

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in Part; Denied in Part	Appeal Number:	2417986
Decision Date:	3/7/2025	Hearing Date:	01/10/2025
Hearing Officer:	Scott Bernard	Record Open:	02/25/25 – 03/03/25

Appearances for Appellant:




Appearance for MassHealth:

Jernice Diaz (Taunton MEC) *via* telephone



*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; Denied in Part	Issue:	Long Term Care/Minimum Monthly Maintenance Needs Allowance (MMMNA)
Decision Date:	3/7/2025	Hearing Date:	01/10/2025
MassHealth's Rep.:	Jerice Diaz	Appellant's Reps.:	
Hearing Location:	Taunton MassHealth Enrollment Center	Aid Pending:	N/A

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

On October 23, 2024, MassHealth notified the institutionalized spouse that he had been determined eligible for MassHealth Standard for Long Term Care Services and that, effective July 1, 2024, he would be required to pay a patient-paid amount (PPA) of \$1,335.45 per month to the nursing facility. (See 130 CMR 520.026 and Exhibit (Ex.) 1). The appellant (the community spouse) filed a timely appeal disputing the PPA calculation on November 22, 2024. (See 130 CMR 610.015(8) and Ex. 2). Disputes regarding PPA calculations are valid grounds for appeal. (See 130 CMR 610.032).

In a letter dated November 22, 2024, the Board of Hearings informed the appellant that failure to submit certain documents within 10 days could result in the dismissal of the appeal. (Ex. 4). The appellant submitted the required documents on December 5, 2024, and the Board subsequently scheduled the present hearing. (Ex. 5; Ex. 6).

After the end of the hearing, the hearing officer opened the record on February 25, 2025 in order to request information from one of the appellant's attorneys. (Ex. 11). After receiving the appellant's attorney's response, the record closed on March 3, 2025. (Id.).

Action Taken by MassHealth

MassHealth calculated a PPA of \$1,335.45 for the institutionalized spouse to pay to the nursing facility each month.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.026, in calculating a PPA of \$1,335.45 for the institutionalized spouse to pay to the nursing facility each month; a second issue is whether exceptional circumstances exist, pursuant to 130 CMR 520.017(D), to allow for an increased spousal allowance for the appellant.

Summary of Evidence

At the hearing, MassHealth was represented by a benefits and eligibility specialist from the Taunton MassHealth Enrollment Center (MEC) and the appellant (the community spouse) was represented by her two attorneys. All parties attended the hearing by telephone.

The MassHealth representative testified to the following. The institutionalized spouse was admitted to the nursing facility in the early summer of 2024. (Testimony). On September 16, 2024, MassHealth received an application for MassHealth Standard for Individuals in need of Long Term Care services, requesting an eligibility start date of July 22, 2024. (Testimony). On October 23, 2024, MassHealth notified the institutionalized spouse that it had approved his application with the requested start date of July 22, 2024. (Testimony). MassHealth also informed the institutionalized spouse that beginning on July 1, 2024, he would be required to pay the nursing facility a monthly patient paid amount (PPA) of \$1,335.45 calculated in the following manner:

Countable Income	
Earned Income:	\$0.00
Social Security/Railroad Retirement:	\$1,902.80
Annuity:	\$0.00
Pension:	\$1,378.95
Veterans Pension:	\$0.00
Other:	\$0.00
Total Countable Income:	\$3,281.75
Allowances:	
Personal Needs Allowance:	\$72.80

Amount to Maintain Home:	\$0.00
[Spousal Maintenance Needs Deduction (SMND)]¹	\$1,581.52
Family Members In Home:	\$0.00
Medicare:	\$0.00
Other Health Insurance:	\$291.98
Guardianship Fees and Expenses:	\$0.00
Other Medical Expenses:	\$0.00
Total Allowances: -\$1,946.30	(Emphasis added). (Ex. 1; Ex. 9, pp. 21-22).

