

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2302843
Decision Date:	7/19/2023	Hearing Date:	5/9/2023
Hearing Officer:	Patrick Grogan	Record Open to:	6/9/23

Appearance for Appellant:



Appearance for MassHealth:

Dianne Braley
Raybryana Dasher

Interpreter:

N/A



*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
Decision Date:	7/19/2023	Hearing Date:	5/9/2023
MassHealth's Rep.:	Dianne Braley	Appellant's Rep.:	[REDACTED]
Hearing Location:	Remote (Tel)	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 13, 2023, MassHealth approved the Appellant for MassHealth Standard to cover her care in a nursing facility. (Exhibit 1). The Notice included the Patient Paid Amount (PPA) of \$1,965.16 beginning April 1, 2022. (see 130 CMR 520 and Exhibit 1). The Appellant filed this appeal in a timely manner on April 10, 2023 (see 130 CMR 610.015(B) and Exhibit 2). Challenging the scope or amount of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth calculated the Appellant-Wife's monthly Patient Paid Amount (PPA) as \$1,965.16 beginning April 1, 2022. (Exhibit 1)

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.17, 130 CMR 520.025, and 130 CMR 520.026, in determining the Appellant-Wife's Patient Paid Amount (PPA) to the nursing facility.

Summary of Evidence

Through a Notice dated March 13, 2023, MassHealth approved an application for long-term care for coverage to begin on November 1, 2021. (Exhibit 1) This March 13, 2023 Notice calculated a Patient Paid Amount (PPA) of \$1,965.16 beginning April 1, 2023 (Exhibit 1). This was an increase from the last calculated PPA amount of \$1,523.48 beginning on November 1, 2022. (Exhibit 1A). The instant appeal followed.

Specifically, in calculating the Patient Paid Amount for April 1, 2023, MassHealth began by calculating the Monthly Maintenance Needs Allowance (MMNA) by combining certain expenses of the Community Spouse: Home Insurance - \$101.81, Real Estate Taxes - \$201.03, and Heating Expenses - \$860 for a total of \$1,162.84. (Testimony, Exhibit 9, p.17). MassHealth then subtracted the standard shelter expense of \$686.63 for a total of \$476.21. (Testimony, Exhibit 9, p.17). MassHealth then included the Minimum-Monthly-Maintenance-Needs Allowance of \$2,288.75 (MMMNA) for a total of \$2,764.96. (Testimony, Exhibit 9, p.17) This amount does not exceed the standard Monthly Maintenance Needs Allowance (MMNA) of \$3,715.50, and \$2,764.96, being the lesser of the two amounts, is utilized, calculating the Monthly Maintenance Needs Allowance at \$2,764.96 for April 1, 2023.

Next, MassHealth calculated the Spousal Maintenance Needs Allowance (SMNA) for April 1, 2023. (Testimony, Exhibit 9, p.17). The Community Spouse's income was calculated at \$2,518.90: Social Security – \$1,896.90 and pension \$622.00. Since the Community Spouse's income is below the Monthly Maintenance Needs Allowance (MMNA), the Community Spouse's income is subtracted from the MMNA for a total Spousal Maintenance Needs Allowance (SMNA) amount of \$246.06. (Exhibit 9, pg. 9)

To complete the Patient Paid Amount (PPA) calculation for April 1, 2023, MassHealth combined the Appellant's monthly income sources for a total of \$2,355.46 for April 1, 2023: \$198.90 from the Social Security Administration, and \$2,156.56 from her pension. (Testimony, Exhibit 1, p.2, Exhibit 9, pg. 12). MassHealth then subtracted the personal needs allowance amount of \$72.80, Health Insurance in the amount of \$71.44, as well as the Spousal Maintenance Needs Allowance of \$246.06 to arrive at the Patient Paid Amount of \$1,965.16 for 2023. (Testimony, Exhibit 1, pg. 2)

At the hearing held on May 9, 2023, the Appellant, through her Representative, indicated that some of the provided figures used to calculate the April 1, 2023 PPA were incorrect. (Testimony) The Record was left open until June 2, 2023, for the Appellant to provide updated information for the PPA calculation, and until June 9 for MassHealth to review and recalculate the PPA based upon the updated information¹. (Exhibit 10) Updated information was provided

¹ Additionally, the Appeal Representative requested the figures for the calculations for the November 1, 2022 PPA notice in the amount of \$1,523.48 as a point of reference in this appeal. MassHealth provided the information, and it is found in this Administrative Record at Exhibit 12, pg. 5. This November 1, 2022 PPA notice, and its calculation, is not the subject of the instant appeal.

on behalf of the Appellant, with supporting documentation. (Exhibit 11) MassHealth recalculated the PPA to \$1,604.44. (Exhibit 12). The Appeal Representative indicated the Appellant had no objection to the updated PPA amount of \$1,604.44 and that this would support closure of this appeal. (Exhibit 13)

