

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in Part; Denied in Part	<b>Appeal Number:</b>	2208616
<b>Decision Date:</b>	12/27/2022	<b>Hearing Date:</b>	12/19/2022
<b>Hearing Officer:</b>	Susan Burgess-Cox		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Elizabeth Landry



*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

<b>Appeal Decision:</b>	Approved in Part; Denied in Part	<b>Issue:</b>	PPA
<b>Decision Date:</b>	12/27/2022	<b>Hearing Date:</b>	12/19/2022
<b>MassHealth's Rep.:</b>	Elizabeth Landry	<b>Appellant's Rep.:</b>	POA/Mother
<b>Hearing Location:</b>	All Parties Appeared by Telephone	<b>Aid Pending:</b>	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 October 28, 2022, MassHealth notified the appellant that he will owe the nursing facility \$942.20 each month to help pay for his care beginning September 1, 2022. (130 CMR 520.026; Exhibit 1). The appellant's attorney-in-fact filed an appeal in a timely manner on November 18, 2022. (130 CMR 610.015; Exhibit 2; Exhibit 3). An agency determination regarding the scope and amount of assistance is valid grounds for appeal. (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth notified the appellant that he will owe the nursing facility \$942.20 each month to help pay for his care beginning September 1, 2022.

### Issue

Whether MassHealth was correct in determining the amount that the appellant will owe the nursing facility to help pay for his care.

## Summary of Evidence

The MassHealth representative presented documents that were incorporated into the hearing record as Exhibit 5. The appellant is in a family group of one and receives \$1,015 each month from the Social Security Administration. At the time of admission, the appellant was eligible for short-term care with no patient paid amount as MassHealth included a home maintenance deduction. This deduction was based on a determination that the appellant would likely return home within 6 months after the month of admission. As required under the regulations, this deduction terminated at the end of the six-month period.

In September 2022, MassHealth calculated a patient paid amount that no longer included a home maintenance deduction as the appellant had been in the facility for more than six months. In calculating a patient paid amount of \$942.20 each month, MassHealth considered the appellant's monthly income of \$1,015 each month and deducted \$72.80 for a personal needs allowance [ $\$1,015 - \$72.80 = \$942.20$ ]. (Testimony; Exhibit 1). At the time of the decision, MassHealth did not consider any other expenses in calculating the patient paid amount.

Prior to the hearing, the appellant presented information regarding a monthly health insurance premium of \$71.44. At the hearing, the MassHealth representative testified that the agency recalculated the patient paid amount effective September 1, 2022 to include a deduction of \$71.44 resulting in a new patient paid amount of \$870.76 [ $\$1,015 - \$72.80 - \$71.44 = \$870.76$ ]. The MassHealth representative testified that the agency could not consider any additional deductions in calculating a patient paid amount as the appellant had been in the facility for more than six months and did not qualify for any other deductions.

The appellant's mother testified that the appellant intends to return to the community. The appellant submitted an application for participation in the Money Follows the Person waiver program and is waiting for a decision. The appellant was residing in an independent living center prior to a hospital admission that preceded his admission to the current facility. The appellant's mother testified that the hospital admission was due to the development of sores from the neglect of those providing care in the independent living center as well as complications related to a COVID diagnosis. Prior to the hearing date, the independent living center determined that the appellant could not return because they could no longer meet the appellant's needs. As a result of

this decision, the appellant's family had to remove his personal belongings from the facility and place them into storage. The appellant's mother requested monthly payments to the storage facility, in the amount of \$219, be considered in calculating the patient paid amount. The storage fees are being paid due to the appellant's intent to return to the community.

