

# Office of Medicaid BOARD OF HEARINGS

## Appellant Name and Address:

<b>Appeal Decision:</b>	Dismissed; Denied in part	<b>Appeal Number:</b>	1505979
<b>Decision Date:</b>	8/3/15	<b>Hearing Date:</b>	07/15/2015
<b>Hearing Officer:</b>	Patricia Mullen	<b>Record Open to:</b>	07/22/2015

## Appellant Representative:

**MassHealth Representative:**  
Clarisse Bothelho



*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>	Dismissed; Denied in part	<b>Issue:</b>	Patient Paid Amount
<b>Decision Date:</b>	8/3/15	<b>Hearing Date:</b>	07/15/2015
<b>MassHealth Rep.:</b>	Clarisse Botelho	<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 April 22, 2015, MassHealth denied the appellant's application for MassHealth benefits because MassHealth determined that the appellant failed to submit verifications in a timely manner. (see 130 CMR 516.001 and Exhibit 1). The appellant filed this appeal in a timely manner on April 27, 2015. (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032). Through a notice dated May 12, 2015, MassHealth approved the appellant's application for MassHealth benefits with a start date of February 1, 2015 and a patient paid amount (PPA) of \$1,650.22. (see 130 CMR 520.026 and Exhibit 4). The appellant filed this appeal in a timely manner on May 21, 2015 disputing the PPA calculation. (see 130 CMR 610.015(B) and Exhibit 5). Dispute as to PPA is valid grounds for appeal (see 130 CMR 610.032). The two appeals were consolidated for hearing.

## Action Taken by MassHealth

MassHealth denied the appellant's application based on failure to timely submit verifications and later approved the appellant's application with a start date of February 1, 2015 and a PPA of

\$1,650.22 a month.

## **Issue**

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 516.001, in determining that the appellant failed to submit verifications in a timely manner; the second issue is whether MassHealth correctly calculated the appellant's PPA of \$1,650.22 pursuant to 130 CMR 520.026 and 130 CMR 520.017.

## **Summary of Evidence**

The appellant was represented telephonically by two attorneys. The MassHealth representative stated that the appellant submitted an application for MassHealth Standard for long term care residents on March 16, 2015 seeking a MassHealth start date of February 1, 2015; the appellant was admitted to the nursing facility on January 7, 2015. The MassHealth representative stated that the appellant failed to submit verifications in a timely manner and the application was denied by notice dated April 22, 2015. The MassHealth representative stated that subsequent to the denial, the appellant submitted the requested verifications and the March 16, 2015 application was reopened and processed. The application was approved on May 12, 2015 with the requested start date of February 1, 2015. (testimony, Exhibit 4) Because the verification appeal has resolved in favor of the appellant, I consider that appeal dismissed.

The appellant's attorney stated that the appellant is appealing the PPA calculation. After some discussion at hearing, it was determined that MassHealth erroneously included the community spouse's income as part of the appellant's income, and did not count any income for the community spouse when determining the spousal allowance. Accordingly it was agreed that the appellant has net Social Security of \$1,988.10 a month and a gross pension of \$2,192.52 for total monthly income of \$4,180.62, not \$4,552.65 as listed on the May 12, 2015 notice. (Exhibit 4) The MassHealth representative stated that she would correct the income error in the system. There is no dispute that the appellant is allowed a deduction of \$72.80 a month for his personal needs allowance (PNA) and \$196.63 a month for private health insurance premiums.