However, On June 8, 2023, MassHealth communicated that the PPA amount of \$1,604.44 was calculated in error due to utilization of the net Social Security Income amount for the Appellant's Community Spouse instead of the gross Social Security Income amount as required by the Regulations. (Exhibit 14, 130 CMR 520.009) MassHealth recalculated the PPA amount utilizing the gross Social Security Income amount for the Appellant's Community Spouse and arrived at the amount of \$1,956.24. (Exhibit 12, pg. 7)

In calculating the adjusted Patient Paid Amount for April 1, 2023 based upon the updated information provided by the Appeal Representative, MassHealth began by calculating the Monthly Maintenance Needs Allowance (MMNA) by combining certain expenses of the Community Spouse: Home Insurance - \$101.81, Real Estate Taxes - \$209.95, and Heating Expenses - \$860 for a total of \$1,171.76. (Exhibit 12, p.6). MassHealth then subtracted the standard shelter expense of \$686.63 for a total of \$485.13. (Exhibit 12, p.6). MassHealth then included the Minimum-Monthly-Maintenance-Needs Allowance of \$2,288.75 (MMMNA) for a total of \$2,773.88. (Exhibit 12, p.6) This amount does not exceed the standard Monthly Maintenance Needs Allowance (MMNA) of \$3,715.50, and \$2,773.88, being the lesser of the two amounts, is utilized, calculating the Monthly Maintenance Needs Allowance at \$2,773.88 for April 1, 2023.

Next, MassHealth calculated the Spousal Maintenance Needs Allowance (SMNA) for April 1, 2023. (Exhibit 12, p.6, Exhibit 14, pg.7). The Community Spouse's income was calculated at \$2,518.90: Social Security – \$1,896.90 and pension \$622.00. Since the Community Spouse's income is below the Monthly Maintenance Needs Allowance (MMNA), the Community Spouse's income is subtracted from the MMNA for a total Spousal Maintenance Needs Allowance (SMNA) amount of \$254.98. (Exhibit 14, pg. 7)

To complete the Patient Paid Amount (PPA) calculation for April 1, 2023, MassHealth combined the Appellant's monthly income sources for a total of \$2,355.46 for April 1, 2023: \$198.90 from the Social Security Administration, and \$2,156.56 from her pension. (Testimony, Exhibit 1, p.2, Exhibit 14, pg. 7). MassHealth then subtracted the personal needs allowance amount of \$72.80, Health Insurance in the amount of \$71.44, as well as the Spousal Maintenance Needs Allowance of \$254.98 to arrive at the Patient Paid Amount of \$1,956.24 for April 1, 2023. (Testimony, Exhibit 14, pg. 7)

Findings of Fact

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

1. The Appellant is a MassHealth member over the age of 65 who entered a long-term care facility in September of 2021 and applied for MassHealth long-term care. (Exhibit 9, pg.5).
2. MassHealth approved an application for long-term care for coverage to begin on November 1, 2021 (Exhibit 1, Exhibit 1A).
3. Based upon the information provided for the March 13, 2023 notice, the Monthly Maintenance Needs Allowance (MMNA) calculation was \$2,764.96 beginning April 1, 2023. (Testimony, Exhibit 9, p.17)
4. Based upon the information provided for the March 13, 2023 notice, the Community Spouse Monthly Income calculation was \$2,518.90 beginning April 1, 2023. (Testimony, Exhibit 9, p.9, Exhibit 9, pg.17)
5. Based upon the information provided for the March 13, 2023 notice, the Spousal Maintenance Needs Allowance (SMNA) calculation was \$246.06 beginning April 1, 2023. (Testimony, Exhibit 9, p.12, Exhibit 9, pg.17)
6. Based upon the information provided for the March 13, 2023 notice, the Institutionalized Spouse Monthly Income calculation was \$2,355.46 beginning April 1, 2023. (Testimony, Exhibit 1, p.2, Exhibit 9, pg. 12)
7. Based upon the information provided for the March 13, 2023 notice, the Patient Pay Amount (PPA) calculation was \$1,965.16 beginning April 1, 2023 (Testimony, Exhibit 1, p.2)
8. At the hearing held on May 9, 2023, the Appellant, through her Representative, indicated that some of the provided amounts used to calculate the April 1, 2023 PPA were incorrect. (Testimony)
9. The Record was left open until June 2, 2023, for the Appellant to provide updated information for the PPA calculation, and until June 9 for MassHealth to review and recalculate the PPA based upon the updated information. (Exhibit 10)
10. Updated information was received from the Appellant, and MassHealth recalculated the PPA to \$1,604.44. (Exhibit 12).
11. On June 8, 2023, MassHealth informed the parties that the PPA amount of \$1,604.44 was calculated in error due to utilization of the net Social Security Income amount instead of the gross Social Security Income amount as required by the Regulations. (Exhibit 14, 130 CMR 520.009)

12. MassHealth recalculated the PPA amount utilizing the gross Social Security Income amount and arrived at the amount of \$1,956.24 (Exhibit 14, pg. 7)

Analysis and Conclusions of Law

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228. See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998). MassHealth administers and is responsible for the delivery of health-care services to MassHealth members. (130 CMR 515.002). The regulations governing MassHealth at 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for noninstitutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by M.G.L. c. 118E, and certain Medicare beneficiaries. (130 CMR 515.002). The Appellant in this case is an institutionalized person. Therefore, the regulations at 130 CMR 515.000 through 522.000 apply to this case. (130 CMR 515.002).

