

**Office of Medicaid
BOARD OF HEARINGS**

Appeal Decision:	Approved	Appeal Number:	1813950
Decision Date:	9/24/18	Hearing Date:	08/10/2018
Hearing Officer:	Casey Groff		

Appearance for Appellant:

Appearance for MassHealth:

Cara Miller of the Tewksbury MassHealth
Enrollment Center



*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:	Long-term-care; Eligibility; Spousal Maintenance Needs Allowance
Decision Date:	9/24/18	Hearing Date:	08/10/2018
MassHealth's Rep.:	Cara Miller	Appellant's Rep.:	
Hearing Location:	Tewksbury MassHealth Enrollment Center	Aid Pending:	

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 April 27, 2018, MassHealth denied Appellant's application for MassHealth benefits because MassHealth determined that Appellant's countable assets are over the program limit. See Exhibit 2; 130 CMR 520.003; 130 CMR 520.004. On May 16, 2018, Appellant's power of attorney appealed the decision in a timely manner, naming Appellant's attorney as his appeal representative. See Exhibit 1; Exhibit 3; 130 CMR 610.015(B) Denial of benefits and a request for an adjustment to the asset allowance are both valid grounds for appeal. See 130 CMR 520.017; 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied Appellant's application for MassHealth benefits because MassHealth determined that Appellant's countable assets are over the program limit.

Issue

Whether MassHealth was correct in determining that Appellants' countable assets are over the program limit and whether Appellant qualifies for an adjustment to the asset allowance.

Summary of Evidence

The MassHealth representative from the Tewksbury MassHealth Enrollment Center testified that MassHealth received an application for long-term care benefits on March 6, 2018 seeking coverage as of February 9, 2018. Appellant's wife continues to live in the community and resides in the marital home located in Sterling, Massachusetts. On April 27, 2018, MassHealth denied Appellant's application because MassHealth determined that Appellant had excess assets. See Exhibit 1. The countable assets of Appellant and his community spouse at the time Appellant applied for long-term care benefits was \$323,277.76. Id. The MassHealth representative testified that pursuant to MassHealth regulations, Appellant is entitled to retain \$2,000 and the community spouse may retain \$123,600.00 as a community spouse resource allowance (CRSA). Accordingly, MassHealth found that Appellant's countable assets exceeded the program limits by \$197,677.76.¹ Id.

Appellant's community spouse and attorney appeared telephonically. Appellant's attorney submitted a memorandum with exhibits that were incorporated into the hearing record as Exhibit 8. The attorney argued that the community spouse is entitled to an increased CRSA based on a calculation of her minimum monthly needs allowance (MMMNA).² The community spouse resides in the marital home and pays for her own heat and utilities. The community spouse pays real property taxes of \$516.61 per month and a property insurance of \$261.08 per month. Appellant's spouse is under age 60 and receives no income. Using the standard heat/utilities allowance of \$636 she has a total shelter expense of \$1,413.69. When the standard shelter expenses of \$609.00 are subtracted it creates an excess shelter amount of \$804.69. When the federal standard maintenance allowance of \$2,030 is added to the excess shelter amount the actual MMMNA is \$2,834.69.³

Appellant's attorney submitted evidence that as of the date of the hearing, the deposit yield quote in the Bank Rate Monitor Index (BRMI) for a money market account was 0.20 percent. Appellant's attorney submitted evidence that putting the first \$10,000 of the CRSA (\$123,600.00) into a money market account at this rate would generate income of \$1.67 per month. Appellant's attorney also submitted evidence that as of the date of the hearing the highest deposit yield quoted in BRMI for a CD not to exceed a 2 ½ year term was .95 percent. See Exhibit 8, Tab A. If the remainder of the CRSA (\$113,600) were put into a CD with .95 percent interest rate, the community spouse could generate an additional \$89.93 amount per month. In sum, the community spouse could generate a total of \$91.60 per month in interest income through her CRSA. When this income is taken into

¹ The MassHealth representative presented several excess asset amounts the day of the hearing. This decision will utilize the amount listed on the notice as that is clearly within the scope of this appeal.

² Appellant testified that several of the standard figures included in Appellant's memorandum were outdated. At the hearing, Appellant testified to the updated standard amounts, specifically, the utility/heat allowance, standard shelter amount, and federal standard.

