

**Office of Medicaid
BOARD OF HEARINGS**

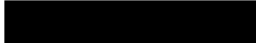
Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2133004
Decision Date:	10/22/2021	Hearing Date:	05/24/2021
Hearing Officer:	Samantha Kurkijy	Record Open to:	07/16/2021

Appearance for Appellant:

Via telephone:



Appearance for MassHealth:

Via telephone:

Lucy Gucciardi, Chelsea MEC



*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 in part; Denied in part	Issue:	Patient Paid Amount
Decision Date:	10/22/2021	Hearing Date:	05/24/2021
MassHealth's Rep.:	Lucy Gucciardi	Appellant's Rep.:	██████████
Hearing Location:	Chelsea MassHealth Enrollment Center	Aid Pending:	No

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 April 6, 2021, MassHealth notified the appellant that he is eligible for MassHealth Standard benefits effective March 3, 2021, with a patient paid amount (PPA) of \$5,458.36 every month (Exhibit 1). The appellant filed this appeal in a timely manner on April 21, 2021 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032). A challenge to the patient paid amount is a valid ground for appeal (see 130 CMR 610.032).

The record was initially held open until June 1, 2021 for the appellant to submit additional documentation and until June 11, 2021 for MassHealth to review and respond to the appellant's submission. At the request of the appellant, the record open was extended until July 6, 2021 for the appellant and July 16, 2021 for MassHealth.

The hearing officer was on leave due to a serious illness, which extends the timeframe for rendering a decision (see 130 CMR 610.015(D)(4)).

Action Taken by MassHealth

MassHealth notified the appellant that he is eligible for MassHealth Standard benefits effective March 3, 2021, with a patient paid amount of \$5,458.36 every month

Issue

The appeal issue is whether the community spouse is entitled to increased support from the appellant through a reduction in the PPA, pursuant to 130 CMR 520.17(D).

Summary of Evidence

The MassHealth representative appeared via telephone and testified as follows: the relevant application date is the re-application date of April 5, 2021. The appellant requested a start date of March 3, 2021. On April 6, 2021, MassHealth approved the appellant for MassHealth Standard benefits effective March 3, 2021 with a monthly PPA of \$5,458.36. The MassHealth representative testified that the appellant's monthly income totals \$5,802.41, comprised of \$1,628 from Social Security Income (SSI), \$129 from a pension, and \$4,045.21 from long-term care insurance. The community spouse is allowed to keep \$271.25 of the appellant's income as the Spousal Maintenance Needs Allowance (SMNA). The PPA was calculated as follows: \$5,802.41 (appellant's monthly income) - \$72.80 (Personal Needs Allowance (PNA)) - \$271.25 (SMNA) = \$5,458.36.

The MassHealth representative stated that the appellant's attorney submitted a list of expenses prior to hearing to determine whether there were any other expenses MassHealth could take into consideration in after the PPA allowances. The MassHealth representative testified that the Blue Cross Blue Shield, tax bill, homeowners insurance, and water and sewer expenses were already taken into account. Life insurance, groceries, haircuts, and personal hygiene expenses from CVS are not considered part of the PPA calculation. Snow removal and lawn care can be deducted from the PPA on a monthly basis as it happens. The appellant should report those expenses to ongoing when they occur and they will be deducted from the PPA for that month. She stated she could factor in the rubbish removal which costs the community spouse \$91 every month.

The appellant was represented at hearing by an attorney who appeared via telephone. She testified that the appellant lives in a town with a higher cost of living, making some bills such as heating, taxes, and maintenance more expensive. She submitted the breakdown of additional bills to show that higher cost of living. In addition to groceries, haircuts, and CVS, the appellant does not drive due to her age and uses taxis. Based on those expenses, she was looking to request the PPA be reduced by a higher amount pursuant to 130 CMR 520.017. The appellant's attorney did not claim exceptional circumstances, but stated that the community spouse is elderly, cannot drive (resulting in paying for taxis), uses a Lifeline (\$30/month), and has a higher cost of living in her town.

The hearing officer inquired about the appellant's available assets. MassHealth testified that at the time of the application, between various checking, savings, and investment accounts, the appellant had \$125,755 in assets, plus the home which, as the primary residence, was not countable.

The record was held open until June 1, 2021 for the appellant to submit updated asset verifications, including explanation and verification of how assets have been spent, and the Bank Rate Monitor Index information for the day of hearing. MassHealth was given until June 11, 2021 to review and

respond to the appellant's submission. At the request of the appellant, the record open period was extended until July 6, 2021 for the appellant and until July 16, 2021 for MassHealth to respond.

MassHealth emailed parties on May 24, 2021 after reviewing the breakdown of bills submitted by the appellant. She stated that MassHealth already allowed for the real estate taxes and homeowner's insurance. She stated that MassHealth could not allow for the rubbish payments as the system does not have a field for it and it could only be added to the rent or mortgage. She repeated that snow removal and landscaping are deducted from the PPA on a paid basis or when it is actually done.

