

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2200395
Decision Date:	9/20/2022	Hearing Date:	07/21/2022
Hearing Officer:	Scott Bernard		

Appearance for Appellant:



Appearance for MassHealth:

Jernice Diaz (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:	Denied	Issue:	Long Term Care (LTC) Patient Paid Amount (PPA)
Decision Date:	9/20/2022	Hearing Date:	07/21/2022
MassHealth's Rep.:	Jernice Diaz	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 November 1, 2021, MassHealth informed the appellant that her monthly LTC PPA was increasing from \$3,815.96 to \$4,623.29 from June 1, 2022 because of the increase in her income. (See 130 CMR 520.025; 520.026 and Exhibit (Ex.) 1, pp. 4-5). The appellant filed this appeal in a timely manner on January 18, 2022. (See 130 CMR 610.015(B), EOM 20-09, and Ex. 1, p. 3). Individual MassHealth determinations regarding scope and amount of assistance are valid grounds for appeal. (See 130 CMR 610.032(A)(5)).

The nursing facility also included paperwork with the appeal showing that the facility had filed a petition for the appointment of a conservator in the Probate and Family Court on December 3, 2021. (Ex. 1, pp. 7-12). Scheduling of the hearing was therefore held until the court appointed a conservator. (Ex. 3; Ex. 4; Ex. 5). On June 22, 2022, the appellant's representative notified the Board that the court had appointed him as the conservator. (Ex. 6). The Board scheduled the hearing at this time.

Action Taken by MassHealth

MassHealth notified the appellant that it was increasing her PPA from \$3,815.96 to \$4,623.29 effective June 1, 2021 because of an increase to her income.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.000, in calculating the appellant's PPA.

Summary of Evidence

The appellant is an individual over the age of 65, who is a household of one. The appellant has been a resident of a nursing facility since 2011. According to MassHealth's files, the appellant receives monthly income consisting of \$1,166.00 from Social Security and \$3,758.09 from a pension. On July 14, 2021, MassHealth received a letter from a Washington (state) law firm stating that they represented the appellant on her Washington State Labor and Industries Pension Benefits Claim. (Ex. 8). The letter stated that the appellant receives a monthly check from the State of Washington in the amount of \$3,758.09 "less our fee of \$563.71" leaving a balance of \$3,194.37. (Id.). On August 5, 2021, MassHealth updated the appellant's financial information to reflect receipt of this monthly income. The MassHealth representative stated that an effective date of June 1, 2021 was manually inputted. The MassHealth representative surmised that this date was used because the information received indicated that the appellant had been receiving the pension since December 15, 2020 and June 1 was the earliest date an increase could be implemented because COVID protections were in effect prior to that date.

The MassHealth representative stated that the system did not generate a notice at this time because on August 3, 2022 MassHealth had sent the appellant a new LTC review form, which placed the appellant's profile on hold. On September 21, 2021, MassHealth received the requested information from the appellant. This resulted in MassHealth issuing the notice under appeal only on November 1, 2021. The notice stated that the appellant's PPA would change to \$4,623.29 per month effective June 1, 2022. (Ex. 1). This was based on her having income of \$938.00 from Social Security and \$3,758.09 from the pension with the only deduction being the Personal Needs Allowance (PNA) deduction of \$72.80. (Ex. 1).

The appellant's conservator stated that he agreed with the MassHealth representative's account of how this played out. The appellant's conservator stated that he was appealing the inclusion of the Washington law office's fee in the calculation of the appellant's gross pension. He stated that the law office was refusing to cut its fee. The appellant was not able to handle dealing with the Washington law firm about this. The appointment took a long time to go through because the appellant is actually not that incapacitated but could not deal with the Washington law office. For that reason, the extent of conservator's power is limited to representing the appellant in front of the MassHealth Board of Hearings, and assisting the appellant in terminating her relationship with the Washington law firm. (Ex. 6, pp. 4-5). The conservator did confirm that as of the month of the hearing that he had managed to terminate the Washington law firm as counsel for the purposes of receiving the appellant's pension. Washington State is now sending the full check to the nursing home. The appellant's conservator argued that during the period the fee was subtracted from the appellant's pension, from June 1, 2021 through June 2022, was inaccessible to her. The Appeal argument - the fee that was going to them was inaccessible – subject of a legal proceeding (referred to in the conservatorship order). Since the fee was inaccessible, the nursing facility asked for the appointment

of a fiduciary involved to correct this issue. The conservator asked that the PPA be adjusted to reflect the net amount of the pension up until July 2022. The conservator cited 130 CMR 520.006(A), (B),(C)(1),2(A), which concerns inaccessible assets.

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).
2. The appellant has a household of one. (Testimony of the MassHealth representative).
3. The appellant has been a resident of a nursing facility since 2011. (Testimony of the MassHealth representative)
4. On July 14, 2021, MassHealth received a letter from a Washington (state) law firm stating that they represented the appellant on her Washington State Labor and Industries Pension Benefits Claim. (Testimony of the MassHealth representative; Ex. 8).
5. The letter stated that the appellant receives a monthly check from the State of Washington in the amount of \$3,758.09 “less our fee of \$563.71” leaving a balance of \$3,194.37. (Ex. 8).
6. On August 5, 2021, MassHealth updated the appellant’s financial information to reflect receipt of this monthly income. (Testimony of the MassHealth representative).
7. On November 1, 2021, MassHealth issued a notice stating that the appellant’s PPA would change to \$4,623.29 per month effective June 1, 2022. (Ex. 1).
8. This was based on her having income of \$938.00 from Social Security and \$3,758.09 from the pension with the only deduction being the Personal Needs Allowance (PNA) deduction of \$72.80. (Ex. 1).
9. A conservator was appointed to amend and/or terminate the appellant’s relationship with the Washington law firm. (Testimony of the appellant’s conservator; Ex. 6).
10. The conservator has terminated the appellant’s relationship with the Washington law firm, and as of July 2022 the full amount of her pension is being paid to the nursing facility. (Testimony of the appellant’s conservator).

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)). Unearned income is income that does not directly result from an individual's own labor or services is unearned. (130 CMR 520.009(D)). Unearned income includes, but is not limited to, social security benefits,

railroad retirement benefits, pensions, annuities, federal veterans' benefits, rental income, interest, and dividend income. (Id.). 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, which is the amount that a member in a long-term-care facility must contribute to the cost of care under the laws of the Commonwealth of Massachusetts.. (130 CMR 520.009(A)(3); 515.001).

The record shows by a preponderance of the evidence that MassHealth has correctly determined the appellant's PPA from June 1, 2021 to the present. The record shows the appellant receives unearned income in the form of Social Security and a pension from the state of Washington. Although the pension was subject to a fee from a Washington law firm, MassHealth added the gross amount of the pension and added that amount to the Social Security in order to determine the appellant's gross income. MassHealth then subtracted the one applicable deduction (for the Personal Needs Allowance (PNA)). (See 130 CMR 520.026(A)(1)). In this way, MassHealth determined the appellant's PPA.

The appellant's conservator did not question the method MassHealth used to determine the PPA. The conservator did argue, however, that the fee the Washington law firm subtracted from the appellant's pension checks was an inaccessible asset and therefore should not be counted in determining the PPA. The rules for inaccessible assets, which are located at 130 CMR 520.006, are applied specifically in the context of determining eligibility.¹ This is not a situation concerning the appellant's eligibility for MassHealth, however. The record shows that MassHealth has determined the appellant is eligible for MassHealth LTC benefits. MassHealth properly used the gross amount of the appellant's pension, including the fee, in order to calculate the PPA.

For the above stated reasons, the appeal is DENIED.

Order for MassHealth

None.

¹ This hearing officer must admit to some confusion as to whether a pension is considered an asset or income. In determining eligibility, "pension funds" can be considered a countable asset under 130 CMR 520.007(C)(3). The regulations further confuse the issue by defining the term "asset" by reference to the term "resource" in the federal statute, and the term "resource" as the same as the term "asset" in the federal statute. (See 42 USC 1396p(h)(1),(5)). It seems that a resource, as used in the federal statute, is somewhat more limited than an asset in the same statute. What is clear in this case, however, is that in the context of determining the PPA the monthly amount received from the pension is unearned income and not an asset.

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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

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

[REDACTED]