

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**

<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	1706272
<b>Decision Date:</b>	7/31/17	<b>Hearing Date:</b>	06/12/2017
<b>Hearing Officer:</b>	Patricia Mullen	<b>Record Open to:</b>	07/12/2017

**Appellant Representative:**

**MassHealth Representative:**  
Stephanie DeSousa



*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>	Spousal Allowance
<b>Decision Date:</b>	7/31/17	<b>Hearing Date:</b>	06/12/2017
<b>MassHealth Rep.:</b>	Stephanie DeSousa	<b>Appellant Rep.:</b>	
<b>Hearing Location:</b>	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 February 21, 2017, MassHealth approved the appellant's application for MassHealth Standard benefits for long term care residents and calculated a spousal allowance of \$373.02 a month and a patient paid amount (PPA) of \$229.98 a month. (see 130 CMR 520.026 and Exhibit 1). The appellant filed this appeal in a timely manner on March 3, 2017 disputing the PPA and seeking an increased spousal allowance amount. (see 130 CMR 610.015(B) and Exhibit 2). Dispute of a PPA calculation is valid grounds for appeal (see 130 CMR 610.032).

## Action Taken by MassHealth

MassHealth calculated a spousal allowance of \$373.02 a month and a PPA of \$229.98 a month.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.026, in determining that the appellant's PPA to the nursing facility is \$229.98 a month; a second issue is whether the appellant's spouse is entitled to an increased spousal allowance pursuant to 130 CMR 520.017(D).

## Summary of Evidence

The appellant was represented by her attorney at the hearing. The MassHealth representative stated that the appellant's application for MassHealth Standard was approved as of the requested start date of August 29, 2016. (Exhibit 1). The MassHealth representative stated that pursuant to regulation and the MassHealth worksheet, MassHealth calculated a spousal allowance of \$373.02 and a PPA of \$229.98 for the period August 29, 2016 to April 30, 2017. The MassHealth representative noted that the PPA increased to \$338.68 as of May 1, 2017 due to an increase in monthly Social Security income.

The MassHealth representative stated that the community spouse resides in an assisted living facility and pays a monthly fee of \$5,200.00. The MassHealth representative stated that pursuant to a monthly maintenance needs allowance worksheet, MassHealth calculated a minimum monthly maintenance needs allowance (MMMNA) of \$6,601.75 for the community spouse. (Exhibit 6). The MassHealth representative stated that MassHealth could only allow the community spouse the maximum MMMNA allowed under MassHealth regulations which is \$3,022.50. (Exhibit 6). The MassHealth representative stated that the community spouse receives a gross monthly pension of \$971.58 and gross monthly Social Security income of \$1,677.90 for total monthly income of \$2,649.48. (Exhibit 6). The MassHealth representative stated that the community spouse's income of \$2,649.48 is subtracted from his MMMNA of \$3,022.50 to calculate the monthly spousal allowance of \$373.02. (Exhibit 6). The MassHealth representative stated that the PPA was calculated by deducting a personal needs allowance of \$72.80 and a spousal allowance of \$373.02 from the appellant's net income of \$675.80 resulting in a PPA of \$229.98. (Exhibit 1). The MassHealth representative stated that the appellant's net Social Security income increased to \$798.50 as of May 1, 2017. The MassHealth representative noted that the community spouse had minimal assets of around \$1,600.00.

The appellant's attorney stated that the community spouse is 90 years old and has lived in an assisted living facility since 2013. The appellant's attorney argued that the services provided by the assisted living facility are medically necessary and thus exceptional circumstances exist resulting in financial duress necessitating an increase in the monthly spousal allowance. The appellant's attorney stated that the community spouse's fee to the assisted living facility was \$5,200.00 a month, but he has recently downsized to a smaller unit and his monthly assisted living facility fee is \$4,429.00 as of April 1, 2017.

The record was left open until July 12, 2017 to give the appellant's attorney the opportunity to submit a physician letter stating that the community spouse requires the services provided by the assisted living facility; the assisted living facility contract; and updated monthly fee to the assisted living facility. (Exhibit 7). The appellant's attorney submitted the information within the record open period. (Exhibit 8).

In a letter dated June 22, 2017, Dr. Darcy Turner wrote that she has been the community spouse's primary care physician since 2013. Dr. Turner noted that in the 12 months prior to the letter date,

the community spouse has been hospitalized 5 times and each time, the staff of the assisted living facility identified the need for urgent medical care. (Exhibit 8). Dr. Turner noted that the community spouse's medical conditions include chronic renal impairment, paroxysmal atrial fibrillation, hypertension, anemia, hypothyroidism, hearing impairment, prostate cancer, and several recent bouts of pneumonia. (Exhibit 8). Dr. Turner wrote that the assisted living facility is appropriate for the community spouse because he requires the assistance and support such a facility provides. (Exhibit 8). Dr. Turner wrote that the community spouse is a frail, older adult and the assisted living facility is the most appropriate setting for him as he must manage multiple chronic diseases. (Exhibit 8).

