

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	DENIED	Appeal Numbers:	2155860 (NL) & 2165858 (CL)
Decision Date:	10/14/2021	Hearing Date:	09/10/2021
Hearing Officer:	Christopher Taffe		

Appearance for Appellants:




Appearance for MassHealth:

Keisha McMullen, Springfield MEC
(by 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

Appeal Decision:	DENIED	Issue:	LTC – Spousal Allowance
Decision Date:	10/14/2021	Hearing Date:	09/10/2021
MassHealth’s Rep.:	K. McMullen	Appellants’ 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

Through a notice dated June 29, 2021 and addressed to the Institutionalized Spouse, MassHealth approved the Institutionalized Spouse/Appellant (“husband”)¹ for MassHealth Standard Long-Term Care (“LTC”) benefits with a start date of May 7, 2021 and a monthly Patient Paid Amount (“PPA”) of \$1,899.31 beginning on June 1, 2021. The PPA calculation resulted in a Spousal Maintenance Needs Allowance (“SMNA”) of \$22.09. See Exhibit 1; 130 CMR 519.006(A)(3); 130 CMR 520.024; 130 CMR 520.026.

Through a second notice also dated June 29, 2021 but addressed to the Community Spouse, MassHealth informed the Community Spouse/Appellant (“wife”) that the agency was going to “change” the PPA for her husband as of June 1, 2021 from \$1,899.31 to \$1,899.31., and that the SMAN would be \$22.09.² See Exhibit 2; 130 CMR 520.024; 130 CMR 520.026.

¹ As will be discussed, there are two Appellants in this matter and they are a married couple. Based on the settings where they respectively resided at the time of hearing and during the application process, the husband is the “Institutionalized Spouse” and the wife is the “Community Spouse” as defined by the MassHealth Eligibility regulations at 130 CMR 515.001. They will be referred to as “husband” (or “Institutionalized Spouse”) and “wife” (or “Community Spouse”) throughout the decision to distinguish between the two individual Appellants and to minimize privacy concerns. See 130 CMR 610.014.

² There is no “change” in these dollar figure amounts. It is unclear why this notice for the wife was sent in the form of a “PPA Change” notice, but it appears to be an administrative or computer error in the form of the letter generated when awarding a retroactive benefit; any such error in the form letter ultimately has no adverse effect on the couple

On July 29, 2021, husband filed a timely appeal with the Board of Hearings as to the notice addressed to him. See Exhibit 1; 130 CMR 610.015(B). On July 29, 2021, wife filed a timely appeal with the Board of Hearings as to the other notice. See Exhibit 2; 130 CMR 610.015(B).

After an Institutionalized Spouse has received notice of approval for LTC benefits, either spouse may appeal to the Board of Hearings the calculation of income available to the Community Spouse and request an increase in the Minimum-Monthly-Maintenance-Needs-Allowance (MMMNA) and corresponding increase in the Spousal Maintenance Needs Allowance MMMNA. See 130 CMR 520.017(D); 130 CMR 610.032.

As explained at the beginning of the hearing, because of the relation of the parties and the identical and very common set of relevant facts and laws needed to review the request for relief, the Hearing Officer consolidated these two appeals into one for purposes of the Fair Hearing decision.³ See 130 CMR 610.082.

Action Taken by MassHealth

MassHealth approved the husband for requested LTC benefits with a start date of May 7, 2021 and a monthly PPA of \$1,899.31 beginning on June 1, 2021. The PPA calculation resulted in a SMNA of \$22.09.

Issue

Do the necessary exceptional circumstances exist which would allow the agency to establish a higher MMMNA which will, in turn, increase the Spousal Maintenance Needs Allowance for the Community Spouse?

Summary of Evidence

Husband was admitted to his current skilled nursing facility on [REDACTED]. Husband filed an application seeking MassHealth LTC benefits on April 29, 2021. MassHealth eventually approved husband for LTC benefits with a benefit start date of May 7, 2021, which is the date on the June 29, 2021 approval notice. At hearing, MassHealth explained that the Husband's current skilled nursing facility had since requested, and received approval for, an earlier LTC start date of March 4, 2021. The parties indicated that there is no current issue with the start date needed for Appellant's current nursing facility.

At all times relevant to the appeal, the wife has lived in the community and has not been medically

or this appeal.

