

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2500544
Decision Date:	04/11/2025	Hearing Date:	02/14/2025
Hearing Officer:	Christopher Jones	Record Open to:	04/07/2025

Appearance for Appellant:



Appearance for MassHealth:

Caitlen Pynn – Worcester 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

Appeal Decision:	Denied	Issue:	LTC; Excess Assets
Decision Date:	04/11/2025	Hearing Date:	02/14/2025
MassHealth's Rep.:	Caitlen Pynn	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 notices dated November 7 and November 20, 2024, MassHealth denied the appellant's application for long-term-care benefits because the appellant had countable assets in excess of \$2,000. (Exhibits 2 and 3; 130 CMR 520.003; 520.004.) The appellant's conservator filed this timely appeal on January 9, 2025.¹ (Exhibit 3; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

Following the hearing, the appellant's representative requested that the hearing record be left open to submit legal arguments regarding non-cooperative spouses. The record was left open until April 7, 2025, for briefs.

Action Taken by MassHealth

MassHealth denied the appellant's application for long-term-care benefits based upon countable assets in excess of MassHealth's limit for an institutionalized applicant.

¹ The Board of Hearings initially dismissed this appeal for lack of authority. The appellant submitted the conservator's Letters of Conservatorship on January 13, 2025.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.003 – .004 and 130 CMR 517.011, in determining that the community spouse's properties are countable despite her refusal to cooperate.

Summary of Evidence

The parties broadly agreed on the facts giving rise to this appeal. The appellant entered a nursing facility in late [REDACTED], and shortly thereafter he was diagnosed with dementia. The appellant's community spouse was his health care proxy, and she participated in filing for his initial application for long-term-care benefits in early 2023, including providing needed resource verifications. In February 2023, MassHealth denied this application based upon excess assets, and this case has been denied multiple times since due to excess assets.

The appellant and his community spouse were married in [REDACTED], and both had previous marriages. Both spouses entered the marriage as owners of real property. The appellant's community home was held in the appellant's name alone, and the community spouse owned two other properties in her name alone. In July 2023, the community spouse was added as a tenant by the entirety to the appellant's property. MassHealth's representative testified that the community home is excluded from countable assets, but the community spouse's two other properties are worth \$471,107.93.² MassHealth's notices allow a community spouse resource allowance of \$154,140. In the November 7, 2024 notice, \$138.72 is listed as being in the appellant's bank account, while the November 20, 2024, notice includes only \$2.00.

The community spouse's two adult children live in her other properties. MassHealth's representative testified that if the community spouse verified that these properties were income-producing, by submitting proof of rental agreements and proof of rental payment, they could be excluded from countable assets. The community spouse has refused to do so.

In the summer of 2024, the probate court appointed a conservator on the appellant's behalf. The appellant's representative is the attorney for the court-appointed conservator, who is also her business partner. The present application for long-term-care benefits was filed on July 30, 2024. The appellant's representative testified that there are now multiple lawsuits pending in three different courts in the Commonwealth arising from the community spouse's refusal to cooperate further in paying the appellant's medical expenses. The nursing facility is suing both spouses for non-payment in excess of \$400,000. The appellant, through his conservator, is also suing for divorce and to have the community home returned to the institutionalized spouse's name alone.

² The value of the community home is not in evidence.

At the hearing, the appellant argued that the property should be deemed noncountable because the community spouse was not cooperative. The hearing record was left open until April 7, 2025, for the appellant to submit additional arguments and for MassHealth's legal department to review and respond. The appellant argued that the community spouse's assets should not be counted as available to the appellant pursuant to 130 CMR 517.011, and Freiner v. EOHHS, 494 Mass. 198 (2024). Along with their filing, the appellant's conservator executed an assignment of rights to spousal support, and an affidavit from the conservator's attorney regarding the facts underlying the case. The appellant argues that this case is different from Freiner because the appellant's conservator has pursued legal action, at the conservator's expense, against the community spouse, and the conservator is also defending the appellant in other legal actions against him.