The issue at hand involves the amount of the SMND. The MassHealth representative provided a detailed breakdown of how she calculated the deduction. (Testimony; Ex. 9, pp. 2, 3). The original calculation, which was used in the notice under appeal, was calculated as follows:

Rent or Mortgage	\$207.74
Taxes and Insurance	+\$549.49
Condo Maintenance Fee	+\$0
Food Stamp Utility Allowance	+\$890.00
Total Shelter Expenses	\$1,647.23
Standard Shelter Expense	-\$766.50
If balance is less than zero, enter "0"	\$880.73
Federal Standard	+\$2,555.00
MMMNA	\$3,435.73
Enter MMMNA or \$3,853.50 whichever is less	\$3,435.73
Community Spouse's Gross Income	- \$1,854.21
SMND	\$1,581.52

(Emphases added). (Testimony; Ex. 9, p. 2).

This calculation did not include the cost of the appellant's homeowners insurance as part of the cost of the appellant's taxes and insurance and therefore it was not reflected in the calculation of the total shelter expenses, because MassHealth did not have that information at the time. (Testimony; Ex. 9, p. 2). Since issuing the notice under appeal, MassHealth has received verification of the appellant's homeowners insurance. (Testimony; Ex. 9). Based on this, the MassHealth representative stated that she has recalculated the SMND in the following manner:

Rent or Mortgage	\$207.74
Taxes and Insurance	+\$752.24
Condo Maintenance Fee	+\$0
Food Stamp Utility Allowance	+\$890.00
Total Shelter Expenses	\$1,849.98

¹ The notice actually lists this as "Spouse in the Home" but it has been changed here in order to clarify that this is the Spousal Maintenance Needs Deduction.

Standard Shelter Expense	-\$766.50
If balance is less than zero, enter "0"	\$1,083.48
Federal Standard	+\$2,555.00
MMMNA	\$3,638.48
Enter MMMNA or \$3853.50 whichever is less	\$3,638.48
Community Spouse's Gross Income	- \$1,854.21
SMND	\$1,784.27

(Emphases added). (Testimony; Ex. 9, p. 3).

The MassHealth representative stated that the increase in the SMND would result in a lower PPA but she had not yet implemented the adjustment because of this appeal. (Testimony; Ex. 9, p. 3).

The appellant, who is the community spouse, testified about her financial situation. The appellant highlighted her limited income from Social Security and a pension. (Testimony). She explained that she had significant debts, including an \$8,000 balance owed to the nursing home for her spouse's PPA, as well as credit card liabilities and a \$29,000 equity line. (Testimony). She also described her ongoing health struggles, particularly cancer, which required frequent medical visits, special supplies, prescriptions, and treatments. (Testimony). She estimated her medical expenses at around \$430 per month. (Testimony). The appellant emphasized that these financial and health challenges created a substantial burden for her and affected her ability to meet her living expenses. (Testimony).

The appellant's attorney raised concerns about the debt the appellant was facing, including an \$8,000 debt to the nursing home and additional liabilities from credit cards and an equity line of \$29,000. (Testimony). The appellant's attorney explained that these debts were significant burdens for the appellant, especially considering her limited income from Social Security and pension, and her health condition, which required frequent hospital visits and ongoing medical expenses. (Testimony). The appellant's attorney also highlighted the extraordinary medical expenses that the appellant faced due to her cancer, including the costs of special medical supplies, prescriptions, and treatments. (Testimony). These were estimated at about \$430 per month. (Testimony). The appellant's attorney asked whether these medical expenses would affect the calculation of the SMND, and whether the \$29,000 equity line could be amortized as part of the expenses. (Testimony).

The discussion also included clarification on utility allowances and the method used to calculate shelter expenses. (Testimony). The MassHealth representative explained that the government standardizes these allowances, meaning that while utilities are accounted for, the actual utility expenses paid by the appellant would not affect the calculation. (Testimony).

