

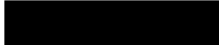
# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved-in-part; Dismissed-in-part; Denied-in-part	<b>Appeal Number:</b>	2417363
<b>Decision Date:</b>	2/10/2025	<b>Hearing Date:</b>	12/11/2024
<b>Hearing Officer:</b>	Christopher Jones	<b>Record Open to:</b>	12/18/2024

**Appearance for Appellant:**



**Appearance for MassHealth:**

Diane Braley – Taunton Intake



*The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, Quincy, Massachusetts 02171*

## APPEAL DECISION

<b>Appeal Decision:</b>	Approved-in-part; Dismissed-in-part; Denied-in-part	<b>Issue:</b>	LTC; Minimum Monthly Maintenance Needs Allowance (MMMNA); Timeliness
<b>Decision Date:</b>	2/10/2025	<b>Hearing Date:</b>	12/11/2024
<b>MassHealth's Rep.:</b>	Diane Braley	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Telephonic	<b>Aid Pending:</b>	No

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

Through a notice dated September 13, 2024, MassHealth calculated the appellant's patient-paid amount to be \$972.35, starting September 1, 2024. (Exhibit 1.) The appellant filed this timely appeal on November 12, 2024. (Exhibit 2; 130 CMR 610.015(B).) MassHealth determinations regarding the scope of assistance are valid grounds for appeal. (130 CMR 610.032.)

### Action Taken by MassHealth

MassHealth calculated a PPA of \$972.35 to begin September 1, 2024.

### Issue

The appeal issues are (1) whether MassHealth correctly calculated the appellant's patient-paid amount, pursuant to 130 CMR 520.017, 520.026; (2) whether the appellant's community spouse is entitled to an increase in the spousal-maintenance-needs deduction through an adjustment to the minimum-monthly-maintenance-needs allowance based upon exceptional circumstances under 130 CMR 520.017(D); (3) as of when should this adjustment be effective.

## Summary of Evidence

On August 7, 2024, MassHealth's ongoing unit requested that the appellant verify that jointly held assets had been fully transferred to the community spouse. In response, the appellant's attorney submitted the requested proof and requested that MassHealth adjust the appellant's patient-paid amount ("PPA") to \$0 as of March 1, 2024, when the community spouse entered an assisted living facility. In response, MassHealth issued the September 13, 2024, notice changing the PPA to \$972.35, effective September 1, 2024. This calculation was done using the institutionalized spouse's income of Social Security of \$1,491 and a private pension of \$1,631.63.<sup>1</sup> The community spouse's income is listed as \$1,806.90. The spousal-maintenance-needs deduction was \$1,988.80. MassHealth calculated the PPA by deducting a personal needs allowance of \$72.80, a spousal deduction of \$1,988.80, and health insurance premiums of \$88.68 from the appellant's income of \$3,122.63, resulting in a PPA of \$972.35.

By way of history, the appellant's attorney testified that this case was initially processed by a different MassHealth worker. Through a notice dated April 29, 2024, that worker approved the application as of December 1, 2023, with a PPA of \$1,573.52. The appellant's attorney testified that she contacted the worker because the community spouse had moved into an assisted living facility and asked that the PPA be adjusted to \$0 as of March 1, 2024. Through a notice dated May 15, 2024, the PPA was increased to \$1,610.52 as of June 1, 2024. The appellant's attorney testified that she spoke with the intake worker, who told her that she would fix the PPA, and the appellant should not file an appeal to the Board of Hearings. On June 28, 2024, the appellant's attorney faxed the assisted living contract to the intake worker and again asked that the PPA be recalculated. On July 1, 2024, MassHealth changed the PPA to \$1,547.52, effective July 1, 2024. The appellant's attorney re-requested the adjustment from the intake worker on July 25, 2024, and August 9, 2024. The change of ownership of the bank accounts was also submitted on August 9, 2024. The case was handed over from the intake unit to the ongoing unit around this time, and the August 7, 2024, request for information was sent out from MassHealth.

The appellant's attorney submitted a letter detailing her calculation of the community spouse's spousal-maintenance-needs deduction ("SMND"). The appellant's attorney calculated the minimum-monthly-maintenance-needs allowance ("minimum-MMNA") using the income numbers for the institutionalized spouse from the MassHealth notices: Social Security of \$1,491 (now known to be inaccurate) and a private pension of \$1,631.63. The community spouse's income is listed as \$1,806.90. The appellant's attorney lists a rental expense of \$4,227.50, from which the attorney

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<sup>1</sup> All MassHealth notices list the institutionalized spouse's Social Security income as \$1,491. MassHealth's exhibit identifies the institutionalized spouse's gross Social Security as \$1,938.70 as of January 1, 2024. At the hearing MassHealth's representative testified that his Social Security had updated on December 7, 2024 to \$1,987, gross. This is presumed to reflect the cost-of-living adjustment for 2025, as it equates to a 2.5% increase over \$1,938.70.

deducted the standard shelter expense of \$766.50<sup>2</sup>, resulting in an excess shelter amount of \$3,461.00. The appellant's attorney added the "Federal Standard Maintenance Allowance of \$2,555.00,"<sup>3</sup> and calculated a minimum-MMNA of \$6,016.00. The appellant's attorney noted that the maximum-monthly-maintenance-needs allowance ("maximum-MMNA") set forth in the MassHealth regulations is \$3,853.50.

At the hearing, the appellant's attorney acknowledged that the SMND can only be adjusted beyond the maximum-MMNA through a fair hearing. It was noted that the first fair hearing request was filed on November 12, 2024, and the deadline to file an appeal is typically 60 days. The appellant's attorney alleged that the original caseworker had told her not to appeal, and she chose not to appeal because she believed that the worker was fixing the problem and appealing would simply result in a duplication of effort for MassHealth. It was noted that there was an extended 120-day appeal timeline in certain circumstances, but even that would only reach back to actions in July 2024.<sup>4</sup>

The MassHealth representative noted that the appellant's attorney's calculation of the MMMNA had not included a standard utilities allowance ("SUA"), and MassHealth's representative confirmed that MassHealth allows a non-heating SUA, even if all utilities are included in rent.<sup>5</sup> The institutionalized spouse's gross monthly income is \$3,570.33: \$1,938.70 from Social Security and \$1,631.63 from a pension. The community spouse receives \$1,864.70 in gross monthly Social Security. Both spouses pay \$174.70 for Medicare premiums, and the institutionalized spouse pays \$88.68 a month for a supplemental insurance premium. As of March 1, 2024, the community spouse has resided in an assisted living facility, for which she pays \$4,227.50 per month in rent. The community spouse's assisted living facility contract includes almost all of the community spouse's needs, including utilities, meals, housekeeping, and laundry. Not included in the fee are beauty/barber services, personal items, guest meals, transportation, room service, maintenance services, and cell phone.

The appellant's attorney argues that exceptional circumstances exist necessitating that the MMMNA be increased. Pursuant to 130 CMR 520.017(D), a hearing officer needs to ensure that no expenses are counted more than once. Because the assisted living contract includes all of the

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<sup>2</sup> This number is effective July 1, 2024. The number in effect from July 1, 2023, through June 30, 2024, was \$739.50.

<sup>3</sup> The number in effect from July 1, 2023, through June 30, 2024, was 2,465.00.

<sup>4</sup> 120 days before November 12 was July 14.

<sup>5</sup> The Standard Utility Allowance figure depends upon whether or not the community spouse pays for their own heating. The SUA is updated by the Department of Transitional Assistance. The non-heating utility allowance in 2024 was \$520 in 2024. (See <https://eohhs.ehs.state.ma.us/DTA/PolicyOnline/olg%20docs/guides/Helpful%20Charts%20and%20Figures.pdf> (last visited Feb. 4, 2025).)

community spouse's living expenses, the Federal Standard Maintenance Allowance appears to be duplicative of some of the community spouse's expenses. The appellant's attorney testified that there are a lot of things that are not covered by the assisted living fee, such as phone, television, snacks that the community spouse would keep in her apartment. The appellant's attorney was asked to supplement the record to document the community spouse's expenses that were not covered by the assisted living fee.

