

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2503586
Decision Date:	5/20/2025	Hearing Date:	04/04/2025
Hearing Officer:	Susan Burgess-Cox	Record Open to:	04/18/2025

Appearance for Appellant:




Appearance for MassHealth:

Kelly Souza



*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:	Long-Term Care MMMNA
Decision Date:	5/20/2025	Hearing Date:	04/04/2025
MassHealth's Rep.:	Kelly Souza	Appellant's Rep.:	
Hearing Location:	All Parties Appeared by Telephone		

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 January 3, 2025, MassHealth notified the appellant that his patient paid amount will change from \$972.35 to \$918.55 as of January 1, 2025 due to a change in circumstances. (130 CMR 520.025; 130 CMR 520.026; Exhibit 1). The appellant's attorney-in-fact filed a timely appeal on March 4, 2025. (130 CMR 610.015(B); Exhibit 2; Exhibit 3). Based on the testimony and evidence presented at hearing, the record was held open to provide counsel for the appellant the opportunity to present additional evidence. This record open period extended the decision due date to June 16, 2025. (Exhibit 7).

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's patient paid amount will change from \$972.35 to \$918.55 on January 1, 2025. (130 CMR 520.025; 130 CMR 520.026).

Issue

Whether MassHealth was correct in calculating the appellant's patient paid amount.

Summary of Evidence

All parties appeared by telephone. Documents presented by MassHealth prior to the hearing are incorporated into the hearing record as Exhibit 5. Documents submitted by the appellant prior to the hearing are incorporated into the hearing record as Exhibit 6. The appellant is eligible for long-term care. The patient paid amount changed as of January 1, 2025 due to a change in circumstances.

The notice on appeal states that MassHealth calculated a patient paid amount of \$918.55 as of January 1, 2025 based on the income and expenses of the appellant and a spouse who resides in the community [herein referred to as "the community spouse"]. Records presented by MassHealth indicate that as of January 2025, the community spouse has a monthly gross income of \$1,912.00. (Exhibit 5).

As of January 1, 2025, MassHealth determined that the appellant has a monthly gross income of \$3,163.33 that included \$1,531.70 from the Social Security Administration and a monthly pension of \$1,631.63. (Exhibit 1). A hearing decision issued in February 2025, from a notice issued in September 2024 and a hearing date in December 2024, ordered MassHealth to increase the spousal maintenance needs allowance to \$2,780.18 which decreased the patient paid amount (PPA) to \$453.97. In that decision, the Board of Hearings adjusted the minimum monthly maintenance needs allowance (MMMNA) of the community spouse finding that she met the standard in determining that exceptional circumstances exist due to the need for services in an assisted living facility. That decision also notes \$40,000 remaining in assets that was used to afford assisted living and other expenses prior to the decision on appeal. At this hearing, counsel noted that the community spouse has spent down those assets to cover expenses incurred after the September 2024 agency decision.

At the hearing for this appeal, counsel noted that the facility's base rent increased and the community spouse's health has declined resulting in an overall increase in expenses. The net base rent payment is \$4,574.15. Counsel calculated additional out-of-pocket medical expenses such as: an increase in services at the facility to a care 2 level for an additional \$28 each day or \$851.67 each month¹; personal products of \$50 each month; medical alert pendant of \$18.75 each month; prescription costs of \$85 each month; dental and vision expenses of \$150 each month; and a Medicare premium of \$185. These expenditures result in a total monthly cost of

¹ This decision is using a rate of \$28 each day multiplied by 365 each year, divided by 12 months versus counsel's aggregate of \$5,442.15 based on a 31-day month period of \$28 each day [$\$4,574.15 + \$868 = \$5,442.15$]

\$5,914.57². The original hearing decision included all of the costs reflected above except the increase in medical services to a care 2 level. That increase is reflected in a December 2024 evaluation resulting in a daily increase to the facility of \$28. At this hearing, counsel did not present documentation to accurately reflect the change in the level of care. The record was held open to provide counsel with the opportunity to present additional evidence of this change. (Exhibit 8). Documents reflecting the change are incorporated into the hearing record as Exhibit 9.

The notice indicates that in calculating a patient paid amount, MassHealth considered additional expenses such as a personal needs allowance of \$72.80 and insurance costs of \$88.68. The notice lists a spousal maintenance needs allowance of \$2,083.30. In the brief submitted by counsel for the appellant, counsel uses a standard shelter expense of \$766.50 to reflect a shortfall of \$5,70.60.

Findings of Fact

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

1. The notice on appeal states that MassHealth calculated a patient paid amount of \$918.55 as of January 1, 2025.
2. As of January 2025, the community spouse has a gross monthly income of \$1,912 from the Social Security Administration.
3. As of January 2025, the appellant has a gross monthly income of \$3,163.33 that includes:
 - a. \$1,531.70 from the Social Security Administration; and
 - b. \$1,631.63 from a pension.
4. A hearing decision issued in February 2025 ordered MassHealth to increase the spousal maintenance needs allowance to \$2,780.18 which decreased the patient paid amount (PPA) to \$453.97.
5. The community spouse resides in an assisted living facility.

