

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2406795
Decision Date:	7/1/2024	Hearing Date:	05/30/2024
Hearing Officer:	Susan Burgess-Cox	Record Open to:	06/21/2024

Appearance for Appellant:



Appearance for MassHealth:

Roberta Noland & Karen Ryan



*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:	Patient Paid Amount
Decision Date:	7/1/2024	Hearing Date:	05/30/2024
MassHealth's Rep.:	Roberta Noland & Karen Ryan	Appellant's Rep.:	
Hearing Location:	All Parties Appeared by Telephone		

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 April 16, 2024, MassHealth determined that the appellant is not eligible for long-term care coverage because the appellant's countable assets are over the program limit. (130 CMR 520.016(B); Exhibit 1). The appellant's attorney-in-fact filed a timely appeal on April 29, 2024. (130 CMR 610.015(B); Exhibit 2; Exhibit 3). The Board of Hearings scheduled a hearing for May 30, 2024. (Exhibit 4). The record was held open until June 21, 2024 to give the parties the opportunity to present additional evidence. (Exhibit 6).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth long-term care benefits because the appellant's countable assets are over the program limit.

Issue

Whether MassHealth was correct in determining that the appellants' countable assets are over the program limit and whether the appellant's spouse qualifies for an adjustment to the Monthly Maintenance Needs Allowance and Asset Allowance. (130 CMR 520.017).

Summary of Evidence

All parties appeared by telephone. Documents presented by MassHealth at hearing were incorporated into the hearing record as Exhibit 5. During the record open period, counsel for the appellant provided documents that were incorporated into the hearing record as Exhibit 7. MassHealth received an application for long-term care in December 2023 seeking coverage as of September 1, 2023. (Testimony; Exhibit 5). The appellant's spouse lives in a rest home with a primary diagnosis of dementia with behavioral disturbances. Other diagnoses include: acute anemia; anxiety; closet 2 part intertrochanteric fracture of proximal femur; Type 2 diabetes mellitus; hypertension; expressive aphasia; history of subarachnoid hemorrhage; gastroesophageal reflux disease (GERD); hyper lipidemia, hypothyroidism; lumbar pain; major depressive disorder; mixed incontinence; mood disorder; allergic rhinitis; and T12 compression fracture. (Testimony; Exhibit 7). MassHealth denied the appellant's application due to a determination that the appellant was over the asset limit of \$154,140.¹ (Testimony; Exhibit 1).

Counsel for the appellant and community spouse did not challenge the fact that the appellant's assets exceed program limits. The community spouse is seeking an adjustment to the asset allowance and minimum monthly maintenance needs allowance (MMMNA) to allow her to stay in a rest home where she receives services and treatment for the conditions noted above. (Exhibit 7). The rest home charges a daily rate of \$450 and bills the community spouse \$13,500 each month. (Exhibit 7). Records from the rest home state that the community spouse was admitted to the facility for long term care as she needs assistance with activities of daily living including bathing, dressing, grooming and incontinence care. (Exhibit 7). The community spouse ambulates without a device but wanders, has poor safety awareness and a roam alert is in place as a safety measure. (Exhibit 7). Counsel noted that the community spouse does not have sufficient income to provide her with the needed minimum monthly maintenance needs allowance (MMMNA). The appellant has a gross monthly income of \$6,065.95 and the community spouse has a gross monthly income of \$1,638.44. (Exhibit 8). The community spouse has a shortfall each month utilizing the income and asset allowance permitted by MassHealth. (Exhibit 7).

The record was held open to allow MassHealth to present information regarding the calculation of a patient paid amount and counsel for the appellant to present copies of documents regarding the services received by the community spouse and costs incurred as no documentation was presented prior to or at hearing. (Exhibit 6). Based on testimony presented at hearing, in calculating a patient paid amount, MassHealth utilized the monthly cost of the payment to the rest home in calculating a total patient paid amount of \$3,867.59. (Exhibit 8). Upon receipt of information from counsel for the appellant regarding the monthly services, MassHealth asked for a

¹ Although coverage was intended to begin in 2023, MassHealth utilized eligibility figures from 2024 which would work in favor of the appellant's potential eligibility as the figures are higher than those in effect in 2023. As the agency utilized 2024 figures which work in the appellant's favor, those figures will be utilized in this decision.

monthly rental or room and board figure to include in their spousal maintenance needs allowance (SMNA) calculation as the agency could factor in those costs in calculating a PPA. (Exhibit 9). As the documents presented by counsel for the appellant did not specify rental or room and board figures from the monthly payments to the rest home, MassHealth recalculated the PPA including only the regulatory Standard Utility Allowance (SUA) of \$852 as shelter expenses. This calculation resulted in a patient paid amount of \$5,005.59. (Exhibit 9).

The regulations require the Board of Hearings to utilize specific financial information in calculating an asset allowance. These figures include the deposit yield quoted in the Bank Rate Monitor Index as of the hearing date for money market accounts, and the 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 exceeds two and one-half years. As of the date of the hearing, the deposit yield quoted in Bank Rate Monitor Index for a money market account was 0.60 percent. (Exhibit 7). As of the date of the hearing, the highest deposit yield quoted in the Bank Rate Monitor National Index for any term not to exceed 2/12 years is the is the 1-year CD rate at 2.08 percent. (Exhibit 7).

Using the regulatory formula, the monthly income generated from community spouse's asset allowance would include \$5 from the first \$10,000 of the asset allowance ($10,000 \times 0.006 \div 12 = \5) and \$249.84 from the remainder of the allowance. This provides the community spouse with total income of \$1,893.28 ($\$1,638.44 + \$5 + \$249.84 = \$1,893.28$). Allowing the appellant to keep a personal needs allowance of \$72.80 leaves \$5,993.15 for the community spouse which does not meet the minimum monthly maintenance needs of the community spouse. (Exhibit 7; Exhibit 8; Exhibit 9).

