

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

Appeal Decision:	APPROVED	Appeal Number:	0907978
Decision Date:	10/19/09	Hearing Date:	07/20/2009
Hearing Officer:	Jeanne Travers Jabour		

Appellant Representative:

MassHealth Representative:
Michelle Mattos



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
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Boston, MA 02116*

APPEAL DECISION

Appeal Decision:	APPROVED	Issue:	MMMNA
Decision Date:	10/19/09	Hearing Date:	07/20/2009
MassHealth Rep.:	Michelle Mattos	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 April 14, 2009, MassHealth approved the Appellant's application for long term care (LTC) benefits effective March 16, 2009 and established a patient paid amount (PPA) of \$2,147.23 (130 CMR 519.010 and Exhibit 1). The Appellant filed this appeal in a timely manner on April 30, 2009 (130 CMR 610.015(B) and Exhibit 2) seeking an increase in the minimum monthly maintenance needs allowance (MMMNA) for the community spouse (CS). A challenge to the MMMNA is a valid ground for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth calculated the PPA using the spousal maintenance needs allowance (SMNA) and the minimum monthly maintenance needs allowance (MMMNA) of the community spouse.

Issue

Did MassHealth act in accordance with the controlling regulations when it calculated the PPA and can that figure be adjusted because of the expenses of the community spouse (CS)?

Summary of Evidence

The Appellant was represented by her attorney at the hearing.

The MassHealth representative testified that the Appellant institutionalized spouse (IS) was admitted to a long term care skilled nursing facility on March 16, 2009. An application for MassHealth long term care benefits was received by MassHealth on March 18, 2009, and MassHealth approved the Appellant for coverage beginning March 16, 2009 (Testimony and Exhibit 1). MassHealth established a patient paid amount (PPA) (his share of the nursing facility costs) of \$2,147.23 based on his gross monthly income of \$4,067.83 (\$3,557.83 pension + \$510.00 Social Security = \$4,067.83) (Exhibit 1 and Testimony).

In determining the Appellant's patient paid amount, MassHealth established the general income deductions to his gross monthly income (taken in the following order): personal needs allowance of \$72.80; a spousal-maintenance-needs allowance (SMNA) of \$1,570.60; a family-maintenance-needs allowance for qualified family members (FMNA) (not applicable in this case); a home-maintenance allowance (HMA) (not applicable in this case); the Appellant's monthly health-care premium of \$277.20; and, incurred medical and remedial-care expenses (not applicable in this case), for total allowances of \$1,920.60 (Exhibit 1). After deducting \$1,920.60 from the Appellant's total gross monthly income of \$4,067.83, the remaining figure was determined by MassHealth to be the patient paid amount, which in this case was \$2,147.23 ($\$4,067.83$ total gross monthly income - $\$1,920.60$ total allowances = $\$2,147.23$ PPA) (Testimony and Exhibit 1).

MassHealth presented the figures used in reaching the determination of the CS's minimum monthly maintenance needs allowance (MMMNA) which formed the basis for the SMNA, as follows: the Appellant CS has total gross monthly income of \$549.40 from Social Security. MassHealth made no allowance for rent or monthly mortgage payments because the Appellant failed to submit a monthly mortgage statement or payment invoice to the MassHealth representative for inclusion.¹ Without this documentation to verify the monthly mortgage payment, MassHealth will not include this expense in the CS's MMMNA. The CS pays taxes and insurance of \$283.00 on their home and received the standard deduction for utility expenses of \$612.00 for a total shelter expense of \$895.00. MassHealth then subtracted the required standard shelter expense (established by federal law) of \$525.00 from the total shelter expense of \$895.00 ($\$895.00 - \$525.00 = \370.00), added the federal standard maintenance allowance of \$1,750.00,² and determined the actual MMMNA of \$2,120.00. Because the actual MMMNA figure falls below the maximum allowed MMMNA (outside of fair hearing) of \$2,739.00, MassHealth used the actual calculation of \$2,120.00 for the Appellant CS's MMMNA. For

¹ MassHealth has indicated that as soon as the Appellant does submit a copy of the mortgage statement or monthly invoice, an allowance will be made to adjust the CS's MMMNA to include that monthly payment which would increase the SMNA by the amount of the monthly payment and decrease the PPA accordingly.

