

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2302641
Decision Date:	7/7/2023	Hearing Date:	05/09/2023
Hearing Officer:	Alexandra Shube	Record Open to:	05/23/2023

Appearance for Appellant:

Via telephone:



Appearance for MassHealth:

Via telephone:

Leslie Ovelheiro, Springfield – 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:	LTC – Spousal allowance
Decision Date:	7/7/2023	Hearing Date:	05/09/2023
MassHealth's Rep.:	Leslie Ovelheiro	Appellant's Rep.:	Daughter
Hearing Location:	Springfield MassHealth Enrollment Center Remote	Aid Pending:	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 8, 2023, MassHealth informed the appellant that he is eligible for MassHealth benefits effective October 1, 2022 and beginning on April 1, 2023, he would have monthly patient paid amount (PPA) of \$2,993.35 (Exhibit 1). Through an updated notice dated April 6, 2023, MassHealth informed the appellant that his monthly PPA would change to \$2,496.75, effective January 1, 2023 due to a change in circumstance (Exhibit 1). The appellant and his community spouse filed this appeal in a timely manner on March 30, 2023 and April 10, 2023 (see 130 CMR 610.015(B) and Exhibit 2). A challenge to the patient paid amount is a valid ground for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified the appellant that his monthly PPA would change to \$2,496.75, effective January 1, 2023.

Issue

The appeal issue is whether the community spouse is entitled to increased support from the appellant through a reduction in the PPA, pursuant to 130 CMR 520.17(D).

Summary of Evidence

The MassHealth representative appeared at hearing via telephone and testified as follows: the appellant was over 65 and a resident of a nursing facility at the time of the hearing.¹ On August 26, 2022, MassHealth received an application for long-term care benefits on behalf of the appellant, requesting a start date of October 1, 2022. On March 8, 2023, MassHealth approved the appellant for MassHealth Standard benefits effective October 1, 2022 with a patient paid amount (PPA) of \$2,993.35 beginning on April 1, 2023. On April 6, 2023, MassHealth issued an updated notice informing the appellant that, due to a change in circumstances, his PPA would be \$2,496.75, effective January 1, 2023, an increase from his 2022 monthly PPA which was \$2,249.85. The MassHealth representative testified that for 2022, the appellant's monthly income totaled \$3,716.87 (comprised of \$843 from Social Security Income (SSI) and \$2,873.37 from a pension). The PPA for 2022 was calculated as follows: \$3,716.87 (appellant's gross income) - \$79.50 (other health insurance) - \$1,314.72 (Spousal Maintenance Needs Allowance (SMNA)) - \$72.80 (Personal Needs Allowance (PNA)) = \$2,249.85. For 2023, the appellant's monthly income totaled \$3,808.97 (comprised of \$935.60 from SSI and \$2,873.37 from a pension). The PPA for 2023 was calculated as follows: \$3,808.97 (appellant's gross income) - \$79.50 (other health insurance) - \$1,159.92 (SMNA) - \$72.80 (PNA) = \$2,496.75.

The MassHealth representative testified that the community spouse's monthly gross income for 2022 was \$1,773.10 (comprised of SSI). The community spouse's Minimum Monthly Maintenance Needs Allowance (MMMNA) for 2022 was calculated as follows: \$0 (rent or mortgage) + \$625.70 (taxes and insurance) + \$860 (standard utility allowance) = \$1,485.70 (total shelter expense) - \$686.63 (standard deduction) = \$799.07 (excess shelter amount) + \$2,288.75 (federal standard) = \$3,087.82 (MMMNA). MassHealth then deducted the community spouse's income of \$1,773.10 to arrive at the SMNA of \$1,314.72. The SMNA was accounted for in the PPA calculation to help support the community spouse at home.

