

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2406354
Decision Date:	7/17/2024	Hearing Date:	05/24/2024
Hearing Officer:	Amy B. Kullar, Esq.	Record Open to:	06/07/2024

Appearances for Appellant:




Appearance for MassHealth:

Kelly Rosati, Springfield MassHealth
Enrollment Center



*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:	LTC Eligibility; PPA; Over 65
Decision Date:	7/17/2024	Hearing Date:	05/24/2024
MassHealth's Rep.:	Kelly Rosati, Springfield MassHealth Enrollment Center	Appellant's Reps.:	
Hearing Location:	Springfield MassHealth Enrollment Center Room 2	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 March 8, 2024, MassHealth approved the appellant's application for MassHealth Long-Term Care benefits (Exhibit 1). The appellant filed this appeal to request that the Patient-Paid Amount (PPA) determination in the approval notice be paid to the appellant's community spouse in its entirety as part of the community spouse's minimum monthly needs allowance (MMMNA).¹ The appellant filed this appeal in a timely manner on April 22, 2024 (see 130 CMR 610.015(B) and Exhibit 2).² After the institutionalized spouse has received notice of approval for MassHealth Standard, either spouse may appeal to the Office of Medicaid Board of

¹ MassHealth's regulations define the MMMNA as "is the amount needed by the community spouse to remain in the community". See 130 CMR 520.017(B).

² The hearing record was left open until June 7, 2024, to allow the appellant to document whether exceptional circumstances exist for the appellant's spouse to support the appellant's request to pay the PPA to the appellant's spouse and to allow MassHealth to respond if necessary. Exhibit 9.

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).

Action Taken by MassHealth

MassHealth approved the appellant's application for MassHealth LTC benefits and determined that the appellant's monthly PPA is \$2,802.39.

Issues

The appeal issues are whether (1) there is a community spouse; and if so, (2) due to exceptional circumstances, is the community spouse is entitled to all or a portion of the appellant's monthly PPA.

Summary of Evidence

A representative from MassHealth, appearing telephonically, testified that appellant is over the age of [REDACTED] and submitted an application for MassHealth Long-Term Care benefits on January 30, 2024.³ The MassHealth representative testified that the computer system had miscalculated the appellant's Patient-Paid Amount (PPA) in the March 8, 2024 notice, and that the caseworker had corrected the error prior to this hearing, which generated a new notice to the appellant. The correct PPA amount is \$2,289.62 effective October 1, 2023. The MassHealth caseworker testified that a new notice containing the correct PPA amount had been sent to the appellant the previous week.

The appellant was represented at the hearing by her attorney and the attorney's paralegal; they appeared telephonically and verified the appellant's identity. The appellant's attorney stated that the appellant's husband is not in the community; he is actually a resident of the same long-term care facility as the appellant due to his frail health. He is a private pay patient, incurring daily costs of \$460 per day at the facility in [REDACTED] and \$480 per day in [REDACTED]. The appellant's attorney testified that she understands that the regulations may allow for the community spouse to receive an adjustment to his or her MMMNA to meet exceptional circumstances of medical frailty.

The appellant and her spouse entered the same long-term care (LTC) facility in [REDACTED]. The appellant filed an application for MassHealth LTC benefits on January 30, 2024, and was approved for coverage as of October 1, 2023. During the application process, the appellant and her spouse continued to reside in the same long-term care facility due to their respective medical needs for assistance with the activities of daily living (Testimony). The spouse is privately paying for his care

³ The word "appellant" and "appellant-wife" are used interchangeably in this decision.

and maintains that he intends to return home (Exhibit 7).⁴

The appellant's attorney submitted invoices from the nursing facility that show that the appellant's spouse pays at least \$14,000.00 per month (calculated with a daily rate of \$480.00 per day x 30 days) to the long-term care facility that the appellant and her spouse are both currently residing in. Because their monthly expenses are significantly higher than their income, the appellant's spouse is requesting to use the entirety of the appellant's PPA due to the appellant's spouse's alleged exceptional circumstances.

The hearing officer granted the appellant's attorney a record-open period until June 7, 2024, in order for the appellant to document whether exceptional circumstances are present to recalculate the appellant's PPA and assign it to the appellant's spouse. During the record-open period, the appellant's attorney submitted a letter that documented the medical frailty of the appellant's spouse and stated that "[his] . . . continued residence at the skilled nursing facility is a medical necessity as a result of his extensive needs for assistance with his daily living activities." Exhibit 8. The appellant's attorney also stated that reference to appellant's spouse's intent to return home was made in the appellant's application and the cover letter that accompanied the application. She provided a copy of the letter and the relevant page of the MassHealth application filed on behalf of the appellant. Exhibit 8. Included as part of the submission was the "Baseline Care Plan" for the appellant's spouse at the long-term care facility. He is receiving hospice services. He requires extensive assistance for bathing/showering, bed mobility, dressing, personal hygiene, transfer out of bed, and he is a fall risk (*Id.*).

