

**Office of Medicaid  
BOARD OF HEARINGS**

<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	1806447
<b>Decision Date:</b>	5/23/18	<b>Hearing Date:</b>	4/27/2018
<b>Hearing Officer:</b>	Cynthia Kopka		

**Appearance for Appellant:**

**Appearance for MassHealth:**  
Meghan Adie



*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>	Long term care – patient paid amount
<b>Decision Date:</b>	5/23/18	<b>Hearing Date:</b>	4/27/2018
<b>MassHealth’s Rep.:</b>	Meghan Adie	<b>Appellant’s Rep.:</b>	
<b>Hearing Location:</b>	Tewksbury	<b>Aid Pending:</b>	No

## 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 January 8, 2018, MassHealth approved Appellant’s application for MassHealth long term care benefits effective January 1, 2018 (Exhibit 1). Appellant filed this appeal in a timely manner on January 29, 2018 (Exhibit 2). 130 CMR 610.015(B). Challenging the scope of assistance is a valid basis for appeal. 130 CMR 610.032.

## Action Taken by MassHealth

MassHealth approved Appellant’s application for MassHealth long term care benefits effective January 1, 2018 and set a patient paid amount (PPA) of \$1,325.20.

## Issue

The appeal issue is whether Appellant’s spouse is entitled to a spousal maintenance needs deduction.

## Summary of Evidence

The MassHealth representative appeared in person and testified as follows. MassHealth approved Appellant’s application in December 2017. Effective January 1, 2018. Appellant’s patient paid amount (PPA) changed due to Appellant’s change in Social Security income. MassHealth calculated



the PPA owed to the nursing home to be \$1,325.20. Appellant's monthly income is \$1,457.00. MassHealth deducted \$72.80 for Appellant's personal needs account (PNA) and \$59.00 for a health insurance.

Appellant's spouse lives in the community. MassHealth submitted a spousal maintenance needs allowance (SMNA) worksheet (Exhibit 4). MassHealth calculated the community spouse's gross monthly income to be \$4,464.76. MassHealth calculated the community spouse's minimum monthly maintenance needs allowance (MMMNA) as follows:

Rent/mortgage	1,300.00
Taxes and insurance	0
Condominium maintenance fee	0
Standard deduction for utility expenses (labelled "food stamp allowance")	609.00
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Total shelter expenses	1,909.00
Federal shelter standard	609.00
Excess shelter amount (\$1,909 – 609)	1,300.00
Standard maintenance allowance	2,030.00
MMMNA (\$1,300 + \$2,030)	\$3,330.00 <sup>1</sup>

(Exhibit 4). As the community spouse's gross income (\$4,464.76) exceeds the MMMNA, MassHealth determined that the community spouse is not entitled to a spousal maintenance needs deduction (SMND) from Appellant's income (Exhibit 4).

Appellant's spouse appeared in person and testified as follows. Appellant's spouse did not dispute the MassHealth's representative's testimony regarding income. Appellant's spouse argued that she has expenses in addition to her mortgage, including cable, phone, internet, car maintenance and insurance, groceries, and prescriptions (Exhibit 5). Appellant's spouse calculated that her average monthly expenses are \$3,070. Appellant's spouse argued that her net income, not her gross income, should be considered. Appellant only receives approximately \$2,800 net income after deductions.

Appellant's spouse testified that she has outstanding medical bills, including bills for Appellant's PPA and hospitalizations. The MassHealth representative testified that Appellant's spouse could submit copies of medical bills for MassHealth to consider, as the PPA for the month the bill was incurred could potentially be adjusted. Appellant's spouse testified that she did not incur any extraordinary expenses arising from her own medical conditions.

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<sup>1</sup> The regulatory maximum MMMNA is \$ 3,090, though MassHealth used 2017's maximum of \$3022.50 on Exhibit 4.

## Findings of Fact

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

1. MassHealth approved Appellant's application for long term care in December 2017. On January 8, 2018, MassHealth notified Appellant that his patient paid amount would change to \$1,325.20 effective January 1, 2018 (Exhibit 1).
2. Appellant filed a timely appeal on January 29, 2018 (Exhibit 2).
3. Appellant's monthly income is \$1,457.00.
4. MassHealth deducted \$72.80 for Appellant's PNA and \$59.00 for a health insurance to calculate the PPA of \$1,325.20.
5. Appellant's spouse lives in the community.
6. The community spouse's monthly gross income is \$4,464.76 (Exhibit 4).
7. The community spouse's MMMNA is \$3,330.00 (Exhibit 4).
8. The community spouse has not incurred any extraordinary expenses.

