

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

Appeal Decision:	Approved	Appeal Number:	1706559
Decision Date:	8/3/17	Hearing Date:	06/19/2017
Hearing Officer:	Patricia Mullen		

Appellant Representative:

MassHealth Representative:
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/MMMNA
Decision Date:	8/3/17	Hearing Date:	06/19/2017
MassHealth Rep.:	Gloria Medeiros	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 January 23, 2017, MassHealth denied the appellant's spouse's application for MassHealth Standard benefits for long term care resident's because MassHealth determined that the appellant's spouse's assets exceed the limit for MassHealth. (see 130 CMR 520.003, 520.016, and Exhibit 1). The appellant filed this appeal in a timely manner on February 2, 2017 seeking to retain the excess assets in order to meet her minimum monthly maintenance needs allowance (MMMNA). (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 spouse's application for MassHealth Standard for long term care residents.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.003, 520.016, in determining that the appellant's spouse's assets exceed the limit for MassHealth Standard; a second issue is whether the appellant is allowed to retain the excess assets in order to meet her MMMNA,

pursuant to 130 CMR 520.017.

Summary of Evidence

The appellant's spouse is deceased, but the appellant has her own appeal rights with regard to a shift in excess assets. (130 CMR 520.017). The appellant is also the personal representative of her spouse's estate and she authorized the attorney to represent her at the hearing. (Exhibit 7).

The MassHealth representative stated that the appellant's spouse submitted an application for MassHealth Standard for long term care residents on July 11, 2016 seeking a MassHealth start date of May 25, 2016. The application was denied by notice dated August 31, 2016 for failure to submit verifications in a timely manner, but such notice was appealed and resolved, thereby preserving the original application date. (Testimony, exhibit 5). The appellant's spouse was admitted to the nursing facility on May 25, 2016 and he passed away on March 17, 2017. (Testimony). The MassHealth representative testified that as of the date for which the appellant's spouse seeks MassHealth coverage, the couple's assets totaled \$472,549.75. The MassHealth representative stated that her calculation of assets was slightly lower than the amount listed on the January 23, 2017 denial notice because she deducted direct deposited income from the total amount. (Exhibit 5). The MassHealth representative stated that out of the assets totaling \$472,549.75, the appellant was entitled to retain \$120,900.00 and the appellant's spouse was entitled to retain \$2,000.00, leaving \$349,649.75 in excess assets. The appellant's spouse's application was denied by notice dated January 23, 2017 and such notice was timely appealed and at issue in this hearing. (Exhibits 1, 2).

The MassHealth representative stated that the appellant's MMMNA was calculated pursuant to MassHealth regulations on a MMMNA worksheet. (Exhibit 5). The MassHealth representative stated that the appellant pays no rent or mortgage and her average monthly homeowner's insurance and real estate taxes total \$1,097.00. (Exhibit 5). The MassHealth representative stated that to this amount, MassHealth adds a standard utility allowance of \$609.00 resulting in total shelter expenses of \$1,706.00. (Exhibit 5). MassHealth deducts a standard shelter expense of \$600.75, pursuant to regulation, resulting in an excess shelter amount of \$1,105.25. (Exhibit 5). To this amount, MassHealth adds the federal standard maintenance allowance of \$2,002.50 and the appellant's resulting MMMNA is \$3,107.75. (Exhibit 5). The MassHealth representative explained that the maximum MMMNA allowed under MassHealth regulations is \$3,022.50 and thus that amount is the appellant's MMMNA. (Exhibit 5). The MassHealth representative testified that the appellant received gross monthly Social Security income of \$706.90 and the appellant's spouse received net monthly Social Security income of \$1,131.40 in 2016. (Exhibit 5). The appellant's spouse paid monthly health insurance premiums of \$182.20. (Testimony, exhibit 5).

The appellant's attorney stated that the appellant is not disputing the asset amount, rather she is seeking an increased spousal allowance because her income is not sufficient to meet her monthly needs. The appellant's attorney noted that the appellant agrees with the MMMNA as calculated by MassHealth and she seeks to retain the excess assets in order to meet that MMMNA. The

appellant's attorney stated, and the hearing officer confirmed at hearing, that the bank rate monitor index showed a rate of 1.53% for 2 year CDs and .11% for money market accounts on the date of hearing.

