

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Approved  
**Decision Date:** 4/25/2023  
**Hearing Officer:** David Jacobs

**Appeal Number:** 2302021  
**Hearing Date:** 04/10/2023

**Appearances for Appellant:**



**Appearances for MassHealth:**  
Rachel Manzi, Tewksbury MEC



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street  
Quincy, MA 02171*

# APPEAL DECISION

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Long-Term Care Patient-Paid Amount
<b>Decision Date:</b>	4/25/2023	<b>Hearing Date:</b>	04/10/2023
<b>MassHealth's Rep.:</b>	Rachel Manzi, Tewksbury MEC	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Board of Hearings (Remote)		

## Authority

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

## Jurisdiction

By a notice dated March 2, 2023, MassHealth notified the appellant was eligible for MassHealth Standard with a patient-paid amount of \$1,423.33 and a spousal allowance of \$2,758.60 (Exhibit 1). The appellant filed a timely appeal on March 13, 2023 (Exhibit 2). Determination of a patient-paid amount is a valid basis for appeal (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth notified the appellant that he was eligible for MassHealth Standard with a patient-paid amount of \$1,423 and a spousal allowance of \$2,758.60.

## Issue

The appeal issue is whether the community spouse is entitled to a higher spousal maintenance needs allowance, which would further reduce the patient-paid amount.

## Summary of Evidence

The MassHealth representative testified that the appellant, who is in a nursing facility, has a spouse living in an assisted living condominium. The appellant applied for long-term care benefits on January 18, 2023, and was approved on March 02, 2023. MassHealth calculated the appellant's patient-paid amount (PPA) at \$1,423.33.

The MassHealth representative submitted into evidence a copy of MassHealth's Minimum Maintenance Needs Allowance (MMMNA) Worksheet (Exhibit 1), which shows the calculation of the amount of income the spouse requires. The MMMNA, as most recently revised, is calculated as follows:

Rent/mortgage	\$ 5700.00
Property taxes and insurance	\$ 0.00
Required condo/coop maintenance charge	\$ 0.00
<u>Utility allowance</u>	<u>\$ 0.00</u>
Total shelter costs	\$ 5700.00
 Standard Maintenance Allowance	 \$ 3715.50
Spousal Income	\$ 956.90
 Total	 \$ 2758.60

Because this figure exceeds the maximum allowable MMMNA, MassHealth reduced it to the maximum figure of \$3715.50 (the maximum allowed). As the community spouse has income of \$956.90 of her own, MassHealth reduced the spousal maintenance allowance to \$2758.60.

The appellant representative appeared at the hearing and testified to the following: The community spouse is disabled and is required to live in an assisted living condominium at great cost to herself. She must make monthly payments to the condominium of \$5700.00 which far exceeds the spousal maintenance fee granted by MassHealth of \$2758.60. After the hearing the appellant representative was asked to submit documentation showing the costs and services provided by the spouse's assisted living condominium, as well as a letter from the spouse's primary care provider concerning her need to live in assisted living. All requested documents were submitted. The condominium documents show a monthly cost \$5700.00, and the associated services guaranteed to the spouse (Exhibit 8). Furthermore, the letter from the spouse's primary care provider states in part that "[Spouse]...requires care/assistance with all activities of daily living including meals and medical needs with constant supervision for safety." (Exhibit 9)

## Findings of Fact

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

1. The appellant resides in a nursing facility. His spouse lives in an assisted living condominium.
2. On January 18, 2023, the appellant applied for long-term care benefits.
3. On March 02, 2023, the appellant was approved for long-term care benefits. MassHealth calculated the appellant's patient-paid amount at \$1,423.33.
4. MassHealth calculated the community spouse's minimum monthly maintenance needs allowance as follows:

Rent/mortgage	\$ 5700.00
Property taxes and insurance	\$ 0.00
Required condo/coop maintenance charge	\$ 0.00
<u>Utility allowance</u>	<u>\$ 0.00</u>
Total shelter costs	\$ 5700.00
 Standard Maintenance Allowance	 \$ 3715.50
Spousal Income	\$ 956.90
 Total	 \$ 2758.60

5. MassHealth reduced the calculated MMMNA to the maximum allowable by regulation, \$3,715.50.
6. The appellant's spouse's assisted living condominium has a monthly fee of \$5700.00.
7. The appellant's spouse has income of her own in the amount of \$956.90 per month.
8. As the appellant's spouse was granted the maximum allowable amount by regulation, MassHealth determination a spousal allowance of \$2758.60 after consideration of her income of \$956.90.
9. The appellant's spouse lives in assisted living as required by her primary care provider.
10. The appellant's spouse requires care/assistance with all activities of daily living including meals and medical needs with constant supervision for safety.

### **Analysis and Conclusions of Law**

At issue in this case is whether pursuant to 130 CMR 520.017(D), the appellant's spouse

qualifies to have her spousal allowance increased beyond the regulatory maximum 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 housing 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.

After reviewing the evidence and testimony presented at hearing, I conclude that the facts presented here do rise to the level of “exceptional circumstances” resulting in significant financial duress, and therefore do warrant an increase beyond the current MMMNA. The appellant representative submitted a persuasive letter from appellant’s spouse’s primary care provider stating that it is necessary for her to live in assisted living as she requires care/assistance with all activities of daily living including meals and medical needs with constant supervision for safety. The necessity of the spouse living in assisted living is found to be exceptional circumstances as described in 130 CMR 520.017(D). **Therefore, the spousal allowance will be increased from \$2,758.60 to \$4,181.93,** the maximum amount the appellant’s net PPA supports.

The appeal is approved.

### **Order for MassHealth**

Rescind notice dated March 02, 2023 and adjust patient-paid amounts as set forth above.

## **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 with Suffolk County Superior Court, within 30 days of your receipt of this decision.

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David Jacobs  
Hearing Officer  
Board of Hearings

cc: Tewksbury MEC

