

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in part; denied in part	<b>Appeal Number:</b>	2206657
<b>Decision Date:</b>	1/17/2023	<b>Hearing Date:</b>	10/7/2022
<b>Hearing Officer:</b>	Cynthia Kopka	<b>Record Open to:</b>	12/8/2022

**Appearance for Appellant:**



**Appearance for MassHealth:**  
K'eisha McMullen, Springfield



*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>	Long term care – patient paid amount
<b>Decision Date:</b>	1/17/2023	<b>Hearing Date:</b>	10/7/2022
<b>MassHealth's Rep.:</b>	Keisha McMullen	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Springfield (remote)	<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

By notice dated August 11, 2022, MassHealth notified Appellant that he is eligible for long term care benefits with a patient-paid amount (PPA) of \$664.18. Exhibit 1. Appellant's spouse filed this appeal in a timely manner on September 7, 2022. Exhibit 2. 130 CMR 610.015(B). Challenging the scope of assistance is a valid basis for appeal. 130 CMR 610.032. The hearing record was held open through December 8, 2022. Exhibits 6, 8.

## Action Taken by MassHealth

MassHealth notified Appellant that he is eligible for long term care benefits with a PPA of \$664.18.

## Issue

The appeal issue is whether Appellant's spouse is entitled to an increased spousal resource allowance and adjustment of the PPA.

## Summary of Evidence

The MassHealth representative appeared by phone and submitted documents in support of hearing. Exhibit 4. A summary follows. Appellant resides in a nursing facility and his spouse resides in the community. On August 11, 2022, MassHealth notified Appellant that he is eligible for MassHealth

benefits to cover his stay in a nursing facility effective June 26, 2022 with a PPA of \$664.18. Exhibit 1. The notice lists Appellant's countable income as \$2,119.40, broken down as Social Security (\$1,714.00), pension (\$271.83) and other (\$133.57). Exhibit 1, Exhibit 4 at 11. The notice provides for the following allowances: personal needs allowance (PNA) of \$72.80, spousal maintenance needs allowance (SMNA) of \$1,281.42, and health insurance of \$101.00. Exhibit 1. These amounts were deducted from Appellant's countable income to establish the PPA.

MassHealth provided a worksheet to show how the SMNA was calculated. Exhibit 4 at 7, 9. MassHealth calculated the community spouse's gross monthly income to be \$1,948.10 including Social Security (\$1,715.10) and pension (\$233). *Id.* at 9. MassHealth calculated the community spouse's minimum monthly maintenance needs allowance (MMMNA) as follows:

Rent/mortgage	1,194.00
Taxes and insurance	12.00
Condominium maintenance fee	0
Standard deduction for utility expenses (labelled "food stamp allowance")	421.00
Total shelter expenses	1627.00
Federal shelter standard	686.63
Excess shelter amount (\$1627 – 686.63)	940.37
Standard maintenance allowance	2,288.75
MMMNA (\$940.37 + \$2,288.75)	\$3,229.12 <sup>1</sup>

*Id.* MassHealth deducted the community spouse's monthly income (\$1,948.10) from the MMMNA (\$3,229.12) to calculate the SMNA of \$1,281.02. *Id.* There is a discrepancy of thirty cents between the SMNA calculated on the worksheet and the SMNA provided on the notice.

The MassHealth representative testified that she used the utility standard of \$421 a month because the spouse does not pay heat in addition to rent. If heat is not included in rent, there is an additional deduction available.

Appellant and her representative appeared by phone and submitted documents in support. Exhibit 5. Appellant's representative argued that the standard utility should be \$437, not \$421. Exhibit 5. Appellant's representative's calculation lists Appellant's income at \$1,627. *Id.*

Appellant's spouse testified that she calculated her monthly expenses, which includes life insurance, car insurance, utility, phone, television, internet, Amazon bill, gasoline, food, and car repairs. Additionally, Appellant's spouse pays \$437 per month to United Health Care for insurance for both spouses. Appellant's spouse does not understand how the maintenance calculation cannot include these items that are necessary for day-to-day life. Appellant's spouse commented that millions of people come across the border and get free stuff and get to live on cruise ships, but the elderly has to

<sup>1</sup> The regulatory maximum MMMNA is \$3,435. Exhibit 4 at 7.

go through all this process to get what is due to them.

The hearing record was held open and extended for Appellant to submit proof of the additional health insurance payment. Exhibit 6. Appellant provided the proof of payment on November 14, 2022. Exhibit 7. On December 8, 2022, the MassHealth representative responded and provided a recalculation of the PPA with the health insurance payment included. Exhibits 8, 9. The new notice provided for a recalculation of the PPA to \$327.47 effective June 1, 2022. Exhibit 9 at 1. The new PPA was calculated by deducting the PNA of 72.80, SMNA of \$1,281.42, and health insurance of \$437.71 from Appellant's income of \$2,119.40. *Id.* at 3. at MassHealth did not change the SMNA when updating the notice. Appellant provided no further response.

