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SJC-13514

HOLLY T. FREINER, personal representative,[1] vs. SECRETARY OF THE EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES & another.[2]

Suffolk. February 7, 2024. – June 14, 2024.

Present: Budd, C.J., Gaziano, Kafker, Wendlandt, & Georges, JJ.

Medicaid. MassHealth. Marriage. Regulation. Assignment. Administrative Law, Agency's interpretation of regulation. Due Process of Law, Administrative hearing. Words, "Refuses to cooperate."

Civil action commenced in the Superior Court Department on April 9, 2020.

The case was heard by Maureen Mulligan, J., on a motion for judgment on the pleadings, and entry of separate and final judgment was ordered by David A. Deakin, J.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

James R. Knudsen for the plaintiff.
Cassandra Bolaños, Assistant Attorney General, for the defendants.

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[1] Of the estate of Costa Tingos.

[2] Director of the board of hearings of the Office of Medicaid.

Patricia Keane Martin, Clarence D. Richardson, Jr., & C. Alex Hahn, for Massachusetts Chapter of the National Academy of Elder Law Attorneys, amicus curiae, submitted a brief.

WENDLANDT, J. This case arises at the intersection of Medicaid and marriage. The Medicaid program must preserve its limited resources to pay benefits only for those who are unable to afford care on their own. Consistent with that directive, the financial resources available to an applicant for Medicaid long-term benefits must fall below a threshold amount in order for the applicant to be eligible. When an applicant for long-term care benefits is married, determining eligibility requires a delicate balance. On the one hand, the Medicaid program seeks to ensure that a financially secure couple cannot shift the burden of paying for the care of a married applicant (institutionalized spouse) onto Medicaid by sheltering assets under the name of the applicant's spouse (community spouse) in order to make the institutionalized spouse appear impoverished "enough" to meet the eligibility requirements for Medicaid benefits. On the other hand, the Medicaid program aims to avoid effectively impoverishing the community spouse by forcing the community spouse to spend virtually all the couple's assets before the institutionalized spouse can obtain benefits.

To address this challenge, Federal and State statutes and regulations govern how State Medicaid agencies must treat the

resources available to the community spouse when determining the institutionalized spouse's eligibility. Before an institutionalized spouse may receive assistance, that spouse must disclose not only her own and the couple's joint resources, but also those resources ostensibly available only to the community spouse. A State Medicaid agency may not, however, deny the institutionalized spouse benefits because of resources determined to be available to the community spouse, if the institutionalized spouse assigns to the agency her rights to spousal support. This scheme allows the agency to attempt to recoup, through litigation if necessary, the benefits it paid on behalf of the institutionalized spouse from the resources available to the community spouse.

Recognizing that in some circumstances an institutionalized spouse may not be able to determine the community spouse's resources, Massachusetts's Medicaid program, MassHealth,[3] offers an additional protection for applicants; specifically, pursuant to 130 Code Mass. Regs. § 517.011 (2017) (regulation), if the community spouse "refuses to cooperate" or if that spouse's "whereabouts [are] unknown," MassHealth nonetheless will provide

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[3] MassHealth is overseen by the Executive Office of Health and Human Services (EOHHS). The parties refer to the State Medicaid program and EOHHS as "MassHealth." For consistency, we do the same.

benefits to the institutionalized spouse even if the couple's combined resources cannot be calculated.[4] At issue in this case is the scope of the phrase "refuses to cooperate" in the regulation.

We conclude that MassHealth's board of hearings (board) reasonably construed the phrase "refuses to cooperate" to exclude the situation presented here, where the community spouse's principal act of noncooperation with the institutionalized spouse was the refusal to disclose her financial resources in connection with the institutionalized spouse's application for benefits from MassHealth. We agree with the agency's reasonable determination that, in the context of a "long-term and ongoing level of cooperation" throughout the marriage, such a refusal to disclose the community spouse's financial resources does not fall within the type of "refus[al] to cooperate" required by the regulation. Further concluding that the process resulting in the board's decision to deny the long-term care benefits in this case was not arbitrary or capricious, we affirm the decision of the Superior Court judge.[5]

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[4] The institutionalized spouse still must assign spousal support rights to MassHealth or meet one of the other specified conditions.

[5] We acknowledge the brief of amicus curiae Massachusetts Chapter of the National Academy of Elder Law Attorneys.

1. Background. The following facts, as set forth in the administrative record, largely are undisputed.[6]

Costa and Mary Tingos were married in September 1957. The couple lived together for over fifty years, until May 2015, when Costa,[7] who was then eighty-two years old, moved into a residential nursing home.