According to the assisted living facility contract, the community spouse's monthly fee covers rent, 3 meals a day, housekeeping services, bed linens once a week, utilities other than phone, a personal emergency response system, 24 hour staff, and service plan A, which includes safety checks, health and wellness assessments, and transportation to medical appointments. (Exhibit 8). The community spouse's fee to the nursing facility was \$5,200.00 a month from August, 2016 through March 31, 2017 and is \$4,429.00 a month beginning April 1, 2017. (Exhibits 6, 8).

## Findings of Fact

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

1. The appellant's application for MassHealth Standard was approved as of the requested start date of August 29, 2016.
2. The community spouse resides in an assisted living facility and paid a monthly fee of \$5,200.00 for the period August, 2016 through March, 2017; the community spouse's monthly fee to the assisted living facility is \$4,429.00 as of April 1, 2017.
3. The community spouse receives a gross monthly pension of \$971.58 and gross monthly Social Security income of \$1,677.90 for total monthly income of \$2,649.48.
4. The appellant received net Social Security of \$675.80 for the period August, 2016 through April, 2017; the appellant's Social Security income increased to \$798.50 as of May 1, 2017.
5. The community spouse is 90 years old and has lived in an assisted living facility since 2013.
6. The community spouse's medical conditions include chronic renal impairment, paroxysmal atrial fibrillation, hypertension, anemia, hypothyroidism, hearing impairment, prostate cancer, and several recent bouts of pneumonia; he had been hospitalized 5 times in the 12 month period prior to June, 2017 and each time the staff of the assisted living facility identified the need for urgent medical care.
7. The community spouse's primary care physician stated that the community spouse requires

the assistance and support provided by the assisted living facility and it is the most appropriate setting for him as he must manage multiple chronic diseases.

8. The community spouse's monthly fee to the assisted living facility covers rent, 3 meals a day, housekeeping services, bed linens once a week, utilities other than phone, a personal emergency response system, 24 hour staff, and service plan A, which includes safety checks, health and wellness assessments, and transportation to medical appointments.

## Analysis and Conclusions of Law

The regulations in effect at the time of the February 21, 2017 decision are as follows:

### 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 \$3,022.50 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, \$3,022.50. The appellant's attorney argues that the community spouse's actual MMMNA is much higher than \$3,022.50 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 her letter. It is clear from the community spouse's age, frailty, and 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, housekeeping services, bed linens once a week, utilities other than phone, a personal emergency response system, 24 hour staff, and service plan A, which includes safety checks, health and wellness assessments, and transportation to medical appointments. The community spouse's fee to the assisted living facility was \$5,200.00 per month from August,

2016 to March 31, 2017, and is \$4,429.00 as of 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 \$5,200.00 a month and is now \$4,429.00 and his monthly income is \$2,649.48. The community spouse has assets less than \$2,000.00. 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 MMMNA is increased to \$5,200.00 for the period August 29, 2016 through March 31, 2017. The community spouse's MMMNA is determined to be \$4,429.00 as of April 1, 2017 to reflect the decrease in his assisted living rate as of that date.

The community spouse's total income of \$2,649.48 is deducted from his MMMNA of \$5,200.00 to determine his spousal allowance of \$2,550.52 for the period August, 2016 through March, 2017. The appellant's monthly income was \$675.80 for this period. After deducting the PNA of \$72.80, the appellant's monthly income is \$603.00. From the remaining income, the spousal allowance of \$2,550.52 is deducted. Accordingly, the appellant's PPA is \$0 for the period August, 2016 through March, 2017.

As of April 1, 2017, the community spouse's total income of \$2,649.48 is deducted from his MMMNA of \$4,429.00 to determine his spousal allowance of \$1,779.52. The appellant's monthly income was \$675.80 in April, 2017<sup>1</sup>. After deducting the PNA of \$72.80, the appellant's monthly income is \$603.00. From the remaining income, the spousal allowance of \$1,779.52 is deducted. Accordingly, the appellant's PPA is \$0 beginning April 1, 2017.

The appeal is approved.

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<sup>1</sup> The MassHealth representative testified that the appellant's income increased to \$798.50 as of May 1, 2017 however there is no documentary evidence or new notice reflecting the new income in the record. I leave it to MassHealth to make any appropriate income adjustments in its system. The appellant's increased income, as testified to by MassHealth, is minimal and would still result in a PPA of \$0 as of May 1, 2017 based on the spousal allowance of \$1,779.52.



## **Order for MassHealth**

Modify the notice dated February 21, 2017 and determine that for the period August 29, 2016 through March 31, 2017, the community spouse's MMMNA is \$5,200.00, his spousal allowance is \$2,550.52, and the appellant's PPA to the nursing facility is \$0.

For the period beginning April 1, 2017, determine that the community spouse's MMMNA is \$4,429.00, his spousal allowance is \$1,779.52, and the appellant's PPA to the nursing facility is \$0.

## **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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Patricia Mullen  
Hearing Officer  
Board of Hearings