

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2308026
Decision Date:	1/2/2024	Hearing Date:	10/23/2023
Hearing Officer:	Patricia Mullen	Record Open to:	11/23/2023

Appearance for Appellant:




Appearance for MassHealth:

Kim Sok, Quincy 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:	Approved	Issue:	Patient Paid Amount
Decision Date:	1/2/2024	Hearing Date:	10/23/2023
MassHealth's Rep.:	Kim Sok, Quincy MEC	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South (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 August 8, 2023, MassHealth calculated a patient paid amount (PPA) of \$2,307.33 for the appellant to pay to the nursing facility each month; through a notice dated September 19, 2023, MassHealth increased the PPA to \$3,753.66 a month. (see 130 CMR 520.026 and Exhibits 1, 4). The appellant filed appeals in a timely manner on September 7, 2023 and September 23, 2023 disputing the PPA calculations. (see 130 CMR 610.015(B) and Exhibits 2, 5). Dispute of a PPA calculation is valid grounds for appeal (see 130 CMR 610.032). A hearing was originally scheduled for September 25, 2023, but was rescheduled at the request of the appellant. (Exhibit 7).

Action Taken by MassHealth

MassHealth calculated a PPA of \$3,753.66 for the appellant to pay to the nursing facility each month.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.026, in calculating a PPA of \$3,753.66 for the appellant to pay to the nursing facility each month; a second issue is whether exceptional circumstances exist, pursuant to 130 CMR 520.017(D), to allow for an increased spousal allowance.

Summary of Evidence

The appellant was represented at the hearing by his attorney, who verified the appellant's identity. MassHealth was represented telephonically by a worker from the MassHealth Enrollment Center (MEC) in Quincy. The MassHealth representative stated that the appellant submitted an application for MassHealth Standard for long term care residents on May 3, 2023 and was approved for MassHealth with the requested start date of February 1, 2023. The MassHealth representative stated that the first patient paid amount (PPA) notice issued on August 8, 2023, but MassHealth erroneously neglected to include trust interest income in the calculation of the spousal allowance. (Exhibit 1). The MassHealth representative stated that the accurate PPA was calculated in the notice dated September 19 2023. (Exhibit 4). The MassHealth representative stated that the appellant receives net Social Security of \$1,633.00 a month and a gross monthly pension of \$2,244.86 for total monthly income of \$3,877.86. (Exhibit 4). The MassHealth representative noted that the regulatory personal needs allowance (PNA) of \$72.80 and health insurance premium of \$51.40 were deducted resulting in a PPA of \$3,753.66. (Exhibit 5).

The MassHealth representative stated that the community spouse receives \$1,405.90 a month in gross Social Security income and \$863.27 a month in a gross pension. There was no dispute that the community spouse received average monthly trust interest income of \$55.70 from February, 2023 through June, 2023, at which time the trust funds were depleted. Accordingly, from February 1, 2023 to June 30, 2023, the community spouse's monthly income was \$2,324.87, and from July 1, 2023 on, the community spouse's monthly income was \$2,269.17.

The appellant's attorney stated that the community spouse has been living in an assisted living facility since prior to February, 2023. The appellant's attorney stated that the community spouse's monthly fee to the assisted living facility is \$9,750.00 and she does not have sufficient income to meet this expense. The appellant's attorney argued that exceptional circumstances exist that necessitate that the community spouse's minimum monthly maintenance needs allowance (MMMNA) be increased to meet her needs. The appellant's attorney noted that the appellant has one, non-interest bearing, bank account with around \$24,000.00.

The record was left open for one month, until November 23, 2023, to give the appellant the opportunity to submit a letter from the community spouse's physician supporting the medical necessity of the assisted living facility; the service plan and contract for the assisted living facility;

and an updated bank statement. (Exhibit 12). The appellant submitted requested documentation within the record open period. (Exhibit 13).

In a letter dated November 2, 2023, the community spouse's physician notes that the community spouse is [REDACTED] years old, is a resident in the memory care unit of the assisted living facility, and suffers from impaired cognitive abilities, balance issues requiring use of a walker, and profound hearing loss without the ability to manage hearing aids. (Exhibit 13, p. 3). The physician states further that the community spouse needs assistance with showering, hygiene maintenance, administration of daily medications, and is not able to shop, cook, or clean. (Exhibit 13, p. 3). The physician writes that it is highly beneficial and medically necessary for the community spouse to be in the assisted living facility. (Exhibit 13, p. 3). Pursuant to the assisted living facility service agreement, the community spouse pays the facility \$9,750.00 a month and such fee includes housing, meals, housekeeping and linen service, laundry, transportation, utilities, up to 20 hours of personal care weekly tailored to the community spouse, resident services team coverage 24/7, and emergency response. (Exhibit 13, pp. 36-38).

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 May 3, 2023 and was approved for MassHealth with the requested start date of February 1, 2023.
2. The appellant receives net Social Security of \$1,633.00 a month and a gross monthly pension of \$2,244.86 for total monthly income of \$3,877.86; the appellant pays a monthly health insurance premium of \$51.40.
3. The community spouse receives \$1,405.90 a month in gross Social Security income and \$863.27 a month in a gross pension; the community spouse received average monthly trust interest income of \$55.70 from February, 2023 through June, 2023, at which time the trust funds were depleted.
4. From February 1, 2023 to June 30, 2023, the community spouse's monthly income was \$2,324.87, and from July 1, 2023 on, the community spouse's monthly income was \$2,269.17.
5. The community spouse has been living in an assisted living facility since prior to February, 2023 and pays a monthly fee of \$9,750.00 to the facility.
6. The community spouse is [REDACTED] years old, is a resident in the memory care unit of the assisted

living facility, and suffers from impaired cognitive abilities, balance issues requiring use of a walker, and profound hearing loss without the ability to manage hearing aids.

