

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

Appeal Decision:	Denied	Appeal Number:	1508928
Decision Date:	10/19/15	Hearing Date:	09/01/2015
Hearing Officer:	Patricia Mullen	Record Open to:	09/28/2015

Appellant Representative:

MassHealth Representative:
Liz 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:	Denied	Issue:	Spousal allowance
Decision Date:	10/19/15	Hearing Date:	09/01/2015
MassHealth Rep.:	Liz 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 June 5, 2015, MassHealth calculated a monthly patient paid amount (PPA) of \$1,429.79 for the appellant to pay to the nursing facility beginning June 1, 2015. (see 130 CMR 520.026 and Exhibit 1). The appellant filed this appeal in a timely manner on July 2, 2015 disputing the PPA. (see 130 CMR 610.015(B) and Exhibit 2). Dispute as to a PPA is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth calculated the appellant's PPA to be \$1,429.79 beginning June 1, 2015.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.026, in determining that the appellant's PPA to the nursing facility is \$1,429.79 a month; a second issue is whether exceptional circumstances exist pursuant to 130 CMR 520.017(D) that allows for an

increase in the community spouse's minimum monthly maintenance needs allowance (MMMNA) and spousal allowance deduction.

Summary of Evidence

The appellant's spouse has appeal rights with regard to an increase in her MMMNA and she appeared at the hearing with her attorney and her daughter. The MassHealth representative stated that the appellant is 82 years old and was admitted to the nursing facility on September 12, 2014. The appellant has a spouse living in the community. (testimony) By notice dated March 26, 2015, the appellant was approved for MassHealth Standard with a start date of October 9, 2014 and a PPA of \$1,394.49. (Exhibit 7) The MassHealth representative stated that the PPA was recalculated to be \$1,526.79 and a new notice was issued on March 27, 2015. (Exhibit 7) The MassHealth representative stated that the appellant submitted a dental bill on or about June 4, 2015 and the PPA was adjusted to reflect the medical expense deduction of \$97.00 by notice dated June 5, 2015. (Exhibit 1) The June 5, 2015 notice was timely appealed and is at issue in this hearing. (Exhibits 1, 2) The MassHealth representative stated that the dental bill deduction was allowed for the month of June, 2015 and the PPA increased back to \$1,526.79 by notice dated July 13, 2015. (Exhibit 4)

The MassHealth representative stated that the appellant receives monthly net Social Security of \$389.00 and a gross monthly pension of \$2,872.27 for a total monthly income of \$3,261.27. The MassHealth representative stated that the appellant is allowed a personal needs allowance (PNA) deduction of \$72.80 a month and his monthly health insurance premium amount of \$109.08 is also deducted. (Exhibit 1) The MassHealth representative stated that MassHealth calculated a spousal needs allowance of \$1,552.60 a month pursuant to a regulatory worksheet. (Exhibit 5)

The MassHealth representative stated that the community spouse's monthly mortgage is \$1,271.00 and her homeowner's insurance premium and real estate taxes average \$411.00 a month. (Exhibit 5) The community spouse's mortgage bill shows that she pays principal and interest totaling \$1270.56 a month and is billed \$465.03 to be put into escrow for her real estate taxes and homeowner's insurance for a total bill of \$1,735.59. (Exhibit 6) The MassHealth representative testified that the community spouse's homeowner's insurance premium is \$1,220.00 a year, or \$101.66 a month, and her annual real estate tax totals \$3,791.30, or \$308.44 a month for total taxes and insurance of \$411.00 a month. (Exhibit 5) The MassHealth representative stated that the community spouse's utility allowance, pursuant to regulation, is \$634.00 a month resulting in total shelter expenses of \$2,316.00. (Exhibit 5) The MassHealth representative stated that pursuant to the MMMNA worksheet and MassHealth regulations, the standard shelter expense of \$598.00 is deducted from the community spouse's shelter expense of \$2,316.00 resulting in an excess shelter allowance of \$1,718.00. (Exhibit 5) The regulatory federal standard maintenance allowance of \$1,992.00 is added to the excess shelter allowance

