

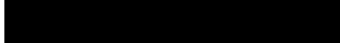
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2416503
Decision Date:	12/18/2024	Hearing Date:	12/4/2024
Hearing Officer:	Thomas J. Goode		

Appearance for Appellant:



Appearance for MassHealth:

Lindsay Gallant, Taunton 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	Issue:	130 CMR 520.017; LTC; Excess Assets
Decision Date:	12/18/2024	Hearing Date:	12/04/2024
MassHealth's Rep.:	Lindsay Gallant	Appellant's Rep.:	[REDACTED]
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

By notice dated October 17, 2024, MassHealth informed Appellant that her application for MassHealth long-term care benefits was denied because assets exceed program limits (130 CMR 520.003 and Exhibit 1). Appellant filed this appeal in a timely manner on October 25, 2024 (130 CMR 610.015(B) and Exhibit 2). Denial of an application for long-term care coverage is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth issued notice on October 17, 2024 informing Appellant that her application for MassHealth long-term care benefits was denied because assets exceed program limits.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.003, 520.017, 520.026, in determining that assets exceed program limits.

Summary of Evidence

The MassHealth representative testified that the institutionalized spouse was admitted to a nursing facility on [REDACTED] 2024. On August 5, 2024, a MassHealth long-term care application was submitted on Appellant's behalf seeking coverage effective July 8, 2024. The application was denied due to assets that exceed MassHealth limits. Total combined countable assets are \$180,154.96. The community spouse is allowed to retain \$154,140, leaving excess assets totaling \$24,014.96. Income for the institutionalized spouse is \$784 Social Security income (Exhibit 6). The community spouse's Social Security income is \$2,369.70 and pension income is \$1,062.78, for total gross income of \$3,432.48. MassHealth calculated the maximum Minimum Monthly Maintenance Needs Allowance of \$3,853.50 (Exhibit 4).

Appellant's attorney testified that the community spouse resides in an assisted living facility at a monthly cost of \$6,000 which includes meals. The admission to the assisted living facility became medically necessary after his spouse was admitted to the nursing facility (Exhibit 6). Appellant's attorney argued that due to the cost of the assisted living facility, and pursuant to 130 CMR 520.017(D), exceptional circumstances exist and should allow the community spouse to retain all excess assets and a portion of the institutionalized spouse's income (Exhibits 5,6).

Findings of Fact

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

1. The institutionalized spouse was admitted to a nursing facility on [REDACTED] 2024.
2. On August 5, 2024, a MassHealth long-term care application was submitted on Appellant's behalf seeking coverage effective July 8, 2024. The application was denied due to assets that exceed MassHealth limits.
3. Total combined countable assets are \$180,154.96.
4. The community spouse is allowed to retain \$154,140, leaving excess assets totaling \$24,014.96.
5. Income for the institutionalized spouse is \$784 Social Security income.
6. The community spouse's Social Security income is \$2,369.70 and pension income is \$1,062.78, for total gross income of \$3,432.48.
7. MassHealth calculated the maximum Minimum Monthly Maintenance Needs Allowance of \$3,853.50 (Exhibit 4).

8. The community spouse resides in an assisted living facility with a monthly cost of \$6,000 which includes meals. The placement is medically necessary (Exhibit 6, p. 3).
9. The Bank Rate Monitor Index rate for Money Market accounts is 0.48%; the 2^{1/2}-year CD rate is 1.36% (Exhibit 6, p. 2).

Analysis and Conclusions of Law

130 CMR 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.

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 (emphasis added).

MassHealth calculated the maximum MMMNA of \$3,853.50.¹ The community spouse resides in an assisted living facility which is medically necessary pursuant to his physician, and costs \$6,000 per month which includes all meals (See Exhibits 5, 6). The assisted living agreement, service plan, fee schedule, and all pertinent medical documentation have been reviewed. The community spouse's monthly fee to the assisted living facility does not include clothing, out of pocket medical expenses, or any other additional necessary expenses. Appellant has shown exceptional circumstances that arise from the medical condition, frailty, or similar special needs of the community spouse which result in significant financial duress. Accordingly, the MMMNA is increased to \$6,000 per month pursuant to 130 CMR 520.017(D).

¹ Figures used to determine the MMMNA are available at: <https://www.mass.gov/doc/figures-used-to-determine-minimum-monthly-maintenance-needs-allowance>.

The community spouse has total income of \$3,432.48. Total assets are \$180,154.96, of which \$154,140 is retained by the community spouse. Income from the first \$10,000 of retained assets is calculated pursuant to 130 CMR 520.017(C)(1) using the current bank rate monitor index of 0.48%, and yields \$4.00 per month, bringing the community spouse's income to \$3,436.48. Income from the remaining \$144,140 retained by the community spouse is calculated pursuant to 130 CMR 520.017(C)(1) at 1.36% and produces \$163.35 per month, bringing the community spouse's income to \$3,599.83, leaving a \$2,400.16 MMMNA shortfall. Therefore, pursuant to 130 CMR 520.017(C)(2), the institutionalized spouse's total gross income of \$784 is reduced by the \$72.80 PNA, and the remaining \$711.20 raises the community spouse's income to \$4,311.03, reducing the MMMNA shortfall to \$1,688.97. Pursuant to 130 CMR 520.017(C)(3), the remaining \$24,014.96 is calculated at the 2^{1/2}-year CD rate of 1.36% and produces \$27.21 interest income per month, raising the community spouse's income to \$4,338.24 per month, leaving a \$1,661.76 shortfall between income and the \$6,000 MMMNA based on exceptional circumstances. Accordingly, the spousal-maintenance-needs-allowance² is \$711.20; and all assets are retained by the community spouse.³

The appeal is APPROVED.

Order for MassHealth

Rescind the October 17, 2024 notice of excess assets. Increase the monthly-maintenance-needs-allowance for the community spouse to \$6,000; shift all assets to the community spouse in addition to a spousal maintenance needs allowance of \$711.20 of the institutionalized spouse's income. Calculate a \$0 patient paid amount, and issue a new notice of eligibility.


² See 130 CMR 520.026(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.

³ The calculations herein result in a more favorable PPA amount than projected by Appellant's representative and MassHealth (Exhibits 6, 4). Regulation 130 CMR 520.026(A) mandates the order in which deductions are allowed. After the PNA is deducted, the spousal-maintenance-needs allowance is deducted from the institutionalized spouse's income. Therefore, for purposes of calculating the PPA, the SMNA reduces the PPA to \$0 without consideration to deductions for health insurance paid by the institutionalized spouse. See also 130 CMR 520.017(C)(1-3).

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.

Thomas J. Goode
Hearing Officer
Board of Hearings


Appeals Coordinator: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104