

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2309098
Decision Date:	11/09/2023	Hearing Date:	10/18/2023
Hearing Officer:	Christine Therrien		

Appearance for Appellant:



Appearance for MassHealth:

Evelyn Daniel



*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:	Approved	Issue:	LTC – Over Assets
Decision Date:	11/09/2023	Hearing Date:	10/18/2023
MassHealth's Rep.:	Evelyn Daniel	Appellant's Rep.:	██████████
Hearing Location:	Tewksbury MassHealth Enrollment Center Telephonic		

Authority

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

Jurisdiction

The appellant received a notice dated 9/19/23 stating that MassHealth has denied your application for MassHealth Standard Long-Term Care benefits because you have more countable assets than MassHealth allows. You must spend \$202,421.76 of your assets. (Exhibit 1).¹ The appellant filed this appeal timely on 9/29/23. (130 CMR 610.015(B); Exhibit 2). Denial of assistance is valid grounds for appeal. (130 CMR 610.032).²

Action Taken by MassHealth

¹ The notice on appeal adds \$2.00 to the total amount of assets but does not account for where the \$2.00 comes from. The notice states that the over-asset amount is \$2.00 more than it should be based on the assets in the appellant's bank account. A second notice submitted with the appeal shows assets that include \$2.00 for real estate and \$1.00 for a trust. The appellant's attorney testified that these do not exist. Total assets are the bank account of \$353,038.76 and will be used as the basis for this appeal.

² The hearing officer was notified that the appellant passed away on ████████ 23. Since the appeal concerns excess assets due to the Spousal Maintenance Needs Allowance (SMNA) that was calculated for the appellant's Community Spouse, the death of the appellant will have no impact on this decision. The decision impacts both the now-deceased appellant and his living spouse. 130 CMR 520(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 Office of Medicaid Board of Hearings to request an adjustment to the asset allowance.** (Emphasis added)

MassHealth denied the appellant's application for long term care (LTC) benefits because of excess assets.

Issue

Is the Community Spouse entitled to have the Community Spouse's asset allowance increased and is the amount sufficient to render the Institutionalized Spouse eligible for MassHealth?

Summary of Evidence

The MassHealth representative testified that the appellant applied for LTC benefits on [REDACTED] 23. The MassHealth representative explained that, under the regulations, the Community Spouse is allowed to retain half of the assessed marital assets, not to exceed \$109,560.00 and the Institutionalized Spouse is allowed to retain \$2,000.00.

The appellant's representative submitted a brief that outlined the reason why the Community Spouse should be eligible to retain all the assets. Under 130 CMR 520.017 (A) and (C), the Community Spouse may include as part of the monthly income the amount of interest income generated by any asset allowance³. If that monthly income is still below the Minimum Monthly Maintenance Needs Allowance (MMMNA), then the Community Spouse is entitled to the Institutionalized Spouse's income (after reduction of the \$72.80 Personal Needs Allowance (PNA)) in an amount that would increase the Community Spouse's total income to a level equal to the MMMNA. If the Community Spouse's gross income is still less than the MMMNA, the 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 Monitoring Index (BRMI), would generate sufficient income to raise the income total to the MMMNA. (Exhibit 2).

The record establishes that the Institutional Spouse (the appellant) and the Community Spouse have total assets of \$353,038.76. MassHealth determined that the Community Spouse may retain assets in the amount of \$148,620.00 and the Appellant is allowed \$2,000.00, for total household noncountable assets of \$150,620.00 and excess assets of \$202,418.76. MassHealth determined that the Community Spouse's income to be \$1,867.00 a month⁴ and the appellant's income was

³ If the combined total assets are less than \$109,560, the Community Spouse may retain all the assets. (130 CMR 520.016(B)(2)(a)(1)).

⁴ 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 Bank Rate 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 Bank Rate Monitor national index as of the hearing date for any term not to exceed two and one-half years. (130 CMR 520.017(c)(1)).

determined to be \$767.00 a month (Social Security). MassHealth calculated the Community Spouse's MMMNA to be \$3,715.50 (Exhibit 5).

The appellant's representative testified that the Community Spouse does not have sufficient income to meet the MMMNA and therefore she is entitled to the appellant's income as well as all the assets.

