

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2301025
Decision Date:	3/16/2023	Hearing Date:	03/10/2023
Hearing Officer:	Christine Therrien		

Appearance for Appellant:




Appearance for MassHealth:

Lindsay Gallant, 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:	PPA
Decision Date:	3/16/2023	Hearing Date:	03/10/2023
MassHealth's Rep.:	Lindsay Gallant	Appellant's Rep.:	
Hearing Location:	Taunton MassHealth Enrollment Center - 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 1/10/23, MassHealth approved the appellant's application for MassHealth Long Term Care benefits beginning 9/30/22, with a patient-paid amount of \$1,159.75 a month. (130 CMR 530.026 and Exhibit 1). The appellant filed this appeal in a timely manner on 2/8/23. (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

The appellant was found eligible for MassHealth as of 9/30/22, with a Patient Paid Amount (PPA) of \$1,159.75.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.026 in approving appellant's application for MassHealth Long Term Care (LTC) benefits with a \$1,159.75 PPA effective 9/30/22.

Summary of Evidence

The MassHealth representative testified that MassHealth received a LTC application for the appellant on 8/9/22. The MassHealth representative testified that the appellant was admitted to the LTC facility on [REDACTED] 2022, and the facility requested a start date of [REDACTED] 2022.

MassHealth approved the appellant's LTC application as of 9/30/2022 with a \$1,027.75 PPA. The MassHealth representative testified that the PPA was calculated by deducting approved allowances from the appellant's income. The appellant's income was calculated as \$1,354 from Social Security and \$1,125 from a pension. MassHealth calculated allowances for a Personal Needs Account as \$72.80, home maintenance \$1,133, and health insurance \$113. (Exhibit 1). The MassHealth representative testified that the home maintenance allowance is a temporary allowance while the appellant was screened as a short-term care resident and was removed after six months when the appellant was re-screened as a LTC resident. The MassHealth representative testified that the appellant's social security is subject to a garnishment in the amount of \$184.05 from the Department of Treasury, Bureau of the Fiscal Service. (Exhibit 2). The MassHealth representative testified that MassHealth regulations do not allow for garnishment deductions.

The appellant received a notice dated 6/29/22 from a debt collection company informing him of the impending garnishment in the amount of \$184.05 to pay a debt of \$46,036.49 to the Department of Homeland Security for oil spill cost recovery. (Exhibit 5). The appellant's representative submitted a memo stating that "Section 459 of the Social Security Act (42 U.S.C. 659) permits Social Security to withhold current and continuing Social Security payments to enforce your legal obligation to pay child support, alimony, or restitution." The appellant's representative testified that the appellant has no control over the garnishment or a means to stop it and continuing to not factor it into his PPA would cause a hardship for his sister/conservator. (Exhibits 2 and 5).

Findings of Fact

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

1. On [REDACTED] 22, MassHealth received a LTC application for the appellant.
2. On [REDACTED] 2022, the appellant was admitted to the LTC facility, and the facility requested a start date of 9/30/2022.
3. On 1/10/23, MassHealth approved the appellant's LTC application as of 9/30/2022 with a \$1,027.75 PPA.
4. The PPA was calculated by deducting approved allowances from the appellant's income.
5. The appellant's income was calculated as \$1,354 from Social Security and \$1,125 from a pension. (Exhibit 1).
6. MassHealth calculated allowances for a Personal Needs Account as \$72.80, home maintenance \$1,133, and health insurance \$113. (Exhibit 1).

7. The home maintenance allowance is a temporary allowance while the appellant was screened as a short-term care resident and was removed after six months when the appellant was re-screened as a LTC resident.
8. The appellant's social security is subject to a garnishment in the amount of \$184.05 from the Department of Treasury, Bureau of the Fiscal Service. (Exhibit 2).
9. The appellant received a notice dated 6/29/22 from a debt collection company informing him of the impending garnishment in the amount of \$184.05 to pay a debt of \$46,036.49 to the Department of Homeland Security for oil spill cost recovery. (Exhibit 5).
10. Section 459 of the Social Security Act permits Social Security to withhold payments to enforce a garnishment issued through an administrative agency. (Social Security Act §459(h)(5)(A)(i), 42 U.S.C. §659).
11. The appellant's sister has been appointed as his conservator. (Exhibits 2).

Analysis and Conclusions of Law

When determining financial eligibility for MassHealth benefits, MassHealth must consider the member's or applicant's gross income, unless explicitly excluded. (130 CMR 506.003; 130 CMR 520.009). Gross income refers to "the total money earned or unearned, such as wages, salaries, rents, pensions, or interest, received from any source without regard to deductions." (130 CMR 501.001; 130 CMR 515.001).¹ "Without regard to deductions" means that MassHealth does not generally exclude any taxes, health insurance premiums, or other expenses that may be withdrawn from a member's income.

130 CMR 506.004 lists various "types of income [that] are noncountable in the determination of eligibility." This implies that the regulation is referring to categories or sources of income that are paid to the member, rather than deductions that may be made to that income after it is paid out. The Social Security Act referenced by the appellant's representative only explains that the Social Security Administration has the power to withhold income, not that the withheld income should be excluded from Medicaid eligibility considerations.

Once an individual has been determined a LTC facility resident MassHealth will establish a PPA which is the amount that a member in a LTC facility must contribute to the cost of care under the laws of the Commonwealth of Massachusetts. 130 CMR 520.026 outlines the general income deductions allowed when determining the PPA.

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

¹ Generally, 130 CMR 501.000-508.000 are relied upon for people under the age of 65 and those who do not qualify for long-term nursing care, and 130 CMR 515.000-522.000 apply to people over 65 or those requiring long-term nursing care. Here, both sets of regulations point to the same conclusion, so detailed analysis on the distinctions is unnecessary.

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.

130 CMR 520.009(A)(3) states that specific deductions described in 130 CMR 520.026 are applied against the individual's countable-income amount to determine the PPA.

130 CMR 520.026 does not provide for any deductions for garnishments. Therefore, the appellant's garnishment by the Department of Treasury, Bureau of the Fiscal Service must be included in his gross income, and the PPA must be calculated using the relevant deductions set out in 130 CMR 520.026. 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]