## Analysis and Conclusions of Law

Appellant's spouse challenges MassHealth's calculation of Appellant's PPA, arguing that she needs to retain a share of Appellant's income to meet her expenses. Either the community or institutionalized spouse has a right to appeal MassHealth's calculation of the asset allowance. 130 CMR 520.017(A).

In calculating the PPA, the regulations allow certain deductions to be made from an institutionalized member's income. 130 CMR 520.009. These deductions are listed at 130 CMR 520.026, which states that "[g]eneral income deductions must be taken in the following order: a personal-needs allowance; a spousal-maintenance-needs allowance; a family-maintenance-needs allowance for qualified family members; a home-maintenance allowance; and health-care coverage and incurred medical and remedial-care expenses." The personal-needs allowance, \$72.80 per month, is set by regulation. 130 CMR 520.025. MassHealth allows a deduction for current health-insurance premiums made directly to the insurer. 130 CMR 520.026(E)(1).

MassHealth allows a spousal maintenance needs deduction (SMND) in cases where the community spouse's gross income is less than the amount he or she needs to live in the community (the minimum-monthly-maintenance-needs allowance, or MMMNA). If the community spouse's gross income is less than the MMMNA, MassHealth may deduct an SMND per 130 CMR 520.026(B), determined as follows:



(B) Spousal-Maintenance-Needs-Deduction. If the community spouse's gross income is less than the amount he or she needs to live in the community (minimum-monthly-maintenance-needs allowance, MMMNA) as determined by the MassHealth agency, the MassHealth agency may deduct an amount from the institutionalized spouse's countable-income amount to meet this need. This amount is the spousal-maintenance-needs deduction. 130 CMR 520.026(B) applies to the first month of eligibility in an institution and terminates the first full calendar month in which the spouse is no longer in an institution or no longer has a spouse in the community. This deduction is the amount by which the minimum-monthly-maintenance-needs allowance exceeds the community spouse's gross income.

(1) The MassHealth agency determines the MMMNA by adding the following amounts:

- (a) \$1,822<sup>2</sup> (the federal standard maintenance allowance); and
- (b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$547<sup>3</sup> and the shelter expenses for the community spouse's principal residence, including
  - (i) 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
  - (ii) 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.

(2) The maximum-monthly-maintenance-needs allowance is \$2,739.00<sup>4</sup> per month, unless it has been increased as the result of a fair-hearing decision based on exceptional circumstances in accordance with 130 CMR 520.017(D).

Here, Appellant does dispute the numbers used by MassHealth in calculating the PPA or the MMMNA. However, Appellant's spouse argued that MassHealth's calculations do not address all of her expenses. Under the regulations, the spouse of a member can request that the MMMNA be adjusted if exceptional circumstances exist:

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

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<sup>2</sup> The federal standard maintenance allowance is \$2,030.00 effective July 1, 2017.

<sup>3</sup> The community spouse monthly housing allowance is \$609.00 effective July 1, 2017.

<sup>4</sup> The regulatory maximum MMMNA is \$3,090.00 effective July 1, 2017.

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.

130 CMR 520.017(D)(1) (emphasis added).

Here, Appellant's spouse argued that MassHealth should consider her net income, not her gross income, in making its calculations. However, 130 CMR 520.026(B) makes clear that MassHealth may only consider Appellant's spouse's gross income in determining whether she is entitled to a SMND. As Appellant's spouse's gross income is higher than her MMMNA, she is not entitled to an SMND.

Appellant's spouse also asked for an increase in the MMMNA, arguing that she has other expenses, including utilities, groceries, car payments, cable, and phone. However, Appellant's spouse testified that she did not incur any extraordinary expenses arising from her own medical conditions, and is therefore not entitled to an increase to her MMMNA per 130 CMR 520.017(D)(1). Additionally, Appellant spouse's utilities are already taken into account in the maintenance standards and other monthly expenses are not included. Accordingly, this appeal is denied. However, Appellant's spouse may reach out to the MassHealth representative to submit outstanding medical bills that could potentially be applied against Appellant's PPA.

## **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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Cynthia Kopka  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA, 01876-1957, 978-863-9290