

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2203774
Decision Date:	6/29/2022	Hearing Date:	06/22/2022
Hearing Officer:	Patricia Mullen	Record Open to:	06/29/2022

Appearances for Appellant:

business office, nursing facility

Appearance for MassHealth:

Eileen Smith, Charlestown MEC; Cynthia Ferreira (observing); Crystal Cameron (observing)



*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:	Patient Paid Amount (PPA)
Decision Date:	6/29/2022	Hearing Date:	06/22/2022
MassHealth's Rep.:	Eileen Smith, Charlestown MEC; Cynthia Ferreira (observing); Crystal Cameron (observing)	Appellant's Reps.:	 business office, nursing facility
Hearing Location:	Charlestown MassHealth Enrollment Center		

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 May 10, 2022, MassHealth calculated a patient paid amount (PPA) of \$1,552.03 a month for the appellant to pay to the nursing facility. (see 130 CMR 520.026 and Exhibit 1). The appellant filed this appeal in a timely manner on May 18, 2022 disputing the PPA. (see 130 CMR 610.015(B) and Exhibit 2). Dispute of a PPA calculation is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth calculated a monthly PPA of \$1,552.03 for the appellant to pay to the nursing facility every month.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.026, in determining that the appellant's monthly PPA to the nursing facility is \$1,552.03.

Summary of Evidence

The appellant was represented telephonically by his attorney and by a representative from the nursing facility's business office. MassHealth was represented telephonically by a worker from the MassHealth Enrollment Center (MEC) in Charlestown. Two workers from the Charlestown MEC observed the hearing. The MassHealth representative testified that the appellant submitted an application for MassHealth Standard for long term care residents on January 6, 2022 seeking a January 19, 2022 start date. (Exhibit 6). By notice dated May 10, 2022, the appellant was approved for MassHealth with a January 19, 2022 start date and a PPA of \$1,552.03 per month to the nursing facility. (Exhibit 1).

The MassHealth representative stated that the appellant receives net Social Security of \$2,310.00 a month. The MassHealth representative stated that, pursuant to MassHealth regulations, the following amounts were deducted from the appellant's income to calculate his PPA: a personal needs allowance (PNA) of \$72.80, a spousal allowance of \$258.22, a family maintenance needs allowance of \$312.50, and the appellant's monthly health insurance premium of \$114.45, for a total of \$757.97 in allowable deductions. The MassHealth representative noted that after deducting \$757.97 from the appellant's income of \$2,310.00, the appellant's PPA is \$1,552.03. (Exhibit 1).

The MassHealth representative stated that the spousal allowance is the difference between the spouse's Minimum Monthly Maintenance Needs Allowance (MMMNA) and her income. The MassHealth representative noted that the MMMNA is calculated pursuant to MassHealth regulations using state and federal regulatory standards, allowances, and calculations. (Exhibit 7, p. 13). The MassHealth representative stated that the appellant's spouse pays a monthly mortgage of \$552.50, pays an average of \$139.53 a month in homeowner's insurance premiums (\$1,674.40/12), and pays an average of \$558.56 a month in real estate taxes (\$6,702.80/12) for total shelter expenses of \$1,250.29. The MassHealth representative stated that because the appellant's spouse lives in a two-family home, MassHealth allows only half of the mortgage, homeowner's insurance, and real estate taxes when calculating the MMMNA. The MassHealth representative stated that whoever is living in the other apartment of the two-family home is responsible for the other half of expenses. The MassHealth representative noted that even if no one is living in the other unit, the appellant's spouse's shelter expenses are still split in half in determining the MMMNA. Accordingly, the appellant's spouse was allowed a shelter expense of \$625.18 (\$1,250.29/2).

The MassHealth representative stated that MassHealth calculated the appellant's spouse's MMMNA by adding the monthly mortgage, real estate taxes, and homeowner's insurance of \$625.18 and a regulatory utility allowance of \$688.00 a month for total shelter expenses of \$1,313.18 a month. (Exhibit 7, p. 13). From this amount, a regulatory shelter expense standard of \$653.25 was deducted. (Exhibit 7, p. 13). To the remaining \$659.93, the federal maintenance allowance of \$2,177.50 was added, resulting in a MMMNA of \$2,837.43. (Exhibit 7, p. 13). The

MassHealth representative stated that the appellant's spouse's income was deducted from her MMMNA to determine a spousal allowance. The MassHealth representative stated that the appellant's spouse submitted two biweekly paystubs, one in the amount of \$1,186.98 and the other in the amount of \$1,193.76. (Exhibit 7, pp. 8, 9). Average monthly gross earnings were calculated by adding the biweekly checks, dividing by 4 and multiplying by 4.333 ($\$1,186.98 + \$1,193.76 = \$2,380.74 / 4 = \$595.18 \times 4.333 = \$2,578.93$). The MassHealth representative stated that the appellant's spouse has gross monthly earnings totaling \$2,578.93. MassHealth deducted the appellant's spouse's income from her MMMNA resulting in a spousal allowance of \$258.50 ($\$2,837.43 - \$2,578.93 = \258.50). (Exhibit 7, p. 13).

