

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2300094

Decision Date: 3/6/2023

Hearing Date: 02/03/2023

Hearing Officer: Thomas Doyle

Record Open to: 2/10/23

Appearance for Appellant:



Appearance for MassHealth:

Dianne Braley

Interpreter:



*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:	PPA
Decision Date:	3/6/2023	Hearing Date:	02/03/2023
MassHealth's Rep.:	Dianne Braley	Appellant's Rep.:	██████████
Hearing Location:	Remote (phone)	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 December 20, 2022, MassHealth changed the appellant's patient paid amount (PPA) to the nursing facility to \$1,374.20 beginning January 1, 2023. (130 CMR 520.026; Ex. 1; Testimony). The appellant filed this appeal in a timely manner on January 4, 2023, disputing the PPA. (Ex. 2). Dispute of a PPA is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth calculated a PPA of \$1,374.20 per month for the appellant to pay to the nursing facility beginning January 1, 2023.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.026, in determining that the appellant's PPA to the nursing facility is \$1,374.20 a month beginning January 1, 2023.

Summary of Evidence

The MassHealth representative that appeared at hearing by telephone testified that appellant was admitted to the nursing facility on ██████████ 2022. (Ex. 5, p. 6; Testimony). On June 23, 2022, appellant signed an Authorized Representative Designation form, naming Brunelle Medical

Consultants as her representative. (Ex. 7). Also on June 23, 2022, appellant signed a form giving MassHealth permission to share information with Brunelle Consultants. (Ex. 8). The nursing facility requested a MassHealth payment date of June 28, 2022. (Ex.5, p. 6).

MassHealth issued a notice on August 12, 2022, informing appellant she was eligible for MassHealth and that her PPA amount would be \$125.20 a month, beginning June 1, 2022. The PPA was calculated by taking appellant's net Social Security income of \$1,331.00, less the allowable deductions of \$72.80 for personal needs allowance and a \$1,133.00 allowance to maintain her home. (Ex. 6).¹

MassHealth issued a notice on December 8, 2022, informing appellant of a changes in her PPA amount. The amount of the PPA was changing from \$125.20 a month to \$241.20 a month, effective January 1, 2023. The PPA was calculated by taking appellant's net Social Security income of \$1,447.00, less the allowable deductions of \$72.80 for personal needs allowance and a \$1,133.00 allowance to maintain her home. The home maintenance needs allowance was calculated by referring to a Federal Poverty Level (FPL) chart. A family size of 1 at 100% on the FPL equals \$1,133.00. The total PPA therefore was \$241.20, effective January 1, 2023. (Ex. 5; Testimony). The MassHealth representative explained that, pursuant to the regulations, the allowance to maintain her home 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); Testimony).

MassHealth issued a notice on December 20, 2022, notifying appellant of another change in her PPA amount. The PPA amount was changing from \$241.20 a month to \$1,374.00 a month, effective January 1, 2023. (Ex. 1). The PPA was calculated by taking appellant's net Social Security income of \$1,447.00, less the allowable deduction of \$72.80 for personal needs allowance. Pursuant to regulations, appellant was no longer eligible for the deduction for maintenance of a former home.

Appellant had appointed a member of the nursing home staff to be her appeal representative. (Ex. 2). He testified that the business office of the nursing home is responsible for PPA issues and he does not manage any finances of the residents. He also testified that any mail received by appellant at the nursing home is delivered directly to her by the activities team. Appellant testified on her own behalf.

At the conclusion of the hearing, the record was left open for MassHealth to provide an August 12, 2022, notice from MassHealth to appellant. This was received and marked as Exhibit 6. MassHealth was also to provide a signed form naming an authorized representative for appellant. This was received and marked as Exhibit 7. MassHealth was also to provide a permission to share form, signed by appellant on June 23, 2022. This was received and marked as Exhibit 8.

Findings of Fact

¹ The MassHealth regulations refer to this deduction as Deductions for Maintenance of a Former Home. 130 CMR 520.026 (D).

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

1. Appellant is single and has no children. (Testimony).
2. Appellant entered a long-term care nursing facility on [REDACTED] 2022. (Testimony; Ex. 5, p. 6).
3. Appellant applied for MassHealth benefits and was found eligible, benefits to begin June 28, 2022. (Ex. 6).
4. On June 23, 2022, appellant signed an Authorized Representative Designation form, naming Brunelle Medical Consultants as her representative. (Ex. 7). Also on June 23, 2022, appellant signed a form giving MassHealth permission to share information with Brunelle Consultants. (Ex. 8).
5. MassHealth issued a notice on August 12, 2022, informing appellant she was eligible for MassHealth and that her PPA amount would be \$125.20 a month, beginning June 1, 2022. The PPA was calculated by taking appellant's net Social Security income of \$1,331.00, less the allowable deductions of \$72.80 for personal needs allowance and a \$1,133.00 allowance to maintain her home. (Ex. 6).
6. MassHealth issued a notice on December 8, 2022, informing appellant of a changes in her PPA amount. The amount of the PPA was changing from \$125.20 a month to \$241.20 a month, effective January 1, 2023. The PPA was calculated by taking appellant's net Social Security income of \$1,447.00, an increase in social security income from the August 12, 2022 MassHealth notice, less the allowable deductions of \$72.80 for personal needs allowance and a \$1,133.00 allowance to maintain her home.
7. MassHealth issued a notice on December 20, 2022, notifying appellant of another change in her PPA amount. The PPA amount was changing from \$241.20 a month to \$1,374.00 a month, effective January 1, 2023. (Ex. 1). The PPA was calculated by taking appellant's net Social Security income of \$1,447.00, less the allowable deduction of \$72.80 for personal needs allowance.
8. The June 23, 2022 form giving MassHealth permission to share information with Brunelle Consultants lists appellant's address as [REDACTED] MA. (Ex. 8).
9. MassHealth notices dated August 12, 2022, December 8, 2022 and December 20, 2022 were sent to appellant at [REDACTED] Ma. (Ex. 1; Ex. 5; Ex. 6).
10. Appellant's mail received at the nursing home is delivered directly to her by the activities team. (Testimony).

Analysis and Conclusions of Law

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. See 130 CMR 520.026.

The MassHealth agency deducts \$72.80 for a long-term-care resident personal-needs allowance (PNA). (130 CMR 520.026(A)(1)).

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 percent federal-poverty-level income standard for one person. See 130 CMR 520.026(D).

Under the December 20, 2022 MassHealth notice, the appellant's total monthly income is \$1,447.00. In calculating the PPA, MassHealth deducts \$72.80 per month for the appellant's PNA, pursuant to regulation. There is no spouse or dependent family members and thus those deductions are inapplicable. The appellant received the home maintenance allowance from May 2022 to the end of November 2022. (Ex. 6; Ex. 5, pp. 1-4; Testimony). This deduction terminates at the end of the sixth month after the month of admission, which was May 2022. The plain language of the regulation allows for a home maintenance allowance for the period ending on the last day of the sixth month after the admission date, with no exceptions made for a hardship argument, or to allow for the sale of the property, or any other reason. The hearing officer cannot rule on the legality of the MassHealth regulations. (130 CMR 610.082(C)(2)). The appellant's PPA of \$1,374.20, to begin January 1, 2023, was correctly calculated pursuant to the regulations.

Appellant argued she was not given sufficient notice of the increase of her PPA. (Testimony). The regulations regarding notice are clear.

610.015: Time Limits

(A) Timely Notice. Before an intended appealable action, the MassHealth agency must send a written timely notice to the member except as provided in 130 CMR 610.027. A timely notice is a notice **mailed** at least ten days before the action. Such notice must include a statement of the right of appeal and the time limit for appealing. (emphasis added).

610.026: Adequate Notice Requirements

(A) A notice concerning an intended appealable action must be timely as stated in 130 CMR 610.015 and adequate in that it must be in writing and contain

- (1) a statement of the intended action;
- (2) the reasons for the intended action;
- (3) a citation to the regulations supporting such action;
- (4) an explanation of the right to request a fair hearing; and
- (5) the circumstances under which assistance is continued if a hearing is requested.

Appellant admitted she received the December 20, 2022 notice which informed her that the PPA would be increased, beginning on January 1, 2023. (Testimony). She testified she had the notice in front of her at hearing. She argued this was insufficient notice. Calculating the time from December 20, 2022 until January 1, 2023 as 11 days, the MassHealth notice was timely as it was mailed at least ten days before the action by MassHealth.²

There was no error in MassHealth's actions and 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

² Computation of any period referred to in 130 CMR 610.000 is on the basis of calendar days, except where expressly provided otherwise. Time periods expire on the last day of such periods, unless the day falls on a Saturday, Sunday, legal holiday, or other day on which BOH is closed, in which event the last day of the time period is deemed to be the next day on which BOH is open. 130 CMR 610.015 (2).

Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Thomas Doyle
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

[REDACTED]