² Counsel provides a calculation of total monthly expenses of \$6,137.15 using the following figures: \$5,442.15 (aggregate assisted living costs) + \$50 (personal hygiene) + \$18.75 (pendant) + \$85 (prescriptions) + \$150 (dental) + \$185 (Medicare). Counsel calculates expenses of \$303.75 ($\$50 + \$18.75 + \$85 + \$150 = \303.75). That figure is correct. Counsel adds that number to a Medicare premium of \$185 and the aggregate of \$5,442.15 to come to a total of \$6,135.15. That figure is not correct as $\$185 + \$5,442.15 + \$303.75 = \$5,930.90$. It is not clear where the delta of \$206.25 figures into the calculations presented in the hearing submission. This decision will use the figures presented to Board of Hearings.

6. In the February 2025 decision, the Board of Hearings found that the community spouse met the standard in determining that exceptional circumstances exist to adjust the Minimum Monthly Maintenance Needs Allowance.
7. In January 2025, the assisted living facility's base rent increased.
8. In January 2025, the community spouse's health declined resulting in an increase in services to a care 2 level at the facility.
9. The care 2 level requires payments of \$28 each day or \$851.67 each month.
10. The net base rent payment is \$4,574.15.
11. The February 2025 hearing decision included the following out-of-pocket medical expenses in calculating the minimum monthly maintenance needs allowance:
 - a. personal products of \$50 each month;
 - b. medical alert pendant of \$18.75 each month;
 - c. prescription costs of \$85 each month;
 - d. dental and vision expenses of \$150 each month; and
 - e. a Medicare premium of \$185.
12. The community spouse has expenses totaling \$5,914.57.
13. In calculating a patient paid amount MassHealth considered a personal needs allowance of \$72.80 and the appellant's insurance premium of \$88.68.
14. The community spouse has spent down assets to cover costs associated with assisted living and other expenses.

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 she is residing in an assisted living facility.

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). In this case, the agency has already considered a personal needs allowance of \$72.80 and health care coverage of \$88.68. MassHealth also calculated a spousal-maintenance-needs allowance (SMNA) and that amount is in dispute.

If a community spouse's gross income is less than the amount he or she needs to live in the community (minimum-monthly-maintenance-needs allowance, MMMNA), as determined by MassHealth, MassHealth 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 allowance. (130 CMR 520.026(B)).

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

- (1) \$2,555 [the federal standard maintenance allowance as of January 1, 2025]; and
- (2) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$766.50 [as of January 1, 2025] and the shelter expenses for the community spouse's principal residence, including:
 - (a) 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
 - (b) the applicable standard deduction under the Food Stamp Program for utility expenses. If heat is included in the rent or condominium fee, this amount is \$542 [as of October 1, 2024]. If heat is not included in the rent or condominium fee, this amount is \$890 [as of October 1, 2024].

The maximum-monthly-maintenance-needs allowance is \$3,948 as of January 1, 2025. This amount can be increased as the result of a fair-hearing decision based on exceptional circumstances in accordance with 130 CMR 520.017(D). MassHealth allowed the maximum-monthly-maintenance-needs allowance for the community spouse.

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)).

In this case, a prior hearing decision found that exceptional circumstances exist to increase the MMMNA of the community spouse. At this hearing, counsel for the appellant presented a new service plan increasing the level of care and costs to the community spouse. In finding that exceptional circumstances exist, the MMMNA will increase to meet the expenses caused by those circumstances. (130 CMR 520.017(D)(2)(a)). In calculating this increase, the hearing officer must verify that the calculation of the gross income includes income generated by the community spouse's asset allowance. (130 CMR 520.017(D)(2)(a)). 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. (130 CMR 520.017(D)(2)(a)). At hearing it was noted that the community spouse no longer has assets that generate income from an asset allowance as the assets discussed at the prior appeal were utilized to cover expenses incurred after the September 2024 agency decision. MassHealth did not consider an asset allowance in this new eligibility decision. As noted above, at the prior appeal it was determined that the community spouse suffered severe financial distress even with the original asset allowance.

A revised MMMNA includes the amount needed to meet the exceptional circumstances. (130 CMR 520.017(D)(2)(b)). In this case, using the information presented by counsel for the appellant and the February 2025 hearing decision, the amount needed to meet the exceptional circumstances is \$5,914.57. The amount includes: \$4,574.15 [net base rent] + \$851.67 [care 2 level services] + \$50 [personal products] + \$18.75 [medical alert pendant] + \$85 [prescriptions]

+ \$150 [dental and vision] + \$185 [Medicare premium] = \$ 5,914.57. (130 CMR 520.017(D)(2)(b)). The regulations require the hearing officer to compare the revised MMMNA to the community spouse's total income. (130 CMR 520.017(D)(2)(c)). 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)(c)). In this case the MMMNA of \$5,914.57 exceeds the community spouse's gross income of \$1,912 by \$4,002.57 [$\$5,914.57 - \$1,912 = \$4,002.57$].

In looking at the appellant's income of \$3,163.33 and deducting a personal needs allowance of \$72.80 and health care coverage of \$88.68 for the appellant, the remaining \$3,001.85 in income is below the amount necessary for his spouse to live in the community. (130 CMR 520.017; 130 CMR 520.026).

This appeal is approved to allow MassHealth to include a spousal maintenance needs allowance of \$4,002.57 in calculating a patient paid amount. This deduction will result in a patient paid amount of \$0.

Order for MassHealth

Calculate a patient paid amount using a spousal maintenance needs allowance of \$4,002.57.

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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

cc:

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MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616