

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part	Appeal Number:	2413079
Decision Date:	4/1/2025	Hearing Date:	09/25/2024; 03/05/2025
Hearing Officer:	Emily Sabo	Record Open to:	03/27/2025

Appearance for Appellant:



Appearance for MassHealth:

Lori Van Zile, Quincy 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

Appeal Decision:	Approved in Part	Issue:	Long Term Care; Community Spouse Resource Allowance (CSRA); Exceptional Circumstances; Minimum Monthly Maintenance Needs Allowance (MMMNA); Patient Paid Amount
Decision Date:	4/1/2025	Hearing Dates:	09/25/2024; 03/05/2025
MassHealth's Rep.:	Lori Van Zile	Appellant's Rep.:	Attorney
Hearing Location:	Quincy Harbor South (Telephone)	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 July 17, 2024, MassHealth found the Appellant eligible for long-term-care services in a nursing facility and stated that starting February 1, 2024, he would owe the nursing facility \$1,740.76 monthly as a patient paid amount.¹ Exhibit 1. The Appellant's power of attorney filed this appeal in a timely manner on August 21, 2024, arguing that exceptional circumstances existed under 130 CMR 520.017(D) to increase the spousal allowance. 130 CMR 610.015(B) and Exhibit 2. MassHealth determinations regarding scope and amount of assistance are valid ground for appeal to the Board of Hearings. See 130 CMR 610.032(A)(5).

¹ MassHealth's monthly patient paid amount calculation allows \$72.80 for a personal needs allowance and \$2,018.44 for spouse-in-home allowance. Exhibit 1.

Action Taken by MassHealth

MassHealth approved the Appellant for long-term care services in a nursing facility with a monthly patient paid amount of \$1,740.76, beginning February 1, 2024.

Issue

The appeal issues are (1) whether MassHealth was correct, pursuant to 130 CMR 520.026, in determining the Appellant's patient-paid amount; and (2) whether extraordinary circumstances exist such that the minimum monthly maintenance needs allowance (MMMNA) for the Appellant's community spouse should be adjusted.

Summary of Evidence

The hearing was held by telephone over the course of two days. The Appellant's attorney verified the Appellant's identity. The record was also held open for the submission of additional evidence. A summary of testimony and record evidence follows:

The Appellant and his spouse are both over the age of 65. The Appellant's attorney testified that the Appellant's spouse ("community spouse") began living in an assisted living facility on [REDACTED] 2024 and that the spousal maintenance needs allowance is insufficient for her care. The Appellant's attorney testified that the Appellant's spouse sold their home in [REDACTED] 2024. The Appellant's attorney also testified that the Appellant had Medicare and Blue Cross Blue Shield premiums that should have been taken into consideration in the calculation of the Appellant's patient-paid amount. During the second hearing date, the Appellant's attorney testified that he would limit the request for a finding of exceptional circumstances for the Appellant's spouse for the period of April to August 2024.

The Appellant's attorney stated that "as a state employee, [the Appellant] does not receive Social Security and did not pay into the Medicare system, and self-paid his Medicare premiums, but the coverage was interrupted for a period and then reinstated retroactively." Exhibit 6 at 1.

The MassHealth representative provided the following spousal maintenance needs allowance (SMNA):

Taxes and Insurance:	\$ 2,692.96
<u>Food Stamp Utility Allowance:</u>	<u>\$ 890.00</u>
Total Shelter Expenses:	\$ 3582.96
 Standard Shelter Expense:	 (\$766.50)

Standard Maintenance Allowance:	\$ 2,555.00
MMMNA	\$ 5,371.46

Exhibit 8.

In 2024, the regulatory maximum monthly maintenance needs allowance is \$3,853.50.² Because \$5,371.46 exceeds the regulatory limit (\$3,853.50), MassHealth then reduced the MMMNA to \$3,853.50, and subtracted the community spouse's gross income of \$1,835.06 (\$1043.70 (Social Security) + \$791.63 (annuity) = \$1,835.06). *Id.* This resulted in a total of \$2,018.44, which was the spouse-in-home allowance granted in the July 17, 2024 MassHealth notice. *Id.*, see Exhibit 1.

Maximum Monthly Maintenance Needs Allowance:	\$3,853.50
Spouse's gross income:	
Spouse's Social Security:	(\$1,053.70)
Spouse's Annuity:	(\$ 791.63)
Spousal Maintenance Needs Deduction:	\$2,018.44

Exhibit 8.