Counsel asked the hearing officer to increase the community spouse's asset allowance by the amount of additional assets that would generate sufficient income to raise the income total to the community spouse's minimum monthly maintenance needs. (Exhibit 7). Retaining the remaining assets totaling \$486,009.08 would generate an additional \$843.31 ($\$486,009 \times 0.0208 \div 12 = \842.41).² Retaining these funds will still result in a monthly income shortfall of \$4,819.66 ($\$13,500 - \$1,893.28 - \$5,944.65 - \$842.41 = \$4,819.66$).

Findings of Fact

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

² Calculations presented by counsel for the appellant, use two separate figures regarding the excess asset amount. The notice states that the appellant had \$492,250.70 in excess assets. Counsel utilizes that amount in some of the calculations presented. At hearing, the MassHealth representative made a correction to that amount by removing monthly income resulting in an excess asset amount of \$486,009.08. (Exhibit 5). This is the figure that is utilized in this decision resulting in discrepancies between the figures presented by counsel and those in the decision. This correction does not change the outcome of the decision.

1. MassHealth received an application for long-term care benefits in December 2023 seeking coverage as of September 1, 2023.
2. MassHealth denied the appellant's application because MassHealth determined that the appellant had excess assets.
3. The countable assets of the appellant and his community spouse at the time the appellant applied for long-term care benefits was \$642,149.08.
4. The appellant is entitled to retain \$2,000 and the community spouse may retain \$154,140.
5. The appellant's countable assets exceed the program limits by \$486,009.08.
6. The appellant's spouse lives in a rest home with a primary diagnosis of dementia with behavioral disturbances.
7. The appellant's spouse needs assistance with activities of daily living including bathing, dressing, grooming and incontinence care.
8. The appellant's spouse ambulates without a device but wanders, has poor safety awareness and a roam alert is in place as a safety measure.
9. The community spouse pays \$13,500 each month for her stay and services assisted living.
10. The highest rate quoted in the Bank Rate Monitor National Index for a money market account as of the date of the hearing is 0.60 percent.
11. The monthly income generated from the first \$10,000 of the community spouse's asset allowance is \$5.
12. The highest deposit yield quoted in the Bank Rate Monitor National Index for any term not to exceed 2/12 years is the 1-year CD rate at 2.08 percent.
13. The monthly income generated from the community spouse's remaining allowable assets is \$249.84 ($\$144,140 \times .0208 \div 12 = \249.84).
14. The total monthly gross income of the community spouse, including the interest generated by her share of assets is \$1,893.28 ($\$1,638.44 + \$5 + \$249.84 = \$1,893.28$).
15. The community spouse requires an additional \$11,606.72 to meet her MMMNA ($\$13,500 - \$1,893.28 = \$11,606.72$).

16. The appellant has an income of \$6,065.95 each month.
17. Because the community spouse's gross monthly income is below her MMMNA, the community spouse is entitled to the appellant's income, after deducting his personal needs allowance of \$72.80, to increase the level of her monthly income.
18. Even with the spousal allowance, the community spouse's gross income is still less than her MMMNA by \$5,613.57 (\$11,606.72 - \$5,993.15 = \$5,613.57).
19. Using the rate of 2.08% for a 2 ½ year CD, the community spouse's monthly income generated from the excess assets of \$486,009.08 is \$842.41 ($\$486,009 \times 0.0208 \div 12 = \842.41).
20. The monthly income generated from the household's excess assets keeps the appellant's spouse's income below the MMMNA.

Analysis and Conclusions of Law

The appellant's spouse is seeking an adjustment to the minimum monthly maintenance needs allowance (MMMNA) and asset allowance as she is having difficulty in making payments to the long-term care facility for the appellant's care. (130 CMR 520.017).

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).

(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 under 130 CMR 520.017(C)(1) 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 increases 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.

(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's 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.

The community spouse has established the need for an MMMNA of at least \$13,500 to allow her to receive treatment in care in the rest home where she currently resides. (130 CMR 520.026; 130 CMR 520.017(D)). 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 \$1,893.28, including interest generated by retained assets.

The difference between the community spouse's total income and what she requires to pay for her assisted living is \$11,606.72. The regulations dictate MassHealth considers the institutionalized spouse's income to generate income for the community spouse. The appellant has income of \$6,065.95. The appellant must retain some income to meet the personal needs allowance of \$72.80. Accordingly, the community spouse would receive \$5993.15 from the appellant which does not meet the MMMNA.

Utilizing income of both the appellant and the community spouse, without the assets, the community spouse's gross income is still less than what she needs to pay for the rest home. Because the community spouse's gross income is still short of the MMMNA, the regulations allow that excess assets may then be used to generate income for the community spouse. The income generated from the excess assets is not sufficient to meet the MMMNA therefore the community spouse may retain all excess assets.

Under the regulations, coverage may be retroactive to the first day of the third month before the month of application, if covered services were received during such period, and the applicant or member would have been eligible at the time services were provided (130 CMR 516.005). The appellant applied for MassHealth in December 2023 seeking coverage as of September 1, 2023. MassHealth should approve coverage back to September 1, 2023 allowing the appellant's income and assets to be allocated to the community spouse.

The appeal is approved.

Order for MassHealth

Allocate the appellant's income, after deducting his personal needs allowance of \$72.80, and all excess assets to the community spouse in determining the appellant eligible as of September 1, 2023.

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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

cc:

[REDACTED]

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