The MassHealth representative stated that the appellant has a minor dependent child living in the home and thus a family maintenance allowance was calculated. The appellant's child receives \$1,240.00 a month in Social Security dependent benefits. The MassHealth representative stated that the family maintenance needs allowance is calculated by deducting the child's income from the federal standard maintenance allowance of \$2,177.50 and dividing by 3. (Exhibit 7, p. 13). Accordingly, the family maintenance needs allowance is \$312.50 ($\$2,177.50 - \$1,240 = \$937.50 / 3 = \312.50). (Exhibit 7, p. 13).

The appellant's attorney stated that the appellant and his spouse have owned the two family home, in which the family lives, since 2004, and have always treated it like a single family home. The appellant's attorney stated that the second unit of the home has never been rented. The appellant's attorney argued that the mortgage, homeowner's insurance premiums, and real estate taxes should not be split in half because the appellant's spouse pays these expenses in full and does not receive any rental income to offset these expenses. The appellant's attorney argued further that the appellant's spouse cannot even afford a reduced PPA because she has so many other expenses including increased life insurance premiums.

The record was left open to give the appellant's attorney the opportunity to submit an affidavit from the appellant's spouse. (Exhibit 8). Within the record open period, the appellant's attorney submitted an affidavit from the appellant's spouse dated June 24, 2022, in which she attests that she and the appellant have owned their home since 2004 and the family has always utilized the home as a single-family residence and continues to do so. (Exhibit 10, p. 3). The appellant's spouse attested further that the property has never been rented out to tenants or otherwise leased and has never produced rental income. (Exhibit 10, p. 3).

Findings of Fact

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

1. The appellant applied for MassHealth Standard for long term care residents on January 6, 2022 seeking a January 19, 2022 start date.
2. By notice dated May 10, 2022, the appellant was approved for MassHealth with a January 19, 2022 start date and a PPA of \$1,552.03 per month to the nursing facility.

3. The appellant receives net Social Security of \$2,310.00 a month.
4. The appellant pays \$114.45 in monthly health insurance premiums.
5. The appellant's spouse pays a monthly mortgage of \$552.50, pays an average of \$139.53 a month in homeowner's insurance premiums, and pays an average of \$558.56 a month in real estate taxes for total shelter expenses of \$1,250.29.
6. The appellant's spouse has average monthly gross earnings of \$2,578.93.
7. The appellant has a minor dependent child living in the home; the appellant's child receives \$1,240.00 a month in Social Security dependent benefits.
8. The appellant and his spouse have owned their home since 2004 and the family has always utilized the home as a single-family residence and continues to do so.
9. The appellants has never rented out an apartment in his home and has received no rental income from the property.

Analysis and Conclusions of Law

Long-term-care General Income Deductions 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.

(A) Personal-needs Allowance.

- (1) The MassHealth agency deducts \$72.80 for a long-term-care resident's personal-needs allowance (PNA).
- (2) If an individual does not have income totaling the standard, the MassHealth agency will pay the individual an amount up to that standard on a monthly basis.
- (3) The PNA for SSI recipients is \$72.80.

(B) Spousal-maintenance-needs-deduction. If the community spouse's gross income is less than the amount he or she needs to live in the community (minimum-monthly-maintenance-needs allowance, MMMNA) as determined by the MassHealth agency, the MassHealth agency may deduct an amount from the institutionalized spouse's countable-income amount to meet this need. This amount is the spousal-maintenance-needs deduction. 130 CMR 520.026(B) applies to the first month of eligibility in an institution and terminates the first full calendar month in which the spouse is no longer in an institution or no longer has a spouse in the community. This deduction is the amount by which the minimum-monthly-maintenance-needs allowance exceeds the community spouse's gross income.

- (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 \$688.00.
- (2) The maximum-monthly-maintenance-needs allowance is \$3,435.00 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).
- (3) If the institutionalized individual is subject to a court order for the support of the community spouse, the court-ordered amount of support must be used as the spousal maintenance-needs deduction when it exceeds the spousal-maintenance-needs deduction calculated according to 130 CMR 520.026(B) or resulting from a fair hearing.

(C) Deductions for Family-maintenance Needs.

