

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2400675
Decision Date:	4/4/2024	Hearing Date:	02/06/2024
Hearing Officer:	Scott Bernard	Record Open To:	04/03/2024

Appearance for Appellant:




Appearance for MassHealth:
Joanne Weldon *via* telephone



*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:	Long Term Care/Excess Assets
Decision Date:	4/4/2024	Hearing Date:	02/06/2024
MassHealth's Rep.:	Joanne Weldon	Appellant's Rep.:	
Hearing Location:	Taunton MassHealth Enrollment Center	Aid Pending:	N/A

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 January 2, 2024, MassHealth denied the appellant's application for MassHealth LTC benefits because it determined that the appellant had more countable assets than MassHealth allowed. (See 130 CMR 520.003; 520.004; and Exhibit (Ex.) 1, pp. 4-8; Ex. 2, pp. 4-8; Ex. 5, pp. 5-6, 7-10). The appellant filed this appeal in a timely manner on January 12, 2024. (See 130 CMR 610.015(B); Ex. 1; Ex. 2). Denial of assistance is valid grounds for appeal. (See 130 CMR 610.032). After the hearing concluded, the record remained open until March 19, 2024 in order to permit the appellant's attorney to submit further evidence. (Ex. 8; Ex. 9; Ex. 10). The record was reopened on April 2, 2024 in order to make an inquiry to both parties, and closed on April 3, 2024. (Ex. 8).

Action Taken by MassHealth

MassHealth denied the appellant's application for LTC benefits because her countable assets were over the allowable asset limit for her and the community spouse.

Issue

The appeal issues are whether MassHealth was correct, pursuant to 130 CMR 520.016, in determining that the appellant's assets exceeded MassHealth's countable asset limit; and whether the appellant is eligible for an adjustment to her assets allowing her to become eligible for MassHealth.

Summary of Evidence

The appellant was represented by her two attorneys¹ and MassHealth was represented by a worker from the Taunton MassHealth Enrollment Center (MEC). All the representatives attended the hearing by telephone.

The MassHealth representative testified to the following. The appellant is an individual who is over the age of 65 with a spouse living in the community. (Testimony; Ex. 5, p. 4). The appellant submitted an application for MassHealth Long Term Care (LTC) services on September 25, 2023 seeking a start date of June 1, 2023. (Ex. 5, pp. 3, 4; Testimony). The appellant and the community spouse have assets which total \$306,882.00, consisting of bank accounts and securities. (Testimony; Ex. 5, pp. 16-17). The community spouse is permitted to retain \$154,140 of these assets, and the appellant is permitted to retain \$2,000.00 (Testimony). Excluding these figures, the appellant has excess assets of \$150,742 and MassHealth determined that the appellant was not eligible for LTC for that reason. (Testimony; Ex. 1). The community spouse lives in an assisted living facility and has expenses of around \$13,000.00 per month. (Testimony). The community spouse is seeking to retain both the excess assets and the appellant's income (less the personal needs allowance) in order to cover the cost of his continuing to live in the community. (Testimony). While this would lower the appellant's assets below the countable asset limit, the MassHealth representative stated that she did not have the power to approve this. (Testimony).

The appellant's attorneys testified to the following. The appellant was seeking an increased resource allowance for the community spouse, requesting that he retain all of the appellant's income, as well as the excess assets due to exceptional circumstances. The community spouse is also over the age of 65 years old. (Testimony). The community spouse experiences both cognitive impairments and physical ailments including coronary artery disease. (Testimony; Ex. 4, p. 47). The community spouse experiences complications from prior bladder cancer surgery that has left him dependent upon the use of a urostomy bag. (Id.). Unfortunately, due to his illnesses, the community spouse requires assistance with a wide range of activities of daily living, as well as managing his urostomy care. (Testimony). While he was able to do that independently in the past, his cognitive decline has seriously impaired his ability to care for himself. (Testimony). The community spouse is not able to live in the community without extensive assistance. (Testimony).

¹ Another attorney from the appellant's attorneys' offices observed but did not otherwise participate in the hearing.

Prior to the hearing, the appellant's attorneys submitted a Residency and Services Agreement from the community spouse's assisted living facility (ALF); letters of medical necessity from the community spouse's primary care physician (PCP) and a social worker assisting with the community spouse's geriatric care; a service agreement for private home care from a certified homecare agency; and an invoice for that homecare assistance. (Ex. 4; Ex. 6; Ex. 7).