It was also noted that income needs to be imputed based upon the community spouse's resource allowance. The appellant's attorney testified that the community spouse has \$40,000 in the bank left, but there is no interest accruing to the money. MassHealth's exhibits document that the appellant had more assets than this at the time of approval, and the appellant's attorney testified that the assets are being spent down on the community spouse's living expenses. The Bank Rate national average on money market accounts on the day of the hearing was 0.41%. The highest average certificate of deposit rate on a term not exceeding 2.5 years was 1.75% for a 1-year CD.

The hearing record was left open until December 18, 2024, for the appellant's attorney to submit additional documentation and arguments regarding the jurisdictional issue, the community spouse's living expenses, and arguments regarding how the PPA should be calculated. The appellant's attorney submitted a letter from the community spouse's doctor confirming that the community spouse needs to live in an assisted living facility based on her vision and unsteady gait. The appellant's attorney also responded that the community spouse's expenses included a medical-alert pendant fee of \$255, personal expenses averaging \$50 per month, and prescription costs of \$85 per month. The appellant's attorney averaged the community spouse's vision and dental expenses to be \$150 per month. The appellant's attorney noted that the community spouse will soon need additional care, which will increase her rent \$843 per month. The appellant's attorney argued that if the Federal Standard Maintenance Allowance were not included in the calculation of the SMND, the appellant would likely need to go through another appeal soon. The assisted living contract documents that the medical-alert pendant fee of \$255 is the cost of the pendant, and the cost of replacing the pendant.

Regarding the jurisdictional issue, the appellant's attorney noted that they were in communication regularly with MassHealth and submitted additional documentation well within 60 days of every MassHealth notice. The appellant's attorney argues that, because a new notice was always received prior to the closing of a 60-day appeal window, the most recent notice received should be considered the one that controls on the case, and the appeal of that notice should be effective back to the date of the first notice erroneously setting the PPA.

## **Findings of Fact**

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

- 1) Through a notice dated April 29, 2024, the institutionalized spouse was approved for long-term-care services as of December 1, 2023, with a PPA of \$1,573.52. (Exhibit 6, pp. 3-4.)

- 2) Through a notice dated May 15, 2024, the appellant's PPA was increased to \$1,610.52 as of June 1, 2024. On July 1, 2024, MassHealth changed the PPA to \$1,547.52, effective July 1, 2024. (Exhibit 6, pp. 123-126.)
- 3) The appellant's case was transferred to MassHealth's ongoing unit, which sent out a request for information on August 7, 2024. MassHealth recalculated the appellant's PPA to be \$972.35, effective September 1, 2024. (Exhibit 1; Exhibit 8, pp. 9-10, 131-132.)
- 4) In 2024, the institutionalized spouse's gross monthly income was \$3,570.33: \$1,938.70 from Social Security and \$1,631.63 from a private pension. The community spouse received \$1,864.70 from Social Security. Both have a monthly Medicare premium of \$174.70, and the institutionalized spouse pays \$88.68 for a supplemental insurance premium. (Testimony by MassHealth's representative; Exhibit 5, pp. 7-10.)
- 5) The community spouse's vision and stability impairments require that she reside in an assisted living community. (Exhibit 8, p. 3.)
- 6) The community spouse's monthly rent at the assisted living facility is \$4,227.50 per month. The assisted living facility contract includes meals, utilities, housekeeping and laundry services. Not included in the fee are beauty/barber services, personal items, guest meals, transportation, room service, maintenance services, cell phone, and additional services. (Exhibits 6, pp. 7-122.)
- 7) The community spouse has additional personal expenses averaging \$50 per month, prescription costs average \$85 per month, and non-covered vision and dental expenses averaging \$150 per month. The monthly cost of the medical alert pendant would be \$18.75. This totals \$303.75 per month. (Exhibit 8, p. 1, 25.)
- 8) The community spouse has \$40,000 remaining in assets, and she has been spending assets to afford her assisted living expenses. (Testimony by the appellant's attorney.)
- 9) The Bank Rate national average on money market accounts on the day of the hearing was 0.41%. The highest average certificate of deposit rate on a term not exceeding 2.5 years was 1.75% for a 1-year CD. (Exhibit 7; Exhibit 9.)

## **Analysis and Conclusions of Law**

To determine a member's PPA, MassHealth regulations require that deductions be made from the member's income "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." (130 CMR 520.026.) The amount for the personal-needs allowance is set at \$72.80. (Id.)

