

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**

<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	1511917
<b>Decision Date:</b>	11/10	<b>Hearing Date:</b>	10/09/2015
<b>Hearing Officer:</b>	Christopher Jones		

**Appellant Representative:**

**MassHealth Representative:**  
Eileen Smith (Phone)



*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>	Denied	<b>Issue:</b>	LTC – SMNA; PPA
<b>Decision Date:</b>	11/10	<b>Hearing Date:</b>	10/09/2015
<b>MassHealth Rep.:</b>	Eileen Smith	<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 a notice dated August 10, 2015, MassHealth approved the appellant for long-term-care benefits and assessed a patient paid amount of \$879.97 a month. Exhibit 1; 130 CMR 520.026. The appellant's wife filed this appeal in a timely manner on August 20, 2015 to request that she be allowed to keep more of her husband's income. Exhibit 2; 130 CMR 610.015(B). Limitation of assistance is valid grounds for appeal. See 130 CMR 610.032.

## Action Taken by MassHealth

MassHealth set the appellant's patient paid amount at \$879.97, leaving \$1,199.00 as the spousal maintenance allowance.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.026, in determining the appellant's patient paid amount.

## Summary of Evidence

The MassHealth representative testified that an application was submitted for the appellant-husband on April 24, 2015, with a requested long-term care coverage start date of July 10, 2015. The appellant was admitted to the nursing facility on May 28, 2015. See also Exhibit 4. The appellant-husband was approved for the requested start date, and he has to contribute \$879.97 a month toward his stay as the Patient Paid Amount (“PPA”). The PPA calculation on the August 10, 2015 notice is as follows:

Social Security	\$ 244.00
Pension	<u>\$2,105.00</u>
<b>Countable Income</b>	<b>\$2,349.00</b>
Personal Needs Allowance	\$ 72.80
Spouse in Home Allowance	\$1,199.00
Health Insurance	<u>\$ 197.23</u>
	<b>\$1,469.03</b>
<b>Total Allowances</b>	<u></u>
	<b>\$ 879.97</b>
<b>Net Countable Income / PPA</b>	

MassHealth also submitted a Maintenance Needs Allowance worksheet, showing how the Spouse in Home Allowance is derived. Finding the Minimum-Monthly-Maintenance-Needs Allowance (“MMMNA”) is the first step toward determining the Spousal Maintenance Needs Deduction (“SMND”):<sup>1</sup>

Mortgage or Rent	\$1,133.00
Taxes and Insurance	\$ 14.00
Standard Utility Expenses	<u>\$ 390.00</u>
<b>Total Shelter Expenses</b>	<b>\$1,537.00</b>
Shelter Expense Standard	<u>-\$ 581.00</u>
<b>Excess Shelter Allowance</b>	<b>\$ 939.00</b>

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<sup>1</sup> In testimony and on its forms, MassHealth generally refers to a spousal “allowance.” See Exhibit 4. However, the regulations almost universally refer to a “Spousal Maintenance Needs Deduction.” See 130 CMR 520.017(D)(2), 520.026(B). They are the same, and this decision will use the term as expressed in the regulations.

A Standard Maintenance Allowance of \$1,992.00 is then added to the Excess Shelter Allowance, to arrive at the appellant-wife's MMMNA of \$2,980.50.

The Standard Utility Expense is based upon whether or not the individual pays for utilities outside of their mortgage/rent payment. If heat is included, then the member only gets a standard allowance of \$390. The Standard Utility Expense is used instead of allowing the MassHealth member to prove what their monthly utility costs are. The Shelter Expense Standard is deducted from the actual shelter expenses and the Standard Maintenance Allowance is added to the end of the calculation. The resulting MMMNA is then compared to a Maximum Monthly Maintenance Needs Amount<sup>2</sup> of \$2,931.00, and MassHealth uses whichever number is lower. MassHealth then subtracts the community spouse's income from the lower of the MMMNA or the regulatory cap of \$2,931, and the result is the SMND. For the community spouse, MassHealth arrived at the SMND of \$1,199.00 by using the regulatory cap of \$2,931.00 and subtracting the community spouse's gross pension income of \$1,732. See Exhibit 4.

The community spouse appeared at the hearing and offered her own accountings of her and her husband's expenses. These accountings show that the institutionalized spouse has over \$11,000 in outstanding debt, mostly unpaid medical expenses incurred prior to his eligibility for MassHealth benefits. Exhibit 5. The community spouse is also paying \$239.70 in federal taxes and she counted the institutionalized spouse's \$197.23 medical insurance premium. The MassHealth representative explained that once her husband entered the nursing facility, he no longer needed to have federal taxes deducted from his income, and MassHealth already deducts his medical insurance from his income before it calculates his PPA. The community spouse's expenses reflect monthly expenses of around \$2,203.29, plus outstanding medical debts for the community spouse totaling \$787.85 upon which she paid \$130 each month.

The community spouse's accounting shows that her expenses are \$601.27 more than her income alone, and that MassHealth is allowing her to keep almost double this amount. However, she testified that she had not been paying her husband's PPA, and she did not believe she could afford to make up the short fall with the amount MassHealth allows her to keep. She also acknowledged that she had no extraordinary medical expenses.

## Findings of Fact

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

1. The appellant entered the nursing facility on May 28, 2015, applied for long-term care benefits on April 24, 2015, with a requested long-term care coverage start date of July 10,

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<sup>2</sup> By regulation, MassHealth will always cap the MMMNA at the Maximum Monthly Maintenance Needs Amount. Only a hearing officer has the authority to award more than the regulatory cap. See 130 CMR 520.017, 520.026.

2015.

2. The appellant was approved on August 10, 2015 for the requested start date with a PPA of \$879.97.
3. The appellant filed this appeal in a timely manner on August 20, 2015.
4. The institutionalized spouse has total countable income of \$2,349.00.
5. The community spouse has income of \$1,732.00, and personal monthly expenses of about \$2,333.29.
6. Using the regulatory maximum maintenance needs allowance of \$2,931.00, MassHealth allows the community spouse an SMND of \$1,199.00.
7. The institutionalized spouse has \$11,727.83 of outstanding medical debt, and the community spouse has \$787.85 in outstanding medical debt. The community spouse pays approximately \$130 each month on her outstanding medical debt.

## Analysis and Conclusions of Law

To determine a member's PPA, MassHealth regulations require that deductions be made from the member's income "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. The amount for the personal-needs allowance is set at \$72.80, and the family-maintenance-needs allowance and home-maintenance needs allowance only apply where a member has dependent children, siblings, or parents living in their former home, or the member he is likely to return home in the next six months.

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). As the MassHealth representative testified at the hearing, 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. See 130 CMR 520.026(B)(1). However, the regulatory cap on the MMMNA 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). See 130 CMR 520.026(B)(2).

(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 Office of Medicaid 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 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.

(2) Determination of Increase for Exceptional Circumstances. If the fair-hearing officer determines that exceptional circumstances exist, the fair-hearing officer may increase the community spouse's MMMNA to meet the expenses caused by the exceptional circumstances as follows.

(a) The fair-hearing officer first verifies 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 fair-hearing officer considers how the assets were spent in determining whether or not significant financial duress exists.

(b) The fair-hearing officer determines the revised MMMNA by including in the calculation the amount needed to meet the exceptional circumstances.

(c) The fair-hearing officer compares 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 fair-hearing officer first deducts 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) (emphasis added).

The community spouse has not shown significant financial duress resulting from exceptional circumstances arising from her own medical condition, frailty, or similar special needs. In fact, the community spouse's own accounting, the \$1,199.00 she keeps from her husband's income should allow her to more than cover her monthly expenses including the payments on her own outstanding medical bills. The regulations do not allow for the consideration of an institutionalized spouse's outstanding bills in determining whether exceptional circumstances exist to warrant an increase in the SMND. Therefore, because the community spouse has not shown significant financial duress arising from her own exceptional circumstances, 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.

Christopher Jones  
Hearing Officer  
Board of Hearings

cc: MassHealth Representative: Sylvia Tiar  
MassHealth Representative: Justine Ferreira