

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2176903
<b>Decision Date:</b>	11/10/2021	<b>Hearing Date:</b>	09/27/2021
<b>Hearing Officer:</b>	Christopher Jones	<b>Record Open to:</b>	11/02/2021

**Appearance for Appellant:**




**Appearance for MassHealth:**  
Cara Miller – Tewksbury Intake



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

## APPEAL DECISION

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	LTC – SMNA/CSRA
<b>Decision Date:</b>	11/10/2021	<b>Hearing Date:</b>	09/27/2021
<b>MassHealth's Rep.:</b>	Cara Miller	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Tewksbury MassHealth Enrollment Center	<b>Aid Pending:</b>	No

### Authority

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

### Jurisdiction

Through a notice dated August 24, 2021, MassHealth denied the appellant's application for long-term-care benefits because their community spouse's assets exceeded \$130,380. Exhibit 3; 130 CMR 520.003, 520.004, 520.028. The appellant filed this appeal in a timely manner on September 9, 2021. Exhibit 2; 130 CMR 610.015(B). Denial of assistance is valid grounds for appeal. 130 CMR 610.032.

The record was initially left open at the hearing until September 29, 2021 for the appellant to submit average interest rates from the Bank Rate Monitor and a physician's letter. The record open period was then extended to November 2, 2021 at the appellant's request to submit additional documentation regarding exceptional medical circumstances.

### Action Taken by MassHealth

MassHealth denied the appellant's application for excess assets.

### Issue

The appeal issue is whether the community spouse is entitled to an increase in their spousal-maintenance-needs allowance and community-spouse-resource allowance pursuant to 130 CMR 520.017(C).

## Summary of Evidence

The appellant filed an application for MassHealth long-term-care benefits on April 23, 2021 and is seeking coverage as of January 23, 2021. During the application process, the appellant and her community spouse verified countable assets of \$246,034.89 as of the benefits request date. MassHealth denied the application as the joint assets were \$113,654.89 over the combined asset limit of \$132,380.00 for an applicant and their community spouse. The institutionalized spouse's income is \$979.50 from Social Security, and the community spouse receives \$709.50 in Social Security and \$3,042.29 in a pension. The regulatory maximum-monthly-maintenance-needs allowance is \$3,259.50. Because the community spouse's income is higher than the maximum-monthly-maintenance-needs allowance, MassHealth cannot allow any of the appellant's income to be diverted to the community spouse as a spousal-maintenance-needs allowance ("SMNA").

The community spouse pays \$8,280 per month to the independent living facility in which they live. Because their monthly expenses are significantly higher than their income, the community spouse is requesting a fair hearing decision allow the community spouse more income than the maximum-monthly-maintenance-needs allowance due to extraordinary circumstances. Because the entirety of institutionalized spouse's income would still leave a shortfall in the community spouse's minimum-monthly-maintenance-needs allowance ("MMMNA"), the community spouse is also requesting that their community-spouse-resource allowance ("CSRA") be increased to generate additional interest income.

During the application process, the appellant submitted an "Independent Living Residency and Service Agreement" showing that both the applicant and her community spouse had been residing in an independent living residence prior to the applicant's entering the nursing facility. The contract states that the "independent living portion of the Community within which the Apartment is located is designed for persons who are capable of providing for their own health care and personal care needs. The independent living portion of the Community is not licensed to offer and does not offer assistance with medications, bathing, dressing, mobility needs or other personal or health care activities." The fee schedule, attached as Exhibit D to the contract, identifies that the rent for the unit is \$7,405, plus \$800 for a "Second Person Monthly Fee," and \$75 for a parking fee. The addendum then lists a variety of additional services such as meals, transportation, and housekeeping that were included in the monthly rental fee. Utilities are also included in the rental fee.

A letter from the community spouse's primary care physician details his many chronic health conditions and indicates that it is medically necessary that he reside in a facility with 24-hour staffing. During the record open period, additional letters were provided that explained that, while the community spouse is not receiving assistance with activities of daily living, he does benefit from social support, well-being supervision, and having an emergency call button in his apartment. A supplementary letter from his physician confirmed the opinion that the community spouse would be at a significant health risk if no longer residing in the independent living facility.

Also submitted at the hearing was information from the Bank Rate Monitor for the week of September 22, 2021 showing that the national average rate for Money Market accounts was 0.07%, and the highest rate for a CD not exceeding two-and-a-half years was 0.20% for a two-year CD.

