

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2207426
Decision Date:	1/10/2023	Hearing Date:	11/01/2022
Hearing Officer:	Casey Groff	Record Open to:	11/08/2022

Appearance for Appellant:



Appearance for MassHealth:

Jessica Adamiec, Taunton MEC



*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:	Denied	Issues:	Patient-Paid-Amount; Spousal Maintenance Needs Allowance; MMMNA
Decision Date:	1/10/2023	Hearing Date:	11/01/2022
MassHealth's Rep.:	Jessica Adamiec	Appellant's Rep.:	Daughter/ HCP
Hearing Location:	Board of Hearings (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 August 30, 2022, MassHealth informed Appellant that owed his nursing facility a monthly patient-paid amount (PPA) of \$1,463.06, effective May 1, 2022. See Exhibit 1, p. 2-3; 130 CMR 520.025; 520.026. Appellant's health care proxy (HCP) filed this appeal in a timely manner on October 5, 2022. See Exhibit 1; 130 CMR 610.015(B). Challenge of a PPA and a request for an adjustment to the spousal minimum monthly maintenance needs allowance (MMMNA) are valid grounds for an appeal. See 130 CMR 610.032; see also 130 CMR 520.017

Action Taken by MassHealth

MassHealth determined that Appellant had a PPA of \$1,463.06 per month effective May 1, 2022, and that \$3,040.90 of his countable income could be deducted as a spousal maintenance needs allowance.

Issue

The appeal issues are (1) whether MassHealth correctly calculated Appellant's PPA and associated spousal allowance, and (2) whether Appellant qualifies for an adjustment to the spousal MMMNA.

Summary of Evidence

A MassHealth eligibility representative appeared at the hearing via telephone and presented the following evidence via testimony and documentary submissions: Appellant is over the age of 65 and a current resident of a skilled nursing facility. Appellant has a spouse that lives in the community. On August 30, 2022, MassHealth notified Appellant that he qualified for MassHealth long-term care benefits with an effective benefit start date of May 6, 2022. See Exh. 1, p. 2. The notice also informed Appellant that, effective May 1, 2022, he owed his nursing facility a patient paid amount (“PPA”) of \$1,463.06 per month to contribute to the cost of his care. Id. The PPA amount was based on Appellant’s total countable income of \$4,647.80, less the following deductions: a personal-needs allowance (PNA) of \$72.80, a spousal maintenance needs allowance (SMNA) of \$3,040.90, and health insurance cost of \$71.04.

The MassHealth representative submitted documentation into evidence that detailed how MassHealth calculated Appellant’s spousal allowance (or SMNA).¹ First, MassHealth identifies the appropriate minimum monthly maintenance needs allowance (MMMNA) to assign the community spouse. MassHealth determined that the community spouse had a “total shelter expense” of \$2,994.51, which consisted of a monthly mortgage payment of \$1448.34, real estate taxes and insurance costs of \$858.17, and the standard food stamp utility allowance of \$688. See Exh. 3. After subtracting the standard federal shelter expense of \$653.25, MassHealth determined that the community spouse had an “excess shelter expense” of \$2,341.26. Id. Next, MassHealth added the minimum federal standard maintenance allowance of \$2,177.50 to arrive at a total minimum monthly maintenance needs amount of \$4,518.76. Because this figure exceeded the regulatory cap, MassHealth used the maximum federal standard maintenance amount allowed of \$3,435.00 as the appropriate MMMNA for the community spouse. Finally, after subtracting the community spouse’s monthly income of \$394.10 from her MMMNA, MassHealth determined that that the community spouse was entitled \$3,040.90 of Appellant’s income to meet her MMMNA. This amount of Appellant’s countable income was deducted as a SMNA for purposes of calculating his PPA.

Appellant’s representative/HCP appeared at the hearing by telephone and requested an increase in the spousal allowance so that Appellant’s spouse can meet her minimum monthly maintenance needs expenses. Appellant’s representative testified that she is the daughter of both Appellant and the community spouse. The community spouse is over 90 years of age and lives in a two-bedroom, one-level ranch home. Appellant’s representative did not dispute the income figures or expenses as stated by MassHealth. But rather, argued that the maximum allowance used by MassHealth in establishing the SMNA, does not allow the community spouse to meet her basic necessary living expenses. Specifically, these expenses consist of a mortgage, two home equity loans, monthly utilities and bills exceeding \$4,000 per month. Costs of heating increase substantially in the winter. Even with financial assistance from family members with bills, the current SMNA is insufficient to cover the cost of the community spouse’s living expenses.

