

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2201137
Decision Date:	7/21/2022	Hearing Date:	06/15/2022
Hearing Officer:	Sara E. McGrath		

Appearances for Appellant:

, Guardian

Appearances for MassHealth:

Dianne Braley, Taunton 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:	Denied	Issue:	Patient-Paid Amount
Decision Date:	7/21/2022	Hearing Date:	06/15/2022
MassHealth Rep.:	Dianne Braley	Appellant Rep:	Guardian
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 January 19, 2022, MassHealth notified the appellant that he is eligible for MassHealth Standard benefits with eligibility beginning on May 1, 2021. The notice also states that starting on January 1, 2022, the appellant owes the nursing facility a monthly patient-paid amount of \$1,029.20 (Exhibit 1). The appellant filed a timely appeal on February 11, 2022 (130 CMR 610.015; Exhibit 2). The hearing was initially scheduled for April 27, 2022 but was rescheduled due to illness of a party (Exhibit 3). The calculation of a patient-paid amount is a valid basis for appeal (130 CMR 610.032). At the conclusion of the hearing, the record was held open to allow the appellant to submit additional documentation and for MassHealth to review and respond (Exhibit 6).

Action Taken by MassHealth

MassHealth notified the appellant that he is eligible for MassHealth Standard benefits with eligibility beginning on May 1, 2021. The notice also states that starting on January 1, 2022, the appellant owes the nursing facility a monthly patient-paid amount of \$1,029.20.

Issue

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

Summary of Evidence

The MassHealth representative appeared at the hearing by telephone and testified as follows: The appellant was admitted to a nursing facility on [REDACTED]. On May 19, 2021, the appellant submitted a MassHealth long-term care conversion application. On August 24, 2021, MassHealth notified the appellant that he is eligible for MassHealth Standard benefits with eligibility beginning on May 21, 2021 (Exhibit 5). On January 19, 2022, MassHealth again notified the appellant that he is eligible for MassHealth Standard benefits with eligibility beginning on May 1, 2021. The notice also states that starting on January 1, 2022, the appellant owes the nursing facility a monthly patient-paid amount of \$1,029.20 (Exhibit 1). The appellant was discharged from the nursing facility on [REDACTED].

The appellant's guardian appeared at the hearing and testified telephonically. She explained that in July 2020, the appellant suffered a hemorrhagic stroke and became disabled. She is his ex-wife and was appointed his guardian in November 2020. During her role as guardian, she has incurred expenses that she feels should be deducted from the appellant's income.

The MassHealth representative responded and stated that MassHealth calculated the appellant's patient-paid amount as follows: \$1,102 (the appellant's countable income) - \$72.80 (personal needs allowance) = \$1,029.20. The MassHealth representative explained that in order to deduct guardianship expenses from the appellant's income, the guardian needs to submit evidence that these expenses were approved by the probate court. As of the date of hearing, the appellant had only submitted the guardianship decree and order. Upon request, the hearing officer held the record open at the conclusion of the hearing to allow the guardian to submit additional documentation from the probate court. Neither the hearing officer nor the MassHealth representative received any additional documentation during the record-open period (Exhibit 7).

Findings of Fact

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

1. In July 2020, the appellant suffered a hemorrhagic stroke and became disabled.
2. On [REDACTED], the appellant was admitted to a nursing facility.
3. In November 2020, the appellant's ex-wife was appointed his guardian.
4. On May 19, 2021, the appellant submitted a MassHealth long-term care conversion

application.

5. On August 24, 2021, MassHealth notified the appellant that he is eligible for MassHealth Standard benefits with eligibility beginning on May 21, 2021.
6. On January 19, 2022, MassHealth again notified the appellant that he is eligible for MassHealth Standard benefits with eligibility beginning on May 1, 2021. The notice also states that starting on January 1, 2022, the appellant owes the nursing facility a monthly patient-paid amount of \$1,029.20.
7. On February 11, 2022, the appellant timely appealed MassHealth's January determination.
8. On [REDACTED], the appellant was discharged from the nursing facility.

Analysis and Conclusions of Law

The issue in this case is whether MassHealth properly calculated the appellant's patient-paid amount from January through April 2022. MassHealth calculated a patient-paid amount of \$1,029.20 by subtracting a personal needs allowance of \$72.80 from his unearned income of \$1,102. The appellant's guardian argues that an additional deduction for guardianship fees and expenses should be allowed, further reducing the patient-paid amount. 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. Per 120 CMR 520.026, 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 other incurred expenses. These deductions are used in determining the monthly patient-paid amount.

