

Office of Medicaid BOARD OF HEARINGS

Appeal Decision:	Approved	Appeal Number:	1801747
Decision Date:	5/15/18	Hearing Date:	03/12/2018
Hearing Officer:	Patricia Mullen	Record Open to:	03/26/2018

Appearances for Appellant:

Appearance for MassHealth:
leasha Pittman



*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	Issue:	Spousal allowance
Decision Date:	5/15/18	Hearing Date:	03/12/2018
MassHealth's Rep.:	leasha Pittman	Appellant's 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 November 28, 2017, MassHealth notified the appellant that her spouse's patient paid amount (PPA) to the nursing facility was increasing to \$645.55 a month. (130 CMR 520.026(B) and Exhibit 1). The appellant filed this appeal in a timely manner on December 8, 2017 seeking an increase in her spousal allowance. (130 CMR 610.015 and Exhibit 2). Dispute of a spousal allowance calculation is valid grounds for appeal (130 CMR 610.032). The hearing was originally scheduled for February 8, 2018 but was rescheduled based on good cause at the request of the appellant. (Exhibit 5).

Action Taken by MassHealth

MassHealth calculated a spousal allowance of \$3,281.00 for the appellant and a PPA of \$645.55 for her spouse.

Issue

The appeal issue is whether appellant is entitled to have her Spousal Maintenance Needs Allowance (SMNA) increased pursuant to 130 CMR 520.026(B) and 520.017(D).

Summary of Evidence

The appellant is the spouse of a MassHealth nursing facility resident and has appeal rights with regard to the calculation of the spousal allowance deduction. The appellant appeared telephonically at the hearing with her attorney. The MassHealth representative submitted the appellant's spouse's Medicaid Management Information Systems (MMIS) screen showing that the appellant's spouse has been open on MassHealth as a long term care resident since August 1, 2011. (Exhibit 3). The MassHealth representative noted that the appellant's spouse's PPA was \$0 based on a previous appeal decision, 1200928. (Exhibit 8). The MassHealth representative stated that when the appellant's spouse's case was transferred from MassHealth's PACE system to MassHealth's MA-21 system in July, 2017, MassHealth did a new determination and calculation of the PPA. The MassHealth representative stated that MassHealth calculated the appellant's minimum monthly maintenance needs allowance (MMMNA) to be \$4,057.00 based on MassHealth regulations. The MassHealth representative testified that the maximum MMMNA allowed under MassHealth regulations is \$3,090.00. The hearing officer pointed out that the spousal allowance listed on the November 28, 2017 notice is \$3,281.00. (Exhibit 1). The MassHealth representative stated that was the spousal allowance determined pursuant to appeal decision 1200928 and MassHealth honors that amount, even though it exceeds the current maximum MMMNA of \$3,090.00. The MassHealth representative stated that MassHealth still accepts that the appellant has exceptional circumstances, but MassHealth cannot increase the spousal allowance amount without another appeal decision. (Exhibit 10). In a notice dated November 28, 2017, MassHealth listed the appellant's spouse's net Social Security income as \$2,464.00 and other income of \$2,888.02 for total income of \$5,352.02. (Exhibit 1). From this, the spouse's personal needs allowance (PNA) of \$72.80 was deducted, as was the spousal allowance of \$3,281.00 and the family maintenance needs allowance of \$1,352.67 resulting in a PPA of \$645.55. (Exhibit 1).

The MassHealth representative testified that the appellant's MMMNA was calculated pursuant to MassHealth regulation as follows: rent of \$2,000.00 is added to standard utility expenses of \$636.00 and from this amount, the standard shelter expense of \$609 is deducted resulting in an excess shelter allowance of \$2,027.00. The MassHealth representative stated that the federal standard maintenance allowance of \$2,030.00 is added to the excess shelter allowance of \$2,027.00 resulting in a MMMNA of \$4,057.00. The MassHealth representative stated that the appellant has no income and thus her spousal allowance would be \$4,057.00 but for the fact that her MMMNA exceeds the regulatory maximum of \$3,090.00 and exceeds the amount determined in appeal decision 1200928.

The MassHealth representative noted that the appellant has been open on MassHealth Standard under category AD for breast cancer patients with income under 250% of the federal poverty level since November, 2014¹. (130 CMR 505.002(F); exhibit 3). Prior to that, the appellant was

¹ In appeal decision 1200928 it was noted that the appellant was not eligible for Standard for breast cancer patients because the family income exceeded 250% of the federal poverty level. (Exhibit 8). The family's current income, based on the spousal allowance of \$3,281.00 and the family maintenance allowance of \$1,352.67 is \$4,633.67.

open on CommonHealth for disabled working adults from November, 2011 to December, 2014. (Exhibit 3).

The appellant testified that she is disabled and has no income other than the spousal allowance of \$3,281.00. The appellant stated that she has a history of breast cancer, chromosomal abnormality, a heart problem, PTSD, anxiety, and depression and her medical conditions coupled with her inability to work result in significant financial hardship. The appellant stated that her landlord recently increased her rent and is threatening eviction. The appellant testified that she cannot find housing that's less expensive and she has cut back on food and necessities. The appellant stated that her two 18 year old children are in college but still come home when they are on break. The children receive a family maintenance allowance totaling \$1,352.67 a month. (Testimony, exhibit 1). The appellant stated that her out of pocket expenses include vitamins and over the counter medications as well as travel costs to get to her medical appointments in Boston. The appellant's attorney argued that the fact that the appellant cannot work in and of itself causes significant financial duress.

The record was left open until March 26, 2018 to give the appellant the opportunity to submit an affidavit and letters from her medical providers. On March 26, 2018, the appellant submitted her affidavit, a letter from her primary care physician, Dr. Campbell, and a letter from her psychotherapist, Ms. Reedy. (Exhibit 9). The appellant attested that her cancer is in remission but she fears it will come back. (Exhibit 9) The appellant noted that she continues to suffer from anxiety, depression, painful neuropathy, and PTSD. (Exhibit 9). The appellant wrote that her out of pocket costs for medications total \$815.56 a month. (Exhibit 9). The appellant also listed health club membership and therapist at club costs. (Exhibit 9). The appellant noted foot care at a cost of \$60.00, massage at \$95.00 an hour, and acupuncture at a cost of \$95.00 an hour without noting frequency. (Exhibit 9). The appellant wrote that her dog offers emotional support and her pet costs are \$200.00 a month. (Exhibit 9). The appellant listed average transportation costs to medical appointments in Boston are \$50.00 a month. (Exhibit 8). In a letter dated March 21, 2018, Dr. Campbell confirmed that the appellant's breast cancer is in remission, she suffers from chronic fatigue syndrome, chronic lyme disease, GAD, peripheral neuropathy, PTSD, adjustment disorder with mixed anxiety and depressed mood, MTHFR mutation which causes vitamin B deficiencies, seborrheic keratosis, and hyperlipidemia. (Exhibit 9). Dr. Campbell referred to increased co-pays and deductibles as well as an increase in rent as compounding the appellant's financial hardship². (Exhibit 9). Dr. Campbell noted that the appellant's pain and neuropathy caused by genetic issues necessitate professional foot care, massage, and acupuncture. (Exhibit 9). Dr. Campbell noted further that the appellant's dog serves as an emotional support animal and gym membership is crucial for her mental stability and physical well being. (Exhibit 9).

Findings of Fact

(Exhibit 1). 250% of the federal poverty level is \$4,330.00 for a family of 3.

² The appellant is on MassHealth Standard and should not have co-pays or deductibles.

