

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2415263
Decision Date:	11/4/2024	Hearing Date:	10/30/2024
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:

[Redacted] (community spouse)

Appearance for MassHealth:

Lori VanZile



*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>	Denied	<b>Issue:</b>	MMMNA
<b>Decision Date:</b>	11/4/2024	<b>Hearing Date:</b>	10/30/2024
<b>MassHealth's Rep.:</b>	Lori VanZile	<b>Appellant's Rep.:</b>	Community Spouse
<b>Hearing Location:</b>	All Parties Appeared by Telephone	<b>Aid Pending:</b>	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 September 26, 2024 MassHealth notified the appellant that they are eligible for MassHealth Standard benefits to cover care in a nursing facility and will owe the nursing facility \$5,817.14 each month starting May 1, 2024. (Exhibit 1). The appellant's community spouse and attorney-in-fact filed a timely appeal on October 4, 2024. (130 CMR 610.015(B); Exhibit 2; Exhibit 3). An agency determination regarding the scope and amount of assistance is valid grounds for appeal. (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth determined that the appellant is eligible for MassHealth Standard benefits to cover care in a nursing facility and will owe the nursing facility \$5,817.14 each month beginning May 1, 2024. (130 CMR 520.025; 130 CMR 520.026).

### Issue

Whether MassHealth was correct in calculating the appellant's patient paid amount and if the community spouse qualifies for an adjustment to the minimum monthly maintenance needs allowance (MMMNA) due to exceptional circumstances.

## Summary of Evidence

All parties appeared by telephone. Documents presented by MassHealth were incorporated into the hearing record as Exhibit 5. Documents presented by the appellant were incorporated into the hearing record as Exhibit 6. MassHealth determined the appellant eligible for MassHealth Standard benefits to cover care in a nursing facility as of May 1, 2024 with a patient paid amount (PPA) of \$5,817.14.60 each month.

MassHealth calculated the PPA of \$5,817.14 based upon the income of the appellant and a spouse who resides in the community [herein referred to as “the community spouse”]. (Testimony; Exhibit 5). Records presented by MassHealth indicate that the community spouse has a monthly gross income of \$9,760.93 that includes \$2,738.70 from the Social Security Administration, a monthly pension of \$293, and earnings of \$6,729.23. (Exhibit 5).

The appellant has a monthly gross income of \$6,368.44 that includes \$1,262.70 from the Social Security Administration and a monthly pension of \$5,105.74. In calculating the patient paid amount, MassHealth deducted a personal needs allowance of \$72.80 and a monthly insurance premium of \$195. MassHealth did not include any other deductions in calculating a PPA such as a spousal maintenance needs allowance (SMNA) as the income of the community spouse exceeds the SMNA calculated by the agency.

In calculating a SMNA, MassHealth considered the following shelter expenses of the community spouse: a monthly mortgage payment of \$2,622; taxes and insurance of \$896; and a standard utility allowance of \$860. Using the regulatory formula, MassHealth then deducted a standard shelter expense of \$739.50 which resulted in countable shelter expenses of \$3,638.50  $[(\$2,622 + \$896 + 860) - \$739.50 = \$3,638.50]$ . The addition of the federal maintenance needs allowance of \$2,465 resulted in a Minimum Monthly Maintenance Needs Allowance (MMMNA) of \$6,103.50 for the community spouse  $[\$3,638.50 + \$2,465.00 = \$6,103.50]$ . As the community spouse’s income of \$3,533.95 exceeds this amount, MassHealth did not include a SMNA in calculating the patient paid amount.

Documents submitted by the community spouse include a list of expenses such as utility bills, credit card payments, life insurance premiums, homeowners insurance, car loan payments, car insurance, telephone bills, costs associated with food, and incidentals. The community spouse states that these monthly expenses total \$8,426. Bills presented by the community spouse coincide with some of the expenses listed by the community spouse. The community spouse did not present any medical or other records regarding an ongoing diagnoses, condition, frailty or special need that would require them to receive services or assistance in the community.