According to the letter from the community spouse's PCP, it is medically necessary for the appellant to live in an assisted living facility (ALF). (Testimony; Ex. 4, p. 47). The PCP wrote that the nursing staff at the ALF assists the community spouse with activities of daily living (ADLs) as well as being an indispensable resource for monitoring the community spouse's condition particularly concerning ongoing issues with his urostomy care and reporting these concerns to the PCP. (Id.). The monthly cost of the community spouse's ALF is \$11,205.00. (Testimony; Ex. 4, p. 32). According to the community spouse's geriatric care social worker, he also requires private care from a certified homecare agency. (Testimony; Ex. 4, p. 49). These caregivers provide 12 hours per day of medical assistance of various sorts. (Ex. 6, p. 8; Ex. 7, p. 8). The social worker wrote that they trialed discontinuing the private care, but the appellant was not able to manage his urostomy himself and experienced a decline to his health. (Testimony; Ex. 4, p. 49). These services cost \$3,024.00 per week or \$12,096.00 per month. (Testimony; Ex. 6, p. 14). The appellant's attorneys argued that these are uncovered medical expenses and should be considered exceptional circumstances warranting an increase in the minimum monthly maintenance needs allowance (MMMNA). They further stated that without that increase, the community spouse would face significant financial duress.

The appellant's attorneys continued by stating that the appellant's gross monthly income is \$1,525.00, consisting of her Social Security retirement benefits. (Testimony; Ex. 8). The community spouse's monthly income is \$6,644.00 consisting of Social Security and pensions. (Testimony; Ex. 8). The community spouse and the appellant's combined monthly income (less \$72.80 deduction for the Personal Needs Allowance (PNA) is only \$8,096.20. (Testimony). This does not cover the community spouse's increased expenses. (Testimony). The appellant's attorneys asked that the community spouse be allowed to retain all of the appellant's income. (Testimony). Additionally, they stated, there continues to be a shortfall even if all of the appellant's, income is shifted to the community spouse. (Testimony). For that reason the appellant's representative requested that the community spouse be permitted to retain all assets in order to generate enough income to meet that shortfall. (Testimony).

The record remained open until March 19, 2023 in order to allow the appellant's attorney and the appellant's representative to submit additional evidence. (Ex. 8). After an inquiry from the hearing officer, the appellant's attorneys submitted the deposit yield for money market accounts quoted in Bank Rate Monitor Index as of the date of the hearing, which was 0.60%. (Id.). They also submitted the highest deposit yield for a CD with a term not to exceed 2½ years quoted in the BRMI on the date of the hearing, which was 1.92%. (Id.). Finally, the appellant's attorneys submitted other decisions from Board of Hearings appeals that they felt supported their arguments. (Ex. 9; Ex. 10).

Findings of Fact

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

1. The appellant is an individual who is over the age of 65 with a spouse living in the community. (Testimony; Ex. 5, p. 4).
2. The community spouse is also over the age of 65 years old and resides in an ALF. (Testimony).
3. The appellant submitted an application for LTC services on September 25, 2023 seeking a start date of June 1, 2023. (Ex. 5, pp. 3, 4; Testimony).
4. The appellant's gross monthly income is \$1,525.00, consisting of her Social Security retirement benefits. (Testimony; Ex. 8).
5. The community spouse's gross monthly income is \$6,644.00 consisting of Social Security and pensions. (Testimony; Ex. 8).
6. The appellant and the community spouse have assets which total \$306,882.00, consisting of bank accounts and securities. (Testimony; Ex. 5, pp. 16-17).
7. The community spouse is permitted to retain \$154,140.00 of these assets, and the appellant is permitted to retain \$2,000.00. (Testimony).
8. Excluding these figures, the appellant has excess assets of \$150,742.00. (Testimony).
9. The community spouse pays \$11,205.00 per month to live in the ALF. (Testimony; Ex. 4, p. 32).
10. The nursing staff at the ALF assists the community spouse with ADLs as well as monitoring the community spouse's condition particularly concerning ongoing issues with his urostomy care and reporting these concerns to the community spouse's PCP. (Testimony; Ex. 4, p. 47).
11. The community spouse also pays \$12,096.00 per month for private care from a certified homecare agency. (Testimony; Ex. 6, p. 14).
12. The private care consists of 12 hours per day of medical assistance of various sorts. (Testimony; Ex. 4, p. 49).
13. During a trial discontinuance of this private care, the appellant was not able to manage his urostomy himself and experienced a decline to his health. (Testimony; Ex. 6, p. 14).

