

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**

<b>Appeal Decision:</b>	Approved in Part	<b>Appeal Number:</b>	1104896
<b>Decision Date:</b>	6/13/11	<b>Hearing Date:</b>	04/27/2011
<b>Hearing Officer:</b>	Susan Burgess-Cox	<b>Record Open to:</b>	05/04/2011

**Appellant Representative:**

**MassHealth Representative:**  
Patricia Irvine



*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 in Part	<b>Issue:</b>	PPA
<b>Decision Date:</b>	6/13/11	<b>Hearing Date:</b>	04/27/2011
<b>MassHealth Rep.:</b>	Patricia Irvine	<b>Appellant Rep.:</b>	
<b>Hearing Location:</b>	Tewksbury 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 notices dated December 28, 2010, December 29, 2010, and January 4, 2011, MassHealth notified the appellant that he was approved for MassHealth benefits beginning October 6, 2010 with an initial patient paid amount of \$272.59, which increased to \$2,910.59 effective October 2010, and then decreased to \$2,900.59 effective December 1, 2010. (Exhibit 1). The appellant's spouse appealed all three decisions in a timely manner. (130 CMR 610.015(B); Exhibit 2). An agency determination regarding the scope and amount of assistance is valid grounds for appeal. (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth determined that the appellant owes a patient paid amount of \$2,910.50 in October and November 2010 and \$2,900.59 beginning December 2010.

### Issue

Whether MassHealth was correct in calculating the appellant's patient paid amount.

## Summary of Evidence

The MassHealth representative, from the Tewksbury MassHealth Enrollment Center, testified that MassHealth received the appellant's application for long-term care benefits on November 8, 2010. The appellant is 85-years old and has a spouse living in the community. The appellant has been in a long-term care facility since July 17, 2010. The appellant requested a start date of October 6, 2010 and that is the start date that MassHealth used in determining his eligibility. The appellant was initially determined eligible with a patient paid amount of \$272.59 each month but MassHealth corrected this and increased the patient paid amount to \$2,910.59 each month effective October 1, 2010 as the appellant's spouse purchased an annuity which increased their income.

The appellant's spouse moved to assisted living in January 2011. Therefore, she is seeking an adjustment to her minimum monthly maintenance needs allowance (MMMNA) to accommodate her payment of the services she receives in assisted living. MassHealth did calculate the MMMNA of the community spouse by considering expenses for assisted living such as room and board. However, MassHealth did not include utilities and other expenses in calculating a new MMMNA as they appeared to be covered by the fee for room and board. A copy of the worksheet used by MassHealth to calculate the new MMMNA was incorporated into the hearing record as Exhibit 5.

Counsel for the appellant appeared in person and presented a brief which was incorporated into the hearing record as Exhibit 4. The figures presented by counsel for the appellant were not consistent with those of MassHealth. For example, the assisted living fee in the brief provided by the appellant was \$5,721 versus the \$4,956 that MassHealth utilized in calculating the MMMNA. Therefore, the record was held open to give the appellant the opportunity to submit additional records and calculations for the MMMNA. (Exhibit 6). A brief from counsel for the appellant was incorporated into the record as Exhibit 7. The brief is more consistent with the figures that MassHealth used in calculating the MMMNA. For example, counsel for the appellant correctly omits the Standard Utility Allowance from the new calculations and has the correct amount of income from the Social Security Administration for the community spouse. (Exhibit 4; Exhibit 7).

## Findings of Fact

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

1. The appellant is a resident of a long-term care facility.

2. The appellant applied for MassHealth and was determined eligible for long-term care with a start date of October 6, 2010 and a patient paid amount of \$2,910.59.
3. This patient paid amount decreased in December 2010 to \$2,900.59.
4. The appellant has a monthly gross income of \$3,175.89
5. The appellant has a spouse who resides in the community who has a monthly gross income of \$4,811.51.
6. The income of the appellant's spouse includes income from an annuity.
7. The appellant has a personal needs allowance of \$72.80.
8. The appellant pays a monthly premium of \$202.50 for his own health insurance.
9. The appellant's spouse moved into assisted living in January 2011.
10. The appellant's spouse pays a monthly fee of \$5,721 for assisted living.
11. The appellant's spouse pays \$97.38 a month for medications.
12. The monthly fee for assisted living includes the cost of a personal care attendant which the community spouse requires for at least one hour each day.
13. The monthly fee for assisted living includes a cost for medication management which the community spouse requires.
14. The community spouse's adjusted MMMNA to meet her medical needs in assisted living is \$5,818.38.
15. The appellant and community spouse did not have countable assets that were considered in calculating the patient paid amount.
16. MassHealth initially determined that the appellant's spouse had a minimum monthly maintenance needs (MMMNA) allowance of \$2,739.
17. The income of the community spouse exceeds this allowance until January 2011.
18. However, the community spouse has special needs that began in January

2011 when she entered an assisted living facility.

