

Office of Medicaid BOARD OF HEARINGS

Appeal Decision:	DENIED	Appeal Number:	1807592
Decision Date:	9/20/18	Hearing Date:	05/02/2018
Hearing Officer:	Kenneth Brodzinski	Record Open to:	07/03/2018

Appearance for Appellant:

Appearance for MassHealth:

Elizabeth Landry – 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:	DENIED	Issue:	PPA – Exceptional Circumstances
Decision Date:	9/20/18	Hearing Date:	05/02/2018
MassHealth’s Rep.:	Elizabeth Landry	Appellant’s Rep.:	Pro se
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 January 25, 2018, MassHealth approved Appellant’s application for MassHealth Long Term Care benefits and determined a Patient Paid Amount (“PPA”) of \$527.58 (Exhibit A). Appellant filed this appeal in a timely manner on February 23, 2018 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 approved Appellant’s application for MassHealth Long Term Care benefits and determined a Patient Paid Amount (“PPA”) of \$527.58.

Issue

The appeal issue is whether Appellant is entitled to an adjustment to the PPA.

Summary of Evidence

The MassHealth representative testified that MassHealth approved Appellant's application for Long Term care benefits with a PPA of \$527.58 effective October 2017. The MassHealth representative submitted a copy of a "Maintenance Needs Allowance" worksheet showing the figures and calculation used in reaching a Minimum Monthly Maintenance needs Allowance (MMMNA) of \$3,022.50 for the Community Spouse (CS) and a PPA of \$527.58 (Exhibit B). The MassHealth representative noted that the CS was awarded the maximum MMMNA allowed by the regulations, even though the CS's calculated expenses totaled \$3,189.36.

Appellant was represented by the CS who testified that he did not contest any of the figures used by MassHealth in calculating the PPA. Nonetheless, the CS testified that he cannot afford to pay the PPA. The CS testified that he has been paying the nursing facility only \$100.00 per month which is all he can afford to pay.

The hearing officer explained to the CS that the only way the MMMNA could be increased above the regulatory maximum (thereby increasing the Spousal Maintenance Needs Allowance (SMNA) and reducing the PPA) was to establish that "exceptional circumstances" arising out of his frailty or medical condition exists which is causing him "significant financial duress" as set forth in regulation 130- CMR 520.017(D)(1). It was explained to the CS in specific detail that he would need to submit an itemization of all of his monthly expenses. Each itemized expense was to reference supporting documentation. It was explained to the CS that in order to prevail, the itemization would have to first evidence significant financial duress and second, that he duress arose from his medical condition (including unusual medical expenses) and/or frailty.

The record was left open until May 18, 2018 for Appellant to file his post-hearing submission and MassHealth waived review and response. The record closed without the receipt of any further documentation from the CS or a request for an extension to make such a filing. However, on July 3, 2018, Appellant filed an itemization along with some supporting documentation (Exhibit C). The hearing officer accepted the submission despite being nearly two months late. The submission contained an itemization of monthly expenses, but contrary to instructions, each itemized expense did not reference an attached supporting document. Documentation was simply lumped together (Id).

Findings of Fact

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

1. MassHealth approved Appellant's application for Long Term care benefits with a PPA of \$527.58 effective October 2017.

2. MassHealth calculated a Minimum Monthly Maintenance needs Allowance (MMMNA) of \$3,022.50 for the Community Spouse (CS) and a PPA of \$527.58 (Exhibit B).
3. The CS asserts that the monthly expenses set forth in his post-hearing submission (Exhibit C) indicate that “exceptional circumstances” are causing him significant financial duress and pursuant to regulation, his MMMNA and SMNA should be increased and Appellant’s resulting PPA lowered.

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)).

MassHealth’s Maintenance Needs Allowance Worksheet (Exhibit B), which was not disputed, shows that MassHealth correctly applied the calculation set forth at 130 CMR 520.526(B) in determining the CS’s MMMNA of \$3,022.50 and PPA of \$527.58.

The only exception to the standard calculation 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.”

The CS’s post-hearing submission asserts monthly expenses for the month of April 2018 totaling \$4,815.00. The itemization contains errors, such as the CS including \$817.00 for house insurance when the accompanying documentation indicates that this is the annual premium, not the monthly. Additionally, Appellant also included \$449.00 for the monthly mortgage escrow expense. A mortgage escrow would typically include the monthly home insurance premium expense. The itemization also includes a car lease of \$433.00 and car insurance of \$86.00. Not only does the above cited regulation remove such payments from the exceptional circumstances calculation, there was no supporting documentation for the car insurance although the CS did provide documentation of motorcycle insurance for a Harley Davidson which indicated that the motorcycle was a third vehicle insured under the policy. The itemization also includes a number of expenses that cannot be

included as they do not constitute "*necessitates that arise from the medical condition, frailty, or similar special needs of the community spouse*". These include birthday gifts for relatives; lawn maintenance expenses including cutting, cleanup and fertilizer application; safe deposit rental; the PPA expense owed to Appellant's nursing facility; gym dues; and Appellant's haircut (which would normally be covered by her own Personal Needs Account which is allotted \$78.20 per month).

The itemization also contains a \$589.23 monthly expense for Blue Cross Blue Shield which was not supported by documentation. This expense would not be upheld without further explanation and supporting documentation given its high cost as such coverage would be supplemental to the CS's Medicare (Medicare premium payment is listed as an additional expense).

The itemization identifies monthly medical costs related to prescriptions; insulin, dentist, foot care and eye doctor totally \$43.32. Together with the CS's Medicare premium of \$134.00 brings total medical related bills to \$177.00. These costs, however, cannot reasonably be found to be the cause of financial stress (let alone the "*significant financial duress*" required by the controlling regulation) when the post hearing submission indicates a number of costly living expenses including maintaining three vehicles, cable and phone bill totally \$312.45 a month and a monthly lease payment for a truck in the amount of \$433.00. An amelioration of these two expenses alone (which together total \$745.45) would more than cover the \$177.00 of verified monthly medical expenses.

On this record, I find that the CS has failed to met his burden of evidencing that he faces "*significant financial duress*" that arises "*from the medical condition, frailty, or similar special needs of the community spouse* (130 CMR 520.017(D)(1)).

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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center,
88 Industry Avenue, Springfield, MA, 01104, 413-785-4186