

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

Appeal Decision:	Approved	Appeal Number:	1702339
Decision Date:	5/11	Hearing Date:	April 11, 2016
Hearing Officer:	B. Padgett		

Appellant Representative:

MassHealth Representative:

J. Moreno, Springfield MEC



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th floor
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Approved in part; Denied in part	Issue:	130 CMR 520.017
Decision Date:	5/11	Hearing Date:	April 04, 2017
MassHealth Rep.:	J. Moreno	Appellant Reps.:	
Hearing Location:	Springfield		

Jurisdiction

The Appellant received a notice dated January 09, 2017 stating: The Division has denied your application for MassHealth Standard benefits because your countable assets are over the program limit. The limit is \$122,900.00 for you and your spouse. (Exhibit 1).

The Appellant filed this appeal timely on January 17, 2017. (130 CMR 610.015(B); Exhibit 2).

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

Action Taken by MassHealth

MassHealth denied the Appellant's application for long term care benefits due to excess assets.

Issue

Is the Community Spouse entitled to have the Community Spouse Resource Allowance (CSRA) increased and is the amount sufficient to render the Institutionalized Spouse eligible for MassHealth?

Summary of Evidence

MassHealth testified the Appellant entered a nursing facility on May 19, 2016 and applied for long-term care benefits on November 06, 2016 (the facility is requesting a retroactive start date of June 01, 2016). MassHealth explained that under the regulations the Community Spouse is allowed to retain half of the assessed marital assets, not to exceed \$120,900.00¹ and the Institutionalized Spouse is allowed to retain \$2,000.00. MassHealth stated the record establishes the Institutional Spouse (Appellant) and the Community Spouse have total assets of \$743,948.00. MassHealth stated that after deducting the total household noncountable assets of \$122,900.00 the household retains excess assets in the amount of \$621,048.00. MassHealth indicated the Community Spouse has income of \$1,051.98 per month (Social Security \$875.00 + Medicare \$104.90 + other \$72.08) and the Institutional Spouse has income of \$2,309.46 per month (Social Security \$1,339.00 + pension \$898.38 + other \$72.08). MassHealth stated that based on the information provided the Community Spouse's Minimum-Monthly-Maintenance-Needs Allowance (MMMNA) was calculated to be \$3,022.50.² Prior to the close of the hearing MassHealth indicated they would not be counting the Community Spouse's residence in the asset calculation and the total asset amount was reduced to \$394,548.00³ and the excess asset amount to \$271,648.00. MassHealth submitted into evidence notices, verification of income and assets and MMMNA worksheet. (Exhibit 4).

The Appellant's representative agreed with MassHealth as to the available assets as of the date of assessment and is requesting a recalculation of the MMMNA to reflect the cost of the Community Spouse's assisted living unit. The Community Spouse resides in an assisted living facility at a cost of \$4,036.00 per month and has been diagnosed with kidney disease, deep vein thrombophlebitis, vascular dementia, temporal arteritis and complete blindness in both eyes. The Community Spouse does not have sufficient income to meet the MMMNA and therefore she is entitled to the Appellant's income and excess assets. The representative indicated the assisted living cost included enhanced assistance and other management fees.

The record remained open until May 03, 2017 for the Appellant's representative to submit evidence of the Appellant's medical necessity for assisted living and the need for enhanced services. (Exhibit 5).

The representative submitted a copy of the assisted living residence agreement with a monthly cost of \$4,036.00 (\$2,900.00 housing fee + \$970.00 in enhanced fee + \$166.00 for medication management fee), a physician letter and a worksheet calculating a MMMNA of \$5,814.00. The evidence indicates the enhanced support fee provides assistance with showering, grooming, daily activities, safety checks, daily nursing assessments and physical assist with meals and walking. (Exhibit 6).

¹ 130 CMR 520.016(B)(2)(a)(2).

² This figure is based on rent/mortgage of \$2,900.00 per month + \$596.00 taxes/insurance + \$609.00 Food Stamp allowance + \$601.00 shelter expense + \$2,003.00 standard maintenance allowance.

³ Life Insurance \$18,949.00 + bank account \$295,177.00 + annuity \$80,422.00.

Findings of Fact

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

1. The Appellant applied for MassHealth LTC benefits on November 06, 2016. (Testimony).
2. The total countable assets of the Appellant and the Community Spouse are \$394,548.00, of which the Appellant is entitled to retain \$2,000.00, and the Community Spouse may retain \$120,900.00, leaving \$271,648.00 in excess assets. (Exhibit 1).
3. The Community Spouse resides in an assisted living facility at a total monthly cost of \$4,036.00 a month which includes assisted living services, housekeeping, food, assistance with activities of daily living etc. (Exhibit 6).
4. The Community Spouse has been diagnosed with kidney disease, deep vein thrombophlebitis, vascular dementia, temporal arteritis and complete blindness in both eyes. (Exhibit 6).
5. The Community Spouse's total monthly income is \$1,051.98 a month (Social Security \$875.00 + Medicare \$104.90 + other \$72.08). (Exhibit 4).
6. The highest rate quoted in the Bank Rate Monitor Index for a money market account as of the date of the hearing is 1.15%.⁴
7. The monthly income generated from the first \$10,000.00 of the Community Spouse's assets is \$9.58 ($\$10,000.00 \times 1.15\% \div 12$).
8. The highest rate quoted in the Bank Rate Monitor Index for a 2½ year certificate of deposit as of the date of the hearing is 1.60%.⁵
9. The monthly income generated from the Community Spouse's remaining allowable assets is \$162.53 ($\$121,900.00 \times 1.60\% \div 12$).
10. The total monthly gross income of the Community Spouse, including the interest generated by his share of the assets is \$1,224.09 ($\$1,051.98 + \$162.53 + \9.58).
11. The Appellant's total monthly income is \$2,309.46 (Social Security \$1,339.00 + pension \$898.38 + other \$72.08) (Exhibit 4).
12. The Appellant's PNA is \$72.80 a month. (Exhibit 4).
13. The Appellant's total countable monthly income is \$2,236.64 ($\$2,309.44 - \72.80).

⁴ www.Bankrate.com

⁵ Ibid.

14. The excess assets of \$271,648.00 generate \$172.10 (\$162.53 + \$9.58.00) in additional income.

Analysis and Conclusions of Law

After the institutional spouse has received notice of either approval or denial for MassHealth, 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. (130 CMR 520.017(D)(1)). The purpose of the adjustment is to generate sufficient income, as determined by MassHealth, for the Community Spouse to remain in the community (130 CMR 520.017(A)).⁶ If the Community Spouse's gross income is less than the amount he or she needs to live in the community MassHealth may deduct an amount from the Institutionalized Spouse's countable-income amount to meet this need. This amount is the spousal-maintenance-needs deduction (SMNA). This deduction is the amount by which the MMMNA exceeds the Community Spouse's gross income. The regulations require MassHealth to use the actual MMMNA or a maximum monthly allowance of \$5,519.00 per month, whichever is lower, unless it has been increase as the result of a fair-hearing decision based on exceptional circumstances. (130 CMR 520.026:(B)(2)). Exceptional circumstances exist when there are circumstances other than those already taken into account in establishing the maintenance standard for the Community Spouse under 130 CMR 520.025(B) and these circumstances result in significant financial duress. Since the federal

⁶ 130 CMR 520.017: Right to Appeal the Asset Allowance or Monthly Maintenance Needs Allowance: 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. (A) 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) 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 Bank rate 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 Bank Rate 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 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 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 date of the hearing date, would generate sufficient income to raise the income total to the MMMNA.

standards used in calculating the MMMNA cover such necessities such 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 housing 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.⁷

The Community Spouse resides in an assisted living facility, which costs \$4,036.00 per month and includes rent, housekeeping, food and assistance with activities of daily living etc. The Appellant's representative has submitted sufficient evidence to demonstrate the Community Spouse has a need for assisted living and the services included in the assisted living fee constitute an exceptional circumstances within the definition at 130 CMR 520.017. The assisted living fee therefore can replace the MassHealth's MMMNA as the cost for the facility "arise from the medical condition, frailty or similar special needs of the Community Spouse." Accordingly, the Community Spouse is entitled to a MMMNA of \$4,036.00. The Appellant's representative submitted a spreadsheet which calculated the MMMNA as \$5,814.00. The Appellant's representative calculated the assisted living cost as rent and then added the MassHealth utility, shelter and maintenance allowance; however since the assisted living fee includes food, shelter, clothing, and utilities the Appellant does not receive any additional shelter allowances as this would be a duplication of the deduction already considered and received.

Under the "income first" regulations, the Community Spouse's monthly income includes the amount of interest income generated by any asset allowance. If that monthly income is still below the MMMNA, then the Community Spouse is entitled to the Institutionalized Spouse's income, (after reduction of the \$72.80 PNA) in an amount that would increase the Community Spouse's total income to a level equal to the MMMNA. If the Community Spouse's gross income is still less than the MMMNA, the 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 date of the hearing date, would generate sufficient income to raise the income total to the MMMNA.

The Community Spouse has a total income of \$1,263.47 including interest generated by the

⁷ 130 CMR 520.017: Appeal the Asset Allowance or Monthly-Maintenance- Needs Allowance: (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.

Community Spouse asset allowance. The difference between the Community Spouse's total income, including the interest generated by his share of the assets and the adjusted MMMNA is \$2,772.53 (\$4,036.00 - \$1,263.47). The regulations dictate MassHealth considers the Institutionalized Spouse's income to generate additional income for the Community Spouse. The Appellant has income of \$2,309.46. Accordingly, the Community Spouse retains the Appellant's income to meet the MMMNA. After adding the Appellant's income to the Community Spouse's income the total income is still less than the MMMNA by \$535.89 (\$4,036.00 - \$1,263.47 - \$2,236.64). Because the Community Spouse's income is still less than the MMMNA, the regulations allow that excess assets may be used to generate income for the Community Spouse. Since \$271,648.00 in excess assets generates only \$172.10 and the Community Spouse requires \$535.89 to remain in the assisted living facility the Community Spouse is allowed to retain all of the excess assets.

This appeal is approved to allow the Community Spouse to retain the Appellant's income and all household's excess assets.

Order for MassHealth

Allocate all income (minus PNA) and excess assets to the Community Spouse. Establish eligibility date consistent with the application date of November 06, 2016.

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, MassHealth of Medical Assistance, at the address on the first page of this decision.

Brook Padgett
Hearing Officer
Board of Hearings

cc: MassHealth representative: Springfield MEC