² Effective July 1, 2009, the federal standard maintenance allowance was changed to \$1,822.00 and the excess shelter allowance became \$547.00. All patient-paid amount (PPA) changes that result from this update became effective July 1, 2009 (Annual Change to the Federal Standard Maintenance Allowance and Standard Shelter Expense for Spousal Allowance, MassHealth Eligibility Operations Memo 09-13, August 1, 2009).

purposes of this appeal, however, the revised federal standard maintenance allowance and excess shelter allowance will be used which will increase the CS's actual MMMNA to \$2,170.00. The CS's gross monthly income of \$549.40 is then subtracted from the MMMNA of \$2,170.00 to establish that a shortfall of \$1,620.60 existed between the CS's monthly needs and her actual gross monthly income (Testimony). The \$1,620.60 figure (the shortfall) is then used as the SMNA which MassHealth treated as a deduction from the Appellant IS's monthly income along with the other allowed deductions (Testimony and Exhibit 5).

Counsel for the Appellants appeared at hearing and explained that the CS is seeking an adjustment to the MMMNA to include her medical expenses which arise from her medical conditions. The CS will not be able to remain in the community to manage her medical conditions if she continues to lack the monthly income to pay for these medical expenses. Counsel stated that the CS is in exceptionally poor health from atrial fibrillation, congestive heart failure, chronic obstructive pulmonary disease, high blood pressure, back spasms, obesity and damaged knees (Testimony and Exhibit 4). She currently has a personal care attendant (PCA) who assists her a few hours each week for a total monthly cost between \$320.00 and \$360.00. She would like the monthly income available to double the PCA's hours because she is having difficulty with so few hours of assistance. Although her son has been filling in to help, the CS requires an expansion of the PCA's assistance over and above what she is currently receiving. Because of her obesity and limited PCA services, the CS has not been able to toilet herself and must purchase and utilize disposable sanitary undergarments at the cost of \$36.00 per week. She must also employ the use of Lifeline services during the times she is unattended. Lifeline costs the CS an additional \$42.10 each month. Counsel averred that the CS's ability to remain at home is directly related to her ability to receive these additional PCA services, as well as sufficient income to continue using Lifeline and purchasing the absorbent products. He asked that her MMMNA be increased to \$2,600.00 which would enable her to double the PCA hours and pay for her medical needs, enabling her to remain in the community and not a long term care facility (Testimony and Exhibit 4). To that end, he asked that the CS be determined to meet the special circumstances requirements set out at 130 CMR 520.017(D) due to her poor health and medical conditions.

Findings of Fact

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

1. The Appellant IS was admitted to a long term care skilled nursing facility on March 16, 2009.
2. MassHealth received the Appellant's application for long term care benefits on March 18, 2009 seeking an eligibility start date of March 16, 2009.
3. MassHealth approved the Appellant IS's application effective March 16, 2009 and established a monthly PPA of \$2,147.23 which was later revised to \$2,097.23 (Exhibits 1 and 5 and Testimony).

