

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**

<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	1009605
<b>Decision Date:</b>	9/27/10	<b>Hearing Date:</b>	August 31, 2010
<b>Hearing Officer:</b>	B. Padgett		

**Appellant Representative:**

**Division Representative:**

C. Carr



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Division of Medical Assistance  
Board of Hearings  
Two Boylston Street  
Boston, MA 02116*

# APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	130 CMR 520.026
<b>Decision Date:</b>	9/27/10	<b>Hearing Date:</b>	August 31, 2010
<b>Division Rep.:</b>	C. Carr	<b>Appellant Rep.:</b>	
<b>Hearing Location:</b>	Taunton		

## Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

## Jurisdiction

The appellant received a notice dated April 28, 2010, stating: The Division will raise your Patient Paid Amount from \$0.00 to \$498.92 on April 01, 2010 because your countable income has gone up” (Exhibit 1).

The appellant filed this appeal timely on May 24, 2010 (130 CMR 610.015(B); Exhibit 2).

Determination of the PPA is valid grounds for appeal (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth established a PPA of \$498.92.

## Issue

Was the appellant's PPA calculated correctly?

## Summary of Evidence

The MassHealth representative testified that appellant was approved for long-term-care (LTC) coverage on March 11, 2009, with a \$0.00 patient paid amount (PPA). The representative stated on March 31, 2010, a new PPA was calculated after submission of an eligibility review form. The MassHealth representative indicated that MassHealth had previously used the appellant's real estate taxes and insurance of \$1,749.00 as a monthly figure in its calculation of the PPA instead of a yearly figure. When the correct amount of taxes and insurance was used the appellant's PPA was calculated to be \$498.92.<sup>1</sup> The MassHealth representative testified the current calculation indicates the community spouse (appellant's wife) has gross income of \$1,061.50 (Social Security) and institutional spouse (appellant) has gross income of \$1,814.52 (\$1,384.52 pension/annuity + \$430.00 Social Security). The representative stated the community spouse has shelter expense of \$305.00 (mortgage of \$84.29 per month + \$144.54 taxes + \$76.00 property insurance). The shelter expense is added to the food stamp allowance of \$611.00 for a total shelter expense of \$916.00. The standard deduction of \$547.00 is subtracted from the total shelter expense and this figure (\$369.00) is added to the federal standard allowance of \$1,822.00 to arrive at the community spouse's Monthly Minimum Maintenance Needs Allowance (MMMNA) of \$2,191.00. The community spouse's gross income of \$1,061.50 is subtracted from the MMMNA of \$2,191.00 to arrive at the Spousal Maintenance Needs Allowance (SMNA) of \$1,129.50, which in turn is subtracted from the appellant's income of \$1,814.52 along with health insurance of \$113.20 and his personal needs allowance (PNA) of \$72.80. Based on the current verifications the appellant has a PPA of \$499.02 (Exhibit 4).

The appellant attorney stated he had previously requested the appellant's file to review the MassHealth action. The representative stated MassHealth was unable to present the appellant's latest review form which is the basis for the newest calculation and therefore an appeal was required. After review the appellant's counsel agreed with the MassHealth figures and calculation.

## Findings of Fact

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

1. The appellant currently resides in a nursing facility.
2. The appellant's has gross monthly income of \$1,814.52.
3. The appellant's monthly income after deductions is \$1,628.52 after subtraction of the appellant's health insurance of \$113.20 and his personal needs allowance of \$72.80.

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<sup>1</sup> An additional notice was sent to the Appellant on June 17, 2010, changing the PPA from \$498.92 to \$499.02. This notice was combined with the present appeal.

4. The community spouse's MMMNA of \$2,191.00 is determined as follows:

Rent/mortgage	\$ 84.29
Taxes and insurance	\$ 144.54
Required Condo Charge	\$ .00
Food Stamp Utility allowance	+ \$ 611.00
Total shelter costs	= \$ 916.00
Federal shelter standard (subtract)	- \$ 547.00
Excess shelter costs	= \$ 369.00
Standard Maintenance Allowance	+ \$1,822.00
MMMNA	= \$2,191.00
  
5. The community spouse has gross monthly income of \$1,061.50.
  
6. The SMNA \$1,129.50 is determined by deducting the community spouse's income (\$1,061.50) from the MMMNA (\$2,191.00).
  
7. The SMNA (\$1,129.50), health care coverage (\$113.20) and PNA (\$72.80) are deducted from the appellant's income (\$1,814.52) to determine the PPA of \$499.02.

## Analysis and Conclusions of Law

The current evidence demonstrates the community spouse has gross monthly income of \$1,061.50 and MassHealth has calculated an MMMNA of \$2,191.00. The regulations dictate MassHealth consider the institutionalized spouse's income for the community spouse when there is a shortfall between the community spouse's income and the MMMNA. The appellant or institutional spouse has income of \$1,628.52 (after subtraction of the appellant's health insurance of \$113.20 and his personal needs allowance of \$72.80). Accordingly, the community spouse retains \$1,129.50 of the institutional spouse income to meet the MMMNA. The remaining funds are the appellant's PPA \$499.02 (\$1,628.52 - \$1,129.50).<sup>2</sup>

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<sup>2</sup> 130 520.026: 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-

After review I find the appellant's correct PPA is \$499.02 and this 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 Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

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Brook A. Padgett  
Hearing Officer  
Board of Hearings

cc: MassHealth representative: Taunton MEC

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monthly-maintenance-needs allowance exceeds the community spouse's gross income. (1) The MassHealth agency determines the MMMNA by adding the following amounts: (a) \$1,822 (the federal standard maintenance allowance); and (b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$547 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 \$611. (2) 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 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.