

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2302275
Decision Date:	6/15/2023	Hearing Date:	4/27/2023
Hearing Officer:	Paul O'Neill (at hearing) Thomas J. Goode (appeal decision)	Record Open	6/9/2023

Appearance for Appellant:



Appearance for MassHealth:

Gloria Medeiros, Taunton MEC



*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:	Patient Paid Amount/MMMNA
Decision Date:	6/15/2023	Hearing Date:	04/27/2023
MassHealth's Rep.:	Gloria Medeiros	Appellant's Rep.:	[REDACTED]
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

On March 1, 2023, MassHealth issued a notice informing Appellant that his application for MassHealth long-term care benefits filed on April 14, 2022 was denied because income exceeds program limits resulting in a deductible (Exhibit 3, p. 2). Through a second notice dated March 8, 2023, MassHealth notified Appellant that as a community resident his assets and income exceed program limits resulting in a deductible (Exhibit 3, p. 7). Appellant filed this appeal in a timely manner on March 20, 2023 (130 CMR 610.015(B) and Exhibit 2).¹ Denial of an application for long-term care coverage or community coverage is valid grounds for appeal (see 130 CMR 610.032). The hearing record remained open at Appellant's request until May 30, 2023, with a response due from MassHealth by June 6, 2023. In the interim the hearing officer who conducted the hearing became unavailable. On May 18, 2023, the parties were notified by the Board of Hearings that the case was transferred to the undersigned hearing officer. On May 26, 2023, Appellant requested an extension of the hearing record-open period to June 2, 2023 which was allowed, with the MassHealth response due date extended to June 9, 2023. Appellant submitted additional evidence on June 2, 2023 (Exhibit 7). MassHealth submitted a response on June 12, 2023 (Exhibit 6, p. 1).

¹ Appellant's attorney submitted an appeal of the March 8, 2023 notice. At hearing, Appellant's attorney stated that he received the March 1, 2023 notice and the March 8, 2023 notice days apart, and intended to appeal both notices in his request for hearing submitted to the Board of Hearings. Based on a filing date of March 30, 2023, the request for an appeal on either notice is timely (130 CMR 610.015).

Action Taken by MassHealth

MassHealth notified Appellant that countable income exceeds program limits, and a deductible must be met to establish eligibility for MassHealth long-term care benefits.

Issue

The appeal issue is whether MassHealth correctly calculated Appellant's income and deductions, and correctly determined that a deductible must be met to establish eligibility for MassHealth long-term care benefits under 130 CMR 520.017, 520.026, 520.028.

Summary of Evidence

The MassHealth representative appeared by telephone and testified that Appellant was admitted to a nursing facility on [REDACTED]. Appellant has a spouse and dependent child living in the community. An application for MassHealth long-term care benefits was submitted on April 14, 2022, which was denied for missing verifications by notice dated May 27, 2022. The denial for missing verifications was not appealed. The application was reopened on June 24, 2022, and was denied on August 22, 2022 due to excess assets. Following an appeal in November 2022, the asset issue resolved to Appellant's favor. On March 1, 2023, MassHealth issued notice informing Appellant that his monthly patient paid amount calculated by MassHealth would be higher than the amount MassHealth would pay for his care and resulted in a 6-month deductible period totaling \$32,503 which must be met before establishing MassHealth eligibility.² The nursing facility reported a private pay daily rate of \$432 per day, which amounts to \$157,680 annually, and \$13,140 monthly. The nursing facility reported a public daily room rate of \$179.99, which amounts to \$65,696.35 annually, and \$5,474.69 monthly. Appellant's net monthly income from Social Security is \$2,710, and \$6,066.20 long term care insurance at \$200/day for monthly income totaling \$8,776.20.

