

Office of Medicaid BOARD OF HEARINGS

Appeal Decision:	Approved	Appeal Number:	1804279
Decision Date:	7/19/18	Hearing Date:	07/10/2018
Hearing Officer:	Patricia Mullen	Record Open to:	07/24/2018

Appearances for Appellant:

Appearance for MassHealth:
Gloria Medeiros



*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:	Assets
Decision Date:	7/19/18	Hearing Date:	07/10/2018
MassHealth's Rep.:	Gloria Medeiros	Appellant's Reps.:	
Hearing Location:	Taunton MassHealth Enrollment Center		

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 December 7, 2017, MassHealth denied the appellant's application for MassHealth Standard benefits for long term care residents because MassHealth determined that the appellant's assets exceed the limit for MassHealth. (see 130 CMR 520.016 and Exhibit 1). The appellant filed this appeal in a timely manner on December 29, 2017. (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal. (see 130 CMR 610.032). The hearing was scheduled for March 7, 2018, but the appellant passed away on March 3, 2018. (Exhibit 5). The Board of Hearings held the case until a Personal Representative of the appellant's estate could be appointed. (Exhibits 7, 10). On June 7, 2018, the appointment of the Personal Representative of the appellant's estate was submitted to the Board of Hearings. (Exhibit 11).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth Standard.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.016, in determining that the appellant's assets exceeds the limit for MassHealth Standard; a second issue is whether the

community spouse is entitled to the excess asset amount in order to meet an increased minimum monthly maintenance needs allowance (MMMNA) pursuant to 130 CMR 520.017(D).

Summary of Evidence

The appellant's estate was represented at the hearing by the Personal Representative of the estate and by the deceased appellant's son; appearing telephonically with permission from the Personal Representative was a representative from Silver Lining Solutions. The MassHealth representative testified that the appellant submitted an application for MassHealth Standard for long term care residents on September 1, 2017 seeking a June 18, 2017 start date. The appellant was admitted to the nursing facility on June 4, 2017. (Exhibit 6). The appellant's application was denied by notice dated December 7, 2017 for excess assets. (Testimony, exhibit 1). Such notice was timely appealed and at issue in this hearing. (Exhibit 2). The appellant passed away on March 3, 2018. (Testimony).

The MassHealth representative testified that in October, 2017, the appellant and her community spouse had assets totaling \$161,594.11, out of which the community spouse was entitled to retain \$120,900.00 and the appellant was entitled to retain \$2,000.00, leaving \$38,694.11 in excess assets. (Exhibit 1). The MassHealth representative noted that originally the appellant was going to annuitize the annuity to reduce assets, but, at the hearing, the issue of shifting assets to the community spouse based on exceptional circumstances was raised. Based on the new issue at hearing, the MassHealth representative requested time to calculate the assets as of June, 2017 and to complete a minimum monthly maintenance needs allowance (MMMNA) worksheet. The record was left open to give the MassHealth representative time to complete such worksheet and immediately following the hearing, the MassHealth representative submitted to the hearing officer and to the appellant's estate's representatives, the assets as of June 18, 2017 and the MMMNA worksheet. (Exhibit 15). The MassHealth representative reported that in June, 2017, the appellant's and her spouse's countable assets totaled \$168,901.41. (Exhibit 15). The appellant's spouse was entitled to retain \$120,900.00 and the appellant could keep the MassHealth limit of \$2,000.00, leaving \$46,001.41 in excess assets. (Exhibit 15). The MassHealth representative testified that the appellant's spouse received gross Social Security of \$1,948.00 a month and gross pension of \$447.77 a month for total monthly income of \$2,395.77. (Exhibit 15). The appellant received net Social Security of \$678.00 a month. (Testimony, exhibit 15). The MassHealth representative noted that the appellant's spouse paid \$111.00 a month in Medicare premiums and \$93.00 a month for Tufts health plan and dental insurance premiums. (Exhibit 15). The appellant paid \$39.00 a month for a supplemental Tufts health plan. (Exhibit 15).

The MassHealth representative stated that MassHealth determined that the appellant's spouse paid \$4,650.00 a month in rent in 2017. MassHealth calculated the spouse's MMMNA to be \$6,071.00 pursuant to the MMMNA worksheet. (Exhibit 15). The MassHealth representative pointed out that the maximum MMMNA pursuant to MassHealth regulations is \$3,022.50. (Exhibit 15).

