



**Commonwealth of Massachusetts**  
**Executive Office of Health and Human Services**  
**Division of Medical Assistance**  
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MassHealth  
 Eligibility Letter 91  
 June 21, 2002

**TO:** Division Staff  
**FROM:** Wendy E. Warring, Commissioner *W. Warring*  
**RE:** Hermanson Lawsuit

This eligibility letter transmits revised regulations that are a result of the Hermanson class-action lawsuit. The revised regulations allow a new deduction to be applied to the gross unearned income of persons who:

- are aged 65 and older;
- are receiving personal-care attendant services paid for by the Division, or have been determined by the Division, through initial screening or by prior authorization, to be in need of personal-care attendant services paid for by the Division; and
- have income that is over 100 percent of the federal poverty level.

This deduction is used to determine eligibility for MassHealth Standard and is equivalent to the difference between the MassHealth deductible-income standard at 130 CMR 520.030 and 133 percent of the federal poverty level. This new deduction includes, and is not in addition to, the \$20 disregard.

These emergency regulations are effective June 21, 2002.

**MANUAL UPKEEP**

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520.012: Community Earned-Income Deductions

In addition to business expenses described at 130 CMR 520.010(A) and (B), the Division allows the following deductions from the gross earned income of each employed individual or married couple living in the community. These deductions do not apply to the income of a community spouse, as described at 130 CMR 520.026(B). Standard earned-income deductions are applied in the following order:

- (A) \$20, if there is no unearned income or, if there is unearned income that is less than \$20, the balance of the \$20 is disregarded from earned income;
- (B) the next \$65 a month of earned income; and
- (C) one-half of the remaining earned income.

520.013: Community Unearned-Income Deductions

In addition to business expenses described at 130 CMR 520.010, the Division allows the deductions listed below from the total gross unearned income. These deductions do not apply to the income of a community spouse described at 130 CMR 520.026(B). The deductions allowed from the total gross unearned income are the following:

- (A) a deduction of \$20 per individual or married couple; or
- (B) in determining eligibility for MassHealth Standard, a deduction that is equivalent to the difference between the applicable MassHealth deductible-income standard at 130 CMR 520.030 and 133 percent of the federal poverty level. This deduction includes, and is not in addition to, the \$20 disregard.
  - (1) This deduction from gross unearned income is allowed only for persons who:
    - (a) are aged 65 and older;
    - (b) are receiving personal-care attendant services paid for by the Division, or have been determined by the Division, through initial screening or by prior authorization, to be in need of personal-care attendant services; and
    - (c) have income that is over 100 percent of the federal poverty level.
  - (2) The Division will redetermine MassHealth eligibility without this deduction if:
    - (a) after 90 days from the date of the MassHealth eligibility approval notice, the person is not receiving personal-care attendant services paid for by the Division or has not submitted, upon request from the Division, proof of efforts to obtain personal-care attendant services paid for by the Division; or
    - (b) the Division denies the prior-authorization request for personal-care attendant services.

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520.014: Long-Term-Care Earned-Income Deductions

(A) The following expenses may be deducted from the earnings of a long-term-care-facility resident:

- (1) a standard deduction of \$11; and
- (2) any of the following work-related expenses deducted from salary:
  - (a) social security taxes (FICA);
  - (b) federal and state income taxes;
  - (c) retirement and employee benefit plans;
  - (d) health or medical insurance premiums; and
  - (e) union dues.

(B) Deductions that may be used to determine the amount owed to the long-term-care facility (patient-paid amount) are described at 130 CMR 520.026.

520.015: Noncountable Income

The following types of income are not considered in determining the financial eligibility of the applicant or member:

- (A) the income of any individual who is a recipient of EAEDC or SSI;
- (B) the portion of the income that is disregarded:
  - (1) for disabled adult children according to 130 CMR 519.004; and
  - (2) under the Pickle Amendment according to 130 CMR 519.003;
- (C) income-in-kind;
- (D) money received from a loan secured by the equity in the home of an individual who is aged 60 or older (reverse mortgage);
- (E) veterans' aid and attendance benefits, unreimbursed medical expenses, housebound benefits, and enhanced benefits (\$90 Veterans' Administration pension to long-term-care-facility residents, including veterans and their childless surviving spouses who live in a state veterans' home);
- (F) social security cost-of-living adjustments until the subsequent federal-poverty-level adjustment for members who are community residents;

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- (G) retroactive RSDI and SSI benefit payments; and
- (H) any other income considered noncountable under Title XIX.

520.016: Long-Term Care: Treatment of Assets

130 CMR 520.016 describes the treatment of countable assets when one member of a couple is institutionalized, the post-eligibility transfer of assets, and the allowable income deductions for applicants and members who are residents of a long-term-care facility.