As described by the couple, the marriage had its challenges; Costa had a long history of gambling problems and financial mismanagement, which eventually drove a wedge between the married couple. Indeed, at some point Mary considered divorcing Costa, but the couple remained married for religious reasons and because their two children "did not want [them] to get divorced."

Both spouses contributed financially to the marriage, albeit in unequal amounts. For much of the marriage, Mary worked consistently and paid the couple's major expenses, including the mortgage on the family home;[8] Costa also worked and

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[6] Our review is confined to the facts in the administrative record. See G. L. c. 30A, § 14 (5); BAA Mass., Inc. v. Alcoholic Beverages Control Comm'n, 49 Mass. App. Ct. 839, 840 n.2 (2000) ("review is confined to [the administrative] record").

[7] Because Costa and Mary Tingos share the same surname, we refer to each by his or her first name.

[8] After Costa stopped paying the mortgage on the family home, he transferred his ownership interest in the home to Mary by deed. The transfer occurred in 1983.

contributed to the payment of utility and cable bills. Beginning sometime around 2003, Mary and Costa started keeping their income and assets "almost entirely separate."[9] They continued to live together in the family home and also continued filing their State and Federal income taxes jointly on the advice of their accountant.

When Costa moved into the nursing facility, Mary continued to assist her husband by helping coordinate his care. She also served as his attorney-in-fact under his power of attorney so she could manage his bank account and pay bills on his behalf.

2. Prior proceedings. a. Initial application. In September 2015, shortly after his admission into the residential nursing facility,[10] Costa filed an application for MassHealth long-term care benefits. In his application, Costa stated:

> "For decades my wife and I have kept our income and assets almost entirely separate, although I lived with her in her home and/or apartment and I contributed to some expenses such as cable[] and utilities. Mary is refusing to support me financially or cooperate with my application for benefits or provide information. I hereby assign to MassHealth my rights to obtain spousal support from her."

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[9] Costa did not have independent access to Mary's financial information.

[10] Prior to his admission to the nursing home, Costa suffered paralysis to the left side of his body.

In response to a request from MassHealth, Costa disclosed certain financial information, including his and Mary's joint tax returns, but he did not provide additional requested information regarding Mary's income and assets.

In December 2015, MassHealth issued a denial letter. Citing 130 Code Mass. Regs. § 515.008 (2014),[11] MassHealth explained, "You did not give MassHealth the information it needs to decide your eligibility within the required time frame."

b. First hearing. Costa requested a hearing to review the denial of his application.[12] Costa asserted that "[he] should not be disqualified due to the refusal of [his] spouse to cooperate when [he] ha[d] assigned the division [his] right to support." A hearing was held in February 2016. In a written decision, the board denied Costa's administrative appeal, concluding:

> "[Costa] has not satisfied the provisions of 130 [Code Mass. Regs. §] 517.011. Specifically, . . . [Costa] has not demonstrated by a preponderance of the evidence that his spouse will not cooperate. [Costa] did not submit any

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[11] Title 130 Code Mass. Regs. § 515.008 provides, in relevant part: "The applicant or member must cooperate with the MassHealth agency in providing information necessary to establish and maintain eligibility."

[12] See G. L. c. 118E, § 47 ("Any applicant for or recipient of medical assistance . . . aggrieved by the failure of the division to grant medical assistance . . . shall have a right to a hearing, after due notice, upon appeal to the division in the manner and form prescribed by the division"). See also 130 Code Mass. Regs. §§ 610.000 (2023) (prescribing hearing rules).

> evidence, other than his own statement in a letter, to demonstrate that the spouse will truly not cooperate . . . . [Costa] did not produce any evidence from the community spouse, testimonial or otherwise, confirming her unwillingness to cooperate. Further, there was no evidence presented at or post-hearing regarding <u>any</u> efforts [Costa] has undertaken to compel the spouse to cooperate."

Costa sought judicial review of the board's decision, pursuant to G. L. c. 30A. In February 2018, a Superior Court judge vacated the decision, concluding that the denial letter had not given Costa sufficient notice that the reason for the denial was insufficient evidence of Mary's noncooperation; thus, he was not on notice that he would have to present such evidence at his hearing before the board. The judge remanded the matter to the board.

c. <u>Second hearing</u>. The board held a second hearing in May 2018, at which Costa testified that he had not asked Mary to provide the requested financial information; instead, he explained that his attorney had notified him of Mary's refusal to cooperate. In support of Costa's position at the hearing, Mary, who did not testify, submitted an affidavit. She averred, "I refuse to cooperate with my husband with his application for MassHealth long-term care benefits and I will not provide him with any information regarding my income, assets and other financial information."

The board again denied Costa's appeal, affirming the decision to deny his application for benefits. The board

concluded that an applicant has a duty "to make reasonable efforts . . . to access his spouse's income and assets . . . [and Costa] has not demonstrated that he has made any [such] effort."

