

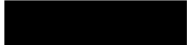
# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in Part; Denied in Part	<b>Appeal Number:</b>	2206429
<b>Decision Date:</b>	11/08/2022	<b>Hearing Date:</b>	09/30/2022
<b>Hearing Officer:</b>	Susan Burgess-Cox	<b>Record Open to:</b>	10/14/2022

**Appearance for Appellant:**



**Appearance for MassHealth:**

Tambria Pioggia



*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

<b>Appeal Decision:</b>	Approved in Part; Denied in Part	<b>Issue:</b>	Patient Paid Amount
<b>Decision Date:</b>	11/08/2022	<b>Hearing Date:</b>	09/30/2022
<b>MassHealth's Rep.:</b>	Tambria Pioggia	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	All Parties Appeared by Telephone	<b>Aid Pending:</b>	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 August 16, 2022, MassHealth notified the applicant and his spouse that he is eligible for MassHealth long-term care as of July 1, 2022 with a patient paid amount of \$4,044.77. (130 CMR 520.000; Exhibit 1). The community spouse filed an appeal in a timely manner on August 29, 2022. (130 CMR 610.015; Exhibit 2). An agency determination regarding the scope or amount of assistance is valid grounds for appeal. (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth notified the applicant and his spouse that he is eligible for MassHealth as of July 1, 2022 with a patient paid amount of \$4,044.77.

### Issue

Whether MassHealth was correct in their decision regarding the calculation of a patient paid amount and if the community spouse qualifies for any adjustment to the Minimum Monthly Maintenance Needs Allowance (MMMNA).

## Summary of Evidence

MassHealth approved an application for long-term care for coverage to begin on the requested start date of July 1, 2022 with a patient paid amount (PPA) of \$4,044.77. The applicant's total monthly gross income of \$4,599.66 includes \$2,217 each month from the Social Security Administration and a monthly pension of \$2,382.66. (Testimony; Exhibit 6). In calculating a patient paid amount, MassHealth allowed a deductions of \$72.80 for a personal needs allowance (PNA), \$24.09 for a spousal maintenance needs allowance (SMNA) and \$458 for health care coverage or other expenses resulting in a patient paid amount (PPA) of \$4,044.77.

The community spouse has a total gross monthly income of \$2,651.19 including \$1,213 each month from the Social Security Administration, a monthly pension of \$154.84 and annuity payments of \$1,283.35. (Testimony; Exhibit 6). As noted above, in the decision on appeal, MassHealth calculated a spousal maintenance needs allowance (SMNA) of \$24.09.<sup>1</sup> The expenses considered in calculating a SNMA include shelter expenses and a standard maintenance allowance.

In the notice on appeal, it appears that MassHealth calculated countable shelter expenses of 386.53.<sup>2</sup> These shelter expenses included payments for taxes, insurance and a standard utility allowance. (Testimony; Exhibit 6). MassHealth deducted a shelter expense standard of \$686.63 to calculate countable shelter expenses of \$386.53. (Testimony; Exhibit 6). MassHealth added this amount to the federal standard maintenance allowance of \$2,288.75 to calculate a Minimum Monthly Maintenance Needs Allowance (MMMNA) of \$2,675.28. (Testimony; Exhibit 6). Deducting the earned income of the community spouse from this MMMNA resulted in a Spousal Maintenance Needs allowance of \$24.09. (Testimony; Exhibit 6).

The community spouse appeared with an appeal representative. The representative noted that the information provided to MassHealth regarding the community spouse's monthly expenses was not correct. The representative presented documents that were incorporated into the hearing record as Exhibit

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<sup>1</sup> While this amount conflicts with the spreadsheet provided at hearing, it is the amount listed in the notice on appeal. The MassHealth representative at hearing presented a spreadsheet at the request of the hearing officer during hearing. It is unclear whether the figures utilized in the spreadsheet presented at hearing were accurate versus those listed in the notice that allowed for a SMNA. This decision will utilize the figures listed on the notice as they provide the most benefit to the applicant and the agency could not account for discrepancies.

