

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2308628
Decision Date:	12/12/2023	Hearing Date:	10/20/2023
Hearing Officer:	Christopher Jones	Record Open to:	11/03/2023

Appearance for Appellant:
[Redacted] Appeal Rep.

Appearance for MassHealth:
Meghan Adie - Tewksbury Ongoing



*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:	Over-65; LTC; PPA; SMNA; MMMNA; Exceptional Circumstances
Decision Date:	12/12/2023	Hearing Date:	10/20/2023
MassHealth's Rep.:	Meghan Adie	Appellant's Rep.:	[REDACTED]
Hearing Location:	Remote	Aid Pending:	No

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 23, 2023, MassHealth approved the appellant for long-term-care coverage, starting February 1, 2023, with a patient-paid amount of \$2,168.09; the patient-paid amount was increased to \$2,392.23 as of September 1, 2023. (Exhibit 1, pp. 9-12.) The appellant filed this timely appeal on September 20, 2023. (Exhibit 1; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

The hearing record was left open until November 3, 2023, following the hearing to document the appellant's incapacity, as well as provide additional documentation regarding the necessity and costs of the community spouse's assisted living arrangement.

Action Taken by MassHealth

MassHealth initially determined the appellant's patient-paid amount to be \$2,168.09, and increase the amount to \$2,392.23 as of September 1, 2023, based in part upon a spousal-maintenance-needs allowance of \$2,917.60.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.017, 520.026, in calculating the appellant's patient-paid amount, and whether the appellant's community spouse is entitled to an increase in her spousal-maintenance-needs allowance through an adjustment to the minimum-monthly-maintenance-needs allowance based upon exceptional circumstances under 130 CMR 520.017(D).

Summary of Evidence

The institutionalized spouse was approved for long-term-care services as of February 1, 2023, with a patient-paid amount ("PPA") of \$2,168.09. This PPA was increased to \$2,392.23 as of September 1, 2023. Both notices were issued on the same day, August 23, 2023. The PPA is generally the entirety of an institutionalized person's income, less certain deductions. The relevant deductions here are the personal-needs allowance ("PNA") of \$72.80, the institutionalized spouse's private health insurance premiums of \$66.18, institutionalized spouse's Medicare premium of \$164.90,¹ and a spousal-maintenance-needs allowance ("SMNA"). Both notices used the same SMNA of \$2,917.60.

The institutionalized spouse current monthly income is \$1,148.00 from Social Security and \$4,300.81 from a private pension. The community spouse receives \$797.90 per month from Social Security.² The community spouse moved into an assisted living facility on February 8, 2023, but the appellant did not have the rental agreement at the hearing to break down how much the rent was, and what was included. The record was left open until November 3, 2023, and the appellant's representative submitted evidence that the community spouse's monthly rent is \$5,600. This rent includes 24-hour on-call assistance, meals, utilities, laundry, and a minimum amount of assistance with activities of daily living and chores. A letter was also submitted by the community spouse's physician, which identifies multiple disabling medical conditions, and opines that the appellant cannot remain safely in the community absent the services provided in the assisted living facility. The parties also verified that the community spouse's assets were below \$2,000; depleted from over \$25,000 from when the application was initially approved upon the community spouse's living expenses.

To calculate the SMNA, first the community spouse's minimum-monthly-maintenance-needs allowance ("MMMNA") needs to be calculated. The MMMNA is the community spouse's shelter

¹ The approval notices shows the health insurance premiums as initially being \$73.51, then being adjusting down for September 1 PPA calculation to \$66.18. The calculation on the approval notices also uses the appellant's net Social Security income, less a Medicare premium of \$164.90, rather than including the Medicare premium as health insurance costs. This decision shall do likewise.

² The community spouse's income is the gross figure.

expenses, adding a standard utilities allowance (“SUA”) and deducting a standard housing allowance.³ This “excess shelter expense” is then added to a standard community-spouse living expense, and the result is the MMMNA. The MMMNA is then compared to a maximum-monthly-maintenance-needs allowance.⁴ The community spouse’s income is deducted from the lower figure, and the result is the SMNA.

Findings of Fact

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

1. The institutionalized spouse was approved for long-term-care services as of February 1, 2023, PPA of \$2,168.09. This PPA was increased to \$2,392.23 as of September 1, 2023. (Exhibit 1, pp. 9-12.)
2. The institutionalized spouse’s gross monthly income is \$5,613.71, \$1,312.90 from Social Security and \$4,300.81 from a private pension. The community spouse receives \$797.90 from Social Security. Both have a monthly Medicare premium of \$164.90. (Exhibit 1, pp. 9-12; testimony by MassHealth’s representative.)
3. The community spouse has multiple disabling medical conditions, and she cannot reside in the community absent the services provided by the assisted living facility in which she resides. (Exhibit 6, pp. 13-17.)
4. The community spouse’s monthly rent at the assisted living facility is \$5,600 per month at the assisted living facility. The assisted living facility contract requires that she receive the services included and charges extra for additional services required. (Exhibits 5; 6, pp. 11, 12.)

