and Residence of Relative Living in the Former Home.

(a) Relationship. The institutionalized individual must verify his or her relationship to the relative living in the former home by birth certificates, marriage licenses, or any other documents necessary to establish the relationship.

(b) Dependency. The institutionalized individual must verify the relative's dependency on the institutionalized individual by a signed statement from the relative attesting to the existence and duration of the dependency. The MassHealth agency may require additional evidence if the relative's claim of dependency is questionable or self-contradictory.

(c) Residence. The institutionalized individual must verify the relative's residence in his or her former home only if there is conflicting or contradictory evidence regarding the relative's residence.

(10) Option to Liquidate to Pay for Medical Care. Instead of selling the countable former home, the individual may liquidate its equity value to pay for his or her medical care. If the individual chooses this option, the home will be noncountable until the equity value is liquidated, but not longer than nine calendar months after the date of the MassHealth agency's notice.

(11) Undue Hardship: Jointly Owned Assets.

(a) The MassHealth agency will continue to exclude otherwise countable property, including a former home, when it is jointly owned and the sale of the property by an individual would cause the other owners to lose housing.

(b) Loss of housing would result when the property serves as the principal place of residence for one (or more) of the other owners, and sale of the

property would result in loss of that residence, and no other housing would be readily available for the displaced other owner. If undue hardship as defined in 130 CMR 520.007(G)(11) ceases to exist, the property becomes a countable asset.

(12) Lien. The MassHealth agency will place a lien before the death of a member against any real estate in which the member has a legal interest. This lien will be placed only if all of the conditions of 130 CMR 515.012: *Real Estate Liens* are met.

(13) Waiver of the Period of Ineligibility Due to Excess Equity Value in the Principal Place of Residence Causing Undue Hardship.

(a) The MassHealth agency may waive the denial of payment of long-term-care services for excess equity value in the principal place of residence if ineligibility would cause the individual undue hardship when the following conditions exist:

1. the denial of long-term-care services 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; and
2. the institution has notified the nursing-facility resident of its intent to initiate discharge the resident because the resident has not paid for his or her institutionalization; and
3. there is no less costly noninstitutional alternative available to meet the nursing-facility resident's needs.

(b) 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.

(c) Where the MassHealth agency has issued a denial notice based on the equity value in the principal place of residence, the individual may request a hardship waiver.

1. The individual must submit a written request for consideration of undue hardship and supporting documentation to the MassHealth Enrollment Center listed on the notice of denial within 15 days after the date on the notice.
2. Within 30 days after the date of the request, the MassHealth agency informs the individual in writing of the decision and of the right to a fair hearing. The MassHealth agency extends this 30-day period if the MassHealth agency requests additional documentation or if extenuating circumstances, as determined by the MassHealth agency, require additional time.

(d) The nursing-facility resident may appeal the MassHealth agency undue-hardship decision and denial of payment of long-term-care services by submitting a request for a fair hearing to the Office of Medicaid Board of

Hearings within 30 days after the receipt of the MassHealth agency written undue-hardship notice, in accordance with 130 CMR 610.000: *MassHealth: Fair Hearing Rules*. If the denial occurs pursuant to 130 CMR 520.007(G)(13)(c)1., the nursing-facility resident may instead appeal the denial of eligibility for long-term-care services by submitting a request for a fair hearing to the Office of Medicaid Board of Hearings, in accordance with 130 CMR 610.000: *MassHealth: Fair Hearing Rules*, while the resident also submits a written request for consideration of undue hardship. If the request for the hardship waiver is later denied, the nursing-facility resident may appeal the MassHealth agency's undue hardship decision by submitting a request for a fair hearing to the Office of Medicaid Board of Hearings within 30 days after the receipt of the MassHealth agency written undue hardship decision notice, in accordance with 130 CMR 610.000: *MassHealth: Fair Hearing Rules*.

(H) Retroactive SSI and RSDI Benefit Payments.

(1) Requirements. Retroactive SSI and RSDI benefit payments are noncountable in the month of receipt and for six months after the month of receipt. Such payments must be readily identifiable as retroactive SSI or RSDI payments, and should be deposited in a separately identifiable account. If commingled with other funds, and not separately identifiable according to the MassHealth agency, the MassHealth agency considers the total amount on deposit a countable asset. Any amount of the benefit payment still retained on the first day following the excluded periods described in 130 CMR 520.007(H)(1) is a countable asset.

(2) Verification. The applicant or member must verify the amount of the benefit and the date of receipt. The preferred source of verification is the notification letter from the Social Security Administration. The amount on deposit may be verified by a bank book or bank statement that shows that the benefit payment is not commingled with other funds.

(I) Trusts. The MassHealth agency counts the value of the principal and income of a revocable or irrevocable trust in accordance with 130 CMR 520.021 through 520.024.

(J) Annuities, Promissory Notes, Loans, Mortgages, and Similar Transactions.

