

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2207912

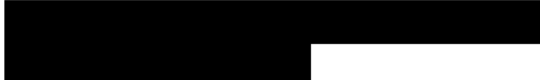
**Decision Date:** 1/18/2023

**Hearing Date:** 11/25/2022

**Hearing Officer:** Thomas Doyle

**Record Open to:**

**Appearance for Appellant:**



**Appearance for MassHealth:**


Elizabeth Landry

**Interpreter:**



*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>	Denied	<b>Issue:</b>	Patient Paid Amount
<b>Decision Date:</b>	1/18/2023	<b>Hearing Date:</b>	11/25/2022
<b>MassHealth's Rep.:</b>	Elizabeth Landry	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Remote (phone)	<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 notices dated September 27, 2022 and November 2, 2022, MassHealth approved appellant for MassHealth Standard to cover his care in a nursing facility, with a Patient Paid Amount (PPA) of \$1,745.56 for the September 27 notice and \$1,519.54 for the November 2 notice. (Ex. 1 and 1A). The appellant filed this appeal in a timely manner on October 20, 2022. (130 CMR 610.015(B); Ex. 2). Challenging the scope or amount of assistance is valid grounds for appeal (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth set the appellant-husband's monthly Patient Paid Amount (PPA) at \$1,745.56 and then, while the appeal was pending, recalculated the PPA at \$1,519.54.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.026 and 520.017, in determining the appellant-husband's PPA to the nursing facility.

## Summary of Evidence

In an eligibility notice dated September 27, 2022 MassHealth approved an application for long-term care for coverage to begin on the requested start date of August 6, 2022 with a patient paid amount (PPA) of \$1,745.56. Appellant has a total gross monthly income of \$2,347.80 from the Social Security Administration. In calculating a patient paid amount, MassHealth allowed a deduction of \$72.80 for a personal needs allowance (PNA) and \$529.44 for a spousal maintenance needs allowance (SMNA), resulting in a patient paid amount (PPA) of \$1,745.56. On October 20, 2022, appellant filed a request for hearing to challenge this notice.

In a second eligibility notice dated November 2, 2022, which was issued after the appeal was requested but before any hearing convened, MassHealth determined a revised PPA of \$1,519.54. This was done by adding a health insurance payment incurred by appellant that was not factored into the first eligibility notice. In calculating a patient paid amount, MassHealth allowed a deduction of \$72.80 for a personal needs allowance (PNA), \$226.02 for health insurance and \$529.44 for a spousal maintenance needs allowance (SMNA), resulting in a patient paid amount (PPA) of \$1,519.54.

The community spouse has a total gross monthly income of \$2,905.56, including \$2,156.10 each month from the Social Security Administration; a monthly pension of \$545.93 from Allianz life insurance company; and \$203.53 a month from Hartford Life Company. In the September 27, 2022 decision on appeal, MassHealth calculated a spousal maintenance needs allowance (SMNA) of \$529.44. The expenses considered in calculating a SNMA include shelter expenses and a standard maintenance allowance.

## Findings of Fact

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

1. The applicant entered a long-term care facility and applied for MassHealth long-term care. (Ex. 7, p. 11; Testimony).
2. MassHealth approved an application for long-term care for coverage to begin on August 6, 2022. (Ex. 1; Testimony).
3. The appellant has a total monthly gross income of \$2,347.80. (Ex. 6, p. 1; Ex. 7, p. 8).
4. The appellant receives \$2,347.80 each month from the Social Security Administration. (Ex. 6, p. 1; Ex. 7, p. 8).
5. In the September 27, 2022 eligibility notice, in calculating a patient paid amount, MassHealth allowed a deduction of \$72.80 for a personal needs allowance (PNA) and

\$529.44 for a spousal maintenance needs deduction (SMND)<sup>1</sup>. MassHealth calculated a (PPA) of \$1,745.56. (Ex. 1).

