

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



|                         |               |                       |                    |
|-------------------------|---------------|-----------------------|--------------------|
| <b>Appeal Decision:</b> | Denied        | <b>Appeal Number:</b> | 2206248            |
| <b>Decision Date:</b>   | 10/13/2022    | <b>Hearing Date:</b>  | September 22, 2022 |
| <b>Hearing Officer:</b> | Brook Padgett |                       |                    |

**Appellant Representative:**



**MassHealth Representative:**

Wesley Swan, Springfield MEC



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Division of Medical Assistance  
Board of Hearings  
100 Hancock Street, 6<sup>th</sup> floor  
Quincy, MA 02171*

# APPEAL DECISION

|                          |             |                        |                    |
|--------------------------|-------------|------------------------|--------------------|
| <b>Appeal Decision:</b>  | Denied      | <b>Issue:</b>          | 130 CMR 520.026    |
| <b>Decision Date:</b>    | 10/13/2022  | <b>Hearing Date:</b>   | September 22, 2022 |
| <b>MassHealth Rep.:</b>  | W. Swan     | <b>Appellant Rep.:</b> | ██████████         |
| <b>Hearing Location:</b> | Springfield |                        |                    |

## Authority

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

## Jurisdiction

The Appellant received a notice dated July 18, 2022 stating: MassHealth will change your Patient Paid Amount from \$2,219.02 to \$2,363.72 on August 01, 2022 because of a change in your circumstances. (130 CMR 520.025, 520.026) (Exhibit 2).

The Appellant filed this appeal timely on August 22, 2022. (130 CMR 610.015(B); Exhibit 3).

Determination of the Patient Paid Amount is valid grounds for appeal. (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth established a Patient Paid Amount of \$2,363.72.

## Issue

Was the Appellant's Patient Paid Amount correctly calculated?

## Summary of Evidence

MassHealth testified that Appellant was approved for long-term-care coverage with a Patient Paid Amount (PPA) of \$2,219.02. MassHealth stated the Appellant received a cost of living increase in his pension (\$666.30 to \$811.00) which caused the recalculation of his PPA using his new income of \$2,704.00 (\$1,893.00 Social Security + \$811.00 pension). MassHealth explained that after the deduction of the Appellant's Personal Needs Allowance (PNA) of \$72.80 and his health insurance premium of \$267.48, the Appellant's PPA was recalculated to be \$2,363.72. (\$2,704.00 - \$72.80 - \$267.48). MassHealth stated that there is no community spouse and no other deductions available to Appellant. (Exhibit 4).

The Appellant's representative stated many years ago the Appellant received an overpayment of his pension. Since 2012 the Appellant has been making monthly installment of \$98.70 to repay the overpayment. The representative argued the Appellant has no control over this repayment and it has been taken from his pension prior to his entry into the nursing facility. The representative stated that due to this repayment the Appellant is unable to pay the full PPA and he will either be \$98.70 or \$25.90 short depending if he uses his entire PNA to pay the PPA. The Appellant's representative submitted into evidence a narrative, Overpayment notification from Office of Personnel Management and notice of annuity adjustment. (Exhibit 5).

MassHealth responded that the regulations require the PPA be calculated using gross income and deductions such as overpayment repayments are not considered.

## Findings of Fact

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

1. The Appellant currently resides in a nursing facility. (Testimony).
2. At the time of the MassHealth notice the Appellant had total gross monthly income of \$2,704.00 (\$1,893.00 Social Security + \$811.00 pension). (Exhibit 4 and Testimony)
3. The Appellant's PPA was calculated by subtracting his PNA of \$72.80 and health care premiums of \$267.48 from his gross income of \$2,704.00. (Testimony).
4. The Appellant has no spouse or qualified family members living in the community. (Testimony).
5. The Appellant is required to make monthly installment of \$98.70 to repay a pension overpayment. (Exhibit 4 and Testimony).

## Analysis and Conclusions of Law

In calculating a PPA, MassHealth looks to both the countable income minus any allowable deductions. (130 CMR 520.009; 520.026).<sup>1</sup> The regulations define countable income as an individual's and the spouse's gross earned and unearned income less certain business expenses and standard income deductions. (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 PPA. 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. These deductions are used in determining the monthly patient-paid amount. (130 CMR 520.026).

The Appellant is a single individual residing in a nursing facility. MassHealth allowed the PNA of \$72.80 and the Appellant's monthly health insurance premium of \$267.48 as deductions pursuant to 130 CMR 520.026(A) and (E). The Appellant's only dispute with regard to the PPA is the monthly amount he is required to repay for an overpayment of his pension which effects his ability to meet the PPA of \$2,363.72. MassHealth regulations do not allow for a PPA deduction for repayments of overpayments. (See 130 CMR 520.026(B)).<sup>2</sup>

The MassHealth's determination that the Appellant has a PPA obligation of \$2,363.72 to the nursing facility is upheld and this appeal is denied.

## Order for MassHealth

None.

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<sup>1</sup> 130 CMR 520.009: Countable-Income Amount (A) Overview. (1) An individual's and the spouse's gross earned and unearned income less certain business expenses and standard income deductions is referred to as the countable-income amount... (3) 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 520.026: Long-Term-Care General Income Deductions General income deductions must be taken in the following order: personal needs allowance (\$72.80 a month); spousal-maintenance-needs allowance; family-maintenance-needs allowance for qualified family members; home-maintenance allowance; health-care coverage and incurred medical and remedial-care expenses.

<sup>2</sup> The regulations do provide for deductions for repayments when the institutionalized spouse is subject to a court order, but that is only where the court order is for the support of the community spouse. (See 130 CMR 520.026(B)(3)). (B) Spousal-Maintenance-Needs-Deduction. ... (3) If the institutionalized individual is subject to a court order for the support of the community spouse, the court-ordered amount of support must be used as the spousal-maintenance-needs deduction when it exceeds the spousal-maintenance-needs deduction calculated according to 130 CMR 520.026(B) or resulting from a fair hearing.

## **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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Brook A. Padgett  
Hearing Officer  
Board of Hearings

cc: MassHealth representative: Springfield MEC