

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2202427
Decision Date:	6/8/2022	Hearing Date:	05/04/2022
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Evelyn Daniel, Springfield 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:	Approved in part; Denied in part	Issue:	Spousal Allowance
Decision Date:	6/8/2022	Hearing Date:	05/04/2022
MassHealth's Rep.:	Evelyn Daniel	Appellant's Rep.:	Pro se
Hearing Location:	Springfield MassHealth Enrollment Center	Aid Pending:	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 February 1, 2022, MassHealth notified the appellant that he is eligible for MassHealth Standard benefits effective March 19, 2021, with a patient paid amount (PPA) of \$1,460.21 every month (Exhibit 1). The appellant filed this appeal in a timely manner on March 30, 2022 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified the appellant that he is eligible for MassHealth Standard benefits effective March 19, 2021 with a patient paid amount of \$1,460.21 every month.

Issue

The appeal issue is whether the community spouse is entitled to increased support from the appellant through a reduction in the PPA, pursuant to 130 CMR 520.17(D).

Summary of Evidence

The MassHealth representative appeared at hearing via telephone and testified as follows: the appellant is over the age of 65 and was a resident of a nursing facility with a spouse in the community. He has since been discharged from the facility and is residing in the community. On June, 30, 2021, MassHealth received a long-term care application on behalf of the appellant with a requested start date of March 19, 2021. On February 1, 2022, MassHealth approved the appellant for benefits effective March 19, 2021, with a patient paid amount (PPA) of \$1,460.21 every month. The MassHealth representative testified that the appellant's monthly income totaled \$1,751 based on Social Security Income (SSI). She explained that the PPA was calculated as follows: \$1,751 (appellant's gross SSI) - \$72.80 (Personal Needs Allowance (PNA)) - \$217.99 (health insurance) = \$1,460.21.

The MassHealth representative explained that the appellant did not qualify for a home maintenance allowance because, pursuant to the regulation 130 CMR 520.026(D), that allowance is for a single individual without a spouse in the community to assist at home. Additionally, based on the community spouse's income and shelter expenses, the appellant and spouse do not qualify to receive the spousal maintenance needs allowance (SMNA). Based on verifications provided to MassHealth, the spouse earned gross income of \$7,436.81 per month. The community spouse's Minimum Monthly Maintenance Needs Allowance (MMMNA) was calculated as follows: \$1,239.52 (mortgage) + \$688 (standard utility expense) = \$1,927.52 (total shelter expense) - \$653.25 (standard shelter expense) = \$1,274.27 (excess shelter amount) + \$2,177.50 (federal standard maintenance allowance) = \$3,451.77 (calculated MMMNA). The regulations require that the calculated MMMNA or the regulatory maximum MMMNA, whichever is lower, be used. In its calculation, MassHealth reverted to the regulatory maximum MMMNA for 2022 of \$3,435.00¹. Because the community spouse's income was above the MMMNA, the community spouse did not qualify for SMNA.

The appellant appeared at hearing via telephone and testified as follows: he has been home since the end of [REDACTED]. He was in the facility for [REDACTED] for rehabilitation after having his leg amputated above the knee. He cannot afford the monthly PPA of \$1,460.21. He stated that his wife's income is accurate for the months in which she gets a paycheck, but she is a schoolteacher and does not get paid during the months of July and August when she is not in the classroom. She structured her salary to be paid only during the time she is working, which is when they have the most expenses.

MassHealth responded that it only had paystubs dated June 11, 2021 (gross \$3,418.10) and June 25, 2021 (gross \$3,447.20), showing that the spouse was paid bi-weekly for an average of \$7,436.81 gross per month. She stated that she would need some sort of verification to show that the appellant does not get paid during non-school months. The appellant said he did not have any documentation because she simply does not receive paychecks during July and August when she is not working.

¹ The regulatory maximum MMMNA for 2021 was \$3,259.50. Because the appellant is looking for coverage during 2021, that figure should have been used, which still would have been less than the calculated MMMNA.

Findings of Fact

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

1. The appellant is over the age of 65 and was a resident of a nursing facility with a spouse in the community (Testimony and Exhibit 5).
2. On June, 30, 2021, MassHealth received a long-term care application on behalf of the appellant with a requested start date of March 19, 2021 (Testimony and Exhibit 5).
3. On February 1, 2022, MassHealth approved the appellant for benefits effective March 19, 2021, with a PPA of \$1,460.21 every month (Testimony and Exhibit 1).
4. On March 30, 2022, the appellant timely appealed the notice (Exhibit 2).
5. The appellant's monthly income totaled \$1,751 made up of SSI (Testimony and Exhibit 1).
6. The PPA was calculated as follows: \$1,751 (appellant's gross SSI) - \$72.80 (PNA) - \$217.99 (health insurance) = \$1,460.21 (Testimony and Exhibit 5).
7. MassHealth had verifications showing that the community spouse is a teacher with a gross earned income of \$7,436.81 per month (Testimony and Exhibit 5).
8. MassHealth calculated the MMMNA as follows: \$1,239.52 (mortgage) + \$688 (standard utility expense) = \$1,927.52 (total shelter expense) - \$653.25 (standard shelter expense) = \$1,274.27 (excess shelter amount) + \$2,177.50 (federal standard maintenance allowance) = \$3,451.77 (calculated MMMNA). MassHealth used the regulatory maximum MMMNA for 2022 of \$3,435.00
9. The appellant is applying for coverage only from [REDACTED] through [REDACTED] and the regulatory maximum MMMNA for 2021 of \$3,259.50 should apply.
10. Because the community spouse's income exceeded that of the MMMNA, MassHealth determined she did not qualify for the SMNA (Testimony and Exhibit 5).
11. The appellant's spouse does not receive any income during July and August when she is not working (Testimony).

