

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



<b>Appeal Decision:</b>	Approved; Remand	<b>Appeal Number:</b>	2132576
<b>Decision Date:</b>	9/08/2021	<b>Hearing Date:</b>	05/28/2021
<b>Hearing Officer:</b>	Scott Bernard	<b>Record Open to:</b>	08/20/2021

Appearance for Appellant:




Appearance for MassHealth:

Nikita Jones (Taunton MEC) *via* telephone



*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

<b>Appeal Decision:</b>	Approved; Remand	<b>Issue:</b>	LTC MMMNA
<b>Decision Date:</b>	9/08/2021	<b>Hearing Date:</b>	05/28/2021
<b>MassHealth's Rep.:</b>	Nikita Jones	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	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 March 11, 2021, MassHealth approved the appellant's application for MassHealth Long Term Care (LTC) benefits with a patient paid amount (PPA) of \$4,418.39, which did not include a spousal maintenance needs deduction (SMND). (See 130 CMR 520.026 and Exhibit 1, pp. 2-3). The appellant, through his Health Care Proxy (HCP), filed this appeal in a timely manner on April 5, 2021. (See 130 CMR 610.015(B) and Ex. 1, pp. 4, 5). Determination of the PPA is valid grounds for appeal. (See 130 CMR 610.032).

On April 7, 2021, the Board of Hearing informed the appellant's HCP that it would dismiss the request for a hearing unless he submitted a letter from the appellant's attending physician stating that the HCP was currently in effect. (Ex. 2). On April 15, 2021, the Board received a request for a hearing form that the appellant signed. (Ex. 3). The Board then scheduled the present hearing. (Ex. 4).

At the hearing, the appellant's representative was given until June 4, 2021 to provide certain documents. (Ex. 5). The appellant's representative submitted the requested documents by June 4, 2021 at which time the record closed. The record was reopened on August 19, 2021 to obtain further information concerning the community spouse's income and then closed again on August 20, 2021. (Ex. 11).

## Action Taken by MassHealth

MassHealth approved the appellant's application for LTC benefits with a PPA of \$4,418.39, which did not include a SMND.

## Issue

The appeal issue is whether the appellant's community spouse was eligible for a spousal maintenance needs allowance, or an adjustment to the minimum monthly maintenance needs allowance (MMMNA) due to extenuating circumstances, pursuant to 130 CMR 520.017.

## Summary of Evidence

The MassHealth representative stated the following. The appellant is an individual over the age of 65 who is receiving MassHealth Long Term Care (LTC) benefits. (Ex. 1; Ex. 4). On March 11, 2021, MassHealth notified the appellant that he was eligible for LTC benefits and starting on February 1, 2021, would owe the nursing facility a PPA of \$4,418.39 every month. MassHealth determined the PPA in the following manner. The appellant had monthly income from Social Security/Railroad Retirement (\$2,161.80) and an annuity (\$2,544.56). MassHealth then determined that the appellant was eligible for deductions for the Personal Needs Allowance (PNA)(\$72.80), and the cost of his Blue Cross premium (\$215.17). MassHealth then deducted the total deductions (\$287.97) from the appellant's total income (\$4,706.36) to reach the PPA (\$4,418.39). The MassHealth representative stated that she would make one correction, which is that the PPA was effective June 1, 2021. Prior to this, the PPA should have been \$4,375.72 through May 2021.

The MassHealth representative stated that the appellant was not eligible to receive the Spousal Maintenance Needs Deduction (SMND) because her income was too high.

The appellant's representative (the appellant and the community spouse's son) stated that the big thing that changed since the appellant entered the nursing facility is that the community spouse entered an assisted living facility (ALF) in March 2020. (Ex. 7, pp. 19-21). Prior to that, the community spouse was living independently and had no expenses other than rent. The cost of the ALF is higher than the community spouse's income. The appellant's representative stated that the community spouse also has out of pocket expenses such as the cost of Blue Cross premium and her prescriptions. This has eaten through both the appellant and the community spouse's bank account. The appellant's representative stated that the ALF is now asking for a community fee and the community spouse is behind on her monthly rent to the ALF.

The appellant's representative was given until June 4, 2021 to provide the following information:

1. The housing agreement, service plan, fee schedule, and other pertinent documents from the assisted living facility. These documents should indicate the monthly expense of living in the facility and describe the services she receives there;
2. Out of pocket expenses for regularly prescribed medications – i.e. receipts;
3. The monthly premium bill for her Blue Cross;
4. Any additional costs from necessities that arise from the community spouse's medical condition, frailty, or similar special needs. Additional amounts are

allowed only for specific expenses necessitated by exceptional circumstances. Exceptional circumstances do not include such necessities as food, clothing, and utilities which are already accounted under the rules for calculating the allowance. (Ex. 6).