MassHealth submitted a legal memorandum reviewing the facts and the Freiner decision. MassHealth argued that the sole factor in determining refusal to cooperate was the bona fides of the spouse's refusal. MassHealth argued the test laid down in Freiner is whether spousal noncooperation was a bona fide result of an estranged marriage, or a convenient isolated event in an otherwise intact longstanding marriage, used to gain eligibility during a MassHealth application. Here, the community spouse is only refusing to cooperate with the requirement that she reduce her assets in order for her spouse to be eligible according to the laws governing MassHealth eligibility.

MassHealth's memorandum referred to the appellant's representative as the appellant's attorney. The appellant's representative responded to clarify her relationship as the attorney for the court appointed conservator, and not for the applicant himself.

Findings of Fact

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

- 1) The appellant entered a nursing facility in [REDACTED], and shortly thereafter he was diagnosed with dementia. The appellant's community spouse was his health care proxy, participated in filing for his initial application for long-term-care benefits, and provided requested verifications. (Testimony by MassHealth's representative; Exhibit 8.)
- 2) The appellant owned his community home individually, and the community spouse owned two properties in her name alone. (Testimony by MassHealth's and the appellant's representatives.)
- 3) The community spouse's adult children live in her two properties, but she has refused to submit any evidence regarding rental arrangements for either property. (Testimony by MassHealth's representative.)
- 4) In July 2023, the appellant added the community spouse as a tenant by the entirety to the community home. (Testimony by MassHealth's and the appellant's representatives.)

- 5) MassHealth has repeatedly denied the appellant's application based upon the two properties owned by the appellant's community spouse valued at \$471,107.93. (Testimony by MassHealth's representative; Exhibits 1; 2.)
- 6) MassHealth has denied the appellant's requests for long-term-care coverage at least six times due to excess assets, based upon the community spouse's two additional properties. (Exhibits 1; 2; 8.)
- 7) In the summer of 2024, the probate court appointed the appellant's conservator, and she filed a new long-term-care application on July 30, 2024. (Exhibits 8; 10.)
- 8) The nursing facility is suing the appellant and the community spouse for non-payment. The appellant, through his conservator, is also suing the community spouse for divorce and to rescind her being added to his community home. (Testimony by the appellant's representative; Exhibits 9; 10.)
- 9) As of February 24, 2025, the appellant's conservator assigned the appellant's rights to spousal support to MassHealth. (Exhibit 11.)

Analysis and Conclusions of Law

The purpose of Medicaid is to provide medical assistance to those "whose income and resources are insufficient to meet the costs of necessary medical services." (42 USC § 1396-1.) To limit benefits only to those who truly do not have the resources to provide for their care, MassHealth requires an individual applying for long-term-care benefits to have less than \$2,000 in assets to qualify. (130 CMR 520.003.) Where one spouse is institutionalized, MassHealth determines "the couple's current total countable assets, regardless of the form of ownership between the couple" (130 CMR 520.016(B)(2).) Once all countable assets are identified, MassHealth deducts "the community spouse's asset allowance" This allowance is \$154,140, unless it has been increased by a court order or a fair hearing decision.^[3] (130 CMR 520.016(B)(2)(a).) After this deduction is taken from the couple's assets, the couple's remaining assets need to be below \$2,000 for the institutionalized spouse to qualify. (130 CMR 520.016(B)(2)(b).)

