

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2304013
Decision Date:	8/10/2023	Hearing Date:	06/13/2023
Hearing Officer:	Scott Bernard	Record Open to:	06/16/2023

Appearance for Appellant:



Appearance for MassHealth:

Jessica Adamiec *via* telephone



*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:	Long Term Care (LTC) Patient Paid Amount (PPA); Spousal Maintenance Needs Deduction (SMND)
Decision Date:	8/10/2023	Hearing Date:	06/13/2023
MassHealth's Rep.:	Jessica Adamiec	Appellant's Rep.:	
Hearing Location:	Taunton MassHealth Enrollment Center		

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 May 4, 2023, MassHealth approved the appellant's application for MassHealth benefits with a patient paid amount (PPA) of \$915.90, calculation of which included a spousal maintenance needs deduction (SMND) of \$2,035.80. (See 130 CMR 520.026 and Exhibit (Ex.) 1). The appellant filed this appeal in a timely manner on May 15, 2022. (See 130 CMR 610.015(B) and Ex. 1). Determination of the PPA is valid grounds for appeal. (See 130 CMR 610.032).

At the request of the appellant's representative and the community spouse, the record was left open in order to submit further information. (Ex. 5). The record closed on June 16, 2023, after the submission of one document. (Ex. 6; Ex. 7).

Action Taken by MassHealth

MassHealth approved the appellant's LTC application and determined that the PPA was \$915.90

calculation of which used a SMND of \$2,035.80.

Issue

The appeal issues are whether MassHealth correctly calculated the SMND and therefore the PPA, pursuant to 130 CMR 520.026, and whether there should be an increase to the Minimum-Monthly-Maintenance-Needs Allowance (MMMNA) due to exceptional circumstances thereby increasing the SMND.

Summary of Evidence

The appellant applied for long-term care (LTC) benefits on February 9, 2023. (Ex. 4, pp. 1, 2). MassHealth approved the appellant's LTC application effective April 3, 2023. (Ex. 1; Ex. 4, pp. 10-11). MassHealth determined that the appellant's PPA was \$915.90 per month. (Ex. 1; Ex. 4, pp. 10-11). In addition to the personal needs allowance (PNA) of \$72.80, MassHealth deducted a SMND of \$2,035.80 from the appellant's income of \$3,070.66 to determine the PPA. (Ex. 1; Ex. 4, pp. 5-6).

MassHealth determined the SMND in the following manner: MassHealth calculated that the community spouse had the following actual shelter expenses: \$300.00 per month for rent and \$72.58 per month for homeowners' insurance. (Ex. 4, pp. 3-4). MassHealth then also added the utility allowance of \$860.00 to reach a total of \$1,232.58. (Ex. 4, pp. 5-6). MassHealth subtracted the standard shelter deduction of \$686.63 to reach \$545.95, which is the excess shelter allowance. (Ex. 4, p. 6). MassHealth added the excess shelter allowance to the federal standard maintenance allowance of \$2,288.75 to reach the MMMNA of \$2,834.70. MassHealth then subtracted the community spouse's monthly gross income of \$798.90 to reach the SMND of \$2,035.70. (Ex. 4, p. 9).

The community spouse confirmed her gross monthly income was \$798.90 from Social Security. The community spouse stated that she had a lot of medical issues, including high blood pressure, and heart disease and has undergone vascular surgery. The community spouse stated that she pays \$100 for her prescriptions. The community spouse also has osteoporosis, which is the reason she could no longer care for him in the home.

The community spouse also stated the cost of the homeowner's insurance has increased. The MassHealth representative stated that the bill she used was for 2022-23 and that she would make an adjustment if the community spouse submitted an updated bill. The appellant's representative requested time after the hearing to also submit evidence of the community spouse's monthly prescription costs arising from her medical conditions, frailty, or similar special needs. (Ex. 5). The appellant's representative was given until July 13, 2023 to do so. (Ex. 5). On June 15, 2023, the appellant's representative faxed the community spouse's prescription profile, listing all of her medications and their costs from June 13, 2022 through June 13, 2023. (Ex. 6). On June 16, 2023, the appellant's representative confirmed that this was the only verification that community spouse

would be submitting. (Ex. 7). For that reason, the record closed as of June 16, 2023. (Id.).

The list of prescribed medications showed the following:

1. From June 13, 2022 through June 13, 2022 (366 days), the community spouse paid a total of \$1,164.30.
2. Averaging this by 12, since both June 2022 and June 2023 were partial months, though with a one day overlap, yielded an average monthly medication cost of \$97.03.
3. Accounting for the one day overlap by dividing the total (\$1,164.30) by 366 days yielded a daily average of \$3.18. Multiplying that figure by 365 yielded a total of \$1,161.11. Dividing this by 12 yielded an average monthly medication cost of \$96.76.
4. Accounting for the one day overlap by adding the total of the two Junes (\$129.10) dividing that by 31 (\$4.17) then multiplying that amount by 30 yielded a weighted average of \$125.10 for both Junes. Adding this to the 11 other months (\$1,035.17) equaled \$1,160.27. Dividing this figure by 12 yielded a monthly average of \$96.68.
5. Removing both partial Junes and just using the other 11 months (\$1,035.17) then dividing that by 11 yielded a monthly average of \$94.10.
6. Discarding the 11 month average of \$94.10 as an outlier and adding the three other monthly averages and dividing this figure by three yielded an average monthly total of \$96.82, which is the figure that shall be used for the remainder of the decision.

