

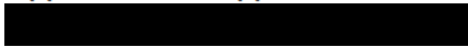
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2175990
Decision Date:	12/01/2021	Hearing Date:	09/16/2021
Hearing Officer:	Scott Bernard	Record Open to:	10/12/2021

Appearance for Appellant:




Appearance for MassHealth:

Jessica Adamiec (Taunton MEC) *via* 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:	Approved	Issue:	Long Term Care (LTC) Minimum Monthly Maintenance Needs Allowance (MMMNA) Increase
Decision Date:	12/01/2021	Hearing Date:	09/16/2021
MassHealth's Rep.:	Jessica Adamiec	Appellant's Rep.:	
Hearing Location:	Taunton 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 July 13, 2021, MassHealth approved the appellant's application for MassHealth LTC benefits with a Patient Paid Amount (PPA) of \$2,152.77 which included a Spousal Maintenance Needs Deduction (SMND) of \$327.77. (See 130 CMR 520.026 and Exhibit 1, pp. 2-3). The appellant filed this appeal in a timely manner on August 8, 2021. (See 130 CMR 610.015(B) and Ex. 1, p. 1). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032). Determination of the PPA is valid grounds for appeal. (See 130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the appellant's application for LTC benefits with a PPA of \$2,152.77, which included a SMND of \$327.77.

Issue

The appeal issues are whether MassHealth was correct, pursuant to 130 CMR 520.026, in determining the PPA and whether the MMMNA can be increased based on exceptional circumstances, thereby allowing an increase in the SMND and a lowering of the PPA.

Summary of Evidence

The MassHealth representative testified to the following. The appellant applied for MassHealth LTC benefits on April 9, 2021. (Ex. 3, p. 1). In a notice dated July 13, 2021, MassHealth approved the appellant's application for LTC with a PPA of \$2,152.77. (Ex. 1, p. pp. 2-3). To reach this, MassHealth subtracted the Personal Needs Allowance (PNA) of \$72.80, the SMND (\$327.77) and the cost of the appellant's other health insurance (\$48.08) from the appellant's countable income (\$2,601.42). (Ex. 1, p. 3; Ex. 3, p. 4; Ex. 5).

The MassHealth representative stated that an SMND applied here because the community spouse resides at an assisted living facility (ALF), which charges a fee of \$5,950 per month. (Ex. 3, pp. 2-3). MassHealth then performed the following calculation:

Minimum Monthly Maintenance Needs Allowance (MMMNA):

Shelter Expense for the Community Spouse: \$5,950.00

(+) Standard Utility Expense: \$0.00

(=) Total Shelter Expense: \$5,950.00

(-) Standard Shelter Expense: \$653.25

(=) Excess Shelter Amount: \$5,296.75

(+) Minimum MMMNA: \$2,177.00

(=) Calculated MMMNA: \$7,474.25

Maximum MMMNA: \$3,259.50

Actual Amount for MMMNA: \$3,259.50.

Spousal Maintenance Needs Deduction (SMND)

Actual MMMNA: \$3,259.50

(-) Community Spouse Income: \$2,931.73

(=) SMNA: \$327.77. (Ex. 3, pp. 5, 6; Ex. 5).

The appellant's attorney testified that the community spouse does not have enough money to continue paying for the ALF. The appellant's attorney requested that the record remain open for 30 days so that he could submit documentation concerning the community spouse's exceptional circumstances. For that reason, the record was to remain open until October 18, 2021 for the appellant's attorney to submit the following:

1. A letter from the community spouse's doctor indicating that the admission to the assisted living facility was medically necessary.
2. The housing agreement, service plan, and other pertinent documents from the assisted living facility. These documents should describe the services the community spouse receives there.
3. Any additional costs from necessities that arise from the community spouse's medical condition, frailty, or similar special needs. Additional amounts are allowed only for specific expenses necessitated by exceptional circumstances. Exceptional circumstances do not include such necessities as food, clothing, and utilities which are already accounted under the rules for calculating the allowance. (Ex. 4).

