

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2309941
Decision Date:	12/19/2023	Hearing Date:	11/16/2023
Hearing Officer:	Paul C. Moore	Record Closed:	12/14/2023

Appellant Representatives:



MassHealth Representative:

Jessica Adamiec, Taunton MassHealth
Enrollment Center (via Microsoft Teams)



*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:	Minimum Monthly Maintenance Needs Allowance
Decision Date:	12/19/2023	Hearing Date:	11/16/2023
MassHealth Rep.:	Jessica Adamiec	Appellant Reps.:	Community spouse, daughters
Hearing Location:	Board of Hearings (via Microsoft Teams)		

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 October 2, 2023, MassHealth informed the appellant-husband and the appellant-wife that the appellant-husband's application for MassHealth long-term care benefits was approved effective July 4, 2023, with a monthly Patient-Paid Amount (PPA), effective November 1, 2023, of \$4,992.27 (Exh. 1). The appellants filed this appeal in a timely manner with the Board of Hearings (BOH) on October 16, 2023 (Exh. 2). The calculation of a monthly PPA owed to a nursing facility is grounds for appeal to BOH (130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the appellant-husband's MassHealth application with a monthly PPA of \$4,992.27, including a monthly Spouse-In-Home Allowance of \$2,538.60.¹

Issue

Is the appellant-wife entitled to a higher monthly Spouse-In-Home Allowance?

¹ Patient-Paid Amount is defined at 130 CMR 515.001 as "the amount that a member in a long-term-care facility must contribute to the cost of care under the laws of the Commonwealth of Massachusetts."

Summary of Evidence

The MassHealth representative testified that the appellant-husband, who is over 65 years of age, resides in a nursing facility, and submitted an application for long-term care coverage on July 13, 2023. MassHealth approved the appellant-husband's application by notice dated September 18, 2023, with a monthly PPA of \$4,992.27, and a \$2,546.60 spouse-in-home allowance.² Long-term care coverage began on July 4, 2023 (Exh. 1). The spouse-in-home allowance amount is calculated to allow the appellant-wife to retain some of the appellant-husband's income in order to remain living in the community, according to the MassHealth representative.

The MassHealth representative testified that the appellant-wife, who is also over 65 years old, does not pay a mortgage on her home, but she does pay monthly town real estate taxes of \$484.00, and monthly homeowner's insurance of \$170.00 (these figures total \$654.00).³ The MassHealth representative submitted a worksheet with her calculation of the appellant-wife's minimum monthly maintenance needs allowance, as follows:⁴

Shelter Expense for community spouse	\$ 654.00
Standard Utility Expense	<u>+\$ 852.00</u>
Total Shelter Expense	\$ 1,506.00
Standard Shelter Expense	<u>-\$ 739.50</u>
Excess Shelter Amount	\$ 766.50

A Standard Maintenance Allowance of \$2,465.00 was then added to the community spouse's Excess Shelter Amount (\$766.50), to arrive at the community spouse's minimum monthly maintenance needs allowance (MMMNA) of \$3,231.50 (Exh. 7).⁵

The MassHealth representative testified that the community spouse's gross monthly Social Security income is \$692.90. Further, she testified that the appellant-husband's gross monthly pension amount is \$7,259.21, and his gross monthly Social Security income is \$679.10 (Testimony).

By federal regulations effective October 1, 2023, the maximum MMMNA for any community spouse was increased to \$3,715.50. However, in the community spouse's case, her actual

² According to the MassHealth representative, the September 18, 2023 approval notice preceded the notice appealed in this matter; as of October 1, 2023, the Standard Maintenance Allowance, Standard Utility Allowance, and Shelter Expense Standard figures were updated by the federal government. Thus, the spouse-in-home allowance contained in the notice under appeal is \$2,538.60 (Exh. 1).

³ The appeal representative and the community spouse did not contest these figures.

⁴ The appellant-wife will also be referred to as the community spouse.

⁵ Pursuant to 130 CMR 520.017(B), 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)."

