

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2511812
<b>Decision Date:</b>	9/24/2025	<b>Hearing Date:</b>	09/09/2025
<b>Hearing Officer:</b>	Susan Burgess-Cox	<b>Record Open to:</b>	09/12/2025

**Appearance for Appellant:**



**Appearance for MassHealth:**

Kelly Rosarti



*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	<b>Issue:</b>	Long-Term Care: Community Resource Allowance
<b>Decision Date:</b>	9/24/2025	<b>Hearing Date:</b>	09/09/2025
<b>MassHealth's Rep.:</b>	Kelly Rosarti	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	All Parties Appeared by Telephone		

### 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 August 1, 2025, MassHealth determined that the appellant is not eligible for long-term care coverage because the appellant's countable assets are over the program limit. (130 CMR 520.016(B); Exhibit 1). The appellant's attorney-in-fact filed a timely appeal on August 12, 2025. (130 CMR 610.015(B); Exhibit 2; Exhibit 3A; Exhibit 3B; Exhibit 4). The Board of Hearings scheduled a hearing for September 9, 2025. (Exhibit 5). At hearing, counsel for the appellant asked the Board of Hearings to rely on figures and calculations presented orally at hearing regarding the appellant's income and assets as well as a letter from the assisted living facility regarding an increase in monthly costs. (Exhibit 6). It was determined that this was not sufficient evidence for the Board of Hearings to utilize in making an adjustment to an asset allowance for the community spouse as requested by counsel for the appellant. A brief record-open period was granted to provide counsel the opportunity to present calculations in writing as well as a copy of a housing agreement, service plan, fee schedule, and other pertinent documents to determine whether exceptional circumstances exist. (Exhibit 7). This record-open period extended the decision due date to September 29, 2025.

Denial of assistance is valid grounds for appeal. (130 CMR 610.032).

## **Action Taken by MassHealth**

MassHealth denied the appellant's application for MassHealth long-term care benefits because the appellant's countable assets are over the program limit.

### **Issue**

Whether MassHealth was correct in determining that the appellants' countable assets are over the program limit and whether the appellant's spouse qualifies for an adjustment to the Asset Allowance. (130 CMR 520.017).

### **Summary of Evidence**

All parties appeared by phone. Documents presented by MassHealth at hearing are incorporated into the hearing record as Exhibit 8. During the record open period, counsel for the appellant provided documents that are incorporated into the hearing record as Exhibit 9. MassHealth received an application for long-term care in June 2025 seeking coverage as of May 13, 2025. (Testimony; Exhibit 8). MassHealth denied the appellant's application due to a determination that the appellant was over the asset limit.<sup>1</sup> (Testimony; Exhibit 1). The appellant is allowed to retain \$2,000 and the community spouse can retain \$157,920.

Counsel for the appellant and community spouse did not challenge the fact that their assets exceed program limits. The community spouse is seeking an adjustment to the asset allowance to allow her to stay in the assisted living facility where she currently resides and pays \$8,296 each month. (Exhibit 9).

The appellant's spouse has moderate memory loss and is disoriented to time and situation. (Exhibit 9). The plan of care from the assisted living facility states that the appellant's spouse requires a structured routine to complete daily tasks. (Exhibit 9). The appellant's spouse ambulates with a rollator, wears a pendant for emergencies, needs cueing for the use of devices and performing certain tasks as well as hands-on assistance with several activities of daily living such as dressing, undressing, bathing and incontinence care. (Exhibit 9). The appellant's spouse requires assistance with all instrumental activities of daily living. (Exhibit 9). Counsel states that the community spouse does not have sufficient income to provide her with the needed minimum monthly maintenance needs allowance (MMMNA). The appellant has a gross monthly income of

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<sup>1</sup> The MassHealth representative at hearing acknowledged that the agency utilized incorrect figures on the notice as the notice states that the appellant is over the asset limit of \$2,000. Since the appellant has a spouse in the community, the notice should have included the asset limit of the community spouse of \$157,920. The appellant's representative accepted testimony presented by MassHealth regarding this regulatory and procedural error and agreed to move forward with the agency making this correction orally at hearing. This modification did not change the outcome for the agency.

\$2,836 and the community spouse has a gross monthly income of \$751.<sup>2</sup> (Exhibit 8; Exhibit 9). The community spouse has a shortfall each month utilizing the income and asset allowance permitted by MassHealth. (Exhibit 8; Exhibit 9).

