

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2300972
<b>Decision Date:</b>	4/25/2023	<b>Hearing Date:</b>	03/08/2023
<b>Hearing Officer:</b>	Patrick Grogan	<b>Record Open to:</b>	N/A

**Appearance for Appellant:**



**Appearance for MassHealth:**

Gabe Gillis, Long Term Care Intake Unit  
Tewksbury MEC

**Interpreter:**

N/A



*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>	PPA - Patient Paid Amount
<b>Decision Date:</b>	4/25/2023	<b>Hearing Date:</b>	03/08/2023
<b>MassHealth's Rep.:</b>	Gabe Gilis	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Remote	<b>Aid Pending:</b>	Yes

## Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

## Jurisdiction

Through two notices dated January 23, 2023 and February 6, 2023, MassHealth approved the Appellant for MassHealth Standard to cover his care in a nursing facility. (Exhibit 1, Exhibit 1A). The January 23, 2023, Notice included the Patient Paid Amount (PPA) of \$2,531.14 beginning November 1, 2022. (Exhibit 1). The February 6, 2023, Notice corrected the Patient Paid Amount (PPA) to \$2,891.57 beginning on March 1, 2023. (Exhibit 1A). The Appellant filed this appeal in a timely manner on February 6, 2023. (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 calculated the Appellant-husband's monthly Patient Paid Amount (PPA) as \$2,531.14 beginning November 1, 2022. (Exhibit 1) and then recalculated the Patient Paid Amount (PPA) at \$2,891.57 beginning on March 1, 2023. (Exhibit 1A).

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.17, 130 CMR 520.025, and 130 CMR 520.0126, in determining the Appellant-Husband's Patient Paid Amount (PPA) to the nursing facility.

## Summary of Evidence

Through a Notice dated January 25, 2023, MassHealth approved an application for long-term care for coverage to begin on the Appellant/Husband's admission date of [REDACTED]. (Exhibit 1, Exhibit 5, p.1, Testimony) Initially, the Notice calculated a Patient Paid Amount (PPA) of \$2,531.14 beginning November 1, 2022 (Exhibit 1). A subsequent Notice, dated February 6, 2023, issued calculating a Patient Paid Amount (PPA) of \$2,891.57 beginning March 1, 2023. (Exhibit 1A). The instant appeal followed.

Initially, MassHealth calculated the Patient Paid Amount (PPA) based upon the income determinations for 2022 at \$2,531.14. (Exhibit 1). This was recalculated for 2022 to \$2,427.19 (Exhibit 5, p.6) In calculating the Patient Paid Amount, MassHealth began by calculating the Monthly Maintenance Needs Allowance (MMNA) by combining certain expenses of the Community Spouse/Wife: Mortgage -\$765.22, Home Insurance - \$133.00, Real Estate Taxes - \$627.60, and Heating Expenses - \$860 for a total of \$2,384.82. (Testimony, Exhibit 5, p.6). MassHealth then subtracted the standard shelter expense of \$686.63 for a total of \$1,698.19. (Testimony, Exhibit 5, p.6). MassHealth then included the Minimum-Monthly-Maintenance-Needs Allowance of \$2,288.75 (MMMNA) for a total of \$3,986.94. (Testimony, Exhibit 5, p.6) This amount exceeds the Monthly Maintenance Needs Allowance (MMNA), and therefore the standard Monthly Maintenance Needs Allowance, being the lesser of the two amounts, is utilized, calculating the Monthly Maintenance Needs Allowance at \$3,715.50 for 2022.

Next, MassHealth calculated the Spousal Maintenance Needs Allowance (SMNA) for 2022. (Testimony, Exhibit 5, p.1, p.6). The Community Spouse/Wife's income was calculated at \$2,285.21: Social Security – \$1,362.10 and pension \$923.11. Since the Community Spouse/Wife's income is below the Monthly Maintenance Needs Allowance (MMNA), the Community Spouse/Wife's income is subtracted from the MMNA for a total Spousal Maintenance Needs Allowance (SMNA) amount of \$1,430.29.

