

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

Appeal Decision:	Approved	Appeal Number:	1803632
Decision Date:	3/14/18	Hearing Date:	February 26, 2018
	Hearing Officer:	Stanley M. Kallianidis	

Appellant Representative:

MassHealth Representative:

Jernice Diaz, 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	Issue:	Increase of Spousal Allowance
Decision Date:	3/14/18	Hearing Date:	February 26, 2018
MassHealth Rep.:	Jernice Diaz		

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 December 18, 2017, MassHealth approved the appellant's request for MassHealth benefits as of September 27, 2017 and established a patient paid amount (PPA) of \$3073.50 (Exhibit 3). On January 9, 2018, the PPA increased to \$3112.60 due to increased income (Exhibit 1). The appellant filed this appeal in a timely manner on January 22, 2018 (see 130 CMR 610.015 and Exhibit 2). A PPA dispute is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the appellant's request for MassHealth benefits and established a patient paid amount (PPA) of \$3073.50.

Issue

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)?

Summary of Evidence

The MassHealth representative testified that MassHealth approved the appellant's request for MassHealth benefits as of September 27, 2017 and established a patient paid amount (PPA) of \$3073.50 (Exhibit 3). On January 9, 2018, the PPA increased to \$3112.60 due to increased income (Exhibit 1).

The MassHealth representative stated that a spouse-in-home deduction was not given in this case. The only deduction from the appellant's income of \$3146.30 was the \$72.80 personal needs allowance. The result was the PPA of \$3073.50 (Exhibit 1). There was no spouse-in-home deduction because there was no shortfall between the community spouse's maximum allowable minimum monthly maintenance needs allowance (MMMNA) of \$2320.49 and her pension income of \$2681.51. Her MMMNA calculation was based on the community spouse's property taxes and insurance minus a shelter standard, which was then added to the federal standard for living in the community. No mortgage allowance was given (Exhibit 3).

The community spouse submitted a copy of the appellant's pay stub showing a deduction of \$126.48 for health insurance from his income (Exhibit 5). She also submitted a copy of her mortgage statement which showed a monthly payment amount of \$1345.56 (Exhibit 6). Neither of these expenses had been previously considered by MassHealth in the appellant's PPA or the community spouse's MMMNA. The addition of the community spouse's mortgage to her MMMNA would result in an actual MMMNA of \$3666.05, which is above the capped amount of \$3022.50.

The community spouse testified that she cannot afford to pay her monthly expenses along with the PPA of \$3073.50 in 2017 and \$3112.60 in 2018. The community spouse testified that she is on a fixed income, has little to no savings, and has multiple medical conditions, namely pulmonary hypertension which requires her to be on continuous oxygen.

Findings of Fact

Based on a preponderance of the evidence, I find:

1. MassHealth approved the appellant's request for MassHealth benefits as of September 27, 2017 and established a PPA of \$3073.50 (Exhibit 3). On January 9, 2018, the PPA increased to \$3112.60 due to increased Social Security income (Exhibit 1).
2. For 2017, the appellant had countable Social Security income of \$3146.30 (Exhibit 1).
3. The community spouse had pension income of \$2681.51 (Exhibit 4).
4. The community spouse's minimum monthly maintenance needs allowance (MMMNA) was calculated at \$2320.49 (Exhibit 4).
5. Factoring in the community spouse's mortgage of \$1345.56, her actual MMMNA was \$3666.05 which is above the capped amount of \$3022.50 (Exhibit 6).
6. The appellant pays \$126.48 monthly for health insurance (Exhibit 5).
7. The community spouse is on a fixed income, has little to no savings, and has multiple medical conditions, namely pulmonary hypertension which requires her to be on continuous oxygen.

Analysis and Conclusions of Law

With regard to increasing the MMMNA, 130 CMR 520.017(D) states that:

After the institutionalized spouse has received notice of either approval or denial for MassHealth Standard, either spouse may appeal to the 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).

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.

(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.

In the instant case, the community spouse has an actual MMMNA figure of \$3666.05. This MMMNA calculation included the community spouse's mortgage payment which had been previously omitted from the calculation. It also included property taxes and insurance. A shelter standard was then subtracted leaving a figure to be added to the federal standard for living in the community.

There is no reason to that the community spouse should not be entitled to her actual MMMNA amount. First of all, the \$3022.50 maximum does not apply to an "exceptional circumstances" case brought to hearing like this. Moreover, the \$3666.05 actual MMMNA amount is strictly based on the "basic necessities" mentioned above, i.e., shelter and utilities, and there is nothing excessive or extravagant about the included \$1345.56 monthly mortgage. Finally, in this case, the appellant is on a fixed income, has little to no savings, and has multiple medical conditions. Considering the above facts, I conclude that the community spouse's health would be at risk without an allowable MMMNA of \$3666.05. Therefore, pursuant to 130 CMR 520.017(D), the community spouse, who is facing significant financial duress, is entitled to her actual MMMNA calculation.

Subtracting the community spouse's income of \$2681.51 from the \$3666.05 MMMNA leaves a shortfall of \$984.54. This is the allowable spouse-in-home deduction from the

PPA. The appellant is also entitled to a health insurance deduction of \$126.48 and the \$72.80 personal needs allowance.

The appeal is therefore approved.

Order for MassHealth

Revise appellant's PPA for 2017 and 2018 due to increase of MMMNA to \$3666.05 and health insurance deduction of \$126.48 from appellant's income.

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.

Stanley M. Kallianidis
Hearing Officer
Board of Hearings

cc: