

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in Part; Denied in Part	Appeal Number:	2409822
Decision Date:	10/08/2024	Hearing Date:	07/29/2024
Hearing Officer:	Mariah Burns	Record Open to:	08/20/2024

Appearances for Appellant:



Appearance for MassHealth:

Anna Martinez, Tewksbury MassHealth
Enrollment Center



*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 in Part; Denied in Part	Issue:	Over 65; Eligibility; Home and Community-Based Waiver Services; Income; Assets
Decision Date:	10/08/2024	Hearing Date:	07/29/2024
MassHealth's Rep.:	Anna Martinez	Appellant's Rep.:	██████
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 May 31, 2024, MassHealth denied the appellant's application for MassHealth Standard through the Frail Elder Waiver because MassHealth determined that the appellant exceeds both the income and the asset limit to qualify for that benefit. *See* 130 CMR 519.007(B)(2) and Exhibit 1. The appellant filed this appeal in a timely manner on June 24, 2024. *See* 130 CMR 610.015(B) and Exhibit 2. Denial of assistance is valid grounds for appeal. *See* 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth Standard through the Frail Elder Waiver.

Issue

The appeal issue is whether MassHealth correctly calculated the appellant's income and assets and

imposed a deductible in denying his application for the Frail Elder Waiver.

Summary of Evidence

The appellant is an adult over the age of 65 who resides in the community with his spouse at their primary residence. He was represented at the hearing by an attorney and by his spouse. MassHealth was represented by a worker from the Tewksbury MassHealth Enrollment Center. The following is a summary of the testimony given and evidence provided at the hearing and during the record open period:

The appellant was clinically approved for the Frail Elder Waiver after submitting an application on March 1, 2024. On May 31, 2024, MassHealth determined that the appellant is both over the income limit and possesses an excess amount of assets to financially qualify for those benefits.¹ In making that determination, MassHealth verified that the appellant receives \$3256.00 in monthly social security payments. As that amount exceeds 300% of the federal benefit rate (which is \$2829.00 for 2024), the income standard for Frail Elder Waiver applicants, MassHealth determined that the appellant's income is too high to qualify for the waiver. Therefore, MassHealth imposed a deductible which the appellant may meet to qualify for benefits (provided he is under the asset limit). MassHealth calculated that deductible by subtracting both the \$20.00 regulatory unearned income disregard, the \$650.00 MassHealth income standard for a household of two, and his private health insurance premium of \$513.20, which equates to \$2072.20. MassHealth then multiplied that number by 6 and determined that the appellant's deductible is \$12,436.80 for a six-month period from May through October of 2024.

MassHealth also verified the assets of the appellant and his spouse and determined that the appellant possessed excess assets totaling \$1,737,969.61. Those assets are broken down as follows:

- Fair Market Value of Appellant's primary residence: \$1,648,000;
- Cash surrender value of life insurance policy in appellant's name: \$15,240;
- Balance of [REDACTED] account jointly owned by appellant and spouse: \$32,349.13;
- Balance of [REDACTED] account jointly owned by appellant and spouse: \$359.87;
- Balance of [REDACTED] account owned by spouse: \$233.86;
- Balance of [REDACTED] account owned by spouse: \$28,839.30;
- Balance of [REDACTED] merica account owned by spouse: less than \$1.00;
- Balance of [REDACTED] owned by appellant: \$14,947.44.

Ultimately at issue for the assets was a) whether the primary residence is a countable asset; and b)

¹ The appellant was approved for the Medicare Savings Plan as a Qualified Medicare Beneficiary, formerly known as the Senior Buy-In.

whether the appellant's spouse is entitled to a community spouse asset allowance pursuant to 130 CMR 520.016. The appellant argued that the primary residence is not countable because its equity value is less than the equity exclusion amount contemplated by MassHealth. He further contended that the remaining assets are all subject to the spousal asset allowance, and their total value is less than the amount allowed by MassHealth. Thus, he argued that the appellant does not have excess assets for purposes of MassHealth eligibility. MassHealth argued that the bank accounts and the life insurance policy in the appellant's name are not subject to the spousal asset allowance, and are therefore countable for the appellant, putting him over the asset limit.