The regulations require the Board of Hearings to utilize specific financial information in calculating an asset allowance. These figures include the deposit yield quoted in the Bank Rate Monitor Index as of the hearing date for money market accounts, and the 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. As of the date of the hearing, the national average deposit yield quoted in Bank Rate Monitor Index for a money market account was 0.47%.<sup>3</sup> (Exhibit 9). As of the date of the hearing, the highest deposit yield quoted in the Bank Rate Monitor National Index for any term not to exceed 2/12 years is the 1-year CD rate at 1.97%.<sup>4</sup> (Exhibit 9).

Using the regulatory formula, the monthly income generated from community spouse's asset allowance would include \$4 from the first \$10,000 of the asset allowance ( $10,000 \times 0.0047 \div 12 = \$3.91$ ) and \$242.83 from the remainder of the allowance ( $\$147,920 \times 0.0197 \div 12 = \$242.83$ ). This provides the community spouse with total monthly income of \$997.83 ( $\$751 + \$4 + \$242.83 = \$997.83$ ). Allowing the appellant to keep a personal needs allowance of \$72.80 leaves \$2,763.20 ( $\$2,836 - \$72.80 = \$2,763.20$ ) for the community spouse which provides the community spouse with monthly income of \$3,761.03 ( $\$997.83 + \$2,763.20 = \$3,761.03$ ). This amount is below the regulatory maximum monthly maintenance needs allowance of \$3,948. The appellant is seeking to have the hearing officer establish an MMMNA over the regulatory maximum to account for her assisted living monthly fee of \$8,296. Even with this adjustment, the community spouse is left with a monthly shortfall of \$4,534.97 ( $\$8,296 - \$997.83 - \$2,763.20 = \$4,534.97$ ) or annual shortfall of \$54,419.64.

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<sup>2</sup> The figures presented by counsel for the appellant for income are less than those presented by the agency. Counsel repeatedly refers to "the MassHealth Application" as a citation in the presentation of these figures. The Board of Hearings does not have a copy of MassHealth records other than those presented by the parties during the appeal process. As the agency made the eligibility decision based upon records presented by the appellant during the application process and counsel for the appellant did not present records regarding the income amounts listed in their submission, which differ from those of the agency, this decision will rely on figures presented by the agency.

<sup>3</sup> These figures differ from those presented by counsel for the appellant as counsel appears to use a competitive rate for the deposit yield of a money market account rather than the national average. While the regulations state that the Board of Hearings will utilize "an interest rate equal to the deposit yield quoted in the Bank Rate Monitor Index as of the hearing date for money market accounts", that interest rate should likely be the national average as opposed to a competitive rate. This decision will utilize the national average. Counsel did not provide the Board of Hearings with an official listing of rates from the Bank Rate Monitor Index which is typically what is presented in these appeals and typically list the national average rather than competitive rates. Instead, counsel just noted rates in a brief. The Hearing Officer researched the rates to confirm whether what counsel presented was correct and found that the national average is lower than the rate presented by counsel. This national average will generate less income for the community spouse which works in her favor.

<sup>4</sup> This decision will also utilize different figures for calculating income available from the remaining allowance for the same reasons noted above.

Counsel asked the hearing officer to increase the community spouse's asset allowance by the amount of additional assets that would generate sufficient income to raise the income total to the community spouse's minimum monthly maintenance needs. (Exhibit 9). At the time of the eligibility decision, the appellant and the community spouse had total assets of \$1,754,284. Retaining assets of \$1,594,364 would still result in a shortfall for the community spouse as it would only generate income of \$2,617.41 ( $\$1,594,364 \times 0.0197 \div 12 = \$2,617.41$ ).

## Findings of Fact

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

1. MassHealth received an application for long-term care in June 2025 seeking coverage as of May 13, 2025.
2. The MassHealth denied the appellant's application due to a determination that the appellant was over the asset limit.
3. The appellant and his spouse had total countable assets of \$1,754,284 at the time of the eligibility decision.
4. The appellant is allowed to retain \$2,000 and the community spouse can retain up to \$157,920.
5. The appellant and his spouse had countable assets that exceeded the program limits by \$1,594,364.
6. The appellant's spouse resides in an assisted living community and pays \$8,296 each month.
7. The appellant's spouse has moderate memory loss and is disoriented to time and situation.
8. The appellant's spouse requires a structured routine to complete daily tasks.
9. The appellant's spouse ambulates with a rollator, wears a pendant for emergencies, needs cueing for the use of devices and performing certain tasks as well as hands-on assistance with several activities of daily living such as dressing, undressing, bathing and incontinence care.
10. The appellant's spouse requires assistance with all instrumental activities of daily living.
11. The community spouse has a gross monthly income of \$751.
12. The appellant has a gross monthly income of \$2,836.