The MassHealth representative also submitted a revised worksheet indicating that the Appellant's pension increased to \$3,870.43, effective July 1, 2024. Exhibit 7. The MassHealth representative also indicated that the patient-paid amount should have deducted Medicare (\$174.70) and Blue Cross Blue Shield (\$55.74) premiums for a total of \$230.44 for the period of February 1, 2024 to September 30, 2024. *Id.* The MassHealth submission indicated that the Appellant's Blue Cross Blue Shield premium changed to \$21.04 monthly as of October 1, 2024. *Id.*

MassHealth submitted the following revised patient-paid amount calculations:

For February 1, 2024 to June 30, 2024:

Gross Pension:	\$ 3,832.00
SMNA:	\$ (2,018.44) ³
Insurance:	\$ (230.44)
Personal Needs Allowance:	\$ (72.80)

² This figure is updated annually by the federal government. See <https://www.medicaid.gov/federal-policy-guidance/downloads/cib05222024.pdf>.

³ On the submitted worksheet, the number listed is \$2,017.44. Exhibit 7. As this differs by one dollar from the amount listed on the notice and the other worksheet submitted, I interpret it as a typo and have corrected it to \$2,018.44. See Exhibit 1, Exhibit 8.

Patient Paid Amount: \$ 1,510.32

For July 1, 2024 to September 30, 2024:

Gross Pension: \$ 3,870.43

SMNA: \$ (2,018.44)

Insurance: \$ (230.44)

Personal Needs Allowance: \$ (72.80)

Patient Paid Amount: \$ 1,548.75

For October 1, 2024 onward:

Gross Pension: \$ 3,870.43

SMNA: \$ (2,018.44)

Insurance: \$ (195.74)

Personal Needs Allowance: \$ (72.80)

Patient Paid Amount: \$ 1,583.45⁴

Exhibit 7.

The Appellant's attorney submitted a letter dated [REDACTED] 2024, from the Appellant's spouse's nurse practitioner stating that the Appellant's spouse was under her care and residing in the memory care unit. Exhibit 10 at 20. The letter stated that the community spouse was "no longer able to make her own medical and financial decisions due to impaired cognition," and that her health care proxy had been activated. *Id.* The Appellant's attorney submitted a monthly billing statement from the community spouse's assisted living facility indicating that her move-in date was [REDACTED] 2024. *Id.* at 21. The Appellant's attorney submitted the community spouse's individual service plan, which indicates that she was admitted to the facility on [REDACTED] 2024, and moved to the memory care unit⁵ on [REDACTED] 2024. Exhibit 11 at 1. The report indicates that residents receive hourly safety checks between 7 pm to 7 am, that staff are awake and available 24 hours per day/7 days per week, and that the Appellant needs verbal cueing to evacuate in an emergency. *Id.* at 3.

The Appellant's attorney stated that

From [REDACTED] [2024] (the date of the sale of her residence),

⁴ While MassHealth calculated a patient-paid amount for October 2024, as discussed in n. 12, *infra.*, the Appellant may not be financially eligible in October 2024 for MassHealth based on excess assets due to the property sale.

⁵ This is described as the Reminiscence Program for Alzheimer's and Dementia in the residency agreement provided. Exhibit 2.

the community spouse both had the house expenses and the cost of [the facility where she was admitted], which constitutes exceptional circumstances under 130 CMR 520.017(D). Just the extra medical and memory care cost was \$3,870 per month, though it started out lower than that (~\$2,000-\$2,500/mo. for first two months). . . . From [REDACTED] to [REDACTED] 2024] she resided at [first facility], but did not have the expenses of the home and had an additional \$619,000 of assets. . . . [Appellant’s spouse] was admitted to the hospital a couple times in mid-October and then was admitted to [nursing home] on [REDACTED] 2024⁶ and remains there and has been private-pay, at a cost of \$525.00/day; it is medically necessary that she be there. . . . She was contractually obligated to pay [first facility] through December 6.

Exhibit 12 at 1-2. The nursing home charged the community spouse \$5,775.00 for [REDACTED] to October 31, 2024 and \$15,750.00 for November 1, 2024 to November 30, 2024. *Id.* at 6.

