

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2208769
Decision Date:	5/8/2023	Hearing Date:	April 27, 2023
Hearing Officer:	Brook Padgett		

Appellant Representative:



MassHealth Representative:

Jared Krok, Springfield MEC



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
100 Hancock Street, 6th floor
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	130 CMR 520.004
Decision Date:	5/8/2023	Hearing Date:	April 27, 2023
MassHealth Rep.:	J. Krok	Appellant Rep.:	[REDACTED]
Hearing Location:	Springfield MEC Telephonic		

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 07, 2022, stating: MassHealth has decided you are eligible for MassHealth Standard benefits beginning September 30, 2021. Starting on September 01, 2021, you will owe your facility \$1,332.70 every month to help pay for your care. This is called your Patient Paid Amount (PPA). (Exhibit 1). The appellant filed this appeal timely on August 16, 2022. (130 CMR 610.015(B); Exhibit 2).¹ The effective date of eligibility for assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined the appellant is eligible for long term care benefits beginning September 2021, with a Patient Paid Amount of \$1,160.69.²

Issue

Did MassHealth correctly determinate the appellant's date of eligibility?

¹ The scheduling of an appeal was delayed pending a Voluntary Administration due to the appellant's death on [REDACTED] 2022. (See Exhibit 7).

² Prior to the hearing MassHealth issued a notice dated April 25, 2023, establishing a new PPA of \$1,160.69.

Summary of Evidence

MassHealth testified the appellant applied for MassHealth long term care benefits on July 07, 2021, requesting benefits beginning June 15, 2021. MassHealth stated that as of the requested date of coverage the appellant had excess assets of \$201,692.00.³ MassHealth explained that the appellant's over asset amount of \$201,692.00 minus \$3,000.00 for a burial account and \$14,520.24⁴ in previously paid PPA payments reduced the over asset amount to \$184,126.76 which after deduction of the spousal asset limit of \$137,400.00 determined the appellant remained \$46,726.76 over the asset limit. MassHealth explained that when after all appropriate deductions an applicant's countable assets still exceeded the program limit MassHealth will determine if an earlier date of eligibility can be established by reducing the assets further after consideration of medical bills incurred within the three months prior to application. MassHealth argued that since the appellant had no additional medical bills the over asset amount of \$46,726.76 was divided by the current nursing facility daily private pay amount of \$435.00 which determined her long term care coverage as of September 30, 2021 or 107 days from the requested date of June 15, 2021. MassHealth testified that prior to the hearing the appellant's representatives submitted additional information regarding the vehicles in the household and the ineligibility period was reduced an additional 19 days or until September 11, 2021.⁵ MassHealth maintains that per regulations the appellant has no other bills in the three months prior to June 15, 2021 to reduce the appellant's asset eligibility prior to September 11, 2021. (Exhibit 4).

The appellant's representative indicated they agree with the MassHealth determination of PPA; however they are requesting an additional deduction of \$9,000.00 for removal of 16 dead and/or dangerous trees and \$15,600.00 for a furnace upgrade from the appellant's assets. The representative argue the tree removal was necessary as it was an imminent threat to the appellant's or neighbor's home and furnace required to be replaced as the appellant's spouse remains in the home. The removal of the trees was initiated in April 2021, but due to scheduling could not be completed for two or three months. The representative requested these payments be considered when determining the start date for the appellant's eligibility.

MassHealth responded that only medical expense payments made within the three month look-back period available for assets reduction. The payment for tree work is dated April 2021 which was outside the three month look back period and the furnace upgrade which was performed on March 09, 2022 and within the look back period are not a medical expense, and as a result cannot be considered for a reduction of assets.⁶

³ Assets as of June 15, 2021: \$201,692.00 = Accts [REDACTED] \$7,143.00, [REDACTED] \$118,927.00, [REDACTED] \$3,030.00, [REDACTED] \$7,430.00, [REDACTED] \$1,296.00 + [REDACTED] balance \$51,817.00 + Real Estate \$4,100.00 + 2nd car \$7,949.00.

⁴ MassHealth stated the appellant's PPA payments were incorrectly deducted from the appellant's assets; however since this result was in the appellant's favor they were not seeking to reverse the determination.

⁵ Verification that the household contained only one vehicle and not two, reduced the asset amount \$7,949.00. The appellant was notified of this new determination by a notice dated April 25, 2023. (See Exhibit 6).

⁶ MassHealth underscored that the appellant has already benefited from MassHealth incorrectly deducting \$14,520.24 in PPA from the appellant's assets as well as an additional \$4,147.00 deduction when MassHealth incorrectly used the 403B account balance as of January 01, 2020 (\$119,927.00) instead of the correct date of July 01, 2021 (\$124,074.00).

