

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2178158
Decision Date:	12/22/2021	Hearing Date:	11/23/2021
Hearing Officer:	Alexandra Shube	Record Open to:	11/24/2021

Appearance for Appellant:

Via telephone:



Appearance for MassHealth:

Via telephone:

Jamie Lapa, Springfield 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	Issue:	Patient Paid Amount; MMMNA; Spousal Allowance
Decision Date:	12/22/2021	Hearing Date:	11/23/2021
MassHealth's Rep.:	Jamie Lapa	Appellant's Rep.:	██████████
Hearing Location:	Springfield 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 October 5, 2021, MassHealth notified the appellant that he is eligible for MassHealth Standard benefits effective May 8, 2021, with a patient paid amount (PPA) of \$2,238.03 every month (Exhibit 1). The appellant filed this appeal in a timely manner on October 26, 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 23, 2021 for the appellant to submit additional documentation and until November 24, 2021 for MassHealth to review and respond to the appellant's submission (Exhibit 6).

Action Taken by MassHealth

MassHealth notified the appellant that he is eligible for MassHealth Standard benefits effective May 8, 2021, with a patient paid amount of \$2,238.03 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.

Summary of Evidence

The MassHealth representative appeared at hearing via telephone and testified as follows: the appellant is over the age of 65 and a resident of a nursing facility with a spouse in the community. On August 23, 2021, MassHealth received a long-term care application on behalf of the appellant with a requested start date of May 8, 2021. On October 5, 2021, MassHealth approved the appellant for benefits beginning on May 8, 2021 with a patient paid amount (PPA) of \$2,238.03 every month. The MassHealth representative testified that the appellant's monthly income totaled \$4,167.42, based on new Social Security Income (SSI) information received the day of hearing for which she still needed verification. She stated that on the hearing date, the PPA and Spousal Maintenance Needs Allowance (SMNA) were adjusted because she also received verification of homeowner's insurance and real estate tax. Additionally, health insurance was incorrectly deducted from the appellant's income in the original PPA calculation. As a result of the homeowner's insurance, real estate tax, and health insurance, the monthly PPA actually increased slightly. In an SMNA worksheet provided prior to hearing which does not reflect the updated income or removal of the health insurance deduction, the PPA was calculated as follows: \$4,315.92 (appellant's monthly income, comprised of SSI, Pension, and Other) - \$72.80 (Personal Needs Allowance (PNA)) - \$1,724.34 (SMNA) - \$76 (health insurance deduction) = \$2,442.78 (monthly PPA).

MassHealth testified that the community spouse's gross monthly income was \$923.66. The community spouse's Minimum Monthly Maintenance Needs Allowance (MMMNA) was calculated as follows: \$0 (rent/mortgage) + \$435.75 (taxes and insurance) + \$688 (standard utility expense) = \$1,123.75 (total shelter expense) - \$653.25 (standard shelter expense) = \$470.50 (excess shelter amount) + \$2,177.50 (federal standard maintenance allowance) = \$2,648.00 (calculated MMMNA) - \$923.66 (community spouse's monthly income) = \$1,724.34 (Spousal Maintenance Needs Deduction (SMND) or SMNA). The SMNA was accounted for in the PPA calculation to help support the community spouse at home. The MassHealth representative explained that pursuant to regulation 130 CMR 520.026(B)(1)(b), MassHealth could only consider the community spouse's rent or mortgage, not the home equity line of credit (HELOC), which the appellant is asking MassHealth to consider when calculating the SMNA and PPA.

The appellant was represented at hearing via telephone by his attorney's office. The representative testified that the HELOC should be considered as part of the appellant's mortgage because the HELOC is a mortgage secured by the property, which is subject to foreclosure proceedings in the event of default. She explained that the HELOC funds were used to replace the roof on the primary residence. The monthly payment for the principal and interest beginning in the month of eligibility was an average of \$60 per month. There is about \$2,700 left on the HELOC and the appellant would notify MassHealth when it was paid off so the SMNA and PPA could be adjusted accordingly. She is not arguing that there are exceptional circumstances, only that the HELOC

should be considered a mortgage by MassHealth in its calculations.

