

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2208248
<b>Decision Date:</b>	12/27/2022	<b>Hearing Date:</b>	12/05/2022
<b>Hearing Officer:</b>	Casey Groff, Esq.	<b>Record Open to:</b>	12/15/2022

**Appearance for Appellant:**




**Appearance for MassHealth:**  
Alfred Peach, 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

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Eligibility; Excess Assets
<b>Decision Date:</b>	12/27/2022	<b>Hearing Date:</b>	12/05/2022
<b>MassHealth's Rep.:</b>	Alfred Peach	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Board of Hearings (Remote)	<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 October 31, 2022, MassHealth denied Appellant's application for MassHealth benefits because it determined that she had countable assets that exceeded program limits. See 130 CMR 520.016(B); Exhibit 1, p. 4-8. Appellant's son/attorney-in-fact appealed the notice in a timely manner on November 4, 2022. See 130 CMR 610.015(B); Exh. 1, pp. 3, 9-18. Denial of assistance and a request for an adjustment to the community spouse asset allowance are both valid grounds for appeal. See 130 CMR 520.017; 130 CMR 610.032. A hearing for the appeal was conducted on December 5, 2022 and the record remained open until December 15, 2022 for Appellant to submit additional evidence. See Exh. 3-6.

### Action Taken by MassHealth

MassHealth denied Appellant's application for long-term care benefits because it determined that her countable assets exceeded program limits.

## Issue

The issues on appeal are (1) whether MassHealth was correct in determining that Appellant's assets exceeded program limits, and (2) whether Appellant qualifies for an adjustment to the asset allowance.

## Summary of Evidence

A MassHealth eligibility representative appeared at the hearing via telephone and testified as follows: Appellant is over the age of 65 and a current resident of a skilled nursing facility. On September 23, 2022, MassHealth received an application on behalf of Appellant seeking coverage of long-term care benefits effective July 14, 2022. See Exh. 3, Attachment ("Attm.") B, p. 1. Appellant has a community spouse that lives in an assisted living facility. Id. On October 31, 2022, MassHealth denied Appellant's application because it determined that Appellant had countable assets that exceeded program limits. See Exh. 1, p. 4-8.

The MassHealth representative provided a detailed outline of the various asset amounts held by Appellant and her spouse, which came to a total of \$383,141.61. See Exh. 3, Attm. A. From the total asset amount, MassHealth subtracted the following amounts: \$1,256.00 and \$2,364.00 representing the monthly social security income of Appellant and her spouse, respectively; \$137,400.00 representing the Community Spouse Resource Allowance (CSRA); and \$2,000 for the applicant asset limit. See id. After the deductions, MassHealth concluded that Appellant had excess assets in the amount of \$240,121.61, rendering her ineligible for benefits. See id.

Two attorneys for Appellant appeared at hearing and argued that Appellant is entitled to a shift in the standard CSRA for her spouse may generate sufficient income to meet his minimum monthly maintenance needs, which would effectively render Appellant eligible for long-term care benefits.<sup>1</sup> According to counsel, the community spouse resides in an assisted living facility, which costs him \$8,775.00 per month. See Exh. 4; see also Exh. 7. Because the community spouse's high monthly maintenance needs expense is due to exceptional circumstances, i.e. declining health and medical needs requiring an assisted living level of care, he is entitled to an increase of the maximum monthly maintenance needs allowance. Appellant's attorneys argued that the community spouse's minimum monthly maintenance needs allowance (MMMNA) should thus be adjusted to \$8,775.00, the cost for him to remain in the community.