<sup>2</sup> While this amount conflicts with the spreadsheet provided at hearing, it is consistent with the notice on appeal so will be utilized in this decision.

5.

The records include bills for the following expenses: utilities, taxes, homeowner's insurance, two life insurance policies, dental insurance, health insurance, automobile insurance, out-of-pocket medical expenses, credit card payments and appliance rentals. (Exhibit 5). The bill for homeowner's insurance shows an annual premium of \$1,685 with monthly payments of \$140.41. (Exhibit 5). The real estate tax bill shows quarterly payments of \$1,243.35, resulting in an annual payment of \$4,973.40 and monthly costs of \$414.45. The monthly medical insurance bill shows a monthly premium of \$229. As noted above, MassHealth utilized a figure of \$281.86 in calculating insurance and taxes rather than the \$554.86 presented by the community spouse at hearing. The appellant's representative testified that the monthly utility costs of the community spouse exceed the \$686 utilized by MassHealth. Utility bills presented include gas and oil.<sup>3</sup> The appeal representative noted that the health insurance premium amount utilized by MassHealth was not correct.

The community spouse testified that she has medical conditions that require her to visit physicians, dentists and other providers regularly in addition to costs for medications. The community spouse testified that she needs to have a landscaper come to take care of her property as she is unable to do so on her own. The community spouse testified that other expenses such as credit card payments, automobile insurance, life insurance, maintenance costs on her home and car all cost more than what she can afford to pay on her own.

At hearing, MassHealth agreed to review any additional records verifying monthly insurance, taxes and other expenses. The record was held open to give the community spouse the opportunity to submit additional evidence regarding her monthly expenses. (Exhibit 7).

The representative provided documents that were incorporated into the hearing record as Exhibit 8. A letter from a physician states that the community spouse has asthma and chronic rhinitis noting at least two medications utilized for treatment. (Exhibit 8). A dental insurance bill for both the applicant and community spouse show a monthly premium of \$124.62. (Exhibit 8). A monthly health insurance bill from the community spouse shows a premium of \$229. (Exhibit 8). A six-month summary of out-of-pocket prescription costs shows a total of \$700. (Exhibit 8). Bank statements show a monthly prescription drug insurance premium of \$99.90. (Exhibit 8).

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<sup>3</sup> While the utility bills presented are copies that are not clearly legible, the actual amount due is not relevant as the regulations require MassHealth to utilize a standard utility allowance. The only legible utility bill is from National Grid reflecting a monthly payments that range from \$71 to \$179.

The MassHealth representative reviewed the records and provided a response that was incorporated into the hearing record as Exhibit 9. The response included a notice dated October 13, 2022 that was issued in error as it was based on facts and evidence presented during this appeal so not subject to new appeal rights. Any adjustments are the subject of this decision, not a new eligibility determination.

In their response, MassHealth did not make any adjustments to the bills for homeowner taxes and insurance but did include a new federal utility allowance of \$860 for a total of \$1,141.86 in shelter expenses. (Exhibit 9). MassHealth again deducted a shelter expense standard of \$686.63 which resulted in total shelter expenses of \$455.23. MassHealth added this new amount to the federal standard maintenance allowance of \$2,288.75 to calculate a new Minimum Monthly Maintenance Needs Allowance (MMMNA) of \$2,743.29. (Exhibit 9). The earned income of the community spouse is less than this amount. (Exhibit 9). This resulted in a deduction of \$92.79 from the patient paid amount to meet the needs of the community spouse. (Exhibit 9),

Utilizing records originally provided to the agency regarding a supplemental health insurance premium of \$458 and information presented during the appeal regarding another supplemental insurance payment of \$99.90, MassHealth adjusted the health care premium deduction to \$557.90. Changes made by MassHealth to the MMMNA and health insurance resulted in a PPA of \$3,773.27.