Costa sought judicial review of the board's decision, pursuant to G. L. c. 30A. In October 2019, a different Superior Court judge (second judge) vacated the board's decision and remanded the matter. The second judge concluded that Costa had not received sufficient notice that he would be required to demonstrate that he had made specific efforts to access Mary's financial information.

d. Third hearing. A third hearing was held before the board in January 2020.[13] MassHealth argued that Costa failed to demonstrate that he engaged in reasonable efforts to provide Mary's financial information, failed to demonstrate an inability to access information on her assets, and had "not presented evidence of [Mary's] bona fide refusal to cooperate with MassHealth but has shown a selective and opportunistic refusal depending on whether noncooperation is financially beneficial."

[13] Costa was competent when he was admitted into the nursing facility, and at least as of June 2018. By January 2, 2020, the time of the third hearing before the board, Costa was no longer competent to testify. Costa was represented at the hearing by his attorney. His later lack of competency is not, however, raised as an issue here.

Costa argued that he complied with his duty to make reasonable efforts to obtain Mary's financial information by providing the couple's joint tax returns, and that he had requested, through his attorney, financial information from Mary, but she had refused.

In March 2020, the board affirmed the denial of Costa's application, concluding:

> "[The record] suggest[s] a long-term and ongoing level of cooperation that fails to satisfy the requirements of 130 [Code. Mass. Regs. §] 517.011. In a determination of eligibility, MassHealth must evaluate the countable assets of both spouses (130 [Code Mass. Regs. §] 520.002[B][2][b]). [Costa] has not fully verified the couple's assets and has thus not fulfilled his duty to cooperate with the MassHealth agency to provide information necessary to establish eligibility."

In reaching its conclusion, the board acknowledged Mary's stated refusal to provide information regarding her finances, but determined that Mary's "other actions, both past and present, belie the notion that she is a noncooperating spouse."

Costa[14] sought judicial review of the board's decision, pursuant to G. L. c. 30A. In February 2022, in a thorough and well-reasoned decision, a different Superior court judge (third judge) affirmed the board's decision. The third judge concluded that the board's construction of 130 Code Mass. Regs.

[14] Costa died on May 28, 2020; his estate was substituted as a party to the proceedings. For purposes of consistency, we will continue to refer to Costa's estate as "Costa."

§ 517.011(B) was reasonable, that the construction was not inconsistent with Federal law, and that the board's decision to deny benefits was supported by substantial evidence. Costa timely appealed, and we transferred the matter to this court on our own motion.

3. Discussion. Our review of the board's decision denying Costa's application for benefits is limited; relevant here, we review such an agency decision to determine whether it is "[b]ased upon an error of law; . . . [u]nsupported by substantial evidence; or . . . [a]rbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law." G. L. c. 30A, § 14 (7). See Massachusetts Inst. of Tech. v. Department of Pub. Utils., 425 Mass. 856, 868 (1997). A party challenging an administrative agency's decision "bears 'a heavy burden,' for we 'give due weight to the [agency's] expertise, as required by [G. L. c. 30A,] § 14 (7).'" Welter v. Board of Registration in Med., 490 Mass. 718, 724 (2022), cert. denied, 143 S. Ct. 2561 (2023), quoting Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 263-264 (2001).

We review an agency's construction of its own regulation in the same manner that we would an agency construction of a statute it is tasked with administering. See Matter of the Estate of Mason, 493 Mass. 148, 152 (2023). Specifically, we

begin with "the text of the regulation, and will apply the clear meaning of unambiguous words unless doing so would lead to an absurd result." Welter, 490 Mass. at 726, quoting Massachusetts Fine Wines & Spirits, LLC v. Alcoholic Beverages Control Comm'n, 482 Mass. 683, 687 (2019). See DeCosmo v. Blue Tarp Redev., LLC, 487 Mass. 690, 699 (2021) ("If the regulation is plain and unambiguous, it should be interpreted according to its terms"). "Where the plain text of the . . . regulation[] is ambiguous, an agency's reasonable interpretation of [it] is generally entitled to deference."[15] Id. at 695-696. "'[W]e are generous in our deference to administrative agencies in their interpretation of their own regulations,' ensuring only that their interpretation is reasonable." Massachusetts Fine Wines & Spirits, LLC, supra, quoting Craft Beer Guild, LLC v. Alcoholic Beverages Control Comm'n, 481 Mass. 506, 527 (2019). See G. L. c. 30A, § 14 (7) ("The court shall give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it"); Carey v. Commissioner of Correction, 479 Mass. 367, 369 (2018) ("A