13. As of the date of the hearing, the national average deposit yield quoted in Bank Rate Monitor Index for a money market account was 0.47%.
14. As of the date of the hearing, the highest deposit yield quoted in the Bank Rate Monitor National Index for any term not to exceed 2/12 years is the 1-year CD rate at 1.97%.<sup>5</sup>
15. The monthly income generated from the first \$10,000 of the asset allowance rounded up to the nearest dollar would be \$4 ( $10,000 \times .0047 = \$3.91$ ).
16. The monthly income generated from the remaining asset allowance would be \$242.83 ( $\$147,920 \times 0.0197 \div 12 = \$242.83$ ).
17. The monthly income of the community spouse, including income generated from her share of assets, is \$997.83 ( $\$751 + \$4 + \$242.83 = \$997.83$ ).
18. The community spouse has a shortfall each month utilizing the income and asset allowance permitted by MassHealth.
19. The community spouse's need for assisted living establishes exceptional circumstances and justifies establishing a new MMMNA of \$8,296.
20. The community spouse requires an additional \$7,298.17 to meet her MMMNA ( $\$8,296 - \$997.83 = \$7,298.17$ ).
21. Because the community spouse's gross monthly income is below her MMMNA, the community spouse is entitled to the appellant's income, after deducting his personal needs allowance of \$72.80, to increase the level of her monthly income.
22. Allowing the appellant to keep a personal needs allowance of \$72.80 leaves \$2,763.20 ( $\$2,836 - \$72.80 = \$2,763.20$ ) for the community spouse which provides the community spouse with a total monthly income of \$3,761.03 ( $\$997.83 + \$2,763.20 = \$3,761.03$ ).
23. The community spouse has a monthly shortfall of \$4,534.97 ( $\$8,296 - \$997.83 - \$2,763.20 = \$4,534.97$ ).
24. Retaining the excess assets of \$1,597,004 ( $\$1,754,284 - \$157,280 - \$2,000 = \$1,597,004$ ) would still result in a shortfall for the community spouse as it would only generate income of \$2,612.75 ( $\$1,597,004 \times 0.0197 \div 12 = \$2,612.75$ ).

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<sup>5</sup> This decision will also utilize different figures for calculating income available from the remaining allowance for the same reasons noted above.

## **Analysis and Conclusions of Law**

The appellant's spouse is seeking an adjustment to the asset allowance as she is having difficulty in making payments to the long-term care facility for the appellant's care. (130 CMR 520.017).

130 CMR 520.017: Right to Appeal the Asset Allowance or 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 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, 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 is inadequate to raise the community spouse's income to the minimum-monthly-maintenance-needs allowance, the fair-hearing officer will determine the gross income available to the community spouse as follows.

- (1) The fair-hearing officer will determine 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 Bankrate 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 will allow 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 to exceed, the MMMNA. 130 CMR 520.017(C)(2) will apply 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 invested at the highest rate quoted in the Bankrate Monitor Index as of the date of the hearing date, 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.

The community spouse has established that exceptional circumstances exist and the need for an MMMNA of at least \$8,296 to allow her to receive treatment and care in the assisted living facility where she currently resides. (130 CMR 520.026; 130 CMR 520.017(D)). On appeal, the appellant's representative asserts that the community spouse's income fails to meet established expenses. The community spouse has a total monthly income of \$997.83, including interest generated by

retained assets.

The difference between the community spouse's total monthly income and what she requires to pay for assisted living is \$7,298.17. The regulations dictate MassHealth considers the institutionalized spouse's income to generate income for the community spouse. The appellant has income of \$2,836. The appellant must retain some income to meet the personal needs allowance of \$72.80. Accordingly, the community spouse would receive \$2,763.20 from the appellant.

Utilizing income of both the appellant and the community spouse, without the assets, the community spouse's gross income is still less than what she needs to pay for the assisted living facility. Because the community spouse's gross income is still short of the MMMNA, the regulations allow that excess assets may be used to generate income for the community spouse. The income generated from the excess assets is not sufficient to meet the MMMNA therefore the community spouse may retain all assets.

The appeal is approved.

## **Order for MassHealth**

Allocate the appellant's income, after deducting his personal needs allowance of \$72.80, and allow the community spouse to retain all assets.

## **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.

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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

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