

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2154126
<b>Decision Date:</b>	11/05/2021	<b>Hearing Date:</b>	07/09/2021
<b>Hearing Officer:</b>	Scott Bernard		

Appearance for Appellant:



Appearance for MassHealth:

Elizabeth Landry (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	<b>Issue:</b>	LTC PPA SMND MMMNA
<b>Decision Date:</b>	11/05/2021	<b>Hearing Date:</b>	07/09/2021
<b>MassHealth's Rep.:</b>	Elizabeth Landry	<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 spouse's application for MassHealth Long Term Care (LTC) benefits with a monthly patient paid amount (PPA) of \$1,865.20 that did not include a Spousal Maintenance Needs Deduction (SMND). (See 130 CMR 520.026 and Exhibit 1). The appellant filed this appeal in a timely manner on June 2, 2021. (See 130 CMR 610.015(B); EOM 20-09; and Ex. 2). Determination of the PPA provides valid grounds for appeal. (See 130 CMR 610.032).

## Action Taken by MassHealth

MassHealth approved the appellant's spouse's application for LTC benefits with a PPA of \$1,865.20 which did not include a SMND.

## Issue

The first appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.026, in determining that the PPA was \$1,865.20. The second issue is whether the appellant is entitled to the application of the spousal maintenance needs deduction (SMND) after an adjustment of the monthly maintenance needs allowance based on the community spouse's exceptional circumstances.

## Summary of Evidence

The MassHealth representative testified to the following. The appellant is an individual over the age of 65 who is the community spouse of MassHealth LTC recipient, who is also over the age of 65. (Ex. 4, pp. 4, 8, 9). The LTC recipient applied for LTC benefits on February 2, 2021. (Ex. 4, p. 7). The institutionalized spouse was admitted to a nursing facility toward the beginning of 2020. The nursing facility was seeking a coverage start date of January 1, 2021. (Ex. 4, p. 9). MassHealth mailed an information request on February 11, 2021 and received all the requested verifications by the due date. MassHealth sent the notice approving the institutionalized spouse's LTC benefit on March 11, 2021. (Ex. 1; Ex. 4, pp. 6). In determining the PPA, the MassHealth representative stated that the only deduction applied was the personal needs allowance (PNA) of \$72.80.

The MassHealth representative stated that the appellant did not qualify to receive the SMND. The MassHealth representative determined this by making the following calculations:

The appellant's monthly expenses were as follows: mortgage of \$565.80, homeowner's insurance of \$62.95<sup>1</sup>, property taxes of \$445.80<sup>2</sup>, and a condo fee of \$700.75. (Ex. 4, pp. 11, 12, 13, 14). The appellant's expenses totaled \$1,774.55. Additionally, the appellant pays for all heat, and other utilities. (Ex. 3, p. 10). The appellant's income consisted of \$1,199.05 from an annuity, \$2,123.50 from Social Security, and self-employment income of \$651.50<sup>3</sup>. (Ex. 4, pp. 3, 4, 15, 16, 17). The appellant's income therefore totaled \$3,974.05. (Ex. 4, p. 2).

Based on these figures, the MassHealth representative performed the following calculations:

### Minimum Monthly Maintenance Needs Allowance (MMMNA):

Shelter Expense for the Community Spouse: \$1,775.30

(+) Standard Utility Expense: \$646.00

(=) Total Shelter Expense: \$2,421.30

(-) Standard Shelter Expense: \$646.50

(=) Excess Shelter Amount: \$1,774.80

(+) Minimum MMMNA: \$2,155

(=) Calculated MMMNA: 3,929.80

Maximum MMMNA: \$3,259.50

Actual Amount for MMMNA: \$3,259.50.

### Spousal Maintenance Needs Deduction (SMND)

Actual MMMNA: \$3,259.50

(-) Community Spouse Income: \$3,984.05

(=) SMNA: \$0. (Ex. 4, p. 18).

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<sup>1</sup> The MassHealth representative determined this number by dividing the annual premium of \$755.34 by 12. (Ex. 4, p. 14).

<sup>2</sup> The MassHealth representative determined this number by dividing the highest quarterly amount due, \$1,337.42 for Quarter 3, 2021 by three. (Ex. 4, p. 13).

<sup>3</sup> The MassHealth representative divided the appellant's Net Profit or Loss from Schedule C of her 2018 tax return by 12 in order to reach this figure. (Ex. 4, p. 17).