The appellant's representative provided the hearing officer the following before June 4, 2021:

1. The appellant and the community's spouse's joint checking account statement for April 15 to May 12, 2021 for. (Ex. 6). This indicates that the community spouse paid a premium of \$215.45 to Blue Cross Blue Shield. (Id.);
2. The ALF's Independent Living Residency Agreement (the Residency Agreement). (Ex. 7). The Residency Agreement indicates that the community spouse receives the following services:
  - a. Use of the apartment and common areas;
  - b. Meal service, which includes breakfast, lunch, and dinner in the dining room of the ALF;
  - c. Housekeeping service, which includes vacuuming, dusting cleared surfaces, trash removal, sanitizing the bathroom, external cleaning of the kitchen area and changing bed linens;
  - d. Flat linen services, which includes laundering sheets and pillowcases on a weekly basis;
  - e. 24-hour staffing, seven days per week;
  - f. Emergency response system where a staff member will always be available and can request emergency medical assistance from emergency services in the area. The Residency Agreement stipulates, however, that the emergency medical services are not provide by the ALF. The Residency Agreement also states that the ALF is not a licensed health care provider and the basic services do not include any professional or nursing services;
  - g. Social and recreational programs;
  - h. Use of the grounds;
  - i. Heat, electricity, air conditioning, water, sewage, trash collection and pre-wiring for cable and telephone access. The community member is responsible for paying for telephone and cable should they choose to use those services;
  - j. Weekly local transportation on an established schedule. (Ex. 7, pp. 6-7).

3. MEDEX Annual Summary of Health Plan Payments Paid in Full In 2020 dated April 21, 2021. (Ex. 8). This was two copies of the first page of a two-page letter. (Id.). The letter stated that the summary Medex and Medicare charges from 2020 was on the opposite side of this letter. (Id.);
4. A statement dated June 1, 2021 for the ALF indicating the following:
  - a. The community spouse had an outstanding balance of \$18,122.96 as of April 30;
  - b. The ALF charged the community spouse \$6.00 for personal laundry and \$108.00 for hair salon and barber exchange on April 30;
  - c. The community spouse paid \$5,595 on May 5;
  - d. The community spouse was charged a late fee of \$130.00 and \$5,995.00 for basic monthly rent on June 1;
  - e. The community spouse's balance as of June 1 was \$18,796.96. (Ex. 9).

On August 19, 2021 the record was reopened so that the hearing officer could ask by email the MassHealth representative the community spouse's income. (Ex. 10). The MassHealth representative responded on August 20, 2021, stating that the community spouse's income was \$3,675 per month. (Id.). The MassHealth representative's response was forwarded to the appellant's representative, who did not respond.

## Findings of Fact

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

1. The appellant is an individual over the age of 65 who is receiving LTC benefits. (Ex. 1; Ex. 4).
2. The appellant has a spouse living in the community. (Testimony of the appellant's representative).
3. The community spouse entered an ALF in March 2020. (Testimony of the appellant's representative; Ex. 7, pp. 19-21).
4. The ALF's Residency Agreement indicates that the community spouse receives the following services:
  - a. Use of the apartment and common areas;
  - b. Meal service, which includes breakfast, lunch, and dinner in the dining room of the ALF;

- c. Housekeeping service, which includes vacuuming, dusting cleared surfaces, trash removal, sanitizing the bathroom, external cleaning of the kitchen area and changing bed linens;
  - d. Flat linen services, which includes laundering sheets and pillowcases on a weekly basis;
  - e. 24-hour staffing;
  - f. Emergency response system where a staff member will always be available and can request emergency medical assistance from emergency services in the area;
  - g. Social and recreational programs;
  - h. Use of the grounds;
  - i. Heat, electricity, air conditioning, water, sewage, trash collection and pre-wiring for cable and telephone access. The community member is responsible for paying for telephone and cable should they choose to use those services;
  - j. Weekly local transportation on an established schedule. (Ex. 7, pp. 6-7).
5. On March 11, 2021, MassHealth notified the appellant that he was eligible for LTC benefits and starting on February 1, 2021, would owe the nursing facility a PPA of \$4,418.39 every month, which was determined in the following manner:
- a. The appellant had monthly income from Social Security/Railroad Retirement (\$2,161.80) and an annuity (\$2,544.56).
  - b. MassHealth then determined that the appellant was eligible for deductions for the Personal Needs Allowance (PNA) (\$72.80), and the cost of the appellant's Blue Cross (\$215.17).
  - c. MassHealth then deducted the total deductions (\$287.97) from the appellant's total income (\$4,706.36) to reach the PPA (\$4,418.39). (Ex. 1).
6. At the hearing, the MassHealth representative stated that the PPA should have been \$4,375.72 through May 2021, and \$4,418.39 effective June 1, 2021. (Testimony of the MassHealth representative).
7. The community spouse's income is \$3,675 per month. (Ex. 10).
8. The community spouse paid \$5,595 to the ALF on May 5. (Ex. 9).
9. The community spouse's basic rent was \$5,995.00 for June 1. (Ex. 9).

10. The community spouse pays \$215.45 per month toward her Blue Cross/Blue Shield premium. (Ex. 6).

## Analysis and Conclusions of Law

MassHealth calculates the MMMNA to determine the amount a community spouse requires to live in the community. (130 CMR 520.026(B).) “If the community spouse’s gross income is less than the [MMMNA]...MassHealth...may deduct an amount from the institutionalized spouse’s countable-income amount to meet this need.” (*Id.*) This amount is referred to as the spousal-maintenance-needs deduction. (*Id.*)

(1) The MassHealth agency determines the MMMNA by adding the following amounts:

- (a) \$[2,177.00]<sup>1</sup> (the federal standard maintenance allowance); and
- (b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$[646.50] and the shelter expenses for the community spouse's principal residence, including
  - (i) the actual expenses for rent, mortgage (including interest and principal), property taxes and insurance, and any required maintenance charge for a condominium or cooperative; and
  - (ii) the applicable standard deduction under the Supplemental Nutrition Assistance Program for utility expenses...[Not applicable].

(2) The maximum-monthly-maintenance-needs allowance is \$[3,259.50] per month, **unless it has been increased as the result of a fair-hearing decision based on exceptional circumstances in accordance with 130 CMR 520.017(D).** (Emphasis added). (*Id.*)

Pursuant to 130 CMR 520.017(D), after an applicant has received notice from MassHealth of his or her denial or approval for MassHealth Standard benefits, either the applicant or the community spouse may submit an appeal to the Board of Hearings, requesting an increase of the community spouse’s MMMNA based upon exceptional circumstances, defined as follows:

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.**

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<sup>1</sup> The numerical amounts listed in the regulations change according to cost-of-living adjustments. The numbers in the brackets reflect the most current numbers as of the date of the hearing. (See <https://www.mass.gov/doc/figures-used-to-determine-minimum-monthly-maintenance-needs-allowance-mmmna-4/download>).

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 ensures 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 reviews the housing agreement, service plan, fee schedule, and other pertinent documents to determine whether exceptional circumstances exist. Additional amounts are allowed only for specific expenses necessitated by exceptional circumstances of the community spouse and not for maintaining any pre-set standard of living.** (Emphases added). (130 CMR 520.017(D)(1)).

The record shows that MassHealth correctly determined that based on 130 CMR 520.026, the appellant should not receive the SMND. The record shows that the maximum MMMNA is \$3,259.50 per month “unless it has been increased as the result of a fair-hearing decision based on exceptional circumstances in accordance with 130 CMR 520.017(D). Because MassHealth is not permitted to increase the maximum MMMNA and the community spouse’s monthly income exceeds the maximum MMMNA, the appellant does not qualifying to receive the SMND.

The MMMNA can be increased above the maximum as a result of a fair hearing based on exceptional circumstances. The record shows that such circumstances exist in this case. The community spouse is a resident of an ALF. A review of the pertinent document indicates that the ALF provides meal services, housekeeping service, flat linen services, 24-hour staffing, an emergency response system, heat, electricity, air conditioning, water, sewage, trash collection and pre-wiring for cable and telephone access. The monthly cost of the ALF was \$5,595 in May 2021 and \$5,995 after June 1, 2021. Additionally, the community spouse pays \$215.45 per month toward her Blue Cross premium. There would be no duplication of expenses if the MMMNA was replaced by the actual cost of the ALF and the Blue Cross/Blue Shield premium. Moving forward the MMMNA should therefore be the actual combined cost of these two extenuating expenses.

For the above stated reasons, the appeal is APPROVED.

At the same time, the hearing record does not contain all the information necessary for the hearing officer to determine the proper amount of the SMNA and therefore the PPA going back to the coverage start date. The hearing record contains the monthly cost of the ALF for May 2021 (\$5,595) and for June 1, 2021 and forward (\$5,995 per month) but does not contain the cost of the ALF from the coverage start date through the end of April 2021.

For this reason, the appeal must also be REMANDED



## Order for MassHealth

Revise the PPA by using an SMND that in turn uses the increased MMMNA derived from the extenuating circumstances shown at the hearing. This would be the monthly cost for the community spouse to live at the ALF as well as the cost of the Blue Cross premium. This should be \$5,810.45 for May 2021 and \$6,210.45 for June 1 forward. Contact the appellant's representative to determine the cost of the ALF from February 1, 2021 through April 2021. Issue a new determination with an updated PPA based on the revised SMND.

## 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.

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Scott Bernard  
Hearing Officer  
Board of Hearings

cc: Justine Ferreira, Taunton MassHealth Enrollment Center