## Findings of Fact

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

1. The institutionalized spouse applied for MassHealth long-term-care benefits in April 2021, seeking coverage as of January 23, 2021. Testimony by MassHealth's representative; Exhibit 3.
2. MassHealth denied the application on August 24, 2021 because the applicant and her community spouse had assets of \$246,034.89, which is \$113,654.89 more than the combined asset limit of \$132,380. Exhibits 2; 3.
3. The institutionalized spouse's income is \$979.50 from Social Security, and the community spouse receives \$709.50 in Social Security and \$3,042.29 in a pension. Exhibit 3.
4. The independent living rental fee is \$8,280, but \$800 of that is for a second resident. Exhibit 4.
5. For the week of September 22, 2021, the national average rate for Money Market accounts was 0.07%, and the highest rate for a CD not exceeding two-and-a-half years was 0.20% for a two-year CD. Exhibit 6.

## Analysis and Conclusions of Law

The minimum-monthly-maintenance-needs allowance is defined as "the amount needed by the community spouse to remain in the community. This amount is based on a calculation that includes the community spouse's shelter and utility costs in addition to certain federal standards, in accordance with 130 CMR 520.026(B)(1)." 130 CMR 520.017(B).

(1) The MassHealth agency determines the MMMNA by adding the following amounts:

(a) \$[2,177.50<sup>1</sup>] (the federal standard maintenance allowance); and

(b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$[653.25] and the shelter expenses for the community spouse's principal residence, including

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<sup>1</sup> The adjusted numbers inserted into this quotation are available from: Centers for Medicare & Medicaid ("CMS") Informational Bulletin from June 4, 2021 (<https://www.medicaid.gov/medicaid/eligibility/downloads/spousal-impoverishment/ssi-and-spousal-impoverishment-standards.pdf>) (last visited October 5, 2021); and [https://eohhs.ehs.state.ma.us/DTA/PolicyOnline/BEACON5/!SSL!/WebHelp/SNAP/SNAP\\_COLA/SNAP\\_COLA\\_OLG\\_Update\\_FINAL.htm](https://eohhs.ehs.state.ma.us/DTA/PolicyOnline/BEACON5/!SSL!/WebHelp/SNAP/SNAP_COLA/SNAP_COLA_OLG_Update_FINAL.htm) (last visited October 5, 2021).

The CMS guidance refers to the "federal standard maintenance allowance" as the MMMNA and the "excess shelter allowance" as the "community spouse monthly housing allowance." The

1. the actual expenses for rent, mortgage (including interest and principal), property taxes and insurance, and any required maintenance charge for a condominium or cooperative; and

2. the applicable standard deduction under the Supplemental Nutrition Assistance Program for utility expenses. If heat is included in the rent or condominium fee, this amount is \$[421]. If heat is not included in the rent or condominium fee, this amount is \$[688].

(2) The maximum-monthly-maintenance-needs allowance is \$[3,259.50] per month, unless it has been increased as the result of a fair-hearing decision based on exceptional circumstances in accordance with 130 CMR 520.017(D).

(3) If the institutionalized individual is subject to a court order for the support of the community spouse, the court-ordered amount of support must be used as the spousal-maintenance needs deduction when it exceeds the spousal-maintenance-needs deduction calculated according to 130 CMR 520.026(B) or resulting from a fair hearing.

130 CMR 520.026(B).

The community spouse's monthly rent should only be \$7,480.00, as there is no longer a second person residing in his apartment with him. The resulting "excess shelter allowance" is therefore \$7,247.75 (\$7,480 + \$421 - \$653.25). The excess shelter allowance is higher than the maximum-monthly-maintenance-needs allowance, which means the maximum is used unless it can be increased under 130 CMR 520.017(D). Such an increase requires finding that "exceptional circumstances" resulting in "significant financial duress." 130 CMR 520.017(D)(1). Exceptional circumstances must be

circumstances other than those already taken into account in establishing the maintenance standards for the community spouse under 130 CMR 520.026(B) ... . Since the federal standards used in calculating the MMMNA cover such necessities as food, shelter, clothing, and utilities, exceptional circumstances are limited to those necessities **that arise from the medical condition, frailty, or similar special needs of the community spouse**. Such necessities **include**, but are not limited to, **special remedial and support services** and extraordinary uncovered medical expenses. Such expenses generally **do not include car payments**, even if the car is used for transportation to medical appointments, or home-maintenance expenses such as **security systems and lawn care**.

