

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2300414
Decision Date:	3/31/2023	Hearing Date:	02/21/2023
Hearing Officer:	Paul C. Moore	Record Closed:	03/31/2023

Appellant Representative:

■■■■■, community spouse (by telephone)

MassHealth Representative:

Nicole Conrad, Taunton MassHealth Enrollment Center (MEC) (by telephone)



*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	Issue:	Long-Term Care Eligibility/MMMNA
Decision Date:	3/31/2023	Hearing Date:	02/21/2023
MassHealth Rep.:	Nicole Conrad	Appellant Rep.:	Community spouse
Hearing Location:	Remote		

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 January 4, 2023, MassHealth increased the appellant-wife's monthly Patient-Paid Amount (PPA) from \$2,870.21 to \$3,052.51 effective February 1, 2023 due to a change in her circumstances (Exhibit 1). The community spouse filed a timely appeal with the Board of Hearings (BOH) on January 18, 2023 (Exhibit 2; 130 CMR 610.015(B)). Calculation of a PPA is a valid basis for appeal to BOH (130 CMR 610.032).

Action Taken by MassHealth

MassHealth changed the appellant-wife's monthly PPA from \$2,870.21 to \$3,052.51 effective February 1, 2023 due to a change in her circumstances.

Issues

The appeal issues are whether MassHealth was correct in increasing the appellant-wife's monthly PPA, and whether the community spouse is entitled to an increase in the Minimum Monthly Maintenance Needs Allowance (MMMNA).

Summary of Evidence

A MassHealth representative from the Taunton MEC testified by telephone that the appellant-wife,

who is over 65 years old, is a resident of a nursing facility. She has a community spouse. She was originally approved for MassHealth long-term care coverage in April, 2022. By notice dated January 4, 2023, MassHealth increased the appellant-wife's monthly Patient-Paid Amount (PPA) owed to the nursing facility from \$2,870.21 to \$3,052.51 effective February 1, 2023, due to an annual cost-of-living increase in the amount of the appellant-wife's monthly Social Security benefit payment (*Id.*).

The appellant-wife's countable income, as reflected in the MassHealth notice, consists of the following: (1) Social Security monthly award amount of \$2,063.70 (as of January 1, 2023); and (2) private pension amount of \$1,061.61 monthly. These amounts, added together, yield \$3,125.31. MassHealth then subtracted the appellant-wife's nursing facility personal-needs allowance (PNA) of \$72.80 per month, yielding \$3,052.51. This amount is the appellant-wife's PPA owed to the nursing facility, monthly, as of February 1, 2023 (Testimony, Exh. 1).

No allowances for home maintenance or a spouse-in-home are deducted from the PPA (Exh. 1).

The appellant-husband, who is the community spouse, stated that he does not contest the income figures for the appellant-wife. However, he is asking for some relief from the monthly PPA owed to the appellant-wife's nursing facility. He recently needed to purchase a new oil burner at his home at a cost of just over \$10,000.00. He had to take a loan to cover the cost of this purchase, and he pays \$284.00 toward this loan per month. He added that the cost of fuel has also increased to \$421.00 per month. His electric bill also increased. The community spouse added that he underwent coronary artery triple-bypass surgery approximately eleven months before the hearing date, is not allowed to work and has driving restrictions. He would get a job if he were permitted to do so. He argued that the unforeseen circumstance of needing to purchase a new oil burner should be taken into account and should be considered a temporary hardship (Testimony).

The MassHealth representative testified that if the community spouse can produce evidence of amounts owed on the couple's mortgage, real estate taxes, homeowner's insurance, and utility bills, MassHealth can calculate the community spouse's Minimum Monthly Maintenance Needs Allowance (MMMNA). If the community spouse's monthly income is insufficient to cover the cost of his MMMNA, then MassHealth can consider deducting an amount from the appellant-wife's monthly PPA, which the community spouse may keep to meet his MMMNA (Testimony).

The hearing officer agreed to keep the record of this appeal open until March 17, 2023 for the community spouse to forward copies of these monthly bills to MassHealth and to the hearing officer, and also agreed to keep the record open for two additional weeks, or until March 31, 2023, for MassHealth to respond in writing whether a reduction in the PPA owed by the appellant-wife may be appropriate (Exh. 5).

On or about March 9, 2023, the hearing officer received from the community spouse a copy of a National Grid bill for the billing period January 18, 2023 through February 15, 2023 for \$82.68; a copy of an invoice from Arbella Insurance Group for his homeowner's policy reflecting an annual premium for the period March 26, 2023 through March 26, 2024 of \$1,467.00; a copy of a mortgage invoice with a due date of March 1, 2023 with a balance due of \$1,421.57; an assessment from the

town of [REDACTED] reflecting town taxes owed in fiscal year 2023 of \$5,301.75, less an abatement of \$2,000.00, or \$3,301.75; three invoices from Arrow Fuel showing the community spouse owed \$480.00 as of November 21, 2022; \$399.00 as of December 26, 2022; and \$409.00 as of February 1, 2023; and an invoice from Tedesco Plumbing and Heating, dated September 15, 2022, showing that the community spouse paid the full cost of a new boiler in the amount of \$9,450.00 (Exhs. 6A through 6H).¹

