

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

Appeal Decision:	Approved; Dismissed; Remand	Appeal Number:	1700725
Decision Date:	4/10	Hearing Date:	03/06/2017
Hearing Officer:	Patricia Mullen	Record Open to:	03/10/2017

Appellant Representative:

MassHealth Representative:
Shennen Swett



*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; Dismissed; Remand	Issue:	Patient Paid Amount
Decision Date:	4/10	Hearing Date:	03/06/2017
MassHealth Rep.:	Shennen Swett	Appellant Rep.:	
Hearing Location:	Taunton MassHealth Enrollment Center		

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 November 7, 2016, MassHealth approved the appellant's application for MassHealth Standard benefits for long term care residents with a start date of July 15, 2016 and a patient paid amount (PPA) of \$1,601.55. (see 130 CMR 516.005; 520.026 and Exhibit 1). The appellant filed this appeal in a timely manner on November 21, 2016 disputing the start date and the PPA. (see 130 CMR 610.015(B) and Exhibit 2). The appeal was dismissed by the Board of Hearings by notice dated February 2, 2017 because Power of Attorney documentation was not submitted with the appeal. (Exhibit 3). The appellant's representative submitted the Power of Attorney documentation on February 7, 2017 and the dismissal was vacated. (Exhibit 4). Dispute as to start date and PPA are valid grounds for appeal (see 130 CMR 610.032). Prior to the hearing, MassHealth corrected the appellant's start to June 17, 2016 and the appellant does not dispute this start date. At the hearing, the appellant's attorney stated that the appeal of the start date is withdrawn. The appeal is dismissed as to the issue of the appellant's MassHealth start date.

Action Taken by MassHealth

MassHealth approved the appellant's application for MassHealth with a start date of June 17, 2016

and a PPA of \$1,601.55.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.026; 520.017(D) in determining that the appellant's PPA to the nursing facility is \$1,601.55 a month.

Summary of Evidence

The appellant's attorney appeared telephonically. The MassHealth representative testified that the appellant was approved for MassHealth Standard for long term care residents with the requested start date of June 17, 2016. The MassHealth representative noted that although the November 7, 2016 approval notice lists Social Security income of \$709.00 for the appellant, such income will be deducted from the PPA calculation because the appellant does not receive Social Security income anymore. The MassHealth representative stated that the appellant's only income is her pension totaling \$2,858.47 a month. The appellant is allowed a personal needs deduction of \$72.80 a month and a deduction for her health insurance premiums totaling \$251.52 a month in calculating the PPA. (Testimony). The MassHealth representative stated that the appellant has a spouse in the community and a spousal allowance of \$1,641.60 was calculated for the community spouse. The MassHealth representative testified that the spousal allowance is calculated pursuant to a minimum monthly maintenance needs allowance (MMMNA) worksheet that corresponds to the MassHealth regulations. (Exhibit 8).

The MassHealth representative stated that the community spouse lives in an assisted living facility and his rent to the assisted living facility exceeds the regulatory maximum MMMNA of \$2,980.50. The MassHealth representative noted that because the appellant's rent alone exceeds the maximum MMMNA allowed under MassHealth regulations, the remainder of the MMMNA calculation on the worksheet is not relevant. (Exhibit 8). MassHealth determined that the appellant's MMMNA was the regulatory maximum amount of \$2,980.50. (Exhibit 8). The MassHealth representative stated that the community spouse's income was deducted from his MMMNA to determine the monthly spousal allowance deduction. (Testimony) The MassHealth representative stated that the community spouse has gross monthly Social Security income of \$1,338.90 and thus his spousal allowance is \$1,641.60 (\$2,980.50 - \$1,338.90). (Exhibit 8).

The appellant's attorney argued that there are exceptional circumstances arising out of the community spouse's medical condition that necessitate an increased MMMNA in this case. The appellant's attorney stated that the community spouse is 85 years old and has been living in the assisted living facility since 2014. The appellant's attorney stated that the community spouse paid \$4,375.00 a month to the assisted living facility until November 23, 2016 when he moved to a smaller unit in the assisted living facility. (Exhibit 10). The appellant's attorney stated that the monthly fee to the assisted living facility covers rent, utilities, 3 meals a day, emergency call system, 24 hour awake staff, licensed nurse to monitor and coordinate care needs, medication

management, and one hour a day of personal care. (Exhibit 10). The appellant's attorney submitted a letter from the community spouse's primary care physician, Dr. Woolverton, dated October 7, 2016. (Exhibit 9). Dr. Woolverton writes that the community spouse has a number of moderately severe medical problems including coronary disease, congestive heart failure, and chronic kidney disease, and it is medically necessary for him to live in an assisted living facility. (Exhibit 9).