7. The community spouse needs assistance with showering, hygiene maintenance, administration of daily medications, and is not able to shop, cook, or clean.
8. It is the community spouse's physician's opinion that the assisted living facility is highly beneficial and medically necessary for the community spouse.
9. The monthly assisted living facility fee of \$9,750.00 covers housing, meals, housekeeping and linen service, laundry, transportation, utilities, up to 20 hours of personal care weekly tailored to the community spouse, resident services team coverage 24/7, and emergency response.

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) \$2,465.00 (the federal standard maintenance allowance); and

- (b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$739.50 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 \$3,715.50 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).
- (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).

Adjustment of the Amount of Asset Allowance. If either spouse claims at a fair hearing that the amount of income generated by the community spouse's asset allowance as determined by the MassHealth agency is inadequate to raise the community spouse's income to the minimum monthly-maintenance-needs allowance, the fair-hearing officer determines the gross income available to the community spouse as follows.

(1) The fair-hearing officer determines the gross amount of income available to the community spouse. The fair-hearing officer includes the amount of the income that would be generated by the spouse's asset allowance if \$10,000 of the asset allowance

were generating income at an interest rate equal to the deposit yield quoted in the Bank Rate Monitor Index as of the hearing date for money market accounts, and if the remainder of the spouse's asset allowance were generating income at an interest rate equal to the highest deposit yield quoted in the Bank Rate Monitor Index as of the hearing date for any term not to exceed two and one-half years.

(2) If the community spouse's gross income under 130 CMR 520.017(C)(1) is less than the minimum-monthly-maintenance-needs allowance (MMMNA), then the fair-hearing officer allows an amount of income from the institutionalized spouse (after the personal-needs deduction described in 130 CMR 520.026(A)) that would increase the community spouse's total income to equal, but not to exceed, the MMMNA. 130 CMR 520.017(C)(2) applies to all hearings held on or after September 1, 2003, regardless of the date of application.

(3) If after the fair-hearing officer has increased the community spouse's gross income under 130 CMR 520.017(C)(1) and (2), the community spouse's gross income is still less than the MMMNA, then the fair-hearing officer increases the community spouse's asset allowance by the amount of additional assets that, if generating income at an interest rate equal to the highest deposit yield in the Bank Rate Monitor Index as of the hearing date for any term not to exceed two and one-half years, would generate sufficient income to raise the income total to the MMMNA.

130 CMR 520.017(C).

MassHealth calculated the maximum MMMNA allowed under the regulations for the appellant's spouse pursuant to 130 CMR 520.026(B). The appellant's representative argues that the appellant's spouse's actual MMMNA is higher than the regulatory maximum of \$3,715.50 and thus we turn to 130 CMR 520.017(D) to determine if exceptional circumstances exist allowing for an increased MMMNA. The regulation at 130 CMR 520.017(D) states that exceptional circumstances exist when there are necessities that arise from the medical condition, frailty or similar special needs of the community spouse and these result in significant financial duress. See 130 CMR 520.017(D).

The community spouse's physician's letter supports the medical need for assisted living services. It is clear from the community spouse's frailty, and medical problems that the services provided in the assisted living facility in which she resides are medically necessary and she needs the assistance provided by the facility in order to remain in the community. The monthly fee for the assisted living facility includes shelter, meals, housekeeping services, utilities, laundry, transportation, up to 20 hours of personal care weekly tailored to the community spouse, resident services team coverage 24/7, and emergency response.

The regulation at 130 CMR 520.017(D) notes that if the community spouse lives in an assisted-living 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. (see 130 CMR 520.019(D)(1)(b)). The assisted living agreement, service plan, fee schedule, and all pertinent medical documentation were reviewed here. The community spouse's monthly fee to the assisted living facility is \$9,750.00. The community spouse's monthly income was \$2,324.87 from February 2023 through June, 2023, and has been \$2,269.17 since July 1, 2023. The community spouse's monthly fee to the assisted living facility does not include clothing, out of pocket medical expenses, or any other additional necessary expenses. I determine that exceptional circumstances resulting in significant financial duress exist in this case and the community spouse's MMMNA should be increased to meet her actual monthly maintenance needs. The community spouse's increased MMMNA is \$9,750.00.

The difference between the community spouse's income and her increased MMMNA for the period February, 2023 through June, 2023 is \$7,425.13 (\$9,750-\$2,324.87). The difference between the community spouse's income and her increased MMMNA for the period beginning July 1, 2023 is \$7,480.83 (\$9,750-\$2,269.17).

From the appellant's income of \$3,877.86, the following is deducted to determine the PPA: \$72.80 for the PNA, \$7,425.13 for the spousal allowance from February, 2023 through June, 2023, and \$7,480.83 for the spousal allowance beginning July 1, 2023. Although the appellant also pays monthly health insurance premiums, the PNA and spousal allowance exceed the appellant's total income. The appellant's PPA is \$0 beginning February 1, 2023. The appeal is approved.

Order for MassHealth

Modify the notices dated August 8, 2023 and September 19, 2023 and determine for the period February 1, 2023 through June 30, 2023 that the community spouse's MMMNA is \$9,750.00, the spousal allowance deduction is \$7,425.13, and the appellant's PPA to the nursing facility is \$0. Determine for the period beginning July 1, 2023, that the community spouse's MMMNA is \$9,750.00, the spousal allowance deduction is \$7,480.8, and the appellant's PPA to the nursing facility is \$0

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.

Patricia Mullen
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Quincy MEC, Attn: Appeals Coordinator, 100 Hancock Street,
6th Floor, Quincy, MA 02171