


Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2307642
Decision Date:	1/5/2024	Hearing Date:	11/01/2023
Hearing Officer:	Marc Tonaszuck	Record Open to:	11/17/2023

Appearance for Appellant:

 Community Spouse

Appearance for MassHealth:

Stephanie DeSousa



*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 – Patient Paid Amount
Decision Date:	1/5/2024	Hearing Date:	11/01/2023
MassHealth’s Rep.:	Stephanie DeSousa	Appellant’s Rep.:	Community Spouse
Hearing Location:	Taunton MassHealth Enrollment Center		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

By a notice dated 08/18/2023, MassHealth informed the appellant that it approved his MassHealth long term care (LTC) benefits beginning on 03/07/2023 with a monthly patient paid amount (PPA) of \$3,286.20 (Exhibit 1). The appellant filed a timely appeal on 08/29/2023 requesting a decreased PPA (Exhibit 2). A calculation of a PPA is valid ground for appeal (130 CMR 610.032).

A fair hearing was scheduled to take place before the Board of Hearings on 10/05/2023; however, the appellant wife requested that the hearing be rescheduled due to illness of the appellant husband. Her request was granted and the hearing was rescheduled (Exhibits 3A and 3B).

A fair hearing was held before the Board of Hearings on 11/01/2023 (Exhibit 3C). Both the appellant wife (community spouse) and the MassHealth representative attended the fair hearing telephonically. At the fair hearing, the appellant wife requested an opportunity to submit additional documentation to the hearing record in support of her argument for a decreased PPA. Her request was granted and the record remained open for her submission until 11/10/2023 and until 11/18/2023 for MassHealth’s response (Exhibit 5).

The appellant wife made no submission during the record open period.

Action Taken by MassHealth

MassHealth approved the appellant's LTC benefits beginning on 03/07/2023 with a PPA of \$3,286.20.

Issue

The appeal issue is whether the community spouse is entitled to an increase in the minimum monthly maintenance needs allowance (MMMNA), which would result in a lower PPA.

Summary of Evidence

MassHealth submitted a packet prior to the hearing (Exhibit 4). The MassHealth representative testified that the appellant husband, a married man whose wife lives in the community (appellant wife or community spouse), is a resident in a skilled nursing facility. An application for long term care (LTC) benefits was submitted on his behalf to MassHealth on 02/13/2023, seeking benefits beginning on 03/07/2023. The application was approved on 08/18/2023 for the date requested. The couple has countable assets that are negligible.¹ The patient paid amount was calculated to be \$3,286.20 (Exhibits 1 and 4). The representative testified that the community spouse lives in a home in the community. MassHealth used bills submitted by the appellants to calculate the Minimum-Monthly-Maintenance-Needs Allowance, or MMMNA, of the community spouse (the appellant wife) by taking into account the rent/mortgage of \$696.33, taxes of \$309.30, insurance of \$200.10, and a food stamp utility allowance of \$860.00, for a total shelter expense that was calculated to be \$2,059.73. MassHealth subtracted the shelter expense standard of \$686.63 and added a standard maintenance allowance of \$2,288.75. Based on its calculations, MassHealth determined the community spouse's MMMNA to be \$3,661.85. Her gross income is \$3,900.00. The community spouse's income exceeds her MMMNA and therefore, there was no spousal maintenance needs allowance (SMNA) deducted from the institutionalized spouse's PPA.

MassHealth then calculated the institutionalized spouse's (appellant husband's) patient-paid amount (PPA). To do this, MassHealth used verifications from the appellants to calculate the institutionalized spouse's income to be \$3,359.00 monthly. MassHealth subtracted the personal needs allowance (PNA) of \$72.80 from the institutionalized spouse's income and calculated the PPA to be \$3,286.20 (Exhibits 1 and 4).

The appellant wife (community spouse)² appeared at the fair hearing and testified that she has a monthly mortgage of \$1,460.00. She also has a loan that was taken out in 2021 in the amount of

¹ Countable assets do not include the value of the residence or one automobile.

² The community spouse has appeal rights in this matter independent of the institutionalized spouse (see 130 CMR 520.017(D)).

\$22,000.00. She makes monthly payments of \$284.71 on the loan. She testified that she has additional bills that were not considered in the PPA calculation, including septic bills of \$99.18 month. She was not able to verify these expenses at the fair hearing. Appellant wife requested an opportunity to submit copies of all her monthly expenses with an explanation of why they should reduce the monthly PPA. Her request was granted and the record remained open for her submission until 11/10/2023 and until 11/18/2023 for MassHealth's response (Exhibit 5). Appellant wife made no submission during the record open period.

Findings of Fact

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

1. Appellant husband (institutionalized spouse) is a resident of a skilled nursing facility. His wife (appellant wife or community spouse) continues to reside in the community (Testimony).
2. Appellant husband was approved for MassHealth long term care benefits effective 03/07/2023 (Testimony; Exhibit 1).
3. Appellant wife appeared at the fair hearing to argue for a reduced PPA.
4. Appellant wife does not dispute the date of eligibility (Testimony).
5. Appellant wife lives in a home in the community and her rent/mortgage is \$696.33. Her taxes are \$309.00 and her insurance is \$200.10 per month (Testimony; Exhibit 4).
6. The community spouse has gross monthly income of \$3,900.00 (Testimony; Exhibit 4).
7. The institutionalized spouse has income of \$3,359.00 (Testimony; Exhibit 4).
8. MassHealth calculated the community spouse's MMMNA as follows:

Rent/mortgage	\$ 696.33
Property taxes and insurance	\$ 309.30
Required condo/coop maintenance charge	\$ 200.10
<u>Utility allowance</u>	<u>\$ 860.00</u>
Total shelter expenses	\$ 2059.73
Federal shelter standard	\$ - 686.53
Excess shelter costs (\$2059.73-\$686.53)	\$ 1373.10
Standard Maintenance Allowance	\$ 2288.75

Total MMMNA

\$3661.85

9. Interest income from retained assets is negligible.
10. Because the community spouse's income exceeds the amount of her MMMNA, she does not receive a Spousal Maintenance Needs Allowance (SMNA).
11. The institutionalized spouse's PPA is \$3,286.20 (Income of \$3,359.00 – PNA \$72.80) (Testimony; Exhibits 1 and 4).
12. The community spouse contends that she requires an increase in the MMMNA in order to cover her living expenses (Testimony).
13. The community spouse requested an opportunity to provide documentation to show that she requires an increased MMMNA, which might reduce the PPA.
14. During the record open period, the appellant wife made no submission.

Analysis and Conclusions of Law

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).

Pursuant to 130 CMR 520.017(D), either spouse may request an increase in the MMMNA calculated by MassHealth due to "exceptional circumstances." At the hearing, the appellant wife argued that the PPA should be reduced. In doing so, she was requesting that the MMMNA be increased, resulting in a larger SMND from the PPA. In support of her argument, the appellant wife testified that she had additional bills that were not considered by MassHealth in the MMMNA calculation. The appellant wife had not submitted any documents to the hearing record prior to or at the fair hearing. She requested an opportunity to submit additional documentation

during a record open period; however, she failed to make any submission during the record open period.

MassHealth's calculation is based on the documentation submitted to MassHealth by the appellants. At the fair hearing, the appellant stated that she had additional expenses; however, she never submitted to the hearing record documentation of those expenses. Without verification of the expenses and the reasons therefore, it is impossible to determine whether they form the basis for an increase in the MMMNA according to the MassHealth regulations. The appellant has failed to meet her burden of showing that MassHealth's calculation is incorrect or that a different result is warranted³. As such, the MMMNA and PPA calculated by MassHealth are supported by the facts in the hearing record as well as the relevant MassHealth regulations. This appeal is therefore 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 with Suffolk County Superior Court, within 30 days of your receipt of this decision.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

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

³ The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *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).

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