

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2302457
Decision Date:	07/27/2023	Hearing Date:	June 22, 2023
Hearing Officer:	Stanley M. Kallianidis		

Appellant Representative:



MassHealth Representative:

Samantha Bybee, Tewksbury



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th Floor
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Approved	Issue:	Increase of Spousal Allowance
Decision Date:	07/27/2023	Hearing Date:	June 22, 2023
MassHealth Rep.:	Samantha Bybee, Tewksbury	Appellant Rep.:	

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 February 27, 2023, MassHealth approved the appellant's request for MassHealth benefits as of September 23, 2022, and established a patient paid amount (PPA) of \$138.24 beginning February 1, 2023 (Exhibit 1). The appellant's spouse filed this appeal in a timely manner on March 27, 2023 (see 130 CMR 610.015 and Exhibit 2). A PPA dispute from either spouse is valid grounds for appeal (see 130 CMR 610.032 and 130 CMR 520.017).

A prior hearing date was rescheduled at the request of the appellant's representative (Exhibits 5-7).

Action Taken by MassHealth

MassHealth approved the appellant's request for MassHealth benefits and established a PPA of \$138.24 beginning February 1, 2023.

Issue

Is the community spouse entitled to an increase in the spousal maintenance needs allowance, based on exceptional circumstances, as defined in 130 CMR 520.017(D)?

Summary of Evidence

The MassHealth representative testified that MassHealth approved the appellant's request for MassHealth benefits as of September 23, 2022, and established a PPA of \$138.24 beginning February 1, 2023 (Exhibit 1). She stated that the \$72.80 personal needs allowance, a \$2,347.60 spouse-in-home allowance, and a health insurance allowance of \$280.51 were deducted from the appellant's Social Security and pension income of \$2,839.15. The result was a PPA of \$138.24 (Exhibit 1).

A spouse-in-home deduction of \$2,347.60 was allowed because there was a shortfall from the appellant's community spouse's maximum allowable minimum monthly maintenance needs allowance (MMMNA) of \$3,715.50 when compared to her gross Social Security income of \$1,367.90. Her actual MMMNA calculation came to \$5,902.12. The calculation was based on the community spouse's all-inclusive rent, minus a basic shelter standard, which was then added to the federal standard for living in the community (Exhibit 3).

The attorney for the appellant's spouse testified that the spouse cannot afford to pay her monthly expenses along with the PPA of \$138.24. She stated that the community spouse has Alzheimer's disease and as a result has been receiving home care as she needs assistance with activities of daily living. The cost for this service is \$1,800.00 monthly. Additionally, the community spouse needs extensive dental work. The cost for the dental work is \$5,900.00, or \$492.00 monthly when prorated. She stated that neither of these expenses is covered by her health insurance. The attorney submitted documentation of the community spouse's medical condition and associated expenses into evidence (Exhibit 4).

Findings of Fact

Based on a preponderance of the evidence, I find:

1. MassHealth approved the appellant's request for MassHealth benefits as of September 23, 2022, and established a PPA of \$138.24 beginning February 1, 2023 (Exhibit 1)
2. The appellant has countable Social Security and pension income of \$2,839.15 (Exhibit 1).
3. The community spouse has gross Social Security income of \$1,367.90 (Exhibit 3).

4. The community spouse's MMMNA was calculated at \$5,902.12. The MMMNA was capped at \$3,715.50, the maximum allowable limit (Exhibit 3).
5. A \$72.80 personal needs allowance, a \$2,347.60 spouse-in-home allowance, and a health insurance allowance of \$280.51 were deducted from the appellant's Social Security and pension income of \$2,839.15. The result was a PPA of \$138.24 (Exhibit 1).
6. The community spouse's MMMNA calculation was based on all-inclusive rent, minus a basic shelter standard, which was then added to the federal standard for living in the community (Exhibit 3).
7. The community spouse has Alzheimer's disease which necessitates her to receive home care for assistance with activities of daily living. The cost for this service is \$1,800.00 monthly (Exhibit 4).
8. The community spouse needs extensive dental work. The cost for the dental work is \$5,900.00, or \$492.00 monthly when prorated (Exhibit 4).
9. The community spouse's home care and dental work are not covered by her health insurance (Exhibit 4).

Analysis and Conclusions of Law

130 CMR 520.026(B): 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. 130CMR520.026(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.

130 CMR 520.026(B)(1)

The MassHealth agency determines the MMMNA by adding the following amounts:(a) \$2,288.75 (the federal standard maintenance allowance); and(b)an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$860.00 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 \$525.00. If heat is not included in the rent or condominium fee, this amount is \$860.00.

(2) 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 130CMR520.017(D).

With regard to increasing the MMMNA, 130 CMR 520.017(D) states that:

After the institutionalized spouse has received notice of either approval or denial for MassHealth Standard, either spouse may appeal to the 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).

Exceptional circumstances exist when there are circumstances other than those already taken into account in establishing the maintenance standards for the community spouse under 130CMR520.026(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.

(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.

In the instant case, the community spouse has an actual MMMNA figure of \$5,902.12. This calculation was based upon the community spouse's all-inclusive rent, minus a shelter standard, which was then added to the federal standard for living in the community. At hearing, the community spouse documented that she has Alzheimer's disease and receives home care to

keep her in the community at a cost of \$1,800.00 monthly. Additionally, she needs extensive dental work at a cost of \$5,900.00, or \$492.00 per month. Neither her home care nor dental work is covered by her health insurance.

The MMMNA is capped by regulation at \$3,715.50, the maximum allowable limit, however, and can only be raised in specific conditions defined as “exceptional circumstances.” As stated above in 130 CMR 520.017(D),

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.

Given this regulation, I conclude that the community spouse’s aforementioned out-of-pocket medical expenses are indeed “extraordinary uncovered medical expenses,” which result in “exceptional circumstances.” By regulation, these total medical expenses of \$2,292.00 can be added to her MMMNA of \$3,715.50. The result is a new MMMNA of \$6,007.50 which exceeds the community spouse’s income of \$1,367.90 even when combined with the institutionalized member’s income of \$2,839.50.

The appeal is therefore approved due to the allowance of \$2,292.00 to the MMMNA based upon “exceptional circumstances,” and the appellant’s resulting \$0.00 PPA.

Order for MassHealth

Adjust appellant’s PPA to \$0.00 effective February 1, 2023.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this notice, you should contact your local office. 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.

Stanley M. Kallianidis
Hearing Officer
Board of Hearings

cc:

Tewksbury MEC