## Findings of Fact

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

1. Appellant resides in a nursing facility and his spouse resides in the community.
2. On August 11, 2022, MassHealth notified Appellant that he is eligible for MassHealth benefits to cover his stay in a nursing facility effective June 26, 2022 with a PPA of \$664.18. Exhibit 1.
3. Appellant filed a timely appeal on September 7, 2022. Exhibit 2.
4. Appellant's countable income as \$2,119.40, broken down as Social Security (\$1,714.00), pension (\$271.83) and other (\$133.57). Exhibit 1, Exhibit 4 at 11.
5. The community spouse's monthly gross income is \$1,948.10 including Social Security (\$1,715.10) and pension (\$233). Exhibit 4 at 9.
6. Using a standard deduction of \$421, MassHealth calculated the spouse's MMMNA to be \$3,229.12. *Id.* at 7.
7. Appellant's spouse pays \$437.71 monthly for health insurance. Exhibit 7.
8. On December 8, 2022, MassHealth recalculated the PPA to include the health insurance payment. Exhibit 9 at 1.
9. The new notice provided for a recalculation of the PPA to \$327.47 effective June 1, 2022. The new PPA was calculated by deducting the PNA of 72.80, SMNA of \$1,281.42, and health insurance of \$437.71 from Appellant's income of \$2,119.40. *Id.* at 1-3.

## Analysis and Conclusions of Law

Appellant's spouse challenges MassHealth's calculation of Appellant's PPA, arguing that she needs

to retain a share of Appellant's income to meet her expenses. Either the community or institutionalized spouse has a right to appeal MassHealth's calculation of the asset allowance. 130 CMR 520.017(A).

Institutionalized members of MassHealth are not subject to a countable income limit, but are required to pay a portion of their income to the nursing facility, known as the "patient-paid amount" or PPA. 130 CMR 520.009(A)(3). In calculating the PPA, the regulations allow certain deductions to be made from an institutionalized member's income. 130 CMR 520.009. These deductions are listed at 130 CMR 520.026, which states that "[g]eneral 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." The personal-needs allowance, \$72.80 per month, is set by regulation. 130 CMR 520.025. MassHealth allows a deduction for current health-insurance premiums made directly to the insurer. 130 CMR 520.026(E)(1).

MassHealth allows a spousal maintenance needs deduction (SMND) in cases where the community spouse's gross income is less than the amount he or she needs to live in the community (the minimum-monthly-maintenance-needs allowance, or MMMNA). If the community spouse's gross income is less than the MMMNA, MassHealth may deduct an SMND per 130 CMR 520.026(B), determined as follows:

(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) \$1,822<sup>[2]</sup> (the federal standard maintenance allowance); and
- (b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$547<sup>[3]</sup> 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

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<sup>2</sup> The federal standard maintenance allowance is \$2,288.75 effective July 1, 2022.

<sup>3</sup> The community spouse monthly housing allowance is \$686.63 effective July 1, 2022.

(ii) the applicable standard deduction under the Supplemental Nutrition Assistance Program for utility expenses. If heat is included in the rent or condominium fee, this amount is \$375. If heat is not included in the rent or condominium fee, this amount is \$611.

(2) The maximum-monthly-maintenance-needs allowance is \$2,739.00<sup>[4]</sup> 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).

Here, MassHealth's calculation of the SMNA is correct apart from one line. For the deduction under 130 CMR 520.026(B)(1)(b)(ii), MassHealth used \$421, a number cited as the current amount under the Supplemental Nutrition Assistance Program (SNAP) for utility expenses when heat is included in rent. Appellant disputed this, arguing that the amount should be \$437. Appellant's figure appears correct, based on a publication issued October 2022 listing the prior year's figures.<sup>5</sup> With this corrected figure, the calculation yields an adjusted SMNA:

Rent/mortgage	1,194.00
Taxes and insurance	12.00
Condominium maintenance fee	0
Standard deduction for utility expenses (labelled "food stamp allowance")	437.00
Total shelter expenses	1643.00
Federal shelter standard	686.63
Excess shelter amount (\$1,643 – 686.63)	956.37
Standard maintenance allowance	2,288.75
MMMNA (\$956.37 + \$2,288.75)	\$3,245.12
SMNA (\$3,245.12 - \$1,948.10)	\$1,297.02

To the extent that the SMNA is adjusted to \$1,297.02, this appeal is approved in part.

Additionally, Appellant's spouse argued that MassHealth's calculations do not address all of her expenses. Under the regulations, the spouse of a member can request that the MMMNA be adjusted if exceptional circumstances exist:

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

<sup>4</sup> The regulatory maximum MMMNA is \$3,435.00 effective July 1, 2022.

<sup>5</sup> See [https://eohhs.ehs.state.ma.us/DTA/PolicyOnline/BEACON5/!SSL!/WebHelp/SNAP/SNAP\\_COLA/SNAP\\_COLA\\_OLG\\_Update\\_FINAL.htm](https://eohhs.ehs.state.ma.us/DTA/PolicyOnline/BEACON5/!SSL!/WebHelp/SNAP/SNAP_COLA/SNAP_COLA_OLG_Update_FINAL.htm) and <https://eohhs.ehs.state.ma.us/DTA/PolicyOnline/olg%20docs/guides/Helpful%20Charts%20and%20Figures.pdf> (last reviewed January 12, 2023).

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.

130 CMR 520.017(D)(1) (emphasis added).

Appellant's spouse argued that the MMMNA should cover her other expenses, including utilities, groceries, car payments, cable, and phone. However, Appellant's spouse did not testify to any extraordinary expenses arising from her own medical conditions or special circumstances, and is therefore not entitled to an increase to her MMMNA per 130 CMR 520.017(D)(1). Appellant spouse's utilities are already considered in the maintenance standards and other monthly expenses are not included by regulation. To the extent Appellant's spouse seeks additional deductions from the PPA, this appeal is denied in part.

## **Order for MassHealth**

Modify the August 11, 2022 and December 8, 2022 eligibility determinations to adjust the SMNA to \$1,297.02 and the PPA to \$311.87 effective June 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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Cynthia Kopka  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104, 413-785-4186

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General Counsel's Office –Sharon Boyle