

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2418525
Decision Date:	02/25/2025	Hearing Date:	01/10/2025
Hearing Officer:	Christopher Jones		

Appearances for Appellant:




Appearance for MassHealth:

Lynn Bloomquist



*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	Issue:	LTC; MMMNA
Decision Date:	02/25/2025	Hearing Date:	01/10/2025
MassHealth's Rep.:	Lynn Bloomquist	Appellant's Reps.:	
Hearing Location:	Telephonic	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 20, 2024, MassHealth approved the appellant's application for long-term-care and set a patient-paid amount of \$2,912.64. (Exhibit 1.) The appellant filed this appeal in a timely manner on December 4, 2024. (Exhibit 1; 130 CMR 610.015(B).) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth approved the appellant's long-term-care benefits and set the patient paid amount at \$2,912.64.

Issue

The appeal issues is whether the appellant's community spouse is entitled to an increase in the spousal-maintenance-needs deduction through a revision to the minimum-monthly-maintenance-needs allowance based upon exceptional circumstances under 130 CMR 520.017(D).

Summary of Evidence

On November 20, 2024, MassHealth approved the appellant for long-term-care benefits starting August 16, 2024. The appellant's patient-paid amount was set at \$2,912.64. MassHealth used the

institutionalized spouse's total income, subtracted a personal-needs allowance of \$72.80, and private health insurance premiums of \$195.96. The parties stipulated that the appellant receives total monthly income of \$3,181.00, including \$2,167.00 from Social Security benefits and \$1,014.00 from a pension. The community spouse receives total monthly income of \$5,370.27, including \$4,062.57 from an annuity and \$1,307.70 from Social Security. The parties also stipulated that the community spouse retained \$139,000 in assets.

The appellant submitted a doctor's letter detailing that the community spouse has multiple significant medical conditions, including dementia and impaired cognition, requiring that she reside in an assisted living facility. The community spouse resides in a memory care assisted living facility, for which she pays \$8,885.00 each month. This rent includes all of the community spouse's living necessities and basic personal care services. The community spouse is often charged an additional \$1,500 per month for "Personal Care Support II," an enhanced amount of personal assistance. The appellant's daughter also submitted an affidavit stating that the community spouse's base payment for the facility will increase to \$9,330.00.

The appellant's attorney testified that the community spouse's monthly expenses at the assisted living facility exceeds the income of both spouses. This will quickly deplete the community spouse's assets, causing financial distress. During the hearing, it was noted that the national average for money market yields was 0.4%, and the highest average deposit yield for a term less than two-and-a-half years was 1.72%.

Findings of Fact

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

- 1) Through a notice dated November 20, 2024, the institutionalized spouse was approved for long-term-care services as of August 16, 2024, with a PPA of \$2,912.64. (Exhibits 1; 4.)
- 2) The institutionalized spouse's gross monthly income was \$3,181.00, including \$2,167.00 from Social Security benefits and \$1,014.00 from a pension. The community spouse receives gross monthly income of \$5,370.27, including \$4,062.57 from an annuity and \$1,307.70 from Social Security. (Exhibit 4.)
- 3) The community spouse's dementia and impaired cognition require that she reside in an assisted living community. (Exhibit 3, pp. 5, 7.)
- 4) The community spouse's base monthly fee at the assisted living facility is \$8,885 per month. The assisted living facility fee covers all of her basic necessities and personal care assistance. The community spouse is often charged \$1,500 for additional personal care services. (Exhibit 3, pp. 5-13.)

- 5) The community spouse has \$139,000 in assets. (Testimony by the appellant's attorney and MassHealth's representative.)
- 6) The Bank Rate national average on money market accounts on the day of the hearing was 0.4%. The highest average certificate of deposit rate on a term not exceeding 2.5 years was 1.72%. (Administrative notice; testimony by the appellant's attorney.)

Analysis and Conclusions of Law

To determine 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." (130 CMR 520.026.) The amount for the personal-needs allowance is set at \$72.80. (*Id.*)

If the community spouse's income is insufficient to meet their monthly expenses, the spousal maintenance needs deduction ("SMND") allows the community spouse to keep some of the institutionalized spouse's income to pay for necessities. The SMND "is the amount by which the minimum-monthly-maintenance-needs allowance exceeds the community spouse's gross income." (130 CMR 520.026(B).)

Calculating the SMND – 130 CMR 520.026(B)

The minimum-monthly-maintenance-needs allowance ("minimum-MMNA") is defined as "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, in accordance with 130 CMR 520.026(B)(1)." (130 CMR 520.017(B).) If the community spouse's gross income is less than the minimum-MMNA, MassHealth "may deduct an amount from the institutionalized spouse's countable-income amount to meet this need." This deduction is the SMND. It is calculated by subtracting the community spouse's gross income from the relevant monthly-maintenance-needs allowance. (130 CMR 520.026(B).)

(1) The MassHealth agency determines the [minimum-]MMNA by adding the following amounts:

(a) \$[2,555.00¹] (the federal standard maintenance allowance); and

¹ The adjusted numbers inserted into this quotation are applicable as of July 1, 2024. (See Centers for Medicare & Medicaid ("CMS") Informational Bulletin from May 22, 2024, available at <https://www.medicare.gov/federal-policy-guidance/downloads/cib05222024.pdf>; "Helpful Charts and Figures—SNAP," available at <https://eohhs.ehs.state.ma.us/DTA/PolicyOnline/olg%20docs/guides/Helpful%20Charts%20and%20Figures.pdf> (last visited February 4, 2025).)

(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

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 for utility expenses. If heat is included in the rent or condominium fee, this amount is \$[520]. If heat is not included in the rent or condominium fee, this amount is \$[852].

(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).**

(3) If the institutionalized individual is subject to a court order for the support of the community spouse, the court-ordered amount of support must be used as the spousal-maintenance needs deduction when it exceeds the spousal-maintenance-needs deduction calculated according to 130 CMR 520.026(B) or resulting from a fair hearing.

(130 CMR 520.026(B) (emphasis added).)

As the community spouse's income is greater than the maximum-MMNA, MassHealth correctly calculated the appellant's PPA to be \$2,912.64 based upon the institutionalized spouse's total income of \$3,181.00 and allowing deductions only for the PNA and health insurance.

Increasing the SMND Beyond the Maximum-MMNA

Exceptional Circumstances

The SMND may only be increased above what is calculated using the maximum-MMNA following a fair hearing. (130 CMR 520.026(B)(2); 130 CMR 520.017(D).) Such an increase requires finding "exception circumstances" resulting in "significant financial duress." (130 CMR 520.017(D)(1).) Exceptional circumstances must be

circumstances other than those already taken into account in establishing the maintenance standards for the community spouse under 130 CMR 520.026(B) **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.

(130 CMR 520.017(D)(1) (emphasis added).)

A fair hearing officer must ensure “that no expense (for example, for food or utilities) is counted more than once in the calculation” and if “the community spouse lives in an assisted-living facility or similar facility ... the fair-hearing officer reviews the ... 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.” (130 CMR 520.017(D)(1)(a)-(b).)

The appellant has established that exceptional circumstances exist. The appellant’s attorney submitted documentation from the community spouse’s physician which demonstrates that she requires the type of supportive environment provided by the assisted living facility. The community spouse’s monthly income is significantly below her medically necessary living expenses. Therefore, I find that the community spouse’s exceptional circumstances pose “significant financial duress.”

Amount of Increase for Exceptional Circumstances

The monthly-maintenance-needs allowance may be increased “to meet the expenses caused by the exceptional circumstances as follows.”

(a) The fair-hearing officer first verifies 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.**

(b) The fair-hearing officer determines the revised MMMNA by including in the calculation the **amount needed to meet the exceptional circumstances.**

(c) The fair-hearing officer compares 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 **first deducts 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)(2) (emphasis added).)

The “income generated by the community spouse’s asset allowance” is

the amount of the income that would be generated by the 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 2½ years.

(130 CMR 520.017(C)(1).)

Given the community spouse's exceptional care needs, her monthly-maintenance-needs allowance may be increased to cover the necessities that arise from her medical condition. Per 130 CMR 520.017(D)(2)(b), the revised MMNA should be adjusted based upon the community spouse's actual expenses.

The community spouse's base rent of \$8,885 includes all expenses typically contemplated in the federal financial standards, as well as some basic personal care services.² The community spouse's monthly income from her remaining assets would be \$188.23 (\$40 per year or \$3.33 per month, from \$10,000 earning interest at 0.40%, the national average for money market accounts, and the remaining \$129,000 earning \$2,218.80 per year, or \$184.90 per month, at the highest national average CD rate not to exceed 2.5 years, 1.72%). The community spouse's income is therefore \$5,558.50 (\$5,370.27 + \$188.23). The community spouse's shortfall in income (the SMND) is \$3,326.50. Because the shortfall for the community spouse exceeds the institutionalized spouse's total monthly income (\$3,181), the community spouse is entitled to retain the institutionalized spouse's full monthly income after the PNA deduction.

Therefore, the revised patient paid amount is \$0.00, as of August 1, 2024. For these reasons this appeal is APPROVED.

Order for MassHealth

Calculate the community spouse's spousal maintenance needs allowance to be \$3,326.50 and redetermine the appellant's PPA to be \$0, as of August 1, 2024.

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

² The fact that the appellant must regularly pay \$1,500 for additional personal care services is ultimately irrelevant, as the base rent will consume all of the community and institutionalized spouse's incomes.

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.

Christopher Jones
Hearing Officer
Board of Hearings

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MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957