Ultimately, the appellant's attorney asked for clarification on how the debts and extraordinary medical expenses would factor into the deduction and whether these adjustments could be made retroactively. (Testimony). The MassHealth representative answered that adjustments could be made retroactively to the start date but would need to follow the regulations for allowable

expenses. (Testimony).

At the conclusion of the hearing, the appellant's attorneys requested permission to submit documentation demonstrating that exceptional circumstances warranted the application of a higher MMMNA. (Testimony). Subsequently, later in the same day as the hearing, the attorneys emailed 77 pages of supporting documents. (Ex. 10).

In the cover letter, the appellant's attorneys asserted that the appellant had faced significant financial hardship since her spouse's admission to the nursing facility. (Ex. 10, pp. 1-2). They argued that, as the community spouse, the appellant's current Monthly Maintenance Needs Allowance (MMMNA) was insufficient to cover her essential health, family, and housing expenses. Consequently, they requested an increase in this allowance and additional protections to prevent further financial hardship. (Id.).

The attorneys enclosed documentation outlining the appellant's financial and other difficulties, including housing costs, medical expenses, and other debts, which amounted to approximately \$43,600. (Ex. 10, pp. 3-77). Specifically, the appellant, diagnosed with colon cancer in 2016, experienced severe pain, difficulty with defecation, depression, and a significant reduction in quality of life. (Ex. 10, pp. 1-2, 10-11, 52-56). The appellant has been unable to work due to these symptoms, and has only been receiving Social Security disability benefits. (Ex. 10, pp. 1-2, 50-51). Since September 2023, she had been hospitalized five times due to complications from both her cancer and radiation treatments. (Ex. 10, pp. 1-2).

Included in the documentation were receipts for monthly prescription medications, medical devices, medical insurance, and annual eye doctor appointments, totaling around \$435 per month. (Ex. 10, pp. 57-59, 61-62). In addition to these medical expenses, the appellant faced several other significant debts: \$8,014 owed to the nursing home (her spouse's PPA), \$3,448 owed to [REDACTED], [REDACTED]², \$3,415 owed to [REDACTED], and \$28,754.32 (total) owed on her home equity line of credit. (Ex. 10, pp. 1-2, 4, 5-9, 39, 65). Other ongoing expenses included \$583 per month for real estate taxes, \$348.87 per month for home equity line payments, and monthly utility bills for electricity, gas, telephone, and internet services. (Ex. 10, pp. 1-2, 12-23, 25-36, 41-43, 63, 65-75, 76-77).

The appellant's attorneys concluded that, given her serious medical condition and ongoing financial difficulties, the appellant was seeking fair consideration for adjustments to her MMMNA and additional protections to alleviate her financial burden. (Ex. 10, pp. 1-2).

² The hearing officer reopened the hearing record and emailed the appellant's attorneys on February 25, 2025, requesting clarification regarding the nature of this debt, since this credit card can be used for both human and veterinary medical expenses (Ex. 11, p. 3). On March 3, 2025, the appellant's attorneys replied, stating that the appellant had informed them she used the credit card to cover her pet's medical expenses (Ex. 11, p. 1).

