

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2178759
Decision Date:	01/12/2022	Hearing Date:	12/22/2021
Hearing Officer:	Christine Therrien		

Appearance for Appellant:




Appearance for MassHealth:

Joanne Weldon, Taunton



*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:	SMNA
Decision Date:	01/12/2022	Hearing Date:	12/22/2021
MassHealth's Rep.:	Joanne Weldon	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 11/12/21, MassHealth approved the appellant's application for MassHealth Long Term Care benefits with a start date of 9/1/21 and a patient paid amount (PPA) of \$1,911.90 (Exhibit 1). The appellant filed this appeal in a timely manner on 11/18/21 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the appellant's request for long term care benefits with a PPA of \$1,911.90.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.014, in determining that the appellant's PPA is \$1,911.90.

Summary of Evidence

MassHealth testified the appellant applied for long term care benefits on 10/13/2021. The appellant current resides in a nursing home and his spouse resides in an assisted living facility. The institutional spouse has income of \$4546.36 and after deductions of \$72.80 Personal Needs Allowance (PNA) + \$191.66 for health insurance + \$2,370 spousal maintenance needs allowance (SMNA); MassHealth

calculated a PPA of \$1911.90. MassHealth submitted into evidence the appellant's application and worksheet. (Exhibit 4). The MassHealth representative testified that as of November 2021, the maximum monthly maintenance needs allowance (MMMNA) is \$3,259.50.

The community spouse has an income of \$889.55 from Social Security. The appellant's representative stated the community spouse is living in an assisted living facility and paying \$7,005 per month. The appellant's representative submitted the community spouse's Residency Lease Agreement which indicates the community spouse pays \$1,620 per month for basic assisted living services, housekeeping, etc., \$360.00 for meals, and \$5,025.00 in rent. (Exhibit 2 and Exhibit 4). The representative maintains the community spouse does not have sufficient income to remain in the community and is quickly depleting her savings.

The appellant's representative submitted a visit summary from the community spouse's provider dated 10/18/21, stating the community spouse's diagnoses and need for assisted living (Exhibit 2). Additionally, the appellant representative submitted the care plan devised by the Assisted Living Facility for the community spouse (Exhibit 4).

Findings of Fact

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

1. The appellant applied for MassHealth LTC benefits on 10/13/21.
2. The appellant has a PNA of \$72.80 a month.
3. The appellant has monthly income of \$4,546.36.
4. The appellant has a PPA of \$1911.90 (\$4,546.36 - \$72.80 PNA - \$191.66 health insurance - \$2,370 SMNA).
5. The community spouse has income of \$889.55 from Social Security.
6. The community spouse resides in an assisted living facility, which costs a total of \$7,005 per month, which includes basic assisted living services, housekeeping, food, etc.
7. As of November 2021, the MMMNA is \$3,259.50.

Analysis and Conclusions of Law

After the institutional spouse has received notice of either approval or denial for MassHealth, 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 (130 CMR 520.017(D)(1)). If the community spouse's gross income is less than the amount he or she needs to live in the community (minimum-monthly-maintenance-needs allowance, MMMNA), MassHealth may deduct an amount from the institutionalized spouse's countable-income amount to meet this

need. This amount is the spousal-maintenance-needs deduction (SMNA). This deduction is the amount by which the minimum-monthly-maintenance-needs allowance exceeds the community spouse's gross income. The regulations require MassHealth to use the actual MMMNA, or a maximum-monthly-maintenance-needs allowance of \$3,259.50, per month, whichever is lower, when calculating the SMNA, unless it has been increased as the result of a fair-hearing decision based on exceptional circumstances.¹

Exceptional circumstances exist when there are circumstances other than those already considered in establishing the maintenance standard for the community spouse under 130 CMR 520.025(B) and these circumstances result in significant financial duress. Since the federal standards used in calculating the MMMNA cover such necessities such 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 housing 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.²

The community spouse resides in an assisted living facility, which costs \$7,005.00 per month and includes rent, assisted living services, housekeeping, food, etc. The appellant's representative has submitted sufficient evidence to demonstrate the community spouse has a need for assisted living

¹ 130 CMR 520.026: Long-Term-Care Income Standard (B) Spousal-Maintenance-Needs-Deduction. If the community spouse's gross income is less than the amount he or she needs to live in the community (minimum-monthly-maintenance-needs allowance, MMMNA) as determined by the Division, the Division may deduct an amount from the institutionalized spouse's countable-income amount to meet this need. This amount is the spousal-maintenance-needs deduction. 130 CMR 520.026(B) applies to the first month of eligibility in an institution and terminates the first full calendar month in which the spouse is no longer in an institution or no longer has a spouse in the community. This deduction is the amount by which the minimum-monthly-maintenance-needs allowance exceeds the community spouse's gross income. (1) The MassHealth agency determines the MMMNA by adding the following amounts: (a) \$1,822 (the federal standard maintenance allowance); and (b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$547 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 \$375. If heat is not included in the rent or condominium fee, this amount is \$612. (2) The maximum-monthly-maintenance-needs allowance is \$2,739 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).

² 130 CMR 520.017: Right to Appeal the Asset Allowance or Monthly-Maintenance- Needs Allowance: (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 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 (*Emphasis added*).

and the services included in the assisted living fee constitute an exceptional circumstance within the definition at 130 CMR 520.017. The assisted living fee therefore can replace the MassHealth's MMMNA as the cost for the facility "arise from the medical condition, frailty or similar special needs of the community spouse." Accordingly, the community spouse is entitled to a MMMNA of \$7005.00 (assisted living fee of \$5,025 + insurance premiums of \$191.66 + food \$360). This appeal is approved.

Order for MassHealth

Recalculate the PPA based on a MMMNA of \$7,005.

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, MassHealth of Medical Assistance, at the address on the first page of this decision.

Christine Therrien
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780. [REDACTED]