



Commonwealth of Massachusetts
Executive Office of Health and Human Services
Division of Medical Assistance
600 Washington Street
Boston, MA 02111
www.mass.gov/dma

MassHealth
Eligibility Letter 97
January 1, 2003

TO: Division Staff

FROM: Wendy E. Warring, Commissioner

A handwritten signature in blue ink, appearing to read 'W. Warring', is placed over the 'FROM:' line.

RE: Spousal Asset Allowance Changes

This letter transmits revised regulations changing the way the Division determines the total amount of assets that a community spouse is allowed to keep when the other spouse is institutionalized.

These regulations are effective January 1, 2003.

MANUAL UPKEEP

<u>Insert</u>	<u>Remove</u>	<u>Trans. By</u>
520.016 (1 of 2)	520.016 (1 of 2)	E.L. 95
520.016 (2 of 2)	520.016 (2 of 2)	E.L. 91
520.017 (1 of 2)	520.017 (1 of 2)	E.L. 63

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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 eligibility representative) applies for MassHealth Standard.

(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.

(a) Deduct the community spouse's asset allowance from the current combined total countable assets. The community spouse's asset allowance is not considered available to the institutionalized spouse when determining the institutionalized spouse's eligibility for MassHealth Standard. The community spouse's asset allowance is the greatest of the following amounts:

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- (i) one-half of the combined total countable assets of the institutionalized spouse and the community spouse, not to exceed \$90,660;
- (ii) \$18,132, if the total combined countable assets of the couple are between \$18,132 and \$36,264;
- (iii) the amount of the couple's total countable assets, if the total combined amount is \$18,132 or less;
- (iv) a court-ordered amount; or
- (v) an amount determined after a fair hearing in accordance with 130 CMR 520.017.

(b) Compare the amount of the remaining assets to the MassHealth asset standard for one person, which is \$2,000. When the amount of the remaining assets is equal to or below \$2,000, the institutionalized spouse has met the asset test of eligibility.

(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).

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(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.

(4) Retroactive Eligibility. In determining the eligibility of the institutionalized spouse for the three-month retroactive period before application in a continuous period of institutionalization, the Division deducts the amount defined in 130 CMR 520.016(B)(2) from the couple's total countable assets.

(5) Eligibility of the Community Spouse. The amount defined in 130 CMR 520.016(B)(2) must be counted in determining the community spouse's eligibility for MassHealth.

520.017: Right to Appeal the Asset Allowance or Minimum-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 Division, 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 Division 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 without regard to the income of the institutionalized spouse as follows.

(1) The fair-hearing officer will include the amount of the income that would be generated by the spouse's asset allowance if the asset allowance were invested in an account and generating income equal to the highest rate quoted in the Bank Rate Monitor Index as of the hearing date.

(2) If the community spouse's gross income is less than the minimum-monthly-maintenance-needs allowance (MMMNA), then the fair-hearing officer will increase the community spouse's asset allowance by the amount of additional assets that, if invested at the highest rate quoted in the Bank Rate Monitor Index as of the hearing date, would generate sufficient income to raise the income total to the MMMNA.

(3) If after the fair-hearing officer has increased the asset allowance, the community spouse's gross income is still less than the MMMNA, 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 not to exceed, the MMMNA.