

# Office of Medicaid BOARD OF HEARINGS

<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	1811347
<b>Decision Date:</b>	8/16/18	<b>Hearing Date:</b>	06/20/2018
<b>Hearing Officer:</b>	Chris Therrien	<b>Record Open to:</b>	07/27/2018

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Tiana Davis, MassHealth Representative,  
Springfield



*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>	Approved	<b>Issue:</b>	Patient Paid Amount
<b>Decision Date:</b>	8/16/18	<b>Hearing Date:</b>	06/20/2018
<b>MassHealth's Rep.:</b>	Tiana Davis	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Springfield MassHealth Enrollment Center	<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 March 21, 2018, MassHealth determined the appellant's spouse's patient paid amount (PPA) to the long-term care facility was increasing to \$1,078.74 a month beginning on April 1, 2018 due to a change in her circumstances (130 CMR 520.026(B) and Exhibit 1). The appellant filed this appeal in a timely manner on March 29, 2018, seeking an increase in her spousal allowance (130 CMR 610.015 and Exhibit 2). Dispute of a spousal allowance calculation is valid grounds for appeal (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth calculated a spousal allowance of \$2,585.80 for the appellant and a PPA of \$1,078.74 for her spouse.

## Issue

The appeal issue is whether appellant is entitled to have her Spousal Maintenance Needs Allowance (SMNA) increased pursuant to 130 CMR 520.026(B) and 520.017(D).

## Summary of Evidence

The MassHealth representative testified that the appellant is a community spouse and her spouse, the MassHealth member, is an institutionalized spouse who resides in a long-term care facility. The institutionalized spouse's PPA increased from \$1,064.34 a month to \$1,078.74 a month beginning on April 1, 2018 (Exhibit 1). The MassHealth representative testified that the reason for the PPA increase is due to a cost of living adjustment in the appellant and institutionalized spouse's social security income. The MassHealth representative testified that the appellant and institutionalized spouse have a gross monthly income of \$3,664.54 (SSI/Railroad retirement \$1,505.40 + Pension \$2,159.14) (Exhibit 1). The MassHealth representative testified that the appellant is clinically eligible for the Frail Elder Waiver (FEW), but is not income eligible because her income exceeds the income standard which is 300% of the federal benefit rate (FBR) for an individual. In 2018 FBR for an individual is \$2,250.<sup>1</sup> The MassHealth representative testified that appellant's income is \$3,080 (Appellant's SSI \$794 + SMNA \$2,296). The MassHealth representative stated that MassHealth calculated the appellant's spousal maintenance needs allowance (SMNA) to be \$2,296 based on MassHealth regulations. The MassHealth representative stated that the appellant's SMNA was calculated by taking the federal standard maintenance allowance of \$2,030.00 and subtracting the appellant's SSI of \$794.

The PPA is determined by deducting certain expenses (Personal Needs Allowance \$72.80 + SMNA \$2,296 + Other Health Insurance \$217 = Total \$2,585.80) from the gross monthly income of \$3,664.54 totaling \$1,078.74 (Exhibit 1).

The appellant testified that she was deemed a frail elder and she has multiple medical conditions including COPD, AFIB, Macular Degeneration and she needs an oxygen concentrator and hearing aids. The appellant testified that she was hospitalized five times in 2017, and she cannot afford the cost of her own medical care. The appellant stated that she is supposed to take two medications for her COPD at a cost of \$400 a month, but she cannot afford to purchase them. The appellant testified that she has medical bills she cannot afford to pay. The appellant also disputed the amount MassHealth has calculated for other health insurance and stated that her husband's health insurance was canceled in December 2017. The appellant stated that she got a bill from Medicare for \$536. The MassHealth representative testified that the Social Security Administration indicates the appellant's Medicare Part B premium is \$123 a month and her husband's Part B premium is \$134 a month. The record was left open to provide the appellant the opportunity to provide medical bills and updated insurance premium bills to ensure here MMMNA was accurate (Exhibit 4). The appellant submitted medical bills covering dates of service from January 2017 through June 2018 showing a patient responsibility in the amount of \$19,837.36 (Home Health Aide: \$936.67 + Medical/prescription drugs: \$18,900.69) (Exhibit 5). Additionally, appellant pays for oxygen at \$47.08 monthly (Exhibit 5). The appellant failed to submit any health insurance premium bills to dispute the \$217 a month which MassHealth used to determine the MMMNA.

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<sup>1</sup> Appellant is asset eligible for the FEW.