(1) Treatment of Annuities Established Before February 8, 2006. Payments from an annuity are countable income in accordance with 130 CMR 520.009. If the annuity can be converted to a lump sum, the lump sum, less any penalties or costs of converting to a lump sum, is a countable asset. Purchase of an annuity is a disqualifying transfer of assets for nursing-facility residents as defined at 130 CMR 515.001: *Definition of Terms* in the following situations:

- (a) when the beneficiary is other than the applicant, member, or spouse;
- (b) when the beneficiary is the applicant, member, or spouse and when the total present value of projected payments from the annuity is less than the

value of the transferred asset (purchase price). In this case, the MassHealth agency determines the amount of the disqualifying transfer based on the actuarial value of the annuity compared to the beneficiary's life expectancy using the life-expectancy tables as determined by the MassHealth agency, giving due weight to the life-expectancy tables of institutions in the business of providing annuities;

(c) when the terms of the annuity postpone payment beyond 60 days, the MassHealth agency will treat the annuity as a disqualifying transfer of assets until the payment start date; or

(d) when the terms of the annuity provide for unequal payments, the MassHealth agency may treat the annuity as a disqualifying transfer of assets. Commercial annuity payments that vary solely as a result of a variable rate of interest are not considered unequal payments under 130 CMR 520.007(J)(1)(d).

(2) Treatment of Annuities Established on or after February 8, 2006. In addition to the requirements in 130 CMR 520.007(J)(1), the following conditions must be met.

(a) The purchase of an annuity will be considered a disqualifying transfer of assets unless

1. the Commonwealth of Massachusetts is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the institutionalized individual;
2. the Commonwealth of Massachusetts is named as such a remainder beneficiary in the second position after the community spouse, or minor or disabled children; or
3. the Commonwealth of Massachusetts is named as such a remainder beneficiary in the first position if the community spouse or the representative of any minor or disabled children in 130 CMR 520.007(J)(2)(a)2. disposes of any such remainder for less than fair-market value.

(b) The purchase of an annuity is considered a disqualifying transfer of assets unless the annuity satisfies 130 CMR 520.007(J)(1) and (J)(2)(a) and is irrevocable and nonassignable, or unless the annuity satisfies 130 CMR 520.007(J)(2)(c).

(c) The purchase of an annuity is considered a disqualifying transfer of assets unless the annuity satisfies 130 CMR 520.007(J)(2)(b), or unless the annuity names the Commonwealth of Massachusetts as a beneficiary as required under 130 CMR 520.007(J)(2)(a) and the annuity is

1. described in section 408(b) or (q) of the Internal Revenue Code of 1986;
2. purchased with the proceeds from an account or trust described in section 408(a), (c), or (p) of the Internal Revenue Code of 1986;
3. purchased with the proceeds from a simplified employee pension described in section 408(k) of the Internal Revenue Code of 1986; or

4. purchased with the proceeds from a Roth IRA described in section 408A of the Internal Revenue Code of 1986.

(3) Promissory Notes, Loans, or Mortgages. The value of any outstanding balance due on a promissory note, loan, or mortgage is considered a disqualifying transfer of assets, unless all of the following conditions are met:

(a) the repayment terms of the promissory note, loan, or mortgage are actuarially sound, based on actuarial tables as determined by the MassHealth agency;

(b) the promissory note, loan, or mortgage provides for equal payment amounts during the life of the loan, with no deferral and no balloon payments; and

(c) the promissory note, loan, or mortgage prohibits cancellation of the balance upon the death of the lender.

(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.

(5) Additional Regulations About Transfers of Assets. Transfers of assets are further governed by 130 CMR 520.018 and 520.019.

130 CMR 520.016: Long-term Care: Treatment of Assets

130 CMR 520.016 describes the treatment of countable assets when one member of a couple is institutionalized, the post-eligibility transfer of assets, and the allowable income deductions for applicants and members who are residents of a long-term-care facility.

(A) Institutionalized Individuals. The total value of assets owned by an institutionalized single individual or by a member of an institutionalized couple must not exceed \$2,000.

(B) Treatment of a Married Couple's Assets When One Spouse Is Institutionalized.

(1) Assessment.

(a) Requirement. The MassHealth agency completes an assessment of the total value of a couple's combined countable assets and computes the community spouse's asset allowance as of the date of the beginning of the most recent continuous period of institutionalization of one spouse.

(b) Right to Request an Assessment. When one spouse has entered a medical institution and is expected to remain institutionalized for at least 30 days, either spouse may request

the MassHealth agency to make this assessment, even if the institutionalized spouse is not applying for MassHealth Standard at that time. The period of institutionalization must be continuous and expected to last for at least 30 days.

(c) Right to Appeal. The MassHealth agency must give each spouse a copy of the assessment and the documentation used to make such assessment. Each spouse must be notified that he or she has the right to appeal the determination of countable assets and the community spouse's asset allowance when the institutionalized spouse (or authorized representative) applies for MassHealth Standard.

(2) Determination of Eligibility for the Institutionalized Spouse. At the time that the institutionalized spouse applies for MassHealth Standard, the MassHealth agency must determine the couple's current total countable assets, regardless of the form of ownership between the couple, and the amount of assets allowed for the community spouse as follows. The community spouse's asset allowance is not considered available to the institutionalized spouse when determining the institutionalized spouse's eligibility for MassHealth Standard.

(a) Deduct the community spouse's asset allowance, based on countable assets as of the date of the beginning of the most recent continuous period of institutionalization of the institutionalized spouse, from the remaining assets. The community spouse's asset allowance is the greatest of the following amounts:

1. the combined total countable assets of the institutionalized spouse and the community spouse, not to exceed \$109,560;
2. a court-ordered amount; or
3. an amount determined after a fair hearing in accordance with 130 CMR 520.017.