To complete the Patient Paid Amount (PPA) calculation for 2022, MassHealth combined the Appellant's net monthly income sources for a total of \$3,930.28 for 2022: \$1,596.00 from the Social Security Administration, and \$1,587.00 and \$747.28 from his OPM and VA pensions. (Testimony, Exhibit 5, p.6). MassHealth then subtracted the personal needs allowance amount of \$72.80 as well as the Spousal Maintenance Needs Allowance of \$1,430.29 to arrive at the Patient Paid Amount of \$2,427.19 for October, November and December of 2022.

Next, MassHealth calculated the Patient Paid Amount (PPA) for 2023 since the Appellant/Husband's Social Security Income, OPM and VA pensions all increased, as did the Community Spouse/Wife's Social Security income, thus decreasing the Spousal Maintenance Needs Allowance (SMNA) and increasing the Patient Paid Amount (PPA) for 2023 to \$2,981.57. MassHealth recalculated the 2023 Patient Paid Amount (PPA) utilizing the process described supra.

Specifically, in calculating the Patient Paid Amount for 2023, MassHealth began by

calculating the Monthly Maintenance Needs Allowance (MMNA) by combining certain expenses of the Community Spouse/Wife which were reported to remain the same as 2022: Mortgage -\$765.22, Home Insurance - \$133.00, Real Estate Taxes - \$627.60, and Heating Expenses - \$860 for a total of \$2,384.82. (Testimony, Exhibit 5, p.7). MassHealth then subtracted the standard shelter expense of \$686.63 for a total of \$1,698.19. (Testimony, Exhibit 5, p.7). MassHealth then included the Minimum-Monthly-Maintenance-Needs Allowance of \$2,288.75 (MMMNA) for a total of \$3,986.94. (Testimony, Exhibit 5, p.7) This amount exceeds the Monthly Maintenance Needs Allowance (MMNA), and therefore the standard Monthly Maintenance Needs Allowance, being the lesser of the two amounts, is utilized, calculating the Monthly Maintenance Needs Allowance at \$3,715.50 for 2023.

Next, MassHealth calculated the Spousal Maintenance Needs Allowance (SMNA) for 2023. (Testimony, Exhibit 5, p.1, p.7). The Community Spouse/Wife's income was calculated at \$2,404.01: Social Security – \$1,480.90 and pension \$923.11. Since the Community Spouse/Wife's income is below the Monthly Maintenance Needs Allowance (MMNA), the Community Spouse/Wife's income is subtracted from the MMNA for a total Spousal Maintenance Needs Allowance (SMNA) amount of \$1,311.49.

To complete the Patient Paid Amount (PPA) calculation for 2023, MassHealth combined the Appellant's net monthly income sources for a total of \$4,275.86 for 2023: \$1,755.00 from the Social Security Administration, and \$1,709.00 and \$811.86 from his OPM and VA pensions. (Testimony, Exhibit 5, p.7). MassHealth then subtracted the personal needs allowance amount of \$72.80 as well as the Spousal Maintenance Needs Allowance of \$1,311.49 to arrive at the Patient Paid Amount of \$2,891.57 for 2023.

## Findings of Fact

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

1. The Appellant/Husband entered a long-term care facility on [REDACTED] and applied for MassHealth long-term care. (Testimony).
2. MassHealth approved an application for long-term care for coverage to begin on [REDACTED]. (Testimony).
3. Based upon the information provided, the Monthly Maintenance Needs Allowance (MMNA) calculation is \$3,715.50 for 2022. (Testimony, Exhibit 5, p.6)
4. Based upon the information provided, the Community Spouse Monthly Income calculation is \$2,285.21 for 2022. (Testimony, Exhibit 5, p.6)
5. Based upon the information provided, the Spousal Maintenance Needs Allowance (SMNA) calculation is \$1,430.29 for 2022. (Testimony, Exhibit 5, p.6)