If the community spouse's income is insufficient to meet their monthly expenses, the SMND allows the community spouse to keep some of the institutionalized spouse's income to pay for necessities. The SMND "is the amount by which the minimum-monthly-maintenance-needs allowance exceeds the community spouse's gross income." (130 CMR 520.026(B).)

### **Calculating the SMND – 130 CMR 520.026(B)**

The minimum-monthly-maintenance-needs allowance is defined as "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)." (130 CMR 520.017(B).) If the community spouse's gross income is less than the minimum-MMNA, MassHealth "may deduct an amount from the institutionalized spouse's countable-income amount to meet this need." This deduction is the spousal maintenance needs deduction ("SMND"). It is calculated by subtracting the community spouse's gross income from the relevant monthly-maintenance-needs allowance. (130 CMR 520.026(B).)

(1) The MassHealth agency determines the [minimum-]MMNA by adding the following amounts:

(a) \$[2,555.00<sup>6</sup>] (the federal standard maintenance allowance); and

(b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$[766.50] 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 \$[520]. If heat is not included in the rent or condominium fee, this amount is \$[852].

(2) The maximum-monthly-maintenance-needs allowance is \$[3,853.50] 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).**

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<sup>6</sup> The adjusted numbers inserted into this quotation are applicable as of July 1, 2024. (See Centers for Medicare & Medicaid ("CMS") Informational Bulletin from May 22, 2024, available at <https://www.medicaid.gov/federal-policy-guidance/downloads/cib05222024.pdf>; "Helpful Charts and Figures—SNAP," available at <https://eohhs.ehs.state.ma.us/DTA/PolicyOnline/olg%20docs/guides/Helpful%20Charts%20and%20Figures.pdf> (last visited February 4, 2025).)

(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.

(130 CMR 520.026(B) (emphasis added).)

The community spouse's monthly rent is \$4,227.50. The resulting "excess shelter allowance" is \$3,981.00 (\$4,227.50 + \$520 - \$766.50), therefore her minimum-MMNA is \$6,536.00 (\$3,981.00 + \$2,555.00). However, the maximum-MMNA must be used unless it is increased by a hearing officer following a fair hearing. The correct SMND for the community spouse that MassHealth should have calculated is simply the maximum-MMNA minus the community spouse's gross income: \$1,974.90 (\$3,853.50 - \$1,878.60). Using the correct income for the institutionalized spouse, of \$3,570.33 (\$1,938.70 for Social Security and \$1,631.63 for pension), the institutionalized spouse is allowed the following deductions: \$72.80 for a personal-needs allowance ("PNA"); \$1,974.90 for the SMND; \$174.70 for Medicare premiums; and \$88.68 for other health insurance resulting in a PPA of \$1,259.25. (See 130 CMR 520.026(A), (B), and (E).)

## **Increasing the SMND Beyond the Maximum-MMNA**

### **Exceptional Circumstances**

The SMND may only be increased above what is calculated using the maximum-MMNA following a fair hearing. (130 CMR 520.026(B)(2); 130 CMR 520.017(D).) Such an increase requires finding that "exception circumstances" resulting in "significant financial duress." (130 CMR 520.017(D)(1).) Exceptional circumstances must be

circumstances other than those already taken into account in establishing the maintenance standards for the community spouse under 130 CMR 520.026(B) ... . **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.

(130 CMR 520.017(D)(1) (emphasis added).)

A fair hearing officer must ensure “that no expense (for example, for food or utilities) is counted more than once in the calculation” and if “the community spouse lives in an assisted-living facility or similar facility ... the fair-hearing officer reviews the ... 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.” (130 CMR 520.017(D)(1)(a)-(b).)

The appellant has established that exceptional circumstances exist. The community spouse’s physician has documented the medical necessity of her living at the assisted living facility. The community spouse’s monthly income with the correct SMND is almost \$1,000 less than her rent, and she is rapidly depleting her assets in paying her housing costs. Therefore, I find that the community spouse’s exceptional circumstances pose “significant financial duress.”

#### **Amount of Increase for Exceptional Circumstances**

The monthly-maintenance-needs allowance may be increased “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.** ... .

(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(D)(2) (emphasis added).)

The “income generated by the community spouse’s asset allowance” is

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 2½ years.

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

The community spouse's housing contract does not allow for separating out specific expenses from the expense of the rent itself. The \$4,227.50 monthly fee to reside in the facility includes numerous services that may not be combined with the federal standards that duplicate these costs, such as food, shelter, and utilities. (130 CMR 520.017(D)(1)(a).) Therefore, I cannot accept the appellant's argument that the monthly-maintenance-needs allowance should be \$6,016.00. Given the community spouse's exceptional care needs, her monthly-maintenance-needs allowance may be increased to cover the necessities that arise from her medical condition. Per 130 CMR 520.017(D)(2)(b), the revised MMMNA should be adjusted based upon the community spouse's actual expenses.

The community spouse's expenses include her rent of \$4,227.50, uncovered monthly living expenses of \$303.75 per month, and a Medicare premium of \$174.70, resulting in total monthly expenses of \$4,705.95.<sup>7</sup> Her monthly income from her remaining assets would be \$47.17, based on \$10,000 earning interest at 0.41%, the national average for money market accounts, and the remaining \$30,000 earning interest at the highest national average CD rate not to exceed 2.5 years, 1.75%. The community spouse's income is therefore \$1,925.77. The community spouse's shortfall in income (the SMND) is \$2,780.18. This results in a PPA of \$453.97 after the institutionalized spouse's PNA and health insurances costs are deducted from his gross income of \$3,570.33. This appeal is APPROVED-in-part with regards to the request that the PPA be reduced through an increased SMND calculated upon an increase above the maximum-MMND.

### **Effective Date of MMMNA Adjustment**

The Board of Hearings "must receive the request for a fair hearing within ... **60 days after an applicant or member receives written notice from the MassHealth agency of the intended action.**" MassHealth notices are presumed received five business days following the date on the notice unless there is evidence to the contrary. "The date of request for a fair hearing is the date on which BOH receives such a request in writing." (130 CMR 610.015(B).)

There is an extended 120-day timeframe for appeals where MassHealth "fails to act on an application; ... fails to act on [a request for services]; ... fails to send written notice of the action; or" the date on which it is alleged that a MassHealth employee has coerced or otherwise improperly deterred the member from filing an appeal. (130 CMR 610.015(B)(2).) Appeals must be dismissed where "the request is not received within the time frame specified in 130 CMR 610.015." (130 CMR 610.035(A)(1).)

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<sup>7</sup> The federal maintenance standard of \$2,555 includes some allowance for non-extraordinary living expenses. The additional expenses presented by the appellant's attorney are reasonable, do not appear to be "for maintaining any pre-set standard of living," and are within the Federal Standard Maintenance Allowance. For this reason, they are allowed.

The only fair hearing request received by the Board of Hearings was received on November 12, 2024. Even using the extended 120-day timeline, the only appealable action by MassHealth is the September 13, 2024 notice. The August 7, 2024 request for information is not a MassHealth action, but rather a notice that action will be taken if no response is provided. The fact that the appellant remained in contact with MassHealth does not alleviate the necessity of filing an appeal with the Board of Hearings. This is especially true where the relief the appellant seeks is only available from the Board of Hearings: “The maximum-monthly-maintenance-needs allowance is \$[3,853.50] 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).**” 130 CMR 520.026(B) (emphasis added).)

Therefore, this appeal is DISMISSED-in-part with regards to the appellant’s request that this PPA adjustment be made back to March 1, 2024.

The “Start Date of Coverage” for MassHealth Standard “is the first day of the third calendar month before the month of application ... ” (130 CMR 516.006(A).) However, for “Continuing Eligibility,” which includes changes to coverage “through an update of the member's circumstances,” the “effective date of the change is the date of the redetermination of eligibility.” (See 130 CMR 516.007(A)(3), (C)(4).) According to the appealed notice, the effective date of the adjustment to the PPA was September 1, 2024. The appellant’s PPA shall be adjusted to \$453.97, effective September 1, 2024. To the extent that this appeal seeks an earlier adjustment, it is DENIED-in-part.

## Order for MassHealth

Increase the community spouse’s SMND to \$2,780.18, and reduce the PPA to \$453.97, effective September 1, 2024.

## 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.

Christopher Jones  
Hearing Officer  
Board of Hearings

[REDACTED]

[REDACTED]

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21  
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