

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

Appeal Decision:	Approved in part; Denied in part	Appeal Number:	1800557
Decision Date:	2/28/18	Hearing Date:	February 5, 2018
Hearing Officer:	Stanley M. Kallianidis		

Appellant Representative:

MassHealth Representative:

Jennifer Carroll, Taunton



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th Floor
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Approved in part; Denied in part	Issue:	Increased spousal allowance
Decision Date:	2/28/18	Hearing Date:	February 5, 2018
MassHealth Rep.:	Jennifer Carroll	Appellant Rep.:	

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 15, 2017, MassHealth raised the appellant's patient paid amount (PPA) to \$1673.77 due to a change in circumstances (Exhibit 1). The appellant filed this appeal in a timely manner on December 4, 2017 (see 130 CMR 610.015 and Exhibit 1). A dispute over the amount of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth established the appellant's eligibility to September 1, 2017 and his PPA at \$1673.77.

Issues

Is the community spouse entitled to an increase in the spousal maintenance needs allowance, based on exceptional circumstances, as defined in 130 CMR 520.017(D)?

Is the appellant's Veterans pension non-countable as defined in 130 CMR 520.015(E)?

Is the appellant entitled to a deduction for retroactive uncovered medical expenses in accordance with 130 CMR 520.026(E) and CMS guidelines?

Summary of Evidence

The MassHealth representative testified that the appellant applied for MassHealth on November 3, 2017 and was approved effective September 1, 2017 (Exhibit 3). The community spouse's minimum monthly maintenance needs allowance (MMMNA) was calculated to be \$2722.00. This was based upon property taxes of \$519.00, insurance of \$146.00, and the standard of \$636.00 for utilities. Her excess shelter costs were \$692.00 as her expenses were over the \$609.00 standard. This \$692.00 was added to the federal standard maintenance allowance of \$2030.00, thus resulting in the MMMNA of \$2722.00 (Exhibit 4).

The community spouse's income totaled \$483.00 and was from Social Security benefits (Exhibit 4). The difference from the MMMNA of \$2722.00, \$2239.00, was the allowable spouse-in-home deduction (Exhibit 4). This figure, along with the standard \$72.80 personal needs allowance, and \$140.14 for health insurance, were deducted from the appellant's income of \$4125.71 resulting in a PPA of \$1673.77. The appellant's income consisted of a private pension of \$2570.46 and a disability Veterans pension of \$1555.25 (Exhibit 1).

The appellant's attorney testified that the community spouse cannot afford to pay her household bills along with the PPA of \$1673.77. According to her memo and attached exhibits, the community spouse has less than \$6000.00 in savings and is behind in the PPA that is owed. She indicated that the community spouse's heating oil deliveries in 49 days totaled \$1880.00 and that her other utilities total an additional \$260.00 monthly. Also, her property tax bill increased to \$562.00 monthly from \$519.00. The attorney noted the community spouse's monthly car and phone expenses of \$350.00, and her monthly health insurance costs of \$246.00. She also noted a dental procedure for the community spouse from the summer. According to what was submitted, the amount paid by the community spouse to her dentist in August 2017 totaled \$750.00 (Exhibit 4).

The attorney noted that the appellant has incurred ambulance bills not covered by insurance that were for travel to and from his dialysis treatment. The bills submitted

totaled \$695.00 and were all from the three-month retroactive period, with the exception of an April 2017 bill for \$86.00. Finally, the attorney questioned whether the appellant's disability Veterans pension of \$1555.25 should be considered countable income because it is not taxable and not required to be reported on a MassHealth application (Exhibit 4).

At the close of the hearing, the appellant's attorney submitted a Center for Medicare and Medicaid Services (CMS) memo dated February 22, 2011 to the then Secretary of Health and Human Services on the subject of uncovered retroactive medical expenses. According to the CMS ruling, MassHealth should be allowing a deduction from the PPA for uncovered medical expenses that were incurred in the three months prior to the eligibility date (Exhibit 5).

Findings of Fact

Based on a preponderance of the evidence, I find:

1. The appellant applied for MassHealth on November 3, 2017 and was approved effective September 1, 2017 (Exhibit 3).
2. The community spouse's minimum monthly maintenance needs allowance (MMMNA) was calculated to be \$2722.00. Her MMMNA was the total of her \$692.00 in excess shelter costs plus the federal standard maintenance allowance of \$2030.00 (Exhibit 4).
3. The community spouse's income totaled \$483.00 and was from Social Security benefits (Exhibit 4).
4. The standard \$72.80 personal needs allowance, along with \$140.14 for health insurance were deducted from the appellant's income of \$4125.71 resulting in a PPA of \$1673.77. The appellant's income consisted of a private pension of \$2570.46 and a disability Veterans pension of \$1555.25 (Exhibit 4).
5. The community spouse's heating oil deliveries in 49 days totaled \$1880.00. Her other utilities total an additional \$260.00 monthly (Exhibit 5).
6. The community spouse has monthly car and phone expenses of \$350.00, and monthly health insurance costs of \$246.00 (Exhibit 5).
7. The community spouse paid her dentist \$750.00 in August 2017 (Exhibit 5).
8. The appellant incurred \$695.00 in uncovered medical expenses prior to his eligibility date, \$609.00 which was incurred in the three month retroactive period (Exhibit 5).

9. The community spouse's property tax bill increased \$43.00 to \$562.00 monthly from \$519.00 (Exhibit 5).
10. According to the CMS, MassHealth should be allowing a deduction from the PPA for uncovered medical expenses that were incurred in the three months prior to the eligibility date (Exhibit 5).

Analysis and Conclusions of Law

130 CMR 520.017(D) allows for either spouse to appeal the calculation of income available to the community spouse and request an increase in the spousal maintenance needs allowance based on exceptional circumstances. Exceptional circumstances exist when there are circumstances other than those already taken into account in establishing the maintenance standard for the community spouse under 130 CMR 520.025(B) and these circumstances result in significant financial duress. Since the federal standards used in calculating the MMMNA cover such necessities such 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 housing 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.

Pursuant to 130 CMR 520.015(E), MassHealth considers the following Veterans benefits non-countable: aid and attendance benefits, and need-based income paid to Veterans from their respective municipalities.

Pursuant to 130 CMR 520.026(E), MassHealth allows a PPA deduction for incurred health insurance expenses not payable by a third party.

In the instant case, the community spouse is claiming that she cannot afford to pay for her monthly expenses and the appellant's PPA of \$1673.77. The PPA has an allowance for a spouse in the home, and such a spousal deduction is based upon the difference of the MMMNA and income of the community spouse. Here, MassHealth is allowing a MMMNA of \$2722.00, and based upon her income of \$483.00, the result is a spousal deduction of \$2239.00.

In order for an MMMNA increase request to be approved, it must be based upon "exceptional circumstances." This is defined as "those necessities that arise from the medical condition, frailty or similar special needs of the community spouse."

As a basis for her request for an increased MMMNA, the community spouse's attorney submitted a letter and exhibits attesting to the need for the increase. She also

documented that the community spouse's property tax bill increased \$43.00 to \$562.00 monthly from \$519.00. Finally she documented that the appellant incurred \$695.00 in uncovered medical expenses prior to his eligibility date, \$609.00 which was incurred in the three month retroactive period. According to the CMS, MassHealth should be allowing a deduction from the PPA for uncovered medical expenses that were incurred in the three months prior to the eligibility date. Based upon these findings, I conclude that the appellant's MMMNA should be increased \$43.00 to \$2765.00 and that the appellant is entitled to a \$609.00 incurred medical expense deduction in his first month's PPA.

With regard to the request to an MMMNA increase based upon exceptional circumstances, I conclude that there are no exceptional circumstances in this case. While the community spouse's heating oil deliveries in 49 days totaled \$1880.00, and her other utilities total an additional \$260.00 monthly, there has been no showing that her combined utility bills exceed the \$609.00 utility standard on an annualized basis. Also, while the community spouse has monthly car and phone expenses of \$350.00, these are not basic necessities contemplated by the above regulation. Also, her monthly health insurance costs of \$246.00 are routine medical expenses and her dental bill of \$750.00 was a payment without a date of service indicated. With no indication what this payment was for, the expense cannot be allowed in determining her necessary MMMNA.

Finally, the attorney questioned whether the appellant's disability Veterans Pension of \$1555.25 should be considered countable income because it is not taxable and not required to be reported on a MassHealth application. Notwithstanding any discrepancies in the application questions, the regulations are clear that a disability Veterans pension is not exempt income. Only aid and attendance and need-based municipality income are non-countable.

In conclusion, therefore, the community spouse is entitled to a revised MMMNA of \$2765.00, and the appellant is entitled to a one-month medical deduction of \$609.00.

The appeal is therefore approved in part and denied in part.

Order for MassHealth

Revise MMMNA to \$2765.00, and PPA to include one month deduction of \$609.00.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this notice, you should contact your local office. 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.

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.

Stanley M. Kallianidis
Hearing Officer
Board of Hearings

cc:

Taunton MEC