

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	1941654
<b>Decision Date:</b>	SEP 09 2019	<b>Hearing Date:</b>	08/26/2019
<b>Hearing Officer:</b>	Sara E. McGrath		

**Appearances for Appellant:**  
Catherine E. Aloisi, Esq.

**Appearances for MassHealth:**  
Scott Michael, Taunton MEC



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street  
Quincy, MA 02171*

## APPEAL DECISION

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Eligibility
<b>Decision Date:</b>	SEP 09 2019	<b>Hearing Date:</b>	11/10/2014
<b>MassHealth Rep.:</b>	Scott Michael	<b>Appellant Rep.:</b>	Catherine E. Aloisi, Esq.
<b>Hearing Location:</b>	Chelsea MassHealth Enrollment Center		

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

By a notice dated June 28, 2019, MassHealth denied appellant's application for long-term care benefits due to two disqualifying transfers of resources in the amount of \$537,323.82 (Exhibit 1). Appellant filed a timely appeal on July 12, 2019 (Exhibit 1). Denial of MassHealth benefits is a valid basis for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth denied appellant's request for MassHealth long-term care benefits because of two disqualifying transfers of resources.

### Issue

The appeal issue is whether appellant's spouse's transfers of \$537,323.82 were disqualifying transfers of resources?

## Summary of Evidence

The MassHealth representative testified that appellant is a resident of a skilled nursing facility. Appellant submitted a long-term care application on May 8, 2019, seeking coverage as of March 16, 2019. On April 4 2019, appellant's spouse purchased two annuities for \$537,323.82. On June 28, 2019, MassHealth determined that these two annuity purchases represent disqualifying transfers of resources, and calculated a period of ineligibility from March 26, 2019 through April 2, 2023 (Exhibit 1).<sup>1</sup> Both annuities provide primary beneficiary language, as follows: "The Commonwealth of Massachusetts for at least the amount of medical assistance paid on behalf of the institutionalized individual" (Exhibit 2, pp. 47, 53). MassHealth takes the position the primary beneficiary language is restricted to "The Commonwealth of Massachusetts" only, and that the additional language included here renders the annuity purchases disqualifying in nature.<sup>2</sup>

In support of its position, MassHealth notes that its policy unit and annuity tracking unit rely on the applicable MassHealth regulations, as well as Eligibility Operations Memo 16-06, which provides in relevant part as follows:

Federal Medicaid law at 42 U.S.C. §1396p(c)(1)(F) requires that the Commonwealth of Massachusetts is named as the remainder beneficiary in the proper position for annuity transactions that occur on or after February 8, 2006. The requirement, under 130 CMR 520.007(J)(2), applies to any purchase of an annuity on or after February 8, 2006, as well as for any annuity transactions that occur on or after February 8, 2006, such as elective withdrawals, additions of principal, annuitization, the selection or modification of a payment plan, the conversion of a variable annuity to a fixed annuity, or any change of beneficiaries, regardless of the date the annuity was initially purchased.

The naming of the Commonwealth of Massachusetts in the proper position for annuity transactions is applicable to annuity transactions in which the applicant, member, or community spouse is named as an annuitant. Failure to comply with these requirements at 130 CMR 520.007(J)(2) including the failure to maintain the Commonwealth of Massachusetts as the beneficiary of the annuity may result in the denial or termination of long-term care benefits and the need to repay any MassHealth benefits obtained during the time that this requirement was not

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<sup>1</sup> MassHealth started the penalty period on this date because it is the date that appellant would have otherwise been eligible for coverage.

<sup>2</sup> At hearing, the parties discussed a third annuity. MassHealth had understood that this annuity's primary beneficiary language included only the words "The Commonwealth of Massachusetts." Appellant's representative clarified that this third annuity's primary beneficiary language is exactly the same as the two annuities at issue here.

satisfied.

(Exhibit 2, p. 4).

Appellant argues that the primary beneficiary language tracks the applicable regulation, and thus is in compliance with both the regulatory requirements and with the sub-regulatory eligibility operations memo. Without this additional language, disbursements among primary and contingent beneficiaries can become confusing, especially with an annuity that pays out in other than a lump sum. Appellant argues that the applicable federal regulation includes similar language regarding annuities, requiring that “the State is named as a 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 (42 U.S.C. §1396p(c)(1)(F)(i)).

### **Findings of Fact**

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

1. Appellant is a resident of a skilled nursing facility.
2. Appellant submitted a long-term care application on May 8, 2019, seeking coverage as of March 16, 2019.
3. On April 4, 2019, appellant’s spouse purchased two annuities for \$537,323.82.
4. Both annuities provide primary beneficiary language, as follows: “The Commonwealth of Massachusetts for at least the amount of medical assistance paid on behalf of the institutionalized individual.”
5. On June 28, 2019, MassHealth determined that the purchase of the two annuities represent disqualifying transfers of resources, and calculated a period of ineligibility from March 26, 2019 through April 2, 2023.
6. On July 12, 2019, appellant timely appealed MassHealth’s determination.

## **Analysis and Conclusions of Law**

The MassHealth agency has set forth the following regulatory provisions regarding when an annuity purchase will be considered a disqualifying transfer:

(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

(i) 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;

(ii) 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

(iii) 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)(ii) 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

(i) described in Section 408(b) or (q) of the Internal Revenue Code of 1986;

(ii) purchased with the proceeds from an account or trust described in Section 408(a), (c), or (p) of the Internal Revenue Code of 1986;

(iii) purchased with the proceeds from a simplified employee pension described in Section 408(k) of the Internal Revenue Code of 1986; or

(iv) purchased with the proceeds from a Roth IRA described in Section 408A of the Internal Revenue Code of 1986.

(130 CMR 520.007(J)(2)).

Appellant persuasively argues that the purchase of the two annuities do not constitute disqualifying transfers because, in compliance with 130 CMR 520.007(J)(2)(a)(i), the Commonwealth of Massachusetts is named as the remainder beneficiary in the first position (Exhibit 2, pp. 47, 53). MassHealth concedes that the Commonwealth of Massachusetts is named as the primary beneficiary in the first position, but argues that the additional language “for at least the amount of medical assistance paid on behalf of the institutionalized individual” does not satisfy the requirements of 130 CMR 520.007(J)(2)(a)(i). Both the regulatory provision and Eligibility Operations Memo 16-06 speak to naming the Commonwealth of Massachusetts as a beneficiary in the first position, but neither contains any language prohibiting the inclusion of additional language (Exhibit 2, p. 4). The additional language included here simply mirrors the regulatory provision, and appellant has demonstrated that the two annuities comply with the requirements of 130 CMR 520.007(J)(2)). Appellant has demonstrated that the annuity purchases on April 4, 2019 do not constitute disqualifying transfers of resources.

The appeal is approved.

### **Order for MassHealth**

Rescind notice dated June 28, 2019 and approve appellant for MassHealth long-term care benefits effective March 26, 2019, if otherwise eligible.

### **Implementation of this Decision**

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, Office of Medicaid, at the address on the first page of this decision.



Sara E. McGrath  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center Appeals Coordinator

Appellant Representative: Catherine E. Aloisi, Esq., Cushing & Dolan, PC, 375 Totten Pond Road, Suite 200, Waltham, MA 02451

Appellant Representative: [REDACTED]