

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2302965
Decision Date:	5/19/2023	Hearing Date:	05/11/2023
Hearing Officer:	Patricia Mullen		

Appearance for Appellant:




Appearance for MassHealth:

Yisell Medina, Taunton 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:	Spousal allowance
Decision Date:	5/19/2023	Hearing Date:	05/11/2023
MassHealth's Rep.:	Yisell Medina, Taunton MEC	Appellant's Rep.:	 paralegal; POA
Hearing Location:	Taunton MassHealth Enrollment Center (remote)		

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 15, 2023, MassHealth notified the appellant that his patient paid amount (PPA) to the nursing facility would be \$1,250.67 a month starting in April, 2023. (130 CMR 520.026(B) and Exhibit 1). The appellant filed this appeal in a timely manner on April 12, 2023 seeking an increase in the spousal allowance. (130 CMR 610.015 and Exhibit 2). Dispute of a PPA calculation is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth calculated a PPA of \$1,250.67 for the appellant beginning April, 2023.

Issue

The appeal issue is whether MassHealth correctly calculated the spousal maintenance needs deduction from the appellant's PPA pursuant to 130 CMR 520.026(B); a second issue is whether the appellant's spouse is entitled to an increased spousal allowance pursuant to 130 CMR

Summary of Evidence

The appellant was represented telephonically by his Power of Attorney (POA), and by a paralegal from his attorney's office. MassHealth was represented telephonically by a worker from the MassHealth Enrollment Center (MEC) in Taunton.

The MassHealth representative stated that the appellant submitted an application for MassHealth Standard for long term care residents on November 7, 2022 seeking an October 15, 2022 MassHealth start date. The MassHealth representative stated that the appellant's application was approved by notice dated March 3, 2023, with the requested MassHealth start date of October 15, 2022. By notice dated March 15, 2023, MassHealth calculated a Patient Paid Amount (PPA) of \$1,250.67, to begin April 1, 2023. (Exhibit 1). The appellant timely appealed the March 15, 2023, notice disputing the PPA calculation. (Exhibit 2). The MassHealth representative noted that the appellant has annuity income that was not counted in the March 15, 2023 PPA calculation, because the appellant was in process of transferring the annuity to the community spouse (CS). The MassHealth representative stated that the appellant's representative reported that the annuity was set up in such a way as to preclude a transfer to the CS and thus had to remain in the appellant's name. The MassHealth representative stated that because the annuity cannot be transferred to the CS, the income received by the appellant from the annuity is countable. The MassHealth representative stated that the appellant's PPAs for October, November, December, 2022, and January, 2023, and February, 2023 were all re-calculated based on the annuity income, as well as other increases including the appellant's and the CS's Social Security incomes beginning January, 2023, the increase in real estate taxes beginning January, 2023, and the increase in the CS's homeowner's insurance premiums beginning February, 2023. (Exhibit 10). The MassHealth representative noted that the CS has about \$31,000.00 in assets.

The appellant's representatives do not dispute that the appellant's 2022 income was as follows:

\$1,978.00 in monthly net Social Security

\$1,174.70 in monthly annuity income

\$1,064.94 monthly from 2 pensions

\$4,215.64

The MassHealth representative stated that the appellant is allowed a deduction of \$72.80 a month for a personal needs allowance. The appellant's representatives do not dispute that the appellant pays \$229.07 in monthly health insurance premiums.

For the period October, 2022 through December, 2022, MassHealth calculated the CS's spousal allowance as follows:

Real estate taxes and homeowner's insurance:	$\$453.27 + \$164.58 =$	\$617.85
Regulatory Food Stamp Utility Allowance:		+\$860.00
Total Shelter Expenses		\$1,477.85
Standard Shelter Expense		-\$ 686.63
		\$ 791.22
Federal standard maintenance allowance		\$2,288.75
Minimum Monthly Maintenance Needs Allowance (MMMNA)		\$3,079.97

There is no dispute that the CS's gross monthly 2022 Social Security income was \$866.10. The MassHealth representative stated that the spousal allowance was calculated by subtracting the CS's income of \$866.10 from her MMMNA of \$3,079.97, resulting in a spousal allowance of \$2,213.87. The MassHealth representative stated that the PNA of \$72.80, the spousal allowance of \$2,213.87, and the health insurance premiums of \$229.07, were deducted from the appellant's income of \$4,215.64 in determining the PPA of \$1,699.90 for the months of October, November, and December, 2022. (Exhibit 10, pp. 7, 8).

