

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**

<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	1805351
<b>Decision Date:</b>	4/10/18	<b>Hearing Date:</b>	March 23, 2018
<b>Hearing Officer:</b>	Brook Padgett		

**Appellant Representative:**

**MassHealth Representative:**

Kathleen Racine, Springfield MEC



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, 6<sup>th</sup> floor  
Quincy, MA 02171*

# APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	130 CMR 520.017
<b>Decision Date:</b>	4/10/18	<b>Hearing Date:</b>	March 23, 2018
<b>MassHealth Rep.:</b>	K. Racine	<b>Appellant Rep.:</b>	
<b>Hearing Location:</b>	Springfield		

## Authority

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

## Jurisdiction

The Appellant received a notice dated February 09, 2018 approving the Appellant's application for Long Term Care (LTC) benefits beginning September 22, 2017 with a Patient Paid Amount (PPA) of \$3,278.95. (Exhibit 1).

The Appellant appealed the notice in a timely manner on February 15, 2017. (130 CMR 610.015(B); Exhibit 2).

Calculation of assistance is valid grounds for appeal (130 CMR 610.032).

## Action ken by MassHealth

MassHealth approved the Appellant's application for long term care benefits as of September 22, 2017 with a PPA of \$3,278.95.

## Issue

Is the Community Spouse eligible for Minimum Monthly Maintenance Needs Allowance (MMMNA) increase due to exceptional circumstances?



## Summary of Evidence

MassHealth testified the Appellant applied for long term care benefits on September 22, 2017. The record establishes the following: The Institutional Spouse (Appellant) and the Community Spouse have no excess assets. The Community Spouse's income is \$2,846.39 a month (\$1,372.00 Social Security + \$503.93 annuity + \$312.46 pension + \$658.00 earned income) and the Appellant's income is \$3,815.15 per month (\$1,810.00 Social Security + \$2,005.15 pension). The Community Spouse's actual MMMNA is \$3,257.00 based on a rent/mortgage of \$1,200.00, the standard utility allowance of \$636.00 minus the standard shelter expenses of \$609.00 and the addition of the Federal Standard Maintenance Allowance of \$2,030.00.<sup>1</sup> A SMNA of \$243.61 was calculated by subtracting the Community Spouse's income \$2,846.39 from the regulatory MMMNA of \$3,090.00. Finally the Appellant's PPA of \$3,278.65 was calculated by subtracting the Appellant's \$72.80 Personal Needs Allowance \$219.79 health insurance and \$243.61 SMNA from the Appellant's income of \$3,815.15. MassHealth submitted into evidence the MMMNA worksheet and verification of income. (Exhibit 4).

The Appellant's wife argued that she needs additional funds to remain in the community. The representative testified that she also has expenses in excess of \$3,000.00 (taxes, car payment, credit card, phone, business rent, gas, and rent) in addition to supplementing her disabled adult child's monthly rent (\$1,000.00) as well as other necessary items (\$1,000.00 food, repairs, mattresses, pillows, supplements, clothes, air conditioner, doctors' visits). The representative submitted a list of expenses. (Exhibit 5).

## Findings of Fact

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

1. The Appellant was approved for long term care benefits beginning September 22, 2017 with a PPA of \$3,320.95. (Exhibit 1).
2. The Appellant and the Community Spouse have no countable assets. (Testimony).
3. The Appellant has gross income of \$3,815.15 per month (\$1,810.00 Social Security + \$2,005.15 pension). (Exhibit 4).
4. The Community Spouse has gross income of \$2,846.39 a month (\$1,372.00 Social Security + \$503.93 annuity + \$312.46 pension + \$658.00 earned income). (Exhibit 4).
5. The Community Spouse's actual MMMNA is \$3,257.00 based on a rent/mortgage of \$1,200.00, the standard utility allowance of \$636.00 minus the standard shelter expenses of

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<sup>1</sup> The regulations require MassHealth to use the actual MMMNA or \$3,090.00 per month, whichever is lower, when calculating the Spousal Maintenance Need Allowance (SMNA), unless it has been increase as the result of a fair-hearing decision based on exceptional circumstances.

\$609.00 and the addition of the Federal Standard Maintenance Allowance of \$2,030.00. (Exhibit 4).

6. The regulatory MMMNA is \$3,090.00. (Exhibit 4).
7. The Community Spouse's \$243.61 SMNA was determined by subtracting the Community Spouse's income of \$2,846.39 from the regulatory MMMNA of \$3,090.00. (Exhibit 4).
8. The Appellant's PPA of \$3,278.65 was determined by subtracting the Appellant's \$72.80 PNA, \$243.61 health insurance and \$243.61 SMNA from the Appellant's \$3,815.15 income. (Exhibit 4).

## **Analysis and Conclusions of Law**

The Community Spouse is requesting a recalculation of the MMMNA because the regulatory maximum MMMNA is insufficient to meet her financial needs. The Appellant's representative maintains she needs to provide funds to her adult disabled child to assist her with her medical care with items such as food, repairs, mattresses, pillows, supplements, clothes, air conditioner, and doctors' visits. The Community Spouse maintains in addition to the bills for her daughter she has expenses in excess of \$3,000.00 after she pays her taxes, car payment, credit card, phone, business rent, gas, and rent and she therefore requesting a recalculation of the SMNA due to exceptional circumstances.

The regulations allow an exceptions circumstance only for those expenses already not taken into account when establishing the actual MMMNA. As the federal standards that is used when calculating the MMMNA already covers 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 housing and extraordinary medical expenses.

### 130 CMR 520.017: Right to Appeal the Asset Allowance or Monthly-Maintenance-Needs Allowance:

#### (D) Adjustment to the Minimum-Monthly-Maintenance-Needs Allowance Due to Exceptional Circumstances

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).

- (1) Exceptional Circumstances. 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. 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 (*Emphasis added*).

The Community Spouse has credibly testified that her income is reduced due to the payment of her day-today bills and the need to assist her adult disabled child; however the regulations are clear that to be eligible for an increase in the SMNA an individual must demonstrate exceptional circumstances along with significant financial duress. While the Community Spouse can make a compelling argument that she is under financial duress, she does not meet the exceptional circumstances criteria. Exceptional circumstance is limited to those necessities that arise from the medical condition, frailty, or similar special needs of the Community Spouse. In this instance the medical condition or special need is that of the Community Spouse's adult disabled child and not the Community Spouse and as a result the Community Spouse is not entitled to an increase in the SMNA. With regard to the Community Spouse's bills these items (taxes, car payment, credit card, phone, business rent, gas, and rent) are already taken into account when MassHealth established the Community Spouse's maintenance under 130 CMR 520.026(B).

The Community Spouse has not presented any evidence that she meets the exceptional circumstances criteria for an increase in the SMNA; therefore this appeal must be denied.

## **Order for MassHealth**

None.

## **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.

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Brook Padgett  
Hearing Officer  
Board of Hearings

cc: Springfield MEC