130 CMR 520.017(D)(1) (**emphasis added**).

A fair hearing officer must ensure "that no expense (for example, for food or utilities) is counted more than once in the calculation" and if "the community spouse lives in an assisted-living facility **or similar facility** ... the fair-hearing officer reviews the ... pertinent documents to determine whether exceptional circumstances exist. Additional amounts are allowed only for specific expenses

necessitated by exceptional circumstances of the community spouse and not for maintaining any pre-set standard of living.” 130 CMR 520.017(1)(a)-(b) (**emphasis added**).

I find that the appellant has established that exceptional circumstances exist. Though styled an “independent living facility,” the additional documentation submitted establishes that the community spouse’s health and safety would be at risk if required to move. Though he remains “independent” his physician has documented medical benefits from living in a facility where 24-hour staff is on hand. Furthermore, the community spouse’s entire monthly income is barely half of his rent. Were he to spend his excess assets on his housing costs, he will only be assured housing for another 18 months. Therefore, I find that the community spouse’s exceptional circumstances pose “significant financial duress.” The community spouse’s housing contract does not allow for separating out specific expenses from the expense of the rent itself. Therefore, the entirety of the community spouse’s rent shall be used as the proven living expenses and their MMMNA is increased to \$7,480.<sup>2</sup>

When a community spouse’s income, including with the income generated by their assets, is insufficient to meet their minimum-monthly-maintenance-needs allowance, the hearing officer must determine the community spouse’s gross income by including

amount of the income that would be generated by ... \$10,000 ... generating income at an interest rate equal to the deposit yield quoted in the Bank Rate Monitor Index as of the hearing date for money market accounts, and [the amount that would be generated if] the remainder of the spouse’s asset allowance were generating income at an interest rate equal to the highest deposit yield quoted in the Bank Rate Monitor Index as of the hearing date for any term not to exceed 2½ years.

**(2) If the community spouse’s gross income under 130 CMR 520.017(C)(1) is less than the minimum-monthly-maintenance-needs allowance (MMMNA), then the fair-hearing officer allows an amount of income from the institutionalized spouse (after the personal-needs deduction described in 130 CMR 520.026(A)) that would increase the community spouse’s total income to equal, but not to exceed, the MMMNA. 130 CMR 520.017(C)(2) applies to all hearings held on or after September 1, 2003, regardless of the date of application.**

**(3) If after the fair-hearing officer has increased the community spouse’s gross income under 130 CMR 520.017(C)(1) and (2), the community spouse’s gross income is still less than the MMMNA, then the fair-hearing officer increases the community spouse’s asset allowance by the amount of additional assets that, if generating income at an interest rate equal to the highest deposit yield in the Bank Rate Monitor Index as of the hearing date for any term not to exceed two and one-half years, would generate sufficient**

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<sup>2</sup> Additional expenses may actually be legitimately included, but they are irrelevant as this hearing decision will still result in a monthly shortfall for the community spouse’s expenses.

income to raise the income total to the MMMNA.

130 CMR 520.017(C)(1)-(3) (**emphasis added**).

Here, the national average money market deposit yield for the week of September 22, 2021 was 0.07%, annually. The highest annual yield for a CD not exceeding 2.5 years was the 2-year CD, which yielded 0.20% interest annually. These rates produce \$0.58 and \$20.06 in monthly income, respectively. Combined with the community spouse's gross income of \$3,751.9, this results in monthly income of \$3,772.44. The next step is to allow the institutionalized spouse's income (\$906.70, after the PNA) to be diverted to the community spouse. This results in monthly income of \$4,679.14. Because this continues to be less than the MMMNA, the community spouse is entitled to an increase in the CSRA in order to generate additional income. Even if the entirety of the remaining \$125,654.89 were generating income at the 0.20% rate, the additional monthly income would only be an additional \$20.94.

For these reasons, the appeal is APPROVED. The community spouse is entitled to keep all identified excess assets and the community spouse is allowed to keep the entirety of the institutionalized spouse's income, less the PNA. In addition to producing a final PPA/SMNA calculation in accordance with this decision, MassHealth is also entitled to review whether any disqualifying transfers occurred that have not been noticed due to the way this appeal developed. Nothing arose during this hearing that suggested the existence of a transfer, but it would be premature for this decision to approve benefits outright.

## **Order for MassHealth**

Rescind the excess assets denial; allow the community spouse to retain all excess assets identified and divert all PPA to the community spouse as SMNA.

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Christopher Jones  
Hearing Officer  
Board of Hearings

cc: MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957