

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2177457
Decision Date:	12/02/2021	Hearing Date:	11/01/2021
Hearing Officer:	Alexandra Shube	Record Open to:	11/29/2021

Appearance for Appellant:




Appearance for MassHealth:

Via telephone:
Karen Ryan, Tewksbury MEC



*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:	Patient Paid Amount; MMMNA
Decision Date:	12/02/2021	Hearing Date:	11/01/2021
MassHealth's Rep.:	Karen Ryan	Appellant's Rep.:	
Hearing Location:	Tewksbury MassHealth Enrollment Center	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

Through a notice dated September 7, 2021, MassHealth notified the appellant that he is eligible for MassHealth Standard benefits effective May 18, 2021, with a patient paid amount (PPA) of \$1,355.28 every month (Exhibit 1). The appellant filed this appeal in a timely manner on September 30, 2021 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

The record in this appeal was held open until November 15, 2021 for the appellant to submit additional documentation and until November 29, 2021 for MassHealth to review and respond to the appellant's submission.

Action Taken by MassHealth

MassHealth notified the appellant that he is eligible for MassHealth Standard benefits effective May 18, 2021, with a patient paid amount of \$1,355.28 every month.

Issue

The appeal issue is whether the community spouse is entitled to increased support from the appellant through a reduction in the PPA, pursuant to 130 CMR 520.17(D).

Summary of Evidence

The MassHealth representative appeared at hearing via telephone and testified as follows: the appellant is under the age of 65 and a resident of a nursing facility with a spouse in the community. On July 13, 2021, MassHealth received a long-term care application on behalf of the appellant with a requested start date of May 18, 2021. MassHealth approved the appellant for benefits beginning on May 18, 2021 with a patient paid amount (PPA) of \$1,355.28 every month. The MassHealth representative testified that the appellant's monthly income totals \$1,674, comprised of his monthly Social Security Income (SSI). She explained that the PPA was calculated as follows: \$1,674 (appellant's gross SSI) - \$72.80 (Personal Needs Allowance (PNA)) - \$245.92 (health insurance) = \$1,355.28.

The MassHealth representative testified that based on the community spouse's income and shelter expenses, the appellant and spouse do not qualify to receive the spousal maintenance needs allowance (SMNA). She stated that the spouse has two sources of income, self-employment and wages, and MassHealth issued its determination based on verifications provided at the time of the application. MassHealth testified that the community spouse's gross income was \$9,563.97. The community spouse's Minimum Monthly Maintenance Needs Allowance (MMMNA) was calculated as follows: \$1,672 (mortgage) + \$646 (standard utility expense) = \$2,318.00 (total shelter expense) - \$653.25 (standard shelter expense) = \$1,664.75 (excess shelter amount) + \$2,177.50 (federal standard maintenance allowance) = \$3,842.25 (calculated MMMNA). MassHealth reverted to the regulatory maximum MMMNA of \$3,529.50. Because the community spouse's income was above the MMMNA, the community spouse did not qualify for SMNA.

MassHealth stated that just prior to the hearing, the appellant's spouse provided updated income information showing self-employment income and earned wages as \$6,512.52 per month. Additionally, there was \$225 in home owner's insurance that had not been taken into consideration. Based on that information, MassHealth provided an updated calculation that resulted in a calculated MMMNA of \$4,109.25, which still reverted to the regulatory maximum MMMNA of \$3,529.50. Because the spouse's income was still greater than the MMMNA, she did not qualify for SMNA and MassHealth's decision did not change.

The appellant was represented at hearing by a Medicaid specialist and his community spouse. The appellant's spouse testified that the income information MassHealth has is not accurate and she is not making close to \$9,000. She was making that amount of money in 2020, but not any more. The spouse explained that she and the appellant filed for bankruptcy about a year ago and she cannot afford the bankruptcy plan payments (\$2,701 per month) without additional support from the appellant. The appellant's spouse argued that, as shown in the Plan, the bankruptcy payment is for back mortgage payments and therefore should be included in the mortgage section of MassHealth's

calculation.¹ The appellant provided a copy of the Order Confirming Chapter 13 Plan prior to hearing, although it was not signed or dated by a Bankruptcy Court judge. The document showed that the Chapter 13 Plan (hereinafter the “Plan”) was filed on March 9, 2021. The Plan’s effective date was November 1, 2020 and payments were \$1,507.00 per month for five months and then \$2,701.00 per month for 55 months. The appellant’s spouse stated that her mortgage and bankruptcy payments alone cost \$4,373 per month and that does not include any other bills or expenses. She cannot handle the bankruptcy payment on her own and she is no longer receiving the appellant’s SSI because the facility became representative payee. She stated that she earns a fixed amount of \$2,400 from her job and about \$3,000 from self-employment, but about \$300 of that will be ending soon.

