

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part	Appeal Number:	2155238
Decision Date:	9/27/2021	Hearing Date:	08/17/2021
Hearing Officer:	Marc Tonaszuck	Record Open to:	09/01/2021

Appearance for Appellant:



Appearance for MassHealth:

Evelyn Daniel



*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	Issue:	Long Term Care – MMMNA
Decision Date:	9/27/2021	Hearing Date:	08/17/2021
MassHealth's Rep.:	Evelyn Daniel	Appellant's Rep.:	
Hearing Location:	Springfield MassHealth Enrollment Center		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

By a notice dated 06/25/2021, MassHealth informed the appellant that it approved his MassHealth long term care (LTC) benefits beginning on 02/28/2021 with a monthly patient paid amount (PPA) of \$1,523.20 (Exhibit 1). The appellant filed a timely appeal on 07/12/2021 requesting a decreased PPA (Exhibit 2). A calculation of a PPA is valid ground for appeal (130 CMR 610.032). The hearing record remained open until September 1, 2021 to allow appellant to submit additional information.

Action Taken by MassHealth

MassHealth approved the appellant's LTC benefits beginning on 02/28/2021 with a PPA of \$1,523.20.

Issue

The appeal issue is whether the community spouse is entitled to an increase in the minimum monthly maintenance needs allowance (MMMNA), which would result in a lower PPA.

Summary of Evidence

The MassHealth representative testified that the appellant, a married man whose wife lives in the community, is a resident in a skilled nursing facility. An application for long term care (LTC) benefits was submitted on his behalf to MassHealth on 03/31/2021, seeking benefits for 02/28/2021. The application was approved on 06/25/2021 for the date requested, 02/28/2021. The couple has countable assets that are negligible.¹ The patient paid amount was calculated to be \$1,523.20 (Exhibit 1). The representative testified that the community spouse lives in a home in the community. MassHealth calculated the Minimum-Monthly-Maintenance-Needs Allowance, or MMMNA, of the community spouse (the appellant wife) by taking into account the rent of \$286.16, taxes/insurance of \$0.00, and a food stamp utility allowance of \$646.00, for a total shelter expense that was calculated to be \$932.16. MassHealth subtracted the shelter expense standard of \$653.25 and added a standard maintenance allowance of \$2,177.50. Based on its calculations, MassHealth determined the community spouse's MMMNA to be \$2,456.41. Her gross income is \$2,910.10 comprised of Social Security and unemployment insurance. The community spouse's income exceeds her MMMNA and therefore, there was no spousal maintenance needs allowance (SMNA) deducted from the institutionalized spouse's PPA.

MassHealth then calculated the institutionalized spouse's (appellant husband's) patient-paid amount (PPA). To do this, MassHealth calculated the institutionalized spouse's income to be \$1,596.00 monthly, consisting of Social Security. Using the above information, MassHealth calculated the PPA to be \$1,523.00 (\$1,596.00 institutionalized spouse's income - \$72.80 personal needs allowance (PNA)) (Exhibits 1 and 4).

The appellant's wife (community spouse)² was represented at the fair hearing by Samantha Sullivan. Ms. Sullivan testified that the appellant wife has a mortgage of \$1,272.00. She also testified that she is entitled to an increased MMMNA due to expenses related to her medical frailty. Specifically, she had hip surgery in April 2021 and knee surgery in August 2021. As a result, she has increased medical expenses related to those surgeries and physical therapy (Exhibit 5). Ms. Sullivan requested an opportunity to submit verification of the community spouse's mortgage and medical expenses. Her request was granted, and the record remained open for her submission until 09/01/2021. MassHealth waived its opportunity to respond (Exhibit 6).

Appellant submitted documentation on 08/30/2021 (Exhibit 7).

Findings of Fact

¹ Countable assets do not include the value of the residence or one automobile.

² The community spouse has appeal rights in this matter independent of the institutionalized spouse (see 130 CMR 520.017(D)).

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

1. Appellant husband (institutionalized spouse) is a resident of a skilled nursing facility. His wife (community spouse) continues to reside in the community (Testimony).
2. The appellant husband was approved for MassHealth long term care benefits effective 02/28/2021 (Testimony; Exhibit 1).
3. The appellant does not dispute the date of eligibility (Testimony).
4. The appellant wife lives in a home in the community and her mortgage is \$1,272.00 (Testimony; Exhibit 7).
5. The community spouse has income of \$2,910.10 (Testimony; Exhibit 4).
6. The institutionalized spouse has income of \$1,596.00 (Testimony; Exhibit 4).
7. MassHealth calculated the community spouse's MMMNA as follows:

Rent/mortgage	\$ 286.16
Property taxes and insurance	\$ + 00.00
Required condo/coop maintenance charge	\$ + 0.00
<u>Utility allowance</u>	<u>\$ +646.00</u>
Total shelter expenses	\$ 932.16
Federal shelter standard	\$ - 653.25
Excess shelter costs (\$932.16-\$653.25)	\$ 278.91
Standard Maintenance Allowance	\$ 2177.50
Total MMMNA	\$2456.41

8. Interest income from retained assets is negligible.
9. Because the community spouse's income does not meet her MMMNA, she receives a Spousal Maintenance Needs Deduction (SMND) of \$234.10.
10. The institutionalized spouse's PPA is \$2,545.05 (Income of \$3,016.00 – PNA \$72.80 – private health insurance \$164.05 – SMND \$234.10) (Testimony; Exhibits 1 and 4).
11. The community spouse contends that she requires an increase in the MMMNA in order to cover her living expenses (Testimony).
12. The community spouse has undergone two recent surgeries; one for a hip replacement and another for knee replacement (Testimony).

13. Between 02/01/2021 and 08/01/2021, the appellant wife has verified that she paid \$650.00 in medical expenses related to her surgeries (Exhibit 7).

Analysis and Conclusions of Law

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.

See 130 CMR 520.017(D).

Pursuant to 130 CMR 520.017(D), either spouse may request an increase in the MMMNA calculated by MassHealth due to "exceptional circumstances." At the hearing, the appellant wife argued that the PPA should be reduced. In doing so, she was requesting that the MMMNA be increased, resulting in a larger SMND from the PPA. In support of her argument, the appellant wife submitted bills relating to her recent surgeries. In her submission during the record open period, the appellant wife was able to show that she paid \$650.00 in medical expenses related to her recent surgeries. Some of the expenses cannot be considered because the purposes for those payments were not verified with an itemized bill, or they were incurred prior to 02/01/2021, the first month the institutionalized spouse was admitted to the skilled nursing facility. In addition, some of the bills submitted were duplicates.

The appellant's representative testified credibly that the appellant wife underwent recent surgeries that have left her medically frail. I agree that the appellant has shown that \$650.00 in expenses are related to her medical frailty. As a result, the MMMNA will be increased by \$108.33 per month for the months of February 2021 through July 2021 (\$650.00 divided by six months).

The appellant has also verified that her mortgage is \$1,272.00 per month.

The MMMNA will be calculated as follows:

Rent/mortgage	\$ 1272.00
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Property taxes and insurance	\$ + 00.00
Required condo/coop maintenance charge	\$ + 0.00
Utility allowance	\$ +646.00
Total shelter expenses	\$ 1918.00
Federal shelter standard	\$ - 653.25
Excess shelter costs (\$1918-\$653.25)	\$ 1264.75
Standard Maintenance Allowance	\$ 2177.50
Total Calculated MMMNA	\$3442.25
Regulator Maximum MMMNA	\$3259.50
Additional MMMNA increase For Exceptional Circumstance	\$+108.33
Adjusted MMMNA For February 2021 through July 2021	\$3367.83
Minus Community Spouse Income	\$2910.10
SMND	\$457.73

For the foregoing reasons, this appeal is approved in part, as to the expenses that the appellant wife verified at hearing related to her medical frailty.

Order for MassHealth

Adjust the mortgage to \$1272.00 per month.

For the months of February 2021 through July 2021: increase the MMMNA to \$3367.83; increase the SMNA to \$457.73; and decrease the PPA to \$1,065.47. Send notice of implementation only. Do not include appeal rights.

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, Division of Medical Assistance, at the address on the first page of this decision.

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 with Suffolk County Superior Court, within 30 days of your receipt of this decision.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc: Dori Mathieu, Springfield MassHealth Enrollment Center

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