The MassHealth representative reviewed the Minimum Monthly Maintenance Needs Allowance (MMMNA) calculation which includes \$2,142.19 for rent or mortgage and \$1,427.16 for taxes and insurance. MassHealth applied in the calculation the \$860 Food Stamp Utility Allowance to arrive at Total Shelter Expenses of \$4,429.35, which was then reduced by the \$686.63 Standard Deduction, and added the minimum monthly maintenance needs allowance \$2,288.75 to arrive at an actual Monthly Maintenance Needs Allowance (MMNA) of \$6,031.47. The MassHealth representative testified that MassHealth regulations limit the MMMNA to a maximum amount of \$3,715.50 unless increased under 130 CMR 520.017(D) due to Exceptional Circumstances. The community spouse's income is \$1,197.34 and includes \$1,081 Social Security income and other

² The March 8, 2023 notice addresses Appellant's ineligibility as a community resident which the parties agree is not relevant.

income of \$116.34, resulting in a Spousal Maintenance Needs Deduction (SMND) of \$2,518.16. MassHealth calculated a \$5,553.09 patient paid amount by deducting from Appellant's income a \$72.80 Personal Needs Allowance (PNA), \$2,518.16 (SMND), a Family Maintenance Needs Allowance (FMNA) allowance of \$402.18, and \$229.57 health care coverage expenses, which were subtracted from Appellant's gross monthly income of \$8,776.20 per month and resulted in a \$5,553.49 patient paid amount (PPA) as required under 130 CMR 520.026. MassHealth noted that the \$3,715.50 maximum MMMNA was used in the SMND calculation.

Appellant's attorney argued that MassHealth erred in using the minimum MMNA in calculations which is not sufficient to meet household expenses including costs for utilities, insurance, phone and internet services, and health and dental insurance, in addition to expenses related to providing for Appellant's daughter. The community spouse is presently unemployed, and borrowed \$20,000 from her sister to meet expenses, with interest-free payments now due. Appellant had stays at different facilities prior to the current nursing facility admission on January 29, 2022 and paid \$34,778 for stays in assisted living facilities and retirement community settings. During the record open period, Appellant submitted bills showing expenses for the community spouse, most of which had already been reviewed by MassHealth, and asserted that the MMMNA should be increased pursuant to 130 CMR 520.017(D)(1) because the community spouse's expenses result in significant financial duress (Exhibit 7).

Findings of Fact

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

1. Appellant was admitted to a nursing facility on [REDACTED]
2. Appellant has a spouse and dependent child living in the community.
3. An application for MassHealth long-term care benefits was submitted on April 14, 2022, which was denied for missing verifications by notice dated May 27, 2022. The denial for missing verifications was not appealed.
4. The April 14, 2022 application was reopened on June 24, 2022, and was denied on August 22, 2022 due to excess assets. Following an appeal in November 2022, the asset issue resolved to Appellant's favor.
5. On March 1, 2023 MassHealth issued notice informing Appellant that his monthly patient paid amount would be higher than the amount MassHealth would pay for his care, and resulted in a 6-month deductible period totaling \$32,503 which must be met before establishing MassHealth eligibility.

6. The nursing facility reported a private pay daily rate of \$432 per day, which amounts to \$157,680 annually, and \$13,140 monthly.
7. The nursing facility reported a public daily room rate of \$179.99, which amounts to \$65,696.35 annually, and \$5,474.69 monthly.
8. Appellant's net monthly income from Social Security is \$2,710, and \$6,066.20 long term care insurance at \$200/day for monthly income totaling \$8,776.20.
9. Appellant's gross income is \$8,946.
10. The MMNA calculation includes \$2,142.19 for rent or mortgage and \$1,427.16 for taxes and insurance.
11. MassHealth applied the \$860 Food Stamp Utility Allowance to arrive at total shelter expenses of \$4,429.35, which was reduced by the \$686.63 Standard Deduction, and added \$2,288.75, the federal standard maintenance allowance, to arrive at an actual minimum monthly maintenance need of \$6,031.47.
12. MassHealth utilized the maximum Minimum Monthly Maintenance Needs Allowance (MMMNA) of \$3,715.50 in calculating the Spousal Maintenance Needs Deduction (SMND).
13. The community spouse's income is \$1,197.34 and includes \$1,081 Social Security income and other income of \$116.34.
14. MassHealth calculated a Spousal Maintenance Needs Deduction (SMND) of \$2,518.16.
15. The patient paid amount was calculated by deducting from Appellant's income a \$72.80 Personal Needs Allowance (PNA), \$2,518.16 (SMND), a Family Maintenance Needs Allowance (FMNA) allowance of \$402.18, and \$229.57 health care coverage expenses, which subtracted from Appellant's \$8,776.20 monthly income results in a \$5,553.49 patient paid amount (PPA).
16. The \$5,553.49 monthly patient paid amount (PPA) exceeds the public monthly room rate of \$5,474.69.

