

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2300453
Decision Date:	3/13/2022	Hearing Date:	02/24/2023
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:




Appearance for MassHealth:

Evelyn Daniel



*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:	MMMNA
Decision Date:	3/13/2023	Hearing Date:	02/24/2023
MassHealth's Rep.:	Evelyn Daniel	Appellant's Rep.:	
Hearing Location:	All Parties Appeared by Telephone		

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 12, 2023, MassHealth notified the appellant that his patient paid amount will change from \$2,683.80 to \$2,905.80 as of February 1, 2023. (Exhibit 1). Through a notice dated, February 1, 2023, MassHealth notified the appellant that his patient amount will change from \$664.04 to \$2,683.80 on October 1, 2022.¹ (Exhibit 6). The appellant's attorney-in-fact filed an appeal in a timely manner on January 18, 2023 and appeared at a hearing on February 24, 2023.² (130 CMR 610.015(B); Exhibit 2; Exhibit 3). An agency determination regarding the scope and amount of assistance is valid

¹ A notice dated January 9, 2023 states that MassHealth determined the appellant eligible as of July 1, 2022 with a patient paid amount of \$2,683.80. (Exhibit 5). As noted above, a subsequent notice determined a change in a patient paid amount from \$664.04 to \$2,683.80 as of October 1, 2022. Neither party presented a copy of a notice reflecting a determination of a PPA in the amount of \$664.04. However, counsel for the appellant specifically noted that the appeal was limited in scope as they were in agreement with the July 1, 2022 start date, asset determination and calculation of a PPA, including a spousal allowance, for July 2022 through September 2022. Counsel specifically asked for the Board of Hearings to consider the PPA from October 2022 to the foreseeable future. Therefore, this decision will only address the PPA from October forward as it appears other possible issues were resolved prior to the hearing.

² Although the request for hearing was filed prior to the notice issued on February 1, 2023, the appearance of the appellant's representative at a hearing within 60 days of the issuance of the notice as well as the common issues of fact are grounds for conducting a single hearing for all notices regarding the patient paid amount at issue in this case. (130 CMR 610.015; 130 CMR 610.073)

grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant's patient paid amount would change from 664.04 to \$2,683.80 on October 1, 2022 and to \$2,905.80 on February 1, 2023.

Issue

Whether MassHealth was correct in calculating the appellant's patient paid amount.

Summary of Evidence

All parties appeared by telephone. Documents presented by MassHealth were incorporated into the hearing record as Exhibit 5. Documents presented by the appellant were incorporated into the hearing record as Exhibit 6. MassHealth received an application for long-term care on October 5, 2022 seeking coverage as of July 9, 2022. MassHealth approved the appellant for long-term care coverage as of the date requested.

MassHealth calculated a patient paid amount of \$664.04. MassHealth adjusted the patient paid amount (PPA) to \$2,683.80 as of October 1, 2022 and \$2,905.80 as of February 1, 2023. This decision will address the PPA calculations from October 2022 forward as requested by counsel for the appellant.

MassHealth calculated the patient paid amount of \$2,639.80 and \$2,905.80 based upon the income of the appellant and a spouse who resides in the community [herein referred to as "the community spouse"]. (Testimony; Exhibit 5). Records presented by MassHealth indicate that as of October 2022, the community spouse has a monthly gross income of \$5,721.51 that includes \$1,003.90 from the Social Security Administration, a monthly pension of \$167.96 and payments from a long-term care insurance policy of \$4,549.65.³ (Exhibit 5).

³ Counsel for the appellant provided a verification letter from the Social Security Administration dated July 22, 2022 indicating a benefit amount of \$924.80 as of December 2021. While this amount is lower than that utilized by MassHealth (\$1,003.90), counsel did not provide a specific argument related to this discrepancy. MassHealth utilizes a matching system indicating the amount received as of the eligibility start date. Additionally, counsel provides an overall gross income amount that is higher than the one utilized by MassHealth due to the agency utilizing a lower payment amount from the long-term care insurance. This decision will utilize figures presented by MassHealth regarding payments from the Social Security Administration.

As of July 1, 2022, the appellant had a monthly gross income of \$2,962.60 that included \$2,090 from the Social Security Administration and a monthly pension of \$872.60. (Exhibit 5). MassHealth determined that the appellant's income from the Social Security Administration increased to \$2,312 as of February 1, 2023 resulting in a monthly gross income of \$3,184.60.

