

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2305979
Decision Date:	10/27/2023	Hearing Date:	08/23/2023
Hearing Officer:	Susan Burgess-Cox	Record Open to:	10/10/2023

Appearance for Appellant:



Appearance for MassHealth:

Evelyn Daniel



*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:	10/27/2023	Hearing Date:	08/23/2023
MassHealth's Rep.:	Evelyn Daniel	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 notices dated May 19, 2023 and May 24, 2023, MassHealth informed the appellant that the agency calculated a patient paid amount (PPA) of: \$3,460.32 as of January 1, 2022; \$4,593.32 as of July 1, 2022; and \$4,746.32 as of January 1, 2023. (Exhibit 1; Exhibit 5). The adjustments were all due to a change in circumstances. (Exhibit 1; Exhibit 5). On July 20, 2023, counsel for the appellant filed a timely appeal for all three decisions. (Exhibit 2; Exhibit 3). A hearing was scheduled for August 23, 2023. (Exhibit 4). At the request of the parties, the record was held open and the Board of Hearings granted more than one extension. The record closed on October 10, 2023. (Exhibits 6-9). An agency determination regarding the scope and amount of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified the appellant that the agency calculated a patient paid amount of: \$3,460.32 as of January 1, 2022; \$4,593.32 as of July 1, 2022; and \$4,746.32 as of January 1, 2023.

Issue

Whether MassHealth was correct in calculating the appellant's patient paid amount.

Summary of Evidence

All parties appeared by telephone. Documents presented by MassHealth prior to the hearing are incorporated into the hearing record as Exhibit 5. The appellant is in a long-term care facility and deemed eligible for MassHealth long-term care coverage beginning January 2022. (Testimony; Exhibit 5). On May 19, 2023 and May 23, 2023 MassHealth made eligibility determinations and calculated patient paid amounts based on information from the appellant regarding eligibility for short-term care as well as a cost-of-living adjustment (COLA) to the appellant's income from the Social Security Administration. (Testimony; Exhibit 5).

MassHealth determined the appellant eligible for short-term care beginning January 1, 2022 with a patient paid amount (PPA) of \$3,460.32. (Testimony; Exhibit 5). MassHealth determined the appellant eligible for long-term care beginning July 1, 2022 with a PPA of \$4,593.32. (Testimony; Exhibit 1; Exhibit 5). Due to a COLA made by the Social Security Administration, MassHealth adjusted the PPA to \$4,746.32 beginning January 1, 2023.¹ (Testimony; Exhibit 5). MassHealth based the calculations on income from the Social Security Administration in the amount of \$1,525 in 2022 that increased to \$1,678 as of January 2023, a pension of \$2,192.61 each month and monthly annuity income of \$1,208.66. From January 2022 to January 2023, the appellant had a countable monthly income of \$4,926.27. From January 2023 to the date of the hearing, the appellant had a countable monthly income of \$5,079.27.

In calculating a PPA, MassHealth made allowable deductions for different periods of eligibility. For the first six months of eligibility, MassHealth allowed the appellant to keep funds to maintain her home. The regulations allow MassHealth to make this deduction for the first six months of admission. The amount deducted is the 100 percent federal-poverty-level income standard for one person. In January 2022 that amount was \$1,133. From January 1, 2022 to July 1, 2022, MassHealth made the following deductions: \$1,133 for a home maintenance needs allowance; \$260.15 for health insurance; and \$72.80 for a personal needs allowance. As of July 1, 2022, MassHealth made the following deductions: \$260.15 for health insurance; and \$72.80 for a personal needs allowance.

Counsel for the appellant challenged the calculation of the patient paid amount from July 2022 forward based on the appellant's intent to return to a residential setting. Counsel noted that the appellant's family has assisted in making monthly payments to maintain a location for the appellant to return to the community. At hearing, counsel also argued that there were exceptional circumstances for MassHealth and the Board of Hearings to consider in adjusting the PPA. Counsel for the appellant requested a period of time to keep the record open for the submission of a brief and any additional evidence. As noted above, due to the approval of several requests to extend the record open period, the record closed on October 10, 2023. (Exhibit 7). Counsel for the appellant provided documents that are incorporated into the

¹ Records indicate that MassHealth issued at least three notices regarding the calculation of a PPA of \$4,746.32. One lists an effective date of January 1, 2023, the second with a date of May 1, 2023 and the third with a date of June 1, 2023. As each notice has the same PPA, they are being addressed as one decision.

hearing record as Exhibit 8. MassHealth's response is incorporated into the hearing record as Exhibit 9.