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[15] "In deciding whether deference is due to an agency's interpretation, [we] consider whether (1) the regulatory language is plain or ambiguous; (2) the agency's interpretation is reasonable; (3) the interpretation is the agency's official or authoritative position; (4) the interpretation draws on the agency's technical and substantive expertise; and (5) the agency's interpretation is based on fair and considered judgment" (footnotes omitted). DeCosmo, 487 Mass. at 699.

plaintiff challenging an agency interpretation has a 'formidable burden'" [citation omitted]). This deference is not, however, "abdication"; we "will not hesitate to overrule agency interpretations of statutes or rules when those interpretations are arbitrary or unreasonable." Matter of the Estate of Mason, supra, quoting Armstrong v. Secretary of Energy & Envtl. Affairs, 490 Mass. 243, 247 (2022).

a. Statutory framework. The Medicaid program is "a cooperative State and Federal program [intended] to provide medical assistance to individuals who cannot afford to pay for their own medical costs." Matter of the Estate of Mason, 493 Mass. at 153, quoting Daley v. Secretary of the Executive Office of Health & Human Servs., 477 Mass. 188, 189 (2017). See 42 U.S.C. § 1396-1 (Medicaid's purpose is to assist qualifying individuals "whose income and resources are insufficient to meet the costs of necessary medical services"). Within the framework established by Federal statute and attendant regulations, participating States have flexibility to design and operate their individual programs. Matter of the Estate of Mason, supra.

The Massachusetts State Medicaid program, MassHealth, makes benefits available for qualifying individuals who require long-term care services. See G. L. c. 118E, § 9; 130 Code Mass. Regs. § 519.006 (2023). Consistent with the Medicaid program's

purpose of providing benefits only to those unable to afford care on their own, see Dermody v. Executive Office of Health & Human Servs., 491 Mass. 223, 225-226 (2023), an applicant's countable assets cannot exceed a threshold amount, 130 Code Mass. Regs. § 520.016 (2013).[16]

Where the applicant is not married, the calculation is relatively straightforward, requiring disclosure and evaluation of that individual's own resources in order to determine the individual's eligibility. Where the applicant is married, the eligibility determination is more complex, involving consideration of the needs and assets of a noninstitutionalized spouse who remains in the community.

If the State agency were to disregard entirely the community spouse's resources in determining a married applicant's eligibility, financially secure couples could shift the burden of paying for long-term care onto the State agency simply by placing their financial resources under the name of the community spouse. See Houghton v. Reinertson, 382 F.3d 1162, 1165 (10th Cir. 2004) ("a wealthy community spouse [could] shelter income and resources from inclusion in the calculation of the institutionalized spouse's eligibility"). Such maneuvering would permit a savvy couple to allow the

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[16] Income limits also apply. See 130 Code Mass. Regs. § 520.009 (2023).

institutionalized spouse to appear to fall within the eligibility requirement for long-term benefits, while hiding the couple's available resources and hoarding them away for the community spouse and family members. Permitting this loophole undermines the goal of Medicaid to preserve its benefits for the most needy. See, e.g., H.R. Rep. No. 100-105, 100th Cong., 1st Sess., pt. 2, at 73 (1987) (Committee on Energy and Commerce) (noting problem of "affluent individuals . . . disposing of resources in order to qualify for Medicaid nursing home coverage" and that "Medicaid -- an entitlement program for the poor -- should not facilitate the transfer of accumulated wealth from nursing home patients to [family]").

By the same token, if MassHealth were to apply the same eligibility requirements to a married applicant as it applied to an unmarried applicant, a community spouse might need to spend the couple's assets before the institutionalized spouse could qualify for benefits, potentially resulting in the "'pauperization' of the community spouse." Wisconsin Dep't of Health & Family Servs. v. Blumer, 534 U.S. 473, 480 (2002), quoting H.R. Rep. No. 100-105, supra at 65. See Houghton, 382 F.3d at 1165 ("As a result, some community spouses [could become] prematurely institutionalized themselves due to a lack of financial self-sufficiency"); H.R. Rep. No. 100-105, supra

("The purpose of the [Medicare Catastrophic Coverage Act[17]] is to end this pauperization by assuring that the community spouse has a sufficient -- but not excessive -- amount of income and resources available to her while her spouse is in a nursing home at Medicaid expense").

i. Required disclosure of couple's combined resources. To protect community spouses from such forced pauperization, and to eliminate loopholes that allowed well-resourced couples to shelter their resources under the name of the community spouse in order to allow the institutionalized spouse to appear qualified for Medicaid benefits, Congress enacted the "spousal impoverishment" provisions of the Medicare Catastrophic Coverage Act of 1988 (act or MCCA), 42 U.S.C § 1396r-5. See Thomas v. Commissioner of the Div. of Med. Assistance, 425 Mass. 738, 740 (1997) ("The MCCA addressed [the] problem" of prior law leaving "the community spouse financially vulnerable. . . . At the same time, the MCCA was designed to eliminate loopholes which allowed couples to qualify for Medicaid even though they had substantial resources").

Pertinent here, the act imposes two requirements on State Medicaid agencies. First, when determining whether a married applicant is eligible for long-term benefits, an agency "must

[17] Discussed infra.

calculate the total value of the couple's resources" regardless of whether those resources are jointly owned or owned by one spouse in that spouse's sole name. Thomas, 425 Mass. at 740. See 42 U.S.C. § 1396r-5(c)(1)(A) ("There shall be computed . . . the total value of the resources to the extent either the institutionalized spouse or the community spouse has an ownership interest . . ."). This permits the State agency to consider the entirety of the couple's finances without regard to the named ownership of the particular asset. Regardless of whether the asset belongs to one or both of the spouses, the asset is considered in the eligibility determination, eliminating the loophole that existed prior to the MCCA that permitted the couple to shelter assets in the name of the community spouse.

Second, the agency must determine, using a defined formula, the community spouse resource allowance (CSRA), which is a portion of the couple's combined total resources calculated in the first step that is set aside for the community spouse's continued use. Thomas, 425 Mass. at 740. 42 U.S.C. § 1396r-5(f)(2). Significantly, the CSRA is not considered as a countable asset when determining the institutionalized spouse's eligibility. Thomas, supra at 740-741. 42 U.S.C. §§ 1396r-5(c)(2), (f)(2)(A). See Dermody, 491 Mass. at 227. By eliminating the CSRA from the eligibility determination for the

institutionalized spouse, the MCCA preserves these resources for the community spouse, eliminating the preexisting situation that sometimes resulted in the forced impoverishment of the community spouse.

Where a couple's combined total resources as calculated in the first step, less the CSRA amount, exceed the allowable amount for Medicaid eligibility, the MCCA provides that the institutionalized spouse "shall not be ineligible by reason of [those] resources" for long-term Medicaid benefits if "the institutionalized spouse has assigned to the State any rights to support from the community spouse."[18] 42 U.S.C. § 1396r-5(c)(3). See, e.g., Morenz v. Wilson-Coker, 415 F.3d 230, 234 (2d Cir. 2005) (applicant eligible for long-term care benefits where State determined couple had excess resources but institutionalized spouse assigned support rights). Thus, an institutionalized spouse who executes the requisite assignment

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[18] In addition, an institutionalized spouse shall not be ineligible for benefits if

> "(B) the institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment but the State has the right to bring a support proceeding against a community spouse without such assignment; or
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> "(C) the State determines that denial of eligibility would work an undue hardship."

42 U.S.C. § 1396r-5(c)(3). Neither of these provisions is at issue in this case.

in favor of the State Medicaid agency will not be ineligible by reason of those resources to receive Medicaid benefits even though the couple's combined countable resources, which exclude the CSRA, exceed the threshold amount; in addition, the assignment allows the State agency to seek reimbursement of its costs from the community spouse.[19] Importantly, the provision applies only where the couple's total combined resources are disclosed to the State agency. This disclosure, in turn, permits the agency to determine whether seeking to pursue its assigned rights is worthwhile.

MassHealth follows each of these MCCA requirements. First, to determine the eligibility of an institutionalized spouse, MassHealth "must determine the couple's current total countable assets, regardless of the form of ownership between the couple." 130 Code Mass. Regs. § 520.016(B)(2). Second, MassHealth determines the CSRA based on the requisite formula, and that "allowance is not considered available to the institutionalized spouse when determining the institutionalized spouse’s eligibility." Id. In addition, an institutionalized spouse "will not be ineligible due to . . . assets determined to be

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[19] In certain circumstances, married individuals have the ability to obtain a court order requiring payment of support from a spouse without a divorce. See G. L. c. 209, § 32; C.P. Kindregan, Jr., M. McBrien, & P.A. Kindregan, Family Law and Practice § 81 (4th ed. 2013).

available for the cost of care in accordance with 130 [Code Mass. Regs. §] 520.016(B) [based on the couple's total resources, less the CSRA] . . . [if] the institutionalized spouse assigns to the MassHealth agency any rights to support from the community spouse." 130 Code Mass. Regs. § 517.011.[20]

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[20] The present matter concerns subsection (B) of 130 Code Mass. Regs. § 517.011; we note that subsection (A) of the regulation, as presently written, appears to contain what MassHealth has described as a "scrivener's error." Title 130 Code Mass. Regs. § 517.011 states in full:

> "An institutionalized spouse, whose community spouse refuses to cooperate or whose whereabouts is unknown, will not be ineligible due to
>
> "(A) assets determined to be available for the cost of care in accordance with 130 [Code Mass Regs. §] 520.016(B): Treatment of a Married Couple’s Assets When One Spouse Is Institutionalized; or
>
> "(B) his or her inability to provide information concerning the assets of the community spouse when one of the following conditions is met:
>
> "(1) the institutionalized spouse assigns to the MassHealth agency any rights to support from the community spouse;
>
> "(2) the institutionalized spouse lacks the ability to assign rights to spousal support due to physical or mental impairment as verified by the written statement of a competent medical authority; or
>
> "(3) the MassHealth agency determines that the denial of eligibility, due to the lack of information concerning the assets of the community spouse, would otherwise result in undue hardship."

As discussed supra, the MCCA does not permit a State agency to deny benefits to an institutionalized spouse because of excess resources if the institutionalized spouse both (1) discloses the information necessary to determine the couple's

ii. Inability to calculate total resources. As discussed supra, the MCCA requires the institutionalized spouse to provide to the State Medicaid agency the information required to determine the couple's total combined resources. Access to such information often may necessitate the cooperation of the community spouse, for example, to disclose the resources held only in the community spouse's name. The Federal statute, however, does not address the circumstance in which the institutionalized spouse is unable to provide the information necessary to calculate the couple's total combined resources because, for example, the couple is estranged, making it infeasible for the institutionalized spouse to secure the information required from the community spouse.

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total combined assets and (2) assigns to the State agency the right to spousal support. See 42 U.S.C. § 1396r-5(c)(3). The regulation appears to impose an additional requirement on an institutionalized spouse to show that the community spouse refuses to cooperate or that the community spouse's whereabouts are unknown. Such an additional requirement contravenes the Federal statute, which must control. See Matter of the Estate of Mason, 493 Mass. at 153; G. L. c. 118E, § 9 (MassHealth must operate "pursuant to and in conformity with [F]ederal law").

MassHealth has represented to this court that, irrespective of the drafting error in its regulation, it "complies with [42 U.S.C. § 1396r-5(c)(3)(A)] in all cases." We urge MassHealth to amend 130 Code Mass. Regs. § 517.011 to bring the plain language of subsection (A) of the regulation into compliance with Federal law.

To address this gap in the Federal scheme, MassHealth has promulgated the regulation, which provides a path to eligibility for an institutionalized spouse even if the couple's combined resources cannot be determined as required by 42 U.S.C. § 1396r-5(c)(1) and 130 Code Mass. Regs. § 520.016(B)(2). The regulation states:

> "An institutionalized spouse, whose community spouse refuses to cooperate or whose whereabouts is unknown, will not be ineligible due to . . . [the institutionalized spouse's] inability to provide information concerning the assets of the community spouse when . . . the institutionalized spouse assigns to the MassHealth agency any rights to support from the community spouse . . . ."[21]

130 Code Mass. Regs. § 517.011(B)(1). Thus, pursuant to the regulation, the institutionalized spouse is not ineligible for benefits by virtue of an inability to provide information concerning the community spouse's assets where (1) the community spouse "refuses to cooperate" or the community spouse's "whereabouts is unknown," and (2) the institutionalized spouse

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[21] Additional conditions may trigger the exception under 130 Code Mass. Regs. § 517.011, but are not at issue here:

> "(2) the institutionalized spouse lacks the ability to assign rights to spousal support due to physical or mental impairment as verified by the written statement of a competent medical authority; or
>
> "(3) the MassHealth agency determines that the denial of eligibility, due to the lack of information concerning the assets of the community spouse, would otherwise result in undue hardship."

assigns to MassHealth any rights the institutionalized spouse may have to seek spousal support from the community spouse.[22] Id.

b. Refusal to cooperate. Costa contends that Mary's refusal to provide the financial information required to determine the couple's total combined resources, without more, satisfies the regulation's first requirement even though Mary and Costa were married and cohabited for decades, they shared financial responsibilities for payment of household expenses, they filed joint tax returns, Mary had Costa's power of attorney, and Mary continued to take care of Costa after he was placed in the nursing facility. In Costa's view, the regulation's use of the phrase "refuses to cooperate" encompasses the situation here where the community spouse's principal act of noncooperation is her refusal to cooperate in providing the financial information required for MassHealth to determine the couple's total combined resources. MassHealth contends that where, as here, the couple has a long-term and ongoing practice of cooperating, the isolated act of the

[22] It is undisputed that Costa assigned the rights to spousal support to MassHealth in his application, satisfying the second requirement of 130 Code Mass. Regs. § 517.011(B). The parties' dispute centers on whether the regulation's first requirement was satisfied.