19. The community spouse requires additional income to meet her adjusted MMMNA.
20. Because the community spouse's gross monthly income is below her adjusted MMMNA, the community spouse is entitled to a portion of the appellant's income (SMNA)(spousal maintenances needs allowance), after deducting his personal needs allowance of \$72.80.
21. The appellant has insurance of \$202.50 each month which MassHealth did originally consider in calculating the PPA.
22. The appellant will have sufficient income to take into consideration the needs of the community spouse, his personal needs allowance and cover payment for his health insurance.

## **Analysis and Conclusions of Law**

MassHealth administers and is responsible for the delivery of health-care services to MassHealth members. (130 CMR 515.002). The regulations governing MassHealth at 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for noninstitutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by M.G.L. c. 118E, and certain Medicare beneficiaries. (130 CMR 515.002). The appellant in this case is an institutionalized person. Therefore, the regulations at 130 CMR 515.000 through 522.000 applies to this case. (130 CMR 515.002).

The issue on appeal is the patient paid amount that the appellant contributes. The appellant would like to provide for the maintenance needs of his community spouse and have MassHealth consider condominium fees and the cost of the ride for the community spouse in calculating the patient paid amount. (130 CMR 520.002(B)). In determining the monthly patient-paid amount, 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. (130 CMR 520.026).

If a 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 MassHealth, MassHealth may deduct an amount

from the institutionalized spouse's countable-income amount to meet this need. (130 CMR 520.026(B)). This amount is the spousal-maintenance-needs deduction. (130 CMR 520.026(B)). 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. (130 CMR 520.026(B)).

Pursuant to 130 CMR 520.026(B), MassHealth determines the MMMNA by adding the following amounts:

- (1) \$1,822 (the federal standard maintenance allowance); and
- (2) 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:
  - (a) 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
  - (b) the applicable standard deduction under the Food Stamp 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 \$612.

The maximum-monthly-maintenance-needs allowance is \$2,739 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). MassHealth allowed a monthly maintenance needs allowance of \$2,739 for the appellant's spouse.

Under the regulations governing MassHealth, 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. (130 CMR 520.017(D)(1)). 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. (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)). 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. (130

CMR 520.017(D)(1)). The expenses presented by the appellant's spouse include costs for assisted living effective January 2011. Therefore, an adjustment shall be made to accommodate the special support service that the community spouse needs at the assisted living facility. (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 community spouse's gross income is less than what she needs to meet the expenses caused by the exceptional circumstances as her gross income would only be \$4,811.51. The regulations then state that the hearing officer will 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 amount needed to meet the exceptional circumstances which is the payment of the cost of the assisted living fee and additional medical expenses which come to an excess shelter allowance of \$5,818.38 each month. (130 CMR 520.017(D)). While counsel for the appellant wanted to add that excess shelter allowance to the federal standard maintenance needs allowance, the regulations at 130 CMR 520.017(D) do not require such consideration. Instead, they simply call for the hearing officer to consider the additional expenses caused by the exceptional circumstances. (130 CMR 520.017(D)). In this case, those additional expenses are \$5,818.38.

The regulations then require the hearing officer to compare the revised MMMNA to the community spouse's total income. (130 CMR 520.017(D)(2)(c)). If the community spouse's total income is less than the amount of the revised MMMNA, the 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)(2)(c)).

In this case, the community spouse's total income is less than the amount of the revised MMMNA. (130 CMR 520.017(D)(2)(c)). Therefore, in determining the patient paid amount, MassHealth must take into consideration the personal needs allowance of the appellant and then a spousal-maintenance-needs deduction to accommodate the spouse's shortfall in income to meet her minimum monthly maintenance needs allowance. In this case, the appellant's spouse has an income shortfall of \$1,006.87. Therefore, the appellant's patient paid amount should be decreased by \$1,006.87 to accommodate the needs of the appellant's spouse. Additionally, MassHealth shall deduct \$202.50 each month to accommodate the appellant's own health care coverage. Despite

the deduction made for the monthly maintenance needs of the community spouse, the appellant will still have sufficient income to deduct for his own monthly health care coverage. This would increase the SMNA of the appellant's spouse to \$1,006.87.

This appeal is approved in part to adjust the MMMNA to account for the community spouse's assistive living costs and adjustment to the SMNA.

## **Order for MassHealth**

Effective, January 2011, the date that the community spouse entered assisted living, increase the SMNA of the community spouse by \$1,006.87 in calculating the appellant's patient paid amount (PPA) in addition to considering the personal needs allowance and health insurance of the appellant in calculating the PPA.

## **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.

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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

cc: MassHealth Representative: Dorothy Zamora