Analysis and Conclusions of Law

In determining a member's PPA, MassHealth regulations require that deductions be made from the member's income "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.” See 130 CMR 520.026. The amount for the personal-needs allowance is set at \$72.80. The family-maintenance-needs allowance is only allowed when the member has dependent children, siblings, or parents living in their former home, and the home-maintenance-needs allowance only applies to single (unmarried) individuals when the member is likely to return home within six months after admission.

As to the SMNA, if the community spouse’s income is insufficient to meet their monthly expenses, the SMNA allows the community spouse to keep some of the institutionalized spouse’s income to pay for necessities. The SMNA “**is the amount by which the minimum-monthly-maintenance-needs allowance exceeds the community spouse’s gross income.**” 130 CMR 520.026(B) (emphasis added). MassHealth determines the MMMNA by adding a federal standard-maintenance allowance to the difference between the community spouse’s actual costs of shelter, including a standard amount for utility costs, and a standard-shelter expense. See 130 CMR 520.017(B), 520.026(B)(1). Either spouse may seek to adjust the amount of the MMMNA based on exceptional circumstances. 130 CMR 520.026(B)(1) and (2) read in relevant part as follows:

520.026: Long-term-care General Income Deductions

...

(B) Spousal-maintenance-needs-deduction.

...

(1) The MassHealth agency determines the MMMNA by adding the following amounts:

- (a) **[\$2,177.50]** (the federal standard maintenance allowance); and
- (b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of **[\$653.25]** 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 not included in the rent or condominium fee, this amount is **[\$688]**.

(2) The maximum-monthly-maintenance-needs allowance is **[\$3,259.50]** 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).

(**Bolded** emphasis added.)²

² All dollar figures in the regulation have been adjusted to be current for the application of this appellant. The 2021 figures for the shelter expenses and MMMNA may be found at <https://www.medicaid.gov/medicaid/eligibility/downloads/ssi-and-spousal-impoverishment-standards.pdf> (last viewed on May 25, 2022) while the food stamp allowance may be found at <https://www.mass.gov/doc/standard-utility-allowance-sua-as-referenced-at-106-cmr-364945/download> (last viewed on May 25, 2022). MassHealth usually tracks and puts the more recent figures on the Maintenance Needs Allowance worksheet (see Exhibit 5) and issues to its eligibility staff periodic updates on changes to these figures. Based on my review of the figures used by the MassHealth Representative in the worksheet in Exhibit 5, it mistakenly used the 2022 regulatory maximum MMMNA of \$3,435.00, instead of the 2021 regulatory maximum MMMNA of

130 CMR 520.017(B) reads in relevant part as follows:

(B) Minimum-monthly-maintenance-needs Allowance. The minimum-monthly maintenance-needs allowance is the amount needed by the community spouse to remain in the community. This amount is based on a calculation that **includes the community spouse's shelter and utility costs** in addition to certain federal standards, in accordance with 130 CMR 520.026(B)(1).

The appellant's testimony that his wife does not get paid for the months of July and August while she is not working is credible. While the MMMNA calculation remains the same, for the months of July and August MassHealth should adjust the SMNA to accurately reflect that she does not receive any income during those months. The calculated MMMNA is \$3,451.77 and MassHealth would revert to the regulatory maximum MMMNA for 2021, which was \$3,259.50. For the months of July and August 2021, the spouse's income was \$0, which is well short of the MMMNA. The SMNA is the amount by which the minimum-monthly-maintenance-needs allowance exceeds the community spouse's gross income. For the months of July and August, the SMNA should be calculated as follows: $\$3,259.50 - 0 = \$3,259.50$. Thus, the PPA for July and August should be calculated as follows: $\$1,751$ (appellant's gross SSI) - $\$72.80$ (Personal Needs Allowance (PNA)) - $\$3,259.50$ (SMNA) - $\$217.99$ (health insurance) = $-\$1,799.29$. The appellant's PPA for the months of July and August 2021 should be \$0 and the spouse should be entitled to keep the appellant's monthly income after deducting the PNA.

To the extent that the appellant seeks an adjustment of the SMNA and PPA, the appeal is approved for the months of July and August 2021. MassHealth should recalculate the SMNA and PPA accounting for \$0 in gross income for the spouse for July and August. MassHealth should apply the 2021 MMMNA regulatory maximum of \$3,259.50, instead of the 2022 figure of \$3,435.00. Besides using the incorrect 2022 MMMNA figure, which did not actually affect the PPA, MassHealth correctly calculated the PPA for months outside of July and August 2021 and accounted for all appropriate allowances. Therefore, the appeal is denied as to an adjustment of the SMNA and PPA for any months outside of July and August 2021.

Order for MassHealth

Recalculate the SMNA and PPA accounting for \$0 in gross income for the appellant's spouse for July and August 2021. Use the 2021 MMMNA regulatory maximum of \$3,259.50, not 2022 figures.

\$3,259.00. The current 2022 figures for shelter expenses and MMMNA may be found at <https://www.medicaid.gov/federal-policy-guidance/downloads/cib11232021.pdf> (last viewed on May 25, 2022). All other figures used in the MassHealth calculation were correctly based off 2021 figures.

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.

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, at the address on the first page of this decision.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104