On March 15, 2023 and March 22, 2023, respectively, the MassHealth representative submitted two calculations of the community spouse's MMMNA; she added his monthly mortgage payment amount (\$1,040.72), homeowner's insurance and taxes owed monthly (\$552.31), and monthly utility costs (\$860.00, a figure set by federal regulations), subtracted a standard shelter expense of \$686.63, and added a standard maintenance allowance of \$2,288.75 to arrive at the community spouse's MMMNA of \$4,055.15 (Exhs. 7 & 8). Next, MassHealth determined the amount of the community spouse's monthly income, consisting of monthly Social Security benefits of \$1,646.00, a monthly annuity payment of \$1,004.00 (Exh. 8B), and a monthly pension payment from the Department of Veterans Affairs in the amount of \$3,754.50 (Exh. 8C). Adding these figures yields \$6,404.50. Because this figure is more than the community spouse's actual MMMNA of \$4,055.15, no spousal maintenance needs deduction was subtracted from the appellant-wife's monthly PPA owed to the nursing facility (Exhs. 7 & 8).²

Findings of Fact

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

1. The appellant-wife, who is over 65 years of age, is a resident of a nursing facility and was approved for MassHealth long-term coverage in April, 2022. (Testimony, Exh. 4).
2. She has a community spouse.
3. Through a notice dated January 4, 2023, MassHealth increased the appellant-wife's monthly Patient-Paid Amount (PPA) from \$2,870.21 to \$3,052.51 effective February 1, 2023 due to a change in her circumstances (Exhibit 1).
4. The community spouse filed a timely appeal of this notice with the BOH on January 18, 2023 (Exh. 2).
5. The appellant-wife's countable income, as reflected in the MassHealth notice, consists of the following: (1) Social Security monthly award amount of \$2,063.70 (as of January 1, 2023); and (2) private pension amount of \$1,061.61 monthly. These amounts, added together, yield \$3,125.31. MassHealth then subtracted the appellant-wife's nursing facility personal-needs allowance (PNA) of \$72.80 per month, yielding \$3,052.51 (Exh. 1).

¹ The community spouse testified that he paid "just over \$10,000" for the new boiler, and that he took a loan to cover the cost, toward which he pays \$284.00/month. However, no loan invoice was included with his post-hearing submission.

² The March 15, 2023 and March 22, 2023 MMMNA calculations are substantially the same.

6. No allowances for home maintenance or a spouse-in-home are deducted from the PPA (Exh. 1).
7. The community spouse's countable income consists of monthly Social Security benefits of \$1,646.00, a monthly annuity payment of \$1,004.00, and a monthly pension payment from the Department of Veterans Affairs in the amount of \$3,754.50, or \$6,404.50 total (Exhs. 8B and 8C).
8. Following the hearing, during a record-open period, MassHealth calculated the community spouse's MMMNA to be \$4,055.15, as follows: monthly mortgage payment (\$1,040.72), plus homeowner's insurance and taxes owed monthly (\$552.00), plus monthly utility costs (\$860.00, a figure set by federal regulations), subtracted a standard shelter expense of \$686.63, and added a standard maintenance allowance of \$2,288.75 (Exhs. 7 & 8).
9. Pursuant to federal law, in 2023, the maximum MMMNA figure is \$3,715.50 (Centers for Medicare and Medicaid Services Informational Bulletin dated November 18, 2022).
10. Because the community spouse's monthly income exceeded his MMMNA, MassHealth did not include a spousal maintenance needs deduction in the PPA calculation (Exhs. 7 & 8).
11. The community spouse asserts that he has a hardship and cannot afford to pay the revised PPA of \$3,052.51 monthly, because in September, 2022, he had to replace an oil burner in his home at a cost of \$9,450.00 (Testimony, Exh. 6H).
12. The community spouse took a loan to cover the cost of the new oil burner, and pays about \$284.00 a month toward this loan (Testimony, Exh. 6H).
13. The community spouse cannot work or drive due to health-related restrictions (Testimony).
14. The community spouse's utility costs are higher than in the past (Testimony).
15. For the community-spouse's monthly mortgage obligation, MassHealth should have used a figure of \$1,421.57 in calculating the community spouse's MMMNA (Exh. 6C).
16. For the community spouse's monthly real estate taxes owed, MassHealth should have used a figure of \$3,301.75 divided by 12, or \$275.14 (Exh. 6D).
17. For the community spouse's monthly homeowner's insurance owed, MassHealth should have used a figure of 1,467.00 divided by 12, or \$122.25.

Analysis and Conclusions of Law

In the instant appeal, MassHealth revised the appellant-wife's PPA owed to the nursing facility to \$3,052.51 effective February 1, 2023. No spousal maintenance needs deduction was included. The community spouse asserts that he has a temporary hardship and cannot afford to pay this

PPA amount.

MassHealth regulation 130 CMR 515.001 defines PPA as “the amount that a member in a long-term-care facility must contribute to the cost of care under the laws of the Commonwealth of Massachusetts.”