MMMNA, based on the worksheet calculation, is \$2,530.60 (Exh. 7).

The community spouse was present virtually at the hearing, along with her two daughters, one of whom is her attorney-in-fact and appeal representative. The appellant's daughter (not her appeal representative) testified that the community spouse's home is infested with termites, and this has caused her unexpected expenses to maintain her home. The appellants' appeal representative submitted into evidence an alternative calculation of the community spouse's monthly expenses, including utilities she pays (water, gas, and electric totaling over \$700.00 monthly), a payment toward purchase of a car (\$266.00 monthly), car insurance (\$150.48 monthly), and cable television (\$300.00 monthly) (Exh. 5). The appellants' appeal representative stated that she needs money for living expenses such as food, gas for her car, car maintenance, hygiene products, clothing, and haircuts, etc. (*Id.*). The community spouse has only \$5,000.00 in savings. The community spouse has undergone some dental work, for which she paid approximately \$1,400.00. The appeal representative explained that the community spouse will need additional dental work, and unless MassHealth increases the spouse-in-house allowance, she will not be able to complete her dental work (Testimony).

The appellant's daughter testified that prior to the appellant-husband being institutionalized, the couple added a walk-in shower and a wheelchair ramp at their home.

The hearing officer explained that he has the authority to increase the spouse-in-home allowance to the federal maximum amount (\$3,715.50), and sometimes above this amount, if the appellants can show exceptional circumstances, resulting in significant financial duress for the appellants. The exceptional circumstances must be other than those already taken into account in establishing the maintenance standards for the community spouse. The hearing officer explained that he is not allowed to count necessities as food, shelter, clothing, and utilities as exceptional circumstances, since these necessities are already taken into account in the federal government allowances for food, shelter and utilities.

At the close of the hearing, the hearing officer agreed to leave the record of this appeal open until December 14, 2023 for the appeal representative to submit evidence of extraordinary uncovered medical expenses of the community spouse, if any, as well as evidence of any urgent household repairs needed to keep the home safe, including any contractor estimates, if available (Exh. 8).

On December 9, 2023, the hearing officer received via e-mail from the appeal representative a copy of an invoice from Security Pest Elimination in the amount of \$295.00, with a corresponding credit card payment by the community spouse on [REDACTED] 2023 (Exh. 9A).⁶ Next, the appeal representative forwarded a proposed dental treatment plan for the community spouse, dated June, 2023, reflecting that she needed 5 tooth extractions, one bone graft, and one implant, in the total amount of \$6,347.00 (Exh. 9B). The appeal representative also forwarded a copy of a check paid to another dentist by the community spouse in May, 2023, in the amount of \$1,040.40 (Exh. 9C), as well as a copy of a credit card payment in May, 2023 by the community spouse to the

⁶ A cover letter accompanied this e-mail from the appeal representative, explaining that only mice, no termites, were discovered in the home, and abated (Exh. 9).

second dentist in the amount of \$399.00 (Exh. 9D).

On December 13, 2023, the hearing officer sent an e-mail inquiry to the appeal representative, with a copy to MassHealth, asking whether the community spouse has dental insurance (Exh. 10). The appeal representative later responded via e-mail, on the same date, that the community spouse had not been to the dentist “for years,” that the community spouse does not have dental insurance, and that the community spouse had a limited amount of dental work done by a second dentist in May, 2023 (Exh. 11). She paid the second dentist \$1,040.40 out of pocket (Exh. 11A). The appeal representative stated in an e-mail to the hearing officer on December 14, 2023 that the community spouse “was having problems with her teeth,” and that she would like to complete the additional dental work described by the first dentist in his treatment plan for the community spouse (Exh. 11B).