## **Findings of Fact**

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

1. MassHealth received an application for long-term care and approved the appellant for coverage as of the date requested.
2. The appellant has a monthly gross income of \$6,368.44 that includes \$1,262.70 from the Social Security Administration and a monthly pension of \$5,105.74.
3. The community spouse has a monthly gross income of \$9,760.93 that includes \$2,738.70 from the Social Security Administration, a monthly pension of \$293, and earnings of \$6,729.23.
4. In calculating the patient paid amount, MassHealth deducted a personal needs allowance of \$72.80 and a monthly insurance premium of \$195.
5. MassHealth did not make a deduction for a spousal maintenance needs allowance (SMNA).
6. In calculating a SMNA, MassHealth considered the following shelter expenses of the community spouse:
  - a. a monthly mortgage payment of \$2,622;
  - b. taxes and insurance of \$896; and
  - c. a standard utility allowance of \$860
7. Using the regulatory standard shelter expense of \$739.50, the community spouse has countable shelter expenses of \$3,638.50.
8. Utilizing a federal maintenance needs allowance of \$2,465, the community spouse has a Minimum Monthly Maintenance Needs Allowance of \$6,103.50.
9. The regulatory MMMNA at the time of the hearing is \$3,853.50.
10. The community spouse did not present any medical or other records regarding an ongoing diagnoses, condition, frailty or special need that would require them to receive services or assistance in the community.

## **Analysis and Conclusions of Law**

MassHealth administers and is responsible for the delivery of health-care services to MassHealth members. (130 CMR 515.002). The regulations governing MassHealth at 130 CMR

515.000 through 522.000 (referred to as Volume II) provide the requirements for noninstitutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by M.G.L. c. 118E, and certain Medicare beneficiaries. (130 CMR 515.002). The appellant in this case is an institutionalized person. Therefore, the regulations at 130 CMR 515.000 through 522.000 apply to this case. (130 CMR 515.002).

The appellant's spouse is seeking an adjustment to the minimum monthly maintenance needs allowance (MMMNA) as they are having difficulty in making payments to the long-term care facility for the appellant's care.

In determining the monthly patient-paid amount, general income deductions must be taken in the following order: a personal-needs allowance; a spousal-maintenance-needs allowance; a family-maintenance-needs allowance for qualified family members; a home-maintenance allowance; and health-care coverage and incurred medical and remedial-care expenses. (130 CMR 520.026).

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) as determined by MassHealth, the agency may deduct an amount from the institutionalized spouse's countable-income amount to meet this need. (130 CMR 520.026(B)). This amount is the spousal-maintenance-needs deduction. (130 CMR 520.026(B)). This deduction 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. (130 CMR 520.026(B)). This deduction is the amount by which the minimum-monthly-maintenance-needs allowance exceeds the community spouse's gross income. (130 CMR 520.026(B)). The minimum-monthly maintenance-needs allowance (MMMNA) 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)).

Pursuant to 130 CMR 520.026(B)(1), MassHealth determines the MMMNA by adding the following amounts:

- (a) \$2,555 (the federal standard maintenance allowance)<sup>1</sup>; and
- (b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$766.50<sup>2</sup> and the shelter expenses for the community spouse's principal residence, including:

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<sup>1</sup> This amount differs from the amount utilized by MassHealth as the figures were adjusted as of July 1, 2024. This change does not impact the decision.

<sup>2</sup> This amount differs from the amount utilized by MassHealth as the figures were adjusted as of July 1, 2024. This change does not impact the decision

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 (SNAP) for utility expenses. If heat is included in the rent or condominium fee, this amount is \$542. If heat is not included in the rent or condominium fee, this amount is \$890.<sup>3</sup>

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). (130 CMR 520.028(B)(2)).

After an 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). (130 CMR 520.017(D)).

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. (130 CMR 520.017(D)(1)). 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. (130 CMR 520.017(D)(1)). Such necessities include, but are not limited to, special remedial and support services and extraordinary uncovered medical expenses. (130 CMR 520.017(D)(1)). 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)).

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. (130 CMR 520.017(D)(1)(a)). 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. (130 CMR 520.017(D)(1)(b)). 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(D)(1)(b)).

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<sup>3</sup> These amounts differ from those utilized by MassHealth as the figures were adjusted as of July 1, 2024. These changes do not impact the decision.

The documents and testimony presented by the community spouse at hearing involved expenses that were considered by the agency in calculating the MMMNA. The community spouse did not provide evidence of any special remedial and support services or extraordinary uncovered medical expenses that arose from a medical condition, frailty or similar special needs of the community spouse. Even taking into consideration a payment for a home equity line of credit in the amount of \$500, which the agency did not consider in the figures they used, this small amount would not change the MMMNA in a manner that would allow the agency or the Board of Hearings to allow for a deduction of a SMNA. While the figures presented by MassHealth in calculating the MMMNA were not consistent with those that went into effect as of July 1, 2024, these small modifications do not impact this decision.

This appeal is denied as MassHealth was correct in calculating the PPA and the community spouse did not present evidence to demonstrate that exceptional circumstances exist to allow the Board of Hearings to adjust the MMMNA. (130 CMR 520.017(D)(1)).

## **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.

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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

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MassHealth Representative: Quincy MEC, Attn: Appeals Coordinator, 100 Hancock Street, 6th Floor, Quincy, MA 02171