

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**

<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	1804884
<b>Decision Date:</b>	5/1/18	<b>Hearing Date:</b>	March 27, 2018
<b>Hearing Officer:</b>	Casey Groff	<b>Record Open to:</b>	April 13, 2018

**Appearance for Appellant:**

**Appearance for MassHealth:**  
John Keefe, Tewksbury MEC



*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>	Approved	<b>Issue:</b>	Spousal Maintenance Needs Allowance
<b>Decision Date:</b>	5/1/18	<b>Hearing Date:</b>	March 27, 2018
<b>MassHealth's Rep.:</b>	John Keefe	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Tewksbury MassHealth Enrollment Center	<b>Aid Pending:</b>	No

## 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 December 26, 2017, MassHealth approved the appellant's application for MassHealth long-term care benefits and established a patient-paid amount of \$1,905.60 per month. See Exhibit 1. On January 25, 2018, the appellant filed a timely appeal. See Exhibit 2. Calculation of a patient-paid amount is a valid basis for appeal. See 130 CMR 610.032. A hearing took place on March 27, 2018. See Exhibit 3. After the hearing, the record was re-opened for the appellant's representative to submit additional evidence. See Exhibit 5. The appellant's representative submitted the evidence within the required timeframes and the record was closed on April 27, 2018.

## Action Taken by MassHealth

MassHealth approved the appellant's application for MassHealth long-term care benefits and set a patient-paid amount of \$1,905.60 per month.

## Issue

The appeal issue is whether there are exceptional circumstances to warrant an increase in the spousal maintenance needs allowance (and corresponding decrease in the patient-paid amount).



## Summary of Evidence

The MassHealth representative testified that on October 2, 2017 MassHealth received the appellant's application for long-term care benefits, which sought a benefit start date of August 9, 2017. Through a notice dated December 26, 2017, MassHealth approved the appellant's application with the requested start date and established a patient-paid amount of \$1,905.60. See Exhibit 1. The MassHealth representative testified that the appellant has a community spouse that lives in an assisted living facility. MassHealth calculated the appellant's patient-paid amount of \$1,905.60 by taking the appellant's total countable monthly income of \$2,084.60 (\$812 in social security and a \$1,272.60 pension) and deducting a personal needs allowance (PNA) of \$72.80 and a spousal maintenance allowance (SMNA) of \$106.20. See Exhibit 4(C).

The MassHealth representative testified that the appellant's spouse (otherwise referred to as the "community spouse") pays \$4,975 per month to live in the assisted living facility. The MassHealth representative submitted paperwork detailing the calculation MassHealth used to determine the community spouse's SMNA. See Exhibits 4(A), 4(B). First, MassHealth identified the community spouse's excess shelter expense as \$4,366 (\$4,975 for rent/mortgage minus the federal shelter expense of \$609). MassHealth then added to that figure, the minimum monthly maintenance needs allowance of \$2,030<sup>1</sup> to calculate a total MMMNA of \$6,396. Because this figure exceeded the regulatory cap, MassHealth reduced the MMMNA to the maximum amount allowed of \$3,022.50.<sup>2</sup> Finally, MassHealth subtracted the community spouse's monthly income of \$2,916.30 (consisting of \$1,913 in social security and a pension of \$1,003.30) from \$3,022.50 to establish a SMNA of \$106.20. See id.

The appellant's representative appeared at the hearing by telephone. The representative did not dispute the community spouse's income figures as presented by MassHealth, but argued that there are exceptional circumstances that warrant an increase in his SMNA. The appellant's representative submitted clinical documentation indicating that the appellant's husband suffers from chronic combined systolic and diastolic congestive heart failure, stage III chronic kidney disease, and hypertension. See Exhibit 9. She also submitted a letter from the community spouse's physician stating that it is necessary for him to reside in an institution "to live safely and securely as a senior." See Exhibit 10. The letter indicates that the appellant's spouse has difficulty seeing, hearing, and is unable to walk properly due to spinal stenosis. Id. His disabilities have caused him to be hunched and he is unable to drive or take care of daily living needs. Id. The services in the facility, including the use of elevator and staff assistance, help with his mobility. Id. The appellant's spouse was unable to adequately care for himself in the home due to his congestive heart failure and relies on the assisted living facility to provide him with a specialized diet. Id.

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<sup>1</sup> Pursuant to the 2017 Supplemental Security Income (SSI) and Spousal Impoverishment Standards the minimum monthly maintenance needs allowance is \$2,030.00, effective July 1, 2017.

<sup>2</sup> Pursuant to the 2017 Supplemental Security Income (SSI) and Spousal Impoverishment Standards the maximum monthly maintenance needs allowance is \$3,022.50, effective January 1, 2017. This rate changed to \$3,090.00, effective January 1, 2018.

The appellant's representative submitted a copy of the assisted living facility's residence agreement and a copy of the ledger documenting the community spouse's monthly expenses. See Exhibits 4(E), 6, and 7. These documents indicate that the community spouse signed a permanent residency agreement with Windsor Place of Wilmington assisted living facility, effective May 20, 2017. See Exhibit 7. He currently pays a flat monthly rate of \$4,975 for an assisted living unit.<sup>3</sup> See Exhibit 4(E). The appellant's representative also submitted documentation from Windsor indicating that the community spouse came under a special that gave him his current reduced rental rate of \$4,975 for a period of one year, however that this rate is expected to increase to the standard "street rate" of \$5,375 per month as of June 1, 2018. See Exhibit 7. According to the residency agreement, the monthly rate covers the costs of rent, meals, utilities, housekeeping, and up to one hour a day of personal care services. See Exhibit 6. Because the community spouse's MMMNA is set at the regulatory cap of \$3,022.50, he is left with a shortfall of \$1,952.50 each month. As a result, he is depleting his assets to cover the costs of his care. Accordingly, the appellant's representative requested that an adjustment be made to the appellant's PPA to allow for a greater SMNA.

During the hearing, the MassHealth representative testified that the appellant and community spouse had assets of \$120,005.<sup>4</sup> The appellant's representative provided information regarding the couple's assets and interest rates associated with each account. See Exhibit 8. Among the accounts listed, three Winter Hill Bank accounts had an interest rate of .10% and generated a total of \$3.17 per month; a Touchstone Federal Credit Union account with an interest rate of .02% generated \$1.09 per month; and the community spouse's Wells Fargo 401K generated \$68.83 per month. Id. Combined, the total amount of income the community spouse generates from his assets is \$73.09 per month. Id.

## Findings of Fact

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

1. The appellant was admitted to a long-term care facility on July 4, 2017.
2. The appellant has a spouse that lives in an assisted living facility.
3. On October 2, 2017, the appellant submitted an application for MassHealth long-term care benefits seeking a benefit start date of August 9, 2017.
4. On December 26, 2017, MassHealth approved the appellant's long-term care application with the requested start date of August 9, 2017 and established a monthly patient-paid amount of \$1,905.60.
5. MassHealth calculated the appellant's patient-paid amount of \$1,905.60 by taking the appellant's total countable income of \$2,084.60 and deducting a PNA of \$72.80 and a SMNA

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<sup>3</sup> This rate has remained consistent from the appellant's benefit start date of August 9, 2017 to present.

<sup>4</sup> Because this amount was below the maximum resource allowance permissible of \$123,900 there was no issue of excess assets affecting the appellant's eligibility for long-term-care services.



of \$106.20.

6. The appellant's spouse is unable to adequately care for himself due to diagnoses including congestive heart failure, chronic kidney disease, and spinal stenosis. It is medically necessary for the appellant's spouse to live in the assisted living facility.
7. The cost of the assisted living facility is \$4,975 per month. This rate will increase to the \$5,375 per month on June 1, 2018.
8. The monthly fee of the assisted living facility covers the costs of rent, utilities, meals, housekeeping services, and up to one hour of personal care services per day.
9. With a maximum MMMNA of \$3,022.50, the community spouse is unable to meet the cost of the assisted living facility.
10. There are exceptional circumstances which warrant an increase over the maximum MMMNA.
11. The community spouse's actual MMMNA is \$4,975 (the amount required to meet his maintenance needs).
12. The community spouse's assets generate \$73.09 in interest income per month.
13. When the interest income is added to the community spouse's pension and social security income, his gross monthly income is \$2,989.39.
14. After subtracting the community spouse's gross income from his actual MMMNA of \$4,975, he is left with a shortfall of \$1,985.61.

