

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2302537
<b>Decision Date:</b>	6/22/2023	<b>Hearing Date:</b>	05/01/2023
<b>Hearing Officer:</b>	Christopher Jones	<b>Record Open to:</b>	06/09/2023

**Appearance for Appellant:**



**Appearance for MassHealth:**

Yous Khieu – Chelsea Intake



*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>	LTC – PPA/SMNA
<b>Decision Date:</b>	6/22/2023	<b>Hearing Date:</b>	05/01/2023
<b>MassHealth's Rep.:</b>	Yous Khieu	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Remote	<b>Aid Pending:</b>	No

### 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 March 2, 2023, MassHealth notified the appellant that he would owe his nursing facility \$3,358.18 every month, starting April 1, 2023. (Exhibit 1.) The appellant filed this appeal in a timely manner on March 28, 2023. (Exhibit 2; 130 CMR 610.015(B).) The calculation of the minimum-monthly-maintenance-needs allowance, which affects the institutionalized spouse's patient-paid amount, is appealable by either spouse. (130 CMR 520.017; 610.032.)

The hearing record was left open until June 9, 2023, following the hearing for the community spouse to submit evidence of "exceptional circumstances" under 130 CMR 520.017.

### Action Taken by MassHealth

MassHealth calculated the appellant's patient-paid amount to be \$3,358.18, based in part upon a spousal-maintenance-needs allowance of \$1,047.47.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.017, 520.026, in calculating the appellant's patient-paid amount.

## Summary of Evidence

The institutionalized spouse is an elderly individual who was approved for long-term-care benefits on or around January 4, 2023.<sup>1</sup> He receives a gross pension of \$4,507.73 and net Social Security benefits of \$42. The community spouse receives gross monthly Social Security benefits in the amount of \$1,942.90. She resides in their community home, which is paid off, but she pays \$380 per month in real estate taxes and \$148.25 per month in homeowner's insurance. She also pays for her own heat and electricity. MassHealth's representative explained that the calculation for the patient-paid amount ("PPA") allows for some money to be diverted to the community spouse where their income is insufficient to meet their expenses. This amount is known as the spousal-maintenance-needs allowance ("SMNA"). The March 2, 2023, notice was not substantively different from the January 4, 2023, notice according to MassHealth's representative.

The SMNA is calculated using the community spouse's shelter expenses, including rent or mortgage, taxes, and insurance. A standard utilities allowance is added to these expenses and a standard housing deduction is taken out. This "excess shelter expense" is then added to a Federal Standard Maintenance Allowance, and the result is the minimum-monthly-maintenance-needs allowance ("MMMNA").<sup>2</sup> For the community spouse, the shelter expenses are \$528.25, and her utility allowance is \$860 because she pays for both heat and electricity. The standard housing deduction is \$686.63, resulting in an excess shelter amount of \$701.62. After the Federal Standard Maintenance Allowance of \$2,288.75 is added, the community spouse's MMMNA is calculated to be \$2,990.37. (Exhibit 6.)

MassHealth subtracted the community spouse's income and arrived at an SMNA of \$1,942.90. The appellant's PPA is then calculated using their income, less the personal-needs allowance ("PNA") of \$72.80, less the SMNA, less a private health insurance premium of \$70.28. The resulting PPA was \$3,358.18. (Exhibit 1.)

The community spouse testified that she cannot make ends meet based upon the SMNA allowed. She believed that her utilities were way beyond \$860 per month, and that she felt it was unfair for the calculation to not take food or medications into consideration. She testified that she suffers from depression, anxiety, and fibromyalgia and that she cannot get a job due to her medical conditions. She testified that her prescriptions cost at least \$400 per month. Some medications are

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<sup>1</sup> This notice was appealed but withdrew at a fair hearing. (Appeal No. 2300660.) MassHealth's representative testified the appellant's attorney agreed to withdraw the appeal after the patient-paid amount calculation was explained. The community spouse testified that she never got this information from her attorney, and she said she would follow up with her attorney to get the documentation that closed the appeal.

<sup>2</sup> All of these standard allowances or deductions are updated at least annually.

not covered any longer, and three of her prescriptions are \$200 per refill. She also has uncovered dental expenses of approximately \$3,500.

