

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

Appeal Decision:	Approved	Appeal Number:	1700501
Decision Date:	3/29	Hearing Date:	February 27, 2017
Hearing Officer:	B. Padgett		

Appellant Representative:

Division Representative:

E. Daniel



*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	Issue:	130 CMR 520.026
Decision Date:	3/29	Hearing Date:	February 27, 2017
Division Rep.:	E. Daniel	Appellant Rep.:	
Hearing Location:	Springfield		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

The Appellant received a notice dated November 04, 2016 stating: “The Division has approved your MassHealth benefits. Your eligibility begins on August 12, 2016. You will owe your facility \$754.28 every month. This is called your Patient Paid Amount (PPA)” (Exhibit 1).

The Appellant filed this appeal in timely on November 30, 2016 (130 CMR 610.015; Exhibit 2).

The calculation of the PPA is a valid ground for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified Appellant that he was eligible for MassHealth long-term-care coverage with a PPA of \$754.28 per month effective August 01, 2016.

Issue

Did MassHealth correctly determine the Appellant’s PPA?

Summary of Evidence

MassHealth testified the Appellant applied for MassHealth long term care benefit on September 08, 2016. On November 04, 2016 the Appellant's request for long term care benefits was approved with an eligibility start date of August 12, 2016 as requested by the nursing facility. MassHealth stated the Community Spouse has earned income of \$2,105.00; the Institutionalized Spouse (Appellant) has income of \$1,594.00 (Social Security). The Appellant's Patient Paid amount (PPA) of \$754.28 was determined by subtracting the SMNA of \$531.52 and the Appellant's personal Needs Allowance (PNA) of \$72.80 from the Appellant's income of \$1,594.00. MassHealth indicated there are no household excess assets. MassHealth submitted into evidence: application, notices, SC-1, MMMNA worksheet¹, bank statement, 2015 tax returns and relevant rules and regulations. (Exhibit 4).

The Appellant's representative requested MassHealth add the Appellant's second mortgage payment of \$250.00 per month in the calculation of MMMNA and the resulting PPA. The representative argued the regulations at 130 CMR 520.026(B)(1) state the actual expenses for rent/mortgage (including interest and principal) be used when calculating the MMMNA. The Appellant's representative stated the Appellant and his wife took the second mortgage in 2014 to fix their home (repair of roof and addition of a mud room) and at no time did they contemplate shifting funds for MassHealth eligibility. The Appellant submitted into evidence the Appellant's first and second mortgages, bank statements and relevant rules and regulations. (Exhibit 5).

MassHealth responded that the regulations do not consider an equity loan when calculating the shelter expense in determination of the MMMNA.

The Appellant's representative responded that the regulations state that there is a deduction for an individual's "mortgage" and does not differentiate between first mortgage or second mortgage. The representative argued the Appellant's home is used as collateral for the loan and there is a lien against the property and whether it is called an equity line of credit or second mortgage is nevertheless still a mortgage. The representative requested a recalculation of the Appellant's MMMNA to give financial relief to the Community Spouse and allow her to remain in the community. (Exhibit 8).

¹ MassHealth submitted the Appellant's PPA calculation which states the Community Spouse has gross earned income of \$2,105.58 and the Appellant has gross income of \$1,594.00 – \$235.50 health insurance and the PNA of \$72.80. The Appellant received the following deductions: mortgage of \$533.00 + \$93.00 for taxes and insurance + utility allowance of \$609.00 for total shelter expenses of \$1,235.00. After deducting \$634.00 for the federal shelter standard and adding \$2,003.00 for the Standard Maintenance Allowance, MassHealth calculated the Community Spouse's Minimum Monthly Maintenance Needs Allowance (MMMNA) as \$2,637.00. The MMMNA of \$2,637.00 minus the Community Spouse's income of \$2,105.58 results in the Spousal Maintenance Needs Deduction (SMND) of \$531.42 which when subtracted from the Institutionalized Spouse income along with health insurance and PNA results in a PPA of \$754.28.

Findings of Fact

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

1. The Appellant applied for MassHealth for Community MassHealth benefits on September 08, 2016. (Exhibit 4).
2. On November 04, 2016 the Appellant was approved for long term care eligibility retroactive to August 12, 2016 with a PPA of \$754.28. (Exhibit 1).
3. The Community Spouse has gross monthly income of \$2,105.38. (Exhibit 4).
4. MassHealth calculated the Community Spouse's MMMNA of \$2,637.00 as follows:

Rent/mortgage	\$ 533.00
Taxes and insurance	\$ 93.00
Required Condo Charge	\$.00
Utility allowance	+ \$ 609.00
Total shelter costs	= \$1,235.00
Federal shelter standard (subtract)	- \$ 634.00
Excess shelter costs	= \$ 0.00
Standard Maintenance Allowance	+ <u>\$2,003.00</u>
MMMNA	= \$2,637.00 (Exhibit 4).
5. The Appellant received an SMNA of \$531.42 which was calculated by subtracting the Community Spouse's gross monthly income of \$2,105.58 from the MMMNA of \$2,637.00. (Exhibit 4).
6. The Institutionalized Spouse and the Community Spouse obtained a \$10,000.00 equity loan on May 24, 2014 for the repair of his roof and mud room which was secured by her home and entered into and recorded as a mortgage on August 25, 2014. (Exhibit 5).
7. The Community Spouse's total mortgage payment including taxes and insurance is \$872.00 (first mortgage \$533.00 + taxes and insurance \$93.00) + second mortgage \$216.76 + \$33.24). (Exhibit 5).
8. The Appellant's adjusted MMMNA is \$2,887.00.
9. The Appellant's adjusted SMNA is \$781.62 is calculated by subtracting the Community Spouse's gross monthly income of \$2,105.38 from the adjusted MMMNA of \$2,887.00.
10. The Appellant's adjusted SMNA is determined by subtracting the Community Spouse's gross monthly income of \$2,105.38 from the adjusted MMMNA of \$2,887.00 which equals

\$781.62.

