

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

Appeal Decision:	Approved	Appeal Number:	1702776
Decision Date:	5/17	Hearing Date:	03/29/2017
Hearing Officer:	Patricia Mullen		

Appellant Representative:

MassHealth Representative:
Nick Jackson



*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/Spousal Allowance
Decision Date:	5/17	Hearing Date:	03/29/2017
MassHealth Rep.:	Nick Jackson	Appellant Rep.:	
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 15, 2016, 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, 2016. (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

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 was represented by her attorney at the hearing. The MassHealth representative testified that the appellant submitted an application for MassHealth Standard for long term care residents on September 28, 2016 seeking a June 1, 2016 start date. The appellant was admitted to the nursing facility on August 31, 2015 and the appellant's attorney noted that she privately paid through to June 1, 2016. The MassHealth representative testified that the application was denied by notice dated November 10, 2016 for failure to timely submit verifications. The MassHealth representative stated that the verification issue resolved and September 28, 2016 remained the controlling application date. The appellant's application was denied by notice dated December 15, 2016 for excess assets. (Testimony, exhibit 1). Such notice was timely appealed and at issue in this hearing. (Exhibit 2).

The MassHealth representative testified that in December, 2016, the appellant and her community spouse had assets totaling \$741,433.00, out of which the community spouse was entitled to retain \$119,200.00 and the appellant was entitled to retain \$2,000.00, leaving \$620,213.00 in excess assets. The MassHealth representative submitted MassHealth's MMMNA worksheet which notes that the community spouse pays \$8,300.00 a month in rent. The MassHealth representative pointed out that the maximum MMMNA pursuant to MassHealth regulations is \$3,022.50. (Exhibit 4). The MassHealth representative testified that the community spouse receives monthly gross Social Security of \$2,303.00 and a monthly gross pension of \$1,504.40 for total monthly income of \$3,807.40. (Exhibit 4). The MassHealth representative noted that the community spouse's monthly income exceeds the maximum MassHealth MMMNA of \$3,022.50. The MassHealth representative testified that the appellant receives net Social Security of \$908.00 a month.

The appellant's attorney did not dispute the asset amount as set forth by MassHealth, but argued that the community 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 attorney stated that the community spouse is 86 years old and has been living in his current assisted living facility since May, 2016. The community spouse was living in a different assisted living facility prior to that date. (Testimony). In a letter dated January 4, 2017, the community spouse's physician, Dr. Ito, notes that the community spouse is in poor health due to diastolic heart failure from amyloid cardiomyopathy, and has gait instability due to Parkinson's disease. (Exhibit 5). Dr. Ito wrote further that the community spouse is being evaluated by a pulmonary specialist for worsening respiratory distress and because of his frailty and dependence for basic and instrumental activities of daily living, it is medically necessary for the community spouse to live in an assisted living facility. (Exhibit 5).

The appellant's attorney submitted the community spouse's contract with the assisted living facility which shows that he pays \$8,300.00 a month for rent, meals, utilities, housekeeping, laundering of towels and linens, 24 hour emergency response service, on site nursing staff, medication management, and one hour per week of personal care. (Exhibit 5). The community spouse pays additional fees for personal laundry service and extra personal care. (Exhibit 5). For the month of

February, 2017, the community spouse paid his monthly fee of \$8,300.00 plus an additional \$60.00 for personal laundry service and an additional \$52.50 for personal care services for a total amount due of \$8,438.95. (Exhibit 5).

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 28, 2016 seeking a June 1, 2016 start date.
2. The appellant was admitted to the nursing facility on August 31, 2015 and privately paid through to June 1, 2016.
3. The appellant and her community spouse have assets totaling \$741,433.00.
4. The community spouse receives monthly gross Social Security of \$2,303.00 and a monthly gross pension of \$1,504.40 for total monthly income of \$3,807.40.
5. The appellant receives net Social Security of \$908.00 a month.
6. The community spouse is 86 years old and has lived in his current assisted living facility since May, 2016.
7. In a letter dated January 4, 2017, the community spouse's physician, Dr. Ito, writes that the community spouse is in poor health due to diastolic heart failure from amyloid cardiomyopathy, and has gait instability due to Parkinson's disease; the community spouse is being evaluated by a pulmonary specialist for worsening respiratory distress and because of his frailty and dependence for basic and instrumental activities of daily living, it is medically necessary for the community spouse to live in an assisted living facility.
8. The community spouse pays \$8,300.00 a month to the assisted living facility for rent, meals, utilities, housekeeping, laundering of towels and linens, 24 hour emergency response service, on site nursing staff, medication management, and one hour per week of personal care.
9. For the month of February, 2017, the community spouse paid his monthly fee of \$8,300.00 plus an additional \$60.00 for personal laundry service and an additional \$52.50 for personal care services for a total amount due of \$8,438.95.

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.

In the present case, the MMMNA calculated by MassHealth pursuant to 130 CMR 520.026(B) was the maximum allowed under the regulation, \$3,022.50. The appellant's attorney 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 severe 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 monthly fee for the assisted living facility includes shelter, meals, utilities, housekeeping, laundering of towels and linens, 24 hour emergency response service, on site nursing staff, medication management, and one hour per week of 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 is \$8,300.00. 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. For the month of February, 2017, the community spouse paid \$8,438.95 to the facility which included his personal laundry and extra personal care services. It is reasonable that the community spouse's fee to the assisted living facility will vary each month based on his needs, however his flat rate of \$8,300.00 a month will be consistent.

Pursuant to 130 CMR 520.017(C), the first \$10,000.00 of the community spouse's assets of \$119,220.00, 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 \$0.92 ($\$10,000.00 \times .11\%$ divided by 12 = \$0.92). (Exhibit 5). The community spouse's remaining \$109,220.00 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 \$46.42 ($\$109,220 \times .51\%$ divided by 12 = \$46.42). (Exhibit 5). Accordingly, the community spouse's assets generate monthly income of \$47.34. When the interest income is added to the community spouse's monthly Social Security and pension income, his total monthly income is \$3,854.74. The community spouse's monthly fee to the assisted living facility alone is \$8,300.00, 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 \$8,300.00 to meet his actual monthly maintenance needs.

Because the community spouse's total monthly income of \$3,854.74 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 \$835.20 ($\$908 - \72.80). When this amount is added to the community spouse's income of \$3,854.74, the total is \$4,689.94 and is not sufficient to meet the community spouse's MMMNA of \$8,300.00, thus we look to the excess assets.

The excess assets of \$620,213.00, when invested at the 2 ½ year CD rate of .51%, generate \$263.59 in monthly interest income. When this amount is added to the community spouse's total income of \$4,689.94, the resulting income of \$4,953.53 is still insufficient to meet the community spouse's MMMNA of \$8,300.00.

The community spouse is entitled to retain the excess assets totaling \$620,213.00 and his monthly spousal maintenance allowance from appellant's income is \$835.20. The appeal is approved because the appellant no longer has excess assets preventing eligibility for MassHealth. MassHealth shall rescind the notice dated December 15, 2016, re-open the application dated September 28, 2016, and re-determine eligibility as of June 1, 2016 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 and has 90 days to get all assets over \$2,000.00 into his name only. Upon approval of the application, the community spouse is entitled to a spousal maintenance needs allowance of \$835.20 per month.

Order for MassHealth

Rescind the notice dated December 15, 2016, re-open the application dated September 28, 2016, and re-determine eligibility as of June 1, 2016 based on the determination that the excess asset amount is now \$0 after a shift of excess assets to the community spouse; upon approval of the application, the community spouse's spousal maintenance needs allowance is \$835.20 a month.

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