

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2200315

**Decision Date:** 3/01/2022

**Hearing Date:** 02/11/2022

**Hearing Officer:** Radha Tilva

**Appearance for Appellant:**




**Appearance for MassHealth:**

Liz Landry, Tewksbury



*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>	Denied	<b>Issue:</b>	LTC – PPA – spousal allowance
<b>Decision Date:</b>	3/01/2022	<b>Hearing Date:</b>	02/11/2022
<b>MassHealth's Rep.:</b>	Liz Landry	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Taunton MassHealth Enrollment Center	<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 November 10, 2021, MassHealth determined that appellant is eligible for MassHealth long-term care benefits with an eligibility start date of June 11, 2021 and patient-paid amount of \$1,120.20 (Exhibit 1). The community spouse filed this appeal in a timely manner on December 9, 2021 seeking a monthly spousal maintenance needs deduction in order to adjust the patient-paid amount (see 130 CMR 610.015(B) and Exhibit 2). Challenging a patient-paid amount is valid grounds for appeal (see 130 CMR 610.032).

## Action Taken by MassHealth

MassHealth approved appellant for MassHealth long-term care benefits with an eligibility start date of June 11, 2021 with a patient-paid amount of \$1,120.20.

## Issue

The appeal issue is whether MassHealth was correct in determining the patient-paid amount of \$1,120.20.

## Summary of Evidence

The MassHealth representative appeared at hearing by telephone and testified that appellant applied for MassHealth long-term care benefits on September 28, 2021 seeking an eligibility start date of June 11, 2021. On October 21, 2021 the case was approved with the requested eligibility start date and a patient-paid amount of \$1,120.20 (Exhibit 1). The community spouse appealed the notice requesting a monthly spousal maintenance needs deduction.

The MassHealth representative explained that a spousal allowance was not given as it was determined that the minimum monthly maintenance needs allowance (MMMNA) did not exceed the community spouse's income. A copy of MassHealth's worksheet which calculates how they derive the maintenance needs allowance was provided (Exhibit 7, p. 22). MassHealth determined that appellant's total shelter expenses less the applicable standard deduction amounted to \$4,885.82. The standard maximum MMMNA of \$3,259.50 was used however by the MassHealth representative. The representative testified that the community spouse's income totaled \$4,525.21 from his Social Security and Home Depot position. Since there was no shortfall MassHealth did not allow for a spousal maintenance needs deduction. The institutionalized spouse's income is \$1,229.00 a month and her health insurance premium is \$36.00.

The community spouse appeared at hearing with an appeal representative by telephone. Appellant's representative testified that they were requesting the community spouse allowance to increase because the amount the spouse needs to maintain his house and expenses is greater than his income. The representative explained that appellant has considerable expenses which includes credit card bills of \$1,285.00 a month. The appellant explained that he had to leave his job following wife's Alzheimer's diagnosis in December 2016 to care for her. The appellant tried to keep his wife at home for as long as he possible could before she entered the facility in June 2021. The appellant's representative stated that appellant has no significant assets. The community spouse testified that he has no health issues of his own presently.

## Findings of Fact

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

- 1) The institutionalized spouse was admitted to a nursing facility in June 2021.
- 2) MassHealth benefits began on June 1, 2021.
- 3) On October 21, 2021, MassHealth notified appellant that the patient paid amount would be \$1,120.20.
- 4) The community spouse appealed that notice challenging the calculation of the MMMNA.
- 5) The patient paid amount was calculated based on a minimum monthly maintenance needs

allowance (MMMNA) of \$3,259.50.<sup>1</sup>

- 6) The community spouse's income is \$1,229.00.
- 7) The community spouse has total expenses equal to \$4,885.82.
- 8) The institutionalized spouse's combined Social Security and work income is \$4, 525.21.
- 9) Deductions of \$36.00 for health insurance paid by the institutionalized spouse and \$72.80 for personal needs were allowed.
- 10) The community spouse has no health issues or conditions.

## Analysis and Conclusions of Law

130 CMR 520.026 states that long-term care general income deductions must be taken 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. These deductions are used in determining the monthly patient-paid amount.

The spousal-maintenance-needs deduction is the amount by which the minimum-monthly-maintenance-needs allowance exceeds the community spouse's gross income (130 CMR 520.026(B)). 130 CMR 520.026(B)(1) explains how MassHealth calculates the MMMNA. MassHealth was correct in calculating the MMMNA and using the federal standard of \$3,259.50 as 130 CMR 520.026(B)(2) states that is the maximum allowed unless increased by a fair-hearing decision based on exceptional circumstances.

Regulation 130 CMR 520.017, which defines exceptional circumstances, states:

(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 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).

(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

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<sup>1</sup> This is the current maximum MMMNA allowable by MassHealth.

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.

(2) Determination of Increase for Exceptional Circumstances. 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.

(a) The fair-hearing officer first verifies that the calculation of the gross income of the community spouse in determining the existing spousal-maintenance-needs deduction includes the income generated by the community spouse's asset allowance. If the community spouse has no assets remaining from the allowance, he or she must verify the dollar amount of the remaining assets, if any, and how the money was spent. The fair-hearing officer considers how the assets were spent in determining whether or not significant financial duress exists.

(b) The fair-hearing officer determines the revised MMMNA by including in the calculation the amount needed to meet the exceptional circumstances.

(c) The fair-hearing officer compares the revised MMMNA to the community spouse's total income. If the community spouse's total income is less than the amount of the revised MMMNA, the fair-hearing officer first deducts the personal-needs allowance from the institutionalized spouse's countable-income amount and then a spousal-maintenance-needs deduction needed to reach the revised MMMNA.

(Emphasis added).

After reviewing the testimony of appellant and his representative that although he has financial duress exceptional circumstances do not exist. The regulation is clear that financial duress is limited to those necessities that arise from the medical condition or frailty of the community spouse. The community spouse testified to no medical condition or frailty that would permit the hearing officer to increase the MMMNA. Thus, MassHealth was correct in calculating the patient-paid amount by only deducting the personal needs allowance and health insurance cost from the institutionalized spouse's income of \$1,229.00. Based on the analysis above this 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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Radha Silva  
Hearing Officer  
Board of Hearings

cc:

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

[REDACTED]