The appellant's estate's representative argued that the appellant's spouse is entitled to retain the entire excess asset amount due to an increased MMMNA resulting from exceptional circumstances

as set forth in 130 CMR 520.017(D). The appellant's estate's representative stated that the appellant's spouse is 88 years old and has been living in an assisted living facility since March, 2016. The appellant's estate's representative stated that the appellant's spouse has a cracked vertebrae and uses a walker; he is unstable and cannot live on his own. The appellant's estate's representative submitted the appellant's spouse's contract with the assisted living facility which shows that in June, 2017 he paid \$4,650.00 a month for rent, meals, utilities, housekeeping, laundering of towels and linens, and 24 hour emergency response service. (Exhibit 14). The appellant's spouse paid an additional fee of \$28.00 a month for personal laundry service and \$280.00 a month for personal care. (Exhibit 14). From June, 2017 to March, 2018, the appellant's spouse paid \$4,958.00 a month to the assisted living facility. (Exhibit 14). The appellant's estate's representative testified that the appellant's spouse pays \$255.00 a month for prescriptions and approximately \$200.00 a month for co-payments and miscellaneous medical expenses. (Exhibit 14).

The record was left open until July 24, 2018 to give the appellant's estate's representative the opportunity to submit a letter from the appellant's spouse's physician speaking to the spouse's need to live in an assisted living facility. (Exhibit 17). During the record open period, the appellant's estate's representative submitted a letter dated July 17, 2018 from the appellant's spouse's physician, Dr. Michael Miller. (Exhibit 19). Dr. Miller writes that the appellant's spouse has multiple medical issues including a history of cerebral aneurysm repair and cervical spine fracture and it is medically necessary that he reside in an assisted living facility. (Exhibit 19).

The interest rate equal to the deposit yield quoted in the Bank Rate Monitor Index as of the hearing date for money market accounts was 2% and for 2 ½ year CDs was 2.55%. (Exhibit 18).

Findings of Fact

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

1. The appellant submitted an application for MassHealth Standard for long term care residents on September 1, 2017 seeking a June 18, 2017 start date; the appellant was admitted to the nursing facility on June 4, 2017.
2. In June, 2017, the appellant's and her spouse's countable assets totaled \$168,901.41.
3. The appellant's assets exceeded the MassHealth limit by \$46,001.41.
4. The appellant's spouse received gross Social Security of \$1,948.00 a month and gross pension of \$447.77 a month for total monthly income of \$2,395.77.
5. The appellant received net Social Security of \$678.00 a month.
6. The appellant's spouse paid \$111.00 a month in Medicare premiums and \$93.00 a month for Tufts health plan and dental insurance premiums; the appellant paid \$39.00 a month for a supplemental Tufts health plan

7. The appellant's spouse is 88 years old and has been living in an assisted living facility since March, 2016.
8. The appellant's spouse uses a walker; he is unstable and cannot live on his own.
9. The appellant's spouse has a history of cerebral aneurysm repair and cervical spine fracture and he requires the care provided in the assisted living facility.
10. From June, 2017 to March, 2018, the appellant's spouse paid \$4,650.00 a month to the assisted living facility for rent, meals, utilities, housekeeping, laundering of towels and linens, and 24 hour emergency response service; the appellant's spouse paid an additional fee of \$28.00 a month for personal laundry service and \$280.00 a month for personal care for a total of \$4,958.00 a month.
11. The appellant's spouse pays \$255.00 a month for prescriptions and approximately \$200.00 a month for co-payments and miscellaneous medical expenses.
12. The interest rate equal to the deposit yield quoted in the Bank Rate Monitor Index as of the hearing date for money market accounts was 2% and for 2 ½ year CDs was 2.55%.

Analysis and Conclusions of Law

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 Office of Medicaid 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 Bank Rate Monitor 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 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 Bank Rate Monitor 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.

(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 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 will ensure 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 will review the housing agreement, service plan, fee schedule, and other pertinent documents to determine whether exceptional circumstances exist. Additional amounts will be 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 will first verify 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 will consider how the assets were spent in determining whether or not significant financial duress exists.

(b) The fair-hearing officer will determine the revised MMMNA by including in the calculation the amount needed to meet the exceptional circumstances.

(c) The fair-hearing officer will compare 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 will first deduct 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.

See 130 CMR 520.017.