Pursuant to 130 CMR 520.026, “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.

130 CMR 520.026(B) states in pertinent part:

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 (the federal standard maintenance allowance); and

(b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$547 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

(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 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

³ These figures are updated annually by the federal government. See,

...

Adjustments to a community spouse's asset allowance are governed by regulation 130 CMR 520.017. The regulation states as follows:

(A) Request for an Adjustment to the Community Spouse's Asset Allowance. After the institutionalized spouse has applied for MassHealth Standard and has received a notice of approval or denial for MassHealth Standard, either spouse may appeal to the Office of Medicaid Board of Hearings to request an adjustment to the asset allowance. The purpose of the adjustment is to generate sufficient income, as determined by the MassHealth agency, for the community spouse to remain in the community.

(B) Minimum-Monthly-Maintenance-Needs Allowance. The minimum-monthly-maintenance-needs allowance is the amount needed by the community spouse to remain in the community. This amount is based on a calculation that includes the community spouse's shelter and utility costs in addition to certain federal standards, in accordance with 130 CMR 520.026(B)(1).

(C) Adjustment of the Amount of Asset Allowance. If either spouse claims at a fair hearing that the amount of income generated by the community spouse's asset allowance as determined by the MassHealth agency is inadequate to raise the community spouse's income to the minimum-monthly-maintenance-needs allowance, the fair-hearing officer determines the gross income available to the community spouse as follows.

(1) The fair-hearing officer determines the gross amount of income available to the community spouse. The fair-hearing officer includes the amount of the income that would be generated by the spouse's asset allowance if \$10,000 of the asset allowance were generating income at an interest rate equal to the deposit yield quoted in the Bank Rate Monitor Index as of the hearing date for money market accounts, and if the remainder of the spouse's asset allowance were generating income at an interest rate equal to the highest deposit yield quoted in the Bank Rate Monitor Index as of the hearing date for any term not to exceed two and one-half years.

(2) If the community spouse's gross income under 130 CMR 520.017(C)(1) is less than the minimum-monthly-maintenance-needs allowance (MMMNA), then the fair-hearing officer allows an amount of income from the institutionalized spouse (after the personal-needs deduction described in 130 CMR 520.026(A)) that would increase the community spouse's total income to equal, but not to exceed, the MMMNA. 130 CMR 520.017(C)(2) applies to all hearings held on or after September 1, 2003, regardless of the date of application.

(3) If after the fair-hearing officer has increased the community spouse's gross income under 130 CMR 520.017(C)(1) and (2), the community spouse's gross income is still less than the MMMNA, then the fair-hearing officer increases the

<https://www.medicaid.gov/medicaid/eligibility/downloads/spousal-impoverishment/ssi-and-spousal-impoverishment-standards.pdf> (last checked March 29, 2023).

community spouse's asset allowance by the amount of additional assets that, if generating income at an interest rate equal to the highest deposit yield in the Bank Rate Monitor Index as of the hearing date for any term not to exceed two and one-half years, would generate sufficient income to raise the income total to the MMMNA.

(Emphasis added)

Pursuant to 130 CMR 520.017(D), either spouse may request an increase in the MMMNA calculated by MassHealth due to "exceptional circumstances," defined in relevant part as follows:

(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.

During a record-open period following the hearing, the community spouse produced updated documentation supporting his monthly mortgage amount owed, his annual real estate taxes, and his annual homeowner's insurance premium. Also, during the record-open period, MassHealth produced documentary evidence of the community spouse's countable income.

The community spouse argues he should receive a hardship waiver on a temporary basis, since the cost of his utilities have increased and since he had to pay out-of-pocket for a new boiler in September, 2022. However, 130 CMR 520.026(B), above, states that the MMMNA is calculated using a standard allowance for utilities set annually by federal law, in this case, \$860.00. Thus,

the cost of utilities such as electricity and oil cannot be counted more than once in the MMMNA calculation.

Regarding the cost of a new boiler, the evidence shows that the community spouse is paying a loan monthly for this large expenditure. However, even if an additional monthly amount of \$284.00 were added to the MMMNA calculation, the community spouse's monthly income still far exceeds the cost of his amended MMMNA.

The "exceptional circumstances" discussed at 130 CMR 520.017(D), above, that would permit an increase in the MMMNA are 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. While the cost of a new oil burner is certainly a necessity for the community spouse, it does not arise specifically from any medical condition of the community spouse. The community spouse has also not produced evidence of any extraordinary uncovered medical expenses he incurred.

Even if the hearing officer were to use an updated expense amount for the community spouse's monthly mortgage (\$1,421.57 rather than \$1,040.72), and add \$284.00 per month toward payoff of the oil burner loan, the revised MMMNA amount would be only \$4,720.52 – well below the community spouse's monthly income of \$6,404.50.

Based on the preceding, MassHealth did not err when calculating the appellant-wife's monthly PPA effective February 1, 2023, to exclude any spousal maintenance needs deduction.

For these reasons, 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.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Justine Ferreira, Appeals Coordinator, Taunton MEC

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