

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2155789
Decision Date:	11/10/2021	Hearing Date:	09/14/2021
Hearing Officer:	Marc Tonaszuck	Record Open to:	10/01/2021

Appearance for Appellant:




Appearance for MassHealth:

Jamie Lapa, Springfield Intake



*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	Issue:	Long Term Care
Decision Date:	11/10/2021	Hearing Date:	09/14/2021
MassHealth's Rep.:	Jamie Lapa	Appellant's Rep.:	
Hearing Location:	Springfield 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

MassHealth issued to the Appellant a notice dated 07/12/2021, stating that the Division has approved your application for MassHealth Standard benefits. Starting 04/01/2021, you will owe your nursing facility \$1,339.40 every month to help apay for your care (patient paid amount or PPA) (130 CMR 520.003, 520.016(B); Exhibit 1). A timely appeal was filed on the Appellant's behalf on 07/30/2021, challenging the PPA amount (130 CMR 610.015(B); Exhibit 2). Level of assistance is valid grounds for appeal (130 CMR 610.032).

At the fair hearing, the hearing officer asked the appellant's attorney if she would be able to provide additional materials concerning the Community Spouse's assisted living facility residence documents. She asked that the record remain open for her submission. Her request was granted and the record remained open for the appellant's submission until 10/01/2021 (Exhibit 6). MassHealth waived its opportunity to respond to the appellant's submission. The appellant submitted additional materials to the hearing record during the record open period (Exhibit 7).

Action Taken by MassHealth

MassHealth approved the Appellant's application for long-term care (LTC) benefits and calculated a PPA of \$1,339.40 effective on 04/01/2021.

Issue

Is the Community Spouse entitled to have the minimum monthly maintenance needs allowance increased, thereby reducing the Institutionalized Spouses PPA pursuant to 130 CMR 520.017(C)?

Summary of Evidence

The MassHealth Representative testified the Appellant (Institutionalized Spouse) applied for LTC benefits on 06/08/2021, seeking an eligibility start date of 04/20/2021 (Exhibit 5). The appellant's husband resides in the community (Community Spouse) and is the power of attorney for the Appellant (Exhibit 4). The MassHealth representative explained that MassHealth calculates a Minimum Monthly Maintenance Needs Allowance (MMMNA), which is the amount of money the Community Spouse would need to remain in the community. The Community Spouse's income is compared to the MMMNA and if the MMMNA exceeds the income, then the Community Spouse is entitled to income from the Institutionalized Spouse's income (after reduction of the \$72.80 Personal Needs Allowance (PNA)) in an amount that would increase the Community Spouse's total income to a level equal to the MMMNA.

The MassHealth representative further stated that the Community Spouse may include as part of the monthly income the amount of interest income generated by any asset allowance, if the asset allowance were invested in an account and generating income equal to the highest rate quoted in the Bank Rate Monitor Index (BRMI). Finally, if the Community Spouse's gross income is still less than the MMMNA, the hearing officer will increase the Community Spouse's asset allowance by the amount of additional assets that if invested at the highest rate quoted in the BRMI, would generate sufficient income to raise the income total to the MMMNA. In this case, the appellant's combined assets are \$87,699.00.

The record establishes that the Community Spouse's income was determined to be \$2,577.34 per month and is comprised of RSDI in the amount of \$1,048.00, Medicare in the amount of \$148.50 and a pension of \$1,380.84. The Institutionalized Spouse's income was determined to be \$2,265.66, comprised of a pension. MassHealth calculated the Community Spouse's MMMNA to be \$3,259.50, the regulatory maximum allowed. MassHealth deducted from the Institutionalized Spouse's income a personal needs allowance of \$72.80, a spousal maintenance needs allowance of \$682.16, and the health insurance premium of \$334.70 and calculated a patient paid amount of \$1,176.00 (Exhibit

5).

An attorney who represents the Community Spouse (Exhibit 2) appeared at the hearing and testified that the Community Spouse lives in an assisted living facility (ALF), which is medically necessary. The ALF costs \$5,700.00 per month and he does not have sufficient income to meet his monthly needs. Therefore, he is entitled an increased MMMNA for exceptional circumstances. The attorney stated that at even when the income from the interest from all the assets, including the excess assets, is added to the Community Spouse's income, he has a shortfall and does not meet his MMMNA. Therefore, an income shift is warranted to bring the Community Spouse's income as close as possible to the MMMNA. The result would be a PPA of zero.

Findings of Fact

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

1. The Appellant Wife applied for MassHealth LTC benefits on 06/08/2021, seeking an eligibility start date of 04/20/2021.
2. The Appellant's LTC application was approved on 07/12/2021 for the date requested.
3. Through an approval notice dated 07/12/2021, MassHealth calculated a monthly PPA of \$1,339.40.
4. Appellant Husband (Community Spouse) resides in the community.
5. The Community Spouse has retained assets totaling \$87,699.00.
6. Monthly income from interest on retained assets is \$16.19.
7. The Community Spouse has gross monthly income of \$2,577.34 from social security, pension and other.
8. The Community Spouse resides in assisted living, which is necessary due to his medical frailty.
9. The assisted living facility costs \$5,700.00 per month.
10. The Community Spouse has an MMMNA of \$5,700.00.
11. The Community Spouse has a monthly shortfall of \$3,106.47 (income of \$2,577.34 plus income from interest on retained assets of \$16.19 minus MMMNA of \$5,700.00).
12. The Institutionalized Spouse's personal needs allowance (PNA) is \$72.80 a month

and her health insurance premium is \$334.70.

