

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; denied in part	Appeal Number:	2155461
Decision Date:	11/10/2021	Hearing Date:	9/1/2021
Hearing Officer:	Cynthia Kopka	Record Open to:	9/28/2021

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Yous Khieu, Chelsea (for David Gelin)



*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:	Eligibility
Decision Date:	11/10/2021	Hearing Date:	9/1/2021
MassHealth's Rep.:	Yous Khieu for David Gelin	Appellant's Rep.:	Pro se
Hearing Location:	Chelsea	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

By notice dated June 29, 2021, MassHealth notified Appellant that her spouse's patient paid amount (PPA) would increase to \$1,234.20 effective February 1, 2020. Exhibit 1. Appellant filed this appeal in a timely manner on July 19, 2021. Exhibit 2. 130 CMR 610.015(B). Challenging the scope of assistance is a valid basis for appeal. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth notified Appellant that her spouse's PPA would increase to \$1,234.20 effective February 1, 2020.

Issue

The appeal issue is whether MassHealth was correct in calculating the PPA.

Summary of Evidence

A MassHealth eligibility representative testified on behalf of the assigned worker as follows. The relevant application date for Appellant's case is April 24, 2020. Exhibit 4 at 3. Appellant's spouse resided in the nursing facility beginning 2017. *Id.* at 15. The requested MassHealth payment start

date was February 15, 2020. *Id.* The length of stay is indicated as more than six months. *Id.*

On June 29, 2021, MassHealth notified Appellant that her spouse's patient paid amount changed from \$0 to \$1,234.20 effective February 1, 2020. Exhibit 1. At the relevant time, Appellant's spouse's monthly income from Social Security was \$2,025.00. MassHealth deducted \$72.80 from this income for Appellant's personal needs account (PNA) and \$718 as a family allowance. *Id.*

Appellant's spouse had been on MassHealth long before this case was assigned to the assigned worker, and the MassHealth representative was not sure whether the current case was an eligibility review or if the case had been closed triggering the need to submit a new application. However, when Appellant's spouse was on MassHealth in the past, there was no PPA.

In response to Appellant's questions, the covering MassHealth representative explained that MassHealth coverage of long term care began in February 2020 until the date of the spouse's death, and covers room and board. The PPA goes to the facility and the facility charges the remaining balance to MassHealth.

Appellant appeared by telephone and testified as follows. Appellant's spouse passed away in [REDACTED] after suffering from long term complications from diabetes significantly since 2005. Together they raised four children, with the youngest having just entered into the air force academy and the oldest in the air force about to be deployed overseas. Appellant and her spouse had been trying to establish a home and keep their children safe and well through the years of her spouse's disability. Appellant's spouse had been in dialysis due to kidney failure since 2010 and had heart surgery in 2014. Appellant's spouse ultimately ended up in a nursing care facility and was never able to permanently return home. In 2018, Appellant had modifications made to the home in an effort to have her spouse return. In 2019, Appellant's spouse was able to take leave from the facility to go home for some dinners. He then switched care facilities and his health care proxy changed to his mother. Appellant did not interfere with this change because she did not want it to cause problems, but Appellant was not aware that it would jeopardize her ability to make decisions on behalf of her spouse. Appellant never received information from either the conservator appointed on her spouse's behalf or the facility's attorney. For the probate of the spouse's estate, Appellant tried to contact the court which was holding COVID restricted dates. The court's message stated that if Appellant did not receive instructions on when the meeting was to take place, then to consider it cancelled. Appellant argued that her spouse had no "estate," that is, no money set aside. Appellant testified that Greater Boston Legal Services was working on her behalf and in touch with the assigned MassHealth worker, but they stopped representation when the spouse passed away.

Appellant challenges the PPA, arguing the deductions made for the spouse, family, and house were too low. The June 29, 2021 notice lists the amount to maintain home and spouse in home at zero, and family members in home were given \$718, which Appellant assumed was for her youngest son who was still in the home during the period in question. Appellant's son was under the age of 21 at the time. Appellant argued that she was not aware that she would be entitled to expenses to maintain the home and/or spouse. Appellant's mortgage was in her spouse's name only and had been refinanced multiple times, but it is greater than \$718.

