

Office of Medicaid BOARD OF HEARINGS

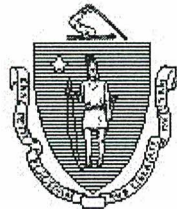
Appellant Name and Address:

Appeal Decision:	APPROVED	Appeal Number:	1802026
Decision Date:	6/5/18	Hearing Date:	02/15/2018
Hearing Officer:	Kenneth Brodzinski		

Appellant Representative:

MassHealth Representative:

Michelle Araujo – Taunton MEC



*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:	PPA
Decision Date:	6/5/18	Hearing Date:	02/15/2018
MassHealth Rep.:	Michelle Araujo	Appellant Rep.:	
Hearing Location:	Springfield MEC		

Authority

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

Jurisdiction

Through notice dated October 26, 2017, MassHealth notified Appellant that it would raise his Patient Paid Amount (“PPA”) effective October 1, 2017 (Exhibit A). Appellant filed this appeal in a timely manner on November 22, 2017 seeking an adjustment to the PPA (Exhibit A). Seeking an adjustment to MassHealth’s determination of the PPA constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth re-determined Appellant’s PPA effective October 1, 2017.

Issue

The appeal issue is whether Appellant is entitled to a further adjustment to the PPA effective October 1, 2017.

Summary of Evidence

The MassHealth representative testified that Appellant entered a skilled nursing facility in June of 2017 and filed an application for MassHealth Long Term Care benefits which was approved. The MassHealth representative submitted a packet of documents including a worksheet showing the calculation of the community spouse's (CS's) Minimum Monthly Maintenance Needs Allowance (MMMNA) as well as Appellant's Patient Paid Amount (PPA) (Exhibit B).

In reviewing the documentation and calculations set forth therein, the MassHealth representative testified that in 2017 MassHealth was awarded a Spousal Maintenance Needs Allowance (SMNA) for the community spouse of \$606.62 which was later increased to \$625.95 due to an increase in property taxes for 2018. The MassHealth representative explained that in calculating the MMMNA, no amount was entered under rental/mortgage. The MassHealth representative explained that she believed that the community spouse wanted the calculation to include a monthly payment made on a home equity line of credit that was taken in 2006 in the amount of \$310,000.00. The MassHealth representative testified that the agency does not include second mortgages or home equity lines of credit in the mortgage/rental portion of the Minimum Monthly Maintenance Needs Allowance (MMMNA) calculation.

Appellant was represented by his spouse who resides in the community (CS) and legal counsel. Appellant's representatives explained that the Appellant actually took out a reverse mortgage in 2006 and this was not the instrument at issue. Appellant's representatives explained that in 2003 a second mortgage was taken on the property and the CS makes a monthly payment of under \$125.74 on this second mortgage. Appellant's representative submitted a packet of documents (Exhibit C). Included in the documentation is a copy of instrument entitled "Mortgage ***This is a Feature Advance Mortgage****". According to the instrument "this MORTGAGE (*Security Instrument)" was given on September 29, 2003 and the "Mortgagor" is identified as Appellant and the CS. The security instrument is given to Aldenville Credit Union of Chicopee Massachusetts and in the amount of \$40,000.00 (Exhibit C).

Appellant's representatives argued that this is a mortgage a security backed by an interest in real property. They argued that the CMR regarding calculation of the PPA and the Spousal Maintenance Needs Allowance (SMNA) merely refers to "mortgage" which is not otherwise defined. Appellant's representatives maintain that this monthly expense should be factored into the CS's MMMNA as a mortgage/rental expense.

In response, the MassHealth representative testified that in calculating the PPA, MMMNA and SMNA MassHealth cannot use a home equity line of credit or second mortgage expense.

Appellant's representatives questioned the MassHealth representative as to whether the agency's position was based on a regulation, guideline or any written policy. The MassHealth representative testified that she spoke with two managers prior to the hearing and was told that home equity lines of credit cannot be used as mortgages. The MassHealth representative could not point to any written policy or guideline or regulation to support the agency's position.

A review of Appellant's documentation shows a copy of the subject "Mortgage"; a copy of a Tax Statement Form 1098 for Tax Year 2017 showing Mortgage interest paid and the outstanding mortgage principal; a copy of a Subordination Agreement whereby Aldenville Credit Union subordinated its "mortgage" to a later Home Equity Conversion Mortgage held by another financial institution that was taken in 2006 (collectively, Exhibit C).

Findings of Fact

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

1. Appellant entered a skilled nursing facility in June of 2017 and filed an application for MassHealth Long Term Care benefits which was approved.
2. In 2017 MassHealth was awarded a Spousal Maintenance Needs Allowance (SMNA) for the community spouse of \$606.62 which was later increased to \$625.95 due to an increase in property taxes for 2018.
3. In calculating the CS's MMMNA, MassHealth included no amount under rental/mortgage.
4. In 2003 Appellant and the CS took out a second mortgage on their home.
5. In 2006 Appellant and the CS took out a reverse mortgage on their home.
6. The CS makes a monthly payment of \$125.74 on the second mortgage.

Analysis and Conclusions of Law

Regulation 130 CMR 520.026(B)(1) states in pertinent part:

The MassHealth agency determines the MMMNA by adding the following amounts: (a) \$1,822 (the federal standard maintenance allowance); and (b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$547 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 \$375. If heat is not included in the rent or condominium fee, this amount is \$611.

The regulation uses the term "mortgage". I cannot find a definition of the word "mortgage" in the regulations. MassHealth has cited to no such definition. MassHealth has failed to cite to any statute, law, regulation, written guideline or written policy to support its position that only first mortgage expenses are allowed in the MMMNA calculation. The regulation contains no such restriction. Consequently, MassHealth's action in calculating Appellant's MMMNA without factoring in the monthly expense on the mortgage she took on her home in 2003 is unsupported by any authority and constitutes an arbitrary and capricious act.

For the foregoing reasons, the appeal is APPROVED.

Order for MassHealth

Recalculate the CS's MMMNA and Appellant's resulting PPA inserting \$125.74 under rental/mortgage in the MMMNA calculation back to October 2017 forward. Issue new notice.

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 the Enrollment Center gives you any problems with implementing 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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

cc: