

# Office of Medicaid BOARD OF HEARINGS

**Appeal Decision:** Denied

**Appeal Number:** 1813535

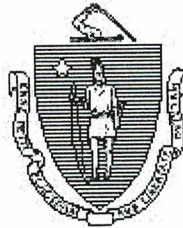
**Decision Date:** 8/24/18

**Hearing Date:** 08/03/2018

**Hearing Officer:** Chris Therrien

**Appearance for Appellant:**

**Appearance for MassHealth:**  
Patricia Lemke, MassHealth  
Representative, 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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Patient Paid Amount
<b>Decision Date:</b>	8/24/18	<b>Hearing Date:</b>	08/03/2018
<b>MassHealth's Rep.:</b>	Patricia Lemke	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Springfield 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 April 4, 2018, MassHealth approved appellant's application for MassHealth long-term care benefits with a \$1,247.60 Patient Paid Amount effective February 18, 2018 (130 CMR 520.026 and Exhibit 1). Appellant filed this appeal in a timely manner on April 16, 2018 (130 CMR 610.015(B) and Exhibit 2). Notice of a Patient Paid Amount is valid grounds for appeal (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth approved Appellant's application for MassHealth long-term care benefits with a \$1,247.60 Patient Paid Amount effective February 18, 2018.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.026 in approving Appellant's application for MassHealth long-term care benefits with a \$1,247.60 Patient Paid Amount effective February 18, 2018.

## Summary of Evidence

The MassHealth representative testified that on April 4, 2018, MassHealth issued a notice informing the appellant that MassHealth approved his application for MassHealth Standard benefits to cover his nursing facility stay effective February 18, 2018 (Exhibit 1). The notice also informed Appellant that as of February 18, 2018, he would owe the nursing facility \$1,247.60 every month as his Patient Paid Amount (PPA).

The MassHealth representative explained how the PPA was calculated. The appellant's gross monthly Social Security Income (SSI) of \$1,322.50 and pension income of \$63.00 (total \$1,385.50) were reduced by the only allowable deduction which was the \$72.80 for the Personal Needs Allowance (PNA) and \$34.60 for his other health insurance resulting in the calculated PPA of \$1,247.60.

The appellant was represented by his daughter-in-law who stated that the facility told her that the appellant's community spouse's income was not taken into consideration and the PPA was based on the appellant's assets not income. The appellant's representative testified that the appellant was admitted to the hospital on January 2, 2018, and was transferred from the hospital to the nursing facility at the end of January 2018, and then discharged to home on June 18, 2018. The appellant's representative testified that all of the appellant's income went to the facility and his community spouse is seeking a lower PPA because of outstanding expenses. The appellant's representative testified that the appellant's spouse stopped paying the rent when the appellant went into the hospital. The appellant's representative testified that the appellant and his spouse pay \$760 a month in rent plus utilities. The appellant's representative testified that the appellant has multiple chronic conditions and she is not sure how long he will remain at home.

The appellant's spouse lives in the community. MassHealth submitted a spousal maintenance needs allowance (SMNA) worksheet (Exhibit 4). MassHealth calculated the community spouse's gross monthly income to be \$3,361.92. MassHealth calculated the community spouse's Minimum Monthly Maintenance Needs Allowance (MMMNA) as follows:

Rent/mortgage	850.00
Taxes and insurance	0
Condominium maintenance fee	0
Standard deduction for utility expenses (labelled "food stamps allowance")	636.00
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Total shelter expenses	1,511.00
Federal shelter standard	609.00
Excess shelter amount (\$1,511 – 609)	902.00
Standard maintenance allowance	2,030.00
MMMNA (\$902+ \$2,030)	\$2,932.00

As the community spouse's gross income (\$3,361.92) exceeds the MMMNA, MassHealth

determined that the community spouse is not entitled to a spousal maintenance needs deduction (SMND) from Appellant's income (Exhibit 4).

The appellant's representative did not dispute the MassHealth's representative's testimony regarding income. The appellant's representative testified that the appellant's spouse is retired now and her income has significantly decreased because she has not started receiving social security. The appellant's representative also stated that the appellant was discharged from the nursing facility in June 2018, the same month his spouse retired.

## **Findings of Fact**

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

1. On April 4, 2018, MassHealth issued a notice informing the appellant that MassHealth approved his application for MassHealth Standard benefits to cover his nursing facility stay effective February 18, 2018 (Exhibit 1).
2. As of February 18, 2018 appellant would owe the nursing facility \$1,247.60 every month as his PPA (Exhibit 1).
3. PPA is calculated by taking the appellant's gross monthly income of \$1,385.50 (SSI \$1,322.50 and pension \$63.00) and deducting \$72.80 for PNA and \$34.60 for his other health insurance for a PPA of \$1,247.60.
4. The appellant and his spouse pay \$760 a month in rent plus utilities (Appellant's representative testimony).
5. The appellant's spouse's income was \$3,361 at the time of the determination (MassHealth representative testimony).
6. MassHealth calculated the appellant's MMMNA as \$2,932 which is less than his spouses income, thus the appellant's spouse was not entitled to the SMND (Exhibit 4).
7. The appellant's spouse is retired now and her income has significantly decreased because she has not started receiving social security yet (Appellant's representative testimony).
8. The appellant was discharged from the nursing facility in June 2018, the same month his spouse retired (Appellant's representative testimony).

## **Analysis and Conclusions of Law**

The appellant's representative challenges MassHealth's calculation of appellant's PPA, arguing that the appellant's spouse needs to retain a share of appellant's income to meet her expenses. Either the community or institutionalized spouse has a right to appeal MassHealth's calculation of the asset allowance (130 CMR 520.017(A)).

In calculating the PPA, the regulations allow certain deductions to be made from an institutionalized member's income (130 CMR 520.009). These deductions are listed at 130 CMR 520.026, which states that "[g]eneral 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." The personal-needs allowance, \$72.80 per month, is set by regulation (130 CMR 520.025). MassHealth allows a deduction for current health-insurance premiums made directly to the insurer (130 CMR 520.026(E)(1)).

MassHealth allows a spousal maintenance needs deduction (SMND) in cases where the community spouse's gross income is less than the amount s/he needs to live in the community (the MMMNA). If the community spouse's gross income is less than the MMMNA, MassHealth may deduct an SMND per 130 CMR 520.026(B), determined as follows:

(B) 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 (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 \$611.

(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).

The appellant's representative does not dispute the income figures used by MassHealth in calculating the PPA or the MMMNA. The appellant's representative argued that MassHealth's calculations do not address all of the appellant's spouse's expenses. Under the regulations, the spouse of a member can request that the MMMNA be adjusted if exceptional circumstances exist:

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.

130 CMR 520.017(D)(1).

The appellant's representative asked for some consideration regarding a spousal maintenance needs allowance, arguing that the appellant's spouse has other expenses. However, the appellant's representative testified that the appellant's spouse did not incur any extraordinary expenses arising from her *own* medical conditions. The appellant's spouse is therefore not entitled to a MMMNA per 130 CMR 520.017(D)(1).

## **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.

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Chris Therrien  
Hearing Officer  
Board of Hearings

cc: