

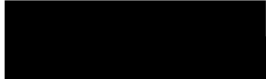
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2202855
Decision Date:	7/28/2022	Hearing Date:	05/19/2022
Hearing Officer:	Christopher Jones	Record Open to:	06/10/2022

Appearance for Appellant:

 – Community Spouse

Appearance for MassHealth:

Jernice Diaz – Taunton 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 – PPA/SMNA
Decision Date:	7/28/2022	Hearing Date:	05/19/2022
MassHealth's Rep.:	Jernice Diaz	Appellant's Rep.:	Community Spouse; [REDACTED]
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 21, 2022, MassHealth increased the appellant's patient-paid amount to \$2,490.01, effective January 1, 2022. (Exhibit 2; 130 CMR 520.025, 520.026.) The appellant filed this appeal in a timely manner on April 14, 2022.¹ (Exhibit 2; 130 CMR 610.015(B).) Reductions of assistance are valid grounds for appeal. (130 CMR 610.032.)

The appellant's attorney requested that the record be left open until June 10, 2022 for him to further discuss the case with MassHealth's representative outside of the hearing and to submit additional documentation regarding the community spouse's financial situation.

Action Taken by MassHealth

MassHealth increased the institutionalized spouse's patient-paid amount to \$2,490.01, as of January 1, 2022.

¹ Both the institutionalized spouse and the community spouse have the right to appeal the calculation of the patient-paid amount and the spousal-maintenance-needs allowance. (See 130 CMR 520.017.)

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.000, in determining the appellant's patient-paid amount.

Summary of Evidence

The institutionalized spouse has been residing in a nursing facility for over two years. During this time, he has been paying a patient-paid amount ("PPA") to contribute toward the cost of his care. The appellant's original PPA was set at \$2,020.71, and it has been \$2,066.81 since April 2020. The PPA is generally the entirety of an institutionalized person's income, less certain deductions. The relevant deductions here are the personal-needs allowance ("PNA") of \$72.80, the institutionalized spouse's health insurance premiums of \$272.29, and a spousal-maintenance-needs allowance ("SMNA").

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 and a standard housing deduction is taken out. This "excess shelter expense" is then added to a standard community-spouse living expense, and the result is the minimum-monthly-maintenance-needs allowance ("MMMNA").²

The institutionalized spouse receives a total monthly income of \$4,675.00; \$2,423 from Social Security, \$2,099 from a private pension, and another income source of \$153 per month. The community spouse's total monthly income is \$1,180.66; \$1,140.10 from Social Security and \$40.56 from a private pension. The community spouse's monthly mortgage payment is \$407.33, and she also pays \$482.43 in real estate taxes and homeowner's insurance. At the time MassHealth calculated the January 1, 2022 PPA, the real estate taxes and insurance were verified to be \$400.95 per month. The number historically used for the mortgage payment has created the confusion that gave rise to this appeal.

In calculating the SMNA for January 1, 2022, MassHealth used a standard utilities allowance for people who pay their own heat and electricity of \$688.³ The standard housing deduction was \$653.25, and the community spouse living expense was \$2,177.50.⁴ MassHealth calculated the community spouse's MMMNA to be, \$3,020.53. From this MMMNA, MassHealth subtracts the community spouse's gross income, and the result is the SMNA, the amount of the institutionalized spouse's

² All of these standard allowances or deductions are updated at least annually. To further confuse matters, different agencies use the term MMMNA to refer to different things. The federal government uses MMMNA to refer to the "standard community-spouse living expense," while MassHealth uses it to refer to both the minimum- and maximum-monthly-maintenance-needs allowances.

³ On March 1, 2022, this number increased to \$714.

⁴ On July 1, 2022, these numbers increased to \$686.63 and \$2,288.75, respectively.

income that may be retained by the community spouse. Starting January 2022, MassHealth found that number to be \$1,839.87 (\$3,020.53 - \$1,180.66).

In 2020, the community spouse's mortgage was listed as \$808.38, not \$407.33.⁵ In 2020, the MassHealth had used the maximum-monthly-maintenance-needs allowance of \$3,216, and set the SMNA at \$2,112.94 based upon the community spouse's income at that time. Once this discrepancy was explained at the hearing, the appellant understood why the PPA increased as of January 2022. However, they argued that the community spouse's living expenses were very high and that this change in the PPA would put the community spouse into financial duress. The community spouse was asked if she had any extraordinary medical expenses, as the regulations only allows the MMMNA to be adjusted where exceptional circumstances arising from the medical condition, frailty, or similar special needs of the community spouse give rise to significant financial duress.

The appellant's attorney explained that there have been some problems at the community home, including basement flooding, emergency heating repairs, and a dental bill for the community spouse. They asked that the record be left open for them to submit additional evidence regarding exceptional circumstances. The appellant submitted an updated copy of their mortgage, showing the mortgage payment remained \$407.33, but the real estate taxes and insurance increased to \$482.43. This letter is dated April 12, 2022. Also submitted were: an undated water damage remediation bill for \$2,427.98; a "draft inducer" replacement bill for the community home's heating system for \$486 from February 7, 2022; and a dental bill for the community spouse dated September 1, 2021 for \$1,750. This final bill appears to be for the surgical extraction of a tooth and the replacement with an implant. In their record open correspondence, the appellant also alleged ongoing monthly bills totaling \$2,249.75. This breakdown includes all of the community spouse's monthly costs, including the home repairs and dental surgery, but excluding the mortgage, taxes, or insurance. After the mortgage, insurance, and taxes are added, the total monthly costs detailed would be \$3,139.51. The appellant's post-hearing submission does not address whether the community spouse is facing financial duress.

Findings of Fact

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

1. The institutionalized spouse has been residing in a nursing facility for over two years. Throughout this time, the community spouse's SMNA has been calculated using a mortgage amount of around \$808.38; in 2020 the SMNA was \$2,112.94. (Testimony by MassHealth's representative; Exhibit 3.)
2. The institutionalized spouse receives a total monthly income of \$4,675.00. He pays \$272.29 per month for health insurance. The community spouse's total monthly income is \$1,180.66. (Testimony by MassHealth's representative; Exhibit 3.)

⁵ It is probable that the larger number was the combined total of the mortgage plus taxes and insurance, but this specific error cannot be reproduced in the math based upon evidence in the record.

3. During the institutionalized spouse's annual renewal this year, community spouse's mortgage was verified to be \$407.33 and her taxes and insurance were verified to be \$400.95. The community spouse pays all her own utility costs. Using \$688 as the standard utilities allowance, \$653.25 as the standard housing deduction, and \$2,177.50 as the community spouse living expense, MassHealth calculated the community spouse's SMNA to be \$1,839.87; the corresponding PPA was \$2,490.04. (Testimony by MassHealth's representative; Exhibit 3.)
4. As of at least April 2022, the community spouse's homeowner's taxes and insurance increased to \$482.43 per month. The community spouse also asserted that, with the cost of dental surgery she underwent in September, her monthly expenses are \$3,139.51. (Exhibits 4 and 5.)

Analysis and Conclusions of Law

To determine 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." (130 CMR 520.026.) The amount for the personal-needs allowance is set at \$72.80. (*Id.*)

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).)

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

- (a) \$[2,113.75] (the federal standard maintenance allowance); and
- (b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$[646.5] 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 \$[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).

(130 CMR 520.026(B)(1)-(2).)^{6, 7}

(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.

⁶ The 2021 Spousal Impoverishment Standards are available at <https://www.medicaid.gov/medicaid/eligibility/downloads/ssi-and-spousal-impoverishment-standards.pdf>. (Last visited July 25, 2022.) Effective July 1, 2022, “the federal standard maintenance allowance” increased to \$2,288.75; the “standard shelter expense” increased to \$686.63; and the maximum-monthly-maintenance-needs allowance increased to \$3,435.00. (Available at <https://www.medicaid.gov/federal-policy-guidance/downloads/cib06022022.pdf> (last visited July 25, 2022).)

⁷ The “applicable standard deduction under the Supplemental Nutrition Assistance Program for utility expenses” is updated by the Department of Transitional Assistance, and this figure increased to \$714 as of March 1, 2022. (Available at https://eohhs.ehs.state.ma.us/DTA/PolicyOnline/BEACON5/!SSL!/WebHelp/SNAP/SNAP_COLA/SNAP_COLA_OLG_Update_FINAL.htm (last visited July 25, 2022).)

...

(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).)

The appellant is entitled to two adjustments to their SMNA and PPA calculations. First, the appellant established that their homeowner's insurance and taxes increased in the Spring of 2022, up to \$482.43 from \$400.95 in January. This occurred around the time that the Standard Utility Allowance also increased to \$714. Therefore, as of March 1, 2022, the appellant's Excess Shelter Expenses are \$950.51, and her resulting MMMNA is \$3,128.01. This increases the SMNA from \$1,839.87 to \$1,947.35 and reduces the PPA to \$2,382.56. Second, the federal standards as of July 1, 2022. Using these new numbers, the appellant's MMNA would be \$3,205.88, the SMNA is then \$2,025.22 and the PPA, \$2,304.69. To this extent, the appeal is APPROVED in part.

The community spouse is not otherwise entitled to an adjustment to her MMMNA arising from "exceptional circumstances." Even if the submitted bills were deemed to "arise from the medical condition, frailty, or similar special needs of the community spouse," the appellant has not shown "significant financial duress" that will arise if the appellant's MMMNA were not increased.⁸ A hearing officer must ensure that no expense is counted more than once in determining an increase to the MMMNA. The numbers MassHealth uses are standardized estimates meant to cover a community spouse's living expenses, aside from their housing expenses. The appellant provided specific numbers to represent all of her monthly expenses to identify how much her MMMNA should be increased to. This requested MMMNA was \$3,139.51. This figure is about \$11 more than the appellant's MMMNA from March 1, 2022, and it is \$66 less than her MMMNA as of July 1, 2022. Without additional evidence, I cannot find that the PPA calculations effective January 1, March 1, and July 1 of 2022 would result in significant financial duress to the community spouse. The remainder of this appeal is DENIED in part.

Order for MassHealth

Recalculate the appellant's PPA in accordance with this decision. As of March 1, 2022, set the PPA at \$2,382.56, and \$2,304.69 as of July 1, 2022. Review the appellant's PPA based upon normal

⁸ The appellant offers no specific argument to explain how these three bills arise from the community spouse's special needs, and therefore there is no reason to find that they do.

practices during their next renewal.

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

Appellant's Atty: [REDACTED]