Analysis and Conclusions of Law

The Patient Paid Amount is 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 (130 CMR 515.001). Regulation 130 CMR 520.026 (A)-(E) outlines long-term care general income

deductions that apply in the calculation of the Patient Paid Amount, which are limited to a Personal-Needs Allowance; Spousal-Maintenance Needs Allowance³; Deductions for Family-Maintenance Needs⁴; Deductions for the Maintenance of a Former Home, which only applies to

³ Pursuant to 130 CMR 520.026(B), 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) \$2,288.75 (the federal standard maintenance allowance) (effective 7/1/2022); and
 - (b) 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
 1. 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
 2. 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 \$525. If heat is not included in the rent or condominium fee, this amount is \$860.
- (2) **The maximum-monthly-maintenance-needs allowance is \$3,715.50 per month (effective 1/1/2023), 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)** (emphasis added).
- (3) If the institutionalized individual is subject to a court order for the support of the community spouse, the court-ordered amount of support must be used as the spousal-maintenance-needs deduction when it exceeds the spousal-maintenance-needs deduction calculated according to 130 CMR 520.026(B) or resulting from a fair hearing.

⁴ Pursuant to 130 CMR 520.026 (C):

- (1) The MassHealth agency allows a deduction from the income of a long-term-care resident to provide for the maintenance needs of the following family members if they live with the community spouse:
 - (a) a minor child — a child younger than 21 years old of either member of the couple;
 - (b) a dependent child — a child 21 years of age and older who is claimed as a dependent by either spouse for income-tax purposes under the Internal Revenue Code;
 - (c) a dependent parent — a parent of either spouse who lives with the community spouse and who is claimed as a dependent by either spouse for income-tax purposes under the Internal Revenue Code; and
 - (d) a dependent sibling — a brother or sister of either spouse (including a half-brother or half-sister) who lives with the community spouse and who is claimed as a dependent by either spouse for income-tax purposes under the Internal Revenue Code.
- (2) **The deduction for family-maintenance needs is ¼ of the amount by which the federal standard maintenance allowance exceeds the monthly gross income of the family member. The federal standard maintenance allowance is \$2,288.75** (emphasis added).

individuals admitted to a skilled nursing facility on a short-term basis only, and are expected to return home within 6 months; and Deductions for Health-Care Coverage and Other Incurred Expenses, which are limited to necessary medical and remedial-care expenses, and expenses associated with Guardianship.

First, Appellant argues that MassHealth incorrectly used the minimum \$2,288.75 MMNA in calculating a \$2,518.16 Spousal Maintenance Needs Deduction (SMND). The minimum allowable MMNA \$2,288.75 is used in calculating the community spouse's *actual* minimum monthly maintenance needs of \$6,031.74 based on standard shelter expenses and standard utility expenses.⁵ However, MassHealth correctly used the maximum allowable \$3,715.50 MMMNA (effective July 1, 2023) in calculating the \$2,518.16 SMND (See Exhibit 4).⁶

Next, to increase the maximum allowable MMMNA, Appellant relies on an argument that the community spouse's expenses result in significant financial duress under 130 CMR 520.017(D)(1): Adjustment to the Minimum-monthly-maintenance-needs Allowance Due to Exceptional Circumstances, which allows the hearing officer discretion to increase the MMMNA due to Exceptional Circumstances defined below:

(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

⁵ See fn. 3 and 130 CMR 520.026(B).