6. Based upon the information provided, the Institutionalized Spouse Monthly Income calculation is \$3,930.28 for 2022. (Testimony, Exhibit 5, p.6)
7. Based upon the information provided, the Patient Pay Amount (PPA) calculation is \$2,427.19 for 2022 (October, November, and December). (Testimony, Exhibit 5, p.6)
8. Based upon the information provided, the Monthly Maintenance Needs Allowance (MMNA) calculation is \$3,715.50 for 2023. (Testimony, Exhibit 5, p.7)
9. Based upon the information provided, the Community Spouse Monthly Income calculation is \$2,404.01 for 2023. (Testimony, Exhibit 5, p.7)
10. Based upon the information provided, the Spousal Maintenance Needs Allowance (SMNA) calculation is \$1,311.49 for 2023. (Testimony, Exhibit 5, p.7)
11. Based upon the information provided, the Institutionalized Spouse Monthly Income calculation is \$4,275.86 for 2023. (Testimony, Exhibit 5, p.7)
12. Based upon the information provided, the Patient Pay Amount (PPA) calculation is \$2,891.57 for 2023. (Testimony, Exhibit 5, p.7)

## **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. See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998). 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 issue on appeal is the Patient Paid Amount (PPA) that the Appellant/Husband contributes. The Appellant Representative is the Community Spouse/Wife and is seeking a reduction in the Patient Paid Amount (PPA) for the Appellant/Husband because she indicated that she believed the PPA was too high. (Exhibit 2, p.1, see also 130 CMR 520.002(B)). In determining the monthly Patient Paid Amount (PPA), 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>1</sup>; and
- (2) an excess shelter allowance determined by calculating the difference between the standard shelter expense<sup>2</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>3</sup>.

The Maximum Monthly-Maintenance-Needs Allowance is \$3,715.50 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

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<sup>1</sup> The federal standard maintenance allowance utilized by MassHealth was \$2,288.75.

<sup>2</sup> The Standard Shelter Expense deduction utilized by MassHealth was \$686.63.

<sup>3</sup> The Supplemental Nutrition Assistance Program (SNAP) standard utility allowance (SUA) as of the date of the decision on appeal was \$860.

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)). Any expenses incurred and reported by an 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. Although an Appellant may request that the Board of Hearings consider utility expenses presented at hearing, 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 Patient Paid Amount (PPA) regarding the January 25, 2023 Notice, adhered to the regulatory language<sup>4</sup>. (130 CMR 520.017; 130 CMR 520.026). Therefore, the appeal concerning this notice is DENIED.

The Notice dated February 6, 2023 is in evidence. (Ex 1A). Although this Notice was not the subject of the instant appeal, administrative economy dictates it be considered in this appeal, where MassHealth recalculated the Patient Paid Amount (PPA) due to the increase of the Appellant's reported income from Social Security, both of his pensions as well as the increase of the Community Spouse/Wife's Social Security income since the time of application. (Testimony, Exhibit 1A, Exhibit 5, p.7). In this February Notice, MassHealth incorporated the increase of incomes (Ex. 5, p. 7) to its Patient Paid Amount (PPA) calculations. However, the January 25, 2023 Notice decreased the PPA amount for 2022 and review for the instant appeal decreased the PPA for 2022 even further based upon the erroneous mortgage amount entered into the calculus. (Exhibit 1, Exhibit 5, p.6, p.8). The Patient Paid Amount (PPA) for 2023 calculated on the February 6, 2023 Notice is correct, adheres to the regulations 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

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<sup>4</sup> The 2022 SMNA amount was initially incorrectly calculated due to a transcription error regarding the amount of the mortgage resulting in a SMNA amount of \$1,326.34. The updated amount was corrected in testimony and Exhibit 5, p.8, reflecting the accurate SMNA amount of \$1,430.29. This recalculation based on the correct figures resulted in a decrease of the 2022 PPA from \$2,531.74 to \$2,427.19 for 2022. (October, November, and December)

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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Patrick Grogan  
Hearing Officer  
Board of Hearings

cc:

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