³ The MassHealth representative also presented a spousal maintenance needs worksheet which provided an identical MMMNA calculation. See Exhibit 7.

consideration, the community spouse still has an unmet MMMNA of \$2,743.09 per month.

Appellant receives monthly income of \$802.10 from social security. He has no other income. After deducting \$72.80 for a personal needs allowance, this leaves \$729.30 in available income from the institutionalized spouse. The community spouse needs approximately \$2,834.69 (MMMNA). When the available income from the institutionalized spouse is taken into consideration, the community spouse still has a shortfall of \$2013.79.

Appellant argued that using the current BRMI rate for a 2 ½ year CD of .95% for the entirety of excess assets (\$197,677.67) would produce an additional \$156.50 per month in income to the community spouse. Because this still leaves the community spouse with a shortfall in meeting her MMMNA, Appellant argued that the CSRA must be increased by the entire amount of excess assets, making Appellant eligible for long-term care benefits with a zero patient-paid amount (PPA).

Appellant's attorney testified that Appellant's spouse received a one-time inheritance in the amount of \$5,000 in June 2018. Appellant's attorney argued that pursuant to 130 CMR 520.009(E) this inheritance should be treated as a lump-sum income. This means it is treated as unearned income in the calendar month of the receipt, and an asset in subsequent months. Appellant argued that the inclusion of this asset does not affect Appellant's eligibility. However, because the community spouse did not have an unmet MMMNA need for June 2018, the Appellant's PPA should be calculated as follows for June:

Social security:	\$802.10
Less PNA:	-\$72.80
Less Tufts Health Ins.:	-\$114.00
	-\$86.90
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TOTAL:	\$528.40

MassHealth did not dispute any of the facts presented by Appellant's representatives.

Findings of Fact

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

1. Appellant was admitted to a long-term care skilled nursing facility on January 18, 2018. (Testimony; Exhibit 6).
2. Appellant has a community spouse that continues to reside in in their marital home located in Sterling Massachusetts. (Testimony).
3. Appellant's spouse pays for her own heat and utilities at her home. (Testimony; Exhibit 6).

4. Appellant's spouse pays real property taxes of \$516.61 per month and a property insurance premium of \$261.08 per month at her home, totaling \$777.69 per month. (Testimony; Exhibit 6; Exhibit 7; Exhibit 8).
5. Appellant has a MMMNA of \$2,834.69. (Testimony; Exhibit 7; Exhibit 8).
6. Appellant's spouse is under the age of 60 and receives no income. (Testimony; Exhibit 8).
7. Appellant receives an income of \$802.10 per month from social security. He has no other income. (Testimony; Exhibit 6; Exhibit 8).
8. On March 6, 2018, MassHealth received Appellant's application for long-term care benefits. (Testimony; Exhibit 6; Exhibit 8).
9. Through a notice dated April 27, 2018, MassHealth denied Appellant's application for long-term care benefits because MassHealth determined that Appellant had excess assets. (Testimony; Exhibit 2).
10. The countable assets of Appellant and his community spouse at the time Appellant applied for long-term care benefits was \$323,277.76. (Testimony; Exhibit 2).
11. Taking into consideration the allowable asset limit of \$2,000 and a CSRA of \$123,600.00, MassHealth determined that Appellant had excess assets of \$197,677.76. (Testimony; Exhibit 2).
12. The highest rate quoted in the BRMI for a money market account as of the date of the hearing is .20 percent. (Exhibit 8, Tab A).
13. The monthly income generated from the first \$10,000 of the community spouse's asset is \$1.67 ($10,000 \times .0020 \div 12 = 1.67$). (Testimony; Exhibit 8).
14. The highest deposit yield quoted in the BRMI as of the date of the hearing for a term not to exceed 2 ½ years for a CD was .95 percent. (Exhibit 8, Tab A).
15. The monthly income generated from the community spouse's remaining allowable assets is \$89.93 ($\$187,677.76 \times .0095 \div 12 = 89.93$). (Testimony; Exhibit 8).
16. The total amount of income generated by the community spouses resource allowance is \$91.60 ($\$1.67 + \$89.93 = \91.60). (Testimony; Exhibit 8).
17. After considering the interest income from the CSRA, the community spouse requires an additional \$2,743.09 to meet her MMMNA. (Testimony).
18. Because the community spouse's gross monthly income is below her MMMNA, the community spouse is entitled to Appellant's income after deducting his personal needs

- allowance of \$72.80 to increase the level of her monthly income. (Testimony; Exhibit 8).
19. Even with Appellant's income, the community spouse's gross income is still less than her MMMNA. (Testimony; Exhibit 8).
 20. Using the rate of .95 percent for a 2 ½ year CD, the community spouse's income generated from the excess assets of \$197,677.76 is \$156.50 per month ($\$197,667.76 \times .0095 \div 12 = \156.50). (Testimony; Exhibit 8).
 21. The monthly income generated from the household's excess assets still keeps Appellant's spouse's income below her MMMNA. (Testimony; Exhibit 8).