Findings of Fact

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

1. The appellant applied for MassHealth LTC benefits on [REDACTED] 23.
2. The countable assets of the appellant and the Community Spouse are \$353,038.76, of which the appellant is entitled to retain \$2,000.00, and the Community Spouse may retain \$148,620.00, leaving \$202,418.76 in excess assets.
3. The appellant's personal needs allowance (PNA) is \$72.80 a month.
4. The appellant's monthly income is \$694.20 (\$767- \$72.80 PNA).
5. The Community Spouse's MMMNA is \$3,715.50 determined as follows:

Rent/mortgage	\$ 2288.00
Taxes and insurance	\$.00
Required Condo Charge	\$.00
Utility allowance	+ \$.00
Total shelter costs	= \$ 2288.00
Federal shelter standard (subtract)	- \$ 739.50
Excess shelter costs	= \$ 1548.50
Standard Maintenance Allowance	+ <u>\$ 2465.00</u>
MMMNA	= <u>\$3,715.50</u>

6. The Community Spouse's income is \$1,867.00.
7. The highest rate quoted in the Bank Rate Monitor Index for a money market account as of the date of the hearing is .62%.⁵
8. The monthly income generated from the first \$10,000.00 of the Community Spouse's assets

⁵ The appellant's representative supplied rates which were verified after the hearing.
<https://www.bankrate.com/banking/money-market/rates/>

is \$5.17 ($\$10,000.00 \times .62\% \div 12$).

9. The highest deposit yield quoted in the Bank Rate Monitor Index as of the hearing date for any term not to exceed 2½ years is 2.08%.
10. The monthly income generated from the Community Spouse's remaining allowable assets is \$240.27 ($\$138,620.00 \times 2.08\% \div 12$).
11. The total monthly gross income of the Community Spouse, including the interest generated by her share of the assets is \$2,112.44 ($\$1,867 + \$5.17 + \240.27).
12. The Community Spouse requires an additional \$1,603.06 of income ($\$3,715.50 - \$2,112.44$) to meet the MMMNA.
13. The Community Spouse is entitled to the appellant's income (\$694.20) to increase the level of monthly income to the MMMNA.
14. The Community Spouse's gross monthly income plus the appellant's income equals \$2806.64 ($\$2,112.44 + \694.20) which is below the MMMNA (\$3,715.50) by \$908.86.
15. The excess assets generate an additional \$350.86 ($\$202,421 \times 2.08\% = \$4,210.32 \div 12 = \$350.86$).

Analysis and Conclusions of Law

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 MassHealth, for the Community Spouse to remain in the community. (130 CMR 520.017(A)).⁶ The appellant applied for MassHealth on [REDACTED] 23. The

⁶ 130 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 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). (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

Community Spouse's monthly income includes the amount of interest income generated by any asset allowance. If that monthly income is still below the MMMNA, then the Community Spouse is entitled to the institutionalized spouse's income, (after a reduction of the \$72.80 PNA) in an amount that would increase the Community Spouse's total income to a level equal to the MMMNA. Finally, if the Community Spouse's gross income is still less than the MMMNA, the hearing officer will increase the Community Spouse's asset allowance by the amount of additional assets that, if invested at the highest deposit yield quoted in the Bank Rate Monitor Index as of the hearing date for any term not to exceed 2½ years, would generate sufficient income to raise the income total to the MMMNA. (130 CMR 520.017(C)(2).

On appeal, the appellant's representative asserts that the Community Spouse's income fails to meet established expenses. The Community Spouse has a total income of \$2,112.44, including interest generated by the Community Spouse asset allowance. The difference between the Community Spouse's total income and the MMMNA is \$1,603.06. The regulations dictate MassHealth considers the institutionalized spouse's income to generate additional income for the Community Spouse. The appellant has an income of \$694.20. Accordingly, the Community Spouse retains the appellant's income to meet the MMMNA. (130 CMR 520.017(C)(2).

After adding the appellant's income to the Community Spouse's income, the total income is still less than the MMMNA by \$908.86 (\$3,715.50 - \$2,112.44 - \$694.20). Because the Community Spouse's income is still less than the MMMNA, the regulations allow that excess assets may be used to generate income for the Community Spouse. The excess assets generate an additional \$350.86. When the income generated by the excess assets is not sufficient to meet the MMMNA the Community Spouse may also retain all excess assets. (130 CMR 520.017(C)(3).

This appeal is APPROVED to allow the Community Spouse to retain the appellant's income and all household's excess assets.

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 Bank rate 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 Bank Rate 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 Bank Rate Monitor Index as of the date of the hearing date, would generate sufficient income to raise the income total to the MMMNA.

Order for MassHealth

Allocate all income (minus PNA) and excess assets to the Community Spouse.

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, MassHealth of Medical Assistance, at the address on the first page of this decision.

Christine Therrien
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center