4. MassHealth deducted a personal needs allowance of \$72.80, a spousal-maintenance-needs allowance (SMNA) of \$1,620.60, and the Appellant IS's monthly health-care premium of \$277.20 for total deductions of \$1,970.60 to his income.
5. MassHealth calculated the Appellant's PPA of \$2,097.23 based on his monthly income of \$4,067.83 less the deductions ($\$4,067.83 - \$1,970.60 = \$2,097.23$).
6. The CS has gross monthly income of \$549.40 from Social Security and pays \$283.00 for taxes and insurance each month.
7. MassHealth determined the CS had a MMMNA allowance of \$2,170.00.
8. The CS has medical conditions and frailties which include atrial fibrillation, congestive heart failure, high blood pressure, chronic obstructive pulmonary disease, back spasms, obesity and damaged knees (Testimony and Exhibit 4).
9. In order to remain in the community and avoid admission to a long term care facility, the CS requires an increase in the PCA assistance she currently receives.
10. The CS requires twice the number of hours of current PCA assistance which would increase the monthly cost to \$720.00.
11. Because the Appellant is not able to toilet herself, and her PCA assistance is limited, the Appellant has been purchasing and utilizing disposable specialty briefs at a cost of \$36.00 per week.
12. The CS has also been paying for Lifeline services at a cost of \$42.10 month for the times when the PCA or her son are not available.
13. The CS's medical conditions require that she double the services of the PCA at twice her current hours, maintain Lifeline and continue to purchase and use the absorbent products to remain in the community.
14. The CS paid a total of \$6,133.67 from December of 2008 through the present for recurring medical expenses as follows: \$462.10 for her Lifeline ($\$41.10$ December/2008 + $\$421.00$ [$\$42.10 \times 10$ months] from January/2008 through the present) + $\$1,711.57$ ($\$155.59$ /monthly for the specialty briefs from December/2008 through the present [$\$35.91 \times 4.333 \times 11$]) + $\$3,960.00$ for PCA assistance (from December/2008 through the present [$\$360.00$ /month $\times 11$]) (Testimony and Exhibit).
15. The CS has no countable assets.
16. The CS has special circumstances arising from her medical frailty and conditions

which require an adjustment to the MMMNA to allow her to have sufficient income to double the PCA services she is currently receiving and to pay for her other monthly medical expenses.

17. Based on the recurring living and medical expenses incurred by the CS each month, the adjusted MMMNA for the upcoming 12 months is \$3,598.82 calculated as follows: \$511.13 monthly (for medical expenses incurred between December of 2008 through the present for PCA assistance, Lifeline and specialty briefs [$\$6,133.67 \div 12 = \$511.13/\text{month}$]), plus \$3,087.69/month ($\720.00 for PCA services + $\$42.10/\text{month}$ for Lifeline + $\$155.59/\text{month}$ for specialty briefs + $\$2,170.00/\text{month}$ [taxes and insurance of $\$283.00$ + the standard deduction for utility expenses of $\$612.00 =$ a total shelter expense of $\$895.00 -$ the federal standard of $\$547.00$ ($\$895.00 - \$547.00 = \$348.00$) + the federal standard maintenance allowance of $\$1,822.00$]).
18. The CS has gross monthly income of \$549.40 which is not sufficient to meet the adjusted MMMNA. When the CS's income is subtracted from the adjusted MMMNA of \$3,598.82 there is a shortfall of \$3,049.42 ($\$3,598.82 - \$549.40 = \$3,049.42$).
19. The Appellant IS's income of \$4,067.83 is reduced by certain allowable deductions taken in following order: his monthly PNA of \$72.80, the SMNA of \$3,049.42 (for the adjusted MMMNA of \$3,598.82), and his monthly health insurance premium of \$277.20.
20. The Appellant's PPA is \$668.41 ($\$4,067.83 - \$72.80 - \$3,049.42 - \$277.20 = \668.41).

Analysis and Conclusions of Law

The maximum-monthly-maintenance-needs allowance is \$2,739.00 per month, unless it has been increased as the result of a fair-hearing decision based on exceptional circumstances (130 CMR 520.017(D)). Based on the information provided, MassHealth allowed a monthly maintenance needs allowance of \$2,170.00 for the Appellant's spouse, but that figure did not cover the CS's actual needs.

MassHealth regulations provide that exceptional circumstances exist when there are circumstances other than those already taken into account in establishing the maintenance standards for the CS (130 CMR 520.026(B)) and these circumstances result in significant financial duress (130 CMR 520.017(D)(1)). Because 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 CS (130 CMR 520.017(D)(1)). Such necessities include, but are not limited to, special remedial and support services and extraordinary uncovered medical expenses (130 CMR 520.017(D)(1)). These 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 (130 CMR 520.017(D)(1)). The expenses presented by the CS include uncovered medical expenses incurred due to her heart and other medical conditions. Therefore, an adjustment shall be made to accommodate the medical conditions and special needs of the CS (130 CMR 520.017(D)(1)).

Once a hearing officer determines that exceptional circumstances exist, the hearing officer may increase the community spouse's MMMNA to meet the expenses caused by the exceptional circumstances by verifying that the calculation of the gross income of the community spouse includes income generated from the community spouse's asset allowance (130 CMR 520.017(D)(2)(a)). In this case, the CS's gross income is less than what she needs to meet the expenses caused by the exceptional circumstances. Her gross income is \$549.40 and there are no countable assets owned by the Appellant and his wife. MassHealth regulations require the hearing officer to determine the revised MMMNA by including in the calculation the amount needed to meet the exceptional circumstances (130 CMR 520.017(D)(2)(b)). In this case, the CS's actual living expenses are determined to be \$3,598.82 (\$2,170.00/month [taxes and insurance of \$283.00 + the standard deduction for utility expenses of \$612.00 = a total shelter expense of \$895.00 - the federal standard of \$547.00 ($\$895.00 - \$547.00 = \348.00) + the federal standard maintenance allowance of \$1,822.00 = $\$2,170.00 + \720.00 for PCA services + \$42.10/month for Lifeline + \$155.59/month for specialty briefs, + \$511.13 for medical expenses incurred from December of 2008 through the present), to meet her exceptional circumstances. The total adjusted MMMNA is \$3,598.82 and no costs have been duplicated.

The hearing officer must then compare the revised MMMNA to the community spouse's total income (130 CMR 520.017(D)(2)(c)).

The CS has gross monthly income of \$549.40 which is not sufficient to meet the adjusted MMMNA. When the CS's income is subtracted from the adjusted MMMNA of \$3,598.82 there is a shortfall of \$3,049.42 ($\$3,598.82 - \$549.40 = \$3,049.42$). The shortfall becomes the spousal maintenance needs allowance (SMNA) which is the allowance for the spouse to maintain herself in the community and a deduction to the IS's gross monthly income.

If the CS's total income is less than the amount of the adjusted MMMNA, the hearing officer will first deduct the PNA from the institutionalized spouse's countable-income (the Appellant) and will then deduct the SMNA needed by the CS to meet her adjusted MMMNA (130 CMR 520.017(D)(2)(c)). The IS's monthly income is \$4,067.83, less the PNA of \$72.80, less the SMNA of \$3,049.42 (shortfall between the adjusted MMMNA and the CS's total monthly income) ($\$4,067.83 - \$72.80 - \$3,049.42 = \945.61)(130 CMR 520.017(D)(2)(c)) leaving \$945.61.

Once the SMNA has been deducted, the next allowable expense which the Appellant incurs each month is the payment of his monthly health-care premium of \$277.20. Subtracting the \$277.20 from the Appellant IS's remaining income of \$945.61 leaves \$668.41 ($\$945.61 - \$277.20 = \$668.41$) which MassHealth uses as the PCA amount the Appellant IS will pay to the nursing facility each month.

For all of the forgoing reasons, this appeal is hereby APPROVED. MassHealth will change the MMMNA to \$3,598.82 and the SMNA to \$3,049.42. MassHealth will establish a PPA of \$668.41.

Order for MassHealth

Rescind the notice dated April 14, 2009 and establish an adjusted MMMNA of \$3,598.82, the SMNA of \$3,049.42, and a PPA of \$668.41 retroactive to March 16, 2009 and notify the Appellant in writing.

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.

Jeanne Travers Jabour
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sherry Anderson