³ In retrospect, the Board of Hearings could have, and should have, just created one single appeal number for the couple's appeal. However, because correspondence has been sent out to the Appellants under two different numbers, consolidation and a decision referencing both appeal numbers is administratively necessary at this point.

institutionalized; in other words she has had no stay or admission at medical facilities such as an acute care hospital or skilled nursing facility. During the time period in question, wife has been in generally acceptable health for her age, although she suffers from high blood pressure and has seen a therapist for counseling and related health needs, in part due to the stress the couple has faced the last few years.

The MassHealth Representative submitted documentation in Exhibit 4 which explains and shows the various calculations of the MMMNA, the PPA, and the SMNA for the couple. The various income and expense figures were verified at hearing and none were disputed.

The MMMNA is the shelter expenses for the Community Spouse's Principal Place of Residence and is calculated by regulation (130 CMR 520.026) and figures established by the federal government. The shelter expenses are calculated as follows:⁴ The mortgage figure of \$1,127.71 is added to the property taxes & insurance figure of \$350.52 and the standard utility allowance of \$646 for houses where heat is paid by the resident, resulting in Shelter Expenses of \$2,124.23. There is a deduction of \$653.25, resulting in an "Excess Shelter Amount" of \$1,470.98. The Federal Standard Maintenance Allowance amount of \$2,177.50 is then added to this figure, resulting in a total of \$3,648.48. This \$3,648.48 is the MMMNA unless it exceeds \$3,259.50, which it does in this case. Accordingly the \$3,259.50 is the MMMNA, subject to revision at this hearing.

Once the MMMNA is established, if the Community Spouse's monthly income is less than that the MMMNA, the Community Spouse receives the difference in the form of a Spousal Maintenance Needs Allowance. In this case, the Wife has monthly income of \$3,237.41, resulting in a SMNA of \$22.09.

The PPA obligation is then calculated by taking the Institutionalized Spouse's income, and then subtracting the SMNA as well as any other deductions allowed by law. See 130 CMR 520.026. In this matter, the Community Spouse had verified monthly income of \$2,602.33. The deductions allowed were a \$72.80 Personal Needs Allowance for the husband, the \$22.09 SMNA for the Community Spouse, and a deduction of \$459.63 for the cost of the couple's non-Medicare health care coverage, resulting in the PPA of \$2,047.81.

Through this appeal, the couple is seeking to increase the MMMNA above \$3,259.50 through the Fair Hearing process, which, if done, would in turn increase the SMNA for the Community Spouse and lower the PPA obligation for the Institutionalized Spouse.

In support of her appeal, the wife at hearing mentioned how the couple was drowning in medical bills that she would have difficulty paying and, if the couple wasn't helped with this debt, it would be difficult to allow the husband to return home at some point if that was possible. In the past year,

⁴ All figures related to income, allowances, and deductions are monthly unless noted. The regulation with the calculation is 130 CMR 520.026(B). One should note that the specific dollar figures in the current text of 130 CMR 520.026 are outdated, as the federal government updates those dollar figures, usually with increases, multiple times per calendar year. In contrast, the dollar figures in the text of 130 CMR 520.026 regulation are not updated that frequently by the Commonwealth.

the husband has had both legs amputated above or around the knee area (after having undergone toe and/or foot amputations previously) due to complications from his diabetes. Husband has been in and out of four hospitals and four nursing facilities since approximately September of 2020, and at the least he will be wheelchair bound for the remainder of his life. During the past year, husband also underwent a kidney biopsy which diagnosed related problems with renal disease. Husband will be unable to perform activities of daily living such as using the bathroom or dressing himself and he will need a caregiver to be present for multiple hours should he return home while wife continues to work at a dental office.

Bills submitted at hearing included outstanding medical bills incurred by husband for:

- An earlier nursing facility stay at the Elaine Center at Hadley with costs incurred during the months of [REDACTED] (totaling over \$8,100);
- A stay at Vero Health & Rehab of South Hadley (over \$2,400) from October of 2020;
- a bill from Willimansett Center of Willimansett (over \$1,700) for some undefined time period prior to [REDACTED];
- an ambulance bill (over \$250) for a call in June of 2021;
- a bill from husband's current nursing facility, CareOne at Northhampton, showing a past due balance of \$5,764.20 for some time period prior to 5/7/2021;⁵ and
- a bill of \$88 related to kidney testing and treatment from January 2021.