It was explained that the regulations allow an increase to the MMMNA based upon “exceptional circumstances,” which are necessities arise “from the medical condition, frailty, or similar special needs of the community spouse” and must result in financial duress. The hearing record was initially left open until May 31, 2023, to submit evidence of “exceptional circumstances.” The appellant reported difficulty accessing the Commonwealth’s secure email server, and the record was extended until June 9 for her to submit the evidence. No further documentation was received, and the record closed.

## **Findings of Fact**

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

1. The institutionalized spouse was approved for long-term-care benefits on or around January 4, 2023. That notice was appealed, but the appeal was withdrawn at or before the hearing. (Testimony by MassHealth’s representative.)
2. On March 2, 2023, MassHealth issued a new notice calculating the institutionalized spouse’s PPA, which implicitly relies upon the calculation of the community spouse’s SMNA. Monthly, the institutionalized spouse receives a pension of \$4,507.73 and net Social Security benefits of \$42. The community spouse receives gross Social Security benefits in the amount of \$1,942.90. (Testimony by MassHealth’s representative; Exhibit 6.)
3. The community spouse has monthly housing expenses of \$380 per month in real estate taxes and \$148.25 per month in homeowner’s insurance. She also pays for her own heat and electricity, for which MassHealth used the utility allowance of \$860. MassHealth used a standard heating deduction of \$686.63 and the Federal Standard Maintenance Allowance of \$2,288.75. (Testimony by MassHealth’s representative; Exhibit 6.)

## **Analysis and Conclusions of Law**

To determine a member’s PPA, MassHealth regulations require that deductions be made from the member’s income “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.) The amount for the personal-needs allowance is set at \$72.80. (Id.)

If the community spouse’s income is insufficient to meet their monthly expenses, the SMNA allows the community spouse to keep some of the institutionalized spouse’s income to pay for necessities. The SMNA “is the amount by which the minimum-monthly-maintenance-needs

allowance exceeds the community spouse's **gross** income." (130 CMR 520.026(B) (emphasis added).)

(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 \$[686.63] 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 not included in the rent or condominium fee, this amount is \$[860.00].

(2) The maximum-monthly-maintenance-needs allowance is \$[3,435.00] 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).

(130 CMR 520.026(B)(1)-(2).)<sup>3, 4</sup>

(D) Adjustment to the Minimum-monthly-maintenance-needs Allowance Due to Exceptional Circumstances. After the 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).

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<sup>3</sup> The 2022 Spousal Impoverishment Standards are available at <https://www.medicaid.gov/federal-policy-guidance/downloads/cib06022022.pdf>. (Last visited June 20, 2023.) These numbers will change July 1, 2023.

<sup>4</sup> The "applicable standard deduction under the Supplemental Nutrition Assistance Program for utility expenses" is updated by the Department of Transitional Assistance, and this figure increased to \$860 as of October 1, 2022. (Available at [https://eohhs.ehs.state.ma.us/DTA/PolicyOnline/BEACON5/ISSL/WebHelp/SNAP/SNAP\\_COLA/SNAP\\_COLA\\_OLG\\_Update\\_FINAL.htm](https://eohhs.ehs.state.ma.us/DTA/PolicyOnline/BEACON5/ISSL/WebHelp/SNAP/SNAP_COLA/SNAP_COLA_OLG_Update_FINAL.htm) (last visited June 20, 2023).)

(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**.

...

(2) Determination of Increase for Exceptional Circumstances. If the fair-hearing officer determines that exceptional circumstances exist, the fair-hearing officer **may increase the community spouse's MMMNA to meet the expenses caused by the exceptional circumstances** as follows.

...

(b) The fair-hearing officer determines the revised MMMNA by including in the calculation the amount needed to meet the exceptional circumstances.

(c) The fair-hearing officer compares the revised MMMNA to the community spouse's total income. If the community spouse's total income is less than the amount of the revised MMMNA, the fair-hearing officer first deducts the personal-needs allowance from the institutionalized spouse's countable-income amount and then a spousal-maintenance-needs deduction needed to reach the revised MMMNA.

(130 CMR 520.017(D) (emphasis added).)

The community spouse alleged exceptional circumstances existed that warranted an adjustment to her MMMNA, but no evidence was submitted during the record open period. Without

additional evidence, I cannot find that MassHealth's PPA calculation would result in significant financial duress to the community spouse. Therefore, this appeal must be 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 of your receipt of this decision.

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Christopher Jones  
Hearing Officer  
Board of Hearings

cc: MassHealth Representative: Shelly-Ann Lewis, Chelsea MassHealth Enrollment Center, 80 Everett Avenue, Chelsea, MA 02150