

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2309821
Decision Date:	12/4/2023	Hearing Date:	11/13/2023
Hearing Officer:	Christopher Jones	Record Open to:	11/29/2023

Appearance for Appellant:

 Esq.

Appearance for MassHealth:

Elizabeth Rodriguez -Tewksbury Ongoing



*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:	Over-65; Ongoing; Excess Assets; CSRA
Decision Date:	12/4/2023	Hearing Date:	11/13/2023
MassHealth's Rep.:	Elizabeth Rodriguez	Appellant's Rep.:	██████████ Esq.
Hearing Location:	Remote	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 September 29, 2023, MassHealth terminated the appellant's long-term-care benefits effective September 29, 2023, because the appellant had more countable assets than were allowed. (Exhibit 1; 130 CMR 520.003, 520.016.) The appellant filed this timely appeal on October 16, 2023. (Exhibit 2; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth terminated the appellant's long-term-care benefits because he had assets in excess of \$2,000.

Issue

The appeal issue is whether MassHealth was correct pursuant to 130 CMR 520.003, 520.016 in determining the appellant's assets were in excess of the relevant asset limits.

Summary of Evidence

The appellant was approved for MassHealth long-term-care benefits on July 3, 2023, starting on April 19, 2023. MassHealth's representative testified that the caseworker who approved the case

was no longer working with the agency, and that the notes left in the system were not very clear. She testified that the notice was automatically generated by a computer system, and that no one reviewed the case in order to cause the termination notice to be issued. Her guess was that the worker who approved the case did so because the joint assets were below the Community Spouse Resource Allowance ("CSRA"), but the appellant needed to transfer assets into an account that was solely in the community spouse's name. However, she could not confirm that was the case, and did not know what resources were being considered when the termination notice was sent out. She asked for updated asset verifications for the appellant to allow the case to be reinstated.

The appellant's attorney explained that they had transferred all assets out of the appellant's name to the community spouse prior the approval notice from July, and it was not a problem to verify the assets were below \$2,000 at that time. He testified that he had been told by a MassHealth worker that the issue was just that the appellant's income had built up in a joint revocable trust account. The appellant had decided to leave this revocable trust account open because it was where the appellant and the community spouse had their income deposited, and they felt it would be too difficult to get their Social Security income deposited elsewhere. MassHealth's representative asked that the appellant submit asset verifications from the benefits-request date (April 19, 2023) all the way through to the present.

The appellant submitted the asset verifications, showing that the joint trust account has never had an ending balance above \$2,000 plus the income deposited for that month. The community spouse's account also remained below the CSRA when income was excluded. In October, the institutionalized spouse transferred over their asset allowance of \$2,000 in addition to the income received.¹ MassHealth's representative confirmed that the appellant was always under assets and should not have been terminated, but she argued that the community spouse was over the CSRA as of October 31, 2023. She noted that the closing balance of the community spouse's October statements showed total resources of \$153,763.64. The statements also show that the community spouse's account realized \$6,971.89 in income. MassHealth insisted that the community spouse needed to reduce her assets below the CSRA in order for MassHealth to reinstate the appellant's eligibility.

If all deposits into the community spouse's account are treated as income, the ending assets for October in the community spouse's account is only \$143,725.98. Alternately, if all resources are reviewed together, the total assets as of October 31, 2023, were \$154,763.67. The total income in October was \$4,266.57. This would result in combined resources of \$150,497.10. If the CSRA of \$148,620 is combined with the institutionalized spouse's asset limit of \$2,000, the couple's total assets limit is \$150,620.

¹ The accounting between the two accounts is complicated because income is deposited into the joint trust account in one month and moved into the community spouse's account in the next month. Generally, the stable retirement income is \$4,065.80; additional deposits fluctuate monthly due to interest.

MassHealth was asked to produce a copy of the intake approval, and it was asked to address why income was not being excluded from their asset calculation. Unfortunately, MassHealth's representative at the hearing left her position during the record open process, and no other representatives from MassHealth responded beyond submitting a copy of the July 3, 2023, approval notice.

The appellant's attorney argues first that the community spouse is allowed to be over the CSRA after the initial approval of the institutionalized spouse, and that even if she were not, she is in fact under the CSRA. The appellant's attorney further reported that MassHealth issued a new termination notice, presumably premised upon the community spouse's assets.