Findings of Fact

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

1. The appellant filed an application for MassHealth Long-Term Care benefits on January 30, 2024. Testimony.
2. The appellant was approved for MassHealth Long-Term Care benefits beginning on October 1, 2023. Exhibit 1.
3. The appellant's PPA was calculated by MassHealth as follows: Social Security Income \$228.00 plus pension income \$2,629.19 for a total countable income of \$2,857.19, less the Personal Needs Allowance of \$72.80, a Spousal Maintenance Needs Deduction of \$338.34, and health insurance premium of \$156.43, equivalent to a PPA of \$2,289.62. Testimony.

⁴ There was no documentary evidence or testimony showing whether MassHealth conducted an assessment of the total value of the couple's combined countable assets at the time of application pursuant to 130 CMR 520.016(B), "Treatment of a Married Couple's Assets When One Spouse Is Institutionalized."

4. The appellant and her spouse reside in the same long-term care facility due to their respective medical ailments. Testimony.
5. In [REDACTED] the appellant's spouse pays a private daily rate of \$480.00 to the long-term care facility that he resides in. Testimony.
6. The appellant's spouse has resided in the same long term-care facility as the appellant since [REDACTED] Testimony and Exhibit 8.
7. The appellant's spouse has not applied for MassHealth benefits.

Analysis and Conclusions of Law

A Community Resident is a person who lives in a noninstitutional setting in the community. 130 CMR 515.001. An Institution (Medical) is a public or private facility providing acute, chronic, or long-term care, unless otherwise defined within 130 CMR 515.000 through 130 CMR 522.000: Other Division Programs. This includes acute inpatient hospitals, licensed nursing facilities, state schools, intermediate-care facilities for the mentally retarded, public or private institutions for mental diseases, freestanding hospices, and chronic-disease and rehabilitation hospitals. 130 CMR 515.001.

In the instant appeal, appellant did not dispute that both spouses reside in the same institutionalized setting, a licensed nursing facility, with the appellant's spouse receiving documented assistance with the Activities of Daily Living. Therefore, he is not a "community spouse." The appellant submitted documentation reflecting that she told MassHealth that she had a community spouse, when in reality, her spouse resides in the same skilled nursing facility as the appellant. Both cannot be true; the appellant cannot have a community spouse who is also an institutionalized spouse. The facts today show that the appellant's spouse is institutionalized.

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.

130 CMR 520.017(D)(1) (emphases added)

“Exceptional circumstances” only apply to the community spouse in MassHealth regulations, upon a showing of circumstances set forth in the above regulation, resulting in significant financial duress. In the instant appeal, both spouses reside at the same long term-care facility. As the privately paying spouse of the appellant is not a resident of the community, he is not entitled to a MMMNA under the regulations. The appellant asserts in her submissions that the appellant’s spouse is medically frail and is not a resident of the community. She also states that in the appellant’s application and cover letter submitted with her application, the appellant’s spouse noted his intent to return home. Because the appellant’s spouse has not applied for MassHealth benefits, his intent to return home is not relevant to this appeal.

The appellant cannot have it both ways. The appellant’s spouse is either an institutionalized or a community spouse. Currently, the evidence shows he is the former. If and when the appellant’s spouse returns to the community, he may be eligible for an MMMNA under the regulations. If the appellant’s spouse returns to the community and is unable to meet his obligations (such as food, shelter, utilities, insurance, rent or mortgage payments), he may seek a community spouse resource allowance (also known as a spousal maintenance needs deduction), potentially to include a portion of the appellant’s income paid as PPA to the nursing facility, at that time.

MassHealth did not err in setting a PPA for the appellant; however, by including in its calculation of the PPA of \$2,289.62 spousal maintenance needs deduction of \$338.34, MassHealth made a mathematical error.⁵

For these reasons, the appeal is DENIED.

Order for MassHealth

Recalculate monthly PPA for the appellant and do not deduct a spousal maintenance needs allowance for the appellant’s institutionalized spouse.

⁵ The MassHealth caseworker testified to the fact that the PPA was incorrectly calculated on the initial approval notice; this was noted and corrected by MassHealth in the week prior to the hearing through the issuance of a new notice to the appellant. The MassHealth caseworker submitted a corrected PPA calculation in his pre-hearing submission (see Exhibit 6). His calculations of the appellant’s PPA are as follows: Social Security Income of \$228.00 plus pension income of \$2,629.19 for a total countable income of \$2,857.19, less the Personal Needs Allowance of \$72.80, a Spousal Maintenance Needs Deduction of \$338.34, and health insurance premium of \$156.43, equivalent to a PPA of \$2,289.62. However, the caseworker erred in assigning a spousal maintenance needs allowance to the appellant, as the appellant’s husband is not a community spouse.


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.

Amy B. Kullar, Esq.
Hearing Officer
Board of Hearings


cc: Dori Mathieu, Appeals Coordinator, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104