The issue on appeal is the Patient Paid Amount (PPA) that the Appellant contributes. The Appellant, through her Representative/Son, is seeking a reduction in the Patient Paid Amount (PPA) for the Appellant because she indicated that she believed the PPA was too high. (Exhibit 2, p.1, see also 130 CMR 520.002(B)). In determining the monthly Patient Paid Amount (PPA), general income deductions must be taken in the following order: a personal-needs allowance (PNA); a spousal-maintenance-needs allowance (SMNA); a family-maintenance-needs allowance for qualified family members (FMNA); a home-maintenance allowance; and health-care coverage and incurred medical and remedial-care expenses. (130 CMR 520.026). The deduction for health care coverage includes current health-insurance premiums or membership costs. (130 CMR 520.026(E)(1)).

If a community spouse's gross income is less than the amount he or she needs to live in the community, MassHealth will calculate a Minimum-Monthly-Maintenance-Needs Allowance, (MMMNA), and deduct an allowance from the institutionalized spouse's countable-income to meet this need. (130 CMR 520.026(B)). This amount is the spousal-maintenance-needs allowance (SMNA). (130 CMR 520.026(B)). The calculations done under the regulations at 130 CMR 520.026(B) apply to the first month of eligibility in an institution and terminate 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)).

Pursuant to 130 CMR 520.026(B), MassHealth determines the MMMNA by adding the following amounts:

- (1) the federal standard maintenance allowance²; and
- (2) an excess shelter allowance determined by calculating the difference between the standard shelter expense³ and the shelter expenses for the community spouse's principal residence, including:
 - (a) 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
 - (b) the applicable standard deduction under the Food Stamp Program for utility expenses⁴.

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 130 CMR 520.017(D).

Under the Regulations governing MassHealth, 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. (130 CMR 520.017(D)(1)). 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. (130 CMR 520.017(D)(1)). Such necessities include, but are not limited to, special remedial and support services and extraordinary uncovered medical expenses. (130 CMR 520.017(D)(1)). Countable 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. (130 CMR 520.017(D)(1)). Any expenses incurred and reported by an Appellant for credit card bills, car insurance payments and life insurance payments are not considered by MassHealth or the Board of Hearings in calculating a MMMNA. The community spouse did not present evidence of necessities that arose from a medical condition and special needs including uncovered medical expenses. Although an Appellant may request that the Board of Hearings consider utility expenses presented at hearing, the regulations do not allow actual costs to be considered, even if they are above the SNAP SUA.

I find the calculations utilized by MassHealth to determine the Patient Paid Amount (PPA)

² The federal standard maintenance allowance utilized by MassHealth was \$2,288.75.

³ The Standard Shelter Expense deduction utilized by MassHealth was \$686.63.

⁴ The Supplemental Nutrition Assistance Program (SNAP) standard utility allowance (SUA) as of the date of the decision on appeal was \$860.

regarding the March 13, 2023 Notice, adhered to the regulatory language. (130 CMR 520.017; 130 CMR 520.026). However, the Appeal Representative testified that some of the amounts utilized were inaccurate. (Testimony). The Appeal Representative was granted additional time to provide updated information to MassHealth, and for MassHealth to recalculate the PPA amount utilizing the adjusted figures.

The updated information provided by the Appeal Representative is now in evidence. (Exhibit 11) The updated calculations, utilizing the new information received from the Appeal Representative are now also in evidence. (Exhibit 14, pg. 7, Exhibit 15). Although this updated PPA was not the subject of the instant appeal, administrative economy dictates it be considered in this appeal, where MassHealth recalculated the Patient Paid Amount (PPA) due to the adjustment of the Appellant's reported expenses. (Testimony) In this updated calculation, MassHealth incorporated the increase of property taxes (Exhibit 11, pg.6, Exhibit 12, pg. 6) to its Patient Paid Amount (PPA) calculations. The new calculation decreases the PPA amount based upon the erroneous property taxes entered into the calculus. (Exhibit 11, pg.6, Exhibit 12, pg. 6, Exhibit 16, pg.9-10.). The Patient Paid Amount (PPA) calculated based upon the updated information provided by the Appeal Representative adheres to the Regulations and any challenge to MassHealth's findings are 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.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. 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.

Patrick Grogan
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616