

Office of Medicaid BOARD OF HEARINGS

Appeal Decision:	Approved	Appeal Number:	1810282
Decision Date:	6/26/18	Hearing Date:	05/30/2018
Hearing Officer:	Radha Tilva	Record Open to:	06/07/2018

Appearance for Appellant:

Appearance for MassHealth:
Nereida Mercado



*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:	Approved	Issue:	LTC - PPA
Decision Date:	6/26/18	Hearing Date:	05/30/2018
MassHealth's Rep.:	Nereida Mercado	Appellant's Rep.:	
Hearing Location:	Chelsea MassHealth Enrollment Center	Aid Pending:	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 April 9, 2018 MassHealth determined appellant was eligible for MassHealth long-term care benefits effective November 2, 2017 with a patient-paid amount of \$1,762.20 (Exhibit 1). The appellant, the community spouse, appealed this notice in a timely manner on April 23, 2018 (see 130 CMR 610.015(B) and Exhibit 2). Adjustment of a patient-paid amount is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved appellant for MassHealth long-term care benefits effective November 2, 2017 with a patient-paid amount of \$1,762.20.

Issue

The appeal issue is whether exceptional circumstances exist to warrant an increase to the Minimum-Monthly-Maintenance-Needs Allowance?

Summary of Evidence

The MassHealth representative testified to the following. Appellant entered the nursing facility on October 3, 2017 and submitted application on November 30, 2017. The nursing facility was seeking coverage effective November 2, 2017. On April 9, 2018 MassHealth issued a notice of approval providing coverage retroactive to the date appellant was seeking, however, the spousal allowance was at issue.

The MassHealth representative submitted a completed Minimum-Monthly-Maintenance Needs Allowance (MMMNA) worksheet which reflected an MMMNA of \$2,030.00 which is less than the standard of \$3,022.50 (Exhibit 5). MassHealth determined that the institutionalized spouse had income of \$2,035.00 and the community spouse had income of \$2,453.31. MassHealth determined that the standard maintenance needs allowance (SMNA) was \$0.00 because the community spouse's gross monthly income of \$2,453.31 was greater than the MMMNA of \$2,030.00.

The MassHealth representative explained that the community spouse lived in assisted living at the Residences of Watertown and was paying approximately \$6,300.00 a month in rent which included room and board and services and activities appellant participates in. The representative expressed that MassHealth needs a breakdown of what portion of the monthly bill is spent on rent and explained that no allowances were allowed in the approval because nothing was submitted. The representative further stated that the assets at the time of the application were \$92,428.00 and that the spousal asset limit is \$125,600.00.

The appellant was represented by an attorney who testified that the community spouse was actually paying \$6,850 a month to the assisted living facility and that the community spouse was seeking to adjust the Minimum-Monthly-Maintenance-Needs Allowance due to exceptional circumstances pursuant to 130 CMR 520.017(D). A copy of the Residency Agreement was provided and incorporated into the record (Exhibit 7). The attorney further testified to the following. The community spouse is disabled due to polio and requires care in an assisted living facility. Dr. Mary Butterfield wrote a letter of medical necessity on May 14, 2018 which states that appellant has an excessive past medical history which has left him wheelchair bound (Exhibit 6). The doctor further wrote it is unsafe for him to live outside of assisted living and the facility helps accommodate his medical needs and keeps him safe (Exhibit 6). The community spouse's income of \$2,453.00 is insufficient to meet his needs and allow him to stay in the assisted living facility. Thus, he needs to retain his wife's income.

The hearing record was left open for appellant to submit an MMMNA worksheet along with the Bankrate Monitor rate and letter from the assisted living facility regarding rent. On May 31, 2018 appellant submitted a letter from the assisted living facility stating that \$6,850.00 is the monthly fee and of that portion \$2,720.00 is considered rent (Exhibit 8). The submission also included an MMMNA worksheet which calculated CS's monthly income to be \$2,665.69 and his monthly

shortfall to be \$4,184.30 (Exhibit 8).¹ Even with the appellant's income of \$2,035.00, after taking the personal needs allowance and health insurance deductions, the community spouse would still have a shortfall of \$2,422.30 (Exhibit 8).