Findings of Fact

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

1. The appellant is an adult over the age of 65 who resides in the community at his primary residence with his spouse. Testimony, Exhibit 4, Exhibit 7 at 1.
2. On March 1, 2024, the appellant submitted an application for MassHealth Standard through the Frail Elder Waiver. Exhibit 1. He was deemed clinically eligible for that benefit. Testimony.
3. On May 31, 2024, MassHealth issued a notice denying the appellant's application for the Frail Elder Waiver after finding that he exceeded both the income and the asset limits to qualify for benefits. Exhibit 1. MassHealth also imposed a deductible the appellant would need to reach should he spend down his assets under the limit. Testimony, Exhibit 1.
4. The appellant filed this request for fair hearing on June 24, 2024. Exhibit 2.
5. The appellant receives \$3256.00 in monthly social security benefits and has no other source of income. Exhibit 1, Testimony. He makes a monthly private insurance premium payment of \$513.20. *Id.*
6. The only property owned by the appellant and his spouse is their primary residence. Exhibit 1, Testimony.
7. The couple's remaining assets, at the time of hearing, are as follows:
 - Fair Market Value of Appellant's primary residence: \$1,648,000;
 - Cash surrender value of life insurance policy in appellant's name: \$15,240;
 - Balance of [REDACTED] account jointly owned by appellant and spouse: \$32,349.13;
 - Balance of [REDACTED] account jointly owned by appellant and spouse: \$359.87;
 - Balance of [REDACTED] account owned by spouse: \$233.86;
 - Balance of [REDACTED] account owned by spouse: \$28,839.30;

- Balance of [REDACTED] account owned by spouse: less than \$1.00;
- Balance of [REDACTED] owned by appellant: \$14,947.44.

Exhibit 1, Exhibit 7 at 3 .

Analysis and Conclusions of Law

MassHealth administers and is responsible for delivery of healthcare benefits to MassHealth members. See 130 CMR 515.002. Eligibility for MassHealth benefits differs depending on an applicant's age. 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for non-institutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as, and certain Medicare beneficiaries. 130 CMR 515.002(B). As an applicant for the Frail Elder Waiver, a community-based service, the appellant is subject to the requirements of the provisions of Volume II. 130 CMR 515.002.

The Frail Elder Waiver is a program through which MassHealth provides certain services in the home of eligible members who would otherwise require nursing home level of care. 130 CMR 519.007(B). To qualify for the waiver, the applicant must clinically qualify for nursing home services and meet the following financial eligibility requirements:

- (2) Eligibility Requirements. In determining eligibility for MassHealth Standard and for waiver services, the MassHealth agency determines income eligibility based solely on the applicant's or member's income regardless of their marital status. The applicant or member must
 - (a) meet the requirements of 130 CMR 519.007(B)(1)(a) and (b);
 - (b) have a countable-income amount less than or equal to 300% of the federal benefit rate (FBR) for an individual; and
 - (c) have countable assets of \$2,000 for an individual and, for a married couple if the initial Waiver eligibility determination was on or after January 1, 2014, have assets that are less than or equal to the standards at 130 CMR 520.016(B): *Treatment of a Married Couple's Assets When One Spouse Is Institutionalized*; and
 - (d) have not transferred resources for less than fair market value, as described at 130 CMR 520.018: *Transfer of Resources Regardless of the Transfer Date* and 520.019: *Transfer of Resources Occurring on or After August 11, 1993*.

130 CMR 519.007(B)(2). Individuals whose income and/or assets exceed those standards "may establish eligibility for MassHealth Standard by reducing their assets in accordance with 130 CMR 520.004...by meeting a deductible as described at 130 CMR 520.028...through 520.035...or by both." *Id.* at 519.007(B)(3).

As the appellant has been deemed clinically eligible for the waiver, at issue is whether he meets the financial requirements to qualify. The appellant argues that MassHealth incorrectly calculated his income and wrongly imposed the requirement that he meet a deductible to qualify for MassHealth Standard through the Frail Elder Waiver. He also asserts that MassHealth incorrectly calculated his assets and did not afford his community spouse a proper allowance based on the regulations. For the reasons stated herein, I find that MassHealth properly calculated the appellant's income in requiring him to meet a deductible to qualify. However, I find that MassHealth did improperly calculate the appellant's assets in determining whether he is under the asset limit.