Findings of Fact

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

1. The appellant was approved for long-term-care benefits as of April 19, 2023, through a July 3, 2023, notice from MassHealth. (Exhibit 6.)
2. MassHealth's computer system erroneously issued a termination notice dated September 29, 2023, indicating that the institutionalized spouse's assets were over \$2,000. (Exhibits 1; 5; testimony by MassHealth's representative.)
3. The institutionalized spouse's assets have never exceeded \$2,000 since he was approved for long-term-care benefits on July 3, 2023. (Exhibit 8.)
4. When treated separately, the community spouse's ending balance in October 2023 was \$153,763.64. She received deposits of \$6,971.89. (Exhibit 7.)
5. If both spouse's resources are combined, the accounts at the end of October 2023 held \$154,763.67, and the combined income between both accounts was \$4,266.57. (Exhibits 7; 8.)

Analysis and Conclusions of Law

For an institutionalized individual applying for long-term-care benefits, MassHealth has an asset limit of \$2,000. (130 CMR 520.016(A).) Where the applicant has a spouse in the community, that spouse may keep significantly more asset, and those assets are not counted against the institutionalized spouse, as long as they are in the community spouse's name alone. (130 CMR 520.016(B).) Assets that remain in the institutionalized spouse's name during the application process must be transferred "no later than 90 days immediately after the date of the notice of approval of MassHealth Standard" in order to continue to be excluded as the community spouse's asset allowance. After this 90-day window MassHealth "counts all assets that remain in the institutionalized spouse's name in determining his or her eligibility." (130 CMR 520.016(B)(3)(e).)

It is also important to distinguish between assets and income. (See 130 CMR 520.007; 520.009.) Generally, income cannot be counted toward assets in the month it is received. (See e.g., 130 CMR 520.007(J); 520.009(E).)

MassHealth's representative explained that the termination was automatically generated by the computer system, likely because the intake worker who approved the case did not turn off some automatic verification trigger. The appellant's assets were reduced during the initial application process, and they have never again exceeded \$2,000 when income is properly excluded. Therefore, the September 29 termination notice should never have been issued. This appeal is APPROVED. MassHealth shall reinstate the appellant's long-term-care coverage back to the date of termination.

MassHealth's determination that the appellant's community spouse's assets warrant his termination is also faulty. MassHealth's representative refused to reinstate the appellant's coverage during the appeal process because she determined that the appellant's community spouse's assets exceeded the CSRA at the end of October.²

(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;^[3]

² In the normal course of business, a fair hearing decision may only address the discreet agency action under review and may not mandate agency practices or procedure. (See 130 CMR 610.032; 610.082(C).) However, MassHealth issued a new termination notice based upon the evidence submitted in this hearing without first reinstating the appellant's benefits. This means MassHealth's subsequent action is premised upon the evidence in review here, and it is appropriate for this decision to evaluate MassHealth's assessment of this hearing's record.

³ This figure is updated annually by the Centers for Medicare and Medicaid Services. The current figure is \$148,620.

...

(b) **Compare the amount of the remaining assets to the MassHealth asset standard for one person, which is \$2,000.** When the amount of the remaining assets is equal to or below \$2,000, the institutionalized spouse has met the asset test of eligibility.

(130 CMR 520.016(B)(2) (emphasis added).)

MassHealth was only able to determine that the community spouse's assets were excess of the CSRA by ignoring both the institutionalized spouse's assets and the couple's monthly income. If the community spouse's account were reviewed on its own; all deposits into that account must be treated as income in the month deposited. The resulting countable assets in the community spouse's account is only \$143,725.98; less than the CSRA of \$148,620. The income for the community spouse was artificially inflated in that month because the appellant transferred over their asset allowance in order to alleviate any confusion regarding their asset eligibility. If the couple's resources were treated together, their combined assets, less income, is still below their combined asset threshold. Therefore, MassHealth's determination that the appellant could not be reinstated because their spouse's assets exceeded the CSRA is incorrect.⁴

Order for MassHealth

Rescind the September 29, 2023, termination notice. Reinstate the appellant's long-term-care coverage and review his eligibility in the normal course of business during his next eligibility review.

⁴ This factual determination takes no position on the question of whether the agency may terminate an institutionalized spouse's coverage based upon the community spouse's post-eligibility resources. It has been found that MassHealth may only review the community spouse's resources as of "the date of the beginning of the most recent continuous period of institutionalization of one spouse," or "the time that the institutionalized spouse applies" for long-term-care coverage. (Appeal No. 1817693; see 130 CMR 520.016(B); 42 USC § 1396r-5(c).)

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.

Christopher Jones
Hearing Officer
Board of Hearings

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