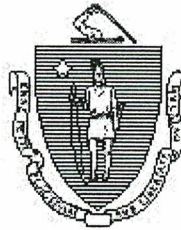


Office of Medicaid BOARD OF HEARINGS

Appeal Decision:	Approved	Appeal Number:	1804640
Decision Date:	7/9/18	Hearing Date:	04/26/2018
Hearing Officer:	Zohra Aziz		

Appearance for Appellant:

Appearance for MassHealth:
Tiana Davis, MEC at Springfield



*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:	LTC MMMNA PPA
Decision Date:	7/9/18	Hearing Date:	04/26/2018
MassHealth's Rep.:	Tiana Davis	Appellant's Rep.:	
Hearing Location:	Springfield MassHealth Enrollment Center	Aid Pending:	

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 13, 2017 MassHealth approved the appellant's Long-Term Care (LTC) application with a Patient Paid Amount (PPA) of \$3,213.25 effective November 21, 2017. (see 130 CMR 520.017, 520.026 and Exhibit 1). An appeal was timely filed on behalf of the appellant on May 1, 2017. (see 130 CMR 610.015(B) and Exhibit 2). A challenge to the PPA is valid grounds for appeal. (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the appellant's LTC application with a PPA of \$3,213.25 effective November 21, 2017.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.017 and 520.026, in determining a PPA of \$3,213.25.

Summary of Evidence

A MassHealth representative testified that the nursing facility is seeking coverage effective November 21, 2017 and that is the date the appellant is otherwise eligible for MassHealth LTC coverage. The community spouse is 89 years old and the institutionalized is 90 years old. Through a notice dated April 13, 2017 MassHealth approved the appellant's Long-Term Care (LTC) application with a Patient Paid Amount (PPA) of \$3,213.25 effective November 21, 2017. (Exhibit 1).

The MassHealth explained that the current monthly PPA is \$3,213.25. The MassHealth representative continued that the community spouse lives in an assisted living facility and her actual monthly minimum maintenance needs allowance (MMMNA) is \$4,530.00. This includes heat, hot water and meals; hence no food stamp allowance was allocated. The community spouse has a monthly health insurance premium of \$169.00, increasing the MMMNA to \$4,699.00. (Exhibit 5). However, the MassHealth representative could only use the regulatory MMMNA maximum of \$3,022.00. The MassHealth representative continued that the community spouse's gross monthly income is \$726.00 consisting of \$572.00 from retired survivor disability income (RSDI) and \$154.00 from a retirement annuity. (Exhibit 5).

The institutionalized spouse's monthly income is \$5,078.55 consisting of \$443.00 from retired survivor disability income (RSDI), \$2,661.55 from a private pension and \$1,974.00 from Veteran's pension. (Exhibit 1). The institutionalized spouse is allowed \$72.80 per month for a personal needs allowance (PNA), \$1,624.11 for a spousal maintenance needs allowance (SMNA) and \$168.50 for health insurance coverage. Based on these deductions, MassHealth calculated the institutionalized spouse's monthly patient paid amount to be \$3,213.25 (\$5,078.55 - \$72.80 - \$1,624.00 - \$168.50). (Exhibit 1). The MassHealth representative testified that the appellants have total assets in the allowable amount of \$104,000.00.

The community spouse was represented by Attorney K.H.¹ who appeared for hearing via telephone and asserted that the community spouse's cost of living is such that she experiences a shortfall every month and needs all of the institutional spouse's income and all assets in order to remain in the community. The community spouse is asking for all of the institutionalized spouse's income and all available assets to be shifted to her so that she may remain in the community. Attorney K.H. asserted that the MMMNA of \$3,022.50 as calculated by MassHealth is insufficient to meet the community spouse's cost of living as she currently resides in an assisted living facility, a placement that is supported by her physician due to multiple medical diagnoses. The monthly cost for the community spouse to remain in the assisted facility is \$4,699.00 which includes heat, utilities, meals, electricity and health insurance. The community spouse is asking for his MMMNA to reflect her actual cost of living and not just the regulatory amount of \$3,022.00.

¹ Initials are being utilized to preserve confidentiality.

Findings of Fact

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

1. The nursing facility is seeking coverage effective November 21, 2017 and that is the date the appellant is otherwise eligible for MassHealth LTC coverage.
2. The community spouse is 89 years old and the institutionalized is 90 years old.
3. Through a notice dated April 13, 2017 MassHealth approved the appellant's LTC application with a PPA of \$3,213.25 effective November 21, 2017. (Exhibit 1).
4. The community spouse lives in an assisted living facility and her actual monthly minimum maintenance needs allowance (MMMNA) is \$4,699.00 which includes heat, hot water, electricity, meals and health insurance premium. (Exhibit 5).
5. MassHealth could only use the regulatory MMMNA maximum of \$3,022.00.
6. The community spouse's gross monthly income is \$726.00 consisting of \$572.00 from retired survivor disability income (RSDI) and \$154.00 from a retirement annuity. (Exhibit 5).
7. The institutionalized spouse's monthly income is \$5,078.55 consisting of \$443.00 from RSDI, \$2,661.55 from a private pension and \$1,974.00 from Veteran's pension. (Exhibit 1).
8. The institutionalized spouse is allowed \$72.80 per month for a personal needs allowance (PNA), \$1,624.11 for a spousal maintenance needs allowance (SMNA) and \$168.50 for health insurance coverage.
9. Based on these deductions, MassHealth calculated the institutionalized spouse's monthly patient paid amount to be \$3,213.25 (\$5,078.55 - \$72.80 - \$1,624.00 - \$168.50). (Exhibit 1).
10. The MassHealth representative testified that the appellants have total assets in the allowable amount of \$104,000.00.
11. The institutionalized spouse is entitled to retain \$2,000.00.
12. The community spouse is entitled to retain the remainder, \$102,000.00.
13. The income generated from the community spouse's first \$10,000.00 of assets using the Bank Rate Monitor Index (BRMI) money market account is \$1.50 per month (\$10,000.00 x 0.18% divided by 12).

14. The income generated from the community spouse's remaining allowable assets using the highest rate quoted in the BRMI not to exceed two and one-half years is \$58.00 per month (\$92,000.00 x .76% divided by 12).

Analysis and Conclusions of Law

Regulation 130 CMR 520.017(D) provides an adjustment by the hearing officer to the Minimum Monthly Maintenance Needs Allowance due to 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. In determining an increased spousal maintenance needs allowance, the hearing officer must ensure that no expense (for example, for food or utilities) is counted more than once in the calculation (130 CMR 520.017(D)(1)(a)).

Regulation 130 CMR 520.017(D)(1)(b) states that if the community spouse lives in an assisted living facility or similar facility and requests an increase in his or her MMMNA, the hearing officer will review the housing agreement, service plan, fee schedule, and other pertinent documents in determining 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.

The community spouse resides in an assisted living facility. The monthly fee of \$4,699.00 includes heat, hot water, electricity, meals and health insurance premium. I conclude that there is no duplication of expenses by eliminating the MMMNA calculation and applying the actual costs associated with residing in an assisted living facility so that the community spouse can continue to reside in the assisted living facility. Thus, I conclude pursuant to 130 CMR 520.017(D)(2) that the community spouse has exceptional circumstances and that the revised MMMNA is \$4,699.00, which exceeds MassHealth's limit of \$3,022.00.

Regulation 130 CMR 520.017(C) states that if either spouse claims at a fair hearing that the amount of income generated by the community spouse's asset allowance as determined by MassHealth is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance, the fair hearing officer will determine the gross income available to the community spouse as follows.

- (1) The fair hearing officer will determine the gross amount of income available to the community spouse. The fair-hearing officer includes the amount of income that would be generated by the spouse's asset allowance if \$10,000 of

the asset allowance were generating income at an interest rate equal to the deposit yield quoted in the Bank Rate Monitor national index as of the hearing date for money market accounts, and if the remainder of the spouse's asset allowance were generating income at an interest rate equal to the highest deposit yield quoted in the Bank Rate Monitor national index as of the date of the hearing for any term not to exceed two and one-half years.

(2) If the community spouse's gross income under 130 CMR 520.017(C)(1) is less than the minimum-monthly-maintenance-needs allowance (MMMNA), then the fair hearing officer allows an amount of income from the institutionalized spouse (after the personal-needs deduction described in 130 CMR 520.026(A)) that would increase the community spouse's total income to equal, but not to exceed, the MMMNA.

(3) If after the fair hearing officer has increased the community spouse's gross income under 130 CMR 520.017(C)(1) and (2), the community spouse's gross income is still less than the MMMNA, then the fair hearing officer increases the community spouse's asset allowance by the amount of additional assets that, if generating income at an interest rate equal to the highest deposit yield in the Bank Rate Monitor national index as of the hearing date for any term not to exceed two and one-half years, would generate sufficient income to raise the income total to the MMMNA.

In determining the monthly patient-paid amount 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. (see 130 CMR 520.026).

In the instant appeal, I have found that the community spouse's income is \$726.00, exclusive of interest. The income from her assets invested as described above is \$59.50 per month (\$1.50 + \$58.00). Since this total income of \$785.50 (\$726.00 + \$59.50) per month is less than the MMMNA of \$4,699.00, the shortfall that results is \$3,913.50 per month (\$4,699.00 - \$785.50). The institutionalized spouse's available income after the \$72.80 per month PNA deduction is \$5,005.75 per month (\$5,078.55 - \$72.80). The community spouse is entitled to keep \$3,913.50 of institutionalized spouse's available income of \$5,005.75. The institutionalized spouse's adjusted PPA is \$923.75 (\$5,078.55 - \$72.80 - \$3,913.50 - \$168.50).

For the foregoing reasons, this appeal is APPROVED.

Order for MassHealth

- Adjust the community spouse's MMMNA to \$4,699.00, the spousal maintenance needs allowance and community resource allowance accordingly.
- Adjust the institutionalized spouse's patient paid amount to \$923.75 effective November 2017.

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.

Zohra Aziz
Hearing Officer
Board of Hearings

cc:MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA, 01104, 413-785-4186