

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**

<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	1702063
<b>Decision Date:</b>	5/8	<b>Hearing Date:</b>	04/28/2017
<b>Hearing Officer:</b>	Radha Tilva		

**Appellant Representative:**

**MassHealth Representative:**  
Paul Keegan



*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>	LTC – Patient Paid Amount - MMMNA
<b>Decision Date:</b>	5/8	<b>Hearing Date:</b>	04/28/2017
<b>MassHealth Rep.:</b>	Paul Keegan	<b>Appellant Rep.:</b>	
<b>Hearing Location:</b>	Chelsea MassHealth Enrollment Center		

## 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 9, 2016, MassHealth approved appellant, (institutionalized spouse “IS”), for MassHealth long-term benefits effective August 18, 2016 with a patient paid amount (“PPA”) of \$852.29 a month (Exhibit 1). The community spouse (“CS”) filed this appeal in a timely manner on December 29, 2016 (see 130 CMR 610.015(B) and Exhibit 2). A request to increase the minimum monthly maintenance needs allowance (“MMMNA”) is a valid ground for appeal (see 130 CMR 610.032(A)).

## Action Taken by MassHealth

MassHealth approved appellant for MassHealth long-term benefits effective August 18, 2016 with a patient paid amount of \$852.29 a month.

## Issue

The appeal issue is whether the IS’s PPA should be adjusted to reflect an increase in the MMMNA pursuant to 130 CMR 520.017(D)?



## Summary of Evidence

The MassHealth representative stated that appellant entered the nursing facility on June 22, 2016 and applied for MassHealth long-term care benefits on October 15, 2016. The appellant requested benefits effective August 18, 2016. On December 9, 2016 MassHealth issued a notice approving appellant for MassHealth long-term care benefits with a patient-paid amount of \$852.29 a month. The CS appealed the notice seeking an increase in the MMMNA to reduce the PPA.

The MassHealth representative testified that MassHealth originally determined the PPA to be \$160.98, but that was in error because the deduction for the appellant's health insurance was incorrect and based on the wrong type of premium. The MassHealth representative submitted two worksheets at hearing (Exhibit 8). The first worksheet showed a calculation of the PPA and MMMNA for the period of August to December 2016. The second worksheet calculated the PPA based off an increase in appellant's Social Security income from January 2017 to present. As the subject of the appeal is the December 9, 2016 notice the MassHealth representative testified as to the way MassHealth calculated the PPA based off the first worksheet.

The MMMNA was determined to be \$3,393.75 based off appellant's mortgage of \$777.00, condominium fee of \$606.00 and the allowable standard amounts (see Exhibit 8). The MassHealth representative testified that CS's gross income was determined to be \$1,821.99 a month. According to MassHealth's calculation, MassHealth subtracted CS's gross monthly income from the maximum MMMNA of \$2,980.50, the federal amount, to find that the additional monthly income need of the CS. The income need of the CS also known as the standard monthly income need (SMNA) was equal to \$1,158.51. The patient paid amount of \$852.29 was calculated by taking IS's gross income of \$2,291.00 and subtracting deductions such as personals needs account allowance (\$72.80), IS's health insurance of \$207.90, and the SMNA of \$1,158.51 (Exhibit 8).

The CS appeared at hearing along with her son, the POA, who testified that his mother is in debt approximately \$550.00 after her expenses are accounted. The CS lives in the community independently and testified that she has no extra medical expenses. The appellant did not provide any evidence of any exceptional circumstances arising from her medical condition. The POA explained that CS only has about \$8,000 in savings and that they will soon be looking into having her move out of her home. The POA stated that CS owes back taxes on her federal and state taxes in the amount of approximately \$282.00 and \$165.00 a month (see Exhibit 9). The POA stated that CS has worked out a payment plan with the IRS and is paying them monthly. The POA also said that CS was caught in a credit card fraud scam and has worked out an interest free loan payment with the credit card company in the amount of \$350.00 a month (see Exhibit 9).

## Findings of Fact

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

1. Appellant entered the nursing facility on June 22, 2016 and applied for MassHealth long-term care benefits on October 15, 2016 requesting benefits effective August 18, 2016.
2. MassHealth approved long-term care benefits on December 9, 2016 with a PPA of \$852.29 a month.
3. CS's gross income is \$1,821.99 a month.
4. IS's gross monthly income is \$2,291.00 a month.
5. The MMMNA was determined to be \$3,393.75 per month.
6. The appellant has no extra medical expenses or exceptional circumstances arising from a medical condition or frailty.
7. The appellant has additional expenses outside of her mortgage and condominium fee which include payment to the IRS and to a credit card company.

## Analysis and Conclusions of Law

Regulation 130 CMR 520.017, which defines exceptional circumstances, states as follows:

(D) Adjustment to the Minimum-Monthly-Maintenance-Needs Allowance Due to Exceptional Circumstances. After the institutionalized spouse has received notice of either approval or denial for MassHealth Standard, either spouse may appeal to the Office of Medicaid 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).

(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.

(2) Determination of Increase for Exceptional Circumstances. If the fair-hearing officer determines that exceptional circumstances exist, the fair-hearing officer may increase the community spouse's MMMNA to meet 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.

(Emphasis Added).

130 CMR 520.026(B)(2) states that the maximum monthly maintenance needs allowance is the standard, which the MassHealth representative testified is \$2,980.50, unless it has been increased as a result of a fair hearing decision based on exceptional circumstances in accordance with 130 CMR 520.017(D). The additional payments CS makes to her credit card company and IRS are not factored into calculation of the MMMNA as the regulation only allows for those payments to be included if the exceptional circumstances arise from the medical condition, frailty, or similar special needs of the CS. As CS has not demonstrated that she has any exceptional circumstances that arise from her medical condition, frailty or other similar needs, the regulation above does not allow for an adjustment to the minimum monthly maintenance needs allowance.

For the reasons set forth above, MassHealth was correct in using the standard \$2,980.50 for the MMMNA in its calculations to derive at the SMNA of \$1,158.51. Thus, MassHealth was also correct in its calculation of the PPA which it determined to be \$852.29 a month. This appeal is therefore DENIED.

## 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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Radha Tilva  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Ms. Nancy Hazlett