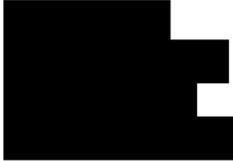


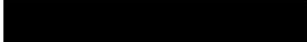
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2418047
Decision Date:	2/14/2025	Hearing Date:	01/06/2025
Hearing Officer:	Christopher Jones		

Appearance for Appellant:



Appearance for MassHealth:

Andrea Pelczar for Kim McAvinchey



*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:	Long Term Care; Community Spouse Resource Allowance (CSRA); Patient Paid Amount
Decision Date:	2/14/2025	Hearing Date:	01/06/2025
MassHealth's Rep.:	Andrea Pelczar	Appellant's Rep.:	[REDACTED]
Hearing Location:	Telephonic	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 November 14, 2024, MassHealth denied the appellant's application for long-term-care benefits because he had more countable assets than MassHealth benefits allow. (Exhibit 1; 130 CMR 520.003, 520.004.) The appellant filed this appeal in a timely manner on November 25, 2024. (Exhibit 1; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth denied the appellant's application because the appellant and his spouse have assets in excess of the community spouse asset allowance.

Issue

The appeal issue is whether the community spouse is entitled to an increase in the community spouse asset allowance pursuant to 130 CMR 520.017(C), (D).

Summary of Evidence

The appellant is seeking MassHealth long-term-care benefits as of June 1, 2024. The appellant filed an application for long-term-care benefits on September 5, 2024. During the application process, the appellant and his community spouse verified countable assets of \$397,949.31 as of the benefits request date. Based upon this, MassHealth denied the application as the joint assets were over the combined asset limit of \$2,000 for the institutionalized spouse and \$154,140.00 for a community spouse asset allowance.¹ MassHealth determined excess assets of \$241,809.31.

As of the benefits request date, the institutionalized spouse's total countable monthly income was \$3,808.78, and the community spouse's gross monthly income was \$2,250.13. (Exhibit 5.) In July 2024, the institutionalized spouse's income increased to \$3,841.22, and the community spouse's income increased to \$2,290.13. (Exhibit 7, pp. 35, 37.)

The community spouse resides in an assisted living facility, for which she pays a fee of \$8,900 per month. This fee includes rent, all utilities, meals, transportation to medical appointments, housekeeping, laundry, and a minimum amount of personal care attendant services each day. The community spouse's physician has documented her dementia and opined that it is necessary for the community spouse to reside in an assisted living facility environment to remain safe in the community. (Exhibit 8).

MassHealth submitted an anticipatory spousal-maintenance-needs allowance ("SMNA") calculation. This calculation used the maximum-monthly-maintenance-needs allowance (maximum-"MMNA") of \$3,853.50, deducted the community spouse's gross income of \$2,290.13, and calculated a SMNA of \$1,563.37. The appellant's representative submitted calculations to show that the community spouse should be allowed to keep all the excess assets because her income would not meet her minimum-MMNA, based upon her housing expenses.

The appellant's representative submitted information from the Bank Rate Monitor from January 1, 2025, showing that average Money Market deposit yields were 0.47%, and the highest yield for a certificate of deposit not exceeding two-and-a-half years was 1.93% for a one-year CD. If the first \$10,000 of the community spouse's asset allowance was invested at the average money market rate of 0.47% it would generate \$3.91 a month in interest income. If the remainder of the community spouse's assets of \$144,140 was invested in a one-year CD earning 1.93%, it would generate \$231.82 a month in interest income. The combined income of the institutionalized spouse (\$3,735.98 after the \$72.80 PNA deduction), the community spouse (\$2,250.13), and the income generated through interest (\$235.73) would total \$6,221.84. Because this amount is less than the community spouse's monthly assisted living fee of \$8,900, the calculation turns to the income generated by the excess assets. The excess assets of \$241,809.31, invested at the average

¹ On January 1, 2025, this asset allowance increased to \$157,920.

one year CD of 1.93% would generate \$388.90 in monthly interest. When added to the income calculated above, there is still a shortfall.

MassHealth's representative agreed with the submitted calculations, but any adjustment to the CSRA needs to be ordered by a fair hearing decision.

Findings of Fact

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

- 1) The appellant resides in a nursing facility; he applied for long-term-care benefits on September 5, 2024, and he is seeking long-term-care benefits as of June 1, 2024. He has a community spouse. (Testimony by MassHealth's representative; Exhibit 4.)
- 2) As of the benefits request date, the institutionalized spouse's countable monthly income was \$3,808.78, and the community spouse's gross monthly income was \$2,250.13. (Exhibit 5.)
- 3) In July 2024, the institutionalized spouse's income increased to \$3,841.22, and the community spouse's income increased to \$2,290.13. (Exhibit 7, pp. 35, 37.)
- 4) Their joint assets as of June 1, 2024, totaled \$397,949.31. (Testimony by MassHealth's representative; Exhibit 4.)
- 5) The national average Money Market yield, as published on Bankrate.com on January 1, 2025, was 0.47%. The highest deposit yield on a CD with a term of less than two-and-a-half years was 1.93%, for a 1-year CD. (Exhibit 8, p. 4.)
- 6) The community spouse resides in an assisted living facility, with a monthly fee of \$8,900. The community spouse's primary care physician believes it is medically necessary for her to reside in an assisted living facility due to her dementia. (Exhibit 8, pp. 7, 42.)