14. As of the date of the hearing, the Bank Rate Monitor Index quoted interest rates of .60% for money market accounts and 1.92% for 2½ year CDs. (Ex. 8).

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. (130 CMR 520.016). MassHealth includes all countable assets in this assessment, regardless of the form of ownership between the couple. (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 the community spouse may keep. (Id.). This asset amount, referred to as the community spouse resource allowance (CSRA), is treated as unavailable to the institutionalized spouse for the purposes of determining the institutionalized spouse's eligibility for MassHealth Standard. (Id.). The maximum CSRA permitted by regulation is \$154,140.00 in 2024. (See 130 CMR 516.016(B)(2)(a)¹²).

Upon completing an asset assessment in this case, MassHealth determined that the total value of the appellant and the community spouse's assets was \$306,882.00. From this total, MassHealth deducted the CSRA of \$154,140.00, and the applicant's \$2,000 asset maximum. This meant that the value of the remaining assets was \$150,742.00, which exceeds the countable asset limit of \$2,000 for an institutionalized individual. It was for this reason that MassHealth denied the appellant's application for LTC services.

The appellant's attorneys did not dispute that the appellant and her spouse own assets in excess of above stated regulatory limits. Rather, the appellant's attorneys requested that the CSRA be increased in accordance with 130 CMR 520.017, thereby reducing the appellant's excess assets amount below the countable asset limit. The result of this would be that the appellant would become eligible for LTC benefits.

130 CMR 520.017 concerns the "Right to Appeal the Asset Allowance or Minimum-monthly-maintenance-needs Allowance" and states the following:

(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. The purpose of the adjustment is to generate sufficient income, as determined by the MassHealth agency, for the community spouse to remain in the

² As modified by <https://www.mass.gov/info-details/program-financial-guidelines-for-certain-masshealth-applicants-and-members#eligibility-figures-for-residents-of-a-long-term-care-facility> (last accessed on April 3, 2024)).

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 agency is inadequate to raise the community spouse's income to the minimum-monthly-maintenance-needs allowance, the fair-hearing officer determines the gross income available to the community spouse as follows

(1) The fair-hearing officer determines 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 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 Index as of the hearing date for any term not to exceed 2 1/2 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 2½ years, would generate sufficient income to raise the income total to the MMMNA.

(D) Adjustment to the Minimum-monthly-maintenance-needs Allowance Due to Exceptional Circumstances. After the institutionalized spouse has received notice of either approval or denial for MassHealth Standard, either spouse may appeal to the Office of Medicaid Board of Hearings the calculation of income available to the community spouse and request an increase in the MMMNA, based on exceptional circumstances, as defined in 130 CMR 520.017(D)(1).

(1) Exceptional Circumstances. Exceptional circumstances exist when there are circumstances other than those already taken into account in establishing the maintenance standards for the community spouse under 130 CMR 520.026(B) and these circumstances result in significant financial duress. 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.

(a) In determining an increased MMMNA, the fair-hearing officer ensures that no expense (for example, for food or utilities) is counted more than once in the calculation.

(b) If the community spouse lives in an assisted-living facility or similar facility and requests an increase in his or her minimum-monthly-maintenance-needs allowance, the fair-hearing officer reviews the housing agreement, service plan, fee schedule, and other 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.

(2) Determination of Increase for Exceptional Circumstances. If the fair-hearing officer determines that exceptional circumstances exist, the fair-hearing officer may increase the community spouse' MMMNA to meet the expenses caused by the exceptional circumstances as follows.

(a) The fair-hearing officer first verifies that the calculation of the gross income of the community spouse in determining the existing spousal-maintenance-needs deduction includes the income generated by the community spouse's asset allowance. If the community spouse has no assets remaining from the allowance, he or she must verify the dollar amount of the remaining assets, if any, and how the money was spent. The fair-hearing officer considers how the assets were spent in determining whether or not significant financial duress exists.

(b) The fair-hearing officer determines the revised MMMNA by including in the calculation the amount needed to meet the exceptional circumstances.

(c) The fair-hearing officer compares the revised MMMNA to the community spouse's total income. If the community spouse's total income is less than the amount of the revised MMMNA, the fair-hearing officer first deducts the personal-needs allowance from the institutionalized spouse's countable-income amount and then a spousal-maintenance-needs deduction needed to

reach the revised MMMNA.