The appellant's attorney submitted the following by October 12, 2021:

- A letter from the community spouse's physician which stated that she required assisted living for safety and support with her activities of daily living due to cognitive impairment. (Ex. 6A; Ex. 7A);
- The residence agreement from the ALF signed in 2019 indicating that the community spouse receives the following basic services provided to all ALF residents:
 - Housekeeping - The community will provide housekeeping services which include vacuuming, dusting of cleared surfaces, disposal of personal trash, bathroom, and external kitchen area cleaning, twice per month.
 - Laundering of bed linens and towels twice per month.
 - One (1) meal of your choice each day, served in the dining room and prepared under the supervision of our Culinary Services Director. No added salt, low fat, low sugar and no added sugar items are always available. Beginning with second quarter of 2015, mechanically altered diets will be offered at additional cost.
 - Staff in the community 24 hours per day.
 - Schedule transportation to doctors' appointments, shopping, religious services, social and recreational activities within a fifteen (15) miles radius from the community.
 - Social, cultural, and educational activities and events. (Ex. 6B; Ex. 7B)
- Personal Service Plan
 - The community spouse requires assistance in and out of the shower for safety and assistance with washing her back and hair one time per week.
 - The community spouse requires reminders to take her medication twice per day.
 - The community spouse requires reminders to eat or prepare breakfast or lunch.
 - The community spouse requires direction, guidance, or reminders from a staff member during an evacuation. (Ex. 6D; Ex. 7D).
- The community spouse's fee agreement for the ALF, which indicated that the community spouse was charged \$5,950 for monthly rent. (Ex. 6C; Ex. 7C).
- The ALF's statement of services for October 2021, which indicated that in addition to the \$5,950 for monthly rent, the community spouse separately paid \$575 for the Personal Service Plan services, and \$360 for meals every month. (Ex. 6E; Ex. 7E). There was also \$65 per month fee for cable television. (Id.).

Findings of Fact

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

1. The appellant applied for MassHealth LTC benefits on April 9, 2021. (Ex. 3, p. 1).
2. In a notice dated July 13, 2021, MassHealth approved the appellant's application for LTC with a PPA of \$2,152.77. (Ex. 1, p. pp. 2-3).
3. To reach this, MassHealth subtracted the Personal Needs Allowance (PNA) of \$72.80, the SMND (\$327.77) and the cost of the appellant's other health insurance (\$48.08) from the appellant's countable income (\$2,601.42). (Ex. 1, p. 3; Ex. 3, p. 4; Ex. 5).
4. The record was left open until October 18, 2021 for the appellant's attorney to submit the following:
 - a. A letter from the community spouse's doctor indicating that the admission to the assisted living facility was medically necessary.
 - b. The housing agreement, service plan, and other pertinent documents from the assisted living facility. These documents should describe the services the community spouse receives there.
 - c. Any additional costs from necessities that arise from the community spouse's medical condition, frailty, or similar special needs. Additional amounts are allowed only for specific expenses necessitated by exceptional circumstances. Exceptional circumstances do not include such necessities as food, clothing, and utilities which are already accounted under the rules for calculating the allowance. (Ex. 4).
5. The appellant's attorney submitted the following by October 12, 2021:
 - a. A letter from the community spouse's physician which stated that she required assisted living for safety and support with her activities of daily living due to cognitive impairment. (Ex. 6A; Ex. 7A);
 - b. The residence agreement from the ALF signed in 2019 indicating that the community spouse receives the following basic services provided to all ALF residents:
 - i. Housekeeping - The community will provide housekeeping services which include vacuuming, dusting of cleared surfaces, disposal of personal trash, bathroom, and external kitchen area cleaning, twice per month.

- ii. Laundering of bed linens and towels twice per month.
 - iii. One (1) meal of your choice each day, served in the dining room and prepared under the supervision of our Culinary Services Director. No added salt, low fat, low sugar and no added sugar items are always available. Beginning with second quarter of 2015, mechanically altered diets will be offered at additional cost.
 - iv. Staff in the community 24 hours per day.
 - v. Schedule transportation to doctors' appointments, shopping, religious services, social and recreational activities within a fifteen (15) miles radius from the community.
 - vi. Social, cultural, and educational activities and events. (Ex. 6B; Ex. 7B)
- c. Personal Service Plan
- i. The community spouse requires assistance in and out of the shower for safety and assistance with washing her back and hair one time per week.
 - ii. The community spouse requires reminders to take her medication twice per day.
 - iii. The community spouse requires reminders to eat or prepare breakfast or lunch.
 - iv. The community spouse requires direction, guidance, or reminders from a staff member during an evacuation. (Ex. 6D; Ex. 7D).
- d. The community spouse's fee agreement for the ALF, which indicated that the community spouse was charged \$5,950 for monthly rent. (Ex. 6C; Ex. 7C).
- e. The ALF's statement of services for October 2021, which indicated that in addition to the \$5,950 for monthly rent, the community spouse separately paid \$575 for the Personal Service Plan services, and \$360 for meals every month. (Ex. 6E; Ex. 7E). There was also \$65 per month fee for cable television. (Id.).

