

**Office of Medicaid
BOARD OF HEARINGS**

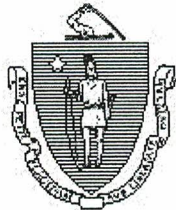
Appellant Name and Address:

Appeal Decision:	Denied	Appeal Number:	1813119
Decision Date:	9/13/18	Hearing Date:	07/18/2018
Hearing Officer:	Sara E. McGrath		

Appearances for Appellant:

Appearances for MassHealth:

Kellie Mace



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Patient-Paid Amount
Decision Date:	9/13/18	Hearing Date:	07/18/2018
Appearances for MassHealth:	Kellie Mace	Appearances for Appellant:	
Hearing Location:	Tewksbury MassHealth Enrollment Center	Record Open to:	08/17/2018

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 May 1, 2018, MassHealth notified the appellant that she is eligible for MassHealth Standard benefits effective August 29, 2017, with a patient-paid amount of \$283.45 (Exhibit 1). The appellant filed this appeal in a timely manner on May 29, 2018 (130 CMR 610.015(B)). A challenge to the patient-paid amount is a valid ground for appeal (130 CMR 610.032(A)).

Action Taken by MassHealth

MassHealth notified the appellant that she is eligible for MassHealth Standard benefits effective August 29, 2017, with a patient-paid amount of \$283.45.

Issue

The appeal issue is whether the community spouse is entitled to have the Minimum Monthly Maintenance Needs Allowance (MMMNA) increased due to exceptional circumstances in accordance with 130 CMR 520.017(D)?

Summary of Evidence

The MassHealth representative testified that on August 29, 2017, appellant was admitted to a skilled nursing facility. In November 2017, MassHealth received from appellant a conversion packet to initiate appellant's conversion to long-term care services. On May 1, 2018, MassHealth approved appellant's application for MassHealth Standard benefits effective August 29, 2017, with a patient-paid amount of \$283.45 (Exhibit 1). The MassHealth representative testified that appellant's monthly income totals \$1,571 and is comprised of a monthly Social Security benefit. She testified that the patient-paid amount was calculated as follows: \$1,571 (appellant's monthly income) - \$72.80 (personal needs allowance) - \$1,214.75 (spousal maintenance needs allowance) = \$283.45 (Exhibit 1). The community spouse's MMMNA was calculated to be \$3,090.¹ The MassHealth representative testified that the community spouse has total monthly income of \$1,875.25, which consists of a Social Security benefit and a pension. Because the spouse's income is less than his MMMNA, MassHealth deducted a spousal maintenance needs allowance of \$1,214.75 from the appellant's income to help support the spouse in the home (Exhibits 1 and 2). The MassHealth representative confirmed that the couple has little to no assets.

Appellant's attorney appeared at hearing and argues that the spouse's monthly expenses constitute exceptional circumstances such that an increase in the MMMNA is warranted. She testified that prior to appellant's admission to a skilled nursing facility, the couple used both of their incomes to cover their monthly expenses. Now, appellant's spouse is unable to cover his monthly expenses. She explained that appellant's spouse is 84-years-old and is in frail health; he suffers from diabetes and needs insulin injections three times per day, as well as twice monthly injections from his primary care physician (Exhibit 4). She verified that the spouse's mortgage is past due, the electric bill is in arrears and has a balance due of over \$8,000, and the gas bill is in arrears and has a balance due of over \$2,000 (Exhibit 4). Appellant's spouse also has an annual homeowner's insurance expense of \$1,951, and a quarterly water bill expense of \$119.84. (Exhibit 4). Appellant's spouse has a \$430.99 past due physician bill (Exhibit 4).

¹ The MMMNA actual total was \$4,399, but MassHealth reverted to the cap of \$3,090. The MMNA was calculated as follows: \$1,567 (mortgage) + \$593 (taxes) + \$163 (homeowner's insurance) + \$636 (utility allowance) = \$2,959 (shelter expenses) - \$618 (standard deduction) = \$2,341 + \$2,058 (federal standard) = \$4,399.

The hearing officer left the record open until August 17, 2018 for appellant's spouse to submit further documentation of his monthly expenses. Appellant's spouse submitted documentation in a timely manner (Exhibit 5). Appellant's spouse submitted documentation of a \$10 past due bill from East Side Clinical Lab, a \$30 past due bill from Vitreo Retinal Associates, a \$45 past due bill from a cardiologist, an \$80 past due bill from Nashoba Valley Medical Center. Appellant's spouse updated his past due electric, gas, and mortgage bill balances, and included documentation of a monthly Dish expense of \$88.07. Appellant's spouse also verified a past due automobile insurance bill of \$446.26, a collection notice referencing a creditor (Comcast) with an amount due of \$492.35, and a Visa credit card bill with a balance of \$289.75 (Exhibit 5).