## Findings of Fact

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

1. Appellant is a community spouse and her institutionalized spouse (the MassHealth Member) resides in a long-term care facility (MassHealth representative testimony).
2. The institutionalized spouse's PPA increased from \$1,064.34 a month to \$1,078.74 a month beginning on April 1, 2018 (Exhibit 1).
3. The PPA increased due to a cost of living adjustment in the appellant and institutionalized spouse's social security income (MassHealth representative testimony).
4. The appellant and institutionalized spouse have a gross monthly income of \$3,664.54 (SSI/Railroad retirement \$1,505.40 + Pension \$2,159.14) (Exhibit 1).
5. The appellant is clinically eligible for the Frail Elder Waiver (FEW) but is not income eligible because her income exceeds the income standard (MassHealth representative testimony).
6. The income standard for the FEW is 300% of the federal benefit rate (FBR) for an individual which is \$2,250 in 2018 (MassHealth representative testimony).
7. The appellant's income is \$3,080 (Appellant's SSI \$794 + SMNA \$2,296) (MassHealth representative testimony).
8. MassHealth calculated the appellant's spousal maintenance needs allowance (SMNA) by taking the federal standard maintenance allowance of \$2,030.00 and subtracting the appellant's SSI of \$794 for a total of \$2,296 (MassHealth representative testimony).
9. The PPA is determined by deducting certain expenses (Personal Needs Allowance \$72.80 + SMNA \$2,296 + Other Health Insurance \$217 = Total \$2,585.80) from the gross monthly income of \$3,664.54 totaling \$1,078.74 (Exhibit 1).
10. The appellant was deemed a frail elder and she has multiple medical conditions including COPD, AFIB, Macular Degeneration and she needs an oxygen concentrator and hearing aids (Appellant testimony).
11. The appellant was hospitalized in 2017 (Appellant testimony and Exhibit 5).
12. The appellant submitted medical bills covering dates of service from January 2017 through June 2018 showing a patient responsibility in the amount of \$19,837.36 (Home Health Aide \$936.67 + Medical/prescription drugs \$18,900.69) (Exhibit 5).

13. Appellant pays for oxygen at \$47.08 monthly (Exhibit 5).

14. The appellant failed to submit any health insurance premium bills to dispute the \$217 a month which MassHealth used to determine the MMMNA.

## **Analysis and Conclusions of Law**

Spousal-Maintenance-Needs-Deduction, found at 130 CMR 520.026(B) dictates how the MMMNA is determined. 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) \$2,030.00 (the federal standard maintenance allowance); and
- (b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$609 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 \$636.

(2) The maximum-monthly-maintenance-needs allowance is \$3,090.00 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).

(3) If the institutionalized individual is subject to a court order for the support of the community spouse, the court-ordered amount of support must be used as the spousal-maintenance-needs deduction when it exceeds the spousal-maintenance-needs deduction calculated according to 130 CMR 520.026(B) or resulting from a fair hearing.

130 CMR 520.026(B).

MassHealth calculated the appellant's MMMNA to be \$2,585.80 correctly within the parameters provided by regulation.

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.

130 CMR 520.017(D).

130 CMR 520.017(D) provides an adjustment by the hearing officer to the MMMNA due to exceptional circumstances. The appellant suffers from a number of medical conditions for which she incurs high out of pocket expenses. The appellant was determined to be clinically eligible for the Frail Elder Waiver by MassHealth.<sup>2</sup> The appellant submitted documentations showing out-of-pocket medical expenses of \$19,837.36 over the previous eighteen months. The appellant's expenses arising out of her multiple medical conditions result in significant financial distress. The appellant's medical issues and financial duress constitute an exceptional circumstance and, thus overriding the MMMNA regulatory limit of \$3,090. The appellant has monthly medical expenses of \$1,102. The highest MMMNA allowable by MassHealth is \$3,090. Including out-of-pocket medical expenses paid by the appellant brings the amount to \$4,192; therefore, the MMMNA is increased to \$4,192.<sup>3</sup> The appellant's SSI income is \$794 per month which is deducted from this new amount. The shortfall between the appellant's income and the revised MMMNA is \$3,398. To meet the shortfall, the analysis turns to the income available to the appellant from the institutionalized spouse's income (130 CMR 520.017(C)(2)).<sup>4</sup> The amount of available gross income from the institutionalized spouse is \$3,591.74 (\$3,664.54 less \$72.80 personal needs allowance), which is reduced by the revised \$3,398 SMNA, and further reduced by the \$217 health insurance premium paid by the institutionalized spouse. Therefore, the revised patient paid amount is \$0.<sup>5</sup>

The appeal is approved.

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<sup>2</sup> See 519 CMR 007 (B) Home- and Community-based Services Waiver-frail Elder. (1) Clinical and Age Requirements. The Home- and Community-based Services Waiver allows an applicant or member who is certified by the MassHealth agency...to be in need of nursing-facility services to receive certain waiver services at home if he or she (a) is 60 years of age or older and, and (b) would be institutionalized in a nursing facility, unless he or she receives one or more of the services administered by the Executive Office of Elder Affairs under the Home and Community-based Services Waiver-frail Elder authorized under § 1915(c) of the Social Security Act.

<sup>3</sup> See generally 130 CMR 520.016, 520.017, 520.026. The increased MMMNA calculation includes rent, standard allowances, and the documented medical expenses submitted by the appellant; however, it does not include additional expenses related to food, phone, utilities, or home maintenance expenses, as expenses of this type are captured under the \$2,030 Standard Maintenance Allowance.

<sup>4</sup> There is no documented income from assets.

<sup>5</sup> The final figure is actually -\$23, but the PPA cannot be a negative.

## Order for MassHealth

Rescind the notice dated March 21, 2018 and re-calculate a MMMNA as \$3,615 which includes an SMNA of \$3,398, and a reduction in the patient paid amount to \$0, effective April 1, 2018.

### 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.

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Chris Therrien  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Tiana Davis, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA, 01104.