

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2500062
Decision Date:	4/11/2025	Hearing Date:	01/28/2025
Hearing Officer:	Thomas Doyle	Record Open to:	02/18/2025

Appearance for Appellant:




Appearance for MassHealth:

Yadira Rodruguez, Springfield 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:	Long-Term Care Eligibility
Decision Date:	4/11/2025	Hearing Date:	01/28/2025
MassHealth's Rep.:	Yadira Rodruguez	Appellant's Rep.:	
Hearing Location:	Remote (phone)	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 a notice dated December 9, 2024 MassHealth denied appellant's application for benefits because his countable assets were over the allowable limit for himself and his spouse (Ex. 1; 130 CMR 520.003, 520.016(B)). Appellant filed a timely appeal on December 26, 2024. (Ex. 2). Denial of benefits is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied appellant's application for benefits because his countable assets were over the allowable asset limit for himself and his wife.

Issue

The appeal issue is whether MassHealth was correct in determining that appellant's assets exceed the program limit, or whether the appellant should be approved for coverage because the community spouse is entitled to keep the excess assets.

Summary of Evidence

The appeal representative, an attorney, and the MassHealth worker (worker) appeared by phone. A long-term care application was submitted by appellant on September 28, 2024.¹ The worker testified that the community spouse has total countable assets of \$435,185.45. (Testimony). This exceeds the combined limit of \$156,140 that the couple is allowed to keep under MassHealth regulations (\$2,000 for the institutionalized spouse, and \$154,140 for the community spouse. (130 CMR 520.003; <https://www.mass.gov/info-details/program-financial-guidelines-for-certain-masshealth-applicants-and-members>)). On December 9, 2024, MassHealth denied the application for excess assets in the amount of \$279,045.45. (Testimony).

The worker testified that the community spouse has a gross income of \$1,615.70 a month, composed of Social Security at \$1,115.70 a month and rental income of \$500 a month. (Testimony). The worker testified appellant (the institutional spouse) has a monthly income of \$3,014 net of Social Security. The community spouse pays rent of \$7,200 per month and private insurance at a total of \$214.13 a month. She stated this results in a SMNA for the community spouse of \$2,237.80 a month. (Testimony; Ex. 5, p. 9).

The worker submitted into evidence a minimum monthly maintenance needs allowance (MMMNA) worksheet, showing the agency's calculation that the community spouse needs \$8,988.50 to remain in the community. That figure was calculated as follows:

Shelter expense:	\$7,200.00
Standard utility expense:	+ 0.00
Total shelter expense:	\$7,200.00
Standard shelter expense:	- 766.50
Excess shelter amount:	\$6,433.50
Standard Maintenance Allowance	+2,555.00
Calculated MMMNA	\$8988.50

MassHealth applied the maximum monthly maintenance needs allowance of \$3,853.50. (Ex. 5, p. 9; <https://www.mass.gov/info-details/program-financial-guidelines-for-certain-masshealth-applicants-and-members>).

The appeal representative testified "we would stipulate to all the financial information provided by [the worker] in terms of income and the amount of excess assets." (Testimony). The appeal representative testified they were seeking an increase in the resource allowance based on

¹ MassHealth determined an original application date of October 9, 2024 but after additional evidence provided by appellant showing the application had been received by the MassHealth Enrollment Center on September 28, 2024, MassHealth accepted the application date of September 28, 2024. (Ex. 9).

exceptional circumstances. He stated the community spouse is frail and is in poor health. She resides in an assisted living facility, where she pays \$7,200 a month in rent. (Ex. 5, p. 12). The appeal representative submitted a letter with appellant's application from a physician, dated September 11, 2024. (Ex. 6). The letter states the community spouse has a chronic medical condition which results in slow stomach bleeding, chronic anemia and profound fatigue. The doctor concludes it is medically necessary for the community spouse to live in a structured environment such as the assisted living facility she lives in now. (Testimony; Ex. 6). The appeal representative stated it was his belief that given the community spouse's medical condition and frailty, the combined income is less than the expense of the assisted living facility.

After the hearing, I reopened the record to request the appeal representatives provide me interest rate information needed to calculate the income of appellant and his spouse. (Ex. 10). The appeal representatives responded in a timely manner. (Ex. 11).

Findings of Fact

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

1. Appellant (institutionalized spouse) is a resident of a nursing facility. (Testimony).
2. On September 8, 2024 the institutionalized spouse applied for MassHealth benefits, seeking a coverage date as of June 6, 2024. (Ex. 7, p. 6).
3. MassHealth determined that the institutionalized spouse and his wife (community spouse) had countable assets totaling \$435,185.45. (Testimony; Ex. 5, p. 1).
4. The institutionalized spouse is entitled to keep \$2,000 in spousal assets. The community spouse is entitled to keep \$154,140 in spousal assets. (Testimony; Ex. 5, p. 1).
5. On December 9, 2024 MassHealth denied appellant's long term care application on the basis that he and his wife had excess assets in the amount of \$279,045.45. (Testimony; Ex. 5, p. 1).
6. The community spouse is very elderly and frail and lives in assisted living. She suffers from gastric antral vascular ectasia, which causes chronic, slow stomach bleeding and causes the community spouse to have profound fatigue where she cannot walk down a hallway or get out of bed for meals. She also suffers from confusion and forgetfulness. She receives multiple wellness checks daily. (Ex. 6).
7. The community spouse pays a monthly service fee of \$7,200 for her assisted living residence. (Ex. 5, p. 12).

