

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2179066
<b>Decision Date:</b>	01/12/2022	<b>Hearing Date:</b>	01/05/2022
<b>Hearing Officer:</b>	Sara E. McGrath		

**Appearances for Appellant:**



**Appearances for MassHealth:**

Gabe Gillis



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street  
Quincy, MA 02171*

## APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Patient-Paid Amount
<b>Decision Date:</b>	01/12/2022	<b>Hearing Date:</b>	01/05/2022
<b>MassHealth's Rep:</b>	Gabe Gillis	<b>Appellant's Rep:</b>	[REDACTED]
<b>Hearing Location:</b>	Board of Hearings (Remote)		

### 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 7, 2021, MassHealth notified the appellant that she is eligible for MassHealth Standard benefits effective August 4, 2021, with a patient-paid amount of \$897.80 (Exhibit 1). The appellant filed this appeal on December 1, 2021 (130 CMR 610.015(B)). A challenge to the patient-paid amount is a valid ground for appeal (130 CMR 610.032(A)).

### Action Taken by MassHealth

MassHealth notified the appellant that she is eligible for MassHealth Standard benefits effective August 4, 2021, with a patient-paid amount of \$897.80.

### Issue

The appeal issue is whether the community spouse is entitled to have the Minimum Monthly Maintenance Needs Allowance (MMMNA) increased due to exceptional circumstances.

## Summary of Evidence

The MassHealth representative appeared at the hearing by phone and testified in summary as follows: On August 12, 2021, the appellant submitted a MassHealth Senior application. On October 7, 2021, MassHealth approved the appellant for MassHealth Standard benefits effective August 4, 2021, with a patient-paid amount of \$897.80 (Exhibit 1). The appellant's monthly income totals \$1,030.50, and her patient-paid amount was calculated as follows: \$1,030.50 (monthly income) - \$72.80 (personal needs allowance) - \$59.90 (health insurance) = \$897.80 (Exhibit 1). The community spouse's MMMNA was calculated to be \$2,790.45.<sup>1</sup> The community spouse has total monthly income of \$3,393.07. Because the spouse's income is more than his MMMNA, MassHealth did not deduct a spousal maintenance needs allowance from the appellant's income (Exhibit 1). As of July 2021, the couple's assets totaled approximately \$25,000. On October 27, 2021, the appellant was discharged home from the nursing facility.

The appellant was represented at hearing by a personal care attendant (PCA) who currently assists both the appellant and her spouse. She testified by phone and testified that while the appellant was in the nursing facility, the community spouse incurred monthly caregiver expenses of approximately \$1,100. By way of background, she explained that several years ago, the appellant's spouse underwent hip replacement surgery. After discharge from the hospital, the spouse had in-home services for a period of time. After those services terminated in April 2020, the couple hired her to work as the spouse's PCA. She assists with the spouse's activities of daily living. She is paid \$20 per hour, and works, on average, 10 hours per week, for a monthly total of approximately \$800 (Exhibit 3). The couple also employs a homemaker who changes beds, cleans, does meal preparation, grocery shops, and runs errands. The homemaker's average monthly pay is \$300 (Exhibit 3).

The PCA submitted a letter detailing the services she provides, including the following:

Over this past year and a half, he's had a decline in his ADLs needing more extensive care. He started off 3x weekly for 30 minutes, \$50 per week. This was just for bathing, and increasing his needs at home [sic]. Meal prep, laundry, shaving, nail care, hair care, skin care, dressing, putting on his shoes and now his medications as well.

Prior to [the appellant] going to Alden Court nursing care in May 2021 I had begun to help her with showering/sponge bathing and meal prep, as she was having a decline as well.

As she was away [the spouse] needed a lot more care in the home and my hours increased. Based upon his needs [sic] (Exhibit 3).

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<sup>1</sup> The MMMNA was calculated as follows: \$149.83 (insurance) + \$428.37 (taxes) + \$688 (utility allowance) = \$1,266.20 - \$653.25 (standard deduction) = \$612.95 + \$2,177.50 (federal standard) = \$2,790.45.

## **Findings of Fact**

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

1. In 2020, the appellant and her spouse hired two individuals to assist in their home, a PCA who assists with activities of daily living and is paid an average of \$800 per month, and a homemaker who assists with cleaning, meal preparation, and shopping and is paid an average of \$300 per month.
2. On August 12, 2021, the appellant submitted a MassHealth application seeking long-term care benefits.
3. On or about that time, the appellant and her spouse had assets totaling approximately \$25,000.
4. On October 7, 2021, MassHealth approved the appellant's application for MassHealth Standard benefits effective August 4, 2021, with a patient-paid amount of \$897.80.
5. On October 27, 2021, the appellant was discharged home from the nursing facility.
6. On December 1, 2021, the appellant appealed the approval notice, challenging MassHealth's calculation of the patient-paid amount.
7. The appellant's monthly income totals \$1,030.50.
8. The appellant's patient-paid amount was calculated as follows: \$1,030.50 (monthly income) - \$72.80 (personal needs allowance) - \$59.90 (health insurance) = \$897.80.
9. The community spouse's monthly income totals \$3,393.07, and his MMMNA was determined to be \$2,790.45.
10. Because the spouse's income is more than his MMMNA, MassHealth did not deduct a spousal maintenance needs allowance from the appellant's income.

## **Analysis and Conclusions of Law**

After the institutionalized spouse has received notice of either approval or denial for MassHealth Standard, either spouse may appeal to the Office of Medicaid 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):

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. 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.

The appellant's MassHealth coverage spanned a period of approximately three months (August through October). During this time period, the expense for the caregivers totaled just over \$3,000 (Exhibit 3). Notably, the spouse's monthly income exceeds his MMMNA by over \$600. Further, at the time of the nursing facility admission, the couple had assets in excess of \$25,000. Given the spouse's resources, it is questionable whether the spouse's caregiver expenses for this limited time period constitute *significant* financial duress.

Additionally, as noted above, exceptional circumstances are limited to those *necessities* that arise from the medical condition, frailty, or similar special needs of the spouse. The record does not include any documentation from a medical provider to verify that these caregiver services are medical necessary for the spouse. On this record, the appellant has not met her burden and has not demonstrated that exceptional circumstances exist. Thus, no adjustment to the spouse's MMMNA or the appellant's patient-paid amount is warranted (130 CMR 520.017(D)).

The appeal is denied.

### **Order for MassHealth**

None.

## 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.

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Sara E. McGrath  
Hearing Officer  
Board of Hearings

cc: Chelsea MassHealth