- (A) Institutionalized Individuals. The total value of assets owned by an institutionalized single individual or by a member of an institutionalized couple must not exceed \$2,000.
- (B) Treatment of a Married Couple's Assets When One Spouse Is Institutionalized.
  - (1) Assessment.
    - (a) Requirement. The Division completes an assessment of the total value of a couple's combined countable assets and computes the spousal share as of the date of the beginning of the most recent continuous period of institutionalization of one spouse.
    - (b) Right to Request an Assessment. When one spouse has entered a medical institution and is expected to remain institutionalized for at least 30 days, either spouse may request the Division to make this assessment, even if the institutionalized spouse is not applying for MassHealth Standard at that time. The period of institutionalization must be continuous and expected to last for at least 30 days.
    - (c) Right to Appeal. The Division must give each spouse a copy of the assessment and the documentation used to make such assessment. Each spouse must be notified that he or she has the right to appeal the determination of countable assets and the community spouse's asset allowance when the institutionalized spouse (or representative) applies for MassHealth Standard.
    - (d) Calculation of the Community Spouse's Asset Allowance. From the couple's combined countable assets, the Division attributes to the community spouse an asset-allowance amount not to exceed \$89,280 even if the assets are held individually. The community spouse's share remains a constant amount for purposes of determining the amount of assets that are used to determine the institutionalized spouse's eligibility.
  - (2) Determination of Eligibility for the Institutionalized Spouse. At the time that the institutionalized spouse applies for MassHealth Standard, the Division must determine the couple's current total countable assets, regardless of the form of ownership, and the amount of assets allowed for the community spouse as follows. The community spouse's asset allowance is not considered available to the institutionalized spouse when determining the institutionalized spouse's eligibility for MassHealth Standard.
    - (a) Assign \$2,000 of the current total countable assets to the institutionalized spouse.

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(b) Deduct the community spouse's asset allowance from the remaining assets. The community spouse's asset allowance is the greatest of the following amounts:

- (i) an amount not to exceed \$89,280;
- (ii) a court-ordered amount for the support of the community spouse; or
- (iii) an amount determined after a fair hearing in accordance with 130 CMR 520.017.

(c) Treat any remaining assets as excess assets.

(3) Post-Eligibility Transfer of Assets.

(a) To meet the needs of the community spouse and to allow the continuing eligibility of the institutionalized spouse, the Division allows the institutionalized spouse, after he or she has been determined eligible for MassHealth Standard, to transfer assets to or for the sole benefit of the community spouse in accordance with 130 CMR 520.016(B)(1) and (2).

(b) The institutionalized spouse must transfer any of his or her assets that are part of the community spouse's asset allowance no later than 90 days immediately after the date of the notice of approval for MassHealth Standard. During this 90-day period, the Division:

- (i) will continue to exclude these assets in the determination of continuing eligibility; and
  - (ii) will not apply the transfer rules in 130 CMR 520.018 and 520.019 to the assets transferred to the community spouse.
- (c) The Division may extend the 90-day period if any of the following conditions exist:
- (i) the court is involved in assigning the couple's property through support actions;
  - (ii) an appeal of the asset allowance has been filed with the Board of Hearings; or
  - (iii) the condition of the institutionalized spouse requires the appointment of a conservator or guardian to act on his or her behalf.

(d) The amount of the transferred assets added to the assets owned by the community spouse cannot exceed the amount defined in 130 CMR 520.016(B)(2).

(e) After the initial 90-day period or the extension is over, the Division will count all assets that remain in the institutionalized spouse's name in determining his or her eligibility.

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(v) Expenses, fees, or costs for expenses that are not essential to obtain medical treatment for the ward including financial management, except when the management is necessary to accurately complete a MassHealth application or redetermination form.

(vi) Expenses, fees, or costs for transportation or travel time.

(vii) Attorney fees, except when payment of the fees is required for the appointment of the guardian.

(viii) Fees for guardianship services provided by a parent, spouse, sibling, or child, even if appointed by the probate court. However, the Division allows a deduction for guardianship expenses in accordance with 130 CMR 520.026(E)(3)(a) and (e).

520.027: Long-Term-Care Deductible

If after applying the deductions in 130 CMR 520.026(A) through (E) the long-term-care-facility resident's monthly income exceeds the public rate at the long-term-care facility, the Division will establish a six-month deductible in accordance with 130 CMR 520.028 through 520.035 and use an income standard of \$60.

520.028: Eligibility for a Deductible

The following individuals may establish eligibility by meeting a deductible:

- (A) former SSI recipients who are not eligible under the Pickle Amendment;
- (B) community-based individuals whose countable-income amount exceeds the 100 percent federal-poverty-level income standards;
- (C) long-term-care-facility residents whose income, after general deductions described in 130 CMR 520.026, exceeds the public rate in a long-term-care facility;
- (D) disabled adult children whose incomes exceed the standards set forth in 130 CMR 519.004(A); and
- (E) persons who are eligible for an increased disregard as described at 130 CMR 520.013(B).

520.029: The Deductible Period

The deductible period is a six-month period that starts on the first day of the month of application or may begin up to three months before the first day of the month of application. The applicant is eligible for this period of retroactivity only if the applicant incurred medical expenses covered by MassHealth and was otherwise eligible.