The MassHealth representative testified that the community spouse's monthly gross income for 2023 was \$1,927.90 (comprised of SSI). The community spouse's MMMNA for 2023 was calculated as follows: \$0 (rent or mortgage) + \$625.70 (taxes and insurance) + \$860 (standard utility

¹ The appellant passed away shortly after hearing on [REDACTED], during the record open period. Pursuant to 130 CMR 520.017(D), 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 the appellant's spouse submitted and signed the request for a fair hearing (along with their daughter, who is the appeal representative), the appellant's passing does not affect the appeal process.

allowance) = \$1,485.70 (total shelter expense) - \$686.63 (standard deduction) = \$799.07 (excess shelter amount) + \$2,288.75 (federal standard) = \$3,087.82 (MMMNA). MassHealth then deducted the community spouse's income of \$1,927.90 to arrive at the SMNA of \$1,159.90, which was accounted for in the 2023 PPA calculation.

The appellant and community spouse were represented at hearing via telephone by their daughter. She explained that the community spouse has stage four lung cancer, which was diagnosed in [REDACTED] 2022. She has dietary restrictions and a comprehensive plan to help her fight the disease and the side effects of chemotherapy. There are a lot of expenses related to her care that insurance does not cover. The appellant's representative provided a breakdown of the community spouse's monthly medical expenses totaling \$1,263.48. These expenses included co-payments, tests, prescriptions, various vitamins, proteins, supplemental shakes, probiotics, and melatonin, as well as \$400 monthly for "special dietary needs." She explained that food is medicine and all of these various supplements and dietary aids really help her mother, the community spouse. Her mother's care and father's nursing facility bills are very expensive. Up to now, the community spouse has been able to afford it, but with difficulty.

The record was held open until May 23, 2023 for the appellant to supplement her submission with supporting documentation from the community spouse's oncologist. During the record open period, the appellant's representative informed parties that the appellant passed away on [REDACTED] 2023. On [REDACTED] 2023, the appellant's representative provided the oncologist's note which stated: "[The community spouse] is a patient under my care. I do not have an objection to the patient taking dietary supplements or over the counter vitamins at this time. I do not prescribe these and it is her choice to utilize these..."

Findings of Fact

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

1. The appellant was over the age of 65 and a resident of a nursing facility at the time of hearing; however, he passed away during the record open period (Testimony and Exhibits 5 and 8).
2. On August 26, 2022, MassHealth received an application for long-term care benefits on behalf of the appellant, requesting a start date of October 1, 2022 (Testimony and Exhibit 5).
3. On March 8, 2023, MassHealth approved the appellant for MassHealth Standard benefits effective October 1, 2022 with a PPA of \$2,993.35 beginning on April 1, 2023 (Testimony and Exhibit 1).
4. On April 6, 2023, MassHealth issued an updated notice informing the appellant that his PPA would be \$2,496.75, effective January 1, 2023, an increase from his 2022 monthly PPA which

was \$2,249.85 (Testimony and Exhibit 1).

5. On March 30, 2023 and April 10, 2023, the appellant and community spouse timely appealed the notices (Exhibit 2).
6. For 2022, the appellant's monthly income totaled \$3,716.87 (comprised of \$843 from SSI and \$2,873.37 from a pension) (Testimony and Exhibit 5).
7. The PPA for 2022 was calculated as follows: \$3,716.87 (appellant's gross income) - \$79.50 (other health insurance) - \$1,314.72 (SMNA) - \$72.80 (PNA) = \$2,249.85 (Testimony and Exhibit 5).
8. For 2023, the appellant's monthly income totaled \$3,808.97 (comprised of \$935.60 from SSI and \$2,873.37 from a pension) (Testimony and Exhibit 5).
9. The PPA for 2023 was calculated as follows: \$3,808.97 (appellant's gross income) - \$79.50 (other health insurance) - \$1,159.92 (SMNA) - \$72.80 (PNA) = \$2,496.75 (Testimony and Exhibit 5).
10. The community spouse's income for 2022 was \$1,773.10, comprised of SSI, and for 2023, was \$1,927.90 (Testimony and Exhibit 5).
11. The community spouse's MMMNA for 2022 was calculated as follows: \$0 (rent or mortgage) + \$625.70 (taxes and insurance) + \$860 (standard utility allowance) = \$1,485.70 (total shelter expense) - \$686.63 (standard deduction) = \$799.07 (excess shelter amount) + \$2,288.75 (federal standard) = \$3,087.82 (MMMNA). MassHealth then deducted the community spouse's income of \$1,773.10 to arrive at the SMNA of \$1,314.72 (Testimony and Exhibit 5).
12. The community spouse's MMMNA for 2023 was calculated as follows: \$0 (rent or mortgage) + \$625.70 (taxes and insurance) + \$860 (standard utility allowance) = \$1,485.70 (total shelter expense) - \$686.63 (standard deduction) = \$799.07 (excess shelter amount) + \$2,288.75 (federal standard) = \$3,087.82 (MMMNA). MassHealth then deducted the community spouse's income of \$1,927.90 to arrive at the SMNA of \$1,159.90 (Testimony and Exhibit 5).
13. The record was held open until May 23, 2023 to allow the appellant to submit supporting documentation from the community spouse's oncologist (Testimony and Exhibit 7).

14. The community spouse has stage four lung cancer and spends about \$1,263 monthly on co-payments, tests, prescriptions, various vitamins, proteins, supplemental shakes, probiotics, and melatonin, as well as \$400 monthly for “special dietary needs.” (Testimony and Exhibits 6 and 8).

Analysis and Conclusions of Law

MassHealth calculates the minimum-monthly-maintenance-needs allowance (MMMNA) to determine the amount needed by the community spouse to remain in the community. This amount is based on a calculation that includes the community spouse’s shelter and utility costs in addition to certain federal standards. (130 CMR 520.017(B)).

Pursuant to the provisions of 130 CMR 520.017(D), the fair hearing officer may substitute for the MMMNA a new amount to meet the expenses of the community spouse. This substitution may be performed only when the community spouse has shown that the requested increase in the spousal maintenance needs allowance is based upon exceptional circumstances.

The application regulation provides as follows:

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 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).

(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 will ensure 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 will review the housing agreement, service plan, fee schedule, and other pertinent documents to determine whether exceptional circumstances exist. Additional amounts will be allowed only for specific expenses necessitated by exceptional circumstances of the community spouse and not for maintaining any pre-set standard of living.

(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.

(a) The fair-hearing officer will first verify that the calculation of the gross income of the community spouse in determining the existing spousal-maintenance-needs deduction includes the income generated by the community spouse's asset allowance. If the community spouse has no assets remaining from the allowance, he or she must verify the dollar amount of the remaining assets, if any, and how the money was spent. The fair-hearing officer will consider how the assets were spent in determining whether or not significant financial duress exists.

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

(c) The fair-hearing officer will compare 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 will first deduct 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 has demonstrated that she has on-going expenses that arise from her medical condition, frailty, or other special need. A finding of exceptional circumstances, however, requires more than that. Exceptional circumstances exist when there are circumstances other than those already taken into account (such as food, shelter, clothing, and utilities) in establishing the maintenance standards **and these circumstances result in significant financial duress**. The appellant's representative credibly testified that the community spouse has stage four lung cancer, but she has not shown that these circumstances result in "significant financial duress." The appellant's representative testified that the

community spouse was able to meet the cost of her co-payments, tests, prescriptions, various vitamins, proteins, and supplements, as well as special dietary needs. Additionally, some of the items listed, such as dietary needs and shakes, would be considered food, which have already been taken into account. Between the SMNA and the community spouse's SSI, she retains over \$3,087 each month and has total shelter expenses of \$1,485.70. Even with the additional expenses related to her cancer care, the community spouse has not demonstrated that she experiences a monthly shortfall or significant financial distress.

Because the community spouse has not shown that her circumstances result in significant financial duress, exceptional circumstances do not exist and there should be no change to the community spouse's MMMNA or the appellant's patient-paid amount (130 CMR 520.017(D)).

For these reasons, the appeal is 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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104

[REDACTED]