

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in Part; Denied in Part	Appeal Number:	2302870
Decision Date:	7/3/2023	Hearing Date:	June 8, 2023
Hearing Officer:	Stanley M. Kallianidis		

Appellant Representative:

Spouse

MassHealth Representative:

Nikita Jones, Taunton



*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 in Part; Denied in Part	Issue:	Increase of Spousal Allowance
Decision Date:	7/3/2023	Hearing Date:	June 8, 2023
MassHealth Rep.:	Nikita Jones	Appellant Rep.:	Spouse

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 6, 2023, MassHealth approved the appellant's request for MassHealth benefits as of March 15, 2019, and established a patient paid amount (PPA) of \$100.60 beginning April 1, 2023 (Exhibit 1). The appellant's spouse filed this appeal in a timely manner on April 10, 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).

Action Taken by MassHealth

MassHealth approved the appellant's request for MassHealth benefits and established a PPA of \$100.60 beginning April 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 March 15, 2019, and established a PPA of \$100.60 beginning April 1, 2023 (Exhibit 1). She stated that the \$72.80 personal needs allowance and a \$1,724.60 spouse-in-home allowance were deducted from the appellant's Social Security income of \$1,898.00. The result was a PPA of \$100.60 (Exhibit 1).

A spouse-in-home deduction of \$1,724.60 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 his gross Social Security income of \$1,990.90. His actual MMMNA calculation came to \$3,794.12. The calculation was based on the community spouse's rent and utility allowance, minus a basic shelter standard, which was then added to the federal standard for living in the community (Exhibit 3).

The appellant's community spouse testified that he cannot afford to pay his monthly expenses along with the PPA of \$100.16. He stated that he has not been able to make any of the PPA payments thus far. He testified that he has total monthly expenses of \$3,529.00 which includes out-of-pocket medical expenses of \$170.00 monthly due to cancer treatments. His list of monthly expenses included costs for life insurance, petty cash, car payments and associated car expenses, and credit card bills. He submitted documentation of his medical expenses into evidence along with recent bank statements (Exhibits 4 & 5).

At the hearing, the appellant's spouse testified that his rent has decreased to \$507.00 from \$1332.00. However, documentation of the new rental figure was unavailable, and the MassHealth representative testified that she needed proof of the revised rent amount to make a change in the appellant's PPA.

Findings of Fact

Based on a preponderance of the evidence, I find:

1. MassHealth approved the appellant's request for MassHealth benefits as of March 15, 2019, and established a PPA of \$100.60 beginning April 1, 2023 (Exhibit 1).
2. The appellant has countable Social Security income of \$1,898.00 (Exhibit 1).
3. The community spouse has gross Social Security income of \$1,990.90 (Exhibit 3).
4. The community spouse's MMMNA was calculated at \$3,794.12. The MMMNA was capped at \$3,715.50, the maximum allowable limit (Exhibit 3).
5. A \$72.80 personal needs allowance and a \$1,724.60 spouse-in-home allowance were deducted from the appellant's income of \$1,898.00. The result was a PPA of \$100.60 (Exhibit 1).
6. The community spouse's MMMNA calculation was based on monthly rent of \$1,332.00, and a utility allowance, minus a shelter standard, which was then added to the federal standard for living in the community (Exhibit 3).
7. The community spouse indicated at hearing that his rent has decreased to \$507.00, but this amount was not able to be verified (testimony).
8. The community spouse has out-of-pocket medical expenses of \$170.00 monthly due to cancer treatments (Exhibit 4).
9. The community spouse's list of monthly expenses totaled \$3,529.00 and included costs for life insurance, petty cash, car payments and associated car expenses, and credit card bills (Exhibits 4 & 5).

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 \$3,794.12. This calculation was based upon the community spouse's mortgage, rent, a standard utility allowance, minus a shelter standard, which was then added to the federal standard for living in the community. At hearing, the community spouse submitted a list of monthly expenses totaling \$3,529.00 and documented out-of-pocket medical expenses of \$170.00 monthly due to cancer treatments.

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.

In addition to his out-of-pocket medical expenses, the community spouse's list of monthly expenses included costs for life insurance, petty cash, car payments and associated car expenses, and credit card bills. With the exception of his out-of-pocket medical expenses, these other expenses are not "special remedial and support services and extraordinary uncovered medical expenses," nor similar-type expenses. I therefore conclude that "exceptional circumstances" are not met as strictly defined in the regulations except for the medical bills portion.

In conclusion, the community spouse is entitled to have \$170.00 added to his MMMNA due to "exceptional circumstances." Before this is done, however, upon verification, the MMMNA must first be recalculated due to the change in his rental amount, from \$1,332.00 to \$507.00 monthly.

The appeal is therefore approved in part due to the allowance of \$170.00 to the MMMNA based upon "exceptional circumstances." It is denied in part due to there being no other "special remedial and support services and extraordinary uncovered medical expenses" or similar-type expenses.

Order for MassHealth

Add \$170.00 to community spouse's MMMNA upon verification of his rental amount.

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 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:

