

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2303433
Decision Date:	7/19/2023	Hearing Date:	05/22/2023
Hearing Officer:	Alexis Demirjian		

Appearance for Appellant:



Appearance for MassHealth:

Brianna Debetetto, Tewksbury 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:	Approved	Issue:	PPA Amount
Decision Date:	7/19/2023	Hearing Date:	05/22/2023
MassHealth's Rep.:	Brianna Debetetto	Appellant's Rep.:	[REDACTED]
Hearing Location:	Tewksbury MassHealth Enrollment Center Room 2	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 March 22, 2023, MassHealth determined that the appellant had a Patient Pay Amount of \$872.20. (see 130 CMR 520.025 and 130 CMR 520.026 and Exhibit 2). The appellant, through her daughter contests the amount of the PPA and filed this appeal in a timely manner on April 23, 2023. (see 130 CMR 610.015(B) and Exhibit 2). Challenging the scope of services is valid grounds for appeal the Board of Hearings. (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the Appellant's long-term care application and determined a Patient Pay Amount ("PPA") of \$872.20.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.026, in determining that Appellant's PPA in the amount of \$872.20.

Summary of Evidence

The applicant was admitted to a long-term care facility on [REDACTED] 2022. MassHealth received an application for Long-Term Care services on January 6, 2023. The application requested services starting on January 1, 2023. The applicant was approved on March 22, 2023 with an effective start date for coverage beginning on January 19, 2023.

On March 22, 2023, the appellant was issued a notice stating that the Patient Paid Amount (“PPA”) for the appellant was \$872.20 per month. The regulations used to determine the PPA were 130 CMR 520.025 and 130 CMR 520.026.

MassHealth testified that the appellant has a Social Security income of \$2,406. Thus, the appellant had a countable income of \$2,406. The MassHealth worker then testified that she took the \$2,406 countable income and subtracted allowable deductions allowed by 130 CMR 520.026. The following deductions were made by MassHealth: \$72.80 for the Personal Needs Allowance (“PNA”), \$1215 for maintenance of a former home, and \$246 for health care coverage and other incurred expenses. See 130 CMR 520.026 (A) (D) (E). MassHealth testified that it calculated the allowable deductions to total \$1533.80.

MassHealth took the appellant’s Social Security income of \$2,406 less the deductions totaling \$1533.80 and calculated a PPA of \$872.20.

At hearing the Appellant’s representative argued that the Appellant’s PPA amount should be reduced because the Appellant has costs related to two life insurance policies. The Appellant’s representative did not argue that MassHealth’s calculation was incorrect but asserted that there should be a deduction allowed for the life insurance premiums.

In addition to MassHealth’s testimony, the MassHealth representative submitted a document from the Social Security Administration titled Your New Benefit Amount and reporting that the Appellant’s Social Security income for 2023 before deductions taken by the Social Security Administration was \$2,570.90. (See Exhibit 5, p. 2) The document also states that \$164.90 will be deducted from the monthly benefit for Medicare Medical Insurance. *Id.* Additionally, the document states that \$36.00 will be deducted for Medicare Prescription Drug Plan. *Id.* The document goes on to conclude that the appellant’s Social Security monthly benefit, after deductions taken for Medicare Medical Insurance and Medicare Prescription Drug Plan, is \$2,370.00. *Id.*

Findings of Fact

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

1. On January 6, 2023, MassHealth received the Appellant's application for Long-Term Care Services. (*Testimony; Exhibit 5*).
2. On March 22, 2023, MassHealth approved the Appellant's application and assessed a Patient Pay Amount ("PPA") of \$872.22. (*Testimony; Exhibit 3*).
3. The Appellant's Social Security Income before deductions is \$2,570.90. (*See Exhibit 5, p.2*).
4. The Social Security Administration deducts \$164.90 for the appellant's Medicare Medical Insurance. (*See Exhibit 5, p.2*).
5. The Social Security Administration deducts \$36.00 for appellant's Medicare Prescription Drug Plan. (*See Exhibit 5, p.2*).
6. After deductions made by Social Security Administration for the appellant's Medicare Medical Insurance and Medicare Prescription Drug Plan, the appellant's Social Security monthly benefit is \$2,370.00. (*See Exhibit 5, p.2*).
7. MassHealth calculated the Appellant's PPA by starting with a countable income of \$2,406 for the appellant. MassHealth derived this number by subtracting \$164.90 from \$2,570.90. (*See Testimony; Exhibit 5, pg. 1 -2*).
8. MassHealth then made a deduction of \$72.80 for the appellant's Personal Needs allowance consistent with 130 CMR 520.026 (A). (*See Testimony; Exhibit 3, Exhibit 5, p.1*).
9. MassHealth also made a deduction of \$1,215 for the appellant's amount to maintain home consistent with 130 CMR 520.026 (D). (*See Testimony; Exhibit 3; Exhibit 5*).
10. MassHealth then made a deduction of \$246 for the appellant's Harvard Pilgrim premium. (*See Testimony; Exhibit3; Exhibit 5*).
11. MassHealth failed to include an allowable deduction for the Appellant's Medicare Prescription Drug Plan. (*See Exhibit 3; Exhibit 5*).
9. MassHealth incorrectly calculated the Appellant's PPA by failing to include the allowable deduction for the Medicare Prescription Drug Plan. (*See Exhibit 3; Exhibit 5*).

Analysis and Conclusions of Law

MassHealth's regulations define an institution medical as a facility public or private "providing

acute, chronic, or long-term care, unless otherwise defined within 130 CMR 515.000 through 522.000: *Other Division Programs*. This includes **acute inpatient hospitals, licensed nursing facilities**, state schools, intermediate-care facilities for the mentally retarded, public or private institutions for mental diseases, freestanding hospices, and chronic-disease and **rehabilitation hospitals**.” See 130 CMR 515.001 (**bolded emphasis added**).