The MassHealth representative stated that she calculated the community spouse's minimum monthly maintenance needs allowance (MMMNA) with no mortgage because she had received documentation that the community spouse paid off her mortgage. The appellant's attorney stated that since December, 2014, the community spouse paid a large portion of the mortgage, but did not pay it off in full and she still has a balance of \$28,000. The appellant's attorney stated that the community spouse has the same mortgage payment of \$624.11 a month that she was paying before reducing her mortgage to \$28,000. The community spouse's monthly homeowner's insurance premium and real estate taxes total \$646.00 a month and her utility allowance,

pursuant to regulation, is \$634.00 a month. The MassHealth representative stated that pursuant to the MMMNA worksheet and MassHealth regulations, the standard shelter expense of \$590.00 is deducted from the community spouse's shelter expense of \$1,904.11 resulting in an excess shelter allowance of \$1,314.11. The regulatory federal standard maintenance allowance of \$1,967.00 is added to the excess shelter allowance resulting in a minimum monthly maintenance needs allowance (MMMNA) of \$3,281.00 for the community spouse. (testimony) Pursuant to MassHealth regulation, the maximum MMMNA is \$2,980.50<sup>1</sup>. (testimony) The community spouse receives monthly annuity income of \$372.03. (testimony) The spousal allowance is calculated by deducting the community spouse's gross monthly income of \$372.03 from her MMMNA of \$2,980.50. The community spouse's spousal allowance amount is \$2,608.47 (\$2,980.50 - \$372.03). The hearing officer noted that it was not clear how MassHealth calculated the larger spousal allowance of \$2,633.00 on the notice. Subsequent to the hearing, the hearing officer calculated the community spouse's MMMNA without the mortgage payment, as it was originally done by MassHealth, and with a lower real estate tax, as it was originally done by MassHealth, and determined a MMMNA of \$2,633.00 for the community spouse. Because MassHealth had erroneously attributed the community spouse's income of \$372.03 a month to the appellant, MassHealth had no community spouse income to deduct from the MMMNA, and the community spouse received the entire amount of \$2,633.00 as a spousal allowance. The error has been corrected and the \$372.03 will be deducted from the appellant's income in the system and will be counted as the community spouse's income. Had the income been entered correctly on the May 12, 2015 notice, the appellant's income would have been \$4,180.62 and the spousal allowance would have been \$2,260.97 (\$2,633 - \$372.03). The PPA would have stayed the same at \$1,650.22. (Exhibit 4)

The appellant's attorney argued that the community spouse's MMMNA should be increased due to exceptional circumstances. The hearing officer questioned the age and medical condition of the community spouse and the appellant's attorney stated that the community spouse is 58 years old and they are not arguing based on her increased medical expenses but rather argue that her need to stay in the home is exceptional and she could not afford to stay in her home without an increase in her MMMNA. The hearing officer asked why the community spouse was not working and the appellant's attorney noted that she cares for her grandchild.

The record was left open for one week to give the appellant's attorney the opportunity to submit a mortgage statement showing that the community spouse still makes mortgage payments. The requested mortgage statement was not submitted within the record open period nor had it been submitted as of the date of this decision.

## Findings of Fact

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<sup>1</sup> At the hearing, the MassHealth representative testified to the previous maximum MMMNA which was \$2,931.00. The maximum MMMNA figure was increased to \$2,980.50 as of January 1, 2015.

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

1. The appellant submitted an application for MassHealth Standard for long term care residents on March 16, 2015 seeking a MassHealth start date of February 1, 2015; the appellant was admitted to the nursing facility on January 7, 2015.
2. The appellant failed to submit verifications in a timely manner and the application was denied by notice dated April 22, 2015; the notice was timely appealed and resolved prior to hearing.
3. MassHealth reopened and approved the appellant's March 16, 2015 application with the requested start date of February 1, 2015.
4. The appellant has net Social Security of \$1,988.10 a month and a gross pension of \$2,192.52 for total monthly income of \$4,180.62.
5. The appellant pays \$196.63 a month for private health insurance premiums.
6. The community spouse had a balance of about \$28,000 owed on her mortgage after paying off most of the mortgage loan balance some time after December, 2014.
7. The community spouse has a mortgage payment of \$624.11 a month and monthly homeowner's insurance premium and real estate taxes totaling \$646.00 a month.
8. The community spouse was paying \$624.11 a month for her mortgage before reducing it to \$28,000.
9. The community spouse receives monthly annuity income of \$372.03.
10. The community spouse is 58 years old and cares for her grandchild.