The appellant's representatives do not dispute that the appellant's income beginning January, 2023 is as follows:

\$2,175.40 in monthly net Social Security
\$1,174.70 in monthly annuity income
\$1,064.94 monthly from 2 pensions
\$4,413.04

For the month of January, 2023, MassHealth calculated the CS's spousal allowance as follows:

Real estate taxes and homeowner's insurance:	$\$464.60 + \$164.58 =$	\$629.18
Regulatory Food Stamp Utility Allowance:		+\$860.00
Total Shelter Expenses		\$1,489.18
Standard Shelter Expense		-\$ 686.63
		\$ 802.55
Federal standard maintenance allowance		\$2,288.75
Minimum Monthly Maintenance Needs Allowance (MMMNA)		\$3,091.30

There is no dispute that the CS's gross monthly 2023 Social Security income is \$940.90. The MassHealth representative stated that the spousal allowance was calculated by subtracting the CS's income of \$940.90 from her MMMNA of \$3,091.30, resulting in a spousal allowance of \$2,150.40. The MassHealth representative stated that the PNA of \$72.80, the spousal allowance of \$2,150.40, and the health insurance premiums of \$229.07, were deducted from the appellant's income of \$4,413.04 in determining the PPA of \$1,960.77 for the month of January, 2023. (Exhibit 10, pp. 9, 10).

For the period beginning February, 2023, MassHealth calculated the CS's spousal allowance as

follows:

Real estate taxes and homeowner's insurance:	\$464.60 + \$252.58 =	\$717.18
Regulatory Food Stamp Utility Allowance:		+\$860.00
Total Shelter Expenses		\$1,577.18
Standard Shelter Expense		-\$ 686.63
		\$ 890.55
Federal standard maintenance allowance		\$2,288.75
Minimum Monthly Maintenance Needs Allowance (MMMNA)		\$3,179.30

The MassHealth representative stated that the spousal allowance was calculated by subtracting the CS's income of \$940.90 from her MMMNA of \$3,179.30, resulting in a spousal allowance of \$2,238.40. The MassHealth representative stated that the PNA of \$72.80, the spousal allowance of \$2,238.40, and the health insurance premiums of \$229.07, were deducted from the appellant's income of \$4,413.04 in determining the PPA of \$1,872.77 for the period beginning February, 2023. (Exhibit 10, pp. 11, 12).

The appellant's POA pointed out that \$4.00 is charged to the CS's homeowner's bill every month because she is on payment plan. (Exhibit 11). The MassHealth representative agreed to add \$4.00 to the CS's MMMNA beginning January, 2023, thereby reducing the PPA by \$4.00 beginning January, 2023. Accordingly, the CS's MMMNA is \$3,095.30 for January, 2023, and her spousal allowance is \$2,154.40 for January, 2023, resulting in a PPA of \$1,956.77 for January, 2023. The CS's MMMNA starting February, 2023 is now \$3,183.30 and her spousal allowance is \$2,242.40, resulting in a PPA of \$1,868.77 starting February, 2023. The MassHealth representative agreed to adjust the appellant's PPA for January, 2023 to \$1,956.77, and the PPA beginning February, 2023 to \$1,868.77.

The appellant's representative submitted a memo prior to the hearing, requesting an increase in the CS's spousal allowance based on exceptional circumstances pursuant to 130 CMR 520.017(D). (Exhibit 8). The memo included a list of the CS's monthly expenses including oil bill, electric bill, real estate taxes, homeowner's insurance premiums, automobile lease payment, auto insurance premium, auto excise tax, health insurance premium, health insurance deductible, Medicare premium, Medicare Part D premium, trash bill, telephone bill, cable bill, Life Alert bracelet, lawn maintenance/snow removal expense, food expense, clothing expense, and gas for automobile, such expenses totaling \$3,564.66 a month. (Exhibit 9, p. 2). The appellant's representative noted further that the CS has expenses for household repairs, podiatry services, haircuts, over the counter vitamins, Depends, hearing amplifier, cleaning supplies, and laundry supplies for a total of between \$300.00-\$500.00 a month. (Exhibit 9, p. 2). The appellant's representative noted that the Life Alert bracelet costs \$49.00 a month, the eye vitamins cost \$52.05, and hearing amplifier costs \$59.99. (Exhibit 9, p. 2). The memo states that the CS needs a total of \$3,123.76 a month, over her income, to meet her expenses. (Exhibit 9, p. 2).

The appellant's POA stated that the CS lives alone in her house and needs more money from the appellant's income in order to meet her monthly expenses. The appellant's representative stated that the appellant had a reverse mortgage on the house and it has reached its maximum. The appellant's representative argued that the MMMNA should be increased so that the CS can stay in the community.

