

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in part; Denied in part	<b>Appeal Number:</b>	2177636
<b>Decision Date:</b>	12/13/2021	<b>Hearing Date:</b>	11/04/2021
<b>Hearing Officer:</b>	Christopher Jones	<b>Record Open to:</b>	11/12/2021

**Appearance for Appellant:**



**Appearance for MassHealth:**

Michael Rooney – Tewksbury 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

<b>Appeal Decision:</b>	Approved in part; Denied in part	<b>Issue:</b>	LTC – PPA/SMNA
<b>Decision Date:</b>	12/13/2021	<b>Hearing Date:</b>	11/04/2021
<b>MassHealth's Rep.:</b>	Michael Rooney	<b>Appellant's Rep.:</b>	██████████
<b>Hearing Location:</b>	Tewksbury MEC - Remote	<b>Aid Pending:</b>	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 August 31, 2021, MassHealth approved the appellant's application for long-term-care benefits and set the appellant's patient-paid amount at \$1,691.95. Exhibit 2. The appellant filed this appeal in a timely manner on October 6, 2021. Exhibit 2; 130 CMR 610.015(B); EOM 20-09 (Apr. 7, 2020). Determinations of the patient-paid amount and the spousal-maintenance-need allowance are valid grounds for appeal. 130 CMR 610.032; 130 CMR 520.017(D).

The record was initially left open at the hearing until November 12, 2021 for the appellant to submit evidence regarding extraordinary medical expenses.

## Action Taken by MassHealth

MassHealth set the appellant's patient-paid amount at \$1,691.95 as of September 1, 2021.

## Issue

The appeal issue is whether the community spouse is entitled to an increase in their spousal-maintenance-needs allowance pursuant to 130 CMR 520.017(D) and 520.026(B)(1).

## Summary of Evidence

The institutionalized spouse filed an application for MassHealth long-term-care benefits on May 11, 2021. MassHealth approved the application on August 31, 2021, with coverage starting as of April 6, 2021. MassHealth set the appellant's patient-paid amount ("PPA") at \$1,691.95 as of September 1, 2021. This calculation was based upon the institutionalized spouse's income of \$821 per month from Social Security and \$2,135.96 from a pension. MassHealth allowed deductions from the institutionalized spouse's income for the personal-needs allowance ("PNA") of \$72.80, the spousal-maintenance-needs allowance ("SMNA") of \$976.76, and health insurance costs of \$215.45.

On October 27, 2021, MassHealth updated the calculation based upon the community spouse's updated gross Social Security. MassHealth's representative testified that this calculation was automatic after Social Security's computer system provided updated benefits information. This reduced the community spouse's SMNA to \$965.76 and increased the institutionalized spouse's PPA to \$1,702.95 as of November 1, 2021. The community spouse's income is currently \$765.20 from Social Security and \$1,528.24 in verified employment income. The community spouse pays a mortgage of \$1,156.29, including taxes and insurance.

The appellants seek to allow the community spouse to retain more of the institutionalized spouse's income to meet her monthly bills. The institutionalized spouse has tens of thousands of dollars in unpaid medical bills from before the coverage date for Medicaid. Also, both appellants have a tax bill owed to the IRS that is significantly impacting their ability to make ends meet. The institutionalized spouse's income is being garnished \$123.15 every month and the community spouse's \$84.90. The community spouse only receives \$550.60 of her Social Security after deductions for tax garnishment and Medicare premiums. She asked that these debts be factored into the PPA. Also submitted were various other bills and expenditures including heating oil bills, past-due electrical bills, health and dental insurance premiums, and unpaid medical bills on behalf of the institutionalized spouse.

MassHealth explained that the appellant's medical bills would only be covered if they are within the lookback period of eligibility. Otherwise, the PPA is adjusted based upon the calculation of the SMNA, which is based upon the community spouse's income and expenses. To calculate the SMNA, MassHealth first determines the community spouse's minimum-monthly-maintenance-needs allowance ("MMMNA"). This is a number based upon the community spouse's actual housing expenses and certain federal standards intended to cover all other costs of living. Using the community spouse's housing expenses resulting in reaching the regulatory maximum-monthly-maintenance-needs allowance of \$3,259.50. To further increase the SMNA there must be a finding of "exceptional circumstances" resulting in "significant financial duress" under 130 CMR 520.017(D). The exceptional circumstances "are limited to those necessities that arise from the medical condition, frailty, or similar special needs of the community spouse." Therefore, the appellant's representative was asked if the community spouse had any medical bills that could be reviewed for "exceptional circumstances."

The appellant's representative responded that the community spouse continues to work, but that she needs back surgery and has many other health problems. She also testified that the appellants have

both previously lost a home to foreclosure and are very concerned about the prospect of facing foreclosure again. She requested that the record be left open to gather additional documents that focused upon expenses arising from the community spouse's medical conditions. She provided documentation of various bills for the community spouse: hearing aids (\$6,015), dental premiums (\$57.40), health insurance premiums (\$228.50), and unpaid extraordinary medical bills (\$412) and dental (\$133) bills.

