

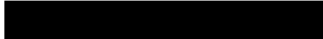
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2301431
Decision Date:	5/22/2023	Hearing Date:	03/21/2023
Hearing Officer:	Paul C. Moore	Record Closed:	04/11/2023

Appearance for Appellant:

 (by telephone)

Appearance for MassHealth:

Kim McAvinchey, Tewksbury MassHealth
Enrollment Center (by telephone)



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Approved	Issue:	Long-Term Care Eligibility Start-Date
Decision Date:	5/22/2023	Hearing Date:	03/21/2023
MassHealth Rep.:	Kim McAvinchey	Appellant Rep.:	██████████
Hearing Location:	Board of Hearings (remote)		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

By a notice dated February 3, 2023, MassHealth notified the appellant that she is eligible for MassHealth Standard coverage for a nursing facility stay starting ██████████ 2022, with a monthly Patient-Paid Amount (PPA) owed to the nursing facility of \$2,171.01 (Exh. 1). The appellant filed a timely appeal of this notice with the Board of Hearings (BOH) challenging the start-date on February 22, 2023 (130 CMR 610.015; Exh. 2). Challenging a coverage start-date is valid grounds for appeal to the BOH (130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the appellant for MassHealth coverage for a nursing facility stay effective ██████████ 2023.

Issue

The issue on appeal is whether MassHealth correctly approved the appellant for nursing facility coverage effective ██████████ 2023, or whether the appellant is entitled to an earlier start-date.

Summary of Evidence

A MassHealth representative from the Tewksbury MassHealth Enrollment Center testified by telephone that the appellant is over age 65, and entered a nursing facility on [REDACTED] 2022. The appellant filed a MassHealth application on July 18, 2022, seeking coverage for her nursing facility stay beginning on [REDACTED] 2022 (Exh. 4). The MassHealth representative stated that a list of the appellant's bank accounts on the date coverage was sought, [REDACTED] 2022, showed that the appellant's combined assets in three bank accounts at Bank #1 were \$4,970.59, which exceeded the allowable limit of \$2,000.00 (Exh. 8A).¹ Therefore, according to the MassHealth representative, she divided the excess asset amount of \$2,970.59 by the nursing facility private pay rate of \$381.00 per day, yielding eight days of MassHealth ineligibility. Therefore, according to the MassHealth representative, coverage for the appellant's "room and board" at the nursing facility begins on [REDACTED] 2022, eight days after [REDACTED] 2022 (Testimony, Exh. 7).

The approval notice at issue in this matter states, "[the appellant's] eligibility [to cover her care in a nursing facility] begins on [REDACTED] 2022, with a monthly PPA of \$2,171.01" (Exh. 1).

The MassHealth representative added that as of [REDACTED] 2022, the appellant had MassHealth coverage for "incidentals," such as co-insurance, ambulance expenses, or doctors' appointments (Testimony).

The appellant was represented at hearing by a consultant, who testified by telephone. She stated that the appellant's excess assets as of [REDACTED] 2023 resulted from the appellant's daughter's failure to use the appellant's monthly income in one of her Bank #1 accounts to pay the appellant's nursing facility estimated PPAs. Thus, the appellant's monthly income accumulated over time, resulting in excess assets being present in the bank account. The appellant's daughter was "new to the process." The consultant testified that although the approval notice states that the appellant's coverage begins [REDACTED] 2023, the nursing facility has been unable to bill for the appellant's room and board until [REDACTED] 2023. She stated that the notice at issue does not distinguish between MassHealth "room and board" coverage and "incidentals" coverage (Testimony).

The consultant testified that the appellant's daughter paid the nursing facility four checks, to cover "estimated patient liability," or PPAs, in the amounts of \$5,000.00 and \$4,212.00, respectively, and two checks for \$2,106.00. She did not know exactly when these checks were paid (Testimony, Exh. 7).

The MassHealth representative stated that per MassHealth regulations, private payments to cover estimated PPAs may not be used to reduce excess assets as of the date coverage is sought; only "room and board" private payments, or pre-paid funeral and/or burial costs paid, may be used for

¹ Per Exhibit 8A, the combined asset balance for these three bank accounts was actually \$4,970.52, not \$4,970.59.

this purpose. Also, if the appellant incurred medical expenses in the three months previous to the MassHealth application date, these medical expenses may be used to reduce excess assets (Testimony).

The MassHealth representative submitted a SC-1 Form into evidence, reflecting that Medicare paid for the appellant's nursing facility stay beginning on [REDACTED] 2022, and ending on [REDACTED] 2022 (Exh. 5).

Immediately following the hearing, the MassHealth representative forwarded to the hearing officer and to the consultant, by e-mail, a copy of regulation 130 CMR 520.004, "Asset Reduction," which states in relevant part:

(A) Criteria.

(1) An applicant whose countable assets exceed the asset limit of MassHealth Standard, Family Assistance, 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. The MassHealth agency 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: Date of Application; and

(2) must not be the same bills or the same portions of the bills that are used to meet a deductible based on income.

...

(Exh. 8)

In her post-hearing e-mail, the MassHealth representative also re-stated her hearing testimony, noting:

Room and board is an acceptable medical expense which can be applied to excess assets on the request date. Using excess assets to pay the Patient Pay Amount (PPA) (*sic*) is not considered a medical expense. It is that portion of the applicant's income which pays the facility.

Applicant did not provide any medical bills incurred within the specified time frame (three months prior to the date of application).

In addition to the medical expenses identified in 520.004, MassHealth allows burial expenses to be applied to excess assets on the request date.

