

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2202729
Decision Date:	6/28/2022	Hearing Date:	05/11/2022
Hearing Officer:	Christopher Jones	Record Open to:	05/20/2022

Appearance for Appellant:

 - Wife
- NF Rep
- Niece

Appearance for MassHealth:

John Keefe – Tewksbury Intake



*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:	LTC – SMNA
Decision Date:	6/28/2022	Hearing Date:	05/11/2022
MassHealth’s Rep.:	John Keefe	Appellant’s Rep.:	██████████; Family
Hearing Location:	Remote	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 March 29, 2022, MassHealth approved the appellant for long-term-care benefits and assessed a patient-paid amount of \$2,417.42 each month.¹ (Exhibit 2, pp. 3-4.) The appellant filed this appeal in a timely manner on April 11, 2022. (Exhibit 2; 130 CMR 610.015(B).) Limitations on assistance and calculations of a spousal-maintenance-needs allowance are appealable actions. (130 CMR 610.032; 130 CMR 520.017(D), 520.026(B).)

Following the hearing, the record was left open until May 20, 2022 for the appellant to submit documentation regarding her frailty and exceptional circumstances.

Action Taken by MassHealth

MassHealth calculated the appellant’s patient-paid amount to be \$2,417.42, based in part upon a spousal-maintenance-needs allowance of \$1,535.90.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.026, in determining the community spouse’s spousal-maintenance-needs allowance, and whether extraordinary

¹ At the hearing, MassHealth’s representative confirmed that the patient-paid amount was actually \$1,949.61. (See Exhibit 5.)

circumstances exist that warrant an adjustment to the minimum-monthly-maintenance-needs allowance.

Summary of Evidence

The institutionalized spouse is an elderly individual who applied for long-term-care benefits on January 25, 2022. He receives a pension of \$1,501.31 and Social Security benefits in the amount of \$2,221. The community spouse receives monthly Social Security benefits in the amount of \$1,899.10. She resides in a handicapped apartment, for which she pays \$2,835.00 each month. She also carries apartment insurance of \$30 per month and pays for her own heat and electricity. MassHealth's representative explained that the calculation for the patient-paid amount ("PPA") allows for some money to be diverted to the community spouse where their income is insufficient to meet their expenses. This amount is known as the spousal-maintenance-needs allowance ("SMNA").

MassHealth's representative reviewed how the PPA and SMNA were calculated. The SMNA is calculated using the community spouse's shelter expenses, including rent or mortgage, taxes, and insurance. Added to these specific numbers is a standard utilities allowance of \$714 for people who pay for their own heat and electricity, and a standard housing deduction of \$653.25 is taken out.² The resulting "excess shelter expense" for the community spouse is \$2,925.75 per month. This amount is added to a standard amount community-spouse living expenses of \$2,177.50, and the result is the minimum-monthly-maintenance-needs allowance ("MMMNA"). The community spouse's current MMMNA is \$5,103.25.

There is a regulatory maximum-monthly-maintenance-needs allowance, however, of \$3,435.00. The SMNA is the lesser of the MMMNA or the maximum-monthly-maintenance-needs allowance, minus the community spouse's own income. MassHealth used the regulatory maximum, subtracted the community spouse's income, and arrived at an SMNA of \$1,535.90. The appellant's PPA is then calculated using their income, less the personal-needs allowance ("PNA") of \$72.80, less the SMNA, less the appellant's private health insurance premium of \$164. The resulting PPA is \$1,949.61.

Prior to the hearing, the appellant submitted proof of unpaid medical bills arising from the institutionalized spouse's care prior to his being covered by MassHealth. It was explained that the regulatory maximum-monthly-maintenance-needs allowance can be adjusted where exceptional circumstance arising from the community spouse's medical condition or frailty that give rise to significant financial duress. Because they must be associated with the community spouse, the institutionalized spouse's unpaid medical bills cannot be used.

The community spouse testified that she is an elderly woman with crippling rheumatoid arthritis. Her apartment is handicapped accessible, and she argued that it would be impossible to find affordable, handicapped accessible housing in this market. She testified that she is looking for other housing options, but this entire situation arose following a sudden medical emergency for the institutionalized

² Prior to March 1, 2022, the standard utility allowance was \$688 for those who paid for their own utilities.

spouse, and everything has been very hectic since the medical emergency that resulted in his institutionalization. The record was left open for her to document her medical condition and the medical necessity of her staying in her apartment. The appellant submitted letters from her landlord confirming that her unit is handicapped accessible, and a letter from her physician confirming that it is medically necessary for her to reside in a handicapped accessible unit.

Findings of Fact

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

1. The institutionalized spouse entered the nursing facility following a sudden medical emergency. An application for MassHealth long-term-care benefits was submitted on January 25, 2022, which was approved with a PPA of \$2,417.42 per month, starting January 1, 2022. (Exhibits 2 and 3; testimony by the appellant's representatives.)
2. The institutionalized spouse's monthly income is \$3,722.31. His monthly health insurance cost is \$164.00. (Exhibit 3.)
3. The community spouse's monthly income is \$1,899.10. The community spouse pays \$2,835 per month in rent and \$30 per month in rental insurance; she pays for her own heat and electricity. (Exhibit 3.)
4. The community spouse is handicapped due to rheumatoid arthritis and it is medically necessary that she reside in a handicapped-accessible apartment. (Exhibit 6.)

Analysis and Conclusions of Law

An institutionalized spouse's patient-paid amount is calculated using the entirety of their income and deducting certain allowances. For the institutionalized spouse, the relevant deductions include a personal-needs allowance of \$72.80, a spousal-maintenance-needs allowance, and a deduction for health insurance premiums. (See 130 CMR 520.026(A), (B), (E).) The spousal-maintenance-needs allowance "is the amount by which the minimum-monthly-maintenance-needs allowance exceeds the community spouse's gross income." (130 CMR 520.026(B).)

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

- (a) \$[2,177.50³] (the federal standard maintenance allowance); and

³ The adjusted numbers inserted into this quotation are available from <https://www.medicaid.gov/medicaid/eligibility/downloads/spousal-impoverishment/ssi-and-spousal-impoverishment-standards.pdf> (last visited June 22, 2022); and https://eohhs.ehs.state.ma.us/DTA/PolicyOnline/BEACON5/!SSL!/WebHelp/SNAP/SNAP_COLA/SNAP_COLA_OLG_Update_FINAL.htm (last visited June 22, 2022).

(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

(i) 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

(ii) 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 \$[714].

(2) The maximum-monthly-maintenance-needs allowance is \$[3,435] 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).

130 CMR 520.026(B)(1)-(2).

(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 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.

...

(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.

...

(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.

130 CMR 520.017(D) (emphasis added).

I agree that the community spouse has "exceptional circumstances" arising from her "medical condition," which result in her "significant financial duress." She is handicapped and requires a handicapped accessible apartment to safely reside in the community. The community spouse credibly testified that she is trying to find cheaper housing, but that her need for a handicapped accessible unit makes this exceptionally difficult. Therefore, I find that the community spouse is entitled to use the actual MMMNA, rather than the regulatory maximum in the calculation of her SMNA. Therefore, this appeal is APPROVED in part.

From January 1, 2022 through February 28, 2022, the community spouse's "excess shelter allowance" was \$2,899.75, from March 1 to July 1, 2022, it is \$2,925.75. This makes the MMMNA for these periods \$5,077.25 and \$5,103.25, respectively. The community spouse's income, and therefore her SMNA, is \$3,313.65 less than the MMMNA before March 2022 and \$3,339.65 after March 2022.

For January and February 2022, the institutionalized spouse's PPA is \$171.86, based upon total income of \$3,722.31, less a PNA of \$72.80, an SMNA of \$3,313.65, and health insurance costs of \$164. From March forward, the PPA is \$145.86, due to the increased SMNA arising from the adjustment to the SUA published by DTA.⁴ This appeal is DENIED in part to the extent that the institutionalized spouse continues to have a PPA.

Order for MassHealth

Adjust the institutionalized spouse's PPA to \$171.86 for January and February 2022. Adjust the PPA to \$145.86 for March 2022 forward in accordance with this decision.

⁴ Many of the standardized federal numbers used to calculate the PPA are adjusted on July 1, 2022. Nothing in the decision prevents MassHealth from making future adjustments to the PPA due to adjustments to these standardized numbers.

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.

Christopher Jones
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957