The assisted living facility charged the community spouse \$22,736.00 for [REDACTED] 2024 to [REDACTED] 2024. Exhibit 2 at 3. The summary of fees indicates a base fee of \$306/day, an additional fee of \$39/day, and a self-administered medication management fee of \$28/day, for a total daily fee of \$373. *Id.* at 37. Using that information, the spouse’s revised spousal maintenance needs deduction is as follows:

For April 2024:

Rent of community spouse ⁷	<u>\$6,714.00</u>
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Actual MMMNA of \$ 6,714.00.⁸

For May 2024:

Rent of community spouse ⁹	\$11,563.00
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Actual MMMNA of \$ 11,563.00.

For June 2024:

Rent of community spouse ¹⁰	\$11,190.00
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⁶ Once institutionalized in the nursing home, the Appellant’s wife is no longer considered a “community” spouse.
⁷ For 18 days.
⁸ Pursuant to 130 CMR 520.017(D)(1)(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.
⁹ For 31 days.

Actual MMMNA of \$ 11,190.00.

For July 2024:

Rent of community spouse ¹¹	\$11,563.00
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Actual MMMNA of \$ 11,563.00.

For August 2024:

Rent of community spouse ¹²	\$11,563.00
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Actual MMMNA of \$ 11,563.00.

The Appellant's spouse's bank records show a deposit for \$619,134.04 from the sale of the home on [REDACTED] 2024. Exhibit 10 at 30.¹³ The Appellant's attorney submitted the following calculation for the monthly income on spousal asset allowance, based on current value as of April 2024, and the assets listed do not include the home sale proceeds:

Combined assets	\$120,111.60
Appellant's non countable assets	\$(2,000.00)
Appellant's spouse's asset allowance	\$118,111.60
Income on first \$10K @.46%/yr	\$ 46.00
Income generated @ 4.46%/yr	\$ 4,821.78
Combined annual income	\$ 4,867.78
Monthly Income on Spouse Asset Allowance	\$ 405.65.

Exhibit 14 at 4.

The MassHealth representative stated that she had reviewed the Appellant's submission and did

¹⁰ For 30 days.

¹¹ For 31 days.

¹² For 31 days.

¹³ The Appellant's attorney argues that the spouse's "sale of her real estate should have no effect on [the Appellant's eligibility] for long-term care benefits, which was approved in July 2024, effective in February 2024. 42 USCS § 1396r-5(c)(4) states: 'Separate treatment of resources after eligibility for benefits established. During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for benefits under this title [42 USCS §§ 1396 et seq.], no resources of the community spouse shall be deemed available to the institutionalized spouse.'" Exhibit 6 at 2. It is not the focus of this appeal, so will not be discussed further, but after the sale of the home, and with both spouses being institutionalized, the assets exceed the financial eligibility limitation and should be spent down in accordance with MassHealth regulations.

not have any objection to it. Exhibit 15 at 1.

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, Exhibit 4.
2. The Appellant's spouse is over the age of 65. In [REDACTED] 2024, she moved to an assisted living facility. Testimony and Exhibit 10.
3. The Appellant's spouse moved to a memory care unit at the assisted living facility for those with Alzheimer's and other Dementia on [REDACTED] 2024. Exhibit 10.
4. The Appellant's spouse's housing costs for [REDACTED] 2024 at the assisted living facility were \$6,714, and her actual MMMNA was \$6,714. Exhibit 2.
5. The Appellant's spouse's housing costs for May 2024 at the assisted living facility were \$11,563, and her actual MMMNA was \$11,563. Exhibit 2.
6. The Appellant's spouse's housing costs for June 2024 at the assisted living facility were \$11,190, and her actual MMMNA was \$11,190. Exhibit 2.
7. The Appellant's spouse's housing costs for July 2024 at the assisted living facility were \$11,563, and her actual MMMNA was \$11,563. Exhibit 2.
8. The Appellant's spouse's housing costs for August 2024 at the assisted living facility were \$11,563, and her actual MMMNA was \$11,563. Exhibit 2.
9. The Appellant's spouse's nurse practitioner stated that the Appellant's spouse was under her care and "no longer able to make her own medical and financial decisions due to impaired cognition," and that her health care proxy had been activated. Exhibit 10.
10. On July 17, 2024, MassHealth approved the Appellant for long-term care services in a nursing facility with a patient-paid amount of \$1,740.76 monthly starting February 1, 2024. This calculation included \$72.80 for a personal needs allowance and \$2,018.44 for spouse-in-home allowance. Exhibit 1.
11. On August 21, 2024, the Appellant's representative filed a timely appeal with the Board of Hearings seeking an increase in the spouse-in-home allowance. Exhibit 2.

12. The MassHealth representative revised the Appellant's patient-paid amount to reflect the following:

For February 1, 2024 to June 30, 2024:

Gross Pension:	\$ 3,832.00
SMNA:	\$ (2,018.44) ¹⁴
Insurance:	\$ (230.44)
<u>Personal Needs Allowance:</u>	<u>\$ (72.80)</u>
Patient Paid Amount:	\$ 1,510.32

For July 1, 2024 to September 30, 2024:

Gross Pension:	\$ 3,870.43
SMNA:	\$ (2,018.44)
Insurance:	\$ (230.44)
<u>Personal Needs Allowance:</u>	<u>\$ (72.80)</u>
Patient Paid Amount:	\$ 1,548.75

Exhibit 7.

13. The Appellant's attorney clarified that the Appellant's spouse is seeking an increased MMMNA for April to August 2024 due to exceptional circumstances. Testimony.
14. The Appellant's attorney calculated the following for the monthly income on spousal asset allowance:

Combined assets	\$120,111.60
Appellant's non countable assets	\$(2,000.00)
Appellant's spouse's asset allowance	\$118,111.60
Income on first \$10K @.46%/yr	\$ 46.00
Income generated @ 4.46%/yr	\$ 4,821.78
Combined annual income	\$ 4,867.78
Monthly Income on Spouse Asset Allowance	\$ 405.65.

Exhibit 14.

¹⁴ On the submitted worksheet, the number listed is \$2,017.44. Exhibit 7. As this differs by one dollar from the amount listed on the notice and the other worksheet submitted, I interpret it as a typo and have corrected it to \$2,018.44. See Exhibit 1, Exhibit 8.

15. The summary of fees for the spouse's assisted living facility indicates a base fee of \$306/day, an additional fee of \$39/day, and a self-administered medication management fee of \$28/day for a total daily fee of \$373. Exhibit 2.
16. The Appellant's gross monthly income consisting of his pension was \$3,832.00 for February 1, 2024 to June 30, 2024, and increased to \$3,870.43 for July 1, 2024 to September 30, 2024. Testimony, Exhibit 7.
17. The Appellant's spouse's current gross monthly income includes \$1,043.70 in Social Security benefits and \$791.63 from an annuity. Exhibit 8.

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.

515.008: Responsibilities of Applicants and Members

(A) Responsibility to Cooperate. The applicant or member must cooperate with the MassHealth agency in providing information necessary to establish and maintain eligibility, and must comply with all the rules and regulations of MassHealth, including recovery and obtaining or maintaining other health insurance.

(B) Responsibility to Report Changes. The applicant or member must report to the MassHealth agency, within ten days or as soon as possible, changes that may affect eligibility. Such changes include, but are not limited to, income, assets, inheritances, gifts, transfers of and proceeds from the sale of real or personal property, distributions from or transfers into trusts, address, availability of health insurance, immigration status, and third-party liability.

130 CM 515.008(A), (B).

520.016: Long-term Care: Treatment of Assets

130 CMR 520.016 describes the treatment of countable assets when one member of a couple is institutionalized, the post-eligibility transfer of assets, and the allowable income deductions for applicants and members who are residents of a long-term-care facility.

(A) Institutionalized Individuals. The total value of assets owned by an institutionalized single individual or by a member of an institutionalized couple must not exceed \$2,000.

(B) Treatment of a Married Couple's Assets When One Spouse Is Institutionalized.

(1) Assessment.

(a) Requirement. The MassHealth agency completes an assessment of the total value of a couple's combined countable assets and computes the community spouse's asset allowance as of the date of the beginning of the most recent continuous period of institutionalization of one spouse.

(b) Right to Request an Assessment. When one spouse has entered a medical institution and is expected to remain institutionalized for at least 30 days, either spouse may request the MassHealth agency to make this assessment, even if the institutionalized spouse is not applying for MassHealth Standard at that time. The period of institutionalization must be continuous and expected to last for at least 30 days.

(c) Right to Appeal. The MassHealth agency must give each spouse a copy of the assessment and the documentation used to make such assessment. Each spouse must be notified that he or she has the right to appeal the determination of countable assets and the community spouse's asset allowance when the institutionalized spouse (or authorized representative) applies for MassHealth Standard.

(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;
2. a court-ordered amount; or
3. an amount determined after a fair hearing in accordance with 130 CMR 520.017.

(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.

(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.

(4) Retroactive Eligibility. In determining the eligibility of the institutionalized spouse for the three-month retroactive period before application in a continuous period of institutionalization, the MassHealth agency deducts the amount defined in 130 CMR 520.016(B)(2) from the couple's total countable assets.

(5) Eligibility of the Community Spouse. The amount defined in 130 CMR 520.016(B)(2) must be counted in determining the community spouse's eligibility for MassHealth.

130 CMR 520.016.

520.017: Right to Appeal the Asset Allowance or Minimum-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 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 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 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 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.

(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.

130 CMR 520.017.

520.026: Long-term-care General Income Deductions

General income deductions must be taken in the following order: a personal-needs allowance; a spousal-maintenance-needs allowance; a family-maintenance-needs allowance for qualified family members; a home-maintenance allowance; and health-care coverage and incurred medical and remedial-care expenses. These deductions are used in determining the monthly patient-paid amount.

(A) Personal-needs Allowance.

- (1) The MassHealth agency deducts \$72.80 for a long-term-care resident's personal-needs allowance (PNA).
- (2) If an individual does not have income totaling the standard, the MassHealth agency will pay the individual an amount up to that standard on a monthly basis.
- (3) The PNA for SSI recipients is \$72.80.

(B) Spousal-maintenance-needs-deduction. If the community spouse's gross income is less than the amount he or she needs to live in the community (minimum-monthly-maintenance-needs allowance, MMMNA) as determined by the MassHealth agency, the MassHealth agency may deduct an amount from the institutionalized spouse's countable-income amount to meet this need. This amount is the spousal-maintenance-needs deduction. 130 CMR 520.026(B) applies to the first month of eligibility in an institution and terminates the first full calendar month in which the spouse is no longer in an institution or no longer has a spouse in the community. This deduction is the amount by which the minimum-monthly-maintenance-needs allowance exceeds the community spouse's gross income.

- (1) The MassHealth agency determines the MMMNA by adding the following amounts:
 - (a) \$1,822 (the federal standard maintenance allowance); and
 - (b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$547 and the shelter expenses for the community spouse's principal residence, including
 1. the actual expenses for rent, mortgage (including interest and principal), property taxes and insurance, and any required maintenance charge for a condominium or cooperative; and

2. the applicable standard deduction under the Supplemental Nutrition Assistance Program for utility expenses. If heat is included in the rent or condominium fee, this amount is \$375. If heat is not included in the rent or condominium fee, this amount is \$611.
- (2) The maximum-monthly-maintenance-needs allowance is \$2,739.00 per month, unless it has been increased as the result of a fair-hearing decision based on exceptional circumstances in accordance with 130 CMR 520.017(D).
- (3) If the institutionalized individual is subject to a court order for the support of the community spouse, the court-ordered amount of support must be used as the spousal-maintenance-needs deduction when it exceeds the spousal-maintenance-needs deduction calculated according to 130 CMR 520.026(B) or resulting from a fair hearing.

(C) Deductions for Family-maintenance Needs.

- (1) The MassHealth agency allows a deduction from the income of a long-term-care resident to provide for the maintenance needs of the following family members if they live with the community spouse:
 - (a) a minor child — a child younger than 21 years old of either member of the couple;
 - (b) a dependent child — a child 21 years of age and older who is claimed as a dependent by either spouse for income-tax purposes under the Internal Revenue Code;
 - (c) a dependent parent — a parent of either spouse who lives with the community spouse and who is claimed as a dependent by either spouse for income-tax purposes under the Internal Revenue Code; and
 - (d) a dependent sibling — a brother or sister of either spouse (including a half-brother or half-sister) who lives with the community spouse and who is claimed as a dependent by either spouse for income-tax purposes under the Internal Revenue Code.
- (2) The deduction for family-maintenance needs is $\frac{1}{3}$ of the amount by which the federal standard maintenance allowance exceeds the monthly gross income of the family member. The federal standard maintenance allowance is \$1,822.

(D) Deductions for Maintenance of a Former Home.

- (1) The MassHealth agency allows a deduction for maintenance of a home when a competent medical authority certifies in writing that a single individual, with no eligible dependents in the home, is likely to return home within six months after the month of admission. This income deduction terminates at the end of the sixth month after the month of admission regardless of the prognosis to return home at that time.
- (2) The amount deducted is the 100 percent federal-poverty-level income standard for one person.

(E) Deductions for Health-care Coverage and Other Incurred Expenses.