An individual is considered institutionalized for MassHealth purposes if he or she is placed in one or more medical institutions where the placement lasts or is expected to last for a continuous period of at least 30 days. See 130 CMR 515.001. Members in a long-term-care facility must contribute to the cost of care under the laws of the Commonwealth of Massachusetts, this contribution is referred to as the “patient-paid amount” or PPA. See 130 CMR 515.001.

Institutionalized members of MassHealth are not subject to a countable income limit but are required to pay a portion of their income to the nursing facility (minus specific deductions set forth in 130 CMR 520.026). See 130 CMR 520.009(A)(3). Social Security benefits are considered countable income. See 130 CMR 520.009 (D).

MassHealth testified that the Appellant’s Social Security income was \$2,406.00 and therefore \$2,406 was the appellant’s countable income.¹ This amount is incorrect. According to documentation from the Social Security Administration, and provided by MassHealth, the appellant’s Social Security monthly benefit beginning in January 2023 is \$2,570.90. See *Exhibit 5*. The documentation further shows that Social Security is deducting \$164.90 for Medicare Medical Insurance and \$36 for Medicare Prescription Drug Plan. *Id.* Thus, after the deductions made by the Social Security Administration, the appellant’s net Social Security income is \$2,370.00. *Id.*

In calculating the PPA, the regulations allow certain deductions to be made from an institutionalized member’s income. See 130 CMR 520.009(A)(3). These deductions are listed at 130 CMR 520.026, which states that “[g]eneral 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.” The personal-needs allowance, \$72.80 per month, is set by regulation. See 130 CMR 520.025. MassHealth allows a deduction for maintenance of a former home. See 130 CMR 520.026 (D). MassHealth also allows for a deduction for health-care coverage and other incurred expenses for the appellant’s necessary medical and remedial-care expenses. See 130 CMR 520.026 (E).

Pursuant to 130 CMR 520.026 (A), MassHealth will deduct \$72.80 for a long-term-care resident’s income to determine their PPA amount. In this matter, MassHealth allowed for \$72.80 to be deducted from the Appellant’s income. See *Exhibit 3 and Exhibit 5*.

¹ To derive the \$2,406 number for countable income, MassHealth subtracted \$164.90 from \$2,570.90.

Additionally, MassHealth allowed for \$1,215.00 to be deducted for maintenance of a former home. This deduction was allowed pursuant to 130 CMR 520.026 (C). Regulations provide that MassHealth may provide 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 prognosis to return home at that time.

Pursuant to 130 CMR 520.026(E) (1), MassHealth allows for deduction for current health-insurance premiums or membership costs when payments are made directly to an insurer or a managed-care organization. Additionally, after an applicant is approved for MassHealth, the MassHealth agency will allow deductions for the applicant's necessary medical and remedial-care expenses. These expenses must not be payable by a third party. These expenses must be for medical or remedial-care services recognized under state law but not covered by MassHealth. *See 130 CMR 520.026 (E)(2)*. A remedial-care expense is a nonmedical support service made necessary by the medical condition of the individual or spouse. *See 130 CMR 520.032 (A)(2)*.

Accordingly, MassHealth deducted \$164.90 for the appellant's Medicare Medical Insurance and \$246 for her Harvard Pilgrim premium, since both payments qualify as allowable deductions for health insurance under 130 CMR 520.026(E) (1). *See Exhibit 3 and Exhibit 5*. Unfortunately, and inexplicably, MassHealth failed to allow the \$36 dollar deduction for Medicare Prescription Drug Plan. *See Exhibit 3 and Exhibit 5*. Medicare drug insurance coverage helps pay for prescription drugs, it is optional coverage that is offered to everyone with Medicare.² Therefore, the \$36 monthly payment for Medicare Prescription Drug Plan coverage should have been included as an allowable deduction under 130 CMR 520.026 (E)(1).

If we apply the regulations as written to the facts of the case, the Appellant's countable income is \$2,570.90. MassHealth erred by not including the \$36 dollar deduction made by Social Security for the Medicare Prescription Drug Plan when calculating the PPA amount.

Had MassHealth properly included this deduction, they would have determined that the Appellant's Social Security income after allowable deductions made by the Social Security Administration for health-insurance would have been \$2,370.00, not \$2,406.00.

Thus, if we continue with the calculation, and subtract the allowable deductions from \$2,370.00, including the PNA at \$72.80, the deduction for maintenance of a former home at \$1215, and the premium for Harvard Pilgrim at \$246, the appellant's PPA is \$836.20.

For those reasons, MassHealth was incorrect, pursuant to 130 CMR 520.026, in determining that Appellant's PPA was \$872.20. Accordingly, this Appeal is APPROVED.

With respect to the Appellant's representative's argument that life insurance premium payments

² See www.medicare.gov/drug-coverage-part-d/how-to-get-prescription-drug-coverage, last visited on July 18, 2023.

should be an allowable deduction. The regulations clearly articulate what constitutes an allowable deduction for calculation of the PPA. There is no allowable deduction for life insurance policies, and they do not fall within a remedial-care expense. Life insurance policies are not a nonmedical support service, rather they are a contract between parties to pay a benefit to a beneficiary upon the death of the insured person. For that reason, the Appellant's representative's argument fails and the PPA will not be recalculated to account for monthly life insurance premiums.

Order for MassHealth

MassHealth shall rescind Notice Number 64800143, dated March 22, 2023, and issue a new notice that includes the correct PPA amount of \$836.20. MassHealth should not include appeal rights with this notice.

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.

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

Alexis Demirjian

Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957, 978-863-9290

[REDACTED]