Findings of Fact

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

1. The institutionalized spouse was admitted to the nursing facility in the early summer of 2024. (Testimony).
2. On September 16, 2024, MassHealth received an application for MassHealth Standard for Individuals in need of Long Term Care services, requesting an eligibility start date of July 22, 2024. (Testimony).
3. On October 23, 2024, MassHealth notified the institutionalized spouse that it had approved his application with the requested start date of July 22, 2024. (Testimony).
 - a. MassHealth also informed the institutionalized spouse that beginning on July 1, 2024, he would be required to pay the nursing facility a monthly PPA of \$1,335.45
 - b. MassHealth calculated the PPA in the following manner:
 - i. The appellant's monthly income was \$3,281.75;
 - ii. MassHealth then subtracted allowances totaling \$1,946.30, which consisted of the following:
 1. PNA: \$72.80;
 2. Other Health Insurance: \$291.98;
 3. SMND: \$1,581.52, which MassHealth calculated in the following manner:
 - a. Total Shelter Expenses: \$1,647.23 =
 - i. Rent or Mortgage: \$207.74 +
 - ii. Taxes and Insurance: \$549.49 +
 - iii. Condo Maintenance Fee: \$0+
 - iv. Food Stamp Utility Allowance: \$890.00
 - b. Subtract Standard Shelter Expense: $\$1,647.23 - \$766.50 = \$880.73$
 - c. Add Federal Standard : $\$880.73 + \$2,555.00 = \$3,435.73$;
 - d. Use the lesser of either \$3,853.50 or $\$3,435.76 = \$3,435.73$ (MMMNA);

- e. Subtract the Community Spouse's Gross Income from the MMMNA:
 $\$3,435.73 - \$1,854.21 =$
 - f. SMND: \$1,581.52. (Testimony; Ex. 9, p. 2).
4. This calculation did not include the cost of the appellant's homeowners insurance as part of the cost of the appellant's taxes and insurance and therefore it was not reflected in the calculation of the total shelter expenses, because MassHealth did not have that information at the time. (Testimony; Ex. 9, p. 2).
5. Since issuing the notice under appeal, MassHealth has received verification of the appellant's homeowners insurance. (Testimony; Ex. 9).
6. Based on this, the MassHealth representative stated that she has recalculated the SMND in the following manner:
 - a. Total Shelter Expenses: \$1,849.98 =
 - i. Rent or Mortgage: \$207.74 +
 - ii. Taxes and Insurance: \$752.24 +
 - iii. Condo Maintenance Fee: \$0 +
 - iv. Food Stamp Utility Allowance: \$890.00 =
 - b. Subtract Standard Shelter Expense: $\$1,849.98 - \$766.50 = \$1,083.48$
 - c. Add Federal Standard: $\$1,083.48 + \$2,555.00 = \$3,638.48$
 - d. Use the lesser of either \$3,853.50 or \$3,435.76: $= \$3,638.48$ (MMMNA)
 - e. Subtract the Community Spouse's Gross Income from the MMMNA: $\$3,638.48 - \$1,854.21 =$
 - f. SMND: \$1,784.27. (Testimony; Ex. 9, p. 2).
7. The appellant's attorneys asserted that the appellant had exceptional circumstances resulting from financial duress arising from her medical condition. (Testimony).
8. The appellant's attorneys submitted the following documentation:
 - a. Receipts for monthly prescription medications, medical devices, medical insurance, and annual eye doctor appointments, totaling around \$435 per month. (Ex. 10, pp. 57-59, 61-62). In

- b. Other significant debts: \$8,014 owed to the nursing home (her spouse's PPA), \$3,448 owed to [REDACTED], \$3,415 owed to Bank of America, and \$28,754.32 (total) owed on her home equity line of credit. (Ex. 10, pp. 1-2, 4, 5-9, 39, 65).
- c. Other ongoing expenses included \$583 per month for real estate taxes, \$348.87 per month for home equity line payments, and monthly utility bills for electricity, gas, telephone, and internet services. (Ex. 10, pp. 1-2, 12-23, 25-36, 41-43, 63, 65-75, 76-77).

Analysis and Conclusions of Law

MassHealth calculates the Minimum Monthly Maintenance Needs Allowance (MMMNA) to determine the amount a community spouse requires to live in the community. (130 CMR 520.026(B).) "If the community spouse's gross income is less than the [MMMNA] . . . MassHealth . . . may deduct an amount from the institutionalized spouse's countable-income amount to meet this need." (*Id.*) This amount is referred to as the spousal-maintenance-needs deduction (SMND). (*Id.*). MassHealth uses the following procedure in order to determine the SMND:

(1) The MassHealth agency determines the MMMNA by adding the following amounts:

- (a) \$[2,555.00]³ (the federal standard maintenance allowance); and
- (b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$[766.50] and the shelter expenses for the community spouse's principal residence, including
 - (i) 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
 - (ii) the applicable standard deduction under the Supplemental Nutrition Assistance Program for utility expenses...If heat is not included in the rent or condominium fee, this amount is \$[890.00].