Calculation of the Appellant's Income and Imposition and Calculation of a Deductible

In concluding whether an applicant is eligible for the Frail Elder Waiver, MassHealth verifies whether that person's individual, countable income exceeds 300% of the federal benefit rate (as distinguished from the federal poverty level). 130 CMR 519.007(B)(2)(b). The federal benefit rate is an amount set by the Social Security Administration and has been adopted by MassHealth. Testimony. For 2024, MassHealth has determined that 300% of the federal benefit rate is \$2829.00 per month.² MassHealth calculates an applicant's countable income as described at 130 CMR 520.009(A):

- (1) An individual's and the spouse's gross earned and unearned income less certain business expenses and standard income deductions is referred to as the countable-income amount. In determining gross monthly income, the MassHealth agency multiplies the average weekly income by 4.333 unless the income is monthly.
- (2) For community residents, the countable-income amount is compared to the applicable income standard to determine the individual's financial eligibility.
- (3) For institutionalized individuals, specific deductions described in 130 CMR 520.026 are applied against the individual's countable-income amount to determine the patient-paid amount.
- (4) The types of income that are considered in the determination of eligibility are described in 130 CMR 520.009, 520.018, 520.019, and 520.021 through 520.024....

MassHealth distinguishes between earned and unearned income when making this determination. Unearned income is that which "does not directly result from an individual's own labor or services...[and] includes social security benefits, railroad retirement benefits, pensions, annuities, federal veteran's benefits, rental income, interest, and dividend income. 130 CMR 510.009(D). A

² See <https://www.mass.gov/info-details/program-financial-guidelines-for-certain-masshealth-applicants-and-members#2024masshealth-income-standards-and-federal-poverty-guidelines>.

list of income that is considered noncountable may be found at 130 CMR 520.015, though neither party asserts that the appellant possesses any non-countable income.

From an applicant's gross income amount, MassHealth "allows certain standard earned- and unearned-income deductions..." 130 CMR 520.011. Deductions for unearned-income of individuals residing in the community are the following:

- (A) a deduction of \$20 per individual or married couple; or
- (B) in determining eligibility for MassHealth Standard, a deduction that is equivalent to the difference between the applicable MassHealth deductible-income standard at 130 CMR 520.030 and 133% of the federal poverty level. This deduction includes, and is not in addition to, the \$20 disregard.
 - (1) This deduction from gross unearned income is allowed only for persons who
 - (a) are 65 years of age and older;
 - (b) are receiving personal-care attendant [(PCA)] services paid for by the MassHealth agency, or have been determined by the MassHealth agency, through initial screening or by prior authorization, to be in need of personal-care attendant services; and
 - (c) prior to applying the deduction at 130 CMR 520.013(B), have countable income that is over 100% of the federal poverty level.
 - (2) The MassHealth agency will redetermine eligibility without this deduction if
 - (a) after 90 days from the date of the MassHealth agency eligibility approval notice, the person is not receiving personal-care attendant services paid for by the MassHealth agency or has not submitted, upon request from the MassHealth agency, proof of efforts to obtain personal-care attendant services paid for by the MassHealth agency; or
 - (b) the MassHealth agency denies the prior-authorization request for personal-care attendant services.
 - (3) If countable income, prior to applying the deduction at 130 CMR 520.013(B), is greater than 133 percent of the federal poverty level, eligibility is determined under 130 CMR 519.005(B): *Financial Standards Not Met*.

130 CMR 520.013. If an applicant, after all relevant deductions have been applied to their gross income, still exceeds the income limit to qualify for benefits, MassHealth calculates and imposes a deductible that a member may meet to receive MassHealth Standard. 130 CMR 519.007(B)(3). MassHealth calculates that deductible by "multiplying the excess income by six." 130 CMR 520.030. Excess income is "the amount by which the applicant's countable-income amount...exceeds the MassHealth deductible income standard," which for a couple living in the community is \$650.00. *Id.* Medicare premiums are "credited prospectively for the cost of six

months' coverage" and is applied to meet the deductible. *Id.* at 520.032(B)(1).

Here, the parties agree that the appellant receives \$3256.00 in monthly social security benefits and has no other source of income. He is therefore entitled to the \$20 disregard set by 130 CMR 520.013(A). There is no evidence in the record that he is entitled to the PCA disregard, there is no assertion of his eligibility for that deduction, and there is no evidence that MassHealth has deemed him to need PCA services. Therefore, the record does not support any assertions that the appellant qualifies for that deduction. This leaves the appellant with a total countable monthly income of \$3236.00, as calculated by MassHealth.

The appellant appears to argue that the income standard of \$2829.00 (or 300% of the federal benefit rate), is "countable income permitted and is therefore deducted from his countable income. This argument is without merit. First, the appellant provides no legal support for this assertion. Second, the regulation clearly states that countable income must be less than or equal to 300% of the federal benefit rate. There is no authority to allow that amount to be deducted from an applicant's gross income calculation.

Further, the appellant seems to claim that, as a waiver applicant, he is entitled to an income calculation as if he were an institutionalized individual. However, 130 CMR 519.007(B)(2) only states that a waiver applicant's *assets* should be calculated as one who is institutionalized, not their income. The appellant's gross monthly income must, consequently, be determined based on the standard set for community applicants. Therefore, I find that MassHealth correctly calculated the appellant's countable gross monthly income to be \$3236.00, which exceeds 300% of the federal benefit rate. The appellant is over the income limit and must meet a deductible to qualify for MassHealth Standard through the Frail Elder Waiver.

In calculating the appellant's deductible, MassHealth took his countable gross monthly income of \$3236.00 and subtracted the deductible income standard of \$650.00. The appellant's monthly health insurance amount of \$513.20 was removed from the calculation, leaving an excess monthly income of \$2072.80. When multiplied by six, this amounts to a total deductible of \$12,436.80. I find no error with MassHealth's calculation of the appellant's income, determination that he exceeds the income limit to qualify for MassHealth Standard through the Frail Elder Waiver, and calculation and imposition of a deductible.

Calculation of Appellant's Total Assets

The MassHealth regulations provide three categories of assets by which an applicant's financial eligibility is evaluated. Those include countable assets, noncountable assets, and inaccessible assets. *See generally*, 130 CMR 520.006-008. An asset is considered inaccessible when the applicant has "no legal access" to it. 130 CMR 520.006(A). This can include instances where ownership of property is subject to legal proceedings such as probate or divorce suits, or when the cash-surrender value of the life insurance has been reassigned for adjustment. *Id.* at

520.006(B). The community spouse's asset allowance is also "not considered available to the institutionalized spouse when determining the institutionalized spouse's eligibility for MassHealth Standard." 130 CMR 520.016(B)(2).

Countable assets are defined as follows:

Countable assets include assets to which the applicant or member or his or her spouse would be entitled whether or not these assets are actually received when failure to receive such assets results from the action or inaction of the applicant, member, spouse, or person acting on his or her behalf. In determining whether or not failure to receive such assets is reasonably considered to result from such action or inaction, the MassHealth agency considers the specific circumstances involved.

130 CMR 520.007. These can include, but are not limited to, cash, bank account balances, IRAs, Keough plans, pension funds, securities, cash surrender value of life-insurance policies, certain vehicles, certain real estate and proceeds from sale thereof, certain SSI and RSDI benefits, trust values, and annuities. *Id.* Noncountable assets are expressly defined as "those assets exempt from consideration when determining the value of assets." 130 CMR 520.008. The only assets considered noncountable are the applicant's primary residence, assets of an SSI recipient, business and nonbusiness property, any loan or grant, funeral or burial arrangements, veteran's payments, and balances of special-needs, pooled, and/or ICF/MR trusts. *Id.*

Any real estate owned by the applicant and their spouse, "with the exception of the principal place of residence as described in 130 CMR 520.008(A) is considered to be a countable asset." 130 CMR 520.007(G)(1). A member's principal place of residence "and any land appertaining to the home" are considered "noncountable assets, except when the equity interest in the home exceeds the amount described in 130 CMR 510.007(G)(3)." 130 CMR 520.008(A). That regulation provides, in pertinent part:

The fair-market value and equity value of all countable real estate owned by the individual and the spouse must be verified at the time of application and when it affects or may affect eligibility. For applications received on or after January 1, 2006, equity interest in the principal place of residence exceeding \$750,000 renders an individual ineligible for payment of nursing facility and other long-term-care services, *unless the spouse of such individual or the individual's child who is younger than 21 years old or who is blind or permanently and totally disabled resides in the individual's home.*

(Emphasis added).

Married applicants for the Frail Elder Waiver must also adhere to the asset standards as if the

applicant was residing in a nursing facility, as provided in 130 CMR 520.016(B). In such an instance, MassHealth “completes an assessment of the total value of a couple’s combined countable assets and computes the community spouse’s asset allowance...” *Id.* at 520.016(B)(1)(a). In so doing, MassHealth “must determine the couple’s current total assets, *regardless of the form of ownership between the couple*, and the amount of assets allowed for the community spouse...” 130 CMR 520.016(2)(a) (Emphasis added). 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 \$109,560³;
2. a court-ordered amount; or
3. an amount determined after a fair hearing in accordance with 130 CMR 520.017.

Id. Once the community spouse’s asset allowance has been determined, MassHealth then compares “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.” *Id.* at 520.026(B)(2)(b).

