

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

Appeal Decision:	Approved in Part; Denied in Part	Appeal Number:	1807201
Decision Date:	6/22/18	Hearing Date:	April 25, 2018
Hearing Officer:	Stanley M. Kallianidis	Record Open Date:	May 25, 2018

Appellant Representative:

MassHealth Representative:

Berthilde Franklin, Taunton



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th Floor
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Approved in Part; Denied in Part	Issue:	Increase of Spousal Allowance
Decision Date:	6/22/18	Hearing Date:	April 25, 2018
MassHealth Rep.:	Berthilde Franklin		

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 January 5, 2018, MassHealth notified the appellant that his patient paid amount (PPA) would increase to \$2,295.00 due to an increase in countable income (Exhibit 1). The appellant filed this appeal in a timely manner on January 19, 2018 (see 130 CMR 610.015 and Exhibit 2). A PPA dispute is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth raised the appellant's to \$2,295.00.

Issue

Is the community spouse entitled to an increase in the spousal maintenance needs allowance, based on exceptional circumstances, as defined in 130 CMR 520.017(D)?

Summary of Evidence

The MassHealth representative testified that, in a notice dated January 5, 2018, MassHealth increased the appellant's PPA to \$2,295.00 beginning February 1, 2018 (Exhibit 1). According to the PPA notice, \$146.00 for health insurance and a \$72.80

personal needs allowance were all that was deducted from the appellant's income of \$2,514.00 (Exhibit 1). No spouse-in-home deduction was allowed because the community spouse's Social Security and earnings of \$3,098.00 exceeded her maximum allowable minimum monthly maintenance needs allowance (MMMNA) of \$3,090.00. Her actual MMMNA calculation when adding her mortgage of \$996.00, taxes and insurance of \$516.00, utilities standard of \$636.00, then subtracting a shelter standard of \$609.00 and adding a federal maintenance standard of \$2030.00 came to \$3,669.00¹ (Exhibit 3).

The community spouse testified that her husband's health insurance was \$192.00 monthly. She testified that she only has a few out-of-pocket medical expenses and car expenses. She testified that she drives her car to work and there is no public transportation. She testified that she has very little in savings.

During the record-open period, the community spouse documented that the appellant's health insurance premium was \$192.00. She also documented that her monthly mortgage and taxes were \$555.00; her condo fee was \$306.00 and her insurance was \$34.00. Based upon the verifications submitted during the record-open period, the community spouse's MMMNA was \$2,952.00. This was in sharp contrast to the \$3,669.00 figure calculated by MassHealth. The community spouse also submitted a monthly water bill of \$18.00, car expenses of \$1,688.00 or \$140.00 monthly, and out-of-pocket medical expenses of \$15.00. Finally, she submitted a copy of a personal loan payment of \$238.00 (Exhibits 4 & 5).

Findings of Fact

Based on a preponderance of the evidence, I find:

1. In a notice dated January 5, 2018, MassHealth increased the appellant's PPA to \$2,295.00 beginning February 1, 2018 (Exhibit 1).
2. \$146.00 for health insurance and a \$72.80 personal needs allowance were deducted from the appellant's income of \$2,514.00 (Exhibit 1).
3. No spouse-in-home deduction was allowed because the community spouse's Social Security and earnings of \$3,098.00 exceeded her capped MMMNA of \$3,090.00 (Exhibit 1).
4. MassHealth calculated the appellant's MMMNA to be \$3,669.00 (Exhibit 3).
5. During the record-open period, the community spouse documented that the appellant's health insurance premium was \$192.00 (Exhibit 5).

¹ The MMMNA calculation that was submitted was \$3,629.00, but had a math error of \$40.00.

6. The community spouse documented that her monthly mortgage and taxes were \$555.00; her condo fee was \$306.00 and her insurance was \$34.00 (Exhibit 5).
7. Based upon the verifications submitted during the record-open period, the community spouse's MMMNA was \$2952.00, an amount much lower than what MassHealth previously calculated (Exhibit 5).
8. The community spouse pays a monthly water bill of \$18.00, car expenses of \$1,688.00 or \$140.00 monthly, and out-of-pocket medical expenses of \$15.00 (Exhibit 5).
9. The community spouse has a personal loan payment of \$238.00 (Exhibit 5).

Analysis and Conclusions of Law

With regard to increasing the MMMNA, 130 CMR 520.017(D) states that:

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).

Exceptional circumstances exist when there are circumstances other than those already taken into account in establishing the maintenance standard for the community spouse under 130 CMR 520.025(B) and these circumstances result in significant financial duress. Since the federal standards used in calculating the MMMNA cover such necessities such 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 housing 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.

In the instant case, MassHealth increased the appellant's PPA to \$2,295.00 beginning February 1, 2018. \$146.00 for health insurance and a \$72.80 personal needs allowance were deducted from the appellant's income of \$2,514.00. No spouse-in-home deduction was allowed because the community spouse's Social Security and earnings of \$3,098.00 exceeded her capped MMMNA of \$3,090.00. MassHealth calculated the appellant's actual MMMNA to be \$3,669.00.

During the record-open period, the community spouse documented that the appellant's health insurance premium was \$192.00. The appellant is entitled to have this amount deducted from his PPA, which is higher than the allowed \$146.00 (see 130 CMR 520.026 for allowable PPA deductions).

Also during the record open period, the community spouse documented that her monthly mortgage and taxes were \$555.00; her condo fee was \$306.00 and her insurance was \$34.00. Based upon the verifications submitted during the record-open period, the community spouse's MMMNA was \$2952.00. This MMMNA is significantly lower than what MassHealth had calculated. The community spouse also submitted a monthly water bill of \$18.00, car expenses of \$1,688.00 or \$140.00 monthly, and out-of-pocket medical expenses of \$15.00.

Based upon the above regulations, there is nothing extraordinary about the community spouse's medical expenses and water bill. While she does have a personal loan payment of \$238.00, there is no evidence that this expense was based upon basic necessities so as to be added to her MMMNA. Even allowing her car expenses, as she does use a car to commute to work, this would only bring her MMMNA to \$3092.00. Where her income is greater than this at \$3098.00, there still would be no spouse-in-home deduction.

The appeal is therefore approved in part and denied in part as the new allowable MMMNA is \$3092.00, but there is still no allowable spousal deduction from the appellant's income.

Order for MassHealth

Decrease PPA by \$46.00 to allow for appellant's increased health insurance beginning February 1, 2018.

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.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this notice, you should contact your local office. 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.

Stanley M. Kallianidis
Hearing Officer
Board of Hearings