When asked if the any of the spouse’s expenses were related to a medical condition or medical expenses, Appellant’s representative responded that she had not factored such costs into the shortfall.

¹ The standard figures included in this calculation and summarized herein were included in MassHealth’s submission and reflect the current / applicable figures in effect at the time the notice was issued.

However, the community spouse's requires continuous supervision both in and out of the home. She is currently being treated for a heart condition. Given her physical limitations and age, she also requires help with cooking and paying bills. Appellant's representative explained that she provides this care to her mother, along with assistance from other family members, such as her brother and grandchildren. Because family can provide this care, the community spouse does pay for a home health aide or visiting nurse. The representative did not identify the existence of uncovered routine medical services or unpaid medical bills that contributed to her monthly maintenance needs expenses.

At the conclusion of the hearing, the record was left open for Appellant to submit documentation detailing any medical condition or basis requiring the community spouse to remain in her current home, as well as documentation of any medical services received or related expenses. See Exh. 4.

On November 8, 2022, Appellant's representative submitted a spreadsheet of the various monthly expenses incurred by the community spouse, which totaled \$4,122.49. See Exh. 5. The expenses included line items for mortgage and home equity loans, cable/phone/internet, car insurance, utilities/excise tax, food/groceries, and oil. Id. The spreadsheet compared the monthly expenses amount with the community spouse's income and current spousal allowance, which, she argued, left her with a shortfall of \$698,75. See Exh. 5, p. 2. Appellant declined the opportunity to submit documentation of the community spouse's medical/health needs and related expenses; however, elected to proceed with the appeal based on the evidence/testimony provided. Id.

Findings of Fact

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

1. Appellant is over the age of 65, a current resident of a skilled nursing facility, and has a spouse that lives in the community.
2. On August 30, 2022, MassHealth notified Appellant that he qualified for MassHealth long-term care benefits with an effective benefit start date of May 6, 2022.
3. The notice also informed Appellant that effective May 1, 2022, he owed his nursing facility a PPA of \$1,463.06 per month to contribute to the cost of his care.
4. The PPA amount was based on Appellant's total countable income of \$4,647.80, less a PNA deduction of \$72.80, a SMNA deduction of \$3,040.90, and health insurance deduction of \$71.04.
5. The community spouse has a "total shelter expense" of \$2,994.51, consisting of a monthly mortgage payment of \$1,448.34, real estate taxes and insurance costs of \$858.17, and the standard food stamp utility allowance of \$688.
6. After subtracting the standard federal shelter expense of \$653.25, the community spouse has an "excess shelter expense" of \$2,341.26.

7. MassHealth appropriately added the community spouse's excess shelter expense of \$2,341.26 with the minimum federal standard maintenance allowance of \$2,177.50 to arrive at a total minimum monthly maintenance needs amount of \$4,518.76.
8. Because \$4,518.76. exceeded the regulatory monthly maintenance needs allowance limit, MassHealth used the maximum federal standard maintenance amount allowed of \$3,435 as the community spouse's MMMNA.
9. The community spouse has a gross income of \$394.10.
10. Using her income alone, the community spouse had a monthly shortfall of \$3,040.90 to meet her MMMNA.
11. MassHealth allotted \$3,040.90 of Appellant's income as an SMNA for the community spouse to offset her monthly shortfall.
12. At the conclusion of the hearing, the record was left open for Appellant to submit evidence of uncovered or routine expenses related to the community spouse's medical condition, special need, or evidence demonstrating a medical need to remain in the home.
13. Pursuant to the record open period, Appellant submitted a spreadsheet detailing the community spouse's mortgage and home equity payments, utility costs, and food/grocery expenses. Appellant did not submit information pertaining to the community spouse's medical condition, special needs, or expenses arising therefrom.

Analysis and Conclusions of Law

This appeal addresses (1) whether MassHealth correctly calculated Appellant's patient paid amount (PPA) and associated spousal maintenance needs allowance (SMNA), and (2) whether he is entitled to an adjustment in the community spouse's minimum monthly maintenance needs allowance (MMMNA). See 130 CMR §§ 520.017; 520.026. In determining a nursing home resident's monthly PPA obligation, MassHealth takes the following general income deductions in this order: a personal-needs allowance (PNA); a spousal-maintenance-needs allowance; a family-maintenance-needs allowance; a home-maintenance allowance; and health-care coverage and incurred medical and remedial-care expenses. See 130 CMR 520.026.

