

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2302456
Decision Date:	6/28/2023	Hearing Date:	06/21/2023
Hearing Officer:	Thomas J. Goode	Record Open	6/23/2023

Appearance for Appellant:
Daughter/Power of Attorney

Appearance for MassHealth:
Alexsandra DeJesus, Taunton MEC



*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:	Patient Paid Amount
Decision Date:	6/28/2023	Hearing Date:	06/21/2023
MassHealth's Rep.:	Alexsandra DeJesus	Appellant's Rep.:	Daughter/POA
Hearing Location:	Remote		

Authority

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

Jurisdiction

On March 9, 2023, MassHealth issued a notice informing Appellant that her application for MassHealth long-term care benefits was approved effective March 1, 2023, with a \$2,154.20 patient paid amount due. Appellant filed this appeal in a timely manner on March 27, 2023 (130 CMR 610.015(B) and Exhibit 2). Notice of a patient paid amount due is valid grounds for appeal (130 CMR 610.032). A hearing was scheduled for May 3, 2023 for which Appellant's representative did not appear, and the Board of Hearings dismissed the appeal on May 22, 2023. On May 5, 2023, Appellant's representative submitted to the Board of Hearings a letter explaining her failure to appear on May 3, 2023 (Exhibit 5). A hearing was scheduled for June 21, 2023 subject to good cause which was established through Appellant's May 5, 2023 letter, and Appellant's representative's explanation for failure to appear on May 3, 2023 (130 CMR 610.048, Exhibit 5). The hearing record remained open until June 23, 2023 to allow MassHealth to review regulations and submit a response which was timely received on June 22, 2023 (Exhibit 7).

Action Taken by MassHealth

MassHealth issued a notice informing Appellant that her application for MassHealth long-term care benefits was approved effective March 1, 2023, with a \$2,154.20 patient paid due.

Issue

The appeal issue is whether MassHealth correctly calculated deductions pursuant to 130 CMR 520.026, and correctly determined a \$2,154 patient paid amount.

Summary of Evidence

The MassHealth representative appeared by telephone and testified that Appellant was admitted to a nursing facility on a long-term basis on [REDACTED] 2022 (Exhibit 6). There is no community spouse. An application for MassHealth long-term care benefits was submitted on December 7, 2022 and approved on March 9, 2023 with a \$2,154.20 patient paid amount (PPA) due effective March 1, 2023. Appellant's total countable income consists of \$2,227 Social Security income, from which a \$72.80 personal needs allowance (PNA) was deducted to arrive at a \$2,154.20 PPA. The MassHealth representative testified that no other deductions under 130 CMR 520.026 apply.

Appellant's daughter/power of attorney testified that prior to admission to a nursing facility, Appellant resided with her adult daughter who is disabled. She added that Appellant's daughter is [REDACTED] years old and had been diagnosed with cerebral palsy since birth and continues to reside in the apartment she shared with Appellant prior to admission to the nursing facility. Appellant's representative stated that Appellant's adult disabled daughter has income totaling \$2,004 from Social Security and Veteran's benefits from her father, and pays \$1,620 rent per month in addition to utilities and other living expenses. Appellant's representative asserted that a deduction should be allowed from Appellant's income to help support her adult disabled daughter.

MassHealth testified that Appellant does not file taxes. During a record open period, MassHealth reviewed deductions at 130 CMR 520.026, and concluded that a family maintenance needs deduction from Appellant's income could not be applied (Exhibit 7).

Findings of Fact

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

1. Appellant was admitted to a nursing facility on a long-term basis on [REDACTED] 2022.
2. There is no community spouse.
3. An application for MassHealth long-term care benefits was submitted on December 7, 2022, and approved on March 9, 2023 with a \$2,154.20 patient paid amount (PPA) due effective March 1, 2023.

4. Appellant's total countable income consists of \$2,227 Social Security income, from which a \$72.80 personal needs allowance (PNA) was deducted to arrive at a \$2,154.20 PPA.
5. Appellant does not file taxes.
6. Prior to admission to a nursing facility, Appellant resided in an apartment with her adult disabled daughter.

Analysis and Conclusions of Law

The Patient Paid Amount 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 515.001). Regulation 130 CMR 520.026 (A)-(E) outlines long-term care general income deductions that apply in the calculation of the Patient Paid Amount, which are limited to a Personal-Needs Allowance; Spousal-Maintenance Needs Allowance; Deductions for Family-Maintenance Needs¹; Deductions for the Maintenance of a Former Home, which only applies to individuals admitted to a skilled nursing facility on a short-term basis only, and are expected to return home within 6 months; and Deductions for Health-Care Coverage and Other Incurred Expenses, which are limited to necessary medical and remedial-care expenses, and expenses associated with Guardianship.

Appellant was admitted to a nursing facility on a long-term basis on [REDACTED] 2022. Appellant's total countable income consists of \$2,227 Social Security income, from which a \$72.80 personal needs allowance (PNA) was deducted to arrive at a \$2,154.20 PPA (130 CMR 520.026(A)). There is no community spouse, and a spousal maintenance needs allowance (SMNA) at 130 CMR 520.026(B) does not apply. MassHealth regulations provide for a family maintenance needs allowance (FMNA) for certain family members *who live with a community spouse* (130 CMR 520.026(C)). The requirements for a FMNA are not met. MassHealth correctly determined that the

¹ Pursuant to 130 CMR 520.026 (C):

(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** (emphasis added):

- (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 $\frac{1}{3}$ of the amount by which the federal standard maintenance allowance exceeds the monthly gross income of the family member.

FMNA deduction does not apply to a disabled adult child who lived with a nursing facility resident prior to admission to a nursing facility. However, the fact that Appellant does not file taxes is not dispositive in the determination of the FMNA as Appellant's adult disabled daughter does not reside with a community spouse which is required under the FMNA regulation at 130 CMR 520.026(C).² Appellant's tax filing status would be a factor only if her disabled adult child who is over 21 years of age lived with a community spouse and was claimed as a dependent by either the community spouse or Appellant which is not the case here. Further, Appellant is not expected to return home within 6 months; therefore, a deduction for the maintenance of a former home does not apply (130 CMR 520.026(D)). Additional health care or incurred expenses do not apply as defined at 130 CMR 520.026(E). The hearing officer does not have discretion to expand the FMNA deduction or waive regulatory requirements and must render a hearing decision in accordance with the law including duly promulgated regulations (130 CMR 610.082). MassHealth correctly applied long-term care income deductions at 130 CMR 520.026 and correctly calculated a \$2,154.20 patient paid amount (PPA) due.

Based on applicable regulations, the appeal must be 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.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780

² See fn. 1.