## **Findings of Fact**

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

1. The appellant is in a family group of one and receives \$1,015 each month from the Social Security Administration.
2. At the time of admission, the appellant was eligible for short-term care with no patient paid amount as MassHealth included a home maintenance allowance.
3. The home maintenance allowance was based on a determination that the appellant would likely return home within 6 months after the month of admission.
4. This home maintenance allowance terminated at the end of the six-month period.
5. The appellant pays a monthly health insurance premium of \$71.44.
6. The appellant pays monthly storage fees of \$219.
7. After issuance of the notice on appeal, MassHealth calculated a patient paid amount of \$870.76 by deducting a personal needs allowance of \$72.80 and monthly insurance premium of \$71.44 from the appellant's monthly gross income of \$1,015 [ $\$1,015 - \$72.80 - \$71.44 = \$870.76$ ].

## **Analysis and Conclusions of Law**

Pursuant to 130 CMR 519.006(A), institutionalized individuals may establish eligibility for MassHealth Standard coverage subject to the following requirements. They must:

- (1) be younger than 21 years old or 65 years of age or older or, for individuals 21 through 64 years of age meet Title XVI disability standards or be pregnant
- (2) be determined medically eligible for nursing-facility services by the MassHealth agency or its agent as a condition for payment, in accordance with 130 CMR 456.000: Long Term Care Services;
- (3) contribute to the cost of care as defined at 130 CMR 520.026: Long-Term-Care General Income Deductions;
- (4) have countable assets of \$2,000 or less for an individual and, for married couples where one member of the couple is institutionalized, have assets that are less than or equal to the standards at 130 CMR 520.016(B): Treatment of a Married Couple's Assets When One Spouse Is Institutionalized; and
- (5) not have transferred resources for less than fair market value, as described at 130 CMR 520.018: Transfer of Resources Regardless of Date of Transfer and 520.019: Transfer of Resources Occurring on or after August 11, 1993.

The regulations define institutionalization as placement of an individual in one or more medical institutions, where placement lasts or is expected to last for a continuous period of at least 30 days. The appellant is in a long-term care facility and placement has lasted for a continuous period of at least 30 days. (130 CMR 515.001). Therefore, the appellant meets the definition for an institutionalized individual.

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 520.009(A)(3)). Countable income includes an individual's gross earned and unearned income less certain business expenses and standard income deductions. (130 CMR 520.009(A)(1)).

Pursuant to 130 CMR 520.026 general income deductions must be taken in the following order in calculating a monthly patient-paid amount: 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. As a single adult with no children, the appellant did not qualify for a spousal-maintenance-needs allowance or a family maintenance needs allowance. (130 CMR 520.026). Prior to the hearing, MassHealth corrected an initial error and included payments for health care coverage in correcting the calculation of the monthly patient paid amount. (130 CMR 520.026). The only

deduction that remained in dispute was a home-maintenance allowance. (130 CMR 520.026).

Pursuant to 130 CMR 520.026(D), MassHealth 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 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. (130 CMR 520.026(D)(1)). The amount deducted is the 100% of the federal poverty-level income standard for one person. (130 CMR 520.026(D)(2)). At the time of the decision, that amount was \$1,133. This amount exceeds the appellant's gross income of \$1,015 resulting in a PPA of \$0 during the first six months of admission before taking other deductions into consideration.

The parties did not dispute the fact that the decision on appeal was made six months after the month of admission. While the appellant's mother noted an intent to return to the community, that intent was only applicable to the calculation of a patient paid amount during the first six months of admission. (130 CMR 520.026(D)(1)). As noted above, this deduction terminated after the end of the six-month after the month of admission regardless of the prognosis or intent to return home at that time. (130 CMR 520.026(D)(1)). The decision made by MassHealth regarding the termination of a deduction of a home maintenance allowance was correct. This part of the appeal is denied.

This appeal is approved in part and denied in part to ensure the agency corrects errors in the original notice by including a deduction for a health insurance premium of \$71.44.

## **Order for MassHealth**

If such action has not occurred, calculate a patient paid amount utilizing a personal needs allowance of \$72.80 and a health insurance premium of \$71.44 for a total patient paid amount of \$870.76.

## **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.

## **Implementation of this Decision**

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

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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616

