

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2407630
<b>Decision Date:</b>	07/02/2024	<b>Hearing Date:</b>	06/11/2024
<b>Hearing Officer:</b>	Sharon Dehmand	<b>Record Open to:</b>	06/25/2024

**Appearance for Appellant:**



**Appearance for MassHealth:**

Lynn Bloomquist, Tewksbury MEC  
Karen Ryan, 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>	Long Term Care; CSRA; Exceptional Circumstances; MMMNA
<b>Decision Date:</b>	07/02/2024	<b>Hearing Date:</b>	06/11/2024
<b>MassHealth's Rep.:</b>	Lynn Bloomquist Karen Ryan	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	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 April 2, 2024, MassHealth denied the appellant's long-term care application because her assets exceeded the MassHealth limit. See 130 CMR 520.016 and Exhibit 1. The appellant filed this appeal in a timely manner on May 13, 2024. See 130 CMR 610.015(B) and Exhibit 2. A denial by MassHealth of an application or request for assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032(A)(1).

### Action Taken by MassHealth

MassHealth denied the appellant's application for long-term care services because her assets exceed the allowable program limit. See 130 CMR 520.016 and Exhibit 1.

### Issue

Whether MassHealth erred in denying the appellant's application for long-term care services because it determined that the appellant's assets exceed the program limit. See 130 CMR

520.017(B); 130 CMR 520.017(C); 130 CMR 520.025; and 130 CMR 520.026.

## Summary of Evidence

All parties participated telephonically. MassHealth was represented by a worker and her supervisor from the Tewksbury MassHealth Enrollment Center. The appellant was represented by her attorney who verified her identity. The following is a summary of the testimonies and evidence provided at the hearing:

The MassHealth representative testified that the appellant is a resident of a nursing facility. MassHealth received an application for long-term care services on behalf of the appellant on January 29, 2024, seeking a coverage start date of October 1, 2023. MassHealth verified the appellant's assets and determined that the appellant and her spouse have total countable assets of \$568,607.69. Through a notice on April 4, 2024, MassHealth denied the appellant's long-term care application due to excess assets in the amount of \$412,467.69. MassHealth requested additional time to submit a worksheet reflecting its calculation for the appellant's spouse's minimum-monthly-maintenance-needs allowance (MMMNA).

The appellant's attorney confirmed the appellant's and her spouse's total countable assets amount. She said that the appellant's spouse resides at an assisted living facility. She submitted a letter from the spouse's physician outlining his medical condition and stating that in light of his medical condition, he is "most safe in an assisted living facility." (Exhibit 4). The attorney submitted into evidence the assisted living housing agreement, service plan, and fee schedule. Id. The attorney argued that the appellant's spouse requires more than the income generated by total asset allowance to meet his MMMNA of \$7,250.00 per month. She submitted a memorandum in support of her argument for the increase to the appellant's asset allowance. Id. The appellant's attorney requested additional time to submit a revised memorandum with the corrected interest rate. She added that with this corrected interest rate, the amount of assets needed to generate the shortfall in appellant's spouse's MMMNA would equal \$1,817,257.55 which far exceeds the appellant's total assets.

Record was held open until June 25, 2024, for both parties to submit their supporting documents.

MassHealth submitted a worksheet reflecting the following calculations for the appellant's spouse's MMMNA:

Assisted Living:	\$ 7,250.00
<u>Utility Allowance:</u>	<u>\$ 852.00</u>
Total Shelter Expenses:	\$ 8,072.00
 Standard Shelter Expense:	 (\$739.50)

Standard Maintenance Allowance:	\$ 2,465.00
MMMNA	\$ 9,827.50

(Exhibit 7).

Since this amount exceeds the regulatory limit for MMMNA of \$3,853.50, MassHealth then reduced the MMMNA to the regulatory limit.

The appellant's attorney submitted an updated memorandum calculating interest income generated from total assets at the Bank Rate Monitor Index of .60% for the first \$10,000 and 1.39% for the remaining amount. (Exhibit 7). These interest rates were reflective of rates set as of May 29, 2024, which the attorney testified were not changed at the time of the hearing.

## Findings of Fact

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

1. The appellant is the institutionalized MassHealth member. He is over the age of 65 and resides in a nursing facility. (Testimony).
2. On January 29, 2024, the appellant submitted a MassHealth long-term care application. (Testimony and Exhibit 5).
3. MassHealth determined that the appellant and her spouse had countable assets totaling \$568,607.69. (Testimony and Exhibit 1).
4. The appellant is entitled to keep \$2000.00 in spousal assets. The appellant's spouse is entitled to keep \$154,140.00 in spousal assets. (Testimony).
5. On April 2, 2024, MassHealth denied the appellant's long-term care application due to excess assets in the amount of \$412,467.69. (Testimony and Exhibit 1).
6. The appellant's spouse lives in an assisted living facility which is required based on his medical condition. (Testimony and Exhibit 4).
7. The cost of his assisted living facility is \$7,250.00 per month. (Testimony, Exhibit 4, and Exhibit 6).
8. MassHealth calculated the MMMNA to be \$9,827.50 per month. (Exhibit 7). Since this amount exceeds the regulatory limit for MMMNA of \$3,853.50, MassHealth reduced the MMMNA to the regulatory limit.

9. The appellant's attorney calculated the MMMNA to be \$7,250.00 per month. (Exhibit 4 and Exhibit 6).
10. The appellant's spouse's income is \$2,394.20 per month. (Exhibit 4 and Exhibit 6).
11. The appellant's total income is \$2,651.65. (Exhibit 4 and Exhibit 6).
12. The yield quoted in the Bank Rate Monitor Index as of May 29, 2024, for money market accounts was .60%. (Exhibit 4 and Exhibit 6).
13. The highest yield quoted in the Bank Rate Monitor Index as of May 29, 2024, for any term not exceeding two and one-half years was 1.41%. (Exhibit 4 and Exhibit 6).