Findings of Fact

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

1. The appellant applied for MassHealth long term care benefits on July 07, 2021, requesting benefits as of June 15, 2021. (Exhibit 4 and testimony).
2. On June 15, 2021, the appellant had assets of \$201,692.00 (Accts █████ \$7,143.00, █████ \$118,927.00, █████ \$3,030.00, █████ \$7,430.00, █████ \$1,296.00 + █████ balance \$51,817.00 + Real Estate \$4,100.00 + 2nd car \$7,949.00). (Exhibit 4 and testimony).
3. The appellant's assets of \$201,692.00 minus \$3,000.00 for a burial account minus \$14,520.24 in PPA payments reduced the asset amount to \$184,126.76. (Exhibit 4 and testimony).
4. The appellant's assets of \$184,126.76 was reduced by the spousal asset limit of \$137,400.00 to determine the appellant's over asset amount of \$46,726.76. (Exhibit 4 and testimony).
5. The appellant's over the asset amount of \$46,726.76 divided by the current nursing facility daily private pay rate of \$435.00 determined long term care coverage as of September 30, 2021 or 107 days from the requested date of June 15, 2021. (Exhibit 1).
6. MassHealth received verification the appellant's second car did not exist and reduced the appellant's over asset amount by \$7,949.00 to \$38,777.76. (Testimony).
7. The appellant's over the asset amount of \$38,777.76 divided by the current nursing facility daily private pay rate of \$435.00 determined long term care coverage as of September 11, 2021 or 88 days from the requested date of June 15, 2021. (Exhibit 6).
8. The appellant's representative used the appellant's assets to pay \$9,000.00 for removal of 16 trees in April 2021 and \$15,600.00 in March 2022 to upgrade the appellant's furnace. (Exhibit 5 and testimony).

Analysis and Conclusions of Law

The appellant applied for MassHealth benefits on July 07, 2021, requesting long term care coverage beginning June 15, 2021. At the time of requested benefits MassHealth determined the appellant had excess assets of \$38,777.76. To calculate the appellant's first date of eligibility MassHealth took the appellant's over asset amount of \$38,777.76 and divided it by the current nursing facility daily private pay amount of \$435.00 assessing 88 days of long term care ineligibility from the requested date of June 15, 2021. Based on this calculation the appellant was determined eligible for MassHealth long term care beginning September 11, 2022.⁷

⁷ It is noted that MassHealth made a number of errors regarding calculating the appellant's countable assets and if

On appeal the appellant's representative requested MassHealth deduct from the appellant's assets an additional \$9,000.00 for tree service and \$15,600.00 for the replacement of a furnace. The regulations state that an applicant whose countable assets exceed the asset limit of MassHealth Standard may be eligible for MassHealth as of the date the applicant reduces his or her excess assets to the allowable asset limit or as of the date the applicant incurs medical bills that equal the amount of the excess assets. (130 CMR 520.004)⁸. In this instance neither the bill for tree removal nor the replacement of a furnace is a medical expense and therefore they do not qualify for any additional asset spend down.⁹

Based on the over asset amount of \$38,777.76 MassHealth properly determined the appellant's long term care start date of September 11, 2022 and this appeal is DENIED.

Order for MassHealth

None.

correctly determined the appellant's ineligibility period would be 130 days (an additional 42 days).

⁸ 130 CMR 520.004: Asset Reduction (A) Criteria. (1) An applicant whose countable assets exceed the asset limit of MassHealth Standard, Essential, or Limited may be eligible for MassHealth: (a) as of the date the applicant reduces his or her excess assets to the allowable asset limit without violating the transfer of resource provisions for nursing-facility residents at 130 CMR 520.019(F); or **(b) as of the date**, described in 130 CMR 520.004(C), **the applicant incurs medical bills** that equal the amount of the excess assets and reduces the assets to the allowable asset limit within 30 days after the date of the notification of excess assets. (2) In addition, the applicant must be otherwise eligible for MassHealth. (B) Evaluating Medical Bills. MassHealth does not pay that portion of the medical bills equal to the amount of excess assets. Bills used to establish eligibility: (1) **cannot be incurred before the first day of the third month prior to the date of application as described at 130 CMR 516.002**; (2) must not be the same bills or the same portions of the bills that are used to meet a deductible based on income; and (3) for MassHealth Essential, must be incurred on or after the effective date of the coverage type. (C) Date of Eligibility. The date of eligibility for otherwise eligible individuals described at 130 CMR 520.004(A)(1)(b) is the date that his or her incurred allowable medical expenses equaled or exceeded the amount of his or her excess assets. (1) If after eligibility has been established, an individual submits an allowable bill with a medical service date that precedes the date established under 130 CMR 520.004(C), MassHealth readjusts the date of eligibility. (2) In no event will the first day of eligibility be earlier than the first day of the third month before the date of the application, if permitted by the coverage type. (*Emphasis added*).

⁹ MassHealth may allow a deduction from the PPA for items such as tree removal and furnace replacement as home-maintenance expense (130 CMR 520.026); however in this instance MassHealth has already, in error, deducted the appellant's PPA payments when calculating asset eligibility and cannot be used again. 130 CMR 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...

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.

Brook Padgett
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Springfield MEC