## **Analysis and Conclusions of Law**

### **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-monthly-maintenance-needs allowance exceeds the community spouse's gross income.

- (1) The MassHealth agency determines the MMMNA by adding the following amounts:
  - (a) \$1,967.00 (the federal standard maintenance allowance); and
  - (b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$590.00 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 \$634.
- (2) The maximum-monthly-maintenance-needs allowance is \$2,980.50 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 fairhearing 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 fairhearing 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 fairhearing officer determines that exceptional circumstances exist, the fairhearing officer may increase the community spouse's MMMNA to meet the expenses caused by the exceptional circumstances as follows.

(a) The fairhearing 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 fairhearing officer will consider how the assets were spent in determining whether or not

significant financial duress exists.

(b) The fairhearing officer will determine the revised MMMNA by including in the calculation the amount needed to meet the exceptional circumstances.

(c) The fairhearing 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 fairhearing officer will first deduct the personalneeds allowance from the institutionalized spouse's countableincome amount and then a spousal-maintenance-needs deduction needed to reach the revised MMMNA.

See 130 CMR 520.017(D).

Although the appellant did not submit the requested mortgage statement to confirm that the community spouse continues to pay \$624.11 a month for her mortgage payments, I will accept the testimony of the appellant's attorney at the hearing. In the present case, the community spouse's MMMNA calculated by MassHealth pursuant to 130 CMR 520.026(B) was the regulatory maximum of \$2,980.50. The appellant's representatives argue that the community spouse's actual MMMNA is greater than the maximum MMMNA set forth in MassHealth regulations, 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 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. (emphasis added) Such necessities include, but are not limited to, special remedial and support services and extraordinary uncovered medical expenses. In determining an increased MMMNA, the fairhearing officer will ensure that no expense (for example, for food or utilities) is counted more than once in the calculation. 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.

The appellant's attorneys argue that the community spouse's housing costs are causing her financial difficulties. The community spouse is paying the same amount of \$624.11 that she was paying prior to reducing her mortgage to \$28,000. The community spouse drastically reduced the debt owed on her home by spending down assets, which enabled the appellant to become asset eligible for MassHealth. Presumably, the community spouse also retained her asset allowance of \$119,220.00 which provides her with resources. While the community spouse's housing costs



might be a valid concern to her, the MassHealth regulation only allows an increase to the MMMNA for exceptional circumstances as outlined in the above regulation and such circumstances do not include shelter costs, unless the shelter cost is related to the community spouse's medical condition as in the case of an assisted living resident. The regulation states that "[a]dditional 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." The community spouse is 58 years old and there is no evidence of a medical condition that results in high out of pocket medical expenses. The community spouse is able to care for her grandchild.

I do not determine that the community spouse has extraordinary uncovered medical expenses arising from her medical condition that result in significant financial duress and thus I determine that exceptional circumstance pursuant to 130 CMR 520.017(D) do not exist here.

The appellant has total monthly income of \$4,180.62 from which \$72.80 is deducted for his PNA; \$2,608.47 is deducted for the community spouse's spousal allowance (\$2,980.50 - \$372.03); and \$196.63 is deducted for monthly health insurance premiums resulting in a PPA to the nursing facility of \$1,302.72. The appeal is denied in part in that the PPA is reduced to \$1,302.72 based on the MMMNA calculation using the mortgage payment and the regulatory increase of the maximum MMMNA to \$2,980.50, but there are no exceptional circumstances resulting in a MMMNA over the regulatory maximum amount.

## **Order for MassHealth**

Modify the notice dated May 12, 2015; determine that the appellant's total income is \$4,180.62 a month; the monthly spousal allowance is \$2,608.47, and the monthly PPA to the nursing facility is \$1,302.72 beginning February 1, 2015.

## **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.

Patricia Mullen  
Hearing Officer  
Board of Hearings

cc