(1) Health-Insurance Premiums or Membership Costs. The MassHealth agency allows a deduction for current health-insurance premiums or membership costs when payments are made directly to an insurer or a managed-care organization.

(2) Incurred Expenses.

(a) After the applicant is approved for MassHealth, the MassHealth agency will allow deductions for the applicant's necessary medical and remedial-care expenses. These expenses must not be payable by a third party. These expenses must be for medical or remedial-care services recognized under state law but not covered by MassHealth.

(b) These expenses must be within reasonable limits as established by the MassHealth agency. The MassHealth agency considers expenses to be within reasonable limits provided they are

1. not covered by the MassHealth per diem rate paid to the long-term-care facility; and
2. certified by a treating physician or other medical provider as being medically necessary.

(3) Guardianship Fees and Related Expenses. The MassHealth agency allows deductions from a member's income for guardianship fees and related expenses when a guardian is essential to enable an incompetent applicant or member to gain access to or consent to medical treatment, as provided below.

(a) Expenses Related to the Appointment of a Guardian.

1. The MassHealth agency allows a deduction for fees and expenses related to the appointment of a guardian if the guardian's appointment is made for the purpose of
 - a. assisting an incompetent applicant to gain access to medical treatment through MassHealth; or
 - b. consenting to medical treatment on behalf of a MassHealth member.
2. The MassHealth agency allows a deduction for reasonable costs, including attorney fees, as approved by the probate court, not to exceed \$500 for the appointment, except as provided in 130 CMR 520.026(E)(3)(a)3.
3. The MassHealth agency may allow a deduction, as approved by the probate court, of up to \$750 for the appointment when the medical issues before the court are more complex. An example of such complexities includes providing evidence of the need for anti-psychotic medications.
4. The deduction is made from the member's monthly patient-paid amount over a 12-month period.

(b) Guardianship Services Related to the Application Process.

1. The MassHealth agency allows a deduction for fees for guardianship services related to the MassHealth application process when the

guardian has been appointed by the probate court to assist an incompetent person with the MassHealth application when the securing of MassHealth benefits is essential for the member to gain access to medical treatment.

2. The MassHealth agency allows a deduction for reasonable costs related to the MassHealth application process, as approved by the probate court, not to exceed \$500. In cases where an administrative hearing is held, the total deduction may not exceed \$750 for the costs related to the application process and hearing.

3. The deduction is made from the member's monthly patient-paid amount over a 12-month period.

(c) Guardianship Services Related to the Redetermination Process.

1. The MassHealth agency allows a deduction for fees for guardianship services related to the MassHealth redetermination process when the guardian has been appointed by the probate court to assist an incompetent person with securing continued access to medical treatment.

2. The MassHealth agency allows a deduction for reasonable costs related to the MassHealth redetermination process, as approved by the probate court, not to exceed \$250. In cases where an administrative hearing is held, the total deduction may not exceed \$375 for the costs related to the redetermination process and hearing.

3. The deduction is made from the member's monthly patient-paid amount over a 12-month period.

(d) Monthly Guardianship Services.

1. The MassHealth agency allows a deduction for monthly fees for a guardian to the extent the guardian's services are essential to consent to medical treatment on behalf of the member.

2. The MassHealth agency allows a deduction, as approved by the probate court, for up to 24 hours per year at a maximum of \$50 per hour for guardianship services.

3. The MassHealth agency allows the deduction only if the guardianship services provided include the attendance and participation of the guardian in quarterly care meetings held by the nursing facility where the member lives.

4. The MassHealth agency allows this deduction only if each year the guardian submits to the MassHealth agency a copy of the affidavit that describes the guardianship services provided to the member.

5. The deduction is made from the member's monthly patient-paid amount over a 12-month period.

(e) Expenses Incurred by the Guardian in Connection with Monthly Guardianship Services.

1. The MassHealth agency allows a deduction up to, but not exceeding, the member's monthly patient-paid amount for filing and court fees incurred by the guardian in connection with monthly guardianship services that are essential to consent to medical treatment for the member.
2. If monthly guardianship services are provided, these expenses are included in the affidavit of services required under 130 CMR 520.026(E)(3)(d)4.
3. The deduction is made from the member's monthly patient-paid amount in the month following receipt of the affidavit of services.

(f) Hardship.

1. If exceptional circumstances exist that make the deductions allowed under 130 CMR 520.026(E) insufficient to cover the expenses required for a guardian to provide essential guardianship services needed to gain access to or consent to medical treatment, the guardian, on behalf of the member, may appeal to the Office of Medicaid Board of Hearings for an increased deduction.
2. A hearing officer may allow for an increased deduction for guardianship expenses only in circumstances where the issues surrounding the member's need to gain access to or consent to medical treatment are extraordinary.
3. Extraordinary circumstances may exist when
 - a. there is a need for a guardian to consistently spend more than 24 hours per year providing guardianship services to appropriately consent to medical treatment needed by the member; or
 - b. the circumstances of a MassHealth member cause the guardian appointment or application process to be particularly complex and significantly more costly than the deduction allowed at 130 CMR 520.026(E)(3)(a) or (b).

(g) Guardianship Services and Expenses That are not Deductible. The following fees and costs are not allowed as a deduction under 130 CMR 520.026(E):

1. amounts that are also used to reduce a member's assets under 130 CMR 520.004;
2. amounts that are also used to meet a deductible or any other deduction allowed under MassHealth regulations;
3. expenses related to the appointment of a guardian for an applicant when the appointment is made more than six months before submission of a MassHealth application;
4. expenses related to the appointment of a guardian for an applicant or member when the applicant or member does not request a deduction for the appointment within six months of the date of application or date of appointment, whichever is later. However, these expenses may be used

as allowed pursuant to 130 CMR 506.009: *The One-time Deductible* or 520.032 to meet a deductible;

5. expenses, fees, or costs for expenses that are not essential to obtain medical treatment for the ward including financial management, except when the management is necessary to accurately complete a MassHealth application or redetermination form;
6. expenses, fees, or costs for transportation or travel time.
7. attorney fees, except when payment of the fees is required for the appointment of the guardian; and
8. fees for guardianship services provided by a parent, spouse, sibling, or child, even if appointed by the probate court. However, the MassHealth agency allows a deduction for guardianship expenses in accordance with 130 CMR 520.026(E)(3)(a) and (e).

130 CMR 520.026.

520.027: Long-term-care Deductible

If after applying the deductions in 130 CMR 520.026(A) through (E) the long-term-care-facility resident's monthly income exceeds the public rate at the long-term-care facility, the MassHealth agency will establish a six-month deductible in accordance with 130 CMR 520.028 through 520.035 and use an income standard of \$72.80.

130 CMR 520.027.

520.009: Countable-income Amount

(A) Overview.

- (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. These include income to which the applicant, member, or spouse would be entitled whether or not actually received when failure to receive such income 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 income is reasonably considered to result from such action or inaction, the MassHealth agency will consider the specific circumstances involved.

130 CMR 520.009(A).

Regarding the Appellant's patient-paid amount, after the testimony and submission of evidence, the MassHealth representative revised it as follows:

For February 1, 2024 to June 30, 2024:

Gross Pension:	\$ 3,832.00
SMNA:	\$ (2,018.44) ¹⁵
Insurance:	\$ (230.44)
<u>Personal Needs Allowance:</u>	<u>\$ (72.80)</u>
Patient Paid Amount:	\$ 1,510.32

For July 1, 2024 to September 30, 2024:

Gross Pension:	\$ 3,870.43
SMNA:	\$ (2,018.44)
Insurance:	\$ (230.44)
<u>Personal Needs Allowance:</u>	<u>\$ (72.80)</u>
Patient Paid Amount:	\$ 1,548.75

Exhibit 7.

With the addition of the allowance for the Appellant's medical insurance, MassHealth corrected the calculation of the Appellant's patient-paid amount. 130 CMR 520.009(A)(3); 130 CMR 520.026.

Regarding the Appellant's request for an adjustment to his spouse's minimum-monthly-maintenance-needs allowance due to exceptional circumstances for the months of [REDACTED] through August 2024, under 130 CMR 520.017(D), I find that the Appellant's spouse's condition, specifically her impaired cognition requiring living and receiving care in a specialized facility, are "necessities that arise from the medical condition, frailty, or similar special needs of the community spouse" under 130 CMR 520.017(D)(1)(b).

¹⁵ On the submitted worksheet, the number listed is \$2,017.44. Exhibit 7. As this differs by one dollar from the amount listed on the notice and the other worksheet submitted, I interpret it as a typo and have corrected it to \$2,018.44. See Exhibit 1, Exhibit 8.

Turning to the fair-hearing officer's calculation of the increase for exceptional circumstances under 130 CMR 520.017(D)(2), I find that under 130 CMR 520.017(D)(2)(a), the existing spousal maintenance needs deduction does not include income generated by the community's spouse's asset allowance. Exhibit 8.

Pursuant to the Appellant's attorney's submission, the Appellant's spouse's monthly asset allocation income is \$405.65. Exhibit 14. Adding this to the Appellant's spouse's gross monthly income of \$1,835.06 (\$1043.70 (Social Security) + 791.63 (annuity income) = \$1,835.06), results in an updated total of \$2,240.71 for gross monthly income. 130 CMR 520.017(D)(2)(a).

In calculating the revised MMMNA to meet the Appellant's spouse's exceptional circumstances, based on the materials submitted, the Appellant's total monthly shelter expenses are \$11,190 based on 30 days at a rate of \$373/day. See Exhibit 2 and 130 CMR 520.017(D)(2)(b). The revised actual MMMNA for the spouse is \$6,714 for April 2024, \$11,563 for May, July, and August 2024, and \$11,190 for June 2024. This exceeds the federal maximum monthly maintenance needs allowance of \$3,853.50. Both the federal maximum monthly maintenance needs allowance and the community spouse's actual expenses exceed the Appellant's spouse's gross monthly income of \$2,240.71.

As the institutionalized spouse, the Appellant's countable income was \$3,832.00 for [REDACTED] 2024 to June 30, 2024. His countable income was \$3,870.43 for July 1, 2024 to September 30, 2024. Reflecting the personal-needs allowance deduction, provided for in 130 CMR 520.017(D)(2)(c), the Appellant's patient paid amounts should be as follows:

February 2024:

Gross Pension:	\$ 3,832.00
SMNA:	\$ (1,612.79) ¹⁶
Insurance:	\$ (230.44)
<u>Personal Needs Allowance:</u>	<u>\$ (72.80)</u>
Patient Paid Amount:	\$ 1,915.97

March 2024:

Gross Pension:	\$ 3,832.00
SMNA:	\$ (1,612.79)
Insurance:	\$ (230.44)

¹⁶ This reflects the adjustment to account for the spouse's monthly asset allowance income of \$405.65.

Personal Needs Allowance:	\$ (72.80)
Patient Paid Amount:	\$ 1,915.97

April 2024:

Gross Pension:	\$ 3,832.00
Personal Needs Allowance:	\$ (72.80) ¹⁷
<u>Revised SMNA:</u>	<u>\$ (4,473.29)¹⁸</u>
Patient Paid Amount:	\$ 0

May 2024:

Gross Pension:	\$ 3,832.00
Personal Needs Allowance:	\$ (72.80)
<u>Revised SMNA:</u>	<u>\$ (9,322.29)</u>
Patient Paid Amount:	\$ 0

June 2024:

Gross Pension:	\$ 3,832.00
Personal Needs Allowance:	\$ (72.80)
<u>Revised SMNA:</u>	<u>\$ (8,949.29)</u>
Patient Paid Amount:	\$ 0

July 2024:

Gross Pension:	\$ 3,870.43
Personal Needs Allowance:	\$ (72.80)
<u>Revised SMNA:</u>	<u>\$ (9,322.29)</u>
Patient Paid Amount:	\$ 0

¹⁷ The spousal-maintenance-needs deduction is the second in a number of general long-term-care income deductions. General income deductions must be taken in the following order: a personal-needs allowance; a spousal-maintenance-needs allowance; a family-maintenance allowance for qualified family members; a home-maintenance allowance; and health-care coverage and incurred medical and remedial-care expenses. These deductions are used in determining the monthly patient-paid amount. 130 CMR 520.026.

¹⁸ Subtracting the spouse's gross income of \$2,240.71 from her April living expenses (\$6,714). 130 CMR 520.017(D)(2)(c).

August 2024:

Gross Pension:	\$ 3,870.43
Personal Needs Allowance:	\$ (72.80)
<u>Revised SMNA:</u>	<u>\$ (9,322.29)</u>
Patient Paid Amount:	\$ 0

Therefore, the appeal is approved in part, as reflected in these calculations.

Order for MassHealth

Revise the Appellant's patient-paid amount in accordance with this finding of exceptional circumstances.

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 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.

Emily Sabo
Hearing Officer
Board of Hearings

[REDACTED]

[REDACTED]

cc: MassHealth Representative: Quincy MEC, Attn: Appeals Coordinator, 100 Hancock Street,
6th Floor, Quincy, MA 02171