Findings of Fact

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

1. Appellant entered the nursing facility on October 3, 2017 and applied for MassHealth long-term care benefits on November 30, 2017 seeking coverage effective November 2, 2017.
2. On April 9, 2018 MassHealth approved coverage retroactive to November 2, 2017 with a patient paid amount of \$1,762.20.
 - a. The patient-paid amount was calculated by MassHealth using a MMMNA of \$2,030.00.
3. Appellant timely appealed this notice to the Board of Hearings challenging the Minimum-Monthly-Maintenance Needs Allowance due to exceptional circumstances.
4. Appellant is wheelchair bound and it is unsafe for him to live outside of assisted living as the assisted living facility helps accommodate his medical needs and keeps him safe.
5. The assisted living facility costs appellant \$6,850.00 a month.
6. The appellant's income is \$2,665.69 and the institutionalized spouse's income is \$2,035.00.
7. The community spouse has a shortfall of \$4,184.30 a month from his income and the cost of the assisted living facility.
8. After taking the institutionalized income into account and subtracting the PNA and health insurance deduction the community spouse has a shortfall of \$2,422.30.

Analysis and Conclusions of Law

Adjustments to a community spouse's asset allowance based on exceptional circumstances are governed by 130 CMR 520.017. The regulation states, in pertinent part, as follows:

...

¹ A copy of the Bankrate monitor rate was submitted with appellant's submission and the community spouse's income was calculated by taking his gross social security retirement benefits and Canadian pensions and adding it to the interest earned on his assets (Exhibit 8).

(B) Minimum-Monthly-Maintenance-Needs Allowance. The minimum-monthly-maintenance-needs allowance is the amount needed by the community spouse to remain in the community. This amount is based on a calculation that includes the community spouse's shelter and utility costs in addition to certain federal standards, in accordance with 130 CMR 520.026(B)(1).

(C) Adjustment of the Amount of Asset Allowance. If either spouse claims at a fair hearing that the amount of income generated by the community spouse's asset allowance as determined by the MassHealth agency is inadequate to raise the community spouse's income to the minimum-monthly-maintenance-needs allowance, the fair-hearing officer determines the gross income available to the community spouse as follows.

(1) The fair-hearing officer determines the gross amount of income available to the community spouse. The fair-hearing officer includes the amount of the income that would be generated by the spouse's asset allowance if \$10,000 of the asset allowance were generating income at an interest rate equal to the deposit yield quoted in the Bank Rate Monitor Index as of the hearing date for money market accounts, and if the remainder of the spouse's asset allowance were generating income at an interest rate equal to the highest deposit yield quoted in the Bank Rate Monitor Index as of the hearing date for any term not to exceed two and one-half years.

(2) If the community spouse's gross income under 130 CMR 520.017(C)(1) is less than the minimum-monthly-maintenance-needs allowance (MMMNA), then the fair-hearing officer allows an amount of income from the institutionalized spouse (after the personal-needs deduction described in 130 CMR 520.026(A)) that would increase the community spouse's total income to equal, but not to exceed, the MMMNA. 130 CMR 520.017(C)(2) applies to all hearings held on or after September 1, 2003, regardless of the date of application.

(3) If after the fair-hearing officer has increased the community spouse's gross income under 130 CMR 520.017(C)(1) and (2), the community spouse's gross income is still less than the MMMNA, then the fair-hearing officer increases the community spouse's asset allowance by the amount of additional assets that, if generating income at an interest rate equal to the highest deposit yield in the Bank Rate Monitor Index as of the hearing date for any term not to exceed two and one-half years, would generate sufficient income to raise the income total to the MMMNA.

(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 Office of Medicaid 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.

(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.

(b) If the community spouse lives in an assisted-living facility or similar facility and requests an increase in his or her minimum-monthly-maintenance-needs allowance, the fair-hearing officer reviews the housing agreement, service plan, fee schedule, and other pertinent documents to determine whether exceptional circumstances exist. Additional amounts are allowed only for specific expenses necessitated by exceptional circumstances of the community spouse and not for maintaining any pre-set standard of living.

(2) Determination of Increase for Exceptional Circumstances. If the fair-hearing officer determines that exceptional circumstances exist, the fair-hearing officer may increase the community spouse's MMMNA to meet the expenses caused by the exceptional circumstances as follows.

(a) The fair-hearing officer first verifies that the calculation of the gross income of the community spouse in determining the existing spousal-maintenance-needs deduction includes the income generated by the community spouse's asset allowance. If the community spouse has no assets remaining from the allowance, he or she must verify the dollar amount of the remaining assets, if any, and how the money was spent. The fair-hearing officer considers how the assets were spent in determining whether or not significant financial duress exists.

(b) The fair-hearing officer determines the revised MMMNA by including in the calculation the amount needed to meet the exceptional circumstances.

(c) The fair-hearing officer compares the revised MMMNA to the community spouse's total income. If the community spouse's total income is less than the amount of the revised MMMNA, the fair-hearing officer first deducts the personal-needs allowance from the institutionalized spouse's countable-income amount and then a spousal-maintenance-needs deduction needed to reach the revised MMMNA.

In this case, the community spouse's MMMNA was set at \$2,030.00 because no deductions were taken for rent as appellant did not timely submit the required residence agreement. Because the community spouse resides in an independent assisted living facility and has physical limitations

he contends that an increase in the MMMNA beyond the regulatory limit is warranted. Pursuant to 130 CMR 520.017(D), either spouse may request an increase in the MMMNA calculated by MassHealth due to “exceptional circumstances.” Exceptional circumstances encompass necessities that arise from the community spouse’s special needs, medical condition, or frailty. For this reason, the expenses relating to things such as television, car insurance and gas, and church dues will not be considered.

There is no dispute that the community spouse has medical issues which require ongoing care and him residing in the assisted living facility. The letter from Dr. Butterfield outlines some of the community spouse’s medical issues and confirms that he requires the type of supportive environment provided by his current assisted living facility. As it is medically necessary for him to reside in this setting and the maximum MMMNA of \$2,030 does not allow him to pay for his basic expenses at the facility, there is a sound basis to increase the MMMNA.

As evidenced in the residency agreement and statements submitted by appellant his cost of living at the assisted living facility is \$6,850.00 a month. The community spouse’s monthly income as calculated by the attorney was \$2,665.69 which was derived from adding his social security retirement benefits and Canadian pensions to the interest earned on his assets of \$92,428.77. The monthly shortfall between appellant’s income and his assisted living expense is \$4,184.31. To meet the shortfall, the analysis turns to the income available to the community spouse from his wife’s income (130 CMR 520.017(C)(2)). The community spouse’s income is \$2,035.00, which is reduced by deductions which include \$72.80 for the personal needs allowance and \$200.00 for the health insurance to equal \$1,762.20. As there is still a shortfall of \$2,422.30 even after taking into consideration the institutionalized spouse’s income the total patient paid amount should be zero and the community spouse should be able to retain all of the institutionalized spouse’s income after the PNA deduction.

Accordingly, this appeal is APPROVED.

Order for MassHealth

Rescind notice dated April 9, 2018 and allocate all income to the community spouse. Revise patient-paid-amount to \$0.00 in accordance to this decision effective the eligibility start date of November 2, 2017.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. 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.

Radha Tilva
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Nancy Hazlett, Chelsea MassHealth Enrollment Center, 45-47 Spruce Street, Chelsea, MA, 02150, 617-551-2028