Before determining what, if any, of the appellant's excess assets may be shifted to increase the community spouse's asset allowance, it is first necessary to ascertain the community spouse's correct minimum monthly maintenance needs allowance (MMMNA). There is generally a cap in place for the MMMNA, which is presently \$3,853.00. (See 130 CMR 520.026(B)(2)³). Through a fair hearing, a MassHealth applicant and/or their spouse may request that this number be increased when "exceptional circumstances" exist. Since MassHealth already factors in such necessities as food, shelter, clothing, and utilities in calculating the MMMNA, exceptional circumstances are limited to those necessities that arise from the medical condition, frailty, or similar special needs of the community spouse and which cause significant financial duress.

Based on evidence submitted, a preponderance of the evidence demonstrates that exceptional circumstances exist warranting an increase in the community spouse's MMMNA. A letter from the community spouse's PCP states that it was medically necessary for the community spouse to reside in an ALF because he needs assistance with ADLs, and needs to have his health condition monitored. A letter from the community spouse's geriatric care social worker states that it was medically necessary for the community spouse to receive 12 hours per day of additional care from private care workers to provide assistance with his medical care beyond what the ALF is able to provide. The social worker took pains to explain that a trialed reduction in these services resulted in a decline in the community spouse's health. The combined cost of the above to the community spouse is \$23,301.00 per month and because of the community spouse's limited income the cost causes him significant financial duress. The record therefore shows that exceptional circumstances do exist and therefore the community spouse's MMMNA should be increased to \$23,301.00, which is the amount he requires to remain in the community.

A preponderance of the evidence shows that the community spouse does not have sufficient income to meet this MMMNA. The community spouse's gross monthly income is \$6,644.00. Applying the Bank Rate Monitor Index quoted interest rate of .60% for money market accounts to the first \$10,000 of the CSRA would generate \$5 per month. Applying the Bank Rate Monitor Index quoted interest rate of 1.92% for 2½ year CDs to the remaining part of the CSRA, \$144,140, would generate \$230.62 per month. The combined income gives the community spouse only \$6,879.62 per month. This is well under the community spouse's MMMNA of \$23,301.00.

A preponderance of the evidence shows that the appellant should be permitted to allocate her income, less specific deductions, to the community spouse to the extent it will reduce his shortfall. The appellant's gross monthly income is \$1,525.00, consisting of her Social Security retirement

³ The current maximum MMMNA, which is updated on an annual basis, became effective January 1, 2024. (See [https://www.mass.gov/info-details/program-financial-guidelines-for-certain-masshealth-applicants-and-members#figures-used-to-determine-minimum-monthly-maintenance-needs-allowance-\(mmmna\)](https://www.mass.gov/info-details/program-financial-guidelines-for-certain-masshealth-applicants-and-members#figures-used-to-determine-minimum-monthly-maintenance-needs-allowance-(mmmna))) (last accessed on April 3, 2024).

benefits. After deducting the PNA of \$72.80⁴, the amount of the appellant's income that the community spouse may use to meet his MMMNA is \$1,452.20. Combining all income sources together (\$6,644.00 + \$5.00 + \$230.62 + \$1,452.20), the community spouse would have access to monthly income totaling \$8,332. The community spouse would still need additional income of \$14,914.18 to meet his MMMNA.

With a shortfall continuing to exist despite the above, the regulations permit the CSRA to be increased by the amount of all the remaining assets, which if invested at the highest rate quoted in the Bankrate Monitor Index as of the hearing date, would generate income sufficient to raise the total to the MMMNA. As evidenced at hearing, the highest rate quoted is 1.92% if deposited into a CD with a term of 2½ years. Investing the appellant's entire excess asset amount of \$150,742 under such terms, would yield annual interest income of \$4,610.33, amounting to monthly income of \$241.18. Combining this with the available income of \$8,332, would give the community spouse income totaling \$8,573. The income generated from the excess assets therefore is still insufficient to meet his MMMNA. For that reason, the community spouse may retain the excess asset amount of \$150,742.00, rendering the appellant asset eligible for MassHealth.

For the above stated reasons, the appeal is APPROVED.

Order for MassHealth

Rescind the notice dated January 2, 2024. Allocate the appellant's income, less \$72.80, and the excess asset amount of \$150,742 to the community spouse. Issue a notice approving the appellant for LTC benefits establishing a coverage start date, and patient paid amount based on the above.

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.

Scott Bernard
Hearing Officer
Board of Hearings

⁴ The PNA is described at 130 CMR 520.026(A).

cc:

Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA
02780