Findings of Fact

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

1. The appellant submitted an application for MassHealth Standard for long term care residents on November 7, 2022 seeking an October 15, 2022 MassHealth start date.
2. MassHealth approved the appellant's application by notice dated March 3, 2023, with the requested MassHealth start date of October 15, 2022.
3. By notice dated March 15, 2023, MassHealth calculated a PPA of \$1,250.67, to begin April 1, 2023, and the appellant timely appealed the March 15, 2023 notice, disputing the PPA calculation.
4. The appellant has annuity income that was not counted in the March 15, 2023 PPA calculation because the appellant was in process of transferring the annuity to the CS.
5. The appellant's annuity is set up in such a way as to preclude a transfer to the CS.
6. The CS has about \$31,000.00 in assets.
7. The appellant's total monthly income for 2022 was \$4,215.64.
8. The appellant pays \$229.07 in monthly health insurance premiums.
9. For the period October, 2022 through December, 2022, the CS paid \$453.27 a month in real estate taxes, and \$164.58 a month for homeowner's insurance premiums.
10. The CS's gross monthly 2022 Social Security income was \$866.10.
11. The appellant's total monthly income for 2023 is \$4,413.04.
12. In January, 2023, the CS paid \$464.60 in real estate taxes, and \$168.58 for homeowner's insurance policy premiums.

13. The CS's gross monthly 2023 Social Security income is \$940.90.
14. Beginning in February, 2023, the CS paid \$464.60 a month in real estate taxes, and \$256.58 a month in homeowner's insurance policy premiums.
15. MassHealth agreed to adjust the appellant's PPA for January, 2023 to \$1,956.77, and the PPA beginning February, 2023 to \$1,868.77.
16. The CS's Life Alert bracelet costs \$49.00 a month, the CS's eye vitamins cost \$52.05 and her hearing amplifier costs \$59.99.

Analysis and Conclusions of Law

Long-Term-Care General Income Deductions

General income deductions must be taken 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. These deductions are used in determining the monthly patient-paid amount.

(A) Personal-Needs Allowance.

- (1) The MassHealth agency deducts \$72.80 for a long-term-care resident's personal-needs allowance (PNA).
- (2) If an individual does not have income totaling the standard, the MassHealth agency will pay the individual an amount up to that standard on a monthly basis.
- (3) The PNA for SSI recipients is \$72.80.

(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. 130 CMR 520.026(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.

- (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 included in the rent or condominium fee, this amount is \$525. If heat is not included in the rent or condominium fee, this amount is \$860.
- (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).
- (3) If the institutionalized individual is subject to a court order for the support of the community spouse, the court-ordered amount of support must be used as the spousal maintenance- needs deduction when it exceeds the spousal-maintenance-needs deduction calculated according to 130 CMR 520.026(B) or resulting from a fair hearing.

130 CMR 520.026(A), (B).

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.

See 130 CMR 520.017(D).

The appellant's representative argues that the CS's MMMNAs should be increased pursuant to 130 CMR 520.017(D) to reflect her actual expenses in the community. The regulation at 130 CMR 520.017(D) states that

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. (emphasis added).

The appellant's representatives provided no evidence as to the CS's medical conditions, frailty, or similar special needs that result in extraordinary uncovered medical expenses resulting in financial duress. As noted, food, shelter, clothing, and utilities are already taken into account in the MMMNA calculation set forth in the regulations. Further, the regulation is clear that expenses used to determine exceptional circumstances generally do not include car payments, or home-maintenance expenses such as security systems and lawn care. The CS's income, which includes her Social Security and spousal allowance, was \$3,079.97 for 2022, \$3,095.30 for January, 2023, and is \$3,183.00 beginning February, 2023. The CS pays \$49.00 a month for her Life Alert bracelet. Even if the listed expense for eye vitamins is medically necessary, the cost is \$52.05, presumably per month. The CS's hearing amplifier was a one time expense of \$59.99. The CS's average medical expenses are a small percentage of her total monthly income. The appellant has no large, non-covered medical expenses. The regulation requires that additional amounts be allowed only for specific expenses necessitated by exceptional circumstances of the community spouse and not for maintaining any pre-set standard of living. The expenses the CS lists do not arise from her medical condition, frailty, or similar special need, nor has she evidenced extraordinary medical expenses resulting in significant financial duress. I do not determine that the community spouse has extraordinary uncovered medical expenses arising from her medical condition that result in significant financial duress and thus I determine that exceptional circumstance pursuant to 130 CMR 520.017(D) do not exist here.

Because exceptional circumstances criteria has not been met, MassHealth correctly determined the CS's MMMNAs. The CS's MMMNA for October through December, 2022 was \$3,079.97 and the spousal allowance was \$2,213.87, resulting in a PPA of \$1,699.90 for this period. The CS's MMMNA for January, 2023 was \$3,095.30, and her spousal allowance was \$2,154.40, resulting in a PPA of \$1,956.77 for January, 2023. The CS's MMMNA starting February, 2023 is \$3,183.30 and her spousal allowance is \$2,242.40, resulting in a PPA of \$1,868.77 starting February, 2023.

Because MassHealth correctly calculated the CS's MMMNAs and spousal allowances, the appellant's PPAs were also calculated correctly, as set forth above. The appeal is denied.

Order for MassHealth

If it has not already done so, MassHealth should adjust the appellant's PPA to \$1,956.77 for January, 2023, and \$1,868.77 starting February, 2023, as agreed to at the hearing.

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.

Patricia Mullen
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21
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