

**Office of Medicaid  
BOARD OF HEARINGS**

Appellant Name and Address:



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2155415
<b>Decision Date:</b>	11/05/2021	<b>Hearing Date:</b>	09/03/2021
<b>Hearing Officer:</b>	Scott Bernard	<b>Record Open to:</b>	10/13/2021

Appearance for Appellant:



Appearance for MassHealth:

Scott Michael (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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	LTC PPA
<b>Decision Date:</b>	11/05/2021	<b>Hearing Date:</b>	09/03/2021
<b>MassHealth's Rep.:</b>	Scott Michael	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	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 June 18, 2021, MassHealth approved the appellant's application for MassHealth Long Term Care (LTC) benefits with a monthly patient paid amount (PPA) of \$4,141.20. (See 130 CMR 520.026 and Exhibit 1). The appellant filed this appeal in a timely manner on July 16, 2021. (See 130 CMR 610.015(B) and Exhibit 2). Contesting the calculation of the PPA is valid grounds for appeal (See 130 CMR 610.032).

On October 8, 2021, the hearing officer reopened the record to make inquiries of the appellant's representative. (Ex. 5). The appellant's representative requested time to provide the answers and was given until October 15, 2021 to do so. (Id.). On October 13, 2021 the appellant's representative submitted the requested answers and the record closed. (Id.).

## Action Taken by MassHealth

MassHealth approved the appellant's application for LTC benefits with a monthly PPA of \$4,141.20.

## Issue

The appeal issues are whether MassHealth was correct, pursuant to 130 CMR 520.026, in calculating the PPA.

## Summary of Evidence

The MassHealth representative testified to the following. The appellant is an individual over the age of 65. (Ex. 2; Ex. 4, pp. 2, 4). The appellant applied for LTC benefits on March 23, 2021, seeking a retroactive coverage start date of October 14, 2020. (Ex. 4, pp. 2, 4). MassHealth approved the appellant's application in a notice dated June 18, 2021<sup>1</sup> with a retroactive start date of December 1, 2020. (Ex. 1; Ex. 4, pp. 5-7). The MassHealth representative stated that the earliest MassHealth can approve a coverage start date is the first day of the third month prior to the date of application. The appellant's application indicated that the community spouse did not have living expenses such as rent, mortgage, utilities etc. and no such expenses were submitted prior to the approval notice. (Ex. 4, p. 3). On August 4, 2021, an assisted living account history was provided showing payments of \$2,645 per month were made from August 2020 through April 2021 to an assisted living facility [REDACTED] in the appellant's name. (Ex. 4, pp. 8-9). The appellant was residing in a nursing facility during these months.

The appellant's representative explained that the appellant was admitted to the nursing facility at the end of [REDACTED]. The appellant's representative stated that the appellant left the facility to go to a hospital then was readmitted to a nursing facility.

The appellant's representative stated<sup>2</sup> that the appellant was admitted to the [REDACTED] on [REDACTED] (Ex. 5). The appellant could no longer safely stay at home because the level of care he required was beyond what the community spouse could provide at home but he was not unwell enough to be admitted to a nursing facility at this point. On [REDACTED], the appellant underwent a medical event and went to the ER. (Ex. 5). The appellant was discharged from the ER on the same date and was sent to the nursing facility for rehabilitation and to monitor his condition in the short term. (Id.). The appellant returned to the [REDACTED]. (Id.).

On or around [REDACTED], the appellant was found having a seizure in his room at the ALF and was transported to a hospital. (Id.). The appellant underwent surgery and was then discharged to the nursing facility on [REDACTED] for short term rehabilitation and skilled nursing. At this point, the appellant and the community spouse intended on his returning to the ALF. It was recommended that the appellant be discharged to a rehab facility until he was clinically stable. The ALF informed the community spouse that until his condition stabilized, the appellant could not return to the ALF. While the appellant was in the hospital, then rehabilitation, the community spouse continued to pay for the appellant's room at the ALF. The appellant had been screened short term at this point and he intended on returning to the ALF. By April 2021, the appellant's condition had not improved sufficiently to allow him to return to the ALF. As there was no way the appellant could safely return to the ALF, the community spouse stopped paying the ALF.

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<sup>1</sup> There was also a subsequent notice dated July 26, 2021, which the MassHealth representative submitted in his hearing packet. (Ex. 4, pp. 5-7). After an email inquiry from the hearing officer, the MassHealth representative explained that this notice was the result of a MassHealth information match with Social Security indicating that the appellant's income changed. there was a change in the appellant's income. (Ex. 5). MassHealth's computer systems then issued a new notice reflecting this change in income as well as a change to the appellant's PPA. (Ex. 5; Ex. 4, pp. 5-7).

<sup>2</sup> The appellant's representative testimony has been supplemented through information requested from her by the hearing officer after the hearing. (See 130 CMR 610.065; 610.071(F); 610.081; Ex. 5).

The appellant's representative requested that the spousal allowance be applied here. The appellant's representative explained that the community spouse used all the appellant's income to pay for the appellant's placement in the ALF while he was in rehabilitation. She stated that the situation was one where there is an exceptional circumstance. The appellant's representative confirmed that the community spouse does live with her son and does not pay rent.