(Exhibits 1 and 2)

Wife also testified that, in addition to these severe and distressing medical problems and expenses facing the couple, the couple also had to replace the septic system in the last year for the property due to a severe problem resulting in flooding of the yard, and that this was an extremely costly expense of approximately \$30,000, necessitating the current mortgage. The couple also got a new car and incurred expenses and loan for that purchase, as a new car was needed in order to allow the now-wheelchair bound husband greater ability to get into and out of a vehicle belonging to the couple.

Findings of Fact

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

1. Husband was admitted to his current skilled nursing facility on [REDACTED] and has resided there on a continuous basis since then through the hearing date. (Testimony)
2. An application for MassHealth benefits was filed on April 29, 2021 on behalf of Husband.

⁵ It is unclear what the initial "balance forward" on this bill comes from, and from what time period, and whether it is current or why it was not covered or handled by the adjustment to the earlier start date of MassHealth benefits. The parties did not raise an issue with the start date of LTC benefits at hearing. It is possible that the subsequent March 4, 2021 approval and start date of LTC benefits mentioned at hearing covered some of the expenses on this particular bill, aside from the PPA obligations.

(Testimony)

3. Through the June 29, 2021 appealable action in question, Husband was initially approved for LTC benefits with a start date of May 7, 2021. Since that June 29, 2021 notice, Husband's LTC start date has been retroactively changed to March 4, 2021. (Testimony and Exhibit 1)
4. With that approval, Husband has been approved with a PPA obligation of \$1,899.31 beginning on June 1, 2021. This PPA determination resulted in a Spousal Maintenance Needs Allowance of \$22.09. (Testimony and Exhibits 1 and 4)
5. The Institutionalized Spouse and Community Spouse currently have a monthly mortgage obligation of \$1,127.71 on the marital home. (Testimony and Exhibit 4)
 - a. The current mortgage or encumbrance on the marital home was necessitated by needs to repair or replace the property's septic system, which had a cost of approximately \$30,000. (Testimony)
6. The Institutionalized Spouse and Community Spouse currently have monthly obligations of \$350.52 on the marital home for taxes and insurance. (Testimony and Exhibit 4)
7. Wife currently has verified monthly income of \$3,237.41, while Husband currently has verified monthly income of \$2,602.33. (Testimony and Exhibit 4)
8. In addition to the septic system issue on the marital home property, the couple has lots of outstanding medical debt incurred by the Husband and Institutionalized Spouse. (Testimony and Exhibits 1 and 2)
9. The wife has limited medical issues and costs; her current major medical issues are related to high blood pressure and therapy. (Testimony and Exhibits 1 and 2)
10. There is no evidence of any exceptional circumstances, such as remedial or special support services, related to necessities that arise from the medical condition, frailty, or similar special needs of the Community Spouse. (Testimony and Exhibits 1 and 2)

Analysis and Conclusions of Law

In determining a member's PPA, MassHealth regulations require that deductions be made from the member's income *"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."* See 130 CMR 520.026. The amount for the personal-needs allowance is set at \$72.80. The family-maintenance-needs allowance is only allowed when the member has dependent children, siblings, or parents living in their former home, and the home-maintenance-needs allowance only applies to single (unmarried) individuals when the member is likely to return home

within six months after admission.

As to the SMNA, if the Community Spouse's income is insufficient to meet their monthly expenses, the SMNA allows the Community Spouse to keep some of the Institutionalized Spouse's income to pay for necessities. The SMNA "*is the amount by which the minimum-monthly-maintenance-needs allowance exceeds the community spouse's gross income.*" 130 CMR 520.026(B). MassHealth determines the MMMNA by adding a federal standard-maintenance allowance to the difference between the Community Spouse's actual costs of shelter, including a standard amount for utility costs, and a standard-shelter expense. See 130 CMR 520.017(B), 520.026(B)(1). Either spouse may seek to adjust the amount of the MMMNA based on exceptional circumstances. 130 CMR 520.026(B)(1) and (2) read in relevant part as follows:

520.026: Long-term-care General Income Deductions

...

(B) Spousal-maintenance-needs-deduction.

...

- (1) *The MassHealth agency determines the MMMNA by adding the following amounts:*
 - (a) ***[\$2,177.50]*** *(the federal standard maintenance allowance); and*
 - (b) *an excess shelter allowance determined by calculating the difference between the standard shelter expense of ***[\$653.25]*** 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 not included in the rent or condominium fee, this amount is ***[\$646]***.*
- (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).*
(**Bolded** emphasis added.)⁶

In this case, the Community Spouse's "excess shelter allowance" was correctly calculated to be \$1,470.98. Therefore, her MMMNA was \$3,648.48, reduced to \$3,259.50. Wife's income of \$3,237.41 was \$22.09 less than this MMMNA figure, resulting in the SMNA established by MassHealth.