Findings of Fact

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

1. The appellant's spouse submitted an application for MassHealth Standard for long term care residents on July 11, 2016 seeking a MassHealth start date of May 25, 2016; the application was denied by notice dated August 31, 2016 for failure to submit verifications in a timely manner, but such notice was appealed and resolved, thereby preserving the original application date.
2. The appellant's spouse was admitted to the nursing facility on May 25, 2016 and he passed away on March 17, 2017.
3. As of the date for which the appellant's spouse seeks MassHealth coverage, the couple's assets totaled \$472,549.75.
4. The appellant's MMMNA is \$3,022.50.
5. The appellant received gross monthly Social Security income of \$706.90 and the appellant's spouse received net monthly Social Security income of \$1,131.40 in 2016; the appellant's spouse paid monthly health insurance premiums of \$182.20.
6. The bank rate monitor index showed a rate of 1.53% for 2 year CDs and .11% for money market accounts on the date of hearing.

Analysis and Conclusions of Law

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 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 Bankrate 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 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 Bankrate Monitor national 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.

See 130 CMR 520.017(A), (B), (C).

The appellant's MMMNA as calculated by MassHealth is \$3,022.50, the maximum allowed under MassHealth regulations. The appellant's total monthly income is \$706.90 and thus she has a deficit of \$2,315.60.

The first \$10,000.00 of the appellant's assets of \$120,900.00 generate interest income of \$0.91 ($\$10,000.00 \times .11\%$ divided by 12 = \$0.91). The appellant's remaining \$110,900.00 in assets generate monthly interest income of \$141.39 when invested at the 2 ½ year CD rate of 1.53% ($\$110,900 \times 1.53\%$ divided by 12 = \$141.39). Accordingly, the appellant's assets generate

monthly income of \$142.30. When the interest income is added to the appellant's monthly Social Security income of \$706.90, her total monthly income is \$849.20.

Because the appellant's income is inadequate to meet her MMMNA we turn to the appellant's spouse's income. After deducting the appellant's spouse's personal needs allowance (PNA) of \$72.80, the appellant's spouse's income is \$1,058.60. When added to the appellant's income of \$849.20, the total is \$1,907.80 and is not sufficient to meet the appellant's MMMNA. The appellant may receive \$1,058.60 from the appellant's spouse's income as a spousal maintenance needs allowance.

After counting the interest generated from the appellant's assets and retaining the appellant's spouse's income after the PNA deduction, the appellant's income is \$1,907.80 and is not sufficient to meet her MMMNA of \$3,022.50, thus we look to the excess assets.

The excess assets of \$349,649.75, when invested at the 2 ½ year CD rate of 1.53%, generate \$455.80 a month in interest income. When added to the appellant's total income of \$1,907.80, the resulting income of \$2,363.60 is still insufficient to meet the appellant's MMMNA.

The appellant is entitled to retain the excess assets totaling \$349,649.75 and her monthly spousal maintenance allowance from the spouse's income is \$1,058.60. The appeal is approved insofar as the appellant's spouse no longer has excess assets preventing eligibility for MassHealth. MassHealth shall rescind the notice dated January 23, 2017, re-open the application dated July 11, 2016, and determine the appellant's spouse's eligibility as of May 25, 2016 based on the determination that the excess asset amount is now \$0. The appellant is entitled to retain all assets over \$2,000.00 and has 90 days to get all assets over \$2,000.00 into her name only. If the appellant's spouse is determined to be otherwise eligible for MassHealth long term care benefits, the appellant is entitled to a spousal maintenance needs allowance of \$1,058.60 per month.

Order for MassHealth

Rescind the notice dated January 23, 2017, re-open the application dated July 11, 2016, and determine eligibility as of May 25, 2016, based on the determination that the excess asset amount is now \$0; the appellant may retain all assets over \$2,000.00; if the appellant's spouse is approved for MassHealth, the appellant is entitled to a spousal maintenance needs allowance of \$1,058.60 per 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