resulting in a minimum monthly maintenance needs allowance (MMMNA) of \$3,710.00 for the community spouse. (testimony, Exhibit 5) Pursuant to MassHealth regulation, the maximum MMMNA is \$2,980.50. (testimony) The community spouse receives monthly gross Social Security income of \$1,427.90. (testimony, Exhibit 5) The spousal allowance is calculated by deducting the community spouse's gross monthly income of \$1,427.90 from her MMMNA of \$2,980.50. (testimony, Exhibit 5) The community spouse's spousal allowance amount is \$1,552.60 (\$2,980.50 - \$1,427.90). (testimony, Exhibit 5) The MassHealth representative stated that after deducting the appellant's PNA, his health insurance premium, and the spousal allowance from his income, his PPA to the nursing facility is \$1,526.79 a month. The MassHealth representative noted that the PPA on the June 5, 2015 notice is slightly lower because it reflects the one time medical expense deduction of \$97.00. (Exhibit 1)

The appellant's attorney argues that the community spouse's MMMNA should be increased pursuant to 130 CMR 520.017(D) due to exceptional circumstances. The appellant's attorney noted that the appellant has high household expenses including a large mortgage on her primary residence which was refinanced 15 years ago. The appellant's attorney submitted documentation of the community spouse's expenses. (Exhibit 6) The community spouse has a balance of \$48,025.68 on her mortgage which has a maturity date of March 1, 2019. (Exhibit 6) The appellant's attorney noted that the appellant's and community spouse's combined net monthly income is \$4,114.00 and their combined expenses exceed this amount. (Exhibit 6) The appellant's attorney noted that the community spouse's mortgage, taxes and insurance total \$1,735.59 a month and the appellant's PPA is \$1,526.79, leaving just \$851.62 from the couple's net income to pay all other monthly bills. (Exhibit 6) The appellant's attorney listed the community spouse's monthly expenses including natural gas, electricity, cell phone bill, phone/internet/cable, water bill, trash removal, Silver Script Medicare Part D prescription premium, health insurance premium, auto insurance premium, and life insurance premium totaling \$848.00 a month. (Exhibit 6) The appellant's attorney noted that the community spouse also has food expenses, gas expenses for her auto, and expenses related to her heart doctor appointments. (Exhibit 6) The appellant's attorney pointed out that the community spouse's auto needs repairs, and her roof and furnace need replacing. (Exhibit 6) The appellant's attorney stated that the community spouse is seeking to have the PPA reduced to zero in order to allow the community spouse to support herself. (Exhibit 6)

The community spouse noted that she has a monthly appointment with her heart doctor and has transportation costs associated with that. The community spouse pays a Medicare premium of \$104.90 a month, as well as a monthly premium of \$131.56 for her Blue Cross/Blue Shield health insurance and a monthly premium of \$23.30 for her Silver Scripts prescription insurance. (Exhibit 6) The community spouse noted that the appellant has an outstanding medical bill from the Taunton Nursing Home, where he stayed last summer, totaling \$2,500.00. The MassHealth representative stated that MassHealth would update the appellant's health expense deduction to \$131.56 a month to reflect the new Blue Cross/Blue Shield premium he is paying.

There was no testimony with regard to any assets held by the community spouse and any potential interest income generated by such assets.

The record was left open for 4 weeks until September 29, 2015 to give the community spouse the opportunity to submit a letter from her heart doctor speaking to her medical condition; 12 months of statements showing her out of pocket medical expenses; self attested travel expenses for her medical appointments; and out of pocket prescription expenses. (Exhibit 9) The community spouse was also to submit the bill from the Taunton Nursing Home with an explanation from the facility regarding the bill. (Exhibit 9)