Where the remaining assets are greater than \$2,000, the applicant becomes eligible for long-term-care benefits "as of the date the applicant reduces his or her excess assets to the allowable asset limit without violating the transfer of resource provisions for nursing-facility residents ... or ... as of

³ This figure is the "Community Spouse Maximum Resource Standard," which is updated annually by the Centers for Medicare and Medicaid. The 2024 community spouse asset allowance was \$154,140.00. On January 1, 2025, the community spouse's asset allowance increased to \$157,920. (See <https://www.medicaid.gov/medicaid/eligibility/spousal-impoverishment> (last visited April 8, 2025).)

the date ... the applicant incurs medical bills that equal the amount of the excess assets and reduces the assets to the allowable asset limit.” (130 CMR 520.004(A)(1)(a)-(b).) The transfer of resource provisions allow MassHealth to see whether an applicant has given away assets within the previous five years in order to qualify – this is referred to as the “lookback period.” (See 130 CMR 520.019(B); 130 CMR 520.023(A).)

Countable assets specifically include “[a]ll real estate owned by the individual and the spouse ... ” (130 CMR 520.007(G)(1).) Except that the “home of the applicant ... and the spouse ... if located in Massachusetts and used as the principal place of residence, are considered noncountable assets ... The home is subject to the lien rules at 130 CMR 515.012: *Real Estate Liens*.” (130 CMR 520.008(A).) Under the lien rules, no lien is placed on a principal place of residence if a spouse is still living there. (130 CMR 515.012(A)(2).)

517.011: Assignment of Rights to Spousal Support

An institutionalized spouse, whose community spouse refuses to cooperate or whose whereabouts is unknown, will not be ineligible due to

(A) assets determined to be available for the cost of care in accordance with 130 CMR 520.016(B): *Treatment of a Married Couple’s Assets When One Spouse Is Institutionalized*; or

(B) his or her inability to provide information concerning the assets of the community spouse when one of the following conditions is met:

- (1) the institutionalized spouse assigns to the MassHealth agency any rights to support from the community spouse;
- (2) the institutionalized spouse lacks the ability to assign rights to spousal support due to physical or mental impairment as verified by the written statement of a competent medical authority; or
- (3) the MassHealth agency determines that the denial of eligibility, due to the lack of information concerning the assets of the community spouse, would otherwise result in undue hardship.

(130 CMR 517.011.)

The question of spousal non-cooperation was recently addressed by the Supreme Judicial Court in Freiner vs. EOHHS, 494 Mass. 198 (2024). There, a husband and wife had maintained separate financial accounts for years due to the institutionalized spouse’s history of gambling and financial mismanagement. During the application for MassHealth benefits, the community spouse refused to share her financial information, and the application never proceeded past the verification of resources. However, the couple

maintained long-standing and ongoing cooperation. The couple lived together for over fifty years until [the applicant's] admission to the nursing facility, and they both contributed to household expenses. They eased their tax burden by filing taxes jointly, which inevitably requires some degree of financial collaboration. ... [The community spouse] helped coordinate [the applicant's] care, served as his representative under his power of attorney, managed his bank account, and paid his bills.

(Freiner, 494 Mass. at 214.)

The court held that “such selective noncooperation within the context of otherwise extensive collaboration in other aspects of the marital relationship was insufficient to constitute the type of refusal to cooperate required by the regulation.” (Id. at 214-215.) Here, the noncooperation is even more selective. In Freiner, the spouses had at least maintained separate assets up to and through the application. Here, the community spouse cooperated in the application, including providing needed resource verifications, and then further comingled resources after the application was filed by transferring the appellant's home into her name.⁴ The community spouse is not party to this appeal, and her motives are unknown, but this selective noncooperation appears to be a disagreement with the eligibility criteria for MassHealth benefits rather than a long-standing estrangement from a spouse who happens to require public assistance. Therefore, this appeal must be DENIED.

Order for MassHealth

None.

⁴ Even if MassHealth were to consider the community spouse estranged, removing the community spouse from the appellant's application should result in this post-application transfer being treated disqualifying under 130 CMR 520.018 – 520.019.

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.

Christopher Jones
Hearing Officer
Board of Hearings

CC:

MassHealth Representative: Worcester MEC, Attn: Michael Rooney, 55 SW Cutoff Suite 1A,
Worcester, MA 01604