Analysis and Conclusions of Law

MassHealth calculates the MMMNA to determine the amount a community spouse requires to live in the community. (130 CMR 520.026(B).) "If the community spouse's gross income is less than the [MMMNA]...MassHealth...may deduct an amount from the institutionalized spouse's countable-income amount to meet this need." (Id.) This amount is referred to as the spousal-maintenance-needs deduction. (Id.).

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

- (a) \$[2,177.00]¹ (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...[Not applicable].

(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).** (Emphasis added). (*Id.*)

Pursuant to 130 CMR 520.017(D), after an applicant has received notice from MassHealth of his or her denial or approval for MassHealth Standard benefits, either the applicant or the community spouse may submit an appeal to the Board of Hearings, requesting an increase of the community spouse's MMMNA based upon exceptional circumstances, defined as follows:

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, the fair-hearing officer reviews the housing agreement, service plan, fee schedule, and other pertinent documents to determine whether exceptional circumstances exist.**

¹ The numerical amounts listed in the regulations change according to cost-of-living adjustments. The numbers in the brackets reflect the most current numbers as of the date of the hearing. (See <https://www.mass.gov/doc/figures-used-to-determine-minimum-monthly-maintenance-needs-allowance-mmmna-4/download>).

Additional amounts are allowed only for specific expenses necessitated by exceptional circumstances of the community spouse and not for maintaining any pre-set standard of living. (Emphases added). (130 CMR 520.017(D)(1)).

The record shows that MassHealth correctly determined that based on 130 CMR 520.026, the appellant should receive an SMND of \$327.77. The record shows that the maximum MMMNA 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 130CMR520.017(D). Because MassHealth is not permitted to increase the maximum MMMNA and the community spouse’s monthly income only exceeds the maximum MMMNA by \$327.77, the appellant does not qualify to receive an SMND that is higher the \$327.77 since MassHealth is not permitted to increase the MMMNA beyond \$3,259.50.

The MMMNA can be increased above the maximum because of a fair hearing based on exceptional circumstances. The record shows that such circumstances exist in this case. The community spouse is a resident of an ALF. According to the community spouse’s physician, she requires assisted living for safety and support with her activities of daily living due to cognitive impairment. A review of the pertinent document indicates that the ALF provides to all residents twice monthly housekeeping and laundering of bed linens and towels; one meal per day in the dining room; staff in the ALF 24 hours per day; scheduled transportation to doctors’ appointments, shopping religious services, social and recreational activities with a 15 miles radius of the ALF; and social, cultural, and educational activities and events. Additionally, the community spouse receives personal services assisting her with ADLs, medications, and safety related services. These are necessities that arise from the medical condition, frailty, or similar special needs of the community spouse and do not appear to be counted more than once in this calculation.

For that reason, the MMMNA should be raised to \$6,885, which includes the monthly cost of rent (\$5,950), services under the community spouse’s personal service plan (\$575), and meals (\$360). This does not include the monthly cost of cable television, which does not fall under the category of exceptional circumstances since it does not appear to arise from the community spouse’s medical condition, frailty, or other similar special needs.

Based on this, the Spousal Maintenance Needs Allowance/Deduction is \$5,577.02 based on the following calculation:

Minimum Monthly Maintenance Needs Allowance (MMMNA):

Shelter Expense for the Community Spouse: \$6,885.00

(+) Standard Utility Expense: \$0.00

(=) Total Shelter Expense: \$6,885.00

(-) Standard Shelter Expense: \$653.25

(=) Excess Shelter Amount: \$6,231.75

(+) Minimum MMMNA: \$2,177.00

(=) Calculated and Actual MMMNA: \$8,408.75

Spousal Maintenance Needs Deduction (SMND)

Actual MMMNA: \$8,408.75

(-) Community Spouse Income: \$2,931.73

(=) SMNA: \$5,577.02.

The new PPA is therefore \$0.00 based on the following calculation:

The appellant's Total Countable Income: \$2,601.42

(-) Total Allowances: \$5,597.10

Personal Needs Allowance: \$72.00

SMND/A: \$5,577.02

Other Health Insurance: \$48.08

(=) Patient Paid Amount: \$0.00

Order for MassHealth

Issue a new approval notice with a PPA of \$0.00 effective January 1, 2021.

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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780

