

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved in part
 Denied in part

Appeal Number: 2179698

Decision Date: 02/10/2022

Hearing Date: 01/21/2022

Hearing Officer: Sara E. McGrath

Appearances for Appellant:




Appearances for MassHealth:

Elizabeth Rodriguez, Tewksbury MEC



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Approved in part Denied in part	Issue:	Patient-Paid Amount
Decision Date:	02/20/2022	Hearing Date:	01/21/2022
MassHealth Rep.:	Elizabeth Rodriguez	Appellant Rep:	
Hearing Location:	Board of Hearings (Remote)		

Authority

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

Jurisdiction

Through notice dated December 14, 2021, MassHealth notified the appellant that her patient-paid amount would change from \$818.13 to \$1,892.13 on December 1, 2021 because of a change in her circumstances (Exhibit 1). The appellant filed a timely appeal on December 17, 2021 (130 CMR 610.015; Exhibit 1). The calculation of a patient-paid amount is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified the appellant that her patient-paid amount would change from \$818.13 to \$1,892.13 on December 1, 2021 because of a change in her circumstances.

Issue

The appeal issue is whether MassHealth correctly determined the appellant's patient-paid amount.

Summary of Evidence

The MassHealth representative appeared at hearing by telephone and testified as follows: On [REDACTED] the appellant was admitted to a skilled nursing facility. On August 16, 2021, the appellant submitted a MassHealth application, requesting a coverage start date of August 16, 2021. On November 5, 2021, MassHealth approved the application with a start date of August 16, 2021, and a patient-paid amount of \$818.13. The patient-paid amount was initially calculated as follows: \$2,213.53 (income) - \$72.80 (personal needs allowance) - \$1,074 (amount to maintain home) - \$248.60 (other health insurance) = \$818.13. The appellant was initially allowed the standard deduction to maintain her former home (\$1,074) because she indicated on her application that she paid rent in the community. Further, the initial nursing facility screening forms indicated that the appellant was clinically eligible for nursing facility services for a short-term stay, and that her length of stay would be short term (six months or less) (Exhibit 3).¹ On December 14, 2021, MassHealth received updated screening forms from the nursing facility; these forms indicated that effective December 13, 2021, the appellant was clinically eligible for MassHealth payment of nursing facility services, and that her length of stay would be more than six months (Exhibit 4). On that same date, MassHealth processed this change in the appellant's level of care - from short-term care to long-term care – and issued the notice on appeal. The notice recalculates the appellant's patient-paid amount without the housing deduction.

The appellant and her two sisters appeared at hearing by telephone as well. They testified that all aspects of the appellant's care have been delayed by the pandemic. Ambulance transportation has been spotty, causing the appellant to miss some critical appointments. The appellant's doctors have been slow to schedule necessary surgery. These delays have extended the appellant's stay at the nursing facility through no fault of her own. She needs more of her income to continue to pay her rent. She lives in elderly housing and plans to go home after surgery. If she does not pay her rent, she will lose her housing and will be unable to return to the community.

Findings of Fact

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

1. The appellant was a community resident with a rent obligation.
2. On [REDACTED], the appellant became a resident at a skilled nursing facility.
3. On August 16, 2021, the appellant submitted a MassHealth application, requesting a MassHealth overage start date of August 16, 2021.

¹ These screening forms were completed by a nurse from the Aging Services Access Point (ASAP) that works with the nursing home.

4. MassHealth received the initial nursing facility screening forms, completed by an ASAP nurse; these forms indicated that the appellant was clinically eligible for nursing facility services for a short-term stay, and that her length of stay would be short term (six months or less).
5. On November 5, 2021, MassHealth approved the application with a start date of August 16, 2021, and a patient-paid amount of \$818.13.
6. The patient-paid amount was initially calculated as follows: \$2,213.53 (income) - \$72.80 (personal needs allowance) - \$1,074 (amount to maintain home) - \$248.60 (other health insurance) = \$818.13.
7. On December 14, 2021, MassHealth received updated screening forms, completed by an ASAP nurse; these forms indicated that effective December 13, 2021, the appellant was clinically eligible for MassHealth payment of nursing facility services, and that her length of stay would be more than six months.
8. On December 14, 2021, MassHealth notified the appellant that effective December 1, 2021, her patient-paid amount would change from \$818.13 to \$1,892.13; that notice calculates the patient-paid amount without the housing deduction: \$2,213.53 (income) - \$72.80 (personal needs allowance) - \$248.60 (other health insurance) = \$1,892.13.
9. On December 17, 2021, the appellant timely appealed this MassHealth action.

Analysis and Conclusions of Law

The issue in this case is MassHealth's determination that effective December 1, 2021, the appellant owes a monthly patient-paid amount to the nursing facility in the amount of \$1,892.13 (Exhibit 1). Under 130 CMR 519.006(A)(3), long-term care residents must "contribute to the cost of care" in accordance with the patient-paid amount regulation at 130 CMR 520.026.

The patient-paid amount calculation allows for certain deductions (130 CMR 520.026). The appellant's issue concerns the deduction for the maintenance of a former home, which is allowed "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)). MassHealth initially allowed this deduction based on the first set of screening forms and the fact that the appellant paid rent in the community. In December, however, MassHealth received updated screening forms, completed by the ASAP nurse, indicating a level of care change (from short-term care to long-term care) (Exhibit 4). MassHealth then processed this level of care change and notified the appellant that her patient-paid would be calculated without the housing deduction (Exhibit 1).

MassHealth's action here is supported by regulation. MassHealth looked to a medical authority, the ASAP nurse, when it initially determined that the appellant's stay would be short term, and calculated her patient-paid amount accordingly. MassHealth looked to this same authority when it determined that the appellant's level of care had changed, and recalculated her patient-paid amount accordingly. While the appellant and her sisters presented credible testimony regarding delays caused by the pandemic, there is no longer any evidence from a competent medical authority that the appellant is likely to return home within six months after the month of admission (130 CMR 520.026(D)). Thus, there is no evidence to support the appellant's argument that her housing deduction should continue until she is discharged.

The appellant's level of care change occurred in the middle of December (Exhibit 4). MassHealth, however, eliminated the appellant's housing deduction retroactive to the beginning of December. I find no regulatory support for this action. Because she was eligible for short-term care for part of the month, she should be entitled to the housing deduction in December, and the deduction should not be eliminated until January 1, 2022.²

This appeal is approved to the extent that the patient-paid amount should not increase until January, and is otherwise denied.

Order for MassHealth

Rescind notice and do not increase the patient-paid amount until January 1, 2022.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact MassHealth. 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.

² By regulation, the housing deduction terminates at the end of the sixth month after the month of admission (130 CMR 520.026(D)(1)). Thus, in any case, the appellant's housing deduction would have terminated at the end of January.

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.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc: Tewksbury MEC