The appellant transferred her home to her son as a caretaker child as the regulations governing MassHealth allow for such a resource transfer. (Exhibit 8). After the transfer of the property to her son, the appellant signed a lease to rent from her son upon her return home. (Exhibit 8). Counsel notes in his brief that while the appellant was obligated under the lease to make such payments from January 2023 to present, she had not made any payments. (Exhibit 8). Counsel states that he was able to secure a release from the lease agreement and there will be no obligation to pay rent going forward. (Exhibit 8). As noted above, information presented by counsel for the appellant indicates that the lease was with the appellant's son to whom the appellant transferred said property. (Exhibit 8). While counsel no longer requests an adjustment for a home maintenance needs allowance, he does note other financial obligations that he would like the agency to consider in calculating a PPA. (Exhibit 8).

The obligations include a motor vehicle loan of approximately \$36,878.43, vehicle expenses of insurance (\$862.20/year), excise tax (\$86.86/year), gas and maintenance (\$100/month). Counsel states that the appellant requires a specialized vehicle for transportation related to medical care arguing that this would allow for an exception to the regulatory requirements in calculating a PPA. Counsel also requests the agency consider educational loan expenses for a student loan totaling \$10,177.86 with monthly payments of \$208.86. Counsel states that failure to pay this loan will result in collections, negative credit reporting and lead to the appellant having to file for bankruptcy. Counsel argues that these expenses create an undue hardship for the appellant and the Board of Hearings has authority to make concessions based on undue hardship under the regulations at 130 CMR 520.019(L).

Finally, counsel notes in his brief that MassHealth did not have accurate figures regarding the appellant's income. (Exhibit 8). Counsel did not provide documents to verify the income amounts listed in the brief. (Exhibit 8). The records included with the brief include evidence of the expenses that the appellant would like considered in calculating a PPA. (Exhibit 8). MassHealth presented documents verifying figures utilized in calculating the PPA including a 2022 Form 1099-R reflecting payments from the appellant's annuity totaling \$14,504 for the year or \$1,208.66 each month and a direct deposit advice reflecting a total monthly pension of \$2,192.61. (Exhibit 5). The pension amount of \$1,957.46, presented by counsel for the appellant, appears to reflect deductions and net income as the pension statement presented by MassHealth shows a net amount of \$1,932.46. Counsel did not provide documentation to verify this new amount.

The MassHealth representative only responded that the agency cannot extend the deduction for a home maintenance needs allowance after the sixth month of admission. (Exhibit 9). MassHealth did not provide a response to the other expenses noted by counsel for the appellant to consider in calculating a PPA. (Exhibit 9).

Findings of Fact

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

1. The appellant is in a long-term care facility and deemed eligible for MassHealth coverage for her stay in the facility beginning January 2022.
2. MassHealth determined the appellant eligible for short-term care beginning January 1, 2022 with a patient paid amount (PPA) of \$3,460.32.
3. MassHealth determined the appellant eligible for long-term care beginning July 1, 2022 with a PPA of \$4,593.32.
4. Due to a cost-of-living adjustment made by the Social Security Administration, MassHealth adjusted the PPA to \$4,746.32 beginning January 1, 2023.
5. In January 2022, the appellant received \$1,525 from the Social Security Administration.
6. In January 2023, the appellant's income from the Social Security Administration increased to \$1,678.
7. The appellant has a pension of \$2,192.61 each month.
8. The appellant has annuity income of \$1,208.66 each month.
9. From January 2022 to January 2023, the appellant had total countable monthly income of \$4,926.27.
10. From January 2023 to the date of the hearing, the appellant had total countable monthly income of \$5,079.27.
11. In January 2022, 100 percent federal-poverty-level income standard for one person was \$1,133.
12. From January 2022 to July 2022, MassHealth made the following deductions from the appellant's income in calculating a patient paid amount:
 - a. A Home Maintenance Needs Allowance of \$1,133;
 - b. Insurance payments of \$260.15; and
 - c. A Personal Needs Allowance of \$72.80.
13. Beginning July 1, 2022, MassHealth made the following deductions from the

appellant's income in calculating a patient paid amount:

- a. Insurance payments of \$260.15; and
 - b. A personal needs allowance of \$72.80.
14. Prior to or at the time of admission, the appellant transferred her home to her son.
 15. At the time of admission, the appellant signed a lease to rent from her son upon her return home.
 16. The appellant was obligated under the lease to begin payments from January 1, 2023.
 17. During the course of the appeal, the appellant was released from the lease agreement.
 18. The appellant has a motor vehicle loan in the amount of \$36,878.43 with payments of \$689.84 each month.
 19. The vehicle is a handicap enabled van.
 20. The vehicle can be used to transport the appellant to medical appointments.
 21. The following expenses are related to the vehicle: insurance payments of \$862.20 each year, excise tax of \$86.86 each year and maintenance of \$100 each month.
 22. The appellant has an education loan in the amount of \$10,177.86 with payments of \$208.86 each month.

Analysis and Conclusions of Law

MassHealth administers and is responsible for the delivery of health-care services to low- and moderate-income individuals and couples. (130 CMR 515.002). The regulations governing MassHealth at 130 CMR 515.000 through 522.000 provide the requirements for noninstitutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and MassHealth's 1115 Medicaid Research and Demonstration Waiver. (130 CMR 515.002). The appellant in this case is an institutionalized person. Therefore, the regulations at 130 CMR 515.000 through 522.000 apply to this case. (130 CMR 515.002).

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 under age 18 or aged 65 or older; or, for individuals aged 18 to 64 inclusive, meet Title XVI disability standards or be pregnant;
- (2) be determined medically eligible for nursing-facility services by MassHealth or MassHealth's agent as a condition for payment, in accordance with 130 CMR 456.000;
- (3) contribute to the cost of care as defined at 130 CMR 520.026;
- (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); and
- (5) not have transferred resources for the sole purpose of obtaining MassHealth as described at 130 CMR 520.018 and 520.019.

The regulations define an institution as a public or private facility providing acute, chronic, or long-term care, unless otherwise defined within 130 CMR 515.000 through 522.000. (130 CMR 515.001). 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. (130 CMR 515.001). 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 was in a long-term care facility and her placement lasted for a continuous period of at least 30 days. (130 CMR 515.001). Therefore, the appellant was determined eligible for MassHealth as an institutionalized individual. The regulations provide specific rules for calculating a patient-paid amount for institutionalized individuals. (130 CMR 520.009; 130 CMR 520.026).

Pursuant to 130 CMR 520.009, 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 (PPA). Pursuant to 130 CMR 520.026 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 520.026).

In this case, MassHealth allowed a deduction for a personal-needs allowance, health care coverage and a home maintenance needs allowance for the first six months of admission. (130 CMR 520.026). The appellant then became eligible for a personal-needs allowance of \$72.80 and health care coverage of \$260.35. (130 CMR 520.026).

Under the regulations governing MassHealth, the agency 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. (130 CMR 520.026(D)(1)). 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 percent federal-poverty-level income standard for one person. (130 CMR 520.026(D)(2)). At the time of the eligibility start date sought by the appellant, 100% of the federal-poverty-level for one person was \$1,133.

While counsel for the appellant initially sought MassHealth continuing this allowance for the appellant to pay rent to her son to whom she transferred her home, the appellant's son agreed to release the appellant of this financial obligation. Instead of considering this obligation in calculating a patient paid amount, counsel asked MassHealth to consider the appellant providing funding for a car that counsel states is "necessary for the appellant to be transported to her various medical providers". Counsel states that the facility is unable to handle this transportation and seeks an adjustment to cover loan payments, car insurance, excise tax as well as gas and maintenance. While the regulations deem one vehicle per household as noncountable, there is no provision in the regulations requiring the agency to consider costs associated with insuring, maintaining, and paying for a vehicle in determining eligibility. (130 CMR 520.007(F)). Additionally, it is unclear who is utilizing the vehicle, the usage beyond taking the appellant to appointments and why this specific vehicle is the only means of transporting the appellant to appointments. Simply stating that the facility cannot provide transportation does not mean that there are not other transportation services available to the appellant. It appears that the appellant's continuation of payments on this vehicle will benefit others more than the appellant.

In requesting that the agency to consider student loan payments in calculating a patient paid amount, counsel relies on regulations governing undue hardship. The regulations cited by counsel, 130 CMR 520.019(L) specifically speak to hardship associated with a waiver of a period of ineligibility due to a transfer of resources, not expenses or debt that one wants to continue to pay after their admission into a long-term care facility. MassHealth is a payor of last resort. It is a public benefit program. