

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2209597
Decision Date:	3/9/2023	Hearing Date:	03/03/2023
Hearing Officer:	Christine Therrien		

Appearance for Appellant:



Appearance for MassHealth:

Carmen Sola, Taunton



*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:	3/9/2023	Hearing Date:	03/03/2023
MassHealth's Rep.:	Carmen Sola	Appellant's Rep.:	Pro se, Sister
Hearing Location:	Taunton - Telephonic		

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 12/14/22, MassHealth notified the appellant that his patient paid amount (PPA) is \$1,615.20 a month beginning on 10/1/22. (130 CMR 520.026 and Exhibit 1). The appellant filed this appeal in a timely manner on 12/27/22. (130 CMR 610.015(B) and Exhibit 2). A change in PPA is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined the appellant's PPA to be \$1,615.20 a month beginning on 10/1/22.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.025, in determining that appellant's PPA is \$1,615.20.

Summary of Evidence

The MassHealth representative testified that the appellant, who was admitted to a nursing facility on [REDACTED], was converted from short-term to long-term on 10/1/22. The MassHealth representative testified that the appellant's PPA was determined to be \$1,615.20 a month beginning on 10/1/22. (Exhibit 1). The MassHealth representative testified that when a member is converted from short-term to long-term a PPA is determined. The MassHealth representative testified that MassHealth calculated the PPA by taking the appellant's income of \$1,688 from social security and then deducting any

allowances the appellant qualifies for. The MassHealth representative testified that the appellant qualifies for the standard personal needs allowance of \$72.80 for a total PPA of \$1,615.20.

The appellant's sister testified that the appellant is still in the nursing facility because the facility did not conduct the neurological evaluation that was requested to discover why the appellant continued to have seizures. Further, the appellant's sister testified that the facility did not use any safety protocols to protect the appellant when he had seizures. The appellant's sister testified that on 9/1/22 the appellant had a seizure and broke his shoulder when he fell thus delaying his discharge from the facility. The appellant testified that he has an apartment he would like to return to, but the facility will not discharge him. The appellant testified that he cannot afford to maintain his apartment and pay the facility his patient paid amount.

Findings of Fact

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

1. The appellant, who was admitted to a nursing facility on [REDACTED], was converted from short-term to long-term on 10/1/22.
2. The appellant's PPA was determined to be \$1,615.20 a month beginning on 10/1/22. (Exhibit 1).
3. When a member is converted from short-term to long-term a PPA is determined.
4. MassHealth calculated the PPA by taking the appellant's income of \$1,688 from social security and then deducting any allowances for which the appellant qualifies.
5. The appellant qualifies for the standard personal needs allowance of \$72.80 for a total PPA of \$1,615.20.
6. The appellant suffers from seizures.
7. On 9/1/22 the appellant had a seizure and broke his shoulder when he fell.
8. The appellant has an apartment to which he would like to return.
9. The appellant cannot afford to maintain his apartment and pay the facility his patient paid amount.

Analysis and Conclusions of Law

Once an individual has been determined a long-term-care facility resident MassHealth will establish a Patient-Paid Amount which is the amount that a member in a long-term care facility must contribute to the cost of care under the laws of the Commonwealth of Massachusetts. 130 CMR 520.026 outlines the order in which the general income deduction must be considered.

130 CMR 520.026: Long-Term-Care General Income Deductions

(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.

(B) Spousal-maintenance-needs-deduction. If the community spouse's gross income is less than the amount he or she needs to live in the community (minimum-monthly-maintenance-needs allowance, MMMNA) as determined by the MassHealth agency, the MassHealth agency may deduct an amount from the institutionalized spouse's countable-income amount to meet this need. This amount is the spousal-maintenance-needs deduction. 130 CMR 520.026(B) applies to the first month of eligibility in an institution and terminates the first full calendar month in which the spouse is no longer in an institution or no longer has a spouse in the community. This deduction is the amount by which the minimum-monthly-maintenance-needs allowance exceeds the community spouse's gross income.

- (1) The MassHealth agency determines the MMMNA by adding the following amounts:
 - (a) \$1,822 (the federal standard maintenance allowance); and
 - (b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$547 and the shelter expenses for the community spouse's principal residence, including
 1. the actual expenses for rent, mortgage (including interest and principal), property taxes and insurance, and any required maintenance charge for a condominium or cooperative; and
 2. the applicable standard deduction under the Supplemental Nutrition Assistance Program for utility expenses. If heat is included in the rent or condominium fee, this amount is \$375. If heat is not included in the rent or condominium fee, this amount is \$611.
- (2) The maximum-monthly-maintenance-needs allowance is \$2,739.00 per month, unless it has been increased as the result of a fair-hearing decision based on exceptional circumstances in accordance with 130 CMR 520.017(D).
- (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.

(C) Deductions for Family-maintenance Needs.

- (1) The MassHealth agency allows a deduction from the income of a long-term-care resident to provide for the maintenance needs of the following family members if they live with the community spouse:
 - (a) a minor child - a child younger than 21 years old of either member of the couple;
 - (b) a dependent child - a child 21 years of age and older who is claimed as a dependent by either spouse for income-tax purposes under the Internal Revenue Code;
 - (c) a dependent parent - a parent of either spouse who lives with the community spouse and who is claimed as a dependent by either spouse for income-tax purposes under the Internal Revenue Code; and
 - (d) a dependent sibling - a brother or sister of either spouse (including a half-brother or half-sister) who lives with the community spouse and who is claimed as a dependent by either spouse for income-tax purposes under the Internal Revenue Code.
- (2) The deduction for family-maintenance needs is a of the amount by which the federal standard maintenance allowance exceeds the monthly gross income of the family member. The federal standard maintenance allowance is \$1,822.

(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 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% federal poverty level income standard for one person.

...

(emphasis added)

130 CMR 520.009(A)(3) states that 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.

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. Per this regulation, when the member is eligible for the six-month short-term deduction, MassHealth counts the six months “after the month of admission”. The appellant, who entered the facility on

[REDACTED], was converted from short-term care to long-term on 10/1/22. The appellant is disputing the PPA because he blames the facility for his need to remain longer than six months. The MassHealth regulation do not provide any exceptions to the long-term care general income deductions.

MassHealth has established a PPA based on this change in status with a start date on 10/1/22. MassHealth was correct in determining the appellant's PPA based on his social security income of \$1,688 and his personal needs allowance of \$72.80 a month. The appellant does not qualify for any other long-term care allowances under 130 CMR 520.026. For this reason, 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.

Christine Therrien
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780. [REDACTED]