Findings of Fact

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

1. In November 2017, appellant submitted a MassHealth conversion application seeking long-term care benefits.
2. On May 1, 2018, MassHealth approved appellant's application for MassHealth Standard benefits effective August 29, 2017, with a patient-paid amount of \$283.45.
3. Appellant's monthly income totals \$1,571 and is comprised of a monthly Social Security benefit.
4. Appellant's patient-paid amount was calculated as follows: \$1,571 (appellant's monthly income) - \$72.80 (personal needs allowance) - \$1,214.75 (spousal maintenance needs allowance) = \$283.45.
5. MassHealth calculated and MMMNA for the community spouse of \$3,090.
6. Appellant's spouse has total monthly income of \$1,875.25, which consists of a Social Security benefit and a pension (Exhibit 3).
7. Because the spouse's income is less than his MMMNA, MassHealth deducted a spousal maintenance needs allowance of \$1,214.75 from the appellant's income to help support the spouse in the home.
8. Appellant's spouse has a \$430.99 past due physician bill, a \$10 past due bill from East Side Clinical Lab, a \$30 past due bill from Vitreo Retinal Associates, a \$45 past due bill from a cardiologist, an \$80 past due bill from Nashoba Valley Medical Center. The medical expenses total \$595.99.
9. Appellant's spouse verified electric, gas, and mortgage balances that are all significantly past due.

10. Appellant's spouse also verified a past due automobile insurance bill of \$446.26, a collection notice referencing a creditor (Comcast) with an amount due of \$492.35, and a Visa credit card bill with a balance of \$289.75.
11. Appellant's spouse also verified an annual homeowner's insurance expense of \$1,951, a quarterly water bill expense of \$119.84, and a monthly Dish expense of \$88.07.

Analysis and Conclusions of Law

Pursuant to the provisions of 130 CMR 520.017(D), the fair hearing officer may substitute for the minimum monthly maintenance needs allowance a new amount to meet the expenses of the community spouse. This substitution may be performed only when the community spouse has shown that the requested increase in the spousal maintenance needs allowance is based upon exceptional circumstances.

The application regulation provides as follows:

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 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 will ensure 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 will

review the housing agreement, service plan, fee schedule, and other pertinent documents to determine whether exceptional circumstances exist. Additional amounts will be 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 will first verify 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 will consider how the assets were spent in determining whether or not significant financial duress exists.

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

(c) The fair-hearing officer will compare 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 will first deduct 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)).

Appellant's spouse's current financial situation, including the significant debt and multiple accounts that are past due, demonstrate financial duress. A finding of exceptional circumstances, however, requires more than a demonstration of financial duress. Exceptional circumstances exist when the spouse has expenses (not already taken into account) that arise from a medical condition or frailty, or other special need. The applicable regulation provides that special remedial and support services and extraordinary uncovered medical expenses are examples of such expenses (130 CMR 520.017(D)(1)). Here, the spouse has not demonstrated that he has on-going expenses that arise from his medical condition, frailty or other special need.

Appellant's spouse has verified that he has some past due medical bills. Upon review, these bills appear to consist of small co-pay amounts, including one bill in the amount of \$430.99 that appears to consist of accumulated co-pay charges since 2014 (Exhibit 4). I find that these small charges do not rise to the level of "extraordinary uncovered medical expenses" contemplated by the applicable regulation. These charges are small, typical charges that are incurred in the normal course by individuals with health insurance coverage (130 CMR 520.107(D)).

The other expenses noted by the community spouse, including both the ongoing monthly expenses that are current and those that are in arrears, are not related to a finding of exceptional circumstance. These expenses mostly relate to appellant's shelter expenses, and are not directly related to a medical condition or other frailty. Further, these expenses have already been accounted for in MassHealth's MMMNA calculation.² Because the community spouse has not demonstrated that exceptional circumstances exist in this case, I find that there should be no change to the spouse's MMMNA or appellant's patient-paid amount (130 CMR 520.017(D)).³

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

² Appellant's spouse's MMMNA captures his current expenses, not the significant arrearages.

³ Appellant's attorney stated that appellant requires twice monthly injections from his primary care physician. Appellant's spouse submitted a medical bill, presumably from his primary physician, that sets forth multiple office visits (starting in 2014), each with a corresponding amount due of \$15 (Exhibit 4). However, this medical bill does not reflect twice monthly visits, and thus is not sufficient evidence to demonstrate that appellant's spouse has a recurring medical expense that could be deemed an exceptional circumstance.

Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center Appeals Coordinator