

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2112448
Decision Date:	10/06/2021	Hearing Date:	06/09/2021
Hearing Officer:	Scott Bernard		

Appearance for Appellant:




Appearance for MassHealth:

Ana Costa (Taunton MEC) *via* telephone



*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

Appeal Decision:	Approved in part; Denied in part	Issue:	LTC PPA, Coverage Start Date
Decision Date:	10/06/2021	Hearing Date:	06/09/2021
MassHealth's Rep.:	Ana Costa	Appellant's Rep.:	
Hearing Location:	Taunton 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 March 1, 2021, MassHealth approved the appellant's application for MassHealth Long Term Care (LTC) benefits with a starting date of February 3, 2020 and a patient paid amount (PPA) of \$1,594.90. (See 130 CMR 516.001; 520.026 and Exhibit 1). For the period between December 16, 2019 and February 2, 2020, the appellant was ineligible for MassHealth due to a transfer of assets. (Ex. 1). The appellant filed this appeal in a timely manner on March 31, 2021. (See 130 CMR 610.015(B) and Ex. 2). Determinations concerning the calculation of the PPA is valid grounds for appeal. (See 130 CMR 610.032).

The hearing was initially scheduled for May 5, 2021. On that date, the appellant's representative informed the hearing officer that her mother (the appellant) had been taken to the hospital. For that reason, the hearing was rescheduled to the present date.

Action Taken by MassHealth

MassHealth determined that the PPA was \$1,594.

Issue

The appeal issue is whether MassHealth was correct, pursuant 520.026, in determining the PPA.

Summary of Evidence

The MassHealth representative stated the following. The appellant applied for LTC benefits on March 23, 2020 seeking a coverage start date of December 16, 2019. The MassHealth representative stated that the appellant was initially denied due to verifications and there was an appeal of this denial. The appeal was withdrawn once the verifications were submitted. The MassHealth representative also stated that there was an issue concerning transfers of assets, which resulted in a penalty period from December 16, 2019 to February 2, 2020. (Ex. 1; Ex. 8; Ex. 9). In a notice dated March 1, 2021, MassHealth approved the appellant for LTC benefits with a start date of February 1, 2020¹. (Ex. 1). In that notice, MassHealth determined the PPA was \$1,594.90 based on the following calculations:

Countable Income	
Earned Income	\$0.00
Social Security/Railroad Retirement	\$168.00
Annuity	\$0.00
Pension	\$1,753.00
Veteran's Pension	\$0.00
Other	\$0.00
Total Countable Income	\$1921.00
Allowances	
Personal Needs Allowance	\$72.80
Amount to Maintain Home	\$0.00
Spouse In Home	\$0.00
Medicare	\$0.00
Other Health Insurance	\$253.30
Guardianship Fees and Expenses	\$0.00
Other Medical Expenses	\$0.00
Total Allowances	\$326.10
Net Countable Income	
Total Countable Income	\$1921.00
–	–
Allowances	\$326.10
=	=
Patient Paid Amount	\$1,594.90

(Ex. 1).

The MassHealth representative stated that the appellant's representative filed the appeal because the appellant seeking to apply deductions that were not reported on the original application and

¹ Which was incorrect, see below.

therefore not counted. The MassHealth representative was able to obtain a Verification of Annuity (pension) statement dated February 27, 2020 which indicated that the cost of Federal Dental Insurance (\$45.76), and Federal Vision Insurance (\$11.90) were deducted from the appellant's pension in addition to the previously counted cost of her health benefits (\$253.30).² (Ex. 6). The MassHealth representative stated that she was able to clarify this after contacting the appellant's nursing facility. The MassHealth representative also stated that once she verified the two insurances, she allowed them to be counted as part of the deduction. The MassHealth representative also stated that the income stated in the pay stubs she examined was \$1,775.00, which was slightly higher than previously reported.