Counsel next argued that the community spouse is unable to meet his minimum monthly maintenance needs expense of \$8,775 with all income sources available. The spousal income available includes the community spouse's social security income of \$2,364.00 per month, Appellant's income of \$1,256.00 per month, and the potential income of \$504.83 per month that could be generated by interest earned on the standard asset allowance. The interest income was

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<sup>1</sup> Appellant's attorneys did not dispute the asset figures presented by MassHealth or its conclusion that Appellant had excess assets at the time of the 10/31/22 denial.

explained as follows: according to figures obtained via the Bank Rate Monitor Index, the deposit yield for a money market account as of the hearing date was 3.25% and the highest deposit yield quoted for any term not to exceed 2½ years was a certificate of deposit (CD) with a term of two-years at 4.50%. See Exh. 4; see also Exhs. 7-8. Applying these rates to the standard \$137,400.00 CSRA, the community spouse would generate \$27.98 per month if the first \$10,000 was held in a money market account, and an additional \$477.75 generated per month if the remaining \$127,400.00 were held in a CD. See Exh. 4. Thus, the total interest that the community spouse could earn from investing his standard asset allowance would still result in a monthly shortfall.

Appellant's attorney requested that the hearing officer increase the CSRA limit by the amount of additional assets that would generate sufficient income to remedy, or reduce, the community spouse's shortfall in meeting his monthly expense. Counsel submitted a spreadsheet showing that even if the community spouse were to retain the entire excess asset amount as part of the CSRA and invest it in a CD with a 4.5% interest rate, he will still be subject to a monthly income shortfall. See id. Therefore, the CSRA may be increased by the entire amount of excess assets.

In response, the MassHealth representative explained that MassHealth stood by the 10/31/22 decision, as MassHealth does not have authority to exceed the regulatory MMMNA or CSRA amounts which are imposed by federal standards. MassHealth indicated that because the application was denied, MassHealth did not calculate a spousal maintenance needs allowance (SMNA), as this is done for purposes of calculating a patient paid amount (PPA) and only when an individual has been deemed eligible for benefits. Had Appellant been financially eligible, MassHealth would have used the regulatory maximum of \$3,435.00 in ascertaining the community spouse's maintenance needs, which would result in an SMNA of all Appellant's social security income less other deductions.

The hearing record was left open until December 15, 2022, for Appellant to submit additional evidence.<sup>2</sup> See Exh. 5. During the record open period, Appellant submitted the following documentation: (1) verification of figures obtained from the Bank Rate Monitor Index which were used to calculate the possible interest income available, specifically 3.25% for average money market account, and 4.5% for a CD with a term of 2 years; (2) a letter from the community spouse's physician opining that it is medically necessary for the spouse to remain at an assisted living level of care due to his significant medical history and diagnoses, inability to function at an independent level, and need for assistance with various activities of daily living (ADLs); and (3) and a copy of the rental agreement between assisted living facility and community spouse, which verified the monthly rental fee and the included services. See Exhs. 6-9.

## Findings of Fact

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<sup>2</sup> The December 15<sup>th</sup> deadline includes one extension that was requested by Appellant and granted. All final submissions by Appellant were filed within the designated record open period.

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

1. Appellant is over the age of 65 and a current resident of a skilled nursing facility.
2. Appellant has a community spouse that lives in an assisted living facility.
3. On September 23, 2022, MassHealth received an application from Appellant seeking coverage of long-term care benefits effective July 14, 2022.
4. On October 31, 2022, MassHealth denied Appellant's application because it determined that Appellant and her spouse had countable assets that exceeded program limits.
5. After deducting a CSRA of \$137,400.00 and individual maximum asset limit of \$2,000, MassHealth found that Appellant had excess assets of \$240,121.61.
6. The community spouse pays \$8,775.00 per month to live in his assisted living facility.
7. The maximum monthly maintenance needs allowance per federal standards is \$3,435.00
8. It is medically necessary for the community spouse to remain at an assisted living level of care due to his significant medical history and diagnoses, inability to function at an independent level, and need for assistance with various ADLs.
9. Appellant and her spouse receive monthly social security income at \$1,256.00 and \$2,364.00, respectively.
10. As of the hearing date, the deposit yield quoted in the Bank Rate Monitor Index for a money market account was 3.25%.
11. The monthly income generated from investing the first \$10,000 of the CSRA in a 3.25% money market account is \$27.08 ( $10,000 \times .0325 \div 12 = 27.08$ ).
12. As of the hearing date, the highest deposit yield quoted in the Bank Rate Monitor Index for any term not to exceed 2½ years was 4.5% on a two-year certificate of deposit.
13. The monthly income generated from investing the remaining CSRA in a two-year CD with 4.5% deposit yield is \$477.75 ( $\$127,400 \times .0450 \div 12 = \$477.75$ ).
14. The monthly gross income of the community spouse, including the interest generated by the standard CSRA, is \$2,868.38 ( $2,364 + 27.08 + 477.75 = 2868.38$ ), which is insufficient to meet his monthly maintenance needs expense of \$8,775.00.

## **Analysis and Conclusions of Law**

In determining whether an institutionalized married applicant is financially eligible for MassHealth benefits, the MassHealth agency will assess the total amount of combined countable assets held by the applicant and/or their spouse. MassHealth includes all countable assets in this assessment, regardless of the form of ownership between the couple. See 130 CMR 520.016(B)(2). When an institutionalized applicant's spouse resides in the community, MassHealth will also determine the amount of assets that may be kept by the community spouse. This asset amount, otherwise referred to as the community spouse resource allowance (CSRA) is treated as unavailable to the institutionalized spouse for purposes of determining eligibility for MassHealth Standard. See id. The maximum CSRA permitted by regulation is \$137,400.00.<sup>3</sup>

Upon completing an asset assessment in this case, MassHealth valued Appellant's total asset amount at \$383,141.61. Included in this amount, however, was the most recent income payments for Appellant and her spouse of \$1,256 and \$2,364, respectively. As such, MassHealth did not consider the combined income total of \$3,620 in its countable asset calculation. From the countable asset amount of \$379,521.61, MassHealth deducted the standard CSRA of \$137,400.00, and the applicant's \$2,000 asset maximum, for a total excess countable amount of \$240,121.61. See Exh. 1. On this basis, MassHealth denied Appellant's application for long-term care services.

Appellant does not dispute that she and her spouse own assets in excess in the regulatory limits, stated above. Rather, Appellant has invoked her right under 130 CMR 520.017 to seek an increase in the standard CSRA. Appellant argues that she is entitled to an adjustment to the CSRA, such that it would reduce her excess asset amount to render her financially eligible for benefits. The relevant MassHealth regulation states the following:

130 CMR 520.017: Right to Appeal the Asset Allowance or Monthly-Maintenance Needs Allowance:

(A) Request for an Adjustment to the Community Spouse's Asset Allowance.

After the institutionalized spouse has applied for MassHealth Standard and has received a notice of approval or denial for MassHealth Standard, either spouse may appeal to the Board of Hearings to request an adjustment to the asset allowance. The purpose of the adjustment is to generate sufficient income, as determined by the MassHealth, for the community spouse to remain in the community.

(B) Minimum-Monthly-Maintenance-Needs Allowance

The minimum-monthly-maintenance-needs allowance is 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).

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<sup>3</sup> This is the figure MassHealth used throughout 2022, and applicable for all relevant times for purposes of this appeal. See <https://www.mass.gov/doc/eligibility-figures-for-residents-of-a-long-term-care-facility-2/download> (11/2/22).

(C) Adjustment of the Amount of Asset Allowance

If either spouse claims at a fair hearing that the amount of income generated by the community spouse's asset allowance as determined by the MassHealth is inadequate to raise the community spouse's income to the minimum-monthly-maintenance-needs allowance, the fair-hearing officer will determine the gross income available to the community spouse as follows.

- (1) The fair-hearing officer will determine the gross amount of income available to the community spouse. The fair-hearing officer includes the amount of the income that would be generated by the spouse's asset allowance if \$10,000 of the asset allowance were generating income at an interest rate equal to the deposit yield quoted in the Bankrate Monitor National Index as of the hearing date for money market accounts, and 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 Bankrate Monitor National Index as of the hearing date for any term not to exceed two and one-half years.
- (2) If the community spouse's gross income is less than the minimum-monthly-maintenance-needs allowance (MMMNA), then the fair-hearing officer will allow 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 to exceed, the MMMNA. 130 CMR 520.017(C)(2) will apply 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 will increase the community spouse's asset allowance by the amount of additional assets that, if invested at the highest rate quoted in the Bankrate Monitor Index as of the date of the hearing date, would generate sufficient income to raise the income total to the MMMNA.

Before determining what amount, if any, of Appellant's excess assets may be shifted to increase the spousal asset allowance, it is first necessary to ascertain the correct minimum monthly maintenance needs allowance (MMMNA) for the community spouse. Generally, the maximum MMMNA is capped at \$3,435.00 as set by federal standards and incorporated into MassHealth regulation. However, the fair hearing process allows for an applicant and/or their spouse to increase the MMMNA when exceptional circumstances exist. See 130 CMR 520.017(D)(1). Because the federal standard factors in necessities, such as shelter and utilities, "exceptional circumstances" must be "limited to necessities that arise from the medical condition, frailty, or similar special needs of the community spouse" and which cause significant financial duress. Id.

Based on evidence submitted, Appellant sufficiently demonstrated that exceptional circumstances exist to warrant an increase in the community spouse's MMMNA. Specifically, Appellant produced a letter from the community spouse's physician, opining that it is "medically necessary" for him to reside in an assisted living level of care due to his significant medical history and diagnoses, inability to function at an independent level, and need for assistance with various ADLs. See Exh. 6 at 2. The cost for the community spouse to reside in the assisted living facility is \$8,775.00 per month and because of limited income this causes him significant financial duress. See Exh. 7. As such, Appellant has demonstrated that her spouse's MMMNA may be increased to \$8,775 - which is the amount needed for him to remain in the community.

Next, Appellant sufficiently demonstrated that the community spouse does not have sufficient income to meet his MMMNA. See 130 CMR 520.017(C)(1). Specifically, the spouse receives \$2,364 per month in social security income. See Exh. 3, Attm. B. Additionally, using applicable Bank Rate Monitor Index figures, he could generate interest income of \$504.83 per month on the standard CSRA asset amount of \$137,400.00.<sup>4</sup> The combined income sources give the community spouse access to a total income of \$2,868.38 per month, which is insufficient to meet an MMMNA of \$8775.00.

Next, Appellant demonstrated that she is permitted to allocate her income, less specified deductions, to her spouse to the extent it will reduce his shortfall. See 130 CMR 520.017(C)(2). Appellant's income consists of a monthly social security payment of \$1,256.00. After deducting the personal needs allowance (PNA) of 72.80, the amount of Appellant's income that the community spouse may use to meet his MMMNA is \$1,183.20. Combining all income sources together (\$2,364 + \$504.83 + \$1,183.20), the community spouse has access to a total monthly income of \$4,052.03. The community spouse would still need additional income of \$4,722.97 to meet his MMMNA.

With a shortfall remaining, the CSRA may be increased by the amount of additional assets, that, if invested at the highest rate quoted in the Bankrate Monitor Index as of the hearing date, would generate sufficient income to raise the total to the MMMNA. See 130 CMR 520.017(C)(3). As evidenced at hearing, the highest rate quoted is 4.5% if deposited into a CD with a term of two-years. Investing Appellant's entire excess asset amount of \$240,121.61 under such terms, would yield an annual interest income amount of \$10,805.47, amounting to a monthly interest income amount of \$900.45. Combining the \$900.45 with the available income of \$4,052.03, gives the community spouse a total income amount of \$4,952.48. The income generated from the excess assets is still insufficient to meet his MMMNA. Therefore, the community spouse may retain all the excess assets for a total CSRA of \$377,521.61. Appellant does not have access to the adjusted CSRA amount.

The appeal is APPROVED.

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<sup>4</sup> As explained in the summary of evidence section, above, and pursuant to the criteria set forth in 130 CMR 520.017(C)(1), this interest income is achieved if the first \$10,000 were held in a money market account with a deposit yield of 3.25% and the remaining asset allowance of \$127,400.00 were placed in a 2 year CD with a deposit yield of 4.50%.



## **Order for MassHealth**

Rescind 10/31/22 notice. Allocate all excess assets to the community spouse resource allowance. Deem all assets in the adjusted CSRA as unavailable to Appellant pursuant to 130 CMR 520.016(B)(2). Proceed with eligibility determination.

## **Implementation of this Decision**

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

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Casey Groff, Esq.  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957, 978-863-9290

[REDACTED]