

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2312708
<b>Decision Date:</b>	3/11/2024	<b>Hearing Date:</b>	01/17/2024
<b>Hearing Officer:</b>	Christine Therrien		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Joanne Weldon, Taunton



*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

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	LTC - PPA
<b>Decision Date:</b>	3/11/2024	<b>Hearing Date:</b>	01/17/2024
<b>MassHealth's Rep.:</b>	Joanne Weldon	<b>Appellant's Rep.:</b>	Community Spouse
<b>Hearing Location:</b>	Taunton MassHealth Enrollment Center - Telephonic		

### 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 10/24/23, MassHealth approved the appellant's application for MassHealth Long Term Care benefits with a start date of 9/1/23 and a patient-paid amount (PPA) of \$3,116.59. (Exhibit 1). The appellant filed this appeal in a timely manner on 12/6/23. (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth approved the appellant's request for long term care benefits with a PPA of \$3,116.59.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.014, in determining that the appellant's PPA is \$3,116.59.

### Summary of Evidence

MassHealth testified that the appellant applied for long-term care benefits on 6/10/23. The appellant currently resides in a nursing home and his spouse resides in the community. The appellant has an income of \$3189.39 and after deductions of \$72.80 Personal Needs Allowance (PNA), MassHealth calculated a PPA of \$3,116.59.<sup>1</sup> The MassHealth representative testified that the notice does not include the Spousal Maintenance Needs Allowance (SMNA), because the community spouse's income is more than the maximum monthly maintenance needs allowance (MMMNA). MassHealth submitted as evidence the appellant's application and a worksheet calculating the community spouse's MMMNA. (Exhibit 5). The MassHealth representative testified that the maximum monthly maintenance needs allowance (MMMNA) in 2023 was \$3,715.50. MassHealth calculated the appellant's SMNA: shelter expenses of \$2,253.89 mortgage/condominium fees/taxes/insurance, plus \$852 food stamp/utility allowance, equal to \$4,105.89 total shelter expenses.<sup>2</sup> Next, MassHealth took \$4,105.89 and subtracted a \$739.50 standard shelter expense, then added a \$2,465 federal standard maintenance allowance, yielding \$5,831.39. This is the community spouse's actual MMMNA. The community spouse's actual monthly income of \$6,053.79, less a \$3,715.50 standard MMMNA, yields a \$0 SMNA.<sup>3</sup>

MassHealth calculated the community spouse's monthly teaching income for 12 months when it is only received for 9 months. MassHealth calculated the community spouse's monthly income as \$6,053.79 based on 12 months of income from her teaching job. (Exhibit 5, p. 15). The MassHealth representative re-calculated the appellant's monthly income based on being paid for 9 months and not 12 months. MassHealth calculated that the community spouse has an average monthly income of \$4,341 which comes from Social Security (\$1,587) and a teaching job (\$2,754). The Correct SMNA calculation is \$4,759 mortgage/condo fees/taxes/Ins./lien/outstanding utility bill + \$852 food stamp/utility allowance = \$5,611.81 total shelter expenses. \$5,611.81 less \$739.50 standard shelter expense plus \$2,965 federal standard maintenance allowance = \$7,337.31 MMMNA. \$3,715.50 standard MMMNA - \$4,341 community spouse's income equals \$0 SMNA.

The community spouse testified that the appellant left her with a tremendous financial burden that she was previously unaware of when he entered the LTC facility. The community spouse testified that the appellant did not pay the electric bill for many months before he was admitted to the LTC facility, and she has an outstanding bill electric bill of \$7,339.66. (Exhibit 2, p. 4). The community spouse testified that she does not turn on the heat because she cannot afford the extra cost.<sup>4</sup> The community spouse, who is over the age of [REDACTED], testified that she continues to work as a teacher because she cannot afford to retire. The community spouse testified that she does not own a car because she cannot afford one. The community spouse testified that she uses the appellant's Social Security to pay her mortgage of \$2,713.11; she pays \$100 a month to the IRS because there is a lien on her home; she tries to pay \$400 a month toward the electric bill; she

---

<sup>1</sup> Income consists of \$2,963 SSI + \$226.39 Pension.

<sup>2</sup> Mortgage \$2,600 + condominium fee \$262.50 + homeowners' insurance of \$45 + Taxes \$436.39. (Exhibit 5, p.14).

<sup>3</sup> The calculation requires that the lower of the actual MMMNA and the standard MMMNA be used.

<sup>4</sup> The electric bill for them month of November 2023 was \$119.57. (Exhibit 5, p. 4).

pays \$1,000 to the LTC facility; she pays \$50 a month for a medical bill of hers that was sent to collections; and her quarterly condominium fees increased to \$3,465.93. (Exhibit 2).

## **Findings of Fact**

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

1. The appellant applied for long-term care benefits on 6/10/23.
2. The appellant currently resides in a nursing home and his spouse resides in the community.
3. The appellant has a monthly income of \$3,189.39, and after deducting \$72.80 for a personal needs account allowance, MassHealth calculated a PPA of \$3,116.59.
4. The notice does not include an SMNA, because the community spouse's income is more than the standard MMMNA of \$3,715.50.
5. The community spouse has an average monthly income of \$4,341 which comes from Social Security (\$1,587.90) and a teaching job (\$2,754).
6. The community spouse is over the age of [REDACTED].
7. The community spouse has an outstanding bill electric bill of \$7,339.66.
8. The community spouse's monthly shelter expenses include a mortgage of \$2,713.11, a condominium fee of \$1,155.31, homeowners' insurance of \$45, taxes of \$262.50, and tax lien payment of \$100; she also pays a medical bill of \$50, and a past due utility bill of \$400.
9. The community spouse has been paying the LTC facility \$1,000 a month.
10. The community spouse's MMMNA is still \$3,715.50 after using the corrected income.

## **Analysis and Conclusions of Law**

After the institutional spouse has received notice of either approval or denial for MassHealth, 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. (130 CMR 520.017(D)(1)). 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), MassHealth may deduct an amount from the institutionalized spouse's countable-income amount to meet this need. This amount is the spousal-maintenance-needs

deduction (SMNA). This deduction is the amount by which the minimum-monthly-maintenance-needs allowance exceeds the community spouse's gross income. The regulations require MassHealth to use the actual MMMNA, or a maximum-monthly-maintenance-needs allowance of \$3,715.50, per month, whichever is lower when calculating the SMNA unless it has been increased as the result of a fair-hearing decision based on exceptional circumstances.<sup>5</sup>

Exceptional circumstances exist when there are circumstances other than those already considered in establishing the maintenance standard for the community spouse under 130 CMR 520.025(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.<sup>6</sup>

---

<sup>5</sup> 130 CMR 520.026: Long-Term-Care Income Standard. (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 Division, the Division 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 \$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 \$3,715.50 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). See, <https://www.mass.gov/info-details/program-financial-guidelines-for-certain-masshealth-applicants-and-members#eligibility-figures-for-community-residents-age-65-or-older->, for current rates.

<sup>6</sup> 130 CMR 520.017: Right to Appeal the Asset Allowance or Monthly-Maintenance- Needs Allowance. (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 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

The fair hearing officer ensures that no expense is counted more than once in the SMNA calculation and that 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 520.019(D)(1)).<sup>7</sup>

MassHealth originally calculated the community spouse's SMNA to be \$0. MassHealth re-calculated the community spouse's monthly income as \$4,341, but this did not change the SMNA. 130 CMR 520.017(D) allows an adjustment by the hearing officer to the MMMNA due to exceptional circumstances. The appellant's community spouse was left with an outstanding electric bill of \$7,339.66 after the appellant was admitted to the LTC facility because the appellant failed to pay the bill for a very long time. The excessively large outstanding electric bill is resulting in significant financial duress for the community spouse. This outstanding utility bill is not something that has already been considered in establishing the maintenance standard for the community spouse and thus is an exceptional circumstance within the definition at 130 CMR 520.017. The appellant's community spouse's SMNA will be adjusted to \$2,116.59.

The appellant's new PPA will be \$1,000.00, which is the amount the community spouse has been able to pay to the LTC facility.<sup>8</sup>

The appeal is approved.

## Order for MassHealth

Rescind the notice dated 10/24/23, re-calculate an SMNA of \$2,116.59, and adjust the appellant's patient-paid amount to \$1000 monthly, effective 9/1/23.

---

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.

<sup>7</sup> 130 CMR 520.017(D)(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.

<sup>8</sup> PPA calculated by deducting \$2,189.39 in allowances (72.80 PNA + \$2,116.59 SMNA) from the appellant's total countable income of \$3,189.39.

## 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.

---

Christine Therrien  
Hearing Officer  
Board of Hearings

cc: MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center  
[REDACTED]