

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

Appeal Decision:	Approved in part; Denied in part	Appeal Number:	1409043
Decision Date:	9/26/14	Hearing Date:	09/09/2014
Hearing Officer:	Paul C. Moore		

Appellant Representative:

MassHealth Representative:
Elizabeth Landry



*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 in part; Denied in part	Issue:	LTC – PPA, SMNA
Decision Date:	9/26/14	Hearing Date:	09/09/2014
MassHealth Rep.:	Elizabeth Landry	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 July 8, 2014, MassHealth informed the appellant-husband that his patient-paid amount (PPA) for long-term care benefits was reduced from \$1,340.60 to \$1,320.60 effective July 1, 2014 (Ex. 1; 130 CMR 520.027). The appellants filed this appeal in a timely manner on August 7, 2014 (Ex. 2; 130 CMR 610.015(B)). A change in the scope or amount of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth reduced the PPA the appellant-husband has to pay his nursing facility every month from \$1,340.60 to \$1,320.60 effective July 1, 2014.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.026 and 130 CMR 520.017, in determining the appellant-husband's PPA and the appellant-wife's minimum monthly maintenance needs allowance (MMMNA).

Summary of Evidence

The MassHealth representative testified that an eligibility review form was sent to the appellant, completed, and received by MassHealth on May 15, 2014. MassHealth processed the review form, which resulted in a small reduction in the PPA calculation for the appellant-husband, who has been residing in a nursing facility. The Patient Paid Amount (PPA) is an amount to be paid by the MassHealth member to the nursing facility to help pay for the member's care. The PPA calculation for the appellant-husband on the July 8, 2014 notice (Ex. 4) is as follows:

Social Security less Medicare	\$1,070.00
Pension	<u>\$3,053.00</u>
Countable Income	\$4,123.00
Personal Needs Allowance	\$72.80
Spouse in Home Allowance	\$2,479.10
Health Insurance Allowance	<u>\$250.50</u>
Less Total Allowances	<u>\$2,802.40</u>
Equals Net Countable Income/ PPA	\$1,320.60

The MassHealth representative also submitted into evidence Exhibit 5, a worksheet which includes a Monthly Maintenance Needs Allowance for the appellant-wife, showing how the Spouse in Home Allowance (a component of the PPA) is derived. Finding the Minimum-Monthly-Maintenance-Needs Allowance ("MMMNA") is the first step toward determining the Spousal Maintenance Needs Deduction ("SMND"):¹

Mortgage or Rent	\$1,135.00
Taxes and Insurance	+ \$0
Food Stamp Utility Allowance	<u>+\$374.00</u>
Total Shelter Expenses	\$1,509.00
Less Shelter Expense Standard	<u>-\$590.00</u>
Excess Shelter Allowance	\$919.00

¹ MassHealth refers to this deduction by several different names. In the calculation attached to the MassHealth notice, this deduction is called the "Spouse in Home" allowance (Ex. 1). At the top of the Maintenance Needs Allowance worksheet, it refers to this deduction as the "Spousal Maintenance Needs Allowance" (Ex. 5). However, the regulations almost universally refer to this deduction as the Spousal Maintenance Needs Deduction (130 CMR 520.017(D)(2) and 520.026(B)).

A Standard Maintenance Allowance of \$1,950.00² was then added to the appellant-wife's Excess Shelter Allowance (\$919.00), to arrive at the appellant-wife's MMMNA of \$2,886.00. Finally, the MassHealth representative deducted the appellant-wife's monthly gross income (\$387.90) from \$2,886.00, to arrive at the SMND of \$2,498.10.³

When the hearing officer asked the MassHealth representative why the figure for the SMND in Exhibit 5 (\$2,498.10) differed from the Spouse in Home Allowance in Exhibit 4 (\$2,479.10), the MassHealth representative testified she was not sure.

The appellant-wife testified telephonically at her request. On her appeal form filed with the Board of Hearings (BOH), she stated, "Ever since the summer of 2013 when I received the new monthly patient paid amount (PPA), I have been experiencing financial hardship. That summer the PPA went up a whole \$300.00! I'm not sure that all my personal needs, housing and bills were taken into consideration when determining the PPA. I would love another review" (Ex. 2). She testified she is eighty-six (86) years old and is herself under a doctor's care, though she still lives in the community. She asked whether her own health insurance costs can be considered an allowable deduction when calculating the appellant-husband's PPA. The MassHealth representative explained that the regulations do not permit that. Throughout her testimony, the appellant-wife repeated that she wished her daughter was present for the hearing, since the daughter handles all of her parents' financial matters.

The MassHealth representative next testified that the appellants had, for unknown reasons, submitted a second eligibility review form for nursing facility services at the end of August, 2014. The MassHealth representative testified that as a result of that second eligibility review, MassHealth actually raised the appellant-husband's PPA to \$1,378.81, and that a new notice to that effect was mailed to the appellant-wife on September 4, 2014.⁴ The appellant-wife testified she has not received any such new notice from MassHealth.

After about fifteen minutes had elapsed, the appellant-wife handed her telephone to a gentleman, who identified himself as the son of the appellants. He inquired who was on the telephone "harassing" his mother. The hearing officer then explained that the appellant-wife had requested a hearing on the recalculated PPA, of which MassHealth notified her on July 8, 2014. The appellants' son asked the hearing officer if he could call back at another time when the appellants' daughter would be present, since the appellant-wife could not answer any more questions. The hearing officer explained that September 9, 2014 at 1:30 pm was the time the BOH had designated for the appeal, and that the appellants had not requested a rescheduled hearing pursuant to the Fair Hearing Rules. Also, the hearing officer explained to the appellants' son that neither he, nor his sister

² The figures used for the Standard Maintenance Allowance, Food Stamp Utility Allowance, and Shelter Expense Standard are updated periodically by the federal government and are set forth in MassHealth regulation 130 CMR 520.026(B)(1).