## Findings of Fact

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

1. The appellant is an individual over the age of 65. (Ex. 2; Ex. 4, pp. 2, 4).
2. On [REDACTED], the appellant was admitted to an ALF because he could no longer safely stay at home and the additional care the appellant required was beyond what the community spouse could provide. (Testimony of the appellant's representative).
3. On [REDACTED], the appellant underwent a medical event and went to the ER. (Ex. 5).
4. The appellant was discharged from the ER on the same date and was sent to the nursing facility for rehabilitation and to monitor his condition in the short term. (Ex. 4, p. 4; Ex. 5).
5. The appellant returned to the ALF on [REDACTED]. (Ex. 5).
6. On or around [REDACTED] the appellant was found having a seizure in his room at the ALF and was transported to a hospital. (Ex. 5).
7. The appellant underwent surgery and was then discharged to the nursing facility on [REDACTED] for short term rehabilitation and skilled nursing. (Ex. 4, p. 3; Ex. 5; Testimony of the appellant's representative).
8. The appellant applied for LTC benefits on March 23, 2021, seeking a retroactive coverage date of October 14, 2020. (Ex. 4, pp. 2, 4).
9. MassHealth approved the appellant's application in a notice dated June 18, 2021 with a retroactive start date of December 1, 2020. (Ex. 1; Ex. 4, pp. 5-7).
10. The appellant's application indicated that the community spouse did not have living expenses such as rent, mortgage, utilities etc. and no such expenses were submitted prior to the approval notice. (Ex. 4, p. 3; Testimony of the MassHealth representative; Testimony of the appellant's representative).
11. On August 4, 2021, an assisted living account history was submitted to MassHealth showing payments of \$2,645 per month were made from August 2020 through April 2021 to the ALF in the appellant's name. (Ex. 4, pp. 8-9).
12. The account history showed that the community spouse continued paying the ALF from December 9, 2020 through April 2021. (Testimony of the appellant's representative; Ex. 4, pp.

8-9; Ex. 5).

## Analysis and Conclusions of Law

MassHealth allows for certain allowances to be deducted from an LTC applicant's income to determine the monthly patient paid amount (PPA). (130 CMR 520.026). When applicable these deductions are taken in the following order: a personal-needs allowance (PNA); 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. (Id.).

The record shows that only one deduction applies in this case. In calculating the PPA, MassHealth deducted \$72.80 for the PNA. (130 CMR 520.026(A)).

The record shows that the community spouse does not have living expenses, therefore the Spousal Maintenance Needs Deduction (SMND) does not apply. (130 CMR 520.026(B)). The appellant's representative asserted that this was an exceptional circumstance. As used in the regulations, the term "exceptional circumstances" does not apply here. An exceptional circumstance, as defined in 130 CMR 520.017(D)(1), is a factor to be taken under consideration in a fair hearing decision when the community spouse's income is such that she does not qualify for the SMND. The appellant is not eligible to receive the SMND because she does not have living expenses not because her income is too high. In any case, the circumstance being asserted here (the monthly cost of maintaining the appellant's spot at the ALF while he was in the nursing facility) was not a necessity arising from the medical condition, frailty, or similar special needs of the community spouse. (See 130 CMR 520.017(D)(1)).

As for the other deductions in 130 CMR 520.026, none appear to apply. MassHealth allows a deduction from the income of a long-term-care resident to provide for the maintenance needs of certain specific family members<sup>3</sup> if they live with the community spouse. (130 CMR 520.026(C)). No such family members live with the community spouse.

MassHealth allows a deduction for maintenance of a home when a competent medical authority certifies in writing that a single individual, with no eligible dependents in the home, is likely to return home within six months after the month of admission. (130 CMR 520.026(D)). Because the appellant has a spouse, he is not a "single individual" and this deduction does not apply.

MassHealth allows deductions for healthcare coverage and other incurred expenses. (130 CMR 520.026(E)). When the LTC recipient directly pays an insurer or a managed-care organization, MassHealth will allow a deduction. (130 CMR 520.026(E)(1)). There was no evidence submitted that the appellant directly pays an insurer or managed-care organization. After the applicant is approved for

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<sup>3</sup> (a) a minor child — a child younger than 21 years old of either member of the couple; (b) a dependent child a child 21 years of age and older who is claimed as a dependent by either spouse for income-tax purposes under the Internal Revenue Code; (c) a dependent parent — a parent of either spouse who lives with the community spouse and who is claimed as a dependent by either spouse for income-tax purposes under the Internal Revenue Code; and (d) a dependent sibling — a brother or sister of either spouse (including a half brother or half-sister) who lives with the community spouse and who is claimed as a dependent by either spouse for income-tax purposes under the Internal Revenue Code. (130 CMR 520.026(C)).

MassHealth, MassHealth will allow deductions for the applicant's necessary medical and remedial-care expenses that are not be payable by a third party and the expenses must be for medical or remedial-care services recognized under state law but not covered by MassHealth. (130 CMR 520.026(E)(2)(a)). These expenses must be within reasonable limits as established by MassHealth, which means they are not covered by the MassHealth per diem rate paid to the long-term-care facility and are certified by a treating physician or other medical provider as being medically necessary. The expense of the ALF is not deductible under this regulation – the appellant was not residing in the ALF for the period between December 9, 2020 and April 2021. The appellant was therefore not receiving remedial services from the ALF during that period. Finally, MassHealth allows deductions from a member's income for guardianship fees and related expenses when a guardian is essential to enable an incompetent applicant or member to gain access to or consent to medical treatment. (130 CMR 520.026(E)(3)). The appellant does not have an appointed guardian.

For the above stated reasons, 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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Scott Bernard  
Hearing Officer  
Board of Hearings

cc:

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