

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2200115

Decision Date: 4/4/22

Hearing Date: 02/04/2022

Hearing Officer: Kenneth Brodzinski

Appearance for Appellant:




Appearance for MassHealth:

Jessica Adamiec – Taunton 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:	Denied	Issue:	Exceptional Circumstances
Decision Date:	4/4/22	Hearing Date:	02/04/2022
MassHealth's Rep.:	Jessica Adamiec	Appellant's Rep.:	
Hearing Location:	Taunton		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through notice dated December 10, 2021, MassHealth approved Appellant's application for MassHealth Long Term Care benefits and determined a Patient Paid Amount ("PPA") of \$4,408.22 (Exhibit A). Appellant filed this appeal in a timely manner on January 6, 2022 seeking an adjustment to the PPA by way of increasing the Community Spouse's MMMNA (Exhibit A). Seeking adjustments to the MMMNA and PPA constitute valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined Appellant's PPA and the Community Spouse's MMMNA.

Issue

The appeal issue is whether the facts and law entitled Appellant and the Community Spouse to adjustments to the MMMNA and PPA.

Summary of Evidence

The MassHealth representative testified that MassHealth approved Appellant's application for Long Term care benefits with a PPA of \$4,408.22. The MassHealth representative submitted a copy of a "Maintenance Needs Allowance" worksheet showing the figures and calculation used in reaching a Minimum Monthly Maintenance Needs Allowance (MMMNA) of \$3,259.50 and a Spousal Maintenance Needs Deduction (SMND) of \$2,230.00 (Exhibit B). The MassHealth representative noted that the CS was awarded the maximum MMMNA allowed by the regulations, even though the CS's calculated monthly expenses totaled \$4,804.75.

Appellant was represented by Counsel who filed a written Memorandum with supporting exhibits (Exhibit C). Counsel testified consistent with the information contained in the memorandum. Counsel presented her own figures on a standard Maintenance Needs Allowance worksheet (Exhibit B). Counsel also testified that the Community Spouse's MMMNA should be increased due to exceptional circumstances.

Counsel explained how the CS's monthly expenses greatly exceed the combination of her own monthly social security income along with the portion of her husband's income (the SMND) she is allowed to keep. Counsel testified that the CS does not own a home and only has assets totaling \$6,131.17. Counsel testified that the CS had once owned a lucrative business which she had to abandon in order to care for her disabled son who sustained a traumatic brain injury in 1989. This obligation also resulted in the loss of assets over time. According to counsel, the CS's early withdrawal from the workforce necessitated by the care needs of her disabled son also caused the CS to lose a substantial amount of social security income. Counsel maintains that these special circumstances entitle the CS to an increase to the MMMNA pursuant to 130 CMR 520.017(D).

There was a discussion between the parties concerning the CS's monthly rent. The MassHealth representative testified that she used the figure of \$2,521.00 that was taken from a copy of the *Apartment Rental Lease Agreement* effective through August 28, 2022 which indicated that in addition to rent the CS paid for sewer, water, electricity and gas. The MassHealth representative also noted that according to the *Agreement*, the CS was receiving a \$100.00 monthly discount on the rent of 2,621.00. After some discussion, Appellant's representatives stated that the figure used by MassHealth for the rent was correct.

Findings of Fact

Based on a preponderance of the evidence, this record supports the following findings:

1. MassHealth approved Appellant's application for Long Term care benefits with a PPA of \$4,408.22.

2. MassHealth used the standard "Maintenance Needs Allowance" worksheet to calculate a Minimum Monthly Maintenance Needs Allowance (MMMNA) of \$3,259.50 and a Spousal Maintenance Needs Deduction (SMND) of \$2,230.00 (Exhibit B).
3. MassHealth relied on the figure of \$2,521.00 that was taken from a copy of the *Apartment Rental Lease Agreement* effective through August 28, 2022 which indicated that in addition to rent the CS paid for sewer, water, electricity and gas.
4. The *Agreement* also indicated that the CS was receiving a \$100.00 monthly discount on the rent 2,621.00.
5. The CS was awarded the maximum MMMNA allowed by the regulations, even though the CS's calculated monthly expenses totaled \$4,804.75.
6. The CS's current monthly expenses exceed the combination of her own monthly social security income along with the portion of her husband's income (the SMND) she is allowed to keep.
7. The CS does not own a home and only has assets totaling \$6,131.17.
8. The CS had once owned a lucrative business which she had to abandon in order to care for her disabled son who sustained a traumatic brain injury in 1989; this obligation also resulted in the loss of assets over time.
9. The CS's early withdrawal from the workforce necessitated by the care needs of her disabled son also caused the CS to lose a substantial amount of social security income.

Analysis and Conclusions of Law

MMMNA Worksheets

After a discussion during the hearing, the parties agreed that the correct rental amount was the \$2,521.00 used by MassHealth. The only other difference in the calculations of the MMMNA (respective worksheets in Exhibits B and C) was the CS's addition of her monthly water and sewer expenses. This would not be correct as such expenses are utilities which are covered by the standard utility allowance. Adding these expenses to the rent would count them twice which is not permitted (130 CMR 520.017(D)(1)(a)).

Appellant's memorandum also contained information about a monthly expense of \$135.03 for the CS's supplemental health insurance. Such expenses are not included in the MMMNA calculation nor are they an allowable deduction in calculating the PPA although

health insurance expenses of the institutionalized spouse are an allowable deduction (130 CMR 520.026).¹

Exceptional Circumstances

This record does not support a finding that exceptional circumstances, as defined by regulation, exist.

The only exception to MassHealth's calculation and/or the regulatory maximum is described at 130 CMR 520.017(D)(1) which states that an increase in the community spouse's MMMNA may be granted based on "exceptional circumstances." According to the regulation, *[e]xceptional 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 supplied).

The Community Spouse has offered an explanation for why she does not have more income and assets to maintain her current standard of living, having lost assets and income due to caring for her disabled son since 1989. However, the Community spouse has not identified any necessities or expenses that arise from her medical condition, her frailty or similar special needs. She has only identified customary living expenses. While it is clear that her income and SMND will not allow her to maintain her current expenses, the regulation is not meant to overcome shortfalls in these circumstances. The regulation is meant to help a community spouse overcome medical, remedial and support service expenses arising from his/her own functional limitations. That is not the case here.

For the foregoing reasons, the appeal is DENIED.

¹ Additionally, Appellant's Memorandum referred to an Exhibit D that was meant to verify the amount of the CS's supplemental health insurance. There was nothing marked as Exhibit D with the memorandum, although there was a document following Exhibit C and prior to Exhibit E which appeared to be the verification. This document did not contain the figure of \$135.03 and also appears to pertain only to the institutionalized spouse, not the community spouse. If it was Appellant's intention to assert that this is an expense incurred by the institutionalized spouse and MassHealth has not yet applied it to the PPA calculation, then Appellant should notify MassHealth of this and verify in the usual course.

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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center,
21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616

[REDACTED]