(2) 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).** (Emphasis added). (*Id.*).

³ The numerical amounts listed in the regulations change on roughly an annual basis. The numbers in the brackets reflect the most current numbers as of the date of the hearing. (See [https://www.mass.gov/info-details/program-financial-guidelines-for-certain-masshealth-applicants-and-members#figures-used-to-determine-minimum-monthly-maintenance-needs-allowance-\(mmmna\)-](https://www.mass.gov/info-details/program-financial-guidelines-for-certain-masshealth-applicants-and-members#figures-used-to-determine-minimum-monthly-maintenance-needs-allowance-(mmmna)-)).

Pursuant to 130 CMR 520.017(D), after an applicant receives notice from MassHealth of his or her denial or approval for MassHealth Standard benefits, either the applicant or the community spouse may submit an appeal to the Board of Hearings, requesting an increase of the community spouse's MMMNA based upon exceptional circumstances, defined as follows:

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 ensures 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 reviews the housing agreement, service plan, fee schedule, and other pertinent documents to determine whether exceptional circumstances exist. 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. (Emphases added). (130 CMR 520.017(D)(1)).

After reviewing the evidence presented at the hearing and considering the applicable regulations, the following decision is made based on a preponderance of the evidence and the law. The testimony and documentation provided by the MassHealth representative indicate that MassHealth initially omitted the appellant's homeowners insurance in the calculation of shelter expenses, which impacted the SMND. Once MassHealth received verification of the appellant's homeowners insurance, the SMND was recalculated, resulting in an increased deduction of \$1,784.27, which is more favorable to the appellant than the initial deduction of \$1,581.52. The recalculated SMND reflects updated shelter expenses, including the appellant's homeowners insurance, and will ultimately reduce the institutionalized spouse's PPA once implemented. This adjustment aligns with MassHealth policies and regulations and should be implemented retroactively.

The appellant and her attorneys argued that exceptional circumstances justify an increase in the appellant's MMMNA due to her limited income, significant debts, and medical costs arising from her cancer diagnosis. Under 130 CMR 520.017(D), an increase in the MMMNA may be warranted if significant financial distress is caused by the community spouse's medical condition, frailty, or special needs. The appellant submitted documentation of her medical condition, including cancer and associated treatment costs, hospitalizations, and prescriptions. Health insurance premiums are not medical costs arising out of an individual's medical condition and are not considered in an exceptional circumstances determination. Further, the appellant's real estate taxes and the standard utility allowance were already used in calculating the appellant's MMMNA and will not be counted twice. The institutional spouse's PPA to the nursing facility was calculated according to his income and the balance of such PPA that he owes to the nursing facility would never be considered in determining exceptional circumstances as that calculation is the whole issue on appeal. The credit card and equity line debt are not expenses arising out of the frailty or medical condition of the community spouse and thus are not considered in an exceptional circumstances calculation. Although the appellant has monthly medical expenses, they do not qualify as extraordinary expenses resulting in financial duress under 130 CMR 520.017(D). The appellant's other debt might be causing financial duress, however the regulation only allows for extraordinary medical expenses to be considered. Therefore, the appellant has not presented sufficient evidence to justify an increase in the MMMNA based on exceptional circumstances.

For the above reasons, this appeal is APPROVED IN PART and DENIED IN PART.

Order for MassHealth

Adjust the institutionalized spouse's PPA by implementing the recalculated SMND of \$1,784.27 retroactive to July 1, 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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

[REDACTED]

[REDACTED]

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