⁶ All dollar figures in the regulation have been adjusted to be current for the application of these Appellants. The current figures for the shelter expenses and MMMNA may be found at <https://www.medicaid.gov/medicaid/eligibility/downloads/ssi-and-spousal-impoverishment-standards.pdf> (last viewed on October 1, 2021) while the food stamp allowance may be found at <https://www.mass.gov/doc/standard-utility-allowance-sua-as-referenced-at-106-cmr-364945/download> (last viewed on October 1, 2021). MassHealth usually tracks and puts the more recent figures on the Maintenance Needs Allowance worksheet in Exhibit 4 and issues to its eligibility staff periodic updates on changes to these figures. Based on my review, I find no error in the figures used by the MassHealth Representative in the worksheet in Exhibit 4.

130 CMR 520.017 reads in relevant part as follows:

520.017: Right to Appeal the Asset Allowance or Minimum-monthly-maintenance-needs Allowance

...

(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).

...

(D) 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 Office of Medicaid 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 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...

(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 first verifies 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 considers how the assets were spent in determining whether or not significant financial duress exists.

(b) The fair-hearing officer determines the revised MMMNA by including in the calculation the amount needed to meet the exceptional circumstances.

(c) The fair-hearing officer compares 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 first deducts 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.

(**Bolded** emphasis added.)

In this case, the couple is certainly facing stressful and difficult circumstances. Unfortunately for the couple, the MassHealth regulations limit exceptional circumstances so that they are often confined to the medical needs of the Community Spouse. As detailed in the regulation, car loan payments are not allowed. See 130 CMR 520.017(D)(1). Money is allowed in the shelter calculations for items like the mortgage (which was utilized to address the septic system costs in the shelter) and cannot be double counted. See 130 CMR 520.017(D)(1)(a). There are no extraordinary or unusual medical costs belonging to Wife or the Community Spouse wife which allow for an adjustment to be made. While there are certainly notable medical expense for the couple due to services received by the Institutionalized Spouse, such expenses are not those of the Community Spouse and cannot be used to support a conclusion that exceptional circumstances exist which can make a difference in this appeal.

The majority of the financial expenses causing duress for the family have to do with medical bills for the Husband or Institutionalized Spouse. As discussed at hearing, if there are outstanding medical bills that fall within the 3-month retroactive period, **the Appellant couple may submit them to MassHealth agency and ask the agency to see if retroactive coverage and an earlier start date for the Husband may be possible.**⁷ If and when such a date is possible, the Appellant couple may ask the providers in question to rebill. In this matter, Appellant Husband applied for benefits during the month of April 2021, so the only bills that MassHealth may be able to provide assistance for have to have been incurred for services received in January 2021 or later. While the couple has unpaid medical bills from 2020, the agency is not able to provide direct assistance on those bills, or to allow those bills to be factored into any analysis of exceptional circumstances. To allow exceptional circumstances for such older bills for the MassHealth member (Husband or Institutionalized Spouse) would conflict with the retroactive regulatory limit of assistance for the MassHealth program. See 130 CMR 516.006(A)(2).

Based on the above, I conclude that the regulations do not allow for further assistance in the form requested by the couple. This appeal must therefore be DENIED.

⁷ The relevant regulation controlling start dates for MassHealth members reads in part as follows:

516.006: Coverage Date

(A) Start Date of Coverage.

...

*(2) The begin date of MassHealth Standard, Family Assistance, or Limited coverage **may be retroactive to the first day of the third calendar month before the month of application**, if covered medical services were received during such period, and the applicant or member would have been eligible at the time services were provided. If more than one application has been submitted and not denied, the begin date will be based on the earliest application that is approved. Retroactive eligibility does not apply to services rendered under a home- and community-based services waiver provided under section 1915(c) of the Social Security Act.*

(**Bolded** emphasis added.)

Order for MassHealth

None, other than to make timely responses to any bills for the Community Spouse from January 2021 to the present, submitted by the Appellants to the agency, which show a need for retroactive assistance and/or a more beneficial start date permitted by 130 CMR 516.006(A)(2) and the other MassHealth regulations.

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.

Christopher Taffe
Hearing Officer
Board of Hearings

cc: Appeals Coordinator @ Springfield MEC