Analysis and Conclusions of Law

When an applicant applies for MassHealth Standard coverage, MassHealth must first determine that the applicant's countable assets are below designated limits. (See 130 CMR 520.016(B).) Typically, MassHealth will allow an institutionalized and community spouse to have combined assets of \$156,140² (130 CMR 520.016(B)(2)(a).) However, if a community spouse evidences

² This figure is the combined "Community Spouse Maximum Resource Standard" and the institutionalized spouse's asset limit of \$2,000. The resource standards are updated annually by the Centers for Medicare and Medicaid. As noted above, the 2024 community spouse asset allowance was \$154,140.00. On January 1, 2025, this asset allowance increased to \$157,920.

exceptional circumstances resulting in financial duress, a fair hearing decision can increase the spousal asset allowance in order to generate additional income. (130 CMR 520.017(B)(2)(a)(3).) The appellant's assets exceed the limit for MassHealth, however the appellant argues that the community spouse is entitled to the excess asset amount based on exceptional circumstances.

Because the community spouse's monthly assisted living expenses exceed the regulatory maximum MMMNA of \$3,835.50, the appellant's representative argues that the MMMNA should be increased due to exceptional circumstances pursuant to 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. Furthermore, the community spouse's monthly income combined with her asset interest income and all of the institutionalized spouse's monthly income is still less than her monthly assisted living facility fee. This shortfall will ensure she rapidly depletes her assets in paying her medically necessary housing costs. Therefore, I find that the community spouse's exceptional circumstances pose "significant financial duress."

(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**^[3] 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.

...

(2) Determination of Increase for Exceptional Circumstances. If the fair-hearing officer determines that exceptional circumstances exist, the fair-

³ At the time these regulations were written, it was possible to obtain historical data from the Bank Rate Monitor's website; the website now only publishes interest rates for free on the day the site is visited. For these reasons, I find the appellant's submission reasonably complies with the regulatory requirement to provide interest rates for the day of the hearing, as the appellant's exhibit packet was prepared and submitted prior to the hearing itself.

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.**

(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(C)(1)-(3), (D)(2) (emphasis added).)

The community spouse's revised minimum-MMNA shall be set at her monthly assisted living fee of \$8,900.⁴ The community spouse's gross monthly income was \$2,250.13, now \$2,290.13, and is insufficient to meet her MMMNA. The first \$10,000 of the community spouse's asset allowance would generate \$3.91 a month at 0.47% interest. The remainder of the community spouse assets allowance (\$144,140.00) would generate \$231.83 per month at 1.93%. The resulting income of \$2,525.87 (using the current income) is still insufficient to meet the community spouse's MMMNA, thus the calculation turns to the institutionalized spouse's income. The personal-needs allowance ("PNA") is \$72.80, leaving \$3,768.42 of the institutionalized spouse's income to be shifted over to the community spouse as a spousal-maintenance-needs deduction. The resulting income of \$6,294.29 still leaves the community spouse with a shortfall. The excess assets of \$241,809.31 would generate an additional \$388.90 per month at 1.93%. Even with a shift of the total excess asset amount to the community spouse, her monthly income of \$6,683.19 is still below her MMMNA.

For these reasons, the appeal is APPROVED. The community spouse is entitled to keep the excess assets, and the eventual calculation of the applicant's PPA should allow her an SMNA including the entirety of the institutionalize spouse's income, less his PNA. In addition to producing a final PPA/SMNA calculation in accordance with this decision, MassHealth is also entitled to review whether any disqualifying transfers occurred that have not been noticed due to the way this

⁴ Both MassHealth and the appellant's representative used the standard allowances and deductions listed in 130 CMR 520.026(B) to calculate the minimum-MMNA. Many of the expenses contemplated in the standard allowances are included in the assisted living contract.

appeal developed. Nothing arose during this hearing that suggested the existence of a transfer, but it would be premature for this decision to approve benefits outright.

Order for MassHealth

Allow the community spouse to retain all excess assets identified in the November 14, 2024 denial notice. When calculating the spousal-maintenance-needs deduction, do so in accordance with this decision's finding that the community spouse's revised minimum-MMNA is \$8,900, allowing all of the institutionalized spouse's income, less his PNA. Continue processing the application.

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

cc: Appellant Attorney: [REDACTED]
[REDACTED]

Appellant Representative: [REDACTED]

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957, 978-863-9290