- (1) The MassHealth agency allows a deduction from the income of a long-term-care resident to provide for the maintenance needs of the following family members if they live with the community spouse:
 - (a) a minor child — a child younger than 21 years old of either member of the couple;
 - (b) a dependent child — a child 21 years of age and older who is claimed as a dependent by either spouse for income-tax purposes under the Internal Revenue Code;
 - (c) a dependent parent — a parent of either spouse who lives with the community spouse and who is claimed as a dependent by either spouse for income-tax purposes under the Internal Revenue Code; and
 - (d) a dependent sibling — a brother or sister of either spouse (including a half-brother or half-sister) who lives with the community spouse and who is claimed as a dependent by either spouse for income-tax purposes under the Internal Revenue Code.
- (2) The deduction for family-maintenance needs is $\frac{1}{3}$ of the amount by which the federal standard maintenance allowance exceeds the monthly gross income of the family member. The federal standard maintenance allowance is \$2,177.50.

130 CMR 520.026(A), (B), (C).

MassHealth argued that because the appellant's spouse owns a two family home, she is only entitled to half of the shelter expenses in determining her MMMNA. The appellant and his

family have always utilized the house as a single family home and have not rented out a unit in the home nor has the appellant or spouse ever received rental income from the property. The MassHealth regulations do not state that only half of the mortgage, real estate taxes, and homeowner's insurance premiums should be counted in determining the MMMNA for the owner of a two family property. As owner of the property, the appellant's spouse is responsible for the entire mortgage, real estate taxes, and homeowner's insurance premiums in full. Even if a unit in the home was rented, a renter is not a joint owner and would not be responsible for half of the mortgage, real estate taxes, or homeowner's insurance on the property. Rental income would be countable and would offset a MMMNA, but the appellant's spouse receives no rental income.

MassHealth should have counted the appellant's spouse's total shelter expenses when calculating her MMMNA. The appellant's spouse pays a monthly mortgage of \$552.50, pays an average of \$139.53 a month in homeowner's insurance premiums, and pays an average of \$558.56 a month in real estate taxes for total shelter expenses of \$1,250.29. A regulatory utility allowance of \$688.00 a month is added to the appellant's shelter expenses, for total shelter expenses of \$1,938.29 a month. From this amount, a regulatory shelter expense standard of \$653.25 is deducted. To the remaining \$1,285.04, the federal maintenance allowance of \$2,177.50 is added, resulting in a MMMNA of \$3,462.54. This amount exceeds MassHealth's maximum MMMNA amount of \$3,435.00 a month and thus the appellant's MMMNA is the maximum of \$3,435.00 a month. The appellant's spouse's income of \$2,578.93 is deducted from her MMMNA of \$3,435.00 resulting in a spousal allowance of \$856.07.

The appellant has a minor dependent child living in the home and MassHealth correctly calculated a family maintenance allowance of \$312.50 pursuant to 130 CMR 520.026(C).

There was no dispute that the appellant pays \$114.45 for monthly health insurance premiums.

The ap/pellant has a spouse living in the home and the spouse was allowed a spousal allowance, thus a home maintenance allowance is not applicable in this case.

From the appellant's countable income of \$2,310.00, he is allowed a PNA deduction of \$72.80, a spousal needs allowance of \$856.07, a family maintenance needs allowance of \$312.50, and a deduction of \$114.45 for monthly health insurance premiums. The appellant's resulting PPA is \$954.18 a month.

The appellant's attorney argued that even \$954.18 is a hardship for the appellant's spouse based on her expenses including increased life insurance premiums. The regulation pertaining to an increase in a MMMNA based on exceptional circumstances is as follows:

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 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 will ensure 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 will review the housing agreement, service plan, fee schedule, and other pertinent documents to determine whether exceptional circumstances exist. Additional amounts will be allowed only for specific expenses necessitated by exceptional circumstances of the community spouse and not for maintaining any pre-set standard of living.

See 130 CMR 520.017(D)(1).

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. The appellant's spouse has not evidenced expenses arising from her medical condition or frailty and does not meet the requirements under 130 CMR 520.017(D).

The appeal is approved insofar as the appellant's PPA is reduced to \$954.18 a month retroactive to January, 2022 but is denied in that the PPA is not less than this amount.

Order for MassHealth

Modify the notice dated May 10, 2022 and re-determine the spousal allowance to be \$856.07 and the PPA to be \$954.18 retroactive to January 1, 2022.

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.

Patricia Mullen
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Jennifer Vitt, Charlestown MassHealth Enrollment Center
Appellant Attorney: [REDACTED]
Appellant Rep.: [REDACTED]
Appellant Rep.: [REDACTED]
[REDACTED]