

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2201441

Decision Date: 5/10/2022

Hearing Date: 04/07/2022

Hearing Officer: Marc Tonaszuck

Appearance for Appellant:




Appearance for MassHealth:

Cara Miller



*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:	Long Term Care – MMMNA
Decision Date:	5/10/2022	Hearing Date:	04/07/2022
MassHealth's Rep.:	Cara Miller	Appellant's Rep.:	
Hearing Location:	Tewksbury MassHealth Enrollment Center		

Authority

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

Jurisdiction

Through a notice dated 02/15/2022, MassHealth informed the appellant husband (institutionalized spouse) that it approved his MassHealth long term care (LTC) benefits beginning on 02/01/2022 with a monthly patient paid amount (PPA) of \$5,239.56 (Exhibit 1). The community spouse¹ filed a timely appeal on 03/08/2022 requesting a decreased PPA (Exhibit 2)². A calculation of a PPA is valid grounds for appeal (130 CMR 610.032).

¹ Pursuant to regulations at 130 CMR 520.017, once an approval notice is issued, either spouse may file an appeal of the minimum monthly maintenance needs allowance (MMMNA) and patient paid amount (PPA).

² In MassHealth Eligibility Operations Memo (EOM) 20-09 dated 04/07/2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends;
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

Action Taken by MassHealth

MassHealth approved the appellant's LTC benefits beginning on 02/01/2022 with a monthly PPA of \$5,239.56.

Issue

The appeal issue is whether the community spouse is entitled to an increase in the minimum monthly maintenance needs allowance (MMMNA), which would result in a lower PPA for the institutionalized spouse.

Summary of Evidence

The MassHealth representative from the Tewksbury MassHealth Enrollment Center testified that the appellants are a married couple. Appellant husband ("institutionalized spouse") was admitted to the skilled nursing facility and was approved for MassHealth benefits on 02/01/2022. His wife lives in the community ("appellant wife" or "community spouse"). The couple has assets of approximately \$20,000. The patient paid amount was calculated to be \$5,239.56 on the approval notice (Exhibit 1).

In order to calculate the institutionalized spouse's PPA, MassHealth first calculated the Minimum-Monthly-Maintenance-Needs Allowance, or MMMNA, of the community spouse (the appellant wife) by taking into account the appellant's mortgage of \$2,377.74, taxes of \$1,070.00, insurance of \$170.25, and a food stamp utility allowance of \$688.00, for a total shelter expense that was calculated to be \$4,306.32. MassHealth then subtracted the shelter expense standard of \$635.25 and added a standard maintenance allowance of \$2,177.50. Based on its calculations, MassHealth determined the community spouse's MMMNA to be \$5,848.57; however, it was reduced to the regulatory maximum MMMNA of \$3,436.00.

The community spouse's gross monthly income is \$4,633.75, comprised of social security of \$449.10, and a pension of \$4,184.65. After subtracting the community spouse's income from her MMMNA, she is left with no shortfall to meet the MMMNA; thus, no spousal maintenance needs allowance (SMNA) was deducted from the institutionalized spouse's PPA.

MassHealth then used the MMMNA calculations to determine the institutionalized spouse's (appellant husband's) PPA. MassHealth used the institutionalized spouse's income of \$5,409.58 monthly, which consists of \$639.00 social security and \$4,770.58 pension. MassHealth determined the PPA to be \$5,239.56 (\$5,409.58 institutionalized spouse's income - \$72.80 personal needs allowance (PNA) - \$97.22 health insurance premium) (Exhibit 5).

The appellant wife appeared at the hearing and testified telephonically with the assistance of a representative from the skilled nursing facility. Prior to the fair hearing, the community spouse submitted a list of monthly expenses that include the following:

Mortgage	\$2,377.74
Home Equity Loan	\$225.02
Real Estate Taxes	\$1070.47
Water/Sewer	\$174.50
Real Estate Insurance	\$170.25
Electricity	\$182.22
Heat	\$534.00
Excise Tax (\$53.23 Annually)	\$4.44
Total	\$4,738.64

The appellant wife testified that her net income is \$3,990.87 and with other household expenses, she cannot meet her expenses with her income. She did not dispute the numbers used by MassHealth; however, she asked that the PPA be reduced so that she can continue to live in the home that she shared with the appellant husband for 23 years. Her car is 9 years old and she recently had a \$640.00 repair bill. She stated she is blind in one eye and she wishes to continue to live her life as she has been living, in the same home, with the ability to pay her expenses. She concluded that she lives about 5 minutes away from the nursing facility where the appellant husband lives and she visits him daily. If she were to move, his anxiety would increase.

The MassHealth representative responded that MassHealth must use the regulations when calculating the MMMNA and PPA. The basis for those numbers is the gross income of the community spouse.

Findings of Fact

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

1. Appellant husband (institutionalized spouse) resides in a nursing facility. His MassHealth benefits were approved for the date he was seeking, 02/01/2022 (Testimony; Exhibits 1 and 4).
2. Appellant wife (community spouse) continues to reside in the community. She lives independently and needs no assistance with activities of daily living (Testimony).
3. On 02/15/2022, MassHealth approved the appellant's application for LTC benefits, with a PPA of \$5,239.56 (Testimony; Exhibit 1).

4. MassHealth calculated the community spouse's MMMNA as follows:

Mortgage	\$2,377.74
Property taxes and insurance	\$1,240.58
Required condo/coop maintenance charge	\$ 0.00
<u>Utility allowance</u>	<u>\$ 688.00</u>
Total shelter expenses	\$4,306.32
Federal shelter standard	\$ 653.25
Excess shelter costs (\$4306.32 - \$653.25)	\$3,653.07
Standard Maintenance Allowance	\$2,177.50
Total MMMNA	\$5,848.57

(Testimony; Exhibit 4).

5. The regulatory maximum MMMNA is \$3,435.00 (Testimony).

6. The appellants have assets that total approximately \$20,000.00 (Testimony).

7. Interest income from retained assets is negligible.

8. The community spouse's gross monthly income is \$4,663.75, comprised of social security of \$449.10, and a pension of \$4,184.65 (Testimony; Exhibit 5).

9. The institutionalized spouse has income of \$5,409.58, comprised of \$639.00 from social security and \$4,770.58 from a pension (Testimony; Exhibit 5).

10. Based on MassHealth's calculations, the community spouse's income exceeds her MMMNA, so MassHealth determined she is not eligible for a Spousal Maintenance Needs Deduction from the PPA (Testimony; Exhibit 5).

11. MassHealth calculated the institutionalized spouse's PPA to be \$5,239.56 (Income of \$5,409.58 – PNA \$72.80 – Health Insurance Premium \$97.22) (Testimony; Exhibits 1 and 5).

12. The community spouse contends that she requires an increase in the MMMNA in order to cover her basic necessities (Testimony).

13. The community spouse has not submitted evidence that she is medically frail (Testimony).

Analysis and Conclusions of Law

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 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.)

See 130 CMR 520.017(D).

MassHealth approved the institutionalized spouse for MassHealth long term care benefits effective on the date requested. In its calculations, it determined that the community spouse's income exceeds her MMMNA and therefore there is no deduction from the institutionalized spouse's income for her SMNA. Therefore, the institutionalized spouse's PPA is the income, minus the PNA and his private health insurance premium. The appellant wife contends that, as the community spouse, she requires an increase in the MMMNA in order to meet all of the basic expenses and that the increased MMMNA exceeds her income, which would result in a SMNA deduction decreasing the PPA. Pursuant to 130 CMR 520.017(D), either spouse may request an increase in the MMMNA calculated by MassHealth due to "exceptional circumstances."

After reviewing the evidence and testimony presented at hearing, the community spouse has not demonstrated "exceptional circumstances," and therefore does not warrant an increase beyond the calculated MMMNA. There is nothing to suggest that the community spouse has additional necessities arising from "medical condition, frailty, or similar special needs." To the contrary, she has not presented any evidence that she is unable to live independently. The community spouses cites specifically that her car expenses, home equity, and general living expenses warrant an increase to the MMMNA. However, those expenses claimed by the community spouse are either already factored into the MMMNA calculation (e.g., housing, electricity, heat, telephone, and health insurance) or are not permissible under the "exceptional circumstances" regulation. Accordingly, there is no support for an increased MMMNA due to exceptional circumstances. Moreover, MassHealth correctly followed the above regulation when calculating the MMMNA, specifically when it used the community spouse's gross income as a basis for its calculations.

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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center,
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