130 CMR 520.016(A), (B)(1),(2).

130 CMR 520.018: Transfer of Resources Regardless of Date of Transfer

(A) 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.

(B) The MassHealth agency denies payment for nursing-facility services to an otherwise eligible nursing-facility resident as defined in 130 CMR 515.001: *Definition of Terms* 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.

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

(D) Circumstances giving rise to disqualifying transfers of resources are also described at 130 CMR 520.007(J).

130 CMR 520.018.

130 CMR 520.019: Transfer of Resources Occurring on or after August 11, 1993

(A) Payment of Nursing-facility Services. The MassHealth agency applies the provisions of 130 CMR 520.018 and 520.019 to nursing-facility residents as defined at 130 CMR 515.001: *Definition of Terms* requesting MassHealth agency payment for nursing-facility services provided in a nursing facility or in any institution for a level of care equivalent to that received in a nursing facility or for home- and community-based services provided in accordance with 130 CMR 519.007(B): *Home- and Community-based Services Waiver-Frail Elder*.

(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).

(C) Disqualifying Transfer of Resources. 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), identified in 130 CMR 520.019(F), or exempted in 130 CMR 520.019(J). The MassHealth agency 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.

(D) Permissible Transfers. The MassHealth agency considers the following transfers permissible. Transfers of resources made for the sole benefit of a particular person must be in accordance with federal law.

- (1) The resources were transferred to the spouse of the nursing-facility resident or to another for the sole benefit of the spouse. A nursing facility resident who has been determined eligible for MassHealth agency payment of nursing facility services and who has received an asset assessment from the MassHealth agency must make any necessary transfers within 90 days after the date of the notice of approval for MassHealth in accordance with 130 CMR 520.016(B)(3).
- (2) The resources were transferred from the spouse of the nursing facility resident to another for the sole benefit of the spouse.
- (3) The resources were transferred to the nursing facility resident's permanently and totally disabled or blind child or to a trust, a pooled trust, or a special-needs trust created for the sole benefit of such child.
- (4) The resources were transferred to a trust, a special-needs trust, or a pooled trust created for the sole benefit of a permanently and totally disabled person who was younger than 65 years old at the time the trust was created or funded.
- (5) Effective until sixty days after the end of the maintenance of effort and continuous eligibility provisions of Section 6008 of the Families First Coronavirus Response Act (Public Law No. 116-127), the resources were transferred to a pooled trust created for the sole benefit of the permanently and totally disabled nursing-facility resident. Effective sixty days after the end of the maintenance of effort and continuous eligibility provisions of Section 6008 of the Families First Coronavirus Response Act (Public Law No. 116-127), this transfer is no longer permissible.
- (6) The nursing facility resident transferred the home he or she used as the principal residence at the time of transfer and the title to the home to one of the following persons:
 - (a) the spouse;
 - (b) the nursing facility resident's child who is younger than 21 years old, or who is blind or permanently and totally disabled;
 - (c) the nursing facility resident's sibling who has a legal interest in the nursing facility resident's home and was living in the nursing facility resident's home for at least one year immediately before the date of the nursing-facility resident's admission to the nursing facility; or
 - (d) the nursing facility resident's child (other than the child described in 130 CMR 520.019(D)(6)(b)) who was living in the nursing facility resident's home for at least two years immediately before the date of the nursing facility resident's admission to the institution, and who, as determined by the MassHealth agency, provided care to the nursing facility resident that permitted him or her to live at home rather than in a nursing facility.
- (7) The resources were transferred to a separately identifiable burial account, burial arrangement, or a similar device for the nursing facility resident or the spouse in accordance with 130 CMR 520.008(F).

(E) Repayment of Financial and Medical Assistance. A nursing-facility resident who has received or will be receiving payment from a third party as a result of an accident, injury, or other loss must first

repay the MassHealth agency for medical assistance under M.G.L. c. 118E, § 22 and 42 U.S.C. 1396a(a)(25)(A) and (B) and the Department of Transitional Assistance for financial assistance under M.G.L. c. 18, § 5G, before the MassHealth agency will consider whether a transfer of such third-party payments may be permissible under 130 CMR 520.019(D), (F), or (J).

(F) Determination of Intent. In addition to the permissible transfers described in 130 CMR 520.019(D), the MassHealth agency will not impose a period of ineligibility for transferring resources at less than fair-market value if the nursing-facility resident or the spouse demonstrates to the MassHealth agency's satisfaction that

- (1) the resources were transferred exclusively for a purpose other than to qualify for MassHealth; or
- (2) the nursing-facility resident or spouse intended to dispose of the resource at either fair-market value or for other valuable consideration. Valuable consideration is a tangible benefit equal to at least the fair-market value of the transferred resource.

(G) Period of Ineligibility Due to a Disqualifying Transfer.

(1) Duration of Ineligibility. If the MassHealth agency has determined that a disqualifying transfer of resources has occurred, the MassHealth agency will calculate a period of ineligibility. The number of months in the period of ineligibility is equal to the total, cumulative, uncompensated value as defined in 130 CMR 515.001: *Definition of Terms* of all resources transferred by the nursing-facility resident or the spouse, divided by the average monthly cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency.