## **Analysis and Conclusions of Law**

The MassHealth agency is responsible for the administration and delivery of health-care services to low and moderate-income individuals and couples. The MassHealth regulations at 130 CMR 515.000 through 522.000 provide the requirements for MassHealth eligibility for persons over age 65, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act. See 130 CMR 515.002. The appellant is an institutionalized person over the age of 65. Therefore, the regulations at 130 CMR 515.000 through 522.000 apply to this case.

Pursuant to 130 CMR 520.017(A), after the institutionalized spouse 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.

MassHealth determines the minimum-monthly-maintenance-needs allowance (MMMNA) for the community spouse to remain in the community by including in their calculation the community spouse's shelter and utility costs in addition to certain federal standards, in accordance with 130 CMR 520.026(B)(1). See 130 CMR 520.017(B). If the community spouse's MMMNA cannot be met by his income, then amount of income generated by the community spouse's asset allowance will be added to his income to reach the MMMNA. 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 MMMNA, 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 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 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 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 Bankrate Monitor national index as of the hearing date for any term not to exceed two and one-half years, would generate sufficient income to raise the income total to the MMMNA.

130 CMR 520.017(C).

In this case, there is no dispute that the appellant and her spouse have assets in excess of what is allowed by MassHealth. There is also no dispute that the excess amount is \$568,607.69. The only remaining issue is whether the appellant can retain those assets to meet her spouse's MMMNA. The appellant's spouse lives in an assisted-living facility which is required by his medical condition. (Exhibit 4). There is no dispute regarding this fact. MassHealth adjusted the MMMNA to the maximum regulatory limit of \$3,853.50 per month. The appellant's attorney calculated the MMMNA to be \$7,250.00 per month. (Exhibit 4 and Exhibit 6). Regardless of which figure is used, the appellant's spouse's income of \$2,394.20 per month is far less than either of the MMMNA figures.<sup>1</sup> See 130 CMR 520.017(D)(1)(b). The appellant has proven by the

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<sup>1</sup> Pursuant to 130 CMR 520.017(D), either spouse may request an increase in the MMMNA calculated by MassHealth due to "exceptional circumstances," as defined in relevant part as follows:

preponderance of the evidence that her spouse's health condition requires him to be in an assisted-living facility. She has submitted a letter from his treating physician as well as a service plan and fee schedule supporting her contention. Thus, I find that there are exceptional circumstances related to her spouse's health condition that warrant an increase in the MMMNA.

Consequently, the interest income generated from the asset allowance must be calculated and added to the appellant's spouse's income in accordance with 130 CMR 520.017(C)(1) in the following manner:

The first \$10,000.00 of the appellant's spouse's asset allowance generates an income of \$5.00 per month which is calculated at the yield quoted in the Bank Rate Monitor Index as of May 29, 2024 for money market accounts of .60%.<sup>2</sup> (Exhibit 4 and Exhibit 6).

The remaining \$144,140.00 of the appellant's spouse's asset allowance generates an income of \$169.36 per month which is calculated at the yield quoted in the Bank Rate Monitor Index as of May 29, 2024 for any term not exceeding two and one-half years of 1.41%. (Exhibit 4 and Exhibit 6).

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(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, 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.

<sup>2</sup> The regulations use the yield rate in the Bank Rate Monitor Index.

Thus, the appellant's spouse's total income including income generated from the asset allowance equals \$2,568.56 (\$2,394.20+\$5.00+169.36) per month which is \$4,681.44 (\$7,250.00-\$2,568.56) less than the MMMNA of \$7,250.00.<sup>3</sup>

If the appellant's spouse's total income is less than the MMMNA, as here, then in accordance with 130 CMR 520.017(C)(2), the appellant's income less her personal-needs deduction will be allocated to her spouse.

Accordingly, the appellant's total income of \$2,651.65 less \$72.80 (PNA), which equals \$2,578.85 will be allocated to the appellant's spouse. After the appellant's income is shifted to her spouse, the appellant's spouse's total income becomes \$5,147.41 which still has a shortfall of \$2,102.59 (\$7,250.00-\$5,147.41) to reach the MMMNA.

Pursuant to 130 CMR 520.017(C)(3), if after the fair-hearing officer has increased the appellant's spouse's gross income under 130 CMR 520.017(C)(1) and (2), the appellant's spouse's gross income is still less than the MMMNA, as here, then the fair-hearing officer increases the appellant's 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 two and one-half years, would generate sufficient income to raise the income total to the MMMNA.

Here, the excess assets in the amount of \$412,467.69, when invested at the yield of 1.41% would generate an additional monthly income of \$484.65. This supplemental income still leaves the appellant's spouse well short of the additional \$2,102.59 needed to meet his MMMNA. As the income from all available spousal resources is still less than the MMMNA, the appellant's spouse is entitled to keep all of the appellant's income and all excess assets.

For the foregoing reasons, this appeal is APPROVED.

## **Order for MassHealth**

Rescind the denial notice dated April 2, 2024, and allocate all income and excess assets to the appellant's spouse. Establish an eligibility start date in accordance with this decision.

## **Implementation of this Decision**

If this decision is not implemented within 30 days after the date of this decision, you should

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<sup>3</sup> The lesser of the MMMNA will be used for the calculations. As explained, this figure is not outcome determinative in this case.



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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Sharon Dehmand  
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