

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in part	Appeal Number:	2405973
Decision Date:	7/19/2024	Hearing Date:	05/31/2024
Hearing Officer:	Alexandra Shube	Record Open to:	06/14/2024

Appearance for Appellant:




Appearance for MassHealth:

Via telephone:
Jennifer Carroll



*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 in part	Issue:	Long-term care – Spousal Allowance; PPA
Decision Date:	7/19/2024	Hearing Date:	05/31/2024
MassHealth’s Rep.:	Jennifer Carroll	Appellant’s Rep.:	
Hearing Location:	Taunton MassHealth Enrollment Center 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 February 23, 2024, MassHealth informed the appellant that she is eligible for MassHealth benefits effective September 30, 2023 and beginning on September 1, 2023, she would have monthly patient paid amount (PPA) of \$1,064.19 (Exhibit 1).¹ The appellant filed this appeal in a timely manner on April 13, 2024 (see 130 CMR 610.015(B) and Exhibit 2). A challenge to the PPA is a valid ground for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified the appellant that she was approved for MassHealth long-term care benefits with a monthly PPA of \$1,064.19.

¹ At hearing, MassHealth stated that the correct start date for benefits and the PPA is October 1, 2023. In MassHealth’s packet prepared for hearing, she provided a corrected notice, also dated February 23, 2024, with the correct start date and the same PPA of \$1,064.19.

Issue

The appeal issue is whether the community spouse is entitled to increased support from the appellant through a reduction in the PPA, pursuant to 130 CMR 520.017(D).

Summary of Evidence

The representatives for MassHealth and the appellant appeared at hearing via telephone. The MassHealth representative testified as follows: the appellant is over the age of 65 and a resident of a nursing facility. On September 14, 2023, MassHealth received an application for long-term care on behalf of the appellant, requesting a start date of October 1, 2023. At the time of the application, she had a spouse in the community who has since passed away. On February 23, 2024, MassHealth approved the appellant for the requested start date with a monthly PPA of \$1,064.19. There was no spousal allowance for the community spouse because his income was too high for the spousal maintenance needs allowance (SMNA). MassHealth explained that she adjusted for everything she could when calculating the PPA and SMNA, including mortgage, taxes and insurance, condominium/homeowner's fees, and utilities. MassHealth calculated the PPA as follows: \$1,391 (appellant's monthly gross Social Security income) - \$72.80 (Personal Needs Allowance (PNA)) - \$254.01 (other health insurance) = \$1,064.19.

The community spouse's monthly income was \$3,972.22, comprised of \$203.15 from an annuity, \$823.37 from a pension, and \$2,945.70 from Social Security. The community spouse's Minimum Monthly Maintenance Needs Allowance (MMMNA) was calculated as follows: \$1,251.27 (rent/mortgage) + \$278.86 (taxes and insurance) + \$176.56 (condo maintenance fee) + \$852 (food stamp utility allowance when heat is not included) = \$2,558.68 (total shelter expenses) - \$739.50 (standard deduction for Community Spouse Monthly Housing Allowance) + \$2,465 (standard for MMMNA) = \$4,022.50.² MassHealth reverted to the cap (the Maximum Monthly Maintenance Needs Allowance) of \$3,853.50³ from which it deducted the community spouse's gross monthly income (\$3,972.22) to arrive at an SMNA of \$0 because the community spouse's income was greater than the Maximum Monthly Maintenance Needs Allowance.

² The standards used for the MMMNA and Community Spouse Monthly Housing Allowance were based on the 2023 SSI and Spousal Impoverishment Standards published on May 22, 2023 which were in effect through June 30, 2024. See <https://www.medicaid.gov/federal-policy-guidance/downloads/cib051123.pdf>, last visited July 18, 2024. The 2024 SSI and Spousal Impoverishment Standards were published on May 22, 2024, but the 2024 MMMNA and Community Spouse Monthly Housing Allowance standards do not take effect until July 1, 2024, unlike the Maximum Monthly Maintenance Needs Allowance which takes effect January 1, 2024. See <https://www.medicaid.gov/federal-policy-guidance/downloads/cib05222024.pdf>, last visited July 18, 2024.

³ MassHealth used the 2024 Maximum Monthly Maintenance Needs Allowance of \$3,853.50 which, as noted in Footnote 2, took effect as of January 1, 2024.

The MassHealth representative noted (and the appellant's representatives understood) that the appellant's PPA would change starting in May 2024 because she will be receiving the community spouse's Social Security benefits upon his death.

The appellant was represented by her daughter and the facility's administrator. Her daughter explained that the community spouse was sick with cancer and incurred expensive medical bills that he could not afford. The appellant and her spouse have no other money and no income-generating assets. The appellant's children have been paying the appellant's PPA so that the community spouse could have the appellant's social security income to pay his bills, which he was not paying since he did not have the money for them. The appellant's representatives were looking to reduce the appellant's PPA so the community spouse could keep more of the appellant's Social Security to pay for his increased medical bills from cancer treatment. The community spouse passed away on [REDACTED].

The record was held open until June 14, 2024 for the appellant's daughter to submit a breakdown of the medical bills paid by the community spouse for his care. She submitted a spreadsheet as well as billing and insurance records that showed the appellant paid out-of-pocket medical expenses for the year of 2023 in the amount of \$9,041.89 (total charges exceeded \$89,000, but Medicare or other health insurance covered the difference). The documentation provided supports that the bills from September 2023 through February 2024 were paid by the community spouse during the PPA period in question (October 1, 2023 through the community spouse's death in April 2024). There were bills included on that spreadsheet paid on behalf of the community spouse outside of that period (\$891.76 total from dates of service in February, March, and June 2023) and bills paid on behalf of the appellant (\$1,581.28 total from dates of service in January through June 2024). When those amounts are subtracted, the total paid by the community spouse for his medical expenses over the seven-month period of October 2023 through April 2024 is \$6,568.85, which averages \$938.41 per month.

Findings of Fact

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

1. On September 14, 2023, MassHealth received an application for long-term care on behalf of the appellant, requesting a start date of October 1, 2023 (Testimony and Exhibit 5).
2. The appellant is over the age of 65 and a resident of a nursing facility. At the time of the application, she had a spouse in the community, who passed away on [REDACTED]. (Testimony).
3. On February 23, 2024, MassHealth approved the appellant for the requested start date with a monthly PPA of \$1,064.19 (Testimony and Exhibit 1).

4. On April 13, 2024, the appellant timely appealed the approval notice (Exhibit 2).
5. The appellant's gross monthly income is \$1,391 from Social Security (Testimony and Exhibit 5).
6. The PPA was calculated as follows: \$1,391 (appellant's monthly gross Social Security income) - \$72.80 (Personal Needs Allowance (PNA)) - \$254.01 (other health insurance) = \$1,064.19 (Testimony and Exhibits 1 and 5).
7. The community spouse's monthly income was \$3,972.22, comprised of \$203.15 from an annuity, \$823.37 from a pension, and \$2,945.70 from Social Security (Testimony and Exhibit 5).
8. The community spouse's MMMNA was calculated as follows: \$1,251.27 (rent/mortgage) + \$278.86 (taxes and insurance) + \$176.56 (condo maintenance fee) + \$852 (food stamp utility allowance when heat is not included) = \$2,558.68 (total shelter expenses) - \$739.50 (standard deduction for Community Spouse Monthly Housing Allowance) + \$2,465 (standard for MMMNA) = \$4,022.50 (Testimony and Exhibit 5).
9. Because the community spouse's income was greater than the Maximum Monthly Maintenance Needs Allowance of \$3,853.50, there was no SMNA (Testimony and Exhibits 1 and 5).
10. The community spouse was sick with cancer and incurred medical bills he could not afford (Testimony).
11. The record was held open until June 14, 2024 for the appellant's representatives to submit billing information for the community spouse (Exhibit 6).
12. The total paid by the community spouse for his medical expenses over the seven-month period of October 2023 through April 2024 was \$6,568.85 (or \$938.41 per month) (Exhibits 7 and 8).
13. The appellant and her spouse have no income-generating assets (Testimony).

Analysis and Conclusions of Law

MassHealth calculates the Minimum Monthly Maintenance Needs allowance (MMMNA) to determine 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. (130 CMR 520.017(B)).

Pursuant to the provisions of 130 CMR 520.017(D), the fair hearing officer may substitute for the MMMNA a new amount to meet the expenses of the community spouse. This substitution may be performed only when the community spouse has shown that the requested increase in the spousal maintenance needs allowance is based upon exceptional circumstances.

The applicable regulation provides as follows:

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 (130 CMR 520.017(D)).

(Emphasis added).

Exceptional circumstances exist when the community spouse has expenses (not already taken into account) that arise from a medical condition or frailty, or other special need and those circumstances result in significant financial duress. The applicable regulation provides that special remedial and support services and extraordinary uncovered medical expenses are examples of such expenses (130 CMR 520.017(D)(1)). The appellant's representative credibly testified that the community spouse, prior to his death on [REDACTED], had cancer which resulted in additional medical expenses. The appellant's representative demonstrated that the community spouse had on-going expenses that arise from his medical condition, frailty, or other special need. A finding of exceptional circumstances requires more than that. Exceptional circumstances exist when there are circumstances other than those already taken into account (such as food, shelter, clothing, and utilities) in establishing the maintenance standards **and these circumstances result in significant financial duress**.

The appellant and her community spouse have no additional money and no assets generating income. The appellant's children have been paying the appellant's PPA so that the community spouse could have the appellant's Social Security income to pay his bills, which he was not paying since he could not afford them. The documentation provided supports that the total paid by the

community spouse for his medical expenses over the seven-month period of October 2023 through April 2024 was \$6,568.85 (or \$938.41 per month). Combined with their limited assets, these expenses (\$938.41 per month) would result in significant financial duress and meet the exceptional circumstances criteria. As such, the MMMNA should be revised to include these expenses pursuant to 130 CMR 520.017(D)(2)(b) and the community spouse is entitled to an increase in the MMMNA for the additional medical expenses.

Pursuant to 130 CMR 520.017(D)(2)(a), the hearing officer must first verify the community spouse's gross income, including income generated by the community spouse's assets allowance. To do this, the regulations instruct the hearing officer to determine:

the amount of the income that would be generated by the [community] 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.

130 CMR 520.017(C)(1).

The appellant and community spouse do not have any assets generating income. For the months of October 2023 through April 2024, the community spouse's MMMNA should be increased to \$4,791.91 (\$3,853.50 MMMNA + \$938.41 average monthly medical bills). The SMNA is \$819.69 (\$4,791.91 MMMNA - \$3,972.22 community spouse's income = SMNA). The appellant's PPA for October 2023 through April 2024 should be \$244.50, recalculated as follows: \$1,391 (appellant's gross Social Security income) - \$72.80 (PNA) - \$254.01 (other health insurance) - \$819.69 (SMNA).

For these reasons, the appeal is approved in part.

Order for MassHealth

Modify the February 23, 2024 determination of the spousal allowance and PPA for October 2023 through April 2024 in accordance with this decision; recalculate the appellant's PPA to \$244.50 from October 1, 2023 through April 2024.

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.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc: [REDACTED]

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780