(2) Determination of the Period of Ineligibility in Special Circumstances. The MassHealth agency determines the periods of ineligibility in the following situations.

(a) Transfers in the Same Month. When a number of resources have been transferred in the same month, the MassHealth agency calculates the period of ineligibility by dividing the total value of the transferred resources by the average monthly cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency. The period of ineligibility begins on the first day of the month in which the resources were transferred.

(b) Periods of Ineligibility That Overlap. When transfers of resources result in periods of ineligibility that overlap, the MassHealth agency adds the value of all the transferred resources and divides the total by the average monthly cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency. The result is a single period of ineligibility beginning on the first day of the month in which the first transfer was made.

(c) Periods of Ineligibility That Do Not Overlap. In the case of multiple transfers where the periods of ineligibility for each transfer do not overlap, the MassHealth agency considers each transfer as a separate event with its own period of ineligibility. For non-overlapping multiple transfers occurring on or after February 8, 2006, see 130 CMR 520.019(G)(2)1.

(d) Periods of Ineligibility of Less Than One Month. If the calculated period of ineligibility is less than one month, the MassHealth agency imposes a partial-month period of ineligibility and does not round down or disregard any fractional period of ineligibility.

(e) Transfer of Lump-sum Income. When income has been transferred as a lump sum, the MassHealth agency calculates the period of ineligibility on the lump-sum value.

(f) Transfer of Stream of Income. When a stream of income has been transferred, the MassHealth agency calculates the period of ineligibility for each income payment that is periodically transferred. The MassHealth agency may impose partial-month periods of ineligibility.

(g) Transfer of the Right to a Stream of Income. When the right to a stream of income has been transferred, the MassHealth agency calculates the period of ineligibility based on the total amount of income expected to be transferred during the nursing-facility resident's life, according to the life-expectancy tables as determined by the MassHealth agency.

(h) Transfer by the Spouse. When a transfer by the spouse results in a period of ineligibility for the nursing-facility resident, and the spouse later becomes institutionalized and applies for MassHealth agency payment of nursing-facility services, the MassHealth agency apportions the remaining period of ineligibility equally between the spouses. If both spouses become nursing-facility residents in the same month, the MassHealth agency divides the period of ineligibility equally between them. When one spouse is no longer subject to a penalty, any remaining penalty must then be imposed on the remaining nursing-facility-resident spouse.

(i) Multiple Transfers Occurring on or after February 8, 2006. For transfers occurring on or after February 8, 2006, the MassHealth agency adds the value of all the resources transferred during the look-back period and divides 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. The result will be a single 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.

(3) Begin Date. For transfers occurring before February 8, 2006, the period of ineligibility begins on the first day of the month in which resources have been transferred for less than fair-market value. For transfers occurring on or after February 8, 2006, the period of ineligibility begins on the first day of the month in which resources were transferred for less than fair-market value or the date on which the individual is otherwise eligible for MassHealth agency payment of long-term-care services, whichever is later. For transfers involving revocable trusts, the date of transfer is the date the payment to someone other than the nursing-facility resident or the spouse is made. For transfers involving irrevocable trusts, the date of transfer is

(a) the date that the countable trust resources are transferred to someone other than the nursing-facility resident or spouse; or

(b) the latest of the following:

1. the date that payment to the nursing-facility resident or the spouse was

- foreclosed under the terms of the trust;
- 2. the date that the trust was established; or
- 3. the date that any resource was placed in the trust.

(H) Transfers of Jointly Held Resources. The MassHealth agency will determine the amount of the nursing-facility resident's ownership interest of jointly held resources as defined in 130 CMR 515.001: *Definition of Terms* in accordance with the ownership rules at 130 CMR 520.005. The MassHealth agency will consider as a transfer any action taken by any person that reduces or eliminates the nursing-facility resident's ownership or control of the resource. The MassHealth agency then will determine whether the transfer was made at less than fair-market value in accordance with the transfer rules.

(I) Transfer of Life-estate and Remainder Interest. The rules pertaining to transfer of life-estate and remainder interest apply in instances involving remainder interest of property including life estates, annuities, wills, and trusts.

(1) The MassHealth agency considers a transfer of property with the retention of a life estate, as defined in 130 CMR 515.001: *Definition of Terms*, to be a transfer of resources. The difference between the fair-market value of the entire asset and the value of the life estate is called the remainder interest. The remainder interest is the amount considered to be transferred at less than fair-market value. The MassHealth agency will calculate the values of the remainder interest and the life estate in accordance with the life-estate tables, as determined by the MassHealth agency. If the language of the document creating the life estate explicitly states that the owner of the life estate has the power to sell the entire property (not simply the life estate), then the creation of this type of life estate will be treated as a trust.

(2) If the nursing-facility resident's or the spouse's life-estate interest or property including the life-estate interest is sold or transferred, the value of the life-estate interest at the time of the sale or transfer is calculated in accordance with the life-estate tables, as determined by the MassHealth agency. The MassHealth agency will attribute the value of the life-estate interest at the time of the sale or transfer to the person selling or transferring the life estate.

(3) The MassHealth agency considers the purchase of a life estate in another individual's home made on or after April 1, 2006, a disqualifying transfer, unless the purchaser resides in the home for a period of at least one year after the date of the purchase.