8. MassHealth calculated the community spouse's minimum monthly maintenance needs allowance (MMMNA) at \$8,988.50. (Ex. 5, p. 9).
9. MassHealth applied the regulatory maximum monthly maintenance needs allowance of \$3,853.50. (Ex. 5, p. 9).
10. There are exceptional circumstances which warrant an increase over the MMMNA calculated by MassHealth.
11. The revised MMMNA is \$8,988.50, which is the original MMMNA calculated by MassHealth. (Ex. 5, p. 9).
12. The community spouse's gross monthly income is \$1,615.70. (Ex. 5, p. 9).
13. The yield quoted in the Bankrate Monitor national index as of the hearing date for money market accounts is 0.46%. (Ex. 11).
14. Using this figure, the first \$10,000 of the community spouse's asset allowance generates monthly income of \$3.83.
15. The highest yield quoted in the Bankrate Monitor national index as of the hearing date for any term not exceeding two and one-half years is 1.95%. (Ex. 11).
16. Using this rate, the community spouse's monthly income from the remainder of her share of the retained spousal assets (\$144,140) is \$234.22.
17. Including the income from retained assets, the community spouse's total monthly income is \$1,853.75.
18. The institutionalized spouse's gross monthly income is \$3,014.00. After deducting the personal needs account (PNA) allowance of \$72.80, his remaining income is \$2,941.20.
19. To meet the revised MMMNA of \$8,988.50, the community spouse is entitled to all of the institutionalized spouse's remaining income of \$2,941.20.
20. After the institutionalized spouse's income is shifted to her, the community spouse still has a shortfall of \$4,749.95 to meet her revised MMMNA.
21. The excess assets (\$279,045.45), when invested at the rate of 1.95%, would generate an additional \$453.44 in monthly income.
22. The community spouse is entitled to keep all of the institutionalized spouse's income and all

excess assets.

Analysis and Conclusions of Law

At issue in this case is MassHealth's denial of the appellant's long-term care application due to excess assets of \$279,045.45. (130 CMR 520.003). While there is no dispute that appellant and his spouse had assets in excess of what is allowed by regulation, the appellant contends that his spouse requires all of those assets to remain in the community. MassHealth does not dispute the appellant's position.

Adjustments to a community spouse's asset allowance are governed by 130 CMR 520.017. The regulation states as follows:

- (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 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 Bankrate Monitor national 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 national 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 Bankrate Monitor national 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.

In this case, the community spouse's MMMNA was initially set at \$3,853.50. However, because she is elderly, frail and resides in assisted living, the appellants have contended that an increase in the MMMNA beyond the regulatory limit is warranted. Pursuant to 130 CMR 520.017(D), either spouse may request an increase in the MMMNA calculated by MassHealth due to "exceptional circumstances," defined in relevant part as follows:

(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.

The appellants' attorney submitted documentation from the community spouse's physician which confirms that she has medical needs and requires assisted living services. Evidence

provided at hearing indicates that the community spouse pays an average of \$7,200.00 per month for these services. As it is medically necessary for her to pay for these services in order to remain in the community and the current MMMNA does not account for these expenses, there is a sound basis to increase the MMMNA to \$8,988.50. See 130 CMR 520.017(D).

The community spouse's own income of \$1,615.70 per month is clearly insufficient to meet the revised MMMNA of \$8,988.50. To make up the shortfall, the regulation first requires that the interest generated from the community spouse's portion of the assets be added to her income. In this case, the community spouse's asset share is \$154,140. The first \$10,000, at the yield quoted as of the date of hearing in the Bankrate Monitor national index for money market accounts (.46%), generates additional monthly income of \$3.83. The remainder of the community spouse's asset share, \$144,140, generates \$234.22 per month when invested at the highest yield quoted as of the hearing date for any term not exceeding two and one-half years (1.95%). Including her own income and the income generated by her share of the spousal assets, the community spouse's income is \$1,853.75. This is still well short of the MMMNA of \$8,988.50.

Next, the analysis turns to 130 CMR 520.026(B), which provides as follows:

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.²

In this case, the community spouse's total monthly income, including interest produced by retained spousal assets, is well under her revised MMMNA. The institutionalized spouse's income, after subtracting his \$72.80 personal needs allowance, is \$2,941.20 per month. Because the MMMNA shortfall for the community spouse exceeds the institutionalized spouse's total monthly income, the community spouse is entitled to retain the institutionalized spouse's full monthly income after the PNA deduction.

² 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. See 130 CMR 520.026.

Finally, because a shortfall of \$4,749.95 remains even after the income shift, we turn to excess assets to generate additional income for the community spouse. The excess assets (\$279,045.45), when invested at the rate of 1.95%, generate an additional monthly income of \$453.44. This supplemental income still leaves the community spouse well short of the revised MMMNA. As the income from all available spousal resources is still less than the MMMNA, the community spouse is entitled to keep all of the institutionalized spouse's income and all excess assets.

This appeal is approved.

Order for MassHealth

Rescind the denial notice dated December 9, 2024, and allocate all income and excess assets to the community spouse. Establish an eligibility start date in accordance with 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.

Thomas Doyle
Hearing Officer
Board of Hearings

cc:

[REDACTED]

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104, 413-785-4186