For that reason, a new notice was sent to the appellant on June 2, 2021 with the new PPA calculation counting the two deductible insurance premiums. Based on this new information, MassHealth determined the PPA was \$1,549.53 based on the following calculation:

Countable Income	
Earned Income	\$0.00
Social Security/Railroad Retirement	\$168.00
Annuity	\$0.00
Pension	\$1,775.00
Veteran's Pension	\$0.00
Other	\$0.00
Total Countable Income	\$1943.00
Allowances	
Personal Needs Allowance	\$72.80
Amount to Maintain Home	\$0.00
Spouse In Home	\$0.00
Medicare	\$0.00
Other Health Insurance	\$320.67
Guardianship Fees and Expenses	\$0.00
Other Medical Expenses	\$0.00
Total Allowances	\$393.47
Net Countable Income	
Total Countable Income	\$1943.00
–	–
Allowances	\$393.47
=	=
Patient Paid Amount	\$1,549.53

² There was also a deduction of \$3.25 from the pension that was listed in the box for other deductions with the deduction for Federal Vision Insurance. (Ex. 6). This deduction is labeled National Association of Retired Federal Employees. (Id.). The MassHealth representative stated that both she and the nursing facility were not able to determine precisely what this pension deduction was for but were able to determine that it was not some form of health insurance that was countable for the LTC deductions.

(Ex. 8; Ex. 9).

The new notice stated that the PPA would become effective on June 1, 2021. (Id.).

The appellant's representative argued that the effective date of the revised PPA should have been earlier than June 1, 2021. The appellant's representative testified that the newly counted deductions existed from the original start date to the present. The appellant's representative did not understand why the June 2, 2021 notice stated that the PPA would be in effect from June 1, 2021 forward. The appellant's representative also wondered if the cost of certain medication should be covered as well from February 2020. The appellant's representative stated she received bills from the prescription provider, although it appears as though Medicare began covering the prescriptions in September 2020.

The MassHealth representative stated that the new PPA should have been effective from February 3, 2020. As for the prescriptions, those were covered by the appellant's Medicare and not by MassHealth. The MassHealth representative stated that any question concerning the prescription billing should be addressed to Medicare.

Findings of Fact

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

1. The appellant applied for LTC benefits on March 23, 2020 seeking a coverage start date of December 16, 2019. (Testimony of the MassHealth representative).
2. MassHealth initially the appellant denied due to verifications and there was an appeal of this denial. (Testimony of the MassHealth representative).
3. That appeal was withdrawn once the verifications were submitted. (Testimony of the MassHealth representative).
4. There was an issue concerning transfers of assets, which resulted in a penalty period from December 16, 2019 to February 2, 2020. (Ex. 1; Ex. 8; Ex. 9).
5. In a notice dated March 1, 2021, MassHealth approved the appellant for LTC benefits with a start date of February 1, 2020. (Ex. 1).
6. In that notice, MassHealth determined the PPA was \$1,594.90 based on the following calculations:

Countable Income	
Earned Income	\$0.00
Social Security/Railroad Retirement	\$168.00
Annuity	\$0.00
Pension	\$1,753.00
Veteran's Pension	\$0.00
Other	\$0.00

Total Countable Income	\$1921.00
Allowances	
Personal Needs Allowance	\$72.80
Amount to Maintain Home	\$0.00
Spouse In Home	\$0.00
Medicare	\$0.00
Other Health Insurance	\$253.30
Guardianship Fees and Expenses	\$0.00
Other Medical Expenses	\$0.00
Total Allowances	\$326.10
Net Countable Income	
Total Countable Income	\$1921.00
—	—
Allowances	\$326.10
=	=
Patient Paid Amount	\$1,594.90

(Ex. 1).

7. The appellant's representative filed the appeal because the appellant seeking to apply deductions that were not reported on the original application and therefore not counted. (Testimony of the MassHealth representative).
8. The MassHealth representative was able to obtain a pension statement dated February 27, 2020. (Ex. 6).
9. The statement indicated that the cost of Federal Dental Insurance (\$45.76) and Federal Vision Insurance (\$11.90) were deducted from the appellant's pension in addition to the previously counted cost of her health benefits (\$253.30). (Ex. 6).
10. Once the MassHealth representative verified the two insurances, she allowed them to be counted as part of the medical deduction. (Testimony of the MassHealth representative; Ex. 8; Ex. 9).
11. The appellant's pension income had also increased to \$1,775.00. (Testimony of the MassHealth representative).
12. For that reason, a new notice was sent to the appellant on June 2, 2021 with the new PPA calculation using the deduction for Other Health Insurance that included the dental and visual insurance premiums. (Ex. 8; Ex. 9).
13. MassHealth determined the PPA was \$1,549.53 based on the following calculation:

Countable Income	
Earned Income	\$0.00
Social Security/Railroad Retirement	\$168.00
Annuity	\$0.00
Pension	\$1,775.00
Veteran's Pension	\$0.00
Other	\$0.00
Total Countable Income	\$1943.00
Allowances	
Personal Needs Allowance	\$72.80
Amount to Maintain Home	\$0.00
Spouse In Home	\$0.00
Medicare	\$0.00
Other Health Insurance	\$320.67
Guardianship Fees and Expenses	\$0.00
Other Medical Expenses	\$0.00
Total Allowances	\$393.47
Net Countable Income	
Total Countable Income	\$1943.00
—	—
Allowances	\$393.47
=	=
Patient Paid Amount	\$1,549.53

(Ex. 8; Ex. 9).

14. The deductions were applied from June 1, 2021, which was acknowledged as incorrect. (Ex. 8; Ex. 9; Testimony of the MassHealth representative).
15. MassHealth did not use the cost of the appellant's prescriptions because these were covered by the appellant's Medicare. (Testimony of the MassHealth representative).

Analysis and Conclusions of Law

An individual's gross earned, and unearned income less certain business expenses and standard income deductions is referred to as the countable-income amount. (130 CMR 520.009(A)(1)). For institutionalized individuals, specific deductions described in 130 CMR 520.026 are applied against the individual's countable-income amount to determine the patient-paid amount. (130 CMR 520.009(A)(4)).

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.³ 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.

...

(E) Deductions for Health-care Coverage and Other Incurred Expenses.

- (1) Health-Insurance Premiums or Membership Costs. The MassHealth agency allows a deduction for current health-insurance premiums or membership costs when payments are made directly to an insurer or a managed-care organization.
- (2) Incurred Expenses.
 - (a) After the applicant is approved for MassHealth, the MassHealth agency will allow deductions for the applicant's necessary medical and remedial-care expenses. These expenses must not be payable by a third party. These expenses must be for medical or remedial-care services recognized under state law but not covered by MassHealth.
 - (b) These expenses must be within reasonable limits as established by the MassHealth agency. The MassHealth agency considers expenses to be within reasonable limits provided they are
 1. not covered by the MassHealth per diem rate paid to the long-term-care facility;
 - and
 2. certified by a treating physician or other medical provider as being medically necessary.

The record shows MassHealth may have made a calculation error in determining the total deduction for Other Health Insurance. In the March 1, 2021 notice, the deduction for Other Health Insurance was \$253.30, which was for payment of Health Benefits out of the appellant's pension. After MassHealth issued the March 1, 2021 notice, the appellant's representative informed MassHealth that there were other medical insurance payments that should have been counted as part of the deduction. These consisted of Federal Dental Insurance (\$45.76) and Federal Vision Insurance (\$11.90). The total of these three insurance payments is \$310.96. In the new notice that MassHealth issued on June 2, 2021, the deduction for Other Health Insurance was \$320.67. Thus, there is either a \$9.71 error in the calculation of the deduction, or a further countable part of the deduction that MassHealth did not explain in its testimony. If it is an error, the error must be corrected.

³ As none of the other deductions appear to be applicable and were not raised on appeal, only the paragraphs concerning the PNA and the incurred medical and remedial care expenses are excerpted here.

The record also shows that MassHealth made an error concerning the first date the deduction for Other Health Insurance should apply. The record shows that the date of the pension statement that MassHealth used to determine the amount of the three countable insurances was February 27, 2020. The appellant was receiving covered services and was otherwise eligible on that date. (See 130 CMR 516.006(A)). Generally, LTC coverage would go back to the first day of that month. (Id.). In this case, the appellant was not eligible until February 3, 2020 due to a transfer of assets. Therefore, the full deduction should have been applied from February 3, 2020 forward. At the hearing, the MassHealth representative acknowledged that this was a mistake, but it is unclear if it was a mistake that was subsequently corrected after the hearing. If the mistake was not corrected or if MassHealth did not notify the appellant of the correction, a notice correcting the PPA from February 3, 2020 must be sent to the appellant.

Finally, the record shows that although the appellant has prescriptions, the cost of these are not countable for the purposes of determining the PPA. As stated above after the applicant is approved for MassHealth, MassHealth will allow deductions for the applicant's necessary medical and remedial-care expenses. These expenses must not be payable by a third party, however. In this case, the cost of the appellant's prescriptions was payable by Medicare and therefore could not be used as part of the deductions.

Order for MassHealth

If the \$9.71 discrepancy in the calculation of the total deduction for Other Medical Insurance is an error, the error must be corrected. If it has not done so already, MassHealth must also apply the corrected deduction for Other Medical Insurance back to February 3, 2020.

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 decision, you should contact your MassHealth Enrollment Center. 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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780