

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2154183
<b>Decision Date:</b>	12/29/2021	<b>Hearing Date:</b>	07/06/2021
<b>Hearing Officer:</b>	Samantha Kurkijy	<b>Record Open:</b>	07/27/2021

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Joshua Bailey—Springfield 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

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	MMMNA/SMNA
<b>Decision Date:</b>	12/29/2021	<b>Hearing Date:</b>	07/06/2021
<b>MassHealth's Rep.:</b>	Joshua Bailey	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Remote	<b>Aid Pending:</b>	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 May 19, 2021, MassHealth informed the institutionalized spouse, the appellant husband ("AH"), that his patient-paid amount ("PPA") would change from \$0 to \$686.02 on June 1, 2021. (Exhibit 1.) Appellant wife ("AW") filed a timely appeal on June 2, 2021, contesting the PPA/spouse in home allowance. (130 CMR 610.015(B); Exhibit 2.) A request to increase the minimum monthly maintenance needs allowance ("MMMNA") is a valid ground for appeal. (130 CMR 610.032.) A hearing was held on July 6, 2021. (Exhibit 3.) The record was left open until July 20, 2021 for the appellant to submit additional information and MassHealth was given until July 27, 2021 to respond. (Exhibit 5.) The record was reopened on November 16, 2021 for MassHealth to clarify some information. (Exhibit 7.) The hearing officer was on periods of medical leave due to a serious illness, which extends the deadline for rendering a hearing decision pursuant to 130 CMR 610.015(D)(4)(b).

## Action Taken by MassHealth

MassHealth informed AH that his PPA would change from \$0 to \$686.02 on June 1, 2021.

## Issue

Whether MassHealth was correct in changing the appellant's PPA to \$686.02 on June 1, 2021.

## Summary of Evidence

AH is a resident of a nursing facility and has a community spouse. The MassHealth representative testified that when AH was converted from short-term care to long-term care, he became subject to a PPA. AH's income consists of a pension totaling \$758.82 per month. MassHealth determined AH's PPA by subtracting the personal-needs allowance ("PNA") of \$72.80 from the pension, yielding a PPA of \$686.02. On May 19, 2021, MassHealth informed AH his PPA would change from \$0 to \$686.02 on [REDACTED]. AW submitted an appeal on June 2, 2021.

The MassHealth representative further testified that there was no spousal maintenance needs allowance ("SMNA") because MassHealth did not receive documentation of AW's rent, heat, or utility bills. The MassHealth representative testified that if AW submits that information, MassHealth can assess whether AW is entitled to any of AH's income.

AW testified that the nursing facility took the appellant's Social Security income, food stamps, and Social Security away from her. She testified that she pays AH's cell phone bill and life insurance premium, as well as for AH's clothes and a personal loan. She testified that she also has to pay her cell phone bill and her car insurance. She testified that all her money is going toward paying bills. AW testified that she should be able to use AH's pension to pay all these bills. She confirmed AH's pension amount and testified that she receives \$800 per month in SSDI. She testified that she does not pay utilities and that her landlord currently is not making her pay rent due to her circumstances, but she will need to start paying rent again.

AW testified that she was informed by Social Security that AH's income was going to the nursing facility. She testified that his Social Security income was \$300 per month when he was admitted to the nursing facility but has since gone up to \$700 per month.<sup>1</sup>

The record was left open until July 20, 2021 for AW to submit a letter from her landlord indicating how much she pays in rent. MassHealth was given until July 27, 2021 to respond. On July 21, 2021, in response to AW's submission showing a lease that began in 2019, the MassHealth representative reported that he was able to approve AW for an SMNA. After the subtraction of the PNA (\$72.80) from AH's income, the remainder of AH's pension (\$686.02) would go to AW. Upon questioning from the hearing officer, the MassHealth representative reported that according to the Social Security Administration, AH does not receive Social Security income and AW receives Social Security income in the amount of \$820 per month. A notice issued on July 21, 2021, informing the appellant that his PPA would be \$0 as of July 1, 2021.

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<sup>1</sup> The MassHealth representative responded that Social Security is reporting that AH does not receive Social Security income.

## Findings of Fact

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

1. AW is a resident of a nursing facility and has a community spouse.
2. On May 19, 2021, MassHealth informed AH his PPA would change from \$0 to \$686.02 on [REDACTED].
3. AW submitted a timely appeal on June 2, 2021.
4. When AH was converted from short-term care to long-term care, he became subject to a PPA.
5. AH's income consists of a pension totaling \$758.82 per month.
6. MassHealth determined AH's PPA by subtracting the PNA of \$72.80 from the pension, yielding a PPA of \$686.02. There was no SMNA because MassHealth did not receive documentation of AW's rent, heat, or utility bills.
7. AW pays AH's cell phone bill and life insurance premium, as well as for AH's clothes and a personal loan. AW also pays her cell phone bill and her car insurance.
8. AW does not pay utilities and her landlord currently is not making her pay rent due to her circumstances, but she will need to start paying rent again.
9. AW testified that she was informed by Social Security that AH's income was going to the nursing facility.
10. The record was left open until July 20, 2021 for AW to submit a letter from her landlord indicating how much she pays in rent. MassHealth was given until July 27, 2021 to respond.
11. On July 21, 2021, in response to AW's submission showing a lease that began in 2019, the MassHealth representative reported that he was able to approve AW for an SMNA. After the subtraction of the PNA (\$72.80) from AH's income, the remainder of AH's pension (\$686.02) would go to AW.
12. Upon questioning from the hearing officer, the MassHealth representative reported that according to the Social Security Administration, AH does not receive Social Security income and AW receives Social Security income in the amount of \$820 per month.
13. A notice issued on July 21, 2021, informing the appellant that his PPA would be \$0 as of July 1, 2021.

## **Analysis and Conclusions of Law**

“General income deductions must be taken in the following order: a personal-needs allowance; a spousal-maintenance-needs allowance; a family-maintenance-needs allowance for qualified family members; a home-maintenance allowance; and health-care coverage and incurred medical and remedial-care expenses. These deductions are used in determining the monthly patient-paid amount.” (130 CMR 520.026.)

An adjustment to the SMNA is addressed in 130 CMR 520.026(B):

If the community spouse’s gross income is less than the amount he or she needs to live in the community (minimum-monthly-maintenance-needs allowance, MMMNA) as determined by the MassHealth agency, the MassHealth agency may deduct an amount from the institutionalized spouse’s countable-income amount to meet this need. This amount is the spousal-maintenance-needs deduction. 130 CMR 520.026(B) applies to the first month of eligibility in an institution and terminates the first full calendar month in which the spouse is no longer in an institution or no longer has a spouse in the community. This deduction is the amount by which the minimum-monthly-maintenance-needs allowance exceeds the community spouse's gross income.

After deducting the PNA from AH’s pension income, in accordance with 130 CMR 520.026, MassHealth determined that AW was entitled to the remainder of the income as her SMNA. The parties offered conflicting testimony as to whether AH was receiving Social Security income. The MassHealth representative provided credible testimony indicating that AH was not receiving Social Security income, at least at the time of the hearing.

The appeal is approved. However, MassHealth will be ordered to a PPA of \$0 and an SMNA of \$686.02 as of [REDACTED], as that is the start date listed on the notice on appeal.

## **Order for MassHealth**

Determine a PPA of \$0 and an SMNA of \$686.02 as of [REDACTED].

## **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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Samantha Kurkjian  
Hearing Officer  
Board of Hearings

cc:  
MassHealth Representative: Dori Mathieu