Analysis and Conclusions of Law

After the institutionalized spouse has applied for MassHealth Standard and has received a notice of approval or denial for MassHealth Standard, either spouse may appeal to the Board of Hearings to request an adjustment to the asset allowance. The purpose of the adjustment is to generate sufficient income, as determined by MassHealth, for the community spouse to remain in the community (130 CMR 520.017(A)).²

If the community spouse's gross income is less than the amount he or she needs to live in the community MassHealth may deduct an amount from the institutionalized spouse's countable-income amount to meet this need. This amount is the SMNA. This deduction is the amount by which the MMMNA exceeds the community spouse's gross income. The regulations require MassHealth to use the actual MMMNA or a maximum monthly allowance whichever is lower, unless it has been increase as the result of a fair-hearing decision based on exceptional circumstances. (130 CMR 520.026(B)(2)).

The Appellant applied for MassHealth long term care benefits and was approved on November 04, 2016 receiving retroactive benefits beginning August 12, 2016. The regulations allow coverage to be retroactive to the first day of the third month before the month of application, if covered services

² 130 CMR 520.017: Right to Appeal the Asset Allowance or Monthly Maintenance Needs Allowance: Request for an Adjustment to the community spouse's Asset Allowance. After the institutionalized spouse has applied for MassHealth Standard and has received a notice of approval or denial for MassHealth Standard, either spouse may appeal to the Board of Hearings to request an adjustment to the asset allowance. The purpose of the adjustment is to generate sufficient income, as determined by the MassHealth, for the community spouse to remain in the community. (A) Minimum Monthly Maintenance Needs Allowance The minimum-monthly-maintenance-needs allowance is the amount needed by the community spouse to remain in the community. This amount is based on a calculation that includes the community spouse's shelter and utility costs in addition to certain federal standards, in accordance with 130 CMR 520.026(B)(1). (B) Adjustment of the Amount of Asset Allowance. If either spouse claims at a fair hearing that the amount of income generated by the community spouse's asset allowance as determined by the 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 the 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 hearing date for any term not to exceed two and one-half years.(2) If the community spouse's gross income is less than the minimum-monthly-maintenance-needs allowance (MMMNA), then the fair-hearing officer will allow 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 to exceed, the MMMNA. 130 CMR 520.017(C)(2) will apply to all hearings held on or after September 1, 2003, regardless of the date of application. (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 will increase the community spouse's asset allowance by the amount of additional assets that, if invested at the highest rate quoted in the Bank Rate Monitor Index as of the date of the hearing date, would generate sufficient income to raise the income total to the MMMNA.

were received during such period, and the applicant or member would have been eligible at the time services were provided (130 CMR 516.005). Under the “income first” regulations, the community spouse’s monthly income includes the amount of interest income generated by any asset allowance. If that monthly income is still below the MMMNA, then the community spouse is entitled to the institutionalized spouse’s income, (after reduction of the \$72.80 PNA) in an amount that would increase the community spouse’s total income to a level equal to the MMMNA.

On appeal the Appellant’s representative asserts MassHealth has failed to properly calculate the Appellant’s PPA as they did not consider the Appellant’s second mortgage when determining the Appellant’s MMMNA. The Appellant’s representative argues the Appellant’s actual mortgage payment contains the first mortgage as well as a second mortgage (equity loan). The second mortgage was assumed in 2014 in an effort to repair the Appellant’s residence and not to obtain MassHealth long term care benefits. Each loan uses the Appellant’s home as collateral and the failure to pay either mortgage could result in the foreclosure of the property and the loss of the Community Spouse’s residence.

130 CMR 520.026: Long-Term-Care General Income Deductions 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. These deductions are used in determining the monthly patient-paid amount. (A) Personal-Needs Allowance. (1) The MassHealth agency deducts \$72.80 for a long-term-care resident's personal-needs allowance (PNA). (2) If an individual does not have income totaling the standard, the MassHealth agency will pay the individual an amount up to that standard on a monthly basis. (3) The PNA for SSI recipients is \$72.80.

(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) \$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 ... *(Emphasis added)* .

The regulations state the MMMNA is calculated by using the Community Spouse’s actual expenses

for rent, mortgage (including interest and principal), property taxes and insurance. In this instance the Community Spouse has a submitted a mortgage note dated May 24, 2014 for \$10,000.00 which is secured by her home and recorded on August 25, 2014 (See Exhibit 5). The second mortgage results in a total mortgage obligation of \$872.00 and results in an adjusted MMMNA of \$2,887.00. The Appellant's adjusted SMNA is calculated by subtracting the Community Spouse's gross monthly income of \$2,105.58 from the adjusted MMMNA of \$2,887.00 which equals \$781.42. The Appellant's PPA is therefore calculated to be \$504.08 (Community Spouse income \$1,594.00 - health insurance \$235.50 - SMNA \$781.62 - PNA \$72.80) and this appeal is APPROVED.

Order for MassHealth

Recalculate the Appellant's PPA consistent with the above.

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.

Brook Padgett
Hearing Officer
Board of Hearings

cc:
MassHealthRepresentative: Springfield MEC