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

1. The appellant's spouse has been open on MassHealth as a long term care resident since August 1, 2011.
2. The appellant's spousal needs allowance was \$3,281.00 based on appeal decision 1200928 issued in March, 2012.
3. MassHealth calculated a MMMNA of \$4,057.00 for the appellant in July, 2017.
4. The appellant's rent is \$2,000.00 a month.
5. The appellant's income is her spousal allowance amount of \$3,281.00 a month.
6. The appellant's two children receive a total of \$1,352.67 a month as a family maintenance allowance.
7. The appellant has been open on MassHealth Standard under category AD for breast cancer patients with income under 250% of the federal poverty level since November, 2014; prior to that the appellant was open on CommonHealth for disabled working adults from November, 2011 to December, 2014.
8. The appellant's out of pocket costs for medications total \$815.56 a month; the appellant's foot care cost totals \$60.00 per treatment, massage is \$95.00 an hour, and acupuncture treatment costs \$95.00 an hour.
9. The appellant's emotional support pet costs are \$200.00 a month.
10. The appellant listed average transportation costs to medical appointments in Boston to be \$50.00 a month.
11. The appellant's breast cancer is in remission; she suffers from chronic fatigue syndrome, chronic lyme disease, GAD, peripheral neuropathy, PTSD, adjustment disorder with mixed anxiety and depressed mood, MTHFR mutation which causes vitamin B deficiencies, seborrheic keratosis, and hyperlipidemia.
12. The appellant's pain and neuropathy caused by genetic issues necessitate professional foot care, massage, and acupuncture.

Analysis and Conclusions of Law

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) \$2,030.00 (the federal standard maintenance allowance); and
- (b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$609 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 \$636.

(2) The maximum-monthly-maintenance-needs allowance is \$3,090.00 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(B).

MassHealth calculated the appellant's MMMNA to be \$4,057.00 correctly within the parameters provided by regulation. Although the maximum MMMNA allowed under the regulations is \$3,090.00, MassHealth honored the appellant's previous MMMNA/spousal allowance of \$3,281.00 based on the 2012 appeal decision.

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).

130 CMR 520.017(D) provides an adjustment by the hearing officer to the MMMNA due to exceptional circumstances. The appellant suffers from a number of medical conditions for which she incurs out of pocket expenses. The appellant was determined to be disabled by MassHealth in

the past. The appellant reported out of pocket medical expenses of over \$1,300.00 a month. Although no frequency was reported for foot care, acupuncture, or massage therapy, I determined once a month was reasonable for these treatments. The appellant's only income is her spousal allowance. I conclude that the appellant's expenses arising out of her medical conditions result in significant financial distress. I determine that the appellant's medical issues and financial duress constitute an exceptional circumstance and, thus override the regulatory limit and adopt the actual MMMNA as calculated by MassHealth for the period beginning July 1, 2017. For the period July 1, 2017 to December 31, 2017, the appellant's spouse's income was \$5,352.02 from which a personal needs allowance of \$72.80, a spousal allowance of \$4,057.00, and a family maintenance needs allowance of \$1,352.67 are deducted resulting in a PPA of \$0. Presumably the appellant's spouse's Social Security income increased as of January 1, 2018, thus MassHealth shall determine the spouse's PPA from January 1, 2018 forward allowing for a spousal allowance deduction of \$4,057.00 and family maintenance allowance of \$1,352.67. The appeal is approved. The case is remanded to MassHealth to re-determine the appellant's eligibility for MassHealth Standard in light of the increase in her income.

Order for MassHealth

Modify the notice dated November 28, 2017 and calculate a MMMNA and spousal allowance of \$4,057.00 retroactive to July 1, 2017. Re-determine the appellant's spouse's PPA to be \$0 for the period July 1, 2017 to December 31, 2017. Recalculate the appellant's spouse's PPA as of January 1, 2018 based on any increase in his income.

Re-determine the appellant's eligibility for MassHealth Standard based on the increase in income.

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: MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA, 02780, 508-828-4616