(J) Home Equity Loans and Reverse Mortgages. Proceeds from a home equity loan or a reverse mortgage that are transferred in the month of receipt will be considered a disqualifying transfer of resources if transferred for less than fair-market value.

(K) Exempting Transfers from the Period of Ineligibility.

(1) During the Eligibility Process. To avoid the imposition of a period of ineligibility, the nursing-facility resident may take action during the determination of eligibility before the issuance of a notice of a period of ineligibility as follows.

(a) Revising a Trust. During the eligibility process, the nursing-facility resident may revise a trust to comply with the criteria of a special-needs trust or a pooled trust, as defined in

130 CMR 515.001: *Definition of Terms*. The use of resources to create these trusts are permissible transfers, in accordance with 130 CMR 520.019(D). The MassHealth agency will use the original application date if during the eligibility process the nursing-facility resident provides proof that the trust has been revised accordingly.

(b) Curing a Transfer. During the eligibility process, the full value or a portion of the full value of the transferred resources may be returned to the nursing-facility resident. The MassHealth agency will use the original application date and consider the transfer to have been eliminated or adjusted. The MassHealth agency will apply the countable assets rules at 130 CMR 520.007 and the countable income rules at 130 CMR 520.009 to the returned resources in determining eligibility.

(2) After Issuance of the Notice of the Period of Ineligibility. After the issuance of the notice of the period of ineligibility, the nursing-facility resident may avoid imposition of the period of ineligibility in the following instances.

(a) Revising a Trust. If the nursing-facility resident revises a trust to comply with the criteria of a special-needs trust or a pooled trust as defined in 130 CMR 515.001: *Definition of Terms* and exempted in 130 CMR 520.019(D), the MassHealth agency will rescind the period of ineligibility as follows.

1. The MassHealth agency will use the original application date if within 60 days after the date of the notice of the period of ineligibility, the nursing-facility resident provides proof that the trust has been revised to comply with the criteria of a special-needs trust or a pooled trust. The MassHealth agency may extend the original 60-day period for an additional 120 days, if court action is required to revise the trust, as long as the court action is filed within the 60-day period after the date of the notice of the period of ineligibility.

2. If after the 60th day after the date of the notice of the period of ineligibility, the nursing-facility resident provides proof that the trust has been revised to comply with the criteria of a special-needs trust or a pooled trust, the MassHealth agency will consider the trust revised as of the date the trust has been both revised and notarized.

(b) Curing a Transfer. If the full value or a portion of the full value of the transferred resources is returned to the nursing-facility resident, the MassHealth agency will rescind or adjust the period of ineligibility and will apply the countable-assets rules at 130 CMR 520.007 and the countable-income rules at 130 CMR 520.009 to the returned resources in the determination of eligibility. The MassHealth agency will rescind or adjust the period of ineligibility as follows.

1. The MassHealth agency uses the original application date if the nursing-facility resident provides proof within 60 days after the date of the notice of the period of ineligibility that the transfer has been fully or partially cured. In the case of a partial cure, the MassHealth agency recalculates the period of ineligibility based on the transferred amount remaining after deducting the cured portion, beginning with the date of transfer or, for cures of transfers occurring on or after February 8, 2006, the later of the date of transfer or the date on which the individual would have otherwise

been eligible.

2. If the nursing-facility resident provides proof later than the 60th day after the date of the notice of a period of ineligibility that the transfer has been fully or partially cured, the nursing-facility resident must reapply. The MassHealth agency recalculates the period of ineligibility based on the amount of the transfer remaining after the cure, beginning with the date of transfer or, for cures of transfers occurring on or after February 8, 2006, the later of the date of transfer or the date on which the individual would have otherwise been eligible.

(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.

(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.

(M) Fraudulent Transfer or Sale. If a nursing-facility resident whose estate would be subject to a claim under 130 CMR 515.011: *Estate Recovery* transfers or sells any property including a home or an interest in the property for less than fair-market value, the MassHealth agency may consider the transfer or sale that does not meet the conditions of 130 CMR 520.019(D)(6) to be fraudulent under the Uniform Fraudulent Conveyance Act (M.G.L. c. 109(A)) and take appropriate legal action to set aside the transfer or sale.

(N) No Double Penalty. In the event that application of the transfer rules and the trust rules in 130 CMR 520.000 results in a nursing-facility resident being subject to a transfer penalty twice for actions involving the same resource, the trust rules will supersede the transfer rules in the determination of eligibility.

130 CMR 520.019.

42 USC § 1396p(c)—Liens, adjustments and recoveries, transfers of assets

...

(c) Taking into account certain transfers of assets

(1)

(A) In order to meet the requirements of this subsection for purposes of section 1396a(a)(18) of this title, the State plan must provide that if an institutionalized individual or the spouse of such an individual (or, at the option of a State, a noninstitutionalized individual or the spouse of such an individual) disposes of assets for less than fair market value on or after the look-back date specified in subparagraph (B)(i), the individual is ineligible for medical assistance for services described in subparagraph (C)(i) (or, in the case of a noninstitutionalized individual, for the services described in subparagraph (C)(ii)) during the period beginning on the date specified in subparagraph (D) and equal to the number of months specified in subparagraph (E).

(B)

(i) The look-back date specified in this subparagraph is a date that is 36 months (or, in

the case of payments from a trust or portions of a trust that are treated as assets disposed of by the individual pursuant to paragraph (3)(A)(iii) or (3)(B)(ii) of subsection (d) or in the case of any other disposal of assets made on or after February 8, 2006, 60 months) before the date specified in clause (ii).

(ii)The date specified in this clause, with respect to—

(I)an institutionalized individual is the first date as of which the individual both is an institutionalized individual and has applied for medical assistance under the State plan, or

(II)a noninstitutionalized individual is the date on which the individual applies for medical assistance under the State plan or, if later, the date on which the individual disposes of assets for less than fair market value.

(C)

(i)The services described in this subparagraph with respect to an institutionalized individual are the following:

(I)Nursing facility services.

(II)A level of care in any institution equivalent to that of nursing facility services.

(III)Home or community-based services furnished under a waiver granted under subsection (c) or (d) of section 1396n of this title.

(ii)The services described in this subparagraph with respect to a noninstitutionalized individual are services (not including any services described in clause (i)) that are described in paragraph (7), (22), or (24) of section 1396d(a) of this title, and, at the option of a State, other long-term care services for which medical assistance is otherwise available under the State plan to individuals requiring long-term care.

(D)

(i)In the case of a transfer of asset made before February 8, 2006, the date specified in this subparagraph is the first day of the first month during or after which assets have been transferred for less than fair market value and which does not occur in any other periods of ineligibility under this subsection.

(ii)In the case of a transfer of asset made on or after February 8, 2006, the date specified in this subparagraph is the first day of a month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the State plan and would otherwise be receiving institutional level care described in subparagraph (C) based on an approved application for such care but for the application of the penalty period, whichever is later, and which does not occur during any other period of ineligibility under this subsection.

(E)

(i)With respect to an institutionalized individual, the number of months of ineligibility under this subparagraph for an individual shall be equal to—

(I)the total, cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) on or after the look-back date specified in subparagraph (B)(i), divided by

(II)the average monthly cost to a private patient of nursing facility services in the State (or, at the option of the State, in the community in which the individual is institutionalized) at the time of application.

(ii)With respect to a noninstitutionalized individual, the number of months of ineligibility under this subparagraph for an individual shall not be greater than a number equal to—

(I)the total, cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) on or after the look-back date specified in subparagraph (B)(i), divided by

(II)the average monthly cost to a private patient of nursing facility services in the State (or, at the option of the State, in the community in which the individual is institutionalized) at the time of application.

(iii)The number of months of ineligibility otherwise determined under clause (i) or (ii) with respect to the disposal of an asset shall be reduced—

(I)in the case of periods of ineligibility determined under clause (i), by the number of months of ineligibility applicable to the individual under clause (ii) as a result of such disposal, and

(II)in the case of periods of ineligibility determined under clause (ii), by the number of months of ineligibility applicable to the individual under clause (i) as a result of such disposal.

(iv)A State shall not round down, or otherwise disregard any fractional period of ineligibility determined under clause (i) or (ii) with respect to the disposal of assets.

(F)For purposes of this paragraph, the purchase of an annuity shall be treated as the disposal of an asset for less than fair market value unless—

(i)the State is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the institutionalized individual under this subchapter; or

(ii)the State is named as such a beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if such spouse or a representative of such child disposes of any such remainder for less than fair market value.

(G)For purposes of this paragraph with respect to a transfer of assets, the term "assets" includes an annuity purchased by or on behalf of an annuitant who has applied for medical assistance with respect to nursing facility services or other long-term care services under this subchapter unless—

(i)the annuity is—

(I)an annuity described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986; or

(II)purchased with proceeds from—

(aa)an account or trust described in subsection (a), (c), or (p) of section 408 of such Code;

(bb)a simplified employee pension (within the meaning of section 408(k) of such Code); or

(cc)a Roth IRA described in section 408A of such Code; or

(ii)the annuity—

(I)is irrevocable and nonassignable;

(II)is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration); and

(III)provides for payments in equal amounts during the term of the annuity, with no

deferral and no balloon payments made.

(H) Notwithstanding the preceding provisions of this paragraph, in the case of an individual (or individual's spouse) who makes multiple fractional transfers of assets in more than 1 month for less than fair market value on or after the applicable look-back date specified in subparagraph (B), a State may determine the period of ineligibility applicable to such individual under this paragraph by—

(i) treating the total, cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) during all months on or after the look-back date specified in subparagraph (B) as 1 transfer for purposes of clause (i) or (ii) (as the case may be) of subparagraph (E); and

(ii) beginning such period on the earliest date which would apply under subparagraph (D) to any of such transfers.

(I) For purposes of this paragraph with respect to a transfer of assets, the term "assets" includes funds used to purchase a promissory note, loan, or mortgage unless such note, loan, or mortgage—

(i) has a repayment term that is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration);

(ii) provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments made; and

(iii) prohibits the cancellation of the balance upon the death of the lender.

In the case of a promissory note, loan, or mortgage that does not satisfy the requirements of clauses (i) through (iii), the value of such note, loan, or mortgage shall be the outstanding balance due as of the date of the individual's application for medical assistance for services described in subparagraph (C).