Findings of Fact

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

1. The appellant applied for LTC benefits on February 9, 2023. (Ex. 4, pp. 1, 2).
2. MassHealth approved the appellant effective April 3, 2023. (Ex. 1; Ex. 4, pp. 10-11).
3. MassHealth determined that the appellant's PPA was \$915.90 per month. (Ex 1; Ex. 4, pp 10-11).
4. In addition to the PNA of \$72.80, MassHealth deducted a SMND of \$2,035.80 from the appellant's income of \$3,070.66 to determine the PPA. (Ex. 1; Ex. 4, pp. 5-6). (Ex. 1; Ex. 4, pp. 5-6).
5. MassHealth calculated that the community spouse had the following expenses: \$300.00 per month for rent and \$72.58 per month for homeowners' insurance. (Ex. 4, pp. 3-4).

6. MassHealth then added the utility allowance of \$860.00 to reach \$1,232.58, which is the total shelter expense. (Ex. 4, pp. 5-6).
7. MassHealth subtracted the standard deduction of \$686.63 from the total shelter expenses to reach a figure of \$545.95. (Ex. 4, p. 6).
8. MassHealth added \$545.95 to the federal standard maintenance allowance of \$2,288.75 to reach the MMMNA of \$2834.70. (Ex. 4, p. 6).
9. MassHealth subtracted the community spouse's monthly gross income of \$798.90 from \$2,288.75 to reach the SMND of \$2,035.80. (Ex. 4, p. 9; Testimony of the community spouse).
10. The community spouse has monthly medication prescription costs that average \$96.82. (Ex. 6).

Analysis and Conclusions of Law

MassHealth calculates the MMMN) to determine the amount a community spouse requires to live in the community. (130 CMR 520.026(B).) "If the community spouse's gross income is less than the [MMMNA] . . . MassHealth . . . may deduct an amount from the institutionalized spouse's countable-income amount to meet this need." (*Id.*) This amount is referred to as the spousal-maintenance-needs deduction (SMND). (*Id.*) MassHealth uses the following procedure in order to determine the SMND:

(1) The MassHealth agency determines the MMMNA by adding the following amounts:

- (a) \$[2,288.75]¹ (the federal standard maintenance allowance); and
- (b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$[686.83] 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].

¹ The numerical amounts listed in the regulations change on roughly an annual basis. The numbers in the brackets reflect the most current numbers as of the date of the hearing. (See [https://www.mass.gov/info-details/program-financial-guidelines-for-certain-masshealth-applicants-and-members#figures-used-to-determine-minimum-monthly-maintenance-needs-allowance-\(mmmna\)-](https://www.mass.gov/info-details/program-financial-guidelines-for-certain-masshealth-applicants-and-members#figures-used-to-determine-minimum-monthly-maintenance-needs-allowance-(mmmna)-)).

(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 130 CMR 520.017(D).** (Emphasis added). (Id.).

Pursuant to 130 CMR 520.017(D), after an applicant has received notice from MassHealth of his or her denial or approval for MassHealth Standard benefits, either the applicant or the community spouse may submit an appeal to the Board of Hearings, requesting an increase of the community spouse's MMMNA based upon exceptional circumstances, defined as follows:

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.**

(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. (Emphases added). (130 CMR 520.017(D)(1)).

A preponderance of the evidence shows that the MassHealth representative correctly calculated the SMND as set forth in 130 CMR 520.026(B). MassHealth properly determined that the total shelter expenses were \$1,232.80 by adding the community spouse's actual expenses (\$372.58) to the utility allowance (\$860). MassHealth then subtracted the standard deduction of \$686.63 from this figure in order to reach the excess shelter allowance of \$545.95. MassHealth added this excess shelter allowance to the federal standard maintenance allowance (\$2,288.75) to determine the MMMNA was \$2834.70. MassHealth then subtracted the community spouse's gross income

(\$798.90) from this figure, which resulted in a SMND of \$2,035.80. This, along with the PNA was subtracted from the appellant's gross income, to determine the PPA. The community spouse did not dispute the amount of her actual expenses, her gross income, the appellant's gross income, or the calculations to determine the SMND and the PPA.²

A preponderance of the evidence, however, does not support increasing the MMMNA based on exceptional circumstances. The community spouse did submit an extensive list of the prescription medications purchased over the course of roughly one year. The need for those medications clearly arises from her medical condition, frailty, or similar special needs. The cost of these, however, only amounts to a monthly average of \$96.82. Added to her other monthly expenses, this does not come near to equaling, much less exceeding the maximum MMMNA of \$3,715.50. Exceptional circumstances therefore do exist in this case and therefore there is no need to consider raising the MMMNA above the calculation MassHealth has already used.

For the above stated 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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780

² The community spouse did state that the cost of her homeowner's insurance had increased or would be increasing but did not provide evidence of what the increase was.