In this case, there are two major asset disputes: whether the couple’s primary residence is a countable asset toward the appellant’s asset limit, and whether the community spouse is entitled to a spousal asset allowance to be subtracted from the appellant’s total countable assets. With respect to the primary residence, the regulations make clear that, if the applicant’s spouse is residing in the home, it is a noncountable asset even if it has an equity interest that exceeds \$750,000. *See* 130 CMR 510.007(G)(3). For that reason, I need not find the value of the appellant’s equity interest in the home, as his spouse is residing in it. Thus, I find that MassHealth erred in considering the appellant’s primary residence a countable asset.

With respect to the remaining assets, the appellant argues that the appellant’s spouse is entitled to a spousal asset allowance that consists of all of the remaining assets for the appellant, his spouse, and the couple combined, up to \$154,140, regardless of who owns that asset. MassHealth contends that the spouse is only entitled to an allowance for her own assets and those jointly owned, not the life insurance policy and bank account in the appellant’s name. The regulations state that the couple’s assets are calculated “regardless of the form of ownership between the couple” and that the spousal allowance is “the combined total countable assets of the institutionalized spouse and the community spouse.” There are only two reasonable readings of the latter quote: either all assets owned by the applicant, their spouse, and the couple are countable toward the spousal allowance, or only their joint assets are countable. Since there does

³ Adjusted for inflation, MassHealth has determined that this amount is now \$154,140. *See* <https://www.mass.gov/info-details/program-financial-guidelines-for-certain-masshealth-applicants-and-members#2024masshealth-income-standards-and-federal-poverty-guidelines>.

not appear to be any dispute that the appellant's spouse would be entitled to an allowance for the assets in her name, it logically follows that all the assets, regardless of ownership, can be considered for the spousal allowance.

When added together, the total amount of assets MassHealth has verified for the appellant and his spouse as listed at Exhibit 7 at 3 is \$91,969.60. Because that amount is less than the \$154,140 maximum spousal allowance, the appellant possesses no remaining assets to compare to the MassHealth asset limit for an individual. Therefore, I find that the appellant is under the asset limit to qualify for MassHealth Standard through the Frail Elder Waiver. If the appellant meets the deductible to qualify for benefits, he will be subject to the requirements of 130 CMR 520.016(B)(3): *Post-Eligibility Transfer of Assets*.⁴ MassHealth must give the appellant proper notice and 90 days to transfer the relevant assets into his spouse's name. I make no finding here as to which of those assets would be subject to those requirements.

For the foregoing reasons, the appeal is hereby approved in part and denied in part.

Order for MassHealth

Rescind the May 31, 2024, notice to the extent that it states that the appellant is over the asset limit to qualify for MassHealth Standard through the Frail Elder Waiver and issue a new notice stating that the appellant's total countable assets are \$0.00.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your

⁴ (3) Post-eligibility Transfer of Assets. (a) To meet the needs of the community spouse and to allow the continuing eligibility of the institutionalized spouse, the MassHealth agency allows the institutionalized spouse, after he or she has been determined eligible for MassHealth Standard, to transfer assets to or for the sole benefit of the community spouse in accordance with 130 CMR 520.016(B)(1) and (2). (b) The institutionalized spouse must transfer any of his or her assets that are part of the community spouse's asset allowance no later than 90 days immediately after the date of the notice of approval for MassHealth Standard. During this 90-day period, the MassHealth agency 1. will continue to exclude these assets in the determination of continuing eligibility; and 2. will not apply the transfer rules in 130 CMR 520.018 and 520.019 to the assets transferred to the community spouse. (c) The MassHealth agency may extend the 90-day period if any of the following conditions exist: 1. the court is involved in assigning the couple's property through support actions; 2. an appeal of the asset allowance has been filed with the Office of Medicaid Board of Hearings; or 3. the condition of the institutionalized spouse requires the appointment of a conservator or guardian to act on his or her behalf. (d) The amount of the transferred assets added to the assets owned by the community spouse cannot exceed the community spouse's asset allowance as defined in 130 CMR 520.016(B)(2). (e) After the initial 90-day period or the extension is over, the MassHealth agency counts all assets that remain in the institutionalized spouse's name in determining his or her eligibility.

receipt of this decision.

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.

Mariah Burns
Hearing Officer
Board of Hearings

cc: Appellant Representative: Richard Schafer, 220 North Main Street, Natick, MA 01760, 508-479-4025

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center