The MassHealth representative stated that since the appellant's income exceeds the actual MMMNA by \$724.55, the institutionalized spouse was not eligible to have the SMND applied to his income in determining his PPA.

The appellant testified<sup>4</sup> that she was seeking an increase to the MMMNA so that the SMND could be applied to her husband's PPA. The appellant stated that while her husband was living with her, he paid for certain expenses that permitted her to continue living in their shared condominium. The appellant stated that she has been legally blind since 2008 and submitted a Certificate of Blindness from the Massachusetts Commission for the Blind. (Ex. 5, p. 5). She stated that she chose the place that she lives in for its accessibility for blind and aged individuals. The appellant explained that walkability, accessible sidewalks, ramps, proximity to healthcare, and availability of public transportation were all reasons the appellant and her husband chose to live in the city, which was more expensive. The appellant stated that she has lived in her unit in the city<sup>5</sup> for 13 years. The appellant was familiar with her unit, the building, and the surrounding environs. The appellant stated that the building has an elevator, which makes her condo unit on the fifth floor accessible. The appellant also stated that her unit is a single level and she has memorized the unit. The appellant stated that the familiarity with the interior of her unit makes it easier for her to avoid injuring herself. As the appellant no longer can see, she receives voluntary assistance for reading, opening mail, and writing checks. Volunteers also assist the appellant with shopping, food preparation, and with cleaning the unit. These voluntary services would not be available to the appellant elsewhere.

The appellant stated that her condominium fee increased by \$20.75 as of July 1, 2021. The appellant stated that she has other expenses, which she was excluding. These other expenses included medical expenses of \$305 and Long-term care insurance of \$230. (Ex. 5, p.3). The appellant also has fixed expenses for her law practice. The appellant also anticipated having to make repairs to her unit in the near future as well. The appellant stated that without the appellant's income, she will need to enter some form of nursing facility, which she did not want to do because she is still active and functions in the community.

## 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 the community spouse of MassHealth LTC recipient, who is also over the age of 65. (Ex. 4, pp. 4, 8, 9; Testimony of the MassHealth representative).
2. The LTC recipient applied for LTC benefits on February 2, 2021. (Ex. 4, p. 7).
3. The nursing facility was seeking a coverage start date of January 1, 2021. (Ex. 4, p. 9; Testimony of the MassHealth representative).

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<sup>4</sup> The appellant's testimony has been supplemented by a written statement that she submitted to the Board of Hearings on July 8, 2021. (Ex. 5).

<sup>5</sup> The name of the city has been excluded for reasons of confidentiality.

4. MassHealth mailed an information request on February 11, 2021. (Ex. 4, p. 6).
5. MassHealth received all the requested verifications by the due date. MassHealth sent the notice approving the institutionalized spouse's LTC benefit on March 11, 2021. (Ex. 1; Ex. 4, p. 6).
6. In determining the PPA, the only deduction applied was the PNA of \$72.80. (Testimony of the MassHealth representative; Ex. 1; Ex. 4, pp. 19, 21-22).
7. The institutionalized spouse did not receive the SMND because the appellant's income exceeded the actual MMMNA. (Testimony of the MassHealth representative; Ex. 4, p. 18).
8. The appellant has been legally blind since 2008 and has a Certificate of Blindness from the Massachusetts Commission for the Blind. (Ex. 5, p. 5).
9. The appellant stated that she has lived in her current condominium unit in the city for 13 years. (Ex. 5).
10. Prior to his entering the nursing facility, the appellant relied on the institutionalized spouse's income to help pay for household expenses. (Ex. 5; Testimony of the appellant).
11. The appellant chose to live in the unit because it is accessible for blind and aged individuals, particularly in terms of walkability and availability of accessible sidewalks, elevator, ramps, proximity to healthcare, and availability of public transportation. (Ex. 5; Testimony of the appellant).
12. The appellant's familiarity with her unit, the building, and the surrounding environs makes it less likely she will injure herself while moving around. (Testimony of the appellant; Ex. 5).
13. The appellant receives the assistance of local volunteers who assist her with reading, opening mail, writing checks, shopping, food preparation, and cleaning. (Testimony of the appellant; Ex. 5).
14. The appellant's condominium fee increased by \$20.75 as of July 1, 2021. (Testimony of the appellant; Ex. 5).
15. The appellant also has long-term care insurance of \$230. (Testimony of the appellant; Ex. 5).