## **Analysis and Conclusions of Law**

MassHealth calculates the minimum monthly maintenance needs allowance (MMMNA) to determine the amount a community spouse needs to live in the community. See 130 CMR 520.026(B). If the community spouse's gross income is less than the MMMNA, MassHealth may deduct an amount from the institutionalized spouse's countable income amount to meet this need, known as a spousal maintenance needs deduction (SMND). Id.

- (1) The MassHealth agency determines the MMMNA by adding the following amounts:
  - (a) \$1,822 (the federal standard maintenance allowance); and
  - (b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$547 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 \$611.

(2) The maximum-monthly-maintenance-needs allowance is \$2,739.00 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).

Id.<sup>5</sup> After an applicant has received notice of an approval or denial for MassHealth Standard, either the applicant or his or her spouse may appeal to the Board of Hearings to request an increase of the spouse's MMMNA based on exceptional circumstances. Id. MassHealth defines "exceptional circumstances" as follows:

(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.

130 CMR 520.017(D)(1) (emphasis added). Here, the appellant seeks an increase of her spouse's MMMNA based on exceptional circumstances. The appellant has shown that exceptional circumstances exist because it is medically necessary for her husband to reside in an assisted living facility. Specifically, the community spouse is unable to live at home due to numerous diagnoses causing physical limitations and the need for a specialized diet. See Exhibits 9

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<sup>5</sup> The minimum and maximum monthly maintenance needs allowance figures, set forth in this regulation, have been updated to reflect the current SSI and Spousal Impoverishment Standards (see footnotes 1 and 2, above).



and 10. The community spouse's physician confirmed that he requires the type of supportive environment that the assisted living facility provides and that he "needs to reside in an institution in order to continue to live safely and securely as a senior." See Exhibit 10. Additionally, the appellant has shown that the community spouse's exceptional circumstances result in significant financial duress, as he is residing in an assisted living facility that leaves him at a significant monetary shortfall of nearly \$2,000 every month. As a result, the community spouse is depleting his assets to cover those costs.

If exceptional circumstances exist, the hearing officer may increase the community spouse's MMMNA to cover 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)(2) (emphasis added).

The appellant's representative demonstrated that the monthly cost for the community spouse to meet his exceptional needs is \$4,975 per month and that rate is expected to increase on June 1, 2018 to \$5,375 per month. Per the residency agreement, the monthly fee to reside in the facility is a flat rate that includes services such as rent, meals, utilities, housekeeping, and up to one hour a day of personal care services. As such, the fee may not be combined with the federal standards that duplicate these costs. However, because the community spouse has exceptional care needs, his MMMNA may be increased.

In its SMNA determination, MassHealth only factored in the community spouse's social security and pension to calculate his gross income. However, when making a determination to increase the MMMNA, the fair-hearing officer must first verify that the calculation of gross income includes income generated by the community spouse's asset allowance. See 130 CMR 520.017(D)(2)(a). Factoring in the \$73.09 of interest income generated from the community spouse's asset allowance brings his monthly gross income to \$2,989.39.<sup>6</sup>

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<sup>6</sup> \$73.09 (interest income) + \$1,913 (social security) + \$1,003.30 (pension) = \$2,989.39.

The revised MMMNA, which is the actual cost of the community spouse's maintenance needs, is \$4,975. After factoring in his income, the amount the community spouse currently needs to meet the exceptional circumstances is \$1,985.61.<sup>7</sup> To meet the full cost of the community spouse's assisted living facility's expense, the community spouse is entitled to that portion of the appellant's income to make up for his current shortfall. The appellant's income, after subtracting an amount of \$72.80 for her PNA, is \$2,011.80 per month. Accordingly, the revised SMNA is \$1,985.61 and the appellant's revised PPA should be \$26.19. MassHealth should make appropriate modifications to the PPA if the assisted living rate increases to the standard rate, as expected on June 1, 2018.

This appeal is APPROVED.

## **Order for MassHealth**

Revise the December 26, 2017 notice to reflect a PPA of \$26.19. Should the community spouse's monthly assisted living rate increase, as it is expected to on June 1, 2018, MassHealth should adjust the appellant's PPA accordingly.

## **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.

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Casey Groff  
Hearing Officer  
Board of Hearings

CC:

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<sup>7</sup> \$4,975 (revised MMMNA) minus \$2,989.39 (community spouse's gross income) = \$1,985.61.