Analysis and Conclusions of Law

Appellant received a denial for MassHealth long-term care benefits because MassHealth determined he retains assets in excess of the allowable limit. Appellant may keep \$2,000 and his community spouse may retain \$123,600.00 as a CSRA pursuant to 130 CMR 520.016(B)(2) and 2018 SSI and Spousal Impoverishment Standards. Accordingly, MassHealth determined that Appellant has excess assets in the amount of \$197,677.76. The issue on appeal is whether the community spouse is entitled to an increased CSRA which would allow her to retain the excess assets so that she may continue to stay in the community. MassHealth regulation 130 CMR 520.017(C) allows for an adjustment to the amount of the asset allowance if either spouse claims at hearing that the amount of income generated by the community spouse's asset allowance is inadequate to raise the community spouse's income to the minimum monthly-maintenance-needs allowance. The relevant regulation provides as follows:

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 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.

The parties agree that the community spouse has a MMMNA of \$2,834.69.⁴ Appellant argues that the community spouse does not have sufficient income to meet her MMMNA. Appellant's attorney provided a calculation showing that the community spouse's gross income, as determined pursuant to 130 CMR 520.017(C)(1), totals \$91.60. This amount consists entirely of interest that could be generated by the CSRA as she has no other source of income. The difference between the community spouse's gross income and what she requires to meet her MMMNA is \$2,743.09. Where there is still a shortfall, the MassHealth regulations dictate that the institutionalized spouse's income (less his PNA) be applied to the the community spouse's total income. See 130 CMR

⁴ As discussed in the preceding sections, this amount was determined by adding the community spouse's property taxes and property insurance (\$777.69) with the standard heat/utilities allowance (\$636) to come to a total shelter expense of \$1,413.69. When the standard shelter expenses of \$609.00 are subtracted, it creates an excess shelter amount of \$804.69. When the federal standard maintenance allowance of \$2,030.00 is added to the excess shelter amount the actual minimum monthly maintenance needs allowance (MMMNA) is \$2,834.69.

520.017(C)(2). Here, the institutionalized spouse's income less his PNA of \$72.80 is \$777.69. When the available income from the institutionalized spouse is taken into consideration, the community spouse still has a shortfall of \$2013.79.

As the community spouse's total income (including the institutionalized spouse's income) is still less than her MMMNA, the community spouse's asset allowance can be increased 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 a term not to exceed two and one half years would generate sufficient income to raise the income total to the MMMNA. See 130 CMR 520.017(C)(3). A BRMI rate for a 2 ½ year CD of .95% for the entire amount of excess assets (\$197,677.76), would generate an additional amount of \$156.50 per month. When deducting the amount of income generated from the additional assets (\$156.50) from the shortfall of \$2013.79, the community spouse still has an unmet need of \$1,857.29. Based on the above, I agree with Appellant and find that the community spouse is entitled to keep all of the institutionalized spouse's income and excess assets. The decision is therefore APPROVED and MassHealth must rescind their notice dated April 27, 2018 and redetermine eligibility in accordance with this decision.⁵

Order for MassHealth

Rescind notice dated April 27, 2018 and increase the community spouse resource allowance to allow Appellant's spouse to retain all of the excess assets and income of Appellant.

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.

Casey Groff
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center

⁵ As the sole issue on appeal concerns whether Appellant is entitled to an asset shift in accordance with 130 CMR 520.017(C), this decision does not address the issue of Appellant's PPA or treatment of the community spouse's \$5,000 inheritance which was received after the MassHealth notice was issued. MassHealth will issue a new eligibility notice in accordance with this decision setting forth Appellant's eligibility and PPA. Appellant has further appeal rights as to the new MassHealth eligibility determination notice.