## **Findings of Fact**

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

1. The applicant was a resident of a long-term care facility and applied for MassHealth long-term care.
2. MassHealth approved an application for long-term care for coverage to begin on July 1, 2022 with a patient paid amount (PPA) of \$4,044.77.
3. The applicant has a total monthly gross income of \$4,599.66.
4. The applicant receives \$2,217 each month from the Social Security Administration.
5. The applicant receives a monthly pension of \$2,382.66.
6. In calculating a patient paid amount, MassHealth allowed a deduction of \$72.80 for a personal needs allowance (PNA), \$24.09 for a spousal

maintenance needs allowance (SMNA) and \$458 for health care coverage or other expenses.

7. MassHealth calculated a (PPA) of \$4,044.77.
8. The applicant has a community spouse with a total gross monthly income of \$2,651.19.
9. The community spouse receives \$1,213 each month from the Social Security Administration.
10. The community spouse has a monthly pension of \$154.84.
11. The community spouse receives annuity payments of \$1,283.35.
12. In the notice on appeal, MassHealth calculated a spousal maintenance needs allowance (SMNA) of \$24.09. The expenses considered in calculating a SNMA included shelter expenses and a standard maintenance allowance.
13. The community spouse pays an annual homeowner's insurance premium of \$1,685 or monthly costs of \$140.41.
14. The community spouse has annual property taxes of \$4,973.40 or monthly costs of \$414.45.
15. The community spouse pays a total of \$554.86 each month for insurance and taxes.
16. The utility bills of the community spouse exceed the standard utility allowance utilized by MassHealth.
17. The community spouse has asthma and chronic rhinitis.
18. The community spouse takes at least two medications to treat these conditions.
19. The community spouse pays a prescription drug insurance premium of \$99.90 each month.
20. The community spouse has dental insurance premium payments of \$124.62 each month.
21. The community spouse incurs an average of \$116.67 each month in out-

of-pocket medical expenses.

22. The community spouse utilizes landscaping services as she is unable to maintain her property on her own.
23. The community spouse has other monthly expenses including credit card payments, automobile insurance, life insurance, and maintenance costs on her home and car.
24. On October 1, 2022, the Supplemental Nutrition Assistant Program (SNAP) Standard Utility Allowance (SUA) increased from \$688 to \$860.
25. In calculating the PPA, MassHealth considered a shelter expense standard of \$686.63.
26. The community spouse lives at home independently.

## **Analysis and Conclusions of Law**

MassHealth administers and is responsible for the delivery of health-care services to MassHealth members. (130 CMR 515.002). The regulations governing MassHealth at 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for noninstitutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by M.G.L. c. 118E, and certain Medicare beneficiaries. (130 CMR 515.002). The appellant in this case is an institutionalized person. Therefore, the regulations at 130 CMR 515.000 through 522.000 apply to this case. (130 CMR 515.002).

The issue on appeal is the patient paid amount that the applicant contributes. The applicant would like to provide for the maintenance needs of the community spouse. (130 CMR 520.002(B)). In determining the monthly patient-paid amount, general income deductions must be taken in the following order: a personal-needs allowance (PNA); a spousal-maintenance-needs allowance (SMNA); a family-maintenance-needs allowance for qualified family members (FMNA); a home-maintenance allowance; and health-care coverage and incurred medical and remedial-care expenses. (130 CMR 520.026). The deduction for health care coverage includes current health-insurance premiums or membership costs. (130 CMR 520.026(E)(1)).

If a community spouse's gross income is less than the amount he or she needs to live in the community, MassHealth will calculate a minimum-monthly-

maintenance-needs allowance, (MMMNA), and deduct an allowance from the institutionalized spouse's countable-income to meet this need. (130 CMR 520.026(B)). This amount is the spousal-maintenance-needs allowance (SMNA). (130 CMR 520.026(B)). The calculations done under the regulations at 130 CMR 520.026(B) apply to the first month of eligibility in an institution and terminate 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. (130 CMR 520.026(B)).

Pursuant to 130 CMR 520.026(B), MassHealth determines the MMMNA by adding the following amounts:

- (1) the federal standard maintenance allowance<sup>4</sup>; and
- (2) an excess shelter allowance determined by calculating the difference between the standard shelter expense<sup>5</sup> and the shelter expenses for the community spouse's principal residence, including:
  - (a) 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
  - (b) the applicable standard deduction under the Food Stamp Program for utility expenses<sup>6</sup>.

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).

Under the regulations governing MassHealth, 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. (130 CMR 520.017(D)(1)). 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. (130 CMR 520.017(D)(1)). Such necessities include, but are not limited to, special remedial and support services and extraordinary uncovered medical expenses. (130 CMR 520.017(D)(1)). Countable expenses generally do not include car

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<sup>4</sup> The federal standard maintenance allowance utilized by MassHealth was \$2,288.75.

<sup>5</sup> The Standard Shelter Expense deduction utilized by MassHealth was \$686.63.

<sup>6</sup> The Supplemental Nutrition Assistance Program (SNAP) standard utility allowance (SUA) as of the date of the decision on appeal was \$688. On October 1, 2022, the SNAP SUA increased to \$860.



payments, even if the car is used for transportation to medical appointments, or home-maintenance expenses such as security systems and lawn care. (130 CMR 520.017(D)(1)). The expenses incurred and reported by the appellant for credit card bills, car insurance payments and life insurance payments are not considered by MassHealth or the Board of Hearings in calculating a MMMNA.

The community spouse did present evidence of necessities that arose from a medical condition and special needs including uncovered medical expenses. Additionally, records presented by the community spouse show errors in the figures utilized by MassHealth in calculating shelter expenses. On October 1, 2022, the SNAP SUA changed from \$688 to \$860. While the appellant requested that the Board of Hearings consider utility expenses presented at hearing, the regulations do not allow actual costs to be considered, even if they are above the SNAP SUA. In using the regulatory figures as well as adjustments to the community spouse's income in May and July, MassHealth should adjust the PPA based on the following calculations:

- July 2022 through September 2022:
  - $\$554.86$  (taxes & insurance) +  $\$688$  (SUA) =  $\$1,242.86$  (total shelter)
  - $\$1,242.86$  (shelter) -  $\$686.63$  (shelter deduction) =  $\$556.23$
  - $\$556.23$  +  $\$2,288.75$  (standard maintenance allowance) =  $\$2,844.98$  (MMMNA)
  - $\$2,844.98$  -  $\$2,651.19$  =  $\$193.79$  (SMNA)
  - $\$4,599.66$  (app income) -  $\$799.19$  (HC and other Exp) -  $\$72.80$  (PNA) -  $\$193.79$  (SMNA) =  $\$3,533.88$  (Patent Paid Amount)
- October 2022 to present:
  - $\$554.86$  (taxes & insurance) +  $\$860$  (SUA) =  $\$1,414.86$  (total shelter)
  - $\$1,414.86$  (shelter) -  $\$686.63$  (shelter deduction) =  $\$728.23$
  - $\$728.23$  +  $\$2,288.75$  (standard maintenance allowance) =  $\$3,016.98$  (MMMNA)
  - $\$3,016.98$  -  $\$2,651.19$  =  $\$365.79$  (SMNA)
  - $\$4,599.66$  (app income) -  $\$799.19$  (HC and other Exp) -  $\$72.80$  (PNA) -  $\$365.79$  (SMNA) =  $\$3,361.88$  (Patent Paid Amount)

As noted above, the subsequent notice issued by MassHealth during the course of this appeal was made in error as the community spouse has been provided the opportunity to appeal the calculation of the MMMNA during this appeal and the Board of Hearings has considered the facts presented.

This appeal is approved in part as not all of the expenses presented by the community spouse were included in calculating a new MMMNA.

## **Order for MassHealth**

Recalculate the patient paid amount as follows:

- \$3,533.88 as of July 1, 2022
- \$3,361.88 as of October 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.

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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

CC:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616