The appellant's attorney submitted documentation within the record open period. (Exhibit 10) The community spouse's cardiovascular physician, Dr. Alice Jacobs, noted in a letter dated September 24, 2015, that the community spouse is 75 years old and has permanent atrial fibrillation managed with rate control and anticoagulation, mitral valve prolapse, hypertension, hypercholesterolemia, and insignificant coronary artery disease. (Exhibit 10) The community spouse submitted 6 daily parking permits for the Mansfield train depot costing \$7.00 each for the dates September 22, March 31, April 15, April 22, June 11, and August 17, and copies of one way fare for the commuter rail showing that a round trip fare costs \$9.20. (Exhibit 10) The community spouse submitted documentation showing that she went to the anticoagulation clinic in Boston on 1/6/15, 2/4/15, 3/5/15, 4/3/15, and 4/30/15, and went to the Quest lab in Foxboro for her blood draws on 5/27/15, 6/25/15, 7/22/15, 7/29/15, 8/5/15, 8/19/15, 9/2/15, 9/9/15, 9/17/15, and 9/24/15. (Exhibit 10) The community spouse submitted out of pocket prescription expenses totaling \$30.00, a medical bill for date of service of June 9, 2015 for \$15.47, a medical bill for date of service of December 1, 2014 for \$15.44, and a medical bill for date of service of June 11, 2015 for \$22.53, for total out of pocket medical expenses of \$83.44. (Exhibit 10) The community spouse also submitted an estimated dental bill for a crown totaling \$869.50, a bill from the appellant's current nursing facility showing total balance due for outstanding PPAs, and a letter dated July 20, 2015 from Taunton Nursing Home stating that the appellant owes \$2,432.00 for the period August 6, 2014 to August 21, 2014; the letter notes that the bill will be resubmitted to Blue Cross Indemnity/Medex but will be the appellant's responsibility if not covered. (Exhibit 10)

Findings of Fact

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

1. The appellant is 82 years old and was admitted to the nursing facility on September 12, 2014; by notice dated March 26, 2015, the appellant was approved for MassHealth Standard with a start date of October 9, 2014 and a PPA of \$1,394.49; the PPA was

recalculated to be \$1,526.79 by notice dated March 27, 2015.

2. The appellant has a spouse living in the community.
3. The appellant submitted a dental bill on or about June 4, 2015 and the PPA was adjusted to reflect the medical expense deduction of \$97.00 by notice dated June 5, 2015; the June 5, 2015 notice was timely appealed and is at issue in this hearing.
4. The dental bill deduction was allowed for the month of June, 2015 and the PPA increased back to \$1,526.79 by notice dated July 13, 2015.
5. The appellant receives monthly net Social Security of \$389.00 and a gross monthly pension of \$2,872.27 for a total monthly income of \$3,261.27.
6. The appellant pays a Blue Cross/Blue Shield private health insurance premium of \$131.56 a month; the community spouse also pays a Blue Cross/Blue Shield health insurance premium of \$131.56 a month.
7. The community spouse has a mortgage loan balance on her property of \$48,025.68 with a maturity date of March 1, 2019.
8. The community spouse's monthly mortgage principal and interest is \$1,271.00 and her homeowner's insurance premium and real estate taxes total \$411.00 a month.
9. The community spouse receives monthly gross Social Security income of \$1,427.90.
10. The community spouse pays a Medicare premium of \$104.90 a month and a monthly premium of \$23.30 for her Silver Scripts prescription insurance.
11. The community spouse is 75 years old and has permanent atrial fibrillation managed with rate control and anticoagulation, mitral valve prolapse, hypertension, hypercholesterolemia, and insignificant coronary artery disease.
12. The community spouse paid \$42.00 total for parking at the Mansfield train depot on September 22, March 31, April 15, April 22, June 11, and August 17; she pays \$9.20 round trip for the commuter rail.
13. The community spouse went to the anticoagulation clinic in Boston on 1/6/15, 2/4/15, 3/5/15, 4/3/15, and 4/30/15, and went to the Quest lab in Foxboro for her blood draws on 5/27/15, 6/25/15, 7/22/15, 7/29/15, 8/5/15, 8/19/15, 9/2/15, 9/9/15, 9/17/15, and 9/24/15.