6. After appellant appealed the September 27, 2022 eligibility notice, but before the requested hearing convened, MassHealth issued another eligibility notice with a revised PPA. (Ex. 1A).
7. In the November 2, 2022 eligibility notice, in calculating a revised patient paid amount, MassHealth allowed a deduction of \$72.80 for a personal needs allowance (PNA), \$529.44 for a spousal maintenance needs allowance (SMNA) and added \$226.02 for health insurance. MassHealth calculated a (PPA) of \$1,519.54. (Ex. 1A).
8. The appellant has a community spouse with a total gross monthly income of \$2,905.56. She receives monthly Social Security of \$2,156.10. (Testimony; Ex. 7, p. 3). She receives \$545.93 a month from Allianz Life Insurance Company. (Testimony; Ex. 7, p. 12). She receives \$203.53 a month from Hartford Life and Accident Company. (Testimony; Ex. 7, p. 13).
9. MassHealth calculated a spousal maintenance needs deduction (SMND) of \$529.44. (Testimony; Ex. 7, p. 6). The expenses considered in calculating a SMND included shelter expenses and a standard maintenance allowance.
10. The community spouse pays an annual homeowner's insurance premium of \$1,818 or monthly costs of \$151.50. (Ex. 7, p. 18; Testimony).
11. The community spouse has annual property taxes of \$1,631.83 or quarterly cost of \$543.94. (Ex. 7, pp. 6, 17; Testimony).
12. The community spouse pays a total of \$554.86 each month for insurance and taxes.
13. On October 1, 2022, the Supplemental Nutrition Assistant Program (SNAP) Standard Utility Allowance (SUA) increased from \$688 to \$860.
14. In calculating the PPA, MassHealth considered a shelter expense standard of \$686.63. (Ex. 7, p. 6).

## **Analysis and Conclusions of Law**

The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007).

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

---

<sup>1</sup> In the notice, it is referred to as "Spouse in Home". (Ex. 1, p. 2).

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 appellant contributes. The appellant 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>2</sup>; and
- (2) an excess shelter allowance determined by calculating the difference between the standard shelter expense<sup>3</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>4</sup>.

---

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

<sup>3</sup> The Standard Shelter Expense deduction utilized by MassHealth was \$686.63.

<sup>4</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.

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 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 not present evidence of necessities that arose from a medical condition and special needs including uncovered medical expenses. While the appellant requested that the Board of Hearings consider utility expenses presented at hearing, (Ex. 6), the regulations do not allow actual costs to be considered, even if they are above the SNAP SUA.

I find the calculations utilized by MassHealth to determine the PPA regarding the September 27, 2022 eligibility notice were correct and adhered to the regulatory language. (130 CMR 520.017; 130 CMR 520.026). Therefore, the appeal concerning this notice is denied.

The eligibility notice of November 2, 2022 is in evidence. (Ex 1A). This notice was not the subject of the appeal but administrative economy dictates it be considered in this appeal, especially where MassHealth recalculated the PPA amount due to the inclusion of appellant's health insurance payment of \$226.02. (Testimony). In this November notice, MassHealth added the health insurance payment (Ex. 7, p. 19) to its PPA calculations. However, when determining the PPA calculation on its worksheet, (Ex. 7, p. 6), MassHealth failed to incorporate the increase in the SNAP Standard Utility Allowance, (Ex. 7, p. 6), which was increased on October 1, 2022, from \$688 to \$860, days after the date of the first eligibility notice of September 27, 2022. Appellant received the benefit of a decreased PPA using the health insurance payment but MassHealth should have also used the updated Standard Utility Allowance of \$860. However, substituting the updated SUA into the calculation will not change the outcome of MassHealth's determination that the PPA is \$1,519.54. On MassHealth's worksheet, if one substitutes the new SUA allowance of \$860, the Minimum Monthly Maintenance Allowance (MMMNA) is increased to \$3,979.76, which is higher than \$3,435, which is the figure required to be utilized if smaller than MMMNA. (130 CMR 520.026 (B) (1)). The PPA on the November 2, 2022 eligibility notice is correct and any challenge to MassHealth's findings are 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.

---

Thomas Doyle  
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

[REDACTED]