## **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>6</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.** 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

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<sup>6</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>).

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 LTC recipient is not eligible to 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). Although the appellant’s actual expenses exceed her income, the regulations require MassHealth to use the maximum MMMNA. Because the appellant’s income exceeds the maximum MMMNA, MassHealth correctly determined that a SMND should not be applied to the institutionalize spouse’s income to determine PPA. The regulations do not permit MassHealth to increase the maximum MMMNA.

The MMMNA can be increased above the maximum because of a fair hearing based on exceptional circumstances. Such exceptional circumstances exist in this case. The record shows that the appellant has been a legally blind person since 2008 and began to live in her current residence in the same year. The appellant stated that she chose to live in this particular area because it is accessible for blind and aged individuals, particularly in terms of walkability and availability of accessible sidewalks, elevator, ramps, proximity to healthcare, and availability of public transportation. Additionally, she has stated that she has become familiar with her unit, the building, and the surrounding environs. The appellant stated that her familiarity with the layout of her unit, makes it easier for her to avoid injury because of her blindness. Finally, the appellant receives the assistance of local volunteers who assist her with reading, opening mail, writing checks, shopping, food preparation, and cleaning. The appellant stated that she relied upon the institutionalized spouse’s income to assist her in paying for the unit and that loss of that income has resulted in her not being able to afford the unit. The appellant has shown that her need to live in this particular unit, in this particular area arises from her medical condition, frailty, or similar special needs and that without an adjustment of the MMMNA (and application of an SMND to the institutionalized spouse’s income in determining the PPA), she will not be able to afford continuing to live in this unit.

Additionally, the appellant has other exceptional expenses that derive from her medical condition, frailty, or similar special needs that were otherwise not counted as part of her living expenses. The appellant has long-term care insurance of \$230, which should be included as part of the revised MMMNA. Additionally, the appellant reported that her condominium fee increased to \$20.75 after July 1, 2021. This should be counted in the determination of the SMND for after July 1, 2021.<sup>7</sup>

For the above stated reasons, the appeal is APPROVED.

MassHealth should utilize the following calculation in determining the SMND prior to July 1, 2021:

Minimum Monthly Maintenance Needs Allowance (MMMNA):

Shelter and Exceptional Expenses for the Community Spouse: \$2,005.30 (Original shelter costs of \$1,775.30 + long-term care insurance of \$230)

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<sup>7</sup> The appellant’s written statement refers to medical expenses of \$305, as well. These have not been counted because there is insufficient evidence in the record to permit a determination as to whether this medical debt is a continuous burden that would fall within the ambit of exceptional circumstances

(+) Standard Utility Expense: \$646.00  
(=) Total Shelter Expense: \$2,651.30  
(-) Standard Shelter Expense: \$646.50  
(=) Excess Shelter Amount: \$2,004.80  
(+) Minimum MMMNA: \$2,155  
(=) Calculated MMMNA: \$4,159.80  
Actual Amount for MMMNA as increased at hearing: \$4,159.80  
Spousal Maintenance Needs Deduction (SMND)  
Actual MMMNA: \$4,159.80  
(-) Community Spouse Income: \$3,984.05  
**(=) SMND: \$175.75.**

MassHealth should utilize the following calculation in determining the SMND after to July 1, 2021:

Minimum Monthly Maintenance Needs Allowance (MMMNA):  
Shelter and Exceptional Expenses for the Community Spouse: \$2,026.05 (Original shelter costs of \$1,775.30 + long-term care insurance of \$230 + condominium fee increase of \$20.75).  
(+) Standard Utility Expense: \$646.00  
(=) Total Shelter Expense: \$2,672.05  
(-) Standard Shelter Expense: \$646.50  
(=) Excess Shelter Amount: \$2,025.55  
(+) Minimum MMMNA: \$2,155  
(=) Calculated MMMNA: \$4,180.55  
Actual Amount for MMMNA as increased at hearing: \$4,180.55  
Spousal Maintenance Needs Deduction (SMND)  
Actual MMMNA: \$4,180.55  
(-) Community Spouse Income: \$3,984.05  
**(=) SMND: \$196.50.**

## Order for MassHealth

Recalculate the institutionalized spouse's PPA by applying the SMND to his income. The SMND prior to July 1, 2020 should be \$175.75. The SMND for after July 1, 2020 should be \$196.50.

## 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.

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Scott Bernard  
Hearing Officer  
Board of Hearings

cc:

Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780