14. The community spouse submitted out of pocket prescription and medical expenses totaling \$83.44.
15. In a letter dated July 20, 2015, Taunton Nursing Home informed the appellant that he owes \$2,432.00 for the period August 6, 2014 to August 21, 2014; the letter notes that the bill will be resubmitted to Blue Cross Indemnity/Medex but will be the appellant's responsibility if not covered.

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) \$1,992.00 (the federal standard maintenance allowance); and
 - (b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$598.00 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 \$390. 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 countable income amount and then a spousal-maintenance-needs deduction needed to reach the revised MMMNA.

See 130 CMR 520.017(D).

The community spouse's MMMNA calculated by MassHealth pursuant to 130 CMR 520.026(B) was the regulatory maximum of \$2,980.50. The community spouse and her representative 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 attorney argues that the community spouse's monthly expenses are causing her financial difficulties. Out of all the expenses listed in the document at Exhibit 6, only three have to do with the community spouse's medical expenses. The listed expenses are for the community spouse's Blue Cross/Blue Shield premium, her Silver Scripts premium, and her average, undocumented expenses for her heart doctor appointments. (Exhibit 6) The community spouse's Medicare premium of \$104.90 is also a monthly medical expense and thus the community spouse's monthly medical expenses total \$339.76. Out of this amount, \$259.76 is for health insurance premiums. Health insurance premiums are not an extraordinary uncovered medical expense as the very nature of health insurance is that it covers certain medical services, thus insurance in and of itself would never be a *covered* medical expense.

During the record open period, the community spouse submitted documentation related to parking and the round trip cost of the commuter rail into Boston. Other than the medical bill for a June 11, 2015 appointment, there was no documentation of medical appointments which correspond to the dates on the parking placards for the Mansfield train depot. None of the parking placards matched up with the dates of the anticoagulation clinic appointments in Boston or the dermatology appointments of December 1, 2014 and June 9, 2015. Regardless, I will accept the submission and count the parking and travel expenses for the 6 dates noted on the parking placards as medical expenses. The parking and transportation for those 6 dates totals \$97.20. The community spouse also submitted documentation of medical bills totaling \$83.44. When adding together, the community spouse's documented uncovered medical expenses total \$180.64, or an average of about \$15.00 a month. The estimated bill for a crown would not be considered an extraordinary uncovered medical expenses arising out of the community spouse's medical condition.

While the community spouse has medical expenses arising from her medical condition, I do not find that such uncovered medical expenses result in significant financial duress. The community spouse's housing costs are causing her financial difficulties. The community spouse's mortgage, real estate taxes, and homeowner's insurance alone total \$1,682.00 and

exceed her monthly income. The community spouse's housing costs are a very valid concern, however, 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 high shelter costs, unless the shelter cost is related to the community spouse's medical condition as in the case of an assisted living resident. While it may sound harsh, 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."

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.

In the letter dated July 20, 2015, the Taunton Nursing Home informed the appellant that it would be rebilling the private health insurance for payment due for the period August 6, 2014 to August 21, 2014. The appellant is advised to get an updated letter from the Taunton Nursing Facility noting the outcome of the rebilling and whether a balance is due to the appellant. If there is a remaining balance due to the appellant, the appellant is advised to submit a current bill with balance due to MassHealth so that MassHealth can determine if the incurred medical expense deduction from his PPA can be adjusted. The MassHealth representative testified at the hearing that the medical expense deduction from the appellant's PPA would be adjusted to reflect the increased health insurance premium of \$131.56 a month.

Because exceptional circumstances do not exist here, the community spouse's MMMNA remains the regulatory maximum of \$2,980.50 and thus MassHealth calculated the spousal allowance correctly. The appellant has total monthly income of \$3,261.27 from which \$72.80 is deducted for his PNA, \$1,552.60 is deducted for the community spouse's spousal allowance, and \$131.56 is deducted for monthly health insurance premiums resulting in a PPA to the nursing facility of \$1,504.31. The appeal is denied.

Order for MassHealth

If MassHealth has not already done so, modify the notice dated July 13, 2015 and adjust the appellant's PPA to the nursing facility to be \$1,504.31 beginning July 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.

Patricia Mullen
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Justine Ferreira