The appellant's spouse's MMMNA calculated by MassHealth pursuant to 130 CMR 520.026(B) was the maximum allowed under the regulation, \$3,022.50. The appellant's estate's representative argues that the community spouse's actual MMMNA is much higher than \$3,022.50 and thus we turn to 130 CMR 520.017(D) to determine if exceptional circumstances exist allowing for an increased MMMNA over the maximum allowed pursuant to 130 CMR 520.026(B). The regulation at 130 CMR 520.017(D) states that exceptional circumstances exist when there are necessities that arise from the medical condition, frailty or similar special needs of the community spouse and these result in significant financial duress. See 130 CMR 520.017(D). The community spouse's physician supports the medical need for assisted living services in his letter. It is clear from the community spouse's frailty and medical problems that the services provided in the assisted living facility in which he resides are medically necessary and he needs the assistance provided by the facility in order to remain in the community. The appellant's spouse paid a monthly fee to the assisted living facility for shelter, meals, utilities,

housekeeping, laundry, 24 hour emergency response service, and personal care. The regulation at 130 CMR 520.017(D) notes that if the community spouse lives in an assisted-living facility and requests an increase in his or her minimum-monthly-maintenance-needs allowance, the fair-hearing officer will review the housing agreement, service plan, fee schedule, and other pertinent documents to determine whether exceptional circumstances exist; additional amounts will be allowed only for specific expenses necessitated by exceptional circumstances of the community spouse and not for maintaining any pre-set standard of living. (see 130 CMR 520.019(D)(1)(b)). The assisted living agreement, service plan, fee schedule, and all pertinent medical documentation were reviewed here. The community spouse's monthly fee to the assisted living facility was \$4,958.00. The community spouse's monthly fee to the assisted living facility does not include clothing, health insurance costs, out of pocket medical expenses, dental expenses, or any other additional necessary expenses.

Pursuant to 130 CMR 520.017(C), the first \$10,000.00 of the community spouse's assets of \$120,900.00, at an interest rate equal to the deposit yield quoted in the Bank Rate Monitor Index as of the hearing date for money market accounts, would generate interest income of \$16.66 ($\$10,000.00 \times 2\%$ divided by 12 = \$16.66). The community spouse's remaining \$110,900.00 in assets, at an 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, would generate monthly interest income of \$235.66 ($\$110,900.00 \times 2.55\%$ divided by 12 = \$235.66). Accordingly, the community spouse's assets generate monthly income of \$252.32. When the interest income is added to the community spouse's monthly Social Security and pension income, his total monthly income is \$2,648.09. The community spouse's monthly fee to the assisted living facility alone is \$4,958.00, without taking into consideration any other necessary expenses. I determine that exceptional circumstances resulting in significant financial duress exist in this case and the community spouse's MMMNA should be increased to \$4,958.00 to meet his actual monthly maintenance needs.

Because the community spouse's total monthly income of \$2,648.09 is inadequate to meet his increased MMMNA, the regulations allow that the appellant's income be granted to the community spouse in order to meet the MMMNA. After deducting the appellant's personal needs allowance (PNA) of \$72.80, the appellant's income totals \$605.20 ($\$678.00 - 72.80$). When this amount is added to the community spouse's income of \$2,648.09, the total is \$3,253.09 and is not sufficient to meet the community spouse's MMMNA of \$4,958.00, thus we look to the excess assets.

The excess assets of \$46,001.41, when invested at the 2 ½ year CD rate of 2.55%, generate \$97.75 in monthly interest income. When this amount is added to the community spouse's total income of \$3,253.09, the resulting income of \$3,350.84 is still insufficient to meet the community spouse's MMMNA of \$4,958.00.

The community spouse is entitled to retain the excess assets totaling \$46,001.41 pursuant to 130 CMR 520.017(D) and his monthly spousal maintenance allowance from appellant's income would be \$605.20. The appeal is approved insofar as the appellant no longer has excess assets preventing eligibility for MassHealth. MassHealth shall rescind the notice dated December 7, 2017, re-open the application dated September 1, 2017, and re-determine eligibility as of June 18, 2017 based on

the determination that the excess asset amount is now \$0. The community spouse is entitled to retain all assets over \$2,000.00. If the appellant is determined to be otherwise eligible for MassHealth long term care benefits, the community spouse is entitled to a spousal maintenance needs allowance of \$605.20 per month and the appellant's patient paid amount (PPA) to the nursing facility is \$0.

Order for MassHealth

Rescind the notice dated December 7, 2017, re-open the application dated September 1, 2017, and re-determine eligibility as of June 18, 2017 based on the determination that the excess asset amount is now \$0; if approved, the community spouse's spousal maintenance needs allowance is \$605.20 a month and the appellant's PPA is \$0.

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.

Patricia Mullen
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA, 02780, 508-828-4616