

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2303814
Decision Date:	6/16/2023	Hearing Date:	06/07/2023
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:



Appearance for MassHealth:

Diane Braley



*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:	6/16/2023	Hearing Date:	06/07/2023
MassHealth's Rep.:	Diane Braley	Appellant's Rep.:	
Hearing Location:	All Parties Appeared by Telephone	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 January 27, 2023, MassHealth notified the appellant that her patient paid amount will change from \$0 to \$1,429.20 on February 1, 2023 due to a change in circumstances. (130 CMR 520.026; Exhibit 1). The appellant filed an appeal on May 9, 2023. (130 CMR 610.015; Exhibit 2). The Board of Hearings scheduled a hearing for June 7, 2023.

Due to the federal public hearing emergency (COVID-19 Pandemic), MassHealth implemented new protocols to support public health efforts for both new and existing MassHealth members that include providing individuals up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns. (130 CMR 610.015; Eligibility Op. Memo 20-09; Exhibit 2). As of April 1, 2023, MassHealth ended temporary eligibility policies established during the COVID-19 Pandemic, including the extended timeframe to request fair hearings. (Eligibility Op. Memo 23-11). As of April 1, 2023, members have up to 60 days to request a fair hearing for concerns related to member eligibility as required under the regulations.¹ (130 CMR 610.015; Eligibility Op. Memo 23-11). Although this appeal was filed in May 2023, it applies to a notice issued in January 2023 so subject to the appeal rights in place during the COVID-19 pandemic.

¹ New regulations governing appeal process went into effect in December 2022. At the time of the change in eligibility protocols due to the COVID-19 Pandemic, an individual had up to 30 days to file a request for hearing. As of December 2022, members have up to 60 days to file a request for hearing.

A decision regarding the scope and amount of assistance is valid grounds for an appeal. (130 CMR 610.032(A)(5)).

Action Taken by MassHealth

MassHealth notified the appellant that her patient paid amount will change from \$0 to \$1,429.20 on February 1, 2023 due to a change in circumstances.

Issue

Whether MassHealth was correct in determining the amount that the appellant will owe the nursing facility to pay for her care.

Summary of Evidence

The MassHealth representative presented documents that were incorporated into the hearing record as Exhibit 4. The appellant is in a family group of one and receives \$1,502 each month from the Social Security Administration. In calculating a monthly patient paid amount (PPA) of \$1,429.20, MassHealth considered the appellant's monthly income of \$1,502 and deducted \$72.80 for a personal needs allowance [$\$1,502 - \$72.80 = \$1,429.20$]. (Testimony; Exhibit 1). At the time of the decision, MassHealth did not consider any other expenses in calculating the patient paid amount.

At the time of admission, the appellant was eligible for short-term care with no PPA. The MassHealth representative testified that this was likely due to MassHealth including a home maintenance needs allowance in calculating the PPA. A home maintenance needs allowance is based on a determination that the individual would likely return home within 6 months after the month of admission. The regulations permit a deduction of this allowance in calculating a PPA. The regulations require this deduction to terminate 6 months after the month of admission. As noted at hearing, deductions from the appellant's PPA terminated more than 6 months after the month of admission. It was unclear at the time of the hearing whether the original PPA of \$0 was due to COVID-19 Pandemic protections or agency error. Either way, the appellant benefitted from the agency making a change well after the 6-month period.

The appellant did not dispute the income calculations presented by MassHealth or provide evidence of other expenses for the agency to consider in calculating a patient paid amount. The appellant argued that it was not fair for the facility to seek payment as she did not believe that she received sufficient notice of the amount due. As noted above, the notice on appeal was issued in January 2023 and the hearing was in May 2023.

Findings of Fact

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

1. The appellant is in a family group of one and receives \$1,502 each month from the Social Security Administration.
2. At the time of admission, the appellant was eligible for short-term care with no patient paid amount.
3. The appellant has been in the facility for more than 6 months.
4. The appellant does not pay a monthly health insurance premium.

Analysis and Conclusions of Law

Pursuant to 130 CMR 519.006(A), institutionalized individuals may establish eligibility for MassHealth Standard coverage subject to the following requirements. They must:

- (1) be younger than 21 years old or 65 years of age or older or, for individuals 21 through 64 years of age meet Title XVI disability standards or be pregnant
- (2) be determined medically eligible for nursing-facility services by the MassHealth agency or its agent as a condition for payment, in accordance with 130 CMR 456.000: Long Term Care Services;
- (3) contribute to the cost of care as defined at 130 CMR 520.026: Long-Term-Care General Income Deductions;
- (4) have countable assets of \$2,000 or less for an individual and, for married couples where one member of the couple is institutionalized, have assets that are less than or equal to the standards at 130 CMR 520.016(B): Treatment of a Married Couple's Assets When One Spouse Is Institutionalized; and
- (5) not have transferred resources for less than fair market value, as described at 130 CMR 520.018: Transfer of Resources Regardless of Date of Transfer and 520.019: Transfer of Resources Occurring on or after August 11, 1993.

The regulations define institutionalization as placement of an individual in one or more medical institutions, where placement lasts or is expected to last for a continuous period of at least 30 days. The appellant is in a long-term care facility and placement has lasted for a continuous period of at least 30 days. (130 CMR 515.001). Therefore, the appellant meets the definition of an institutionalized individual.

For institutionalized individuals, specific deductions described in 130 CMR 520.026 are applied against the individual's countable-income amount to determine the patient-paid amount. (130 CMR 520.009(A)(3)). Countable income includes an individual's gross earned and unearned income less certain business expenses and standard income deductions. (130 CMR 520.009(A)(1)). Unearned income includes, but is not limited to, social security benefits, railroad retirement benefits, pensions, annuities, federal veterans' benefits, rental income, interest, and dividend income. (130 CMR 520.009(D)). The appellant's social security benefits qualify as unearned income. (130 CMR 520.009(D)).

Pursuant to 130 CMR 520.026 general income deductions must be taken in the following order in calculating a monthly patient-paid amount: 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. As a single adult with no children, the appellant did not qualify for a spousal-maintenance-needs allowance or a family maintenance needs allowance. (130 CMR 520.026). The only deduction possibly considered in the past was a home-maintenance allowance. (130 CMR 520.026).

Pursuant to 130 CMR 520.026(D), MassHealth 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. (130 CMR 520.026(D)(1)). The amount deducted is the 100% of the federal poverty-level income standard for one person. (130 CMR 520.026(D)(2)). At the time of the decision, that amount was \$1,215. While this amount does not exceed the appellant's gross income of \$1,502 or even \$1,429.20 which is the amount after considering a personal needs allowance, MassHealth calculated a patient paid amount of \$0 prior to the decision on appeal. That decision is not within the scope of this appeal and it is unclear how a determination was made to calculate a PPA of \$0. However, the current PPA calculation includes the correct deduction of \$72.80 alone. The decision made by MassHealth in calculating a PPA of \$1,429.20 is correct.

This 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.

Susan Burgess-Cox
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