Findings of Fact

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

1. The appellant-husband, who is over age 65, resides in a nursing facility and was approved for MassHealth long-term care benefits beginning on July 4, 2023 (Testimony).
2. By notice dated October 2, 2023, MassHealth apprised the appellant that effective November 1, 2023, the appellant-husband will owe a PPA of \$4,992.27 to his nursing facility, and that a spouse-in-home allowance of \$2,538.60 would be allocated to the community spouse (Exh. 1).
3. The appellants timely filed an appeal of the PPA, and spouse-in-home allowance, with the BOH on October 16, 2023 (Exh. 2).
4. The community spouse lives alone in her own home (Testimony).
5. MassHealth calculated the community spouse’s MMMNA as follows: monthly homeowners insurance (\$170.00), plus monthly town real estate taxes (\$484.00), plus a standard utility expense (\$852.00), minus a standard shelter expense (\$739.50), equivalent to an excess shelter amount of \$766.50 (Exh. 7).
6. MassHealth then added a standard maintenance allowance of \$2,465.00 to the community spouse’s excess shelter amount, yielding the community spouse’s actual MMMNA of \$3,231.50 (Exh. 7).
7. The community spouse’s gross monthly Social Security income is \$692.90, the appellant-husband’s gross monthly pension amount is \$7,259.21, and the appellant-husband’s gross monthly Social Security income is \$679.10 (Testimony).
8. The community spouse asserts that she needs a higher spouse-in-home allowance to continue to live safely in the community (Testimony).

9. The community spouse pays over \$700.00 monthly in utilities, a car payment of \$266.00, \$150.48 monthly for car insurance, and \$300.00 monthly for cable television (Testimony, Exh. 5).
10. The community spouse had dental work done in May, 2023, for which she paid \$1,040.40 by check, and \$399.00 by credit card (Testimony, Exhs. 9C and 9D).
11. The community spouse had deferred dental work, and has no dental insurance (Testimony).
12. The community spouse recently had work done by an exterminator at her home, for which she paid \$295.00 (Exh. 9).

Analysis and Conclusions of Law

MassHealth regulations at 130 CMR 520.016 governs the treatment of a married couple's assets when one spouse is institutionalized, as follows:

130 CMR 520.016 describes the treatment of countable assets when one member of a couple is institutionalized, the post-eligibility transfer of assets, and the allowable income deductions for applicants and members who are residents of a long-term-care facility.

(A) Institutionalized Individuals. The total value of assets owned by an institutionalized single individual or by a member of an institutionalized couple must not exceed \$2,000.

(B) Treatment of a Married Couple's Assets when One Spouse is Institutionalized.

(1) Assessment.

(a) Requirement. The MassHealth agency completes an assessment of the total value of a couple's combined countable assets and computes the community spouse's asset allowance as of the date of the beginning of the most recent continuous period of institutionalization of one spouse. (b) Right to Request an Assessment. When one spouse has entered a medical institution and is expected to remain institutionalized for at least 30 days, either spouse may request the MassHealth agency to make this assessment, even if the institutionalized spouse is not applying for MassHealth Standard at that time. The period of institutionalization must be continuous and expected to last for at least 30 days.

(c) Right to Appeal. The MassHealth agency must give each spouse a copy of the assessment and the documentation used to make such assessment. Each spouse must be notified that he or she has the right to appeal the determination of countable assets and the community spouse's asset allowance when the institutionalized spouse (or authorized representative) applies for MassHealth Standard.

(2) Determination of Eligibility for the Institutionalized Spouse. At the time that the institutionalized spouse applies for MassHealth Standard, the MassHealth agency must determine the couple's current total countable assets, regardless of the form of ownership between the couple, and the amount of assets allowed for the community spouse as follows. The community spouse's asset allowance is not considered available to the institutionalized spouse when determining the institutionalized spouse's eligibility for MassHealth Standard.

(a) Deduct the community spouse's asset allowance, based on countable assets as of the date of the beginning of the most recent continuous period of institutionalization of the institutionalized spouse, from the remaining assets. The community spouse's asset allowance is the greatest of the following amounts:

1. the combined total countable assets of the institutionalized spouse and the community spouse, not to exceed \$109,560;
2. a court-ordered amount; or

3. an amount determined after a fair hearing in accordance with 130 CMR 520.017.

(b) Compare the amount of the remaining assets to the MassHealth asset standard for one person, which is \$2,000. When the amount of the remaining assets is equal to or below \$2,000, the institutionalized spouse has met the asset test of eligibility.

...

(Emphasis added)

According to 130 CMR 520.017, "Right to Appeal the Asset Allowance or Minimum monthly maintenance needs Allowance:"

(A) Request for an Adjustment to the Community Spouse's Asset Allowance. After the institutionalized spouse has applied for MassHealth Standard and has received a notice of approval or denial for MassHealth Standard, either spouse may appeal to the Office of Medicaid Board of Hearings to request an adjustment to the asset allowance. The purpose of the adjustment is to generate sufficient income, as determined by the MassHealth agency, for the community spouse to remain in the community.

(B) Minimum-monthly-maintenance-needs Allowance. The minimum-monthly-maintenance needs allowance is 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).

(C) 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 2½ 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 2½ years, would generate sufficient income to raise the income total to the MMMNA.

(D) 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 Office of Medicaid 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 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.

(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 first verifies 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 considers how the assets were spent in determining whether or not significant financial duress exists.

(b) The fair-hearing officer determines the revised MMMNA by including in the calculation the amount needed to meet the exceptional circumstances.

(c) The fair-hearing officer compares 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 first deducts 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.

(Emphases added)

Next, pursuant to 130 CMR 520.026(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) \$1,822 (the federal standard maintenance allowance); and

(b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$547 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 \$375. If heat is not included in the rent or condominium fee, this amount is \$611.

(2) The maximum-monthly-maintenance-needs allowance is \$2,739.00 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.

(Emphases added)⁷

Here, MassHealth used the standard federal utility expense, standard federal shelter expense, and standard federal maintenance allowance, plus the amount of the community spouse's monthly taxes and monthly homeowners' insurance, to arrive at her actual MMMNA of \$3,231.50. There was no error in MassHealth's calculation.

The community spouse's monthly income, consisting of Social Security benefits, is \$692.90. This leaves a shortfall of \$2,538.60 for the community spouse to meet her MMMNA of \$3,231.50. Therefore, MassHealth allocated \$2,538.60 (spouse-in-home allowance) of the appellant-husband's monthly income to meet this shortfall amount,

The appellant-wife argued at hearing that she believes she is entitled to a higher spouse-in-home allowance to meet her MMMNA. She cites to her high utility costs per month; yet these expenses are already accounted for in the standard federal utility allowance of \$852.00, and the hearing officer is not permitted to count these expenses more than once. In addition, the community spouse points to a car loan amount, car maintenance expenses, and gas as other

⁷ The figures contained in this regulation are updated annually by the U.S. Department of Health and Human Services. 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)) (last checked December 16, 2023).

“exceptional” circumstance warranting a higher spouse-in-home allowance. However, regulation 130 CMR 520.017(D)(1), above, is clear that car-related expenses are not the kind of necessary expenses constituting exceptional circumstances that would allow the hearing officer to raise the spouse-in-home allowance. Cable television costs are also not exceptional necessary expenses.

The community spouse submitted evidence of deferred dental work, for which she has paid close to \$1,500.00 out of pocket. She has no dental insurance. However, it is not clear that the dental work the community spouse had done, or may need in the future, is of an emergency nature and therefore “an extraordinary uncovered medical expense,” as discussed at 130 CMR 520.017(D)(1).

Finally, the community spouse argued at hearing that she had a “termite” problem at her home. However, evidence submitted following the hearing shows that an exterminator found no termites, but only mice in her home, which was abated at a cost of \$290.00. This cost is minimal, and does not appear to be recurring. This is more in the nature of a “shelter” expense, already accounted for in the MMMNA calculation, and also does not rise to the level of an exceptional circumstance, leading to financial duress for the appellants.

The MMMNA calculated for the community spouse by MassHealth was correct. The spouse-in-home allowance of \$2,530.60, deducted from the appellant-husband’s PPA, is also correct.

For these reasons, the appeal must be 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.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Justine Ferreira, Appeals Coordinator at Taunton MEC