community spouse refusing to provide the required financial information does not satisfy the regulation's requirement.

i. Construction of refusal to cooperate. To resolve the parties' dispute, we begin with the plain meaning of the phrase "refuses to cooperate." 130 Code Mass. Regs. § 517.011. See Matter of the Estate of Mason, 493 Mass. at 151-152, quoting Harvard Crimson, Inc. v. President & Fellows of Harvard College, 445 Mass. 745, 749 (2006) ("We construe '[a] properly promulgated regulation . . . in the same manner as a statute'" and "begin with [the] plain language"). The term "refuse" means "to show or express a positive unwillingness to do or comply with (as something asked, demanded, expected)." Webster's Third New International Dictionary 1910 (2002). The term "cooperate" means "to act or work with another or others to a common end" or "to associate with another or others for mutual . . . benefit." Id. at 501. Thus, the phrase "refuses to cooperate" could encompass an unwillingness to collaborate on a specific task, including, as suggested by Costa, an isolated refusal to provide the requisite financial disclosure; or the phrase could refer to a more comprehensive unwillingness to collaborate or associate for mutual benefit, as MassHealth contends.

Of course, we do not read the words of the regulation in isolation. See Plymouth Retirement Bd. v. Contributory Retirement Appeal Bd., 483 Mass. 600, 605 (2019) ("Courts must

look to the . . . scheme as a whole . . . so as to produce an internal consistency . . . . Even clear . . . language is not read in isolation" [quotations and citations omitted]). A phrase "gains meaning from other[] [words] with which it is associated."[23] Commonwealth v. Gallant, 453 Mass. 535, 542 (2009), quoting H.J. Alperin & L.D. Shubow, Summary of Basic Law § 19.10, at 846 (3d ed. 1996). See People for the Ethical Treatment of Animals, Inc. v. Department of Agric. Resources, 477 Mass. 280, 287 (2017), quoting Commonwealth v. Hamilton, 459 Mass. 422, 432 (2011) ("ordinarily the coupling of words denotes an intention that they should be understood in the same general sense"). Accordingly, "words and phrases used in a statute [or regulation] should be construed by reference to their associated terms in the statutory context." Morrison v. Lennett, 415 Mass. 857, 863 (1993). See Commonwealth v. Magnus M., 461 Mass. 459, 462 (2012), quoting Commonwealth v. Brooks, 366 Mass. 423, 428 (1974) (we "interpret 'words in a statute . . . in light of the other words surrounding them'"); Black's Law Dictionary 1274 (11th ed. 2019) ("noscitur a sociis"; "the meaning of an unclear word or phrase, esp[ecially] one in a list, should be determined by the words immediately surrounding it").

[23] This principle of construction is known as "noscitur a sociis," which is Latin for "it is known by its associates." Black's Law Dictionary 1274 (11th ed. 2019).

Here, the phrase "refuses to cooperate" is followed immediately by the phrase "or whose whereabouts is unknown." 130 Code Mass. Regs. § 517.011. Both phrases modify the term "community spouse." Id. The second phrase, describing a community spouse "whose whereabouts is unknown," invokes a complete breakdown of the marital relationship such that the institutionalized spouse lacks even the basic knowledge of the community spouse's location. Construing "refuses to cooperate" in this context supports MassHealth and the board's construction that the phrase does not refer to the situation where the community spouse's principal act of noncooperation is failing to cooperate in the disclosure needed to calculate the couple's total combined resources for purposes of determining Medicaid eligibility. Including such an isolated refusal to cooperate alongside the sweeping inability even to locate the community spouse makes little sense.

The purpose of the Medicaid program, as well as the aim of the MCCA, further bolsters MassHealth and the board's construction of the regulation. See Dinkins v. Massachusetts Parole Bd., 486 Mass. 605, 608 (2021) ("the regulation here must be interpreted within the context of the larger statutory framework"). As we have previously noted, a core purpose of the Medicaid program is to preserve the Commonwealth's limited resources for those unable to afford medical care on their own.

See Dermody, 491 Mass. at 226 (Medicaid amendments "have been attempts to ensure that Medicaid benefits go to those who need them rather than to those who can afford to pay"). To further that purpose, as discussed supra, Congress enacted the MCCA to close the preexisting loophole that allowed wealthy, financially savvy married couples to shelter their resources from the eligibility calculus simply by placing the resources in the community spouse's sole name.

Costa's construction would undermine the MCCA's goal to close this loophole by creating one that is virtually identical, further undermining the purpose of the Medicaid program to preserve resources for those in most need of assistance. Specifically, as before the MCCA, Costa's construction of the regulation would allow a couple to shelter assets by placing them in the community spouse's name, and then simply refusing to provide information about those assets in connection with the institutionalized spouse's application for benefits. See Atlanticare Med. Ctr. v. Commissioner of the Div. of Med. Assistance, 439 Mass. 1, 7 n.9 (2003) (rejecting interpretation of regulatory statute that "would render largely meaningless the [superseding] Federal regulation"). By contrast, MassHealth and the board's construction of the regulation does not risk unraveling the protections in the MCCA. See Malloy v. Department of Correction, 487 Mass. 482, 496 (2021), quoting

Attorney Gen. v. School Comm. of Essex, 387 Mass. 326, 336 (1982) ("we will not construe a [provision] such that 'the consequences . . . are absurd or unreasonable'"). Accordingly, we conclude that the board reasonably construed the scope of the regulation by determining that "refusal to cooperate" requires that a married applicant, who has a lengthy and ongoing history of marital collaboration, must demonstrate more than only the community spouse's refusal to supply the requisite financial information to the institutionalized spouse.

ii. Mary's cooperation. Applying the agency's reasonable construction of the regulation, the board's determination that Costa has not shown that Mary "refuse[d] to cooperate" as required by the regulation is supported by substantial evidence.[24] See Medical Malpractice Joint Underwriting Ass'n of Mass. v. Commissioner of Ins., 395 Mass. 43, 55 (1985) ("Substantial evidence is such evidence as a reasonable mind might accept as adequate to support a conclusion . . . upon consideration of the entire record, . . . including whatever in

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[24] The Superior Court judges and hearing officers presumed, and Costa does not contest, that Costa bore the burden of demonstrating eligibility, including Mary's noncooperation, by a preponderance of the evidence. See 130 Code Mass. Regs. § 610.082(B) (2019) (board's "decision must be based upon a preponderance of evidence"); 130 Code Mass. Regs. § 519.006 ("Institutionalized individuals may establish eligibility for MassHealth Standard coverage subject to the following requirements").

the record fairly detracts from its weight" [quotations and citations omitted]); G. L. c. 30A, § 1 (6).

To be sure, the record reflects that Mary kept her finances separate from Costa, and MassHealth does not challenge Costa's position that the marriage suffered strife stemming from Costa's gambling and financial mismanagement. Nonetheless, the record also shows that the couple maintained long-standing and ongoing cooperation. The couple lived together for over fifty years until Costa's admission to the nursing facility, and they both contributed to household expenses. They eased their tax burden by filing taxes jointly, which inevitably requires some degree of financial collaboration. After Costa moved into the long-term care facility, Mary continued to cooperate with Costa; she helped coordinate his care, served as his representative under his power of attorney, managed his bank account, and paid his bills.

On this record, the board was warranted in determining that Mary's refusal to disclose her financial information to MassHealth did not meet Costa's burden under the regulation. The board could conclude reasonably that such selective noncooperation within the context of otherwise extensive collaboration in other aspects of the marital relationship was insufficient to constitute the type of refusal to cooperate required by the regulation.

c. Procedural due process. Costa also challenges the denial of his application on the ground that the board's decisional process was ad hoc and arbitrary. As delineated above, the first and second judges determined that MassHealth and the board provided insufficient notice to Costa that resulted in his case being twice remanded for further proceedings. Nonetheless, we disagree that this circuitous route renders the ultimate outcome invalid.

"A decision is not arbitrary and capricious unless there is no ground which 'reasonable [persons] might deem proper' to support it." McCauley v. Superintendent, Mass. Correctional Inst., Norfolk, 491 Mass. 571, 598 (2023), quoting Garrity v. Conservation Comm'n of Hingham, 462 Mass. 779, 792 (2012). Here, the record does not support the claim that MassHealth and the board acted arbitrarily. MassHealth and the board did not concoct excuses for denying Costa's application, did not rely on changing rationales, and did not otherwise act unreasonably. See Fafard v. Conservation Comm'n of Reading, 41 Mass. App. Ct. 565, 572 (1996) (agency criteria "devised for the occasion, rather than of uniform applicability" is arbitrary). Rather, each of the rationales for denying Costa's application related to MassHealth and the board's consistent position that the regulation requires more than merely stating that the community spouse has refused to divulge financial information. To the

extent that Costa did not understand, during the first two hearings, the full scope of his burden to demonstrate Mary's refusal to cooperate, the misapprehension was cured by the subsequent hearing. See Yebba v. Contributory Retirement Appeal Bd., 406 Mass. 830, 837 (1990) (improper denial of opportunity to litigate issue before agency was remedied by subsequent opportunity do so).[25]

Judgment affirmed.

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[25] Costa's request for appellate attorney's fees and costs is denied.