Guardianship fees and related expenses are allowable deductions from the member's income (under the section describing deductions for health-care coverage and other incurred expenses), subject to the following relevant regulatory provisions:

(3) Guardianship Fees and Related Expenses. The MassHealth agency 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, as provided below.

(a) Expenses Related to the Appointment of a Guardian.

1. The MassHealth agency allows a deduction for fees and expenses related to the appointment of a guardian if the guardian's appointment is made for the purpose of

a. assisting an incompetent applicant to gain access to medical treatment through MassHealth; or

b. consenting to medical treatment on behalf of a MassHealth member.

2. The MassHealth agency allows a deduction for reasonable costs, including attorney fees, as approved by the probate court, not to exceed \$500 for the appointment, except as provided in 130 CMR 520.026(E)(3)(a)3.

3. The MassHealth agency may allow a deduction, as approved by the probate court, of up to \$750 for the appointment when the medical issues before the court are more complex. An example of such complexities includes providing evidence of the need for anti-psychotic medications.

4. The deduction is made from the member's monthly patient-paid amount over a 12-month period.

(b) Guardianship Services Related to the Application Process.

1. The MassHealth agency allows a deduction for fees for guardianship services related to the MassHealth application process when the guardian has been appointed by the probate court to assist an incompetent person with the MassHealth application when the securing of MassHealth benefits is essential for the member to gain access to medical treatment.

2. The MassHealth agency allows a deduction for reasonable costs related to the MassHealth application process, as approved by the probate court, not to exceed \$500. In cases where an administrative hearing is held, the total deduction may not exceed \$750 for the costs related to the application process and hearing.

3. The deduction is made from the member's monthly patient-paid amount over a 12-month period.

(c) Guardianship Services Related to the Redetermination Process.

1. The MassHealth agency allows a deduction for fees for guardianship services related to the MassHealth redetermination process when the guardian has been appointed by the probate court to assist an incompetent person with securing continued access to medical treatment.

2. The MassHealth agency allows a deduction for reasonable costs related to the MassHealth redetermination process, as approved by the probate court, not to exceed \$250. In cases where an administrative hearing is held, the total deduction may not exceed \$375 for the costs related to the redetermination process and hearing.

3. The deduction is made from the member's monthly patient-paid amount over a 12-month period.

(d) Monthly Guardianship Services.

1. The MassHealth agency allows a deduction for monthly fees for a guardian to the extent the guardian's services are essential to consent to medical treatment on behalf of the member.

2. The MassHealth agency allows a deduction, as approved by the probate court, for up to 24 hours per year at a maximum of \$50 per hour for guardianship services.

3. The MassHealth agency allows the deduction only if the guardianship services provided include the attendance and participation of the guardian in quarterly care meetings held by the nursing facility where the member lives.

4. The MassHealth agency allows this deduction only if each year the guardian submits to the MassHealth agency a copy of the affidavit that describes the guardianship services provided to the member.

5. The deduction is made from the member's monthly patient-paid amount over a 12-month period.

(e) Expenses Incurred by the Guardian in Connection with Monthly Guardianship Services.

1. The MassHealth agency allows a deduction up to, but not exceeding, the member's monthly patient-paid amount for filing and court fees incurred by the guardian in connection with monthly guardianship services that are essential to consent to medical treatment for the member.

2. If monthly guardianship services are provided, these expenses are included in the affidavit of services required under 130 CMR 520.026(E)(3)(d)4.

3. The deduction is made from the member's monthly patient-paid amount in the month following receipt of the affidavit of services.

(130 CMR 520.026(E)).

As noted above, for guardianship and related fees to be deducted from the member's income, whether related to the guardianship appointment, the member's MassHealth application or redetermination process, or monthly guardianship services, the costs must be approved by the probate court and must in some circumstances be accompanied by an affidavit describing the services. Despite the opportunity to submit additional information, the appellant's guardian did not submit any of the required documentation. The submission of the decree and order of guardianship, without more, is not sufficient. There is no evidence that any of the other deductions apply, and the appellant has therefore not demonstrated that MassHealth erred in its calculation of the patient-paid amount (130 CMR 520.026).

On this record, 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.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc: Taunton MEC