The spousal allowance (or SMNA) is the amount that MassHealth deducts from the institutionalized spouse's countable income when the community spouse has a shortfall in meeting his or her minimum monthly maintenance needs allowance (MMMNA). Id. The MMMNA is defined as the amount needed by the community spouse to remain in the community *and is* based on a calculation that includes the spouse's shelter and utility costs and certain federal standards incorporated into regulation. See 130 CMR 520.017(B). If the community spouse's gross income

is less than their MMMNA, MassHealth may deduct a spousal allowance from the institutionalized spouse's countable-income amount to meet this need. See 130 CMR 520.026(B).

Pursuant to 130 CMR 520.026(B), MassHealth determines the appropriate MMMNA by selecting *the lesser of* the following two figures: either (1) the maximum monthly maintenance needs allowance set by federal standards at \$3,435.00,² *or* (2) the actual spousal monthly maintenance needs which is determined by adding the following amounts:³

- (a) [\$2,177.50] (the minimum monthly maintenance needs 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 Food Stamp Program for utility expenses...If heat is not included in the rent or condominium fee, this amount is [\$688].

See 130 CMR 520.026(B)(1).

Using the aforementioned formula, MassHealth found that the community spouse had actual monthly maintenance needs amount of \$4,518.76. Because this amount exceeded the regulatory limit, MassHealth appropriately used the maximum maintenance needs standard of \$3,435.00 as the appropriate MMMNA. After accounting for her gross income of \$394.10, the community spouse was left with a shortfall of \$3,040.90 in meeting her MMMNA. Accordingly, MassHealth appropriately deducted this amount from Appellant's countable income as the spousal allowance. After accounting for Appellant's PNA and health insurance deductions, the remaining amount of Appellant's income – \$1,463.06 - was appropriately established by MassHealth as his PPA obligation. See 130 CMR 520.026.

Appellant does not dispute the income figures and expenses used in these calculations. Rather, Appellant seeks an increase in her MMMNA through the fair hearing process. As noted above, the maximum monthly maintenance needs allowance is generally capped at the applicable federal standard. See 130 CMR 520.026(B)(2). However, through the fair hearing process, an aggrieved

² This figure was obtained from the federal *2022 SSI and Spousal Impoverishment Standards*, published by the Centers for Medicare & Medicaid Services (CMS), and was in effect at all relevant times for purposes of this appeal.

³ The figures cited in MassHealth's publication of 130 CMR 520.026(B) do not reflect the updated and current federal standards. For clarity, this Decision has incorporated all applicable figures as set forth by CMS in its *2022 SSI and Spousal Improvement Standards* and those cited via MassHealth publication *Figures Used to Determine Minimum Monthly Maintenance Needs Allowance* (Rev.1/23). All such figures were appropriately used in MassHealth's calculation in determining the SMNA and are entered into evidence as Exhibit 3, p. 4.

spouse may seek an increase in the MMMNA by demonstrating the existence of “exceptional circumstances.” *Id.* The applicable regulatory provision for this exception states the following:

(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.

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

130 CMR 520.017(D) (emphasis added).

In consideration of the evidence in the record, Appellant did not sufficiently demonstrate the presence of “exceptional circumstances” to warrant an increase in the community spouse’s MMMNA. As stated above, “exceptional circumstances” exist when the spouse has additional expenses (not already taken into account) that arise from his or her medical condition, special needs, or frailty and results in significant financial duress. *See id.* The federal standards incorporated into the MMMNA already account for the expenses Appellant evidenced at hearing, such as the community spouse’s mortgage, home equity lines, utility payments, and food costs. Additionally, none of these expenses arose from the medical condition, special needs, or frailty of the community spouse. Despite being granted a post-hearing record open period, Appellant did not present evidence of any necessary routine medical expenses or unpaid medical bills that

contributed to the community spouse's shortfall. Appellant limited its production to solely those expenses that were already accounted for in establishing the maximum maintenance needs amount. Accordingly, Appellant did not identify the existence of "extraordinary circumstances" to warrant an increase in the community spouse's MMMNA or adjustment in Appellant's PPA. See 130 CMR 520.017(D).

The appeal is DENIED.

Order for MassHealth

None.

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.

Casey Groff, Esq.
Hearing Officer
Board of Hearings

cc:

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

