

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**

<b>Appeal Decision:</b>	DENIED	<b>Appeal Number:</b>	1717185
<b>Decision Date:</b>	4/18/18	<b>Hearing Date:</b>	12/07/2017
<b>Hearing Officer:</b>	Kenneth Brodzinski	<b>Record Open to:</b>	04/10/2017

**Appellant Representative:**

**MassHealth Representative:**

Karyn Boutin with Keisha McMullen –  
Springfield 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>	DENIED	<b>Issue:</b>	MMMNA – Exceptional Circumstances
<b>Decision Date:</b>	4/18/18	<b>Hearing Date:</b>	12/07/2017
<b>MassHealth Rep.:</b>	Karyn Boutin	<b>Appellant Rep.:</b>	
<b>Hearing Location:</b>	Springfield MEC		

## Authority

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

## Jurisdiction

Through notice dated August 14, 2017, MassHealth approved Appellant's application for MassHealth Long Term Care benefits and determined a Patient Paid Amount ("PPA") of \$1,165.25 (Exhibit A). Appellant filed this appeal in a timely manner on September 13, 2017 seeking an adjustment to the PPA (Exhibit A). Seeking an adjustment to the PPA is valid grounds for appeal (see 130 CMR 610.032). A hearing was held on December 7, 2017 after which the record was held open until December 15, 2017. The record was reopened again and ultimately closed on April 10, 2017.

## Action Taken by MassHealth

MassHealth determined Appellant's PPA.

## Issue

The appeal issue is whether Appellant is entitled to an adjustment to the PPA.



## Summary of Evidence

The MassHealth representative testified that Appellant filed an application for MassHealth Long-Term Care benefits on June 29, 2017. Appellant was admitted to a long-term care facility on December 30, 2016 and is seeking an eligibility start date of April 1, 2017. After requesting and receiving financial verifications, MassHealth approved Appellant's application on August 14, 2017 awarding the requested start date of April 1, 2017 along with a monthly Patient Paid Amount (PPA) of \$1,165.25.

The MassHealth representative submitted a PPA worksheet showing the calculation of the CS's Minimum Monthly Maintenance Needs Allowance (MMMNA) and Appellant's Patient Paid Amount (PPA) (Exhibit G). According to the worksheet, the CS has gross monthly income derived from a pension of \$2,320.75 (Id). Appellant has monthly income derived from Social Security of \$2,028.00 (Id). The worksheet also indicates that Appellant pays a monthly health insurance expense of \$88.20 (Id).

The MassHealth representative further testified that subsequent to the approval of Appellant's application, MassHealth learned that Appellant's Community Spouse (CS) passed away on July 13, 2017. MassHealth determined that assets held by the CS were now deemed available to Appellant resulting in a determination that Appellant had excess assets of \$4,791.64. Consequently, MassHealth issued the subject denial notice indicating that Appellant had to verify that the excess assets were spent down to below the \$2,000.00 eligibility limit.

Appellant was represented by counsel who appeared by telephone and testified that she agreed with the facts as stated by the MassHealth representative. Counsel set forth two positions. First, Appellant asserted that prior to the CS's death, she had been residing in an assisted living facility with expenses ranging between \$9,683.00 and \$11,000.00 per month. Counsel requested that Appellant's PPA be reduced to zero for those months on the grounds that the MMMNA should be increased due to the exceptional circumstances constituted by the CS's need to reside in an assisted living facility. Second, Appellant testified that the excess assets were spent down. Appellant submitted a brief containing documentation meant to support her position that the excess assets were spent on funeral arrangements for the CS. The documents include a copy of a funeral contract and related expenses (Exhibit C).

The MassHealth representative accepted the funeral contract and related documentation as evidence of the spend down, but also asked for bank statements showing that the funds actually were from Appellant's accounts and that the assets have in fact been reduced from Appellant's funds.

The record was left open until the close of business on the day of the hearing for Appellant to file copies of the relevant bank statements. The record was held open for

one week (close of business December 15, 2017) to allow Appellant to file the documentation referenced in regulation 130 CMR 520.017(D) concerning the CS's assisted living situation and an assertion of exceptional circumstances as grounds to increase the Minimum Monthly Maintenance Needs Allowance (MMMNA).

By the close of business on the day of the hearing, Appellant filed copies of the bank statements showing that the excess assets had been spent down. The MassHealth representative indicated that the spend down requirement had been met.

Upon further request by Appellant's counsel, the record-open period was extended to allow her to file documentation supporting the assisted living expenses as required under 130 CMR 520.017(D). Appellant filed this documentation in a timely manner (Exhibit F).