Appellant also disputes the timing, alleging that her spouse was in the hospital for the entirety of the relevant time, April through August 2020. Appellant felt it was fraudulent that the nursing facility is getting money from the state for a period when it was not providing the spouse care. Appellant expressed understanding about transfer obligations and keeping a bed open but continued to challenge it. Finally, Appellant argues that it took entirely too long for the decision to be made. Appellant submitted documents in 2019 and 2020 and nothing was decided until 2021.

The covering MassHealth representative was not able to answer questions as to how the PPA was calculated and what caused the delay between the application date of April 24, 2020 and the decision date of June 29, 2021. He speculated that Appellant's tax dependent was not listed on the application, which may have affected the determination. However, this was incorrect, as the application lists Appellant's youngest son as a dependent. Exhibit 4 at 4.

Given the inability of MassHealth to present necessary evidence at hearing, the hearing officer determined that a second hearing date was needed. Appellant agreed to email as a means of exchanging documents and communicating the information needed in the hearing record. However, Appellant's desire for the most expedient means of resolving the issue prompted the hearing officer to reopen the record through September 28, 2021 for documentary evidence answering the questions raised at hearing in lieu of a second hearing day. Exhibit 7.

MassHealth provided the calculation of the spousal maintenance needs allowance (SMNA) and family maintenance needs allowance (FMNA) and supporting documents for taxes, mortgage, homeowner's insurance, and an attestation of Appellant's income. The mortgage statement appears to include both the taxes and insurance in the monthly payment, which is \$1,953.35 without paying the escrow shortage, or \$1,920.20 upon paying a \$397.83 escrow shortage in full. Exhibit 6 at 6. MassHealth calculated the SMNA as follows:

Rent/mortgage	1,920.20
Taxes and insurance	0
Condominium maintenance fee	0
Standard deduction for utility expenses (labelled "food stamp allowance")	646.00
Total shelter expenses	2,566.30
Federal shelter standard	646.50
Excess shelter amount (\$2,566.20-646.50)	1,919.70
Standard maintenance allowance	2,155.00
MMMNA (\$1,919.70+2,155.00)	\$4,074.70

Id. at 2. This calculation is the minimum monthly maintenance needs allowance (MMMNA). In 2021, the regulatory maximum maintenance needs allowance is \$3,259.50. Therefore, the MMMNA is adjusted to \$3,259.50.

MassHealth received an attestation from the personal representative of the spouse's estate

supporting spousal income. *Id.* at 13. Per this attestation, Appellant's income changed in October 2019 to \$3,530.00 monthly, which was a significant increase. The attestation states that the income is visible on the joint bank account. *Id.*

MassHealth calculated Appellant's monthly income to be \$3,127.98.¹ Subtracting this from the maximum maintenance needs allowance of \$3,259.50, MassHealth calculated the SMNA as \$131.52. The FMNA is one third of the federal standard maintenance allowance less the dependent's income. There was no reported income for Appellant's dependent, so the FMNA was calculated (\$2,155 divided by 3) at \$718. MassHealth only applied the FMNA, not the SMNA. Exhibit 1.

During the record open period, Appellant offered her 2019 tax returns, asking that this income be used to determine the 2020 PPA. Exhibit 10. Appellant also offered evidence of extraordinary expenses as a way of adjusting the MMMNA. This evidence included two statements from the nursing facility dated October 1, 2020 and May 1, 2021 with a balance of \$89,660.35. The May 21, 2021 statement specifically states "THIS IS NOT A BILL, it is for your INFORMATION only. It includes ONLY the private Room & Board charges that will be due if the resident's Medicaid Application is denied. Additional charges for Ancillary items may be due." Exhibit 8 at 2.

Other proof of expenses submitted by Appellant were \$10,270 to a construction company to repair stairs, ramp, deck, and siding; a \$3,300 estimate to a landscaping company for walkway repair with proof of \$2,000 in payment; an estimate for \$1,200 for fence repair; an invoice and payment of \$8,074.99 for the spouse's funeral; bills for Sallie Mae student loans for one of the children; a 2006 lien judgment against the spouse for \$6,924.96 and a related deed execution amendment of \$10,285.17 for the released lien; and three medical bills for Appellant for \$856, \$181, and \$530.64. Exhibit 8. Appellant did not submit proof of her income.