(J) For purposes of this paragraph with respect to a transfer of assets, the term "assets" includes the purchase of a life estate interest in another individual's home unless the purchaser resides in the home for a period of at least 1 year after the date of the purchase.

(2) An individual shall not be ineligible for medical assistance by reason of paragraph (1) to the extent that—

(A) the assets transferred were a home and title to the home was transferred to—

(i) the spouse of such individual;

(ii) a child of such individual who (I) is under age 21, or (II) (with respect to States eligible to participate in the State program established under subchapter XVI) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1382c of this title;

(iii) a sibling of such individual who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date the individual becomes an institutionalized individual; or

(iv) a son or daughter of such individual (other than a child described in clause (ii)) who was residing in such individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual, and who (as determined by the State)

provided care to such individual which permitted such individual to reside at home rather than in such an institution or facility;

(B)the assets—

(i)were transferred to the individual's spouse or to another for the sole benefit of the individual's spouse,

(ii)were transferred from the individual's spouse to another for the sole benefit of the individual's spouse,

(iii)were transferred to, or to a trust (including a trust described in subsection (d)(4)) established solely for the benefit of, the individual's child described in subparagraph (A)(ii)(II), or

(iv)were transferred to a trust (including a trust described in subsection (d)(4)) established solely for the benefit of an individual under 65 years of age who is disabled (as defined in section 1382c(a)(3) of this title);

(C)a satisfactory showing is made to the State (in accordance with regulations promulgated by the Secretary) that (i) the individual intended to dispose of the assets either at fair market value, or for other valuable consideration, (ii) the assets were transferred exclusively for a purpose other than to qualify for medical assistance, or (iii) all assets transferred for less than fair market value have been returned to the individual; or

(D)the State determines, under procedures established by the State (in accordance with standards specified by the Secretary), that the denial of eligibility would work an undue hardship as determined on the basis of criteria established by the Secretary.

The procedures established under subparagraph (D) shall permit the facility in which the institutionalized individual is residing to file an undue hardship waiver application on behalf of the individual with the consent of the individual or the personal representative of the individual. While an application for an undue hardship waiver is pending under subparagraph (D) in the case of an individual who is a resident of a nursing facility, if the application meets such criteria as the Secretary specifies, the State may provide for payments for nursing facility services in order to hold the bed for the individual at the facility, but not in excess of payments for 30 days.

(3)For purposes of this subsection, in the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset.

(4)A State (including a State which has elected treatment under section 1396a(f) of this title) may not provide for any period of ineligibility for an individual due to transfer of resources for less than fair market value except in accordance with this subsection. In the case of a transfer by the spouse of an individual which results in a period of ineligibility for medical assistance under a State plan for such individual, a State shall, using a reasonable methodology (as specified by the Secretary), apportion such period of ineligibility (or any portion of such period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State plan.

(5) In this subsection, the term “resources” has the meaning given such term in section 1382b of this title, without regard to the exclusion described in subsection (a)(1) thereof.

CMS State Medicaid Manual

3258. TRANSFERS OF ASSETS FOR LESS THAN FAIR MARKET VALUE

3258.1 General.--Under the transfer of assets provisions in §1917(c) of the Act, as amended by OBRA 1993, you must deny coverage of certain Medicaid services to otherwise eligible institutionalized individuals who transfer (or whose spouses transfer) assets for less than fair market value. You may also choose to deny coverage for certain other services for noninstitutionalized individuals who transfer (or whose spouses transfer) assets for less than fair market value. The following instructions explain the specific circumstances and rules under which you must deny Medicaid services.

The provisions explained in these instructions apply to all States, including those using more restrictive eligibility criteria than are used by the SSI program, under §1902(f) of the Act. Thus, 209(b) States cannot apply periods of ineligibility due to a transfer of resources for less than fair market value except in accordance with these instructions.

A. Definitions.--The following definitions apply to transfers of assets.

1. Fair Market Value.--Fair market value is an estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred. Value is based on criteria you use in appraising the value of assets for the purpose of determining Medicaid eligibility.

NOTE: 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. A transfer for love and consideration, for example, is not considered a transfer for fair market value. Also, while relatives and family members legitimately can be paid for care they provide to the individual, HCFA presumes that services provided for free at the time were intended to be provided without compensation. Thus, a transfer to a relative for care provided for free in the past is a transfer of assets for less than fair market value. However, an individual can rebut this presumption with tangible evidence that is acceptable to the State. For example, you may require that a payback arrangement had been agreed to in writing at the time services were provided.

2. Valuable Consideration.--Valuable consideration means that an individual receives in exchange for his or her right or interest in an asset some act, object, service, or other benefit which has a tangible and/or intrinsic value to the individual that is roughly equivalent to or greater than the value of the transferred asset.

3. Uncompensated Value.--The uncompensated value is the difference between the fair market value at the time of transfer (less any outstanding loans, mortgages, or other encumbrances on the asset) and the amount received for the asset.
4. Institutionalized Individual.--An institutionalized individual is an individual who is:
 - An inpatient in a nursing facility;
 - An inpatient in a medical institution for whom payment is based on a level of care provided in a nursing facility; or
 - A home and community-based services recipient described in §1902(a)(10)(A)(ii)(VI) of the Act. For purposes of this section, a medical institution includes an intermediate care facility for the mentally retarded (ICF/MR). (See 42 CFR 435.1009.)
5. Noninstitutionalized Individual.--A noninstitutionalized individual is an individual receiving any of the services described in §3258.8.
6. Nursing Facility Services.--Nursing facility services are services as described in the State Medicaid Plan as nursing facility services.