Upon reviewing the post-hearing documentation, the hearing officer discovered that it included a copy of Appellant's application to the assisted living facility. The application contains a page where Appellant represented that he and his spouse had combined monthly income of \$12,601.00 which included an "employer pension" of \$8,360.00. The hearing officer realized that this amount was never identified or discussed at hearing. The hearing officer issued a letter to the parties informing the parties of the issue and asking Appellant to respond to explain the nature of the income source (Exhibit H). Appellant filed a response under cover letter dated April 9, 2018 (Exhibit I). The response included an affidavit from Appellant's daughter in which she states, *inter alia*, that she completed the assisted living application on behalf of her parents in September 2016 and the source of the \$8,360.00 monthly income was a 401K fund that she referred to as a retirement account and listed under "employer pension" on the application (Id).

The MassHealth representative filed a written response indicating that the retirement accounts including the 401K were known to MassHealth and they were shown to have been cleared of funds in April 2017. According to the MassHealth representative, the majority of the funds from these accounts were transferred to the community spouse and still totaled over \$61,000.00 at the time of her death (Exhibit J).

## Findings of Fact

By a preponderance of the evidence, I find the following:

1. Appellant was admitted to a long-term care facility on December 30, 2016.
2. Appellant filed an application for MassHealth Long-Term Care benefits on June 29, 2017 seeking an eligibility start date of April 1, 2017.



3. After requesting and receiving financial verifications, MassHealth approved Appellant's application on August 14, 2017 awarding the requested start date of April 1, 2017 along with a monthly Patient Paid Amount (PPA) of \$1,165.25.
4. MassHealth prepared a worksheet based on the income verified during the application process (Exhibit G).
5. According to MassHealth's worksheet, the CS has gross monthly income derived from a pension of \$2,320.75; Appellant has monthly income derived from Social Security of \$2,028.00 and Appellant pays a monthly health insurance expense of \$88.20 (Exhibit G).
6. After issuing the approval, MassHealth learned that Appellant's Community Spouse (CS) had passed away on July 13, 2017.
7. MassHealth determined that assets which had been held by the CS were available to Appellant upon the CS' death resulting in a determination that Appellant had excess assets of \$4,791.64 as of July 13, 2017.
8. MassHealth issued the subject denial notice indicating that Appellant had to verify that the excess assets were spent down to below the \$2,000.00 eligibility limit (Exhibit A).
9. Prior to the CS's death, she had been residing in an assisted living facility with expenses ranging between \$9,683.00 and \$11,000.00 per month.
10. During the record-open period on this appeal, Appellant verified to MassHealth that excess assets had been properly spent down.
11. During the record-open period, Appellant filed documentation verifying the CS's assisted living documentation (Exhibit F).
12. The assisted living documentation includes a copy of Appellant's application to the assisted living facility.
13. The application contains a page where Appellant represented that he and his spouse had combined monthly income of \$12,601.00 which included an "employer pension" of \$8,360.00.
14. Appellant's daughter completed the assisted living application on behalf of her parents in September 2016 and the source of the \$8,360.00 monthly income was a 401K fund that she referred to as a retirement account and listed under "employer pension" on the application (Exhibit I).

15. The retirement accounts including the 401K were known to MassHealth and they were shown to have been cleared of funds in April 2017.
16. The majority of the funds from these accounts were transferred to the community spouse and still totaled over \$61,000.00 at the time of her death.

## Analysis and Conclusions of Law

Regulations at 130 CMR 520.017(D)(1) state that an increase in the community spouse's MMMNA may be granted based on "exceptional circumstances." According to the regulation:

*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 will ensure 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 will review the housing agreement, service plan, fee schedule, and other pertinent documents to determine whether exceptional circumstances exist. Additional amounts will be allowed only for specific expenses necessitated by exceptional circumstances of the community spouse and not for maintaining any pre-set standard of living.*

(Emphasis supplied)

After reviewing the assisted living documentation and considering the testimony of the parties, I find that Appellant has failed to evidence that special circumstances existed which caused the community spouse to experience "significant financial duress". Regulation 130 CMR 520.017(D)(2) specifically requires the hearing officer to consider the spousal assets in determining whether or not significant financial duress exists. The record shows that Appellant and the community spouse had \$12,601.00 in monthly income available to them

to pay the assisted living facility. This exceeds the amount of the community spouse's asserted assisted living charges. The record also shows that at the time of her death, the community spouse still had over \$61,000.00 in retirement assets. On these facts, I cannot reasonably find that the assisted living charges were causing the community spouse to suffer significant financial duress. Accordingly, the appeal is 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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Kenneth Brodzinski  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu