

# Office of Medicaid BOARD OF HEARINGS

<b>Appeal Decision:</b>	DENIED	<b>Appeal Number:</b>	1805940
<b>Decision Date:</b>	9/28/18	<b>Hearing Date:</b>	04/20/2018
<b>Hearing Officer:</b>	Kenneth Brodzinski		

**Appearance for Appellant:**

**Appearance for MassHealth:**

Patricia Lemke – Springfield 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

<b>Appeal Decision:</b>	DENIED	<b>Issue:</b>	PPA Exceptional Circumstances
<b>Decision Date:</b>	9/28/18	<b>Hearing Date:</b>	04/20/2018
<b>MassHealth's Rep.:</b>	Patricia Lemke	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	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 notices dated December 4, 2017 and December 13, 2017, determined Patient Paid Amounts ("PPA's") of \$4,947.04 and \$4,961.44, respectively (Exhibit A). Appellant filed this appeal in a timely manner on January 3, 2017 seeking adjustments to the PPA (Exhibit A).<sup>1</sup> Seeking an adjustment to MassHealth's determination of a PPA constitutes valid grounds for appeal (see 130 CMR 610.032).

## Action Taken by MassHealth

Through notices dated December 4, 2017 and December 13, 2017, determined Patient Paid Amounts ("PPA's") of \$4,947.04 and \$4,961.44, respectively,

## Issue

The appeal issue is whether Appellant is entitled to an adjustment to either of the PPA's calculated by MassHealth on December 4, 2017 and December 13, 2017.

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<sup>1</sup> A third notice – a termination for excess assets dated March 8, 2018, was also appealed timely, but this matter was resolved prior to hearing with benefits being reinstated after Appellant verified a proper asset spend down (Exhibit B).

## Summary of Evidence

The MassHealth representative testified that on December 4, 2017, MassHealth approved Appellant's application for Long-Term Care benefits with a PPA of \$4,947.04 effective September 19, 2017. A change in income caused MassHealth to adjust the PPA to \$4,961.44 effective January 1, 2017 (Exhibit A).

The MassHealth representative submitted a copy of agency computer screens showing countable income figures used to calculate the Community Spouse's (CS) Minimum Maintenance Needs Allowance (MMMNA) and Appellant's Patient Paid Amount (PPA). MassHealth reviewed the income figures and calculation used to reach both figures and explained that because the CS has monthly income of \$3,430.00 which exceeds the maximum allowable MMMNA of \$3,022.50, the CS was not awarded a Spousal Maintenance Needs Allowance (SMNA) (Exhibit C).

Appellant was represented by legal Counsel who was accompanied by Appellant's Community Spouse and daughter. Appellant's representatives argued that the CS is entitled to an increase to the MMMNA which exceeds the customary maximum due to exceptional circumstances pursuant to regulation 130 CMR 520.017(D). Appellant's representative submitted documentation meant to show the existence of exceptional circumstances which are causing the CS significant financial duress (Exhibit D).

Appellant's supporting documentation includes a Memorandum setting forth an itemization of the CS's monthly expenses along with documentation meant to verify each itemized expense (Id). According to the Memorandum, The CS has monthly income totaling \$3,224.08. The Memorandum itemized the CS's monthly expenditures as follows:

Mortgage	1,490.40
National Grid	272.00
Solar	118.52
Trash	35.00
Land phone	113.21
Cell phone	141.08
Car payment	454.99
Car insurance	116.00
Dish TV	134.61
Groceries	270.00
Burial vault and headstone	100.52
Life insurance premium	43.40
	<u>3,289.7</u>

## Findings of Fact

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

1. On December 4, 2017, MassHealth approved Appellant's application for Long-Term Care benefits with a PPA of \$4,947.04 effective September 19, 2017 (Exhibit A).
2. A change in income caused MassHealth to adjust the PPA to \$4,961.44 effective January 1, 2017 (Exhibit A).
3. The CS has monthly income of \$3,430.00.
4. MassHealth applied the maximum allowable MMMNA of \$3,022.50 and determined that it could not award a Spousal Maintenance Needs Allowance (SMNA) to the CS because her monthly income exceeds the maximum MMMNA (Exhibit C).
5. The CS does not dispute MassHealth's figures or calculations.
6. The CS is asserting the existence of "exceptional circumstances" pursuant to 130 CMR 520.017(D) to increase her MMMNA, secure an SMNA for herself and thereby reduce Appellant's PPA's
7. The CS itemized her monthly expenses as follows:

Mortgage	1,490.40
National Grid	272.00
Solar	118.52
Trash	35.00
Land phone	113.21
Cell phone	141.08
Car payment	454.99
Car insurance	116.00
Dish TV	134.61
Groceries	270.00
Burial vault and headstone	100.52
Life insurance premium	43.40
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	3,289.73

## Analysis and Conclusions of Law

The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity (*Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989)).

Appellant did not dispute MassHealth's income figures or the accuracy of the calculations to reach the two subject PPA's. Appellant seeks to lower the PPA's by increasing the CS's MMMNA's.

The only exception to the standard calculation of the MMMNA is described at 130 CMR 520.017(D)(1) which states that an increase in the community spouse's MMMNA may be granted based on "exceptional circumstances." According to the regulation, "[e]xceptional 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 520.025(B) and these circumstances result in significant financial duress." The regulation further states that "[s]ince 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 housing and extraordinary uncovered medical expenses. Such expenses generally do not include car payments even if used for transportation to medical appointments, or home maintenance expenses such as security systems and lawn care." (Emphasis supplied).

Appellant's Memorandum asserts monthly expense of the CS totaling \$3,289.73 which exceeds the current MMMNA maximum by only \$65.65. There is no reasonable basis to conclude that such a small difference constitutes "significant financial duress" More importantly, the itemization contains no expense which satisfies the regulatory definition of an "exceptional circumstance". None of the itemized expenses is shown to arise from the medical condition, frailty or similar "special needs" of the CS. There are no exceptional circumstances here and no "significant" financial duress.

For the foregoing reasons, the appeal is 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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Kenneth Brodzinski  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center,  
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