In calculating the patient paid amount, MassHealth considered the following deductions: health care costs of \$206 and a personal needs allowance of \$72.80. MassHealth did not include a deduction for a spousal maintenance needs allowance.

In calculating a spousal maintenance needs allowance, MassHealth considered the following shelter expenses of the community spouse: taxes and insurance of \$615; a condominium maintenance fee of \$114.50 and a standard utility allowance of \$860. MassHealth then deducted the standard shelter expense of \$686.63 which resulted in countable shelter expenses of \$902.87 $[(\$615 + \$114.50 + \$860) - \$686.63 = \$902.87]$. The addition of the federal maintenance needs allowance of \$2,288.75 resulted in a MMMNA of \$3,191.62 $[\$902.87 + \$2,288.75 = \$3,191.62]$. As the community spouse's income of \$5,721.51 exceeded this amount, MassHealth did not utilize a spousal maintenance needs allowance in calculating the patient paid amount.

Documents submitted by counsel for the appellant note that they are seeking an adjustment to the patient paid amount from October 2022 forward to increase the minimum monthly maintenance needs allowance (MMMNA) of the community spouse due to exceptional circumstances involving the community spouse entering into an assisted living facility. A summary from counsel for the appellant and bills for the community spouse show insurance payments for ambulatory transportation, prescription drug bills for items that can be provided over the counter such as Vitamin C, Vitamin D, a Multi-Vitamin, aspirin as well as prescribed medications for high blood pressure, depression and digestive issues.

Counsel for the appellant provided a statement from the community spouse regarding a surgery, rehabilitation and recommendation from a physician to return home with the necessary equipment to care for wounds related to surgeries or remain in a long-term care facility. Counsel for the appellant did not provide any medical records or correspondence documenting findings or recommendations from a physician regarding any ongoing care needs of the community spouse. The statement from the community spouse does not provide any dates of surgery, rehabilitation or discharge from the nursing facility. Counsel for the appellant did not provide a residency agreement, contract or lease with the assisted living facility outlining the needs of the community spouse. At hearing, counsel was asked if there was anything to present other than documents

provided one day prior to the hearing and counsel felt that the records presented, mostly bills for services, were self-explanatory regarding the need for the Board of Hearings to adjust the MMMNA as the community spouse has been residing in an assisted living facility since October 2022 and has a shortfall in being able to pay for expenses incurred while residing in the assisted living facility.

The documents submitted by counsel for the appellant note payment due to the assisted living facility for a room and personal care in the amount of \$6,900 each month. The only documents that appear to provide some information regarding the need for the community spouse's stay at the assisted living facility are from a private insurance company. The private insurance company pays \$150 each day or approximately \$4,650 each month for the stay at the assisted living facility. (Exhibit 6).

The private insurance company determined that the community spouse met eligibility requirements of the policy to receive coverage for services in the assisted living facility. The private insurance company determined that the community spouse is dependent for bathing, dressing and transferring. This determination was made by a licensed social worker as the policy requires a "licensed health care practitioner" to certify that such services are needed. The policy defines a "licensed health care practitioner" as "any licensed physician, registered professional nurse or licensed social worker". Even if the findings were made by a physician, the policy defines a "physician" as "any licensed practitioner of the healing arts acting within the scope of his or her license in treating any injury or sickness".

The records do not include any specific medical findings or recommendations and do not indicate what, if any, specific services are necessary and received by the community spouse while residing in the assisted living facility. The community spouse still pays for expenses associated with her primary residence as she intends to return home. Counsel for the appellant's list of expenses associated with the primary residence are comparable to those provided by MassHealth except for utility costs that are lower than the standard utility allowance (SUA) utilized by MassHealth. Records presented by the parties do not indicate any rent or mortgage on the primary residence.

Findings of Fact

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

1. MassHealth received an application for long-term care on October 5, 2022 seeking coverage as of July 9, 2022.

2. MassHealth approved the appellant for long-term care coverage as of the date requested.
3. As of October 1, 2022, the appellant had a monthly gross income of \$2,962.60 that included:
 - a. \$2,090 from the Social Security Administration; and
 - b. \$872.60 from a pension.
4. As of February 1, 2023, the appellant has a monthly gross income of \$3,184 that includes:
 - a. \$2,312 from the Social Security Administration; and
 - b. \$872.60 from a pension.
5. As of October 2022, the community spouse has a monthly gross income of \$5,271.51 that includes:
 - a. \$1,003.90 from the Social Security Administration;
 - b. \$167.96 from a pension; and
 - c. \$4,549.65 from a long-term care insurance policy.
6. MassHealth adjusted the appellant's patient paid amount from \$664.04 to \$2,683.80 as of October 1, 2022.
7. MassHealth adjusted the appellant's patient paid amount from \$2,683.80 to \$2,905.80 as of February 1, 2023.
8. In calculating the patient paid amount, MassHealth considered the following deductions: health care costs of \$206 and a personal needs allowance of \$72.80.
9. In calculating a spousal maintenance needs allowance, MassHealth utilized \$1,589.56 in shelter expenses that included:
 - a. \$615.06 in taxes and insurance;
 - b. \$114.50 in condominium maintenance fee; and
 - c. \$860 as a standard utility allowance.
10. MassHealth utilized the regulatory shelter expense deduction of \$686.63 to calculate a total shelter allowance of \$902.93.
11. The addition of the federal maintenance needs allowance of \$2,288.75

resulted in a MMMNA of \$3,191.68 [$\$902.93 + \$2,288.75 = \$3,191.68$].

12. MassHealth did not include a spousal maintenance needs deduction in calculating the PPA as the income of the community spouse [\$5,271.51] exceeded the minimum monthly maintenance needs allowance [\$3,191.68].
13. The community spouse has been hospitalized in the past.
14. The community spouse began residing in an assisted living facility in October 2022.
15. Payments are made to the assisted living facility for a room and personal care.
16. The monthly payments due are in the amount of \$6,900 each month.
17. The community spouse has private insurance that covers approximately \$4,650 each month for the expenses incurred while residing in the assisted living facility.
18. The private insurance company approved coverage for assisted living expenses based on a determination made by a licensed social worker that the community spouse is dependent for bathing, dressing and transferring.
19. The community spouse continues to pay for expenses associated with her primary residence with the intent to return home.
20. The community spouse did not provide a copy of a contract with the assisted living facility.
21. The community spouse did not present any medical or other records regarding a specific diagnoses, condition, frailty or special need.

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 appellant's spouse is seeking an adjustment to the minimum monthly maintenance needs allowance (MMMNA) as she has been residing in an assisted living facility since October 2022.

In determining the monthly patient-paid amount, 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. (130 CMR 520.026).

If a 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 MassHealth, MassHealth may deduct an amount from the institutionalized spouse's countable-income amount to meet this need. (130 CMR 520.026(B)). This amount is the spousal-maintenance-needs allowance. (130 CMR 520.026(B)).

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

- (1) \$2,288.75 (the federal standard maintenance allowance); and
- (2) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$686.63 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. If heat is included in the rent or condominium fee, this amount is \$525. If heat is not included in the rent or condominium fee, this amount is \$860.

The maximum-monthly-maintenance-needs allowance was \$3,435 in October 2022 and increased to \$3,715.59 as of January 1, 2023. This amount can be increased as the result of a fair-hearing decision based on exceptional circumstances in accordance with 130 CMR 520.017(D). MassHealth allowed

the maximum-monthly-maintenance-needs allowance for the community spouse.

After an 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). (130 CMR 520.017(D)).

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)). 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)).

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. (130 CMR 520.017(D)(1)(a)). 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. (130 CMR 520.017(D)(1)(b)). 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)(1)(b)).

Despite being asked at hearing if there was any additional evidence or arguments to present, counsel for the appellant noted that the necessary documents were presented to make an adjustment. These documents did not include a housing agreement, service plan, fee schedule or any medical or other records demonstrating necessities that arise from a medical condition, frailty, or similar special needs of the community spouse. Bills from a recent hospitalization and prescription costs do not indicate an ongoing medical condition or frailty. Additionally, a self-serving statement from the community spouse as well as the presentation of an insurance policy that made a

determination for coverage based on a recommendation by a licensed social worker does not clearly demonstrate what, if any, services are provided or that the community spouse has a medical condition, frailty or similar special need.

This appeal is denied as the community spouse did not present evidence to clearly demonstrate that exceptional circumstances exist to allow the Board of Hearings to adjust the MMMNA. (130 CMR 520.017(D)(1)).

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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957, 978-863-9290