MassHealth responded that its records show the appellant’s spouse earns about \$1,800 gross bi-weekly in wages from her job. If the spouse wants to update her self-employment income, MassHealth would consider an updated profit and loss statement showing the total income minus any allowable expenses. The MassHealth representative stated that per regulation 130 CMR 520.026(B)(1)(b), when determining spousal maintenance needs deductions, MassHealth could only consider “the actual expenses for rent, mortgage (including interest and principal), property taxes and insurance, and any required maintenance charge for a condominium or cooperative,” not bankruptcy payments or other debts.

The record was left open until November 15, 2021 for the appellant to submit a profit and loss statement for January 2021 through October 2021 and a signed and dated copy of the bankruptcy plan.

On November 15, 2021 via email, the appellant provided a signed and dated copy of the Plan and a profit and loss statement. The signed Plan showed that it was confirmed by a Bankruptcy Court judge on July 19, 2021. Upon review of the documentation submitted, MassHealth responded on November 18, 2021 and stated that it reviewed the updated income for the spouse, but there has been no change to the SMNA. MassHealth considered all allowable expenses pursuant to 130 CMR 520.026. The community spouse’s updated income based on the profit and loss statement and wages was \$6,717.52.² MassHealth provided the following MMMNA calculation: \$1,897 (mortgage and home owner’s insurance) + \$688 (standard utility expense) = \$2,585.00 (total shelter expense) - \$653.25 (standard shelter expense) = \$1,931.75 (excess shelter amount) + \$2,177.50 (federal standard maintenance allowance) = \$4,109.25 (calculated MMMNA). MassHealth again reverted to the regulatory maximum MMMNA of \$3,529.50.

The appellant’s spouse responded that the bankruptcy payment must be taken into account and she

¹ The Plan shows that the payments go toward the appellant’s mortgage holder for prepetition arrears on the appellant’s property in the sum of \$51,395.53 over 60 months in the sum of \$856.59 per month; an IRS tax lien on the appellant’s property in the sum of \$56,920.08 over 60 months in the sum of \$948.66 per month; and an MDOR tax lien on the appellant’s property in the sum of \$5,850.34 over 60 months in the sum of \$97.50 per month. There are also attorney’s fees and other claims listed. See Exhibits 2 and 8.

² The community spouse’s income is broken down as follows: \$1,871.84 in bi-weekly earned wages, totaling \$4,052.52 per month and \$2,664 per month in self-employment based off of the profit and loss statement from January 2021 through October 2021.

cannot survive without the appellant's income. Additionally, on November 24, 2021 she stated that the appellant was released from the nursing facility which significantly brought up expenses at home for his care.

Findings of Fact

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

1. The appellant is under the age of 65 and was a resident of a nursing facility with a spouse in the community (Testimony and Exhibit 5).
2. On July 13, 2021, MassHealth received a long-term care application on behalf of the appellant with a requested start date of May 18, 2021 (Testimony and Exhibit 5).
3. On September 7, 2021, MassHealth approved the appellant for benefits beginning on May 18, 2021 with a PPA of \$1,355.28 every month (Testimony and Exhibit 1).
4. The appellant's monthly income totals \$1,674, comprised of his monthly SSI and the PPA was calculated as follows: \$1,674 (appellant's gross SSI) - \$72.80 (PNA) - \$245.92 (health insurance) = \$1,355.28 (Testimony and Exhibit 5).
5. At the time of the application, the community spouse's income was reported as \$9,563.97, but it was updated to \$6,717.52 based on her wages of \$4,052.52 per month and self-employment earnings of \$2,664 per month (which were updated based on a profit and loss statement for January 2021 through October 2021 provided by the appellant's spouse during the record open period). (Testimony and Exhibits 5, 8, and 9).
6. The MMMNA was calculated as follows: \$1,897 (mortgage and home owner's insurance) + \$688 (standard utility expense) = \$2,585.00 (total shelter expense) - \$653.25 (standard shelter expense) = \$1,931.75 (excess shelter amount) + \$2,177.50 (federal standard maintenance allowance) = \$4,109.25 (calculated MMMNA). MassHealth again reverted to the regulatory maximum MMMNA of \$3,529.50.
7. Because the community spouse's income exceeded that of the MMMNA, she did not qualify for the SMNA (Testimony and Exhibits 5 and 9).
8. The appellant and his community spouse pay \$2,701 per month pursuant to a bankruptcy plan (Testimony and Exhibits 2 and 8).
9. The bankruptcy plan shows that the payments go toward the appellant's mortgage holder for prepetition arrears on the appellant's property in the sum of \$51,395.53 over 60 months in the sum of \$856.59 per month; an IRS tax lien in the appellant's property in the sum of \$56,920.08 over 60 months in the sum of \$948.66 per month; and an MDOR tax lien on the appellant's property in the sum of \$5,850.34 over 60 months in the sum of \$97.50 per

month. There are also attorney's fees and other claims listed. (Exhibit 8).

10. Since the date of hearing, the appellant has been discharged from the nursing facility (Exhibit 10).

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) (emphasis added). 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
 1. 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
 2. 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 **[\$688]**.

(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.)³

130 CMR 520.017(B) reads in relevant part as follows:

(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).

In this case, the appellant and his community spouse are requesting that MassHealth consider the bankruptcy payment as part of the mortgage in its MMMNA calculation. The appellant argued that the bankruptcy payment is a mortgage payment because the monthly payment pursuant to the Chapter 13 Plan is for back mortgage payments. MassHealth's position is that it cannot do so because the regulation only allows for "the actual expenses for rent, mortgage (including interest and principal), property taxes and insurance, and any required maintenance charge for a condominium or cooperative."

130 CMR 520.017, however, states that the MMMNA is based on "the community spouse's shelter and utility costs..." and 130 CMR 520.026 does not explicitly exclude bankruptcy plan payments, but states only that it includes "**the actual expenses for rent, mortgage (including interest and principal)**, property taxes and insurance..." The appellant's argument that the bankruptcy payment is for back mortgage payments and should be included in the MMMNA calculation as part of the mortgage is persuasive. Pursuant to the Plan, however, only \$856.59 per month is paid for arrears to the appellant's mortgage holder. This amount is for the back mortgage payments and should be included as part of the community spouse's "shelter costs." While the appellant argued that the entire \$2,701 monthly payment was for back payments, it does not appear that way from the Plan, which includes payments to the IRS, MDOR, as well attorney's fees and other claims.

³ 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-impoveryshment-standards.pdf> (last viewed on November 26, 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 November 26, 2021). MassHealth usually tracks and puts the more recent figures on the Maintenance Needs Allowance worksheet (see Exhibits 5, 7, and 9) 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 Exhibits 5, 7 and 9. As can be seen in Exhibits 7 and 9, the MassHealth representative updated the Standard Utility Allowance to \$688 from the \$646 originally used in the calculation shown in Exhibit 5.

For these reasons, the appeal is approved in part and MassHealth should include the additional \$856.59 per month from the bankruptcy plan as part of the mortgage when calculating the MMMNA.

When the amount for the mortgage is increased by the allowed portion of the bankruptcy payment, the following MMMNA calculation applies: \$2,753.59 (\$1,672 mortgage + \$225 home owner's insurance + \$856.59 bankruptcy payment) + \$688 (standard utility expense) = \$2,753.59 (total shelter expense) - \$653.25 (standard shelter expense) = \$2,100.34 (excess shelter amount) + \$2,177.50 (federal standard maintenance allowance) = \$4,277.84 (calculated MMMNA). The community spouse's income (\$6,717.52) is still greater than the calculated MMMNA and the regulatory maximum MMMNA of \$3,529.50, to which MassHealth would revert.

For these reasons, the appeal is denied in part because the appellant still does not qualify for the SMNA based on the MMMNA calculation.

Even if the full \$2,701 bankruptcy payment was included as part of the mortgage for a total monthly mortgage of \$4,598 (\$1,672 mortgage + \$225 home owner's insurance + \$2,701 bankruptcy payment), the calculated MMMNA would be \$6,810.25, the standard MMMNA cap of \$3,259.50 would apply, and the appellant would still not qualify for SMNA. The difference between the calculated MMMNA and the community spouse's income (\$92.73 per month) does not qualify for an adjustment of the MMMNA pursuant to 130 CMR 520.017.

Pursuant to the provisions of 130 CMR 520.017(D), the fair hearing officer may substitute for the minimum monthly maintenance needs allowance a new amount to meet the expenses of the community spouse. This substitution may be performed **only when the community spouse has shown that the requested increase in the spousal maintenance needs allowance is based upon exceptional circumstances.**

The applicable regulation provides as follows:

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 (130 CMR 520.017(D)).

(Emphasis added).

Exceptional circumstances exist when the community spouse has expenses (not already taken into account) that arise from a medical condition or frailty, or other special need of the community spouse and those circumstances result in significant financial duress. The appellant's

spouse and Medicaid specialist did not argue or provide sufficient evidence to establish that there were exceptional circumstances. There are no extraordinary or unusual medical costs, medical conditions, frailty, or similar special need belonging to the community spouse which allow for an adjustment to be made. Additionally, the appeal has been approved as far as allowing for a portion of the bankruptcy payment in the mortgage section of the MMNA calculation. As such, that has already been included as part of the shelter expense in calculating the MMMNA and cannot be double counted. As there are no exceptional circumstances, the MMMNA cannot be adjusted pursuant to 130 CMR 520.017(D).

For these reasons, the appeal is denied in part and approved in part.

Order for MassHealth

While it does not change the PPA or SMNA, MassHealth should include \$856.59 from the bankruptcy plan monthly payment in the mortgage section when calculating the MMMNA.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957

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