³ These figures are adjusted annually, and at different times throughout the year. The Standard Utility Allowance figure depends upon whether or not the community spouse pays for their own heating. The SUA is updated on October 1 by the Department of Transitional Assistance. Through October 1, 2023, the utility allowance was \$525 for housing that included heat. Starting October 1, 2023, the amount decreased to \$520. (See <https://eohhs.ehs.state.ma.us/DTA/PolicyOnline/olg%20docs/guides/Helpful%20Charts%20and%20Figures.pdf> (last visited Dec. 7, 2023).) The community spouse housing allowance is updated on July 1 by the Centers for Medicare and Medicaid (“CMS”) and was \$686.63 until July 1, 2023, when it increased to \$739.50.

⁴ These figures are also updated annually by CMS on July 1. Through July 1, 2023, the standard community-spouse living expense (referred to by CMS as the “MMMNA”) was \$2,288.75, after it was \$2,465.00. The maximum-monthly-maintenance-needs allowance for these periods were \$3,715.50 and \$3,853.50, respectively.

5. The community spouse's assets are now below \$2,000 because her living expenses exceed her income. (Testimony by appellant's representative; Exhibits 4; 6; 7.)

Analysis and Conclusions of Law

The minimum-monthly-maintenance-needs allowance is defined as "the amount needed by the community spouse to remain in the community. This amount is based on a calculation that includes the community spouse's shelter and utility costs in addition to certain federal standards, in accordance with 130 CMR 520.026(B)(1)." (130 CMR 520.017(B).)

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

(a) \$[2,465.00⁵] (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

1. 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

2. 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 \$[520]. If heat is not included in the rent or condominium fee, this amount is \$[852].

(2) The maximum-monthly-maintenance-needs allowance is \$[3,853.50] 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.

⁵ The adjusted numbers inserted into this quotation are applicable as of July 1, 2023. (See Centers for Medicare & Medicaid ("CMS") Informational Bulletin from November 14, 2023, available at <https://www.medicaid.gov/sites/default/files/2023-11/cib11142024.pdf>; "Helpful Charts and Figures—SNAP," available at <https://eohhs.ehs.state.ma.us/DTA/PolicyOnline/olg%20docs/guides/Helpful%20Charts%20and%20Figures.pdf> (last visited December 7, 2023).)

(130 CMR 520.026(B) (emphasis added).)

The community spouse's monthly rent is \$5,600. The resulting "excess shelter allowance" is \$5,380.50 (\$5,600 + \$520 - \$739.50), therefore her MMMNA is \$7,845.50 (\$5,380.50 + \$2,465.00). However, the maximum-monthly-maintenance-needs allowance must be used unless it can be increased under 130 CMR 520.017(D). Such an increase requires finding that "exceptional circumstances" resulting in "significant financial duress." (130 CMR 520.017(D)(1).) Exceptional circumstances must be

circumstances other than those already taken into account in establishing the maintenance standards for the community spouse under 130 CMR 520.026(B) 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.**

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

A fair hearing officer must ensure "that no expense (for example, for food or utilities) is counted more than once in the calculation" and if "the community spouse lives in an assisted-living facility or similar facility ... the fair-hearing officer reviews the ... 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." (130 CMR 520.017(1)(a)-(b).)

I find that the appellant has established that exceptional circumstances exist. The community spouse's physician has documented the medical necessity of her living at the assisted living facility. Furthermore, the community spouse's monthly income is less than a seventh of her rent, and she has already depleted her assets in paying her housing costs. Therefore, I find that the community spouse's exceptional circumstances pose "significant financial duress." The community spouse's housing contract does not allow for separating out specific expenses from the expense of the rent itself. Therefore, the community spouse is entitled to have her actual MMMNA (\$7,845.50), rather than the regulatory maximum-monthly-maintenance-needs allowance.

When a community spouse's income is insufficient to meet their monthly-maintenance-needs allowance, the hearing officer must increase the community spouse's income by including "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).)

The next step is to allow the institutionalized spouse's income (\$5,376.01, after the PNA) to be diverted to the community spouse. This results in the community spouse having monthly income of \$6,173.91. For these reasons, the appeal is APPROVED. The community spouse is allowed to keep the entirety of the institutionalized spouse's income, less the PNA.

Order for MassHealth

Increase the community spouse's SMNA in accordance with this decision, based upon her actual MMMNA of \$7845.50, starting in February 2023. The institutionalized spouse's PPA shall be set to \$0 per month.

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.

Christopher Jones
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957