The record was left open for one week to give the appellant's attorney the opportunity to submit an updated assisted living bill for the community spouse, and proof of assets in June, 2016. During the record open period, the appellant's attorney submitted verification of the changes in the community spouse's assisted living costs in November, 2016, and in April, 2017, and verification of assets in June, 2016 and in December, 2016. (Exhibit 11). In a letter dated March 3, 2017, the bookkeeper from the assisted living facility writes that as of November 23, 2016, the community spouse's monthly rate to the assisted living facility was \$3,280.00. (Exhibit 11). The appellant's attorney also submitted a Rate Adjustment Agreement from the assisted living facility noting that the community spouse's monthly rate to the assisted living facility is \$3,600.00 beginning April 1, 2017. (Exhibit 11). Verification of bank statements for June, 2016 show that the community spouse's assets totaled \$27,261.00 at the time MassHealth coverage began. (Exhibit 11). The appellant and community spouse's assets generated total income of \$45.50 in 2016. (Exhibit 11).

Findings of Fact

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

1. The appellant was approved for MassHealth Standard for long term care residents with a start date of June 17, 2016 and a PPA to the nursing facility of \$1,601.55 a month.
2. The community spouse is 85 years old and lives in an assisted living facility.
3. The appellant has monthly income totaling \$2,858.47 and pays \$251.52 in monthly health insurance premiums.
4. The community spouse has gross monthly Social Security income of \$1,338.90.
5. The community spouse has lived in an assisted living facility for the past 3 years; the community spouse has a number of moderately severe medical problems including coronary disease, congestive heart failure, and chronic kidney disease.
6. The community spouse's physician determined that the community spouse needs the care provided in an assisted living facility.
7. The community spouse's monthly rate to the assisted living facility was \$4,375.00 from June, 2016 through November 22, 2016; the community spouse's monthly rate to the assisted living facility was \$3,280.00 from November 23, 2016 through March 31, 2017; the community

spouse's monthly rate to the assisted living facility is \$3,600.00 beginning April 1, 2017.

8. The community spouse's monthly rate to the assisted living facility covers rent, meals, heat, utilities, emergency call system, 24 hour awake staff, licensed nurse to monitor and coordinate care needs, medication management, and one hour a day of personal care.
9. The appellant and community spouse's assets totaled \$27,261.00 in June, 2016; the assets generated total interest income of \$45.50 in 2016.

Analysis and Conclusions of Law

520.026: Long-Term-Care General Income Deductions

General 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. These deductions are used in determining the monthly patient-paid amount.

(A) Personal-Needs Allowance.

- (1) The MassHealth agency deducts \$72.80 for a long-term-care resident's personal-needs allowance (PNA).
- (2) If an individual does not have income totaling the standard, the MassHealth agency will pay the individual an amount up to that standard on a monthly basis.
- (3) The PNA for SSI recipients is \$72.80.

(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) \$2,002.50 (the federal standard maintenance allowance); and
 - (b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$600.75 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 \$376. If heat is not included in the rent or condominium fee, this amount is \$609.

(2) The maximum-monthly-maintenance-needs allowance is \$2,980.50 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(A), (B).

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.

See 130 CMR 520.017(D).

In the present case, the MMMNA calculated by MassHealth pursuant to 130 CMR 520.026(B) was the maximum allowed under the regulation, \$2,980.50. The appellant's attorney argues that the community spouse's actual MMMNA is much higher than \$2,980.50 and thus we turn to 130 CMR 520.017(D) to determine if exceptional circumstances exist allowing for an increased MMMNA over the maximum allowed pursuant to 130 CMR 520.026(B). The regulation at 130 CMR 520.017(D) states that exceptional circumstances exist when there are necessities that arise from the medical condition, frailty or similar special needs of the community spouse and these result in significant financial duress. See 130 CMR 520.017(D). The community spouse's physician supports the medical need for assisted living services in his letter. It is clear from the community spouse's severe medical problems that the services provided in the assisted living facility in which he resides are medically necessary and he needs the assistance provided by the facility in order to remain in the community. The monthly fee for the assisted living facility includes shelter, meals, utilities, emergency call system, medication management, nurse to monitor and coordinate care needs, 24 hour staffing, and some personal care. The community spouse's rate to the assisted living facility was \$4,375.00 per month from June, 2016 through November 22, 2016, and \$3,280.00 per month from November 23, 2016 through March 31, 2017. The community spouse has been paying \$3,600.00 per month to the assisted living facility since April 1, 2017. The regulation at 130 CMR 520.017(D) notes that if the community spouse

lives in an assisted-living 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. (see 130 CMR 520.019(D)(1)(b)). The assisted living agreement, service plan, fee schedule, and all pertinent medical documentation were reviewed here. The community spouse's monthly fee to the assisted living facility was \$4,375.00 a month and his monthly Social Security income was \$1,338.90. The appellant and community spouse's assets generated an average of \$3.79 per month in 2016 (\$45.50/12). The community spouse's monthly fee to the assisted living facility does not include clothing, health insurance costs, out of pocket medical expenses, dental expenses, or any other additional necessary expenses. I determine that exceptional circumstances resulting in significant financial duress exist in this case and the MMMNA should be increased to meet the community spouse's actual monthly maintenance needs.

The community spouse's shelter, food, utilities, medication administration, and some personal care assistance expenses totaled \$4,375.00 a month and the community spouse pays \$104.90 a month for Medicare premiums. The community spouse's MMMNA is increased to \$4,479.90 for the period June 17, 2016 through November 22, 2016. The community spouse's MMMNA is determined to be \$3,384.90 for the period November 23, 2016 through March 31, 2017 to reflect the decrease in his assisted living rate as of November 23, 2016, and is increased to \$3,704.90 as of April 1, 2017 to reflect the increased assisted living rate as of that date.

The community spouse's total income (including interest income of \$3.79) of \$1,342.69 is deducted from his MMMNA of \$4,479.90 to determine his spousal allowance of \$3,137.21 for the period June 17, 2016 through November 22, 2016. The appellant's monthly income is \$2,858.47. After deducting the PNA of \$72.80, the appellant's monthly income is \$2,785.67. From the remaining income, the spousal allowance of \$3,137.21 is deducted. Accordingly, the appellant's PPA is \$0 for the period June 17, 2016 through November 22, 2016.

For the period November 23, 2016 through December 31, 2016, the community spouse's MMMNA is \$3,384.90 and after deducting his income of \$1,342.69, his spousal allowance is \$2,042.21. After deducting the PNA of \$72.80, the spousal allowance of \$2,042.21, and the monthly health insurance premium of \$251.52 from the appellant's income of \$2,858.47, the appellant's PPA to the nursing facility is \$491.91 for this period. The appellant's attorney did not dispute this PPA calculation at the hearing. The appeal is approved insofar as the spousal allowance is increased to \$3,137.21 and the PPA is decreased to \$0 for the period June 17, 2016 through November 22, 2016, and the spousal allowance is increased to \$2,042.21 and the PPA is \$491.91 for the period November 23, 2016 through December 31, 2016.

The appellant's income and the community spouse's income as of January 1, 2017 were not submitted at the hearing. In light of the fact that such incomes may have increased as of January 1, 2017, the case is remanded to MassHealth to determine the PPA from January 1, 2017 to the

present. The PPA calculations shall be based on the community spouse's MMMNA of \$3,384.90 for the period January 1, 2017 through March 31, 2017 and the community spouse's MMMNA of \$3,704.90 beginning April 1, 2017.

Order for MassHealth

Modify the notice dated November 7, 2016 and determine that for the period June 17, 2016 through November 22, 2016, the community spouse's MMMNA is \$4,479.90, his spousal allowance is \$3,137.21, and the appellant's PPA to the nursing facility is \$0.

For the period November 23, 2016 through December 31, 2016, determine that the community spouse's MMMNA is \$3,384.90, his spousal allowance is \$2,042.21, and the appellant's PPA to the nursing facility is \$491.91.

For the period January 1, 2017, determine that the community spouse's MMMNA is \$3,384.90 and calculate the spousal allowance and PPA based on the appellant's and community spouse's 2017 income.

For the period beginning April 1, 2017, determine that the community spouse's MMMNA is \$3,704.90 and calculate the spousal allowance and PPA based on the appellant's and community spouse's 2017 income.

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.

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.

Patricia Mullen
Hearing Officer
Board of Hearings