During the record open period, the appellant submitted a letter from the appellant's daughter describing the community spouse's health and medical condition. She is ■ years old with severe osteoporosis and fractured vertebrae #4 and #5 in January 2021. She cannot lift anything heavier than 3 pounds, cannot bend down or reach over her head, and uses a walker to balance. She cannot drive and requires transportation for any errands or appointments. She needs helps with grocery shopping and other errands, laundry, housework, showering, cooking, opening windows, and bringing out the trash.

The appellant also submitted bank documents showing that there was now less than \$2,000 in the appellant's name. \$10,000 was paid to the nursing facility. The Bank Rate Monitor Index was also provided for May 26, 2021. The attorney had trouble obtaining the information and by the time she was able to, information for May 24, 2021 was no longer available.

Findings of Fact

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

1. The relevant application date is the re-application date of April 5, 2021 (Testimony and Exhibit 5).
2. On April 6, 2021, MassHealth approved the appellant for MassHealth Standard benefits effective March 3, 2021 with a monthly PPA of \$5,458.36 (Testimony and Exhibit 1).
3. The appellant's monthly income totals \$5,802.41, comprised of \$1,628 from Social Security Income, \$129 from a pension, and \$4,045.21 from long-term care insurance (Testimony and Exhibit 5).
4. The community spouse was allowed to keep \$271.25 of the appellant's income as the Spousal Maintenance Needs Allowance (Testimony and Exhibits 1 and 5).
5. The PPA was calculated as follows: \$5,802.41 (appellant's monthly income) - \$72.80 (Personal Needs Allowance) - \$271.25 (SMNA) = \$5,458.36 (Testimony and Exhibit 1).
6. MassHealth testified that it could allow the expense for monthly rubbish removal which costs the community spouse \$91 per month (Testimony).

7. The appellant's attorney provided a breakdown of the community spouse's expenses which included Blue Cross Blue Shield, tax bill, homeowners insurance, water and sewer expenses, life insurance, groceries, haircuts, taxis, Lifeline, snow removal, landscaping, and personal hygiene expenses from CVS (Testimony and Exhibit 6).
8. The appellant's attorney did not claim exceptional circumstances or argue for an asset shift (Testimony).
9. The record in the appeal was held open until July 16, 2021 (Exhibit 7).

Analysis and Conclusions of Law

Pursuant to the provisions of 130 CMR 520.017(D), the fair hearing officer may substitute for the minimum monthly maintenance needs allowance a new amount to meet the expenses of the community spouse. This substitution may be performed only when the community spouse has shown that the requested increase in the spousal maintenance needs allowance is based upon exceptional circumstances.

The applicable regulation provides as follows:

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 (130 CMR 520.017(D)).

(Emphasis added).

Exceptional circumstances exist when the community spouse has expenses (not already taken into account) that arise from a medical condition or frailty, or other special need of the community spouse, and those circumstances yield significant financial duress. The applicable regulation provides that extraordinary uncovered medical expenses and special remedial/support services are examples of such expenses (130 CMR 520.017(D)(1)). The appellant's attorney did not argue that there were exceptional circumstances and did not provide sufficient evidence to establish any exceptional circumstances. While the appellant's daughter described the community spouse's health condition, there are no extraordinary or unusual medical costs belonging to the community spouse which allow for an adjustment to be made.

Furthermore, established maintenance standards used in calculating the MMMNA cover food, clothing, shelter, and utilities and cannot be double counted (130 CMR 520.017(D)(1)(a)). As detailed in the regulation, car payments, even if the vehicle is used to transport the individual to medical appointments, are not allowed. Here, the taxi rides could be considered a similar expense to that of a car payment and cannot be allowed. The other expenses noted by the community spouse, including Verizon, heating, electric, water, sewer, real estate taxes, Lifeline, CVS, groceries, haircuts, lawn care, and snow removal are not related to a finding of exceptional circumstance. The appellant has not shown that the expenses are related to a medical condition, frailty, or other special need. Additionally, some of these expenses (such as heating, electric, water, sewer, and taxes) have already been taken into account as part of the maintenance standards used in calculating the MMMNA.

As mentioned at hearing, the appellant can submit lawn care and snow removal expenses as they occur to be deducted from the PPA for that month, but they cannot be used to adjust the SMNA and PPA on a permanent basis. At hearing, the MassHealth representative agreed that she could allow for the monthly rubbish removal fee of \$91 per month. She later stated in an email that it was not possible to account for this because there was no field for it in the system and it could only be added to the rent or mortgage field. As MassHealth testified it would allow for this expense, it should adjust SMNA and PPA calculation to include the \$91 per month for rubbish removal as part of the rent or mortgage field.

For these reasons, the appeal is approved in part and denied in part.

Order for MassHealth

Re-calculate the SMNA and PPA to include the \$91 per month for rubbish removal as part of the rent or mortgage field.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

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.

Samantha Kurkky
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Nancy Hazlett, Chelsea MassHealth Enrollment Center, 45-47 Spruce Street, Chelsea, MA 02150