The Appellant has the burden “to demonstrate the invalidity of the administrative determination.” *Andrews v. Division of Medical Assistance*, 68 Mass. App. Ct. 228, 231 (2007). See also *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass. App. Ct. 333, 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386, 390 (1998).

“MassHealth is a cooperative Federal and State undertaking that provides payment for medical services to eligible individuals and families who are unable to pay for their own medical care.” *Shelales v. Dir. of the Office of Medicaid*, 75 Mass. App. Ct. 636, 637 (2009). MassHealth is “a needs-based program aimed at maximizing the use of personal funds for long-term care before relying on public funds. Medicaid is, and always has been, a program to provide basic health coverage to people who do not have sufficient income or resources to provide for themselves.” *Id.* at 641.

One of the requirements to be eligible for MassHealth Long-Term-Care, is that the institutionalized individual “must . . . not have transferred resources for less than fair market value.” 130 CMR 519.006(A)(5). See also 130 CMR 520.018(B). MassHealth stated that the reason for the denial and calculation of an ineligibility period was that the payment or transfers of funds to ■ and to the Appellant’s representative were not for fair market value. Specifically, because MassHealth cannot establish ■ actual hourly wage, it cannot establish the fair market value and accordingly found

payments to ■ to be a disqualifying transfer. Regarding the payments to the Appellant's representative, MassHealth stated that they were for tasks that were duplicative of her fiduciary responsibilities as power of attorney, and so were not for fair market value, and were a disqualifying transfer. After careful review, and because the Appellant has the burden to demonstrate the invalidity of MassHealth's determination, I credit MassHealth's determination that the funds transferred were disqualifying because they were for less than fair market value.

Under 130 CMR 520.019(F), MassHealth will not impose a period of ineligibility for transferring resources at less than fair-market value if the Appellant demonstrates to the MassHealth agency's satisfaction that (1) the resources were transferred exclusively for a purpose other than to qualify for MassHealth; or (2) the Appellant intended to dispose of the resource at either fair-market value or for other valuable consideration. Here, given the age of the Appellant, the durable power of attorney instrument's paragraphs 16-17, and the reference to applying for MassHealth benefits in the agreement between the Appellant and Appellant's representative, I find that the Appellant contemplated the need for applying for public benefits to fund long-term-care in a nursing facility. *See also Gauthier v. Dir. of the Office of Medicaid*, 80 Mass. App. Ct. 777, 785-86 (2011) (*Gauthier*). I do not have sufficient evidence before me of the Appellant's intent as to the purpose for transferring the funds or whether she intended to dispose of them for fair market value. Based on the materials in the record, and the statement of the Appellant's representative, the Appellant is not incapacitated. For example, the Appellant did not appear at hearing, or provide an affidavit under penalty of perjury, establishing her intention. Therefore, 130 CMR 520.019(F) is not satisfied.

Gauthier states that:

The ineligibility period (in months) imposed for a disqualifying transfer of assets is "equal to the total, cumulative, uncompensated value ... of all resources transferred ... divided by the average monthly cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency." 130 Code Mass. Regs. § 520.019(G)(1) (2006). The "uncompensated value" of a resource is defined as "the difference between the fair-market value of the resource or interest in the resource at the time of transfer less any outstanding debts and the actual amount the individual received for the resource." 130 Code Mass. Regs. § 515.001 (2005). Fair market value, in turn, is "an estimate of the value of a resource if sold at the prevailing price." 130 Code Mass. Regs. § 515.001 (2007). Therefore, if a disqualifying transfer occurred, the ineligibility period will be $(V-R)/C$ months long, where V is the fair market value of the asset transferred, R is the amount received for the asset, and C is the average monthly cost of a nursing home determined by MassHealth.

Id. at 779-80.

MassHealth considered all of the \$38,001.84, to be not for fair market value and a disqualifying

transfer, and so seemingly, found that the Appellant did not receive any value for that exchange under the “R” value above. What is challenging is that while the services provided to the Appellant may likely have had a value greater than zero, I do not have a clear way of establishing what that value is. *See id.* at 788-91. Regarding the affidavit from [REDACTED] is a different jurisdiction than Massachusetts, and furthermore, in reviewing the tasks performed by the Appellant representative, they do not seem to be paralegal tasks. Exhibit 2. Therefore, I find that the Appellant has not established the value she received for the funds she transferred to [REDACTED] and the Appellant’s representative by a preponderance of the evidence. Accordingly, I find that the Appellant has not established that MassHealth erred in its August 28, 2025 notice. Dividing \$38,001.84 by the \$441.00/daily rate equals the penalty MassHealth imposed between August 18, 2025 and November 12, 2025. 130 CMR 520.019(G)(1).¹⁰ Therefore, the 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.

Emily Sabo
Hearing Officer
Board of Hearings

[REDACTED]

[REDACTED]

cc: MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East

¹⁰ *See also*, MassHealth Eligibility Operations Memo 25-16, “Average Daily Cost of Nursing Facility Services for Calculating a Period of Ineligibility,” October, 2025.

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