

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2417637
Decision Date:	12/19/2024	Hearing Date:	12/10/2024
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:

Via telephone:

Pro se

Appearance for MassHealth:

Via telephone:

Jamie Lapa, Springfield MEC

Interpreter:



*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; PPA; SMNA; MMMNA
Decision Date:	12/19/2024	Hearing Date:	12/10/2024
MassHealth's Rep.:	Jamie Lapa	Appellant's Rep.:	Pro se
Hearing Location:	Springfield 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 November 4, 2024, MassHealth informed the appellant that his Patient Paid Amount (PPA) would change from \$1,043.90 to \$869.20 because of a change in circumstances (Exhibit 1). The appellant filed this appeal in a timely manner on November 15, 2024 (130 CMR 610.015(B) and Exhibit 2). A change in PPA is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth recalculated the appellant's Patient Paid Amount (PPA) from \$1,043.90 to \$869.20.

Issue

The appeal issue is whether MassHealth was correct in determining the appellant's PPA.

Summary of Evidence

The MassHealth representative appeared at hearing via telephone and testified as follows: on June 26, 2024, MassHealth received an application for long-term care on behalf of the appellant, who is over the age of 65 and a resident of a nursing facility with a spouse in the community. He has Social Security income of \$801.00 and a pension of \$141.00 for a total monthly income of \$942.00. MassHealth deducted the appellant's Personal Needs Allowance (PNA) of \$72.80 resulting in a PPA of \$869.20. This PPA adjustment went back to April 2024, the appellant's MassHealth requested start date. The appellant's community spouse was not entitled to a Spousal Maintenance Needs Allowance (SMNA) because her income was too high. The spouse has Social Security income of \$400 and working income of \$3,210.57 for a total monthly income of \$3,610.57, which is greater than the Minimum Monthly Maintenance Needs Allowance (MMMNA) of \$3,030.50 calculated by MassHealth.

The MMMNA was calculated as follows: \$700 (rent) + \$542 (food stamp allowance when heat is included because MassHealth did not receive any documentation that the appellant or his wife pay for utilities separately)¹ = \$1,242 (total shelter expenses) – \$766.50 (standard deduction for Community Spouse Monthly Housing Allowance) + \$2,555 (Standard Maintenance Allowance) = \$3,030.50 (MMMNA).² The appellant did not provide any additional documentation for MassHealth to consider, despite the opportunity to do so after the first appeal in November 2024. Because the community spouse's income is greater than the MMMNA, there was no spousal allowance for her. Based on the appellant's testimony that he pays for heating, electricity, and all utilities, MassHealth recalculated the MMMNA, but the community spouse's income was still too high to qualify for an SMNA.

The appellant testified via telephone, with the aid of an Albanian interpreter, that he needs more money for rent, food, and other items. The appellant stated his landlord is charging below market rent for his apartment because he knows he does not have a lot of money and if he raises the rent his wife will not be able to afford to stay in her home. The appellant argued that his wife is in her [REDACTED] and still has to work so she can pay the rent and feed him Albanian food because he does not eat what is served in the facility. The appellant's daughter also drives 50 miles each way, two times a day to feed him the food she and his wife make for him. His wife

¹ The appellant had an earlier appeal with the Board of Hearings (#2415305) on November 4, 2024 disputing a change in PPA from \$869.90 to \$1,043.90. At hearing, MassHealth acknowledged there was an error in the PPA and corrected it to \$869.20 and the appeal was dismissed as to the PPA. The appellant raised the issue of his potential eligibility for SMNA and the appeal was remanded for MassHealth to redetermine if the appellant was eligible for an SMNA. MassHealth was ordered to send the appellant a request for all documentation needed to determine his eligibility for an SMNA. See Board of Hearings decision for appeal #2415305. MassHealth did not receive any additional documentation from the appellant.

² The standards used for the MMMNA and Community Spouse Monthly Housing Allowance were based on the 2024 SSI and Spousal Impoverishment Standards published on May 22, 2024 and in effect as of July 1, 2024. See <https://www.medicaid.gov/federal-policy-guidance/downloads/cib05222024.pdf>, last visited December 18, 2024.

has to pay her for gas and the food.

Findings of Fact

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

1. On June 26, 2024, MassHealth received an application for long-term care on behalf of the appellant, who is over the age of 65 and a resident of a nursing facility with a spouse in the community (Testimony and Exhibit 5).
2. On November 4, 2024, MassHealth notified the appellant that his PPA would change from \$1,043.90 to \$869.20 going back to April 2024 because of a change in circumstances (Testimony and Exhibit 1).
3. On November 15, 2024, the appellant timely appealed the notice (Exhibit 2).
4. The PPA was calculated as follows: \$801 (Social Security) + \$141 (pension) - \$72.80 (PNA) = \$869.20 (Testimony and Exhibits 1 and 5).
5. The community spouse's monthly income is \$3,610.57, comprised of \$400 from Social Security and \$3,210.57 from employment (Testimony and Exhibit 5).
6. The community spouse's MMMNA was calculated as follows: \$700 (rent) + \$542 (food stamp allowance when heat is included) = \$1,242 (total shelter expenses) - \$766.50 (standard deduction for Community Spouse Monthly Housing Allowance) + \$2,555 (Standard Maintenance Allowance) = \$3,030.50 (Testimony and Exhibit 5).
7. Because the community spouse's income was greater than the MMMNA, there was no SMNA (Testimony and Exhibit 5).
8. After a first hearing in November 2024 regarding his PPA, the appellant was given the opportunity to submit documentation regarding any additional expenses for MassHealth to consider regarding his eligibility for an SMNA. The appellant did not submit any additional information regarding other expenses; however, he testified that he pays for all utilities (Testimony).
9. MassHealth recalculated the MMMNA to reflect that the appellant pays for utilities, but the community spouse was still not eligible for an SMNA because her income exceeds her MMMNA (Testimony).

Analysis and Conclusions of Law

In determining a member's PPA, MassHealth regulations require that deductions be made from the member's income "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." See 130 CMR 520.026. The amount for the personal-needs allowance is set at \$72.80.

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 did not demonstrate that

the community spouse has any on-going expenses that arise from her medical condition, frailty, or other special need. The appellant has not met the criteria for exceptional circumstances.

MassHealth has correctly determined that the appellant's community spouse is not entitled to an SMNA and correctly calculated the appellant's PPA. Because the appellant has not shown that his community spouse's circumstances result in significant financial duress, exceptional circumstances do not exist and there should be no change to the community spouse's MMMNA or the appellant's PPA. (130 CMR 520.017(D)).

For these reasons, the appeal is 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.

Alexandra Shube
Hearing Officer
Board of Hearings

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104