MassHealth also provided a history of notices related to this case, including a September 1, 2020 denial for failure to provide all verifications. Exhibit 9 at 10. The facility requested a fair hearing on the denial on September 14, 2021 pending the appointment of a personal representative for the spouse's estate. Without the appointment, there was no legal entity to request a hearing and appear on behalf of the spouse's estate. The Board of Hearings held the appeal, Appeal No. 2008836, until receiving the proof of that the personal representative had been appointed on January 8, 2021. On January 12, 2021, the Board of Hearings scheduled the hearing on Appeal No. 2008836 for February 3, 2021. However, the hearing was postponed at the request of the personal representative due to a scheduling conflict and rescheduled to be heard on March 3, 2021. At the March 3, 2021 hearing, the hearing officer left the hearing record open through May 24, 2021 for the submission of additional evidence. The appeal was approved and the April 24, 2020 date was preserved.

Findings of Fact

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

¹ It is not clear why this figure is different from the \$3,530 provided in the attestation.

1. On June 29, 2021, MassHealth notified Appellant that her spouse's PPA changed from \$0 to \$1,234.20 effective February 1, 2020. Exhibit 1.
2. Appellant filed a timely appeal on July 19, 2021. Exhibit 2.
3. Appellant's spouse has resided in a nursing facility since 2017.
4. The SC-1 submitted with this case indicates the spouse's length of stay to be six months or greater.
5. At the relevant time, Appellant's spouse's monthly income from Social Security was \$2,025.00.
6. MassHealth deducted \$72.80 from this income for Appellant's PNA and \$718 as a family allowance.
7. Appellant lives in the community. During the relevant time, her minor child under the age of 21 lived at home.
8. MassHealth determined that Appellant's monthly income is \$3,127.98.
9. MassHealth determined that the Appellant's MMMNA is \$3,259.50, the federal maximum.
10. Appellant received two statements from the nursing facility dated October 1, 2020 and May 1, 2021 with a balance of \$89,660.35. The May 21, 2021 statement specifically states "THIS IS NOT A BILL, it is for your INFORMATION only. It includes ONLY the private Room & Board charges that will be due if the resident's Medicaid Application is denied. Additional charges for Ancillary items may be due." Exhibit 8 at 2.
11. Appellant supplied documents showing expenses including \$10,270 to a construction company to repair stairs, ramp, deck, and siding; a \$3,300 estimate to a landscaping company for walkway repair with proof of \$2,000 in payment; an estimate for \$1,200 for fence repair; an invoice and payment of \$8,074.99 for the spouse's funeral; bills for Sallie Mae student loans for one of the children; a 2006 lien judgment against the spouse for \$6,924.96 and a related deed execution amendment of \$10,285.17 for the released lien; and three medical bills for Appellant for \$856, \$181, and \$530.64. Exhibit 8.
12. Appellant did not provide proof of her income.

Analysis and Conclusions of Law

Appellant challenges MassHealth's calculation of the PPA, arguing that she needs to retain a share of her spouse's income to meet her expenses. Either the community or institutionalized spouse has a

right to appeal MassHealth's calculation of the asset allowance. 130 CMR 520.017(A).

In calculating the PPA, the regulations allow certain deductions to be made from an institutionalized member's income. 130 CMR 520.009. These deductions are listed at 130 CMR 520.026, which states that "[g]eneral 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." The personal-needs allowance, \$72.80 per month, is set by regulation. 130 CMR 520.025. MassHealth allows a deduction for current health-insurance premiums made directly to the insurer. 130 CMR 520.026(E)(1).

In this matter, Appellant argued that she is entitled to a spousal-maintenance-needs allowance for herself, a family-maintenance-needs allowance for her dependent son, and a home-maintenance allowance. For the home-maintenance needs allowance, MassHealth

allows a deduction for maintenance of a home when a competent medical authority certifies in writing that a single individual, with no eligible dependents in the home, is likely to return home within six months after the month of admission. This income deduction terminates at the end of the sixth month after the month of admission regardless of the prognosis to return home at that time.

130 CMR 520.026(D). Here, Appellant's spouse did not qualify for a home-maintenance needs allowance, as the SC-1 indicated a stay of longer than six months and there was a dependent in the home.

MassHealth's regulations regarding the spousal-maintenance needs deduction and the family-maintenance needs deductions are as follows:

(B) Spousal-Maintenance-Needs-Deduction. 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.

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

(a) \$1,822² (the federal standard maintenance allowance); and

² The federal standard maintenance allowance was \$2,155.00 in June 2021.

(b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$547³ 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. If heat is included in the rent or condominium fee, this amount is \$375. If heat is not included in the rent or condominium fee, this amount is \$611.

(2) The maximum-monthly-maintenance-needs allowance is \$2,739.00⁴ 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).

(C) Deductions for Family-Maintenance Needs.

(1) The MassHealth agency allows a deduction from the income of a long-term-care resident to provide for the maintenance needs of the following family members if they live with the community spouse:

- (a) a minor child — a child younger than 21 years old of either member of the couple;
- (b) a dependent child — a child 21 years of age and older who is claimed as a dependent by either spouse for income-tax purposes under the Internal Revenue Code;
- (c) a dependent parent — a parent of either spouse who lives with the community spouse and who is claimed as a dependent by either spouse for income-tax purposes under the Internal Revenue Code; and
- (d) a dependent sibling — a brother or sister of either spouse (including a half-brother or half-sister) who lives with the community spouse and who is claimed as a dependent by either spouse for income-tax purposes under the Internal Revenue Code.

(2) The deduction for family-maintenance needs is one-third of the amount by which the federal standard maintenance allowance exceeds the monthly gross income of the family member. The federal standard maintenance allowance is \$1,822.

130 CMR 520.026(B) and (C) (emphasis added).

The family maintenance needs deduction is a simple calculation. Here, as Appellant's dependent child was under the age of 21, living in the home, and did not have an income, the family was entitled to a deduction of \$718 (\$2,155 divided by 3).

³ The community spouse monthly housing allowance is \$653.25 effective January 1, 2021.

⁴ The regulatory maximum MMMNA is \$3,259.50 effective January 1, 2021.

Appellant also contends that she was entitled to a spousal allowance. Appellant did not provide evidence refuting MassHealth's calculation of either her spouse's income or her own income. Though it was unclear whether the appropriate mortgage payment amount included in the SMNA calculation was \$1,920.20 or \$1,953.35, this would not affect the determination that Appellant is entitled to the maximum maintenance amount of \$3,259.50. Subtracting MassHealth's determination of Appellant's monthly income of \$3,127.98 from this yields a SMNA of \$131.52.

It was not clear why MassHealth did not deduct the SMNA amount from the PPA calculation.⁵ The regulation allows for both an SMNA and an FMNA to be applied, with the SMNA being applied first. 130 CMR 520.026. Accordingly, Appellant is entitled to an adjustment of the PPA by \$131.52, and this appeal is approved in part.

Under the regulations, the spouse of a member can request that the MMMNA be adjusted if exceptional circumstances exist:

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.

130 CMR 520.017(D)(1) (emphasis added).

Appellant provided documentation of some bills she has incurred for things such as household repairs, student loans, medical payments, and funeral costs. However, the evidence provided were insufficient to establish exceptional circumstances. The necessity of the household repairs was not established with the documents provided. The student loans appeared to be for one of the children. There was nothing provided to show that the \$1,567.64 were extraordinary uncovered medical expenses and for whom. The deed execution amendment was unexplained. Finally, the evidence in the record does not support that Appellant owes \$89,660 to the nursing facility, as the statement specifically stated that this amount is only due if MassHealth is denied. Here, MassHealth was approved after the date of the May 1, 2021 statement and therefore the nursing facility amount will be adjusted. Appellant has not met her burden of demonstrating exceptional circumstances, and therefore this appeal is denied in part.

⁵ MassHealth did not offer as evidence at this appeal that there was a valid waiver of spousal support pursuant to 130 CMR 517.011(B).

Appellant should note that MassHealth's delay in approving the case was due to the September 1, 2020 denial having been appealed and the Board of Hearings holding Appeal No. 2008836 pending the appointment of a personal representative. Though burdensome, the long delay in having that appeal heard ultimately allowed the case to be approved.

Order for MassHealth

Adjust the PPA from \$1,234.20 to \$1,102.68.

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Nancy Hazlett, Chelsea MassHealth Enrollment Center, 45-47 Spruce Street, Chelsea, MA 02150, 617-551-2028