

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2206366
Decision Date:	9/29/2022	Hearing Date:	09/26/2022
Hearing Officer:	Christopher Jones		

Appearance for Appellant:



Appearance for MassHealth:

Alex Gershaw – Charlestown Intake



*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:	LTC – PPA
Decision Date:	9/29/2022	Hearing Date:	09/26/2022
MassHealth’s Rep.:	Alex Gershaw	Appellant’s Rep.:	Daughter/POA
Hearing Location:	Charlestown MassHealth Enrollment Center	Aid Pending:	No

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 July 20, 2022, MassHealth changed the amount of money the appellant must pay the nursing facility for their care from \$0.00 to \$1,101.41. (Exhibit 2; 130 CMR 520.026.) The appellant filed this appeal in a timely manner on August 25, 2022. (Exhibit 3; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth removed the appellant’s home-maintenance deduction after she remained in the nursing facility for six months.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.026, in determining that the appellant was only eligible for a personal-needs allowance from her income.

Summary of Evidence

The appellant is an elderly woman who entered the nursing facility on [REDACTED]. MassHealth approved her for long-term-care benefits and assessed her a patient-paid amount (“PPA”) of \$27.51 starting February 1, 2022. The appellant’s monthly income includes \$1,007 per

month from Social Security and \$167.21 per month from a private pension. From this total \$1,174.21 per month, MassHealth allowed a \$72.80 personal-needs allowance (“PNA”) and an allowance of \$1,073.90 for the maintenance of her community home. When MassHealth updated its federal poverty level tables in March 2022, the appellant’s PPA was zeroed-out, as her home-maintenance allowance was increased to \$1,133.

On July 20, 2022, MassHealth informed the appellant that she was no longer eligible for the home-maintenance allowance because she has been residing in the nursing facility for more than six months. As of [REDACTED], MassHealth calculated her PPA to be \$1,101.41, based upon her total income less \$72.80 for her PNA. The appellant’s daughter, who is also her power-of-attorney, appealed the notice. She is also elderly and living on a fixed income. She lives in a different city from where the appellant’s nursing facility, and she takes an Uber at least three times a week to visit her mother. The appeal letter details that the nursing facility is at the top of a long, steep hill from the closest public transit, and that the appellant’s daughter is often needed to help calm the appellant so that she will eat or cooperate with her medical care. Along with her appeal, she submitted bank records showing the cost of her Uber rides and her reimbursement to herself from her mother’s income for the cost of these rides.

At the hearing, MassHealth’s representative explained that there are a limited number of deductions and allowances that are allowed by law from an institutionalized individual’s income. He explained that the appellant had been receiving the home-maintenance deduction because she was listed as residing in the nursing facility on a short-term basis, and she expected to return to the community. Regardless of an individual’s prognosis, however, MassHealth may not allow a home-maintenance allowance to continue after the sixth month following the month a person enters the facility. Prior to the hearing, MassHealth’s representative had suggested that the appellant’s daughter seek out assistance with rides through social media, as MassHealth’s regulations did not allow for money to be diverted from her mother’s income to cover the cost of her travel to visit the appellant. The appellant’s daughter was deeply offended by this suggestion, finding it to be a dangerous idea for an elderly woman to give out her home address and then get into a car with a stranger from the internet. This discussion was taken up again during the hearing; it quickly became heated and before the hearing could be redirected to the matters in dispute, the appellant’s representative hung up.

Findings of Fact

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

1. The appellant is an elder woman who has been residing in a nursing facility for more than six months. (Testimony by MassHealth’s representative; Exhibit 3.)
2. The appellant’s total monthly income is \$1,174.21. For the first six months that the appellant was covered by MassHealth, she was allowed to keep most of her income in order to maintain her community home based upon the assertion that she was planning to return to the community. (Testimony by MassHealth’s representative.)

3. Starting [REDACTED], MassHealth increased the appellant's PPA, removing this home-maintenance allowance. The only remaining allowance was \$72.80 for her PNA. (Testimony by MassHealth's representative; Exhibit 2.)
4. The appellant's daughter used the appellant's income to reimburse herself for the cost of visiting the appellant in the nursing facility and to pay for other expenses on the appellant's behalf. (Testimony by the appellant's representative.)

Analysis and Conclusions of Law

A person is generally expected to spend the entirety of their income on covering the cost of their nursing facility care. Only specifically allowed deductions may be kept from an institutionalized member's income. (See 130 CMR 520.026.) Because the appellant does not have a community spouse, the spousal-maintenance and family-maintenance deductions are inapplicable. The change in the appellant's PPA was the result of the expiration of her home-maintenance allowance following six months of MassHealth "long term care" coverage.¹

520.026: Long-Term-Care General Income Deductions

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.

(A) Personal-Needs Allowance.

(1) The MassHealth agency deducts \$72.80 for a long-term-care resident's personal-needs allowance (PNA).

(2) If an individual does not have income totaling the standard, the MassHealth agency will pay the individual an amount up to that standard on a monthly basis.

(3) The PNA for SSI recipients is \$72.80.

...

(D) Deductions for Maintenance of a Former Home.

(1) The MassHealth agency 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

¹ MassHealth's regulations sometimes refer to people residing in a nursing facility as "institutionalized"; they are also interchangeably referred to as "long term care residents." (See e.g. 130 CMR 519.006; 130 CMR 520.026.) The rules governing "long term care" benefits apply to all residents of nursing facilities regardless of whether they are screened as short term or long term.

within six months after the month of admission. **This income deduction terminates at the end of the sixth month after the month of admission regardless of the prognosis to return home at that time.**

(2) The amount deducted is the 100 percent federal-poverty-level income standard for one person.

(130 CMR 520.026(A), (D) (emphasis added).)

The appellant entered the nursing facility in [REDACTED], the appellant does not dispute that MassHealth correctly terminated the home-maintenance deduction. Therefore, this appeal is DENIED. Further details regarding the appellant's situation were not discussed during the hearing because the appellant's representative left the appeal.

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.

Christopher Jones
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Jennifer Vitt, Charlestown MassHealth Enrollment Center, 529 Main Street, Suite 1M, Charlestown, MA 02129