³ The MassHealth representative did not indicate in her testimony if any of the appellant-wife's gross income was derived from assets retained by the appellant-wife.

⁴ The September 4, 2014 notice is not at issue in this appeal.

(appellants' daughter), were designated as the appeal representatives, so that the hearing officer could not speak to them unless the appellants' had sent a letter to the BOH designating them as such.

Consistent with the testimony of the MassHealth representative, the hearing officer explained to the appellants' son that a new MassHealth notice was in the mail to the appellants, and attempted to explain that there are appeal rights associated with that new notice. At that point, the appellants' son abruptly hung up the phone, and the hearing was terminated.

Findings of Fact

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

1. The appellant-husband has resided at a nursing facility for some time, and the appellant-wife lives in the community (Testimony).
2. An eligibility review for nursing facility services was conducted by MassHealth in May, 2014 (Testimony).
3. As a result of this review, the appellant-husband's PPA as of July 1, 2014 was reduced from \$1,340.60 per month to \$1,320.60 per month (Ex. 4).
4. MassHealth notified the appellants of this change in the PPA via notice dated July 8, 2014 (Ex. 4).
5. The appellants timely appealed the July 8, 2014 MassHealth notice, and the appellant-wife stated on her appeal form that she is not sure all of her personal needs, housing and bills were taken into consideration when determining the PPA (Ex. 2).
6. During the appeal hearing, the appellant-wife demonstrated no exceptional circumstances that would allow for an increase in the minimum monthly maintenance needs allowance or SMND, which, if shown, reduces the appellant-husband's monthly PPA accordingly.
7. MassHealth incorrectly calculated the appellant-husband's PPA effective July 1, 2014, as follows: appellant-husband's monthly income \$4,123.00 (including \$1,070.00 of Social Security and \$3,053.00 pension), less \$72.80 (personal needs allowance), less \$2,479.10 (amount to maintain appellant-wife in home), less \$250.50 (appellant-husband's health insurance premium), equals \$1,320.60 (Ex. 4).
8. MassHealth should have used an SMND (amount to maintain spouse in home) figure of \$2,498.10 when calculating the July 1, 2014 PPA. Otherwise, the figures MassHealth used when calculating the PPA were correct.

Analysis and Conclusions of Law

MassHealth regulation 130 CMR 520.009(A)(3) provides, in part, as follows: “For institutionalized individuals, specific deductions described in 130 CMR 520.026 are applied against the individual’s countable-income amount to determine the patient-paid amount.” The long-term care general income deductions include a \$72.80 personal needs allowance, which has been deducted in this case; a home maintenance needs allowance, which is not applicable in this case; a deduction for health-care coverage and other incurred expenses, which has been deducted in this case; an SMND, which has been deducted in this case; and a family maintenance needs allowance, which also is not applicable in this case (130 CMR 520.026).

If the community spouse’s income is insufficient to meet their monthly expenses, the spousal-maintenance-needs deduction allows the community spouse to keep some of the institutionalized spouse’s income to pay for necessities. The SMND “is the amount by which the minimum-monthly-maintenance-needs allowance exceeds the community spouse’s gross income.” 130 CMR 520.026(B). MassHealth determines the MMMNA by adding a federal standard maintenance allowance to the difference between the community spouse’s actual costs of shelter, including a standard amount for utility costs, and the standard shelter expense, as described at 130 CMR 520.026(B)(1). However, a regulatory cap on the MMMNA⁵ limits the amount MassHealth will allow to cover spousal expenses unless it is increased through a fair-hearing decision in accordance with 130 CMR 520.017(D) and 130 CMR 520.026(B)(2).

MassHealth regulation 130 CMR 520.017 delineates a member’s right to appeal the Asset Allowance or Minimum Monthly-Maintenance-Needs Allowance. “The maximum-monthly-maintenance-needs allowance is \$2,931.00⁶ 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)” (130 CMR 520.026(B)(2)). The criteria for exceptional circumstances are outlined below:

(D) 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**

⁵ Again, the MMMNA cap amount is set by the federal government, and updated periodically.

⁶ The maximum MMMNA figure is updated periodically by the federal government.

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 ensures 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 reviews the housing agreement, service plan, fee schedule, and other pertinent documents to determine whether exceptional circumstances exist. Additional amounts are allowed only for specific expenses necessitated by exceptional circumstances of the community spouse and not for maintaining any pre-set standard of living (130 CMR 520.017(D)(1))

(Emphasis added).

The appellant-wife submitted no evidence to substantiate her claim that she has unusual medical expenses constituting the “exceptional circumstances” that would justify an increase in the SMND when calculating the appellant-husband’s PPA. Accordingly, this portion of the appeal is DENIED.

Pursuant to 130 CMR 520.026, MassHealth calculated the appellant-husband’s PPA by taking the appellant-husband’s total income and allowing deductions, as follows:

Income of institutionalized spouse:	\$4,123.00
Less personal needs allowance:	-\$ 72.80
Less health insurance:	-\$ 250.50
Less SMND:	-\$2,479.10
Equals PPA:	\$1,320.00

However, the hearing officer notes that the SMND figure used by MassHealth in the calculation of the appellant-husband’s PPA is not the same figure used in the Maintenance Needs Allowance Worksheet; there is a difference of \$21.00 between these figures. Insofar as this appeal refers the calculation of the SMND, this portion of the appeal is APPROVED.

Order for MassHealth

Recalculate the PPA for July 1, 2014 using an SMND of \$2,498.10 instead of \$2,479.10. Send notice of implementation only.

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.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Justine Ferreira;