13. The Institutionalized Spouse's monthly income is \$2,265.66 comprised of RSDI.
14. Once the Institutionalized Spouse's income is allocated to the Community Spouse, his total income of \$4,843.00 still does not meet his MMMNA of \$5,700.00.

Analysis and Conclusions of Law

After the institutionalized spouse has applied for MassHealth Standard and has received a notice of approval or denial for MassHealth Standard, either spouse may appeal to the Board of Hearings to request an adjustment to the asset allowance. The purpose of the adjustment is to generate sufficient income, as determined by MassHealth, for the Community Spouse to remain in the community (130 CMR 520.017(A)). The Appellant applied for MassHealth on 06/08/2021, seeking a MassHealth benefit start date of 04/20/2021. Under the regulations, coverage may be retroactive to the first day of the third month before the month of application, if covered services were received during such period, and the applicant or member would have been eligible at the time services were provided (130 CMR 516.005).

At issue in this case is the MMMNA and income of the Appellant Husband, the Community Spouse. The Appellant Wife, the Institutionalized Spouse, was admitted to the nursing facility and was approved for MassHealth benefits effective 04/20/2021, the date she was seeking. MassHealth determined that the Community Spouse has an MMMNA of \$3,259.50, which is the regulatory maximum MMMNA. Appellant's counsel argued that the Community Spouse has exceptional circumstances which would give rise to an increased MMMNA, thereby reducing the PPA to zero. In order to remain in the community, his income of \$2,577.34 would need to be supplemented.

The pertinent regulation governing this issue states:

130 CMR 520.017: Right to Appeal the Asset Allowance or Minimum-Monthly-Maintenance-Needs Allowance

(A) Request for an Adjustment to the Community Spouse's Asset Allowance. After the institutionalized spouse has applied for MassHealth Standard and has received a notice of approval or denial for MassHealth Standard, either spouse may appeal to the Board of Hearings to request an adjustment to the asset allowance. The purpose of the adjustment is to generate sufficient income, as determined by the MassHealth agency, for the community spouse to remain in the community.

(B) Minimum-Monthly-Maintenance-Needs Allowance. The minimum-monthly maintenance- needs allowance is the amount needed by the community spouse to remain in the community. This amount is based on a calculation that includes the

community spouse's shelter and utility costs in addition to certain federal standards, in accordance with 130 CMR 520.026(B)(1).

(C) Adjustment of the Amount of Asset Allowance. If either spouse claims at a fair hearing that the amount of income generated by the community spouse's asset allowance as determined by the MassHealth agency is inadequate to raise the community spouse's income to the minimum monthly-maintenance-needs allowance, the fair-hearing officer determines the gross income available to the community spouse as follows.

(1) The fair-hearing officer determines the gross amount of income available to the community spouse. The fair-hearing officer includes the amount of the income that would be generated by the spouse's asset allowance if \$10,000 of the asset allowance were generating income at an interest rate equal to the deposit yield quoted in the Bankrate[®] Monitor national index as of the hearing date for money market accounts, and if the remainder of the spouse's asset allowance were generating income at an interest rate equal to the highest deposit yield quoted in the Bank Rate Monitor national index as of the hearing date for any term not to exceed two and one-half years.

(2) If the community spouse's gross income under 130 CMR 520.017(C)(1) is less than the minimum-monthly-maintenance-needs allowance (MMMNA), then the fair-hearing officer allows an amount of income from the institutionalized spouse (after the personal-needs deduction described in 130 CMR 520.026(A)) that would increase the community spouse's total income to equal, but not to exceed, the MMMNA. 130 CMR 520.017(C)(2) applies to all hearings held on or after September 1, 2003, regardless of the date of application.

(3) If after the fair-hearing officer has increased the community spouse's gross income under 130 CMR 520.017(C)(1) and (2), the community spouse's gross income is still less than the MMMNA, then the fair-hearing officer increases the community spouse's asset allowance by the amount of additional assets that, if generating income at an interest rate equal to the highest deposit yield in the Bankrate[®] Monitor national index as of the hearing date for any term not to exceed two and one-half years, would generate sufficient income to raise the income total to the MMMNA.

The Community Spouse has provided documentation from his physician and assisted living facility to show that his medical frailty supports an increased MMMNA of \$5,700.00. On appeal the Community Spouse's representative asserts the Community Spouse's income fails to meet his established expenses. The Community Spouse has a total monthly income of \$2,593.53 (income of \$2,577.34 plus income from interest on retained assets of \$87,699 equaling \$16.19). Because the Community Spouse's income is short of the MMMNA, he may access the Institutionalized Spouse's income. The Institutionalized Spouse has available income of \$2,192.86 (\$2,265.66 - \$72.80 PNA). Accordingly, the

Community Spouse may retain this portion of the Appellant Wife's income to assist him in meeting the MMMNA. However, his income, even supplemented by the Institutionalized Spouse's income, still falls short of her MMMNA.

Appellant Husband has demonstrated that as a matter of law and fact, he is entitled to an income shift, thereby reducing the Institutionalized Spouse's PPA to zero. The appeal is therefore approved.

Order for MassHealth

Rescind the action in the notice dated 07/12/2021. Effective 04/01/2021, increase the MMMNA to \$5,700.00 and decrease the PPA to zero. Allocate all of the Institutionalized Spouse's income (less the PNA) to the Community Spouse. Notify the appellant of the new PPA. 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, MassHealth of Medical Assistance, at the address on the first page of this decision.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center,
88 Industry Avenue, Springfield, MA 01104

[REDACTED]