The record was held open for the appellant until the close of business on November 23, 2021 (the day of hearing) to submit statements showing the HELOC payments and verification of the appellant's SSI. The record was held open until November 24, 2021 for MassHealth to review and respond to the appellant's submission. The HELOC statements provided show that the appellant's monthly payment averaged \$60.08 over the 11-month period since payments began. The MassHealth representative provided an updated SMNA worksheet which reflected the change in the appellant's income¹ and PPA calculation as follows: \$4,167.42 (appellant's monthly income) - \$72.80 (PNA) - \$1,724.34 (SMNA) - \$0 (no health insurance deduction) = \$2,370.28 (monthly PPA). MassHealth still would not consider the HELOC as the mortgage and the SMNA calculation for the community spouse remained unchanged.

Findings of Fact

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

1. The appellant is over the age of 65 and is a resident of a nursing facility with a spouse in the community (Testimony and Exhibit 5).
2. On August 23, 2021, MassHealth received a long-term care application on behalf of the appellant with a requested start date of May 8, 2021 (Testimony and Exhibit 5).
3. On October 5, 2021, MassHealth approved the appellant for benefits beginning on May 8, 2021 with a PPA of \$2,238.03 every month (Testimony and Exhibit 1).
4. On October 26, 2021, the appellant timely appealed the notice (Exhibit 2).
5. After updating his SSI with MassHealth, the appellant's monthly income is \$4,167.42 and the PPA was calculated as follows: \$4,167.42 (appellant's income) - \$72.80 (PNA) - \$1,724.34 (SMNA) - \$0 (no health insurance deduction) = \$2,370.28 (monthly PPA).
6. The new PPA of \$2,370.28 reflected the appellant's correct SSI, included homeowner's insurance and taxes, and removed the health insurance deduction (Testimony and Exhibits 5 and 8).
7. The community spouse's income is \$923.66 and the MMMNA and SMNA were calculated as follows: \$0 (rent/mortgage) + \$435.75 (taxes and insurance) + \$688 (standard utility expense) = \$1,123.75 (total shelter expense) - \$653.25 (standard shelter expense) = \$470.50 (excess shelter amount) + \$2,177.50 (federal standard maintenance allowance) = \$2,648.00 (calculated MMMNA) - \$923.66 (community spouse's income) = \$1,724.34 (SMNA)

¹ The appellant's SSI was confirmed to be \$1,947.00, not \$2,095.50 which MassHealth originally used in its calculation. His pension and other income remained the same.

(Testimony and Exhibits 5 and 8).

8. The appellant and his community have a HELOC which was taken out to pay for a new roof on the primary residence (Testimony and Exhibit 4).
9. The monthly payment for the HELOC averages \$60.08 (Testimony and Exhibit 7).
10. The record in the appeal was held open until November 24, 2021 (Exhibits 6 and 9).

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.)²

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 HELOC monthly payment as part of the mortgage in its MMMNA calculation. The appellant argued that the HELOC payment is a mortgage payment because it is secured by the property and is subject to foreclosure proceedings in the event of default. 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(B)(1)(b) does not explicitly exclude HELOC 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 HELOC payment is a mortgage payment and should be included in the MMMNA calculation as part of the mortgage is persuasive. A HELOC is essentially a second mortgage and there is no reason why MassHealth should not consider it as part of the actual expense for the mortgage when calculating the MMMNA. Additionally, the HELOC was used by the appellant and his spouse to pay for a new roof, which is a legitimate shelter expense.

For these reasons, the appeal is approved.

² 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 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 and 8) 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 and 8.

Order for MassHealth

Include \$60.08 per month in the mortgage section to account for the HELOC payment. Recalculate the PPA, MMMNA, and SMNA in accordance with 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: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104

[REDACTED]