(*Id.*)

The consultant testified that the appellant is not contesting the PPA calculation, which is set at \$1,038.01 for the period May 13, 2022 through November 1, 2022, and at \$2,171.01 as of November 1, 2022 (Exh. 1, Exh. 4).²

At the close of the hearing, the hearing officer left the record of this appeal open until April 11, 2023 for the consultant to submit the following documentation:

Copies of checks paid by the appellant in the amounts of \$5,000.00 and \$4,212.00, respectively, to the facility, and a written explanation of time periods to which these payments applied; letter from Tufts Health Insurance explaining what, if anything, was paid to the nursing facility on the appellant's behalf, and an explanation of what type of insurance the appellant had through Tufts (such as Medicare managed care, indemnity, fee-for-service, PPO or HMO); a written explanation of what Medicare paid for the appellant's stay at the nursing home, what dates were covered by Medicare, and why Medicare stopped paying; whether the appellant was on a community MassHealth benefit prior to her admission to a nursing facility; and any comments on MassHealth's exhibits submitted into the hearing record on March 21, 2023.

(Exh. 9)³

Nothing was received from the consultant by April 11, 2023, nor did the hearing officer receive any requests from the consultant for an extension of time.

Findings of Fact

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

1. The appellant is over age 65, and entered a nursing facility on [REDACTED] 2022 (Testimony,

² The PPA is a lower amount for the first six months of the appellant's institutionalization because a short-term deduction for the maintenance of a former home is included, which automatically ends after six months. *See also*, 130 CMR 520.026.

³ The MassHealth representative declined an opportunity to comment on the appellant's record-open submission.

Exh. 4).

2. On July 18, 2022, the appellant submitted a MassHealth application to cover her nursing home stay (Testimony, Exh. 4).
3. The appellant seeks coverage for her nursing facility stay beginning [REDACTED] 2022 (Exh. 5).
4. As of the date coverage was sought ([REDACTED] 2022), the appellant had combined assets in her bank accounts at Bank #1 in the amount of \$4,970.52 (Testimony, Exh. 8A).
5. MassHealth assessed an eight-day period of coverage ineligibility, by dividing excess assets as of [REDACTED] 2023 (\$2,970.52) by the by the nursing facility private pay rate of \$381.00 per day (Exh. 6).
6. MassHealth testified that the coverage start-date for the appellant's room and board at the facility is [REDACTED] 2022, and that MassHealth coverage for "incidentals" begins on May 5, 2022 (Testimony, Exh. 6).
7. A MassHealth approval notice dated February 3, 2023 states that "[the appellant's] eligibility [to cover her care in a nursing facility] begins on [REDACTED] 2022, with a monthly PPA of \$2,171.01" (Exh. 1).
8. The appellant filed a timely appeal of this notice with the BOH on February 22, 2023 (Exh. 2).
9. The nursing facility where the appellant resides has been unable to bill MassHealth for the appellant's room and board back to [REDACTED] 2022 (Testimony).
10. Medicare stopped paying for the appellant's nursing facility stay effective [REDACTED] 2022 (Exh. 5).
11. The appellant paid four checks to the nursing facility for estimated "patient liability" in the total amount of \$13,424.00 (Exh. 7).
12. The appellant did not make any private payments toward room and board (*Id.*).
13. The appellant did not submit evidence (such as invoices or canceled checks) of any medical expenses she incurred during the three months prior to the date of her July, 2022 MassHealth application.
14. The appellant did not submit evidence of any pre-paid funeral or burial arrangements to MassHealth (Testimony).

Analysis and Conclusions of Law

MassHealth regulation 130 CMR 520.003(A) states that in order to qualify for MassHealth Standard to cover a nursing home stay, the total value of countable assets owned by or available to an unmarried individual may not exceed \$2,000.00.

MassHealth issued a notice to the appellant dated February 3, 2023 approving her for MassHealth Standard to cover a nursing home stay effective May 5, 2022, with a monthly PPA of \$2,171.01,

However, at hearing, MassHealth indicated that the coverage date for the appellant's room and board at her nursing facility does not actually begin until [REDACTED] 2023, although MassHealth coverage for incidentals may begin on May 5, 2022.

The notice at issue makes no mention of a coverage start-date of [REDACTED] 2022, nor does the notice make a distinction between coverage for nursing facility room and board versus "incidentals."

While it is true that the appellant had excess assets of [REDACTED] 2022, as reflected in her bank statements, the notice at issue does not apprise the appellant that MassHealth would impose an eight-day period of ineligibility due to these excess assets.

The Fair Hearing Rules at 130 CMR 610.026, "Adequate Notice Requirements," state as follows:

- (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.

...

The notice at issue lacks a statement of MassHealth's intended action (to award long-term care coverage as of May 13, 2022) and lacks an explanation of the reasons for the intended action. In addition, there is no citation in the notice to the regulations cited by the MassHealth representative at hearing regarding asset reduction (130 CMR 520.004), nor to the regulations designating burial arrangements as non-countable assets (130 CMR 520.008(F)).

Moreover, the regulations governing long-term care coverage at 130 CMR 515.00 *et seq.* do not distinguish between MassHealth Standard coverage for "room and board" and MassHealth Standard coverage for "incidentals."

Absent an adequate notice apprising the appellant of the existence of excess assets on the date coverage is sought, and of the consequences thereof, MassHealth's action to impose an eight-day period of ineligibility cannot stand.

For these reasons, this appeal is APPROVED.

Order for MassHealth

Award long-term care coverage to the appellant as of [REDACTED] 2022.

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, Office of Medicaid, at the address on the first page of this decision.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Sylvia Tiar, Appeals Coordinator, Tewksbury MassHealth Enrollment Center