## **Findings of Fact**

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

1. The institutionalized spouse applied for MassHealth long-term-care benefits on May 11, 2021. Exhibit 4.
2. On August 31, 2021, MassHealth approved the appellant's long-term-care benefits as of April 6, 2021 and set the PPA at \$1,691.95 as of September 1, 2021. Exhibits 2; 4.
3. The institutionalized spouse's income consists of gross Social Security benefits of \$821 and a pension of \$2135.96. He has monthly health insurance premiums of \$215.45. Exhibit 4; testimony by MassHealth's representative.
4. The community spouse verified monthly income includes gross monthly Social Security benefits of \$765.20 as of January 1, 2021 and verified employment income of \$1,528.24. Testimony by MassHealth's representative; Exhibits 3; 4.
5. The community spouse pays for her own utilities, and has a monthly mortgage payment of \$1,156.29, including taxes and insurance. Testimony by both parties; Exhibits 4; 5.
6. Both appellants have their Social Security income garnished by the IRS. Further, the community spouse has extraordinary expenses related to her medical conditions including \$6,015 for hearing aids, \$412 for medical bills, and \$133 in dental bills. Exhibit 5.

## **Analysis and Conclusions of Law**

The minimum-monthly-maintenance-needs allowance is defined as "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)." 130 CMR 520.017(B).

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

- (a) \$[2,177.50<sup>1</sup>] (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 included in the rent or condominium fee, this amount is \$[421]. 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).
- (3) If the institutionalized individual is subject to a court order for the support of the community spouse, the court-ordered amount of support must be used as the spousal-maintenance needs deduction when it exceeds the spousal-maintenance-needs deduction calculated according to 130 CMR 520.026(B) or resulting from a fair hearing.

130 CMR 520.026(B).

The community spouse's current MMMNA is only slightly higher than the regulatory maximum-monthly-maintenance needs allowance:  $\$2,177.50 + (\$1,156.29 - \$653.25) + \$688 = \$3,368.54$ .<sup>2</sup> However, the community spouse is requesting an increase beyond the maximum-monthly-maintenance-needs allowance due to "exception circumstances" resulting in "significant financial duress." 130 CMR 520.017(D)(1). Exceptional circumstances must be

circumstances other than those already taken into account in establishing the maintenance standards for the community spouse under 130 CMR 520.026(B) ... . 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,**

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<sup>1</sup> The adjusted numbers inserted into this quotation are available from: Centers for Medicare & Medicaid ("CMS") Informational Bulletin from June 4, 2021 (<https://www.medicaid.gov/medicaid/eligibility/downloads/spousal-impoverishment/ssi-and-spousal-impoverishment-standards.pdf>) (last visited December 5, 2021); and [https://eohhs.ehs.state.ma.us/DTA/PolicyOnline/BEACON5/!SSL!/WebHelp/SNAP/SNAP\\_COLA/SNAP\\_COLA\\_OLG\\_Update\\_FINAL.htm](https://eohhs.ehs.state.ma.us/DTA/PolicyOnline/BEACON5/!SSL!/WebHelp/SNAP/SNAP_COLA/SNAP_COLA_OLG_Update_FINAL.htm) (last visited December 6, 2021).

The CMS guidance refers to the "federal standard maintenance allowance" as the MMMNA and the "excess shelter allowance" as the "community spouse monthly housing allowance." The

<sup>2</sup> Prior to October 1, 2021, the MMMNA was only \$3,326.54, based upon the standard deduction for utility expenses of \$646.

**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**.

...

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.

130 CMR 520.017(D)(1)-(2) (**emphasis added**).

This appeal must be DENIED in part to the extent that the appellants seek to have the PPA adjusted to consider the institutionalized spouse's medical bills or either spouse's debt to the IRS. Similarly, the community spouse's medical and dental premiums are ordinary expenditures and therefore cannot be taken into consideration. However, I find that the appellants have established that exceptional circumstances exist arising from the community spouse's medical conditions.

The regulations indicate that the MMMNA should be used, and that an increase should be allowed from the MMMNA to meet the expenses caused by the exceptional circumstances.<sup>3</sup> The community spouse identified extraordinary, uncovered medical expenses that total \$6,560. If paid over a year, this debt would necessitate an additional \$546.67 per month. This decision will allow an increase in the SMNA of \$546.67 for one year from September 1, 2021, the date of the appealed PPA notice. Because of the various changes in factors there are three separate PPA calculations:

- For September 2021, the SMNA should have been \$1,590.47 and the PPA should have been \$1,078.24.
- For October 2021, based on the increase to the standard utility deductions, the SMNA would have increased to \$1,632.47 and the PPA decreased to \$1,036.24.
- For November 2021 forward, the SMNA would be \$1,621.77 and the PPA is \$1,046.94.

This appeal is APPROVED in part. If the community spouse has any fluctuations in her employment income, she should report those to MassHealth and her SMNA may be recalculated to reflect those income changes. However, the additional SMNA increase of \$546.67 should continue through August 2022.

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<sup>3</sup> Possibly, the regulations are meant to only allow an increase from the maximum-monthly-maintenance-needs allowance. However, the regulatory language repeated refers to increases to the "MMMNA" which is defined as the minimum-monthly-maintenance-needs allowance and is distinct from the maximum-monthly-maintenance-needs allowance. See 130 CMR 520.017(C)(2).

## **Order for MassHealth**

Allow an increase to the SMNA of \$546.67 for one year from September 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.

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Christopher Jones  
Hearing Officer  
Board of Hearings

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