⁶ Figures used to determine the MMMNA are available at: <https://www.mass.gov/doc/figures-used-to-determine-minimum-monthly-maintenance-needs-allowance>.

allowed only for specific expenses necessitated by exceptional circumstances of the community spouse and not for maintaining any pre-set standard of living. (emphasis added)

A complete reading of the regulation governing a finding of exceptional circumstances does not vest in the hearing officer discretion to increase any federal standards, or to increase the MMMNA due only to significant financial duress as Appellant asserts. Exceptional circumstances do not include expenses already taken into account in establishing the maintenance standards for the community spouse under 130 CMR 520.026(B) and are limited to those necessities that arise from the medical condition, frailty, or similar special needs of the *community spouse* and include, but are not limited to, special remedial and support services and *extraordinary uncovered medical expenses*. Payments made for Appellant's stays prior to his admission to the nursing facility are not defined within the definition of extraordinary circumstances. While dental, physical therapy, and health insurance bills are included with Appellant's submission, there is no evidence of the community spouse having extraordinary uncovered medical expenses. The expenses submitted are primarily related to car repairs, cell phones, insurance, taxes, mortgage and utility expenses on two properties, and the cost of tuition and music lessons for Appellant's daughter (Exhibit 7). The hearing officer is specifically precluded from finding exceptional circumstances based on the community spouse maintaining any pre-set standard of living. The evidence submitted by Appellant does not meet the definition of exceptional circumstances required by regulation.

MassHealth correctly calculated a Spousal Maintenance Needs Deduction (SMND) of \$2,518.16, and correctly calculated the patient paid amount by deducting from Appellant's \$8,776.20 income a \$72.80 Personal Needs Allowance (PNA), \$2,518.16 (SMND), a Family Maintenance Needs Allowance (FMNA) allowance of \$402.18,⁷ and \$229.57 health care coverage expenses which results in a \$5,553.49 patient paid amount (PPA). If after applying the deductions in 130 CMR 520.026(A) through (E) the long-term-care-facility resident's monthly income exceeds the public rate at the long-term-care facility, the MassHealth agency will establish a six-month deductible in accordance with 130 CMR 520.028 through 520.035 and use an income standard of \$72.80 (130 CMR 520.027, 520.028(C)). The \$5,553.49 monthly patient paid amount (PPA) exceeds the nursing facility's public monthly room rate of \$5,474.69. Therefore, MassHealth correctly calculated a deductible from May 2022 through October 2022.⁸ The appeal is DENIED.

⁷ See fn. 4. The community spouse's income from Social Security and other income is \$1,197.34. The \$2,288.75 federal standard maintenance allowance exceeds the community spouse's income by \$1,091.41, 1/3 of which is \$363.80. It appears MassHealth used only the community spouse's \$1,081 Social Security income in calculating a \$402 FMNA (\$2,288.75 exceeds \$1,081 by \$1,207.75, 1/3 of which is \$402) and is to Appellant's favor (Exhibit 4).

⁸ Deductible calculations were not reviewed at hearing by MassHealth or challenged by Appellant at hearing or in post-hearing submissions. MassHealth based the deductible on Appellant's gross income, applied a \$72.80 income standard, and reduced gross income in amounts that reflect allowances under 130 CMR 520.026 to arrive at a deductible of \$5,417.33 per month for May 2022 through October 2022 (Exhibit 3, p. 4). MassHealth noted in its narrative presented at hearing that the deductible dates were due to a reduction in assets and the date deeds were signed to remove properties from countable trusts (Exhibit 3, p. 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.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Nga Tran, Charlestown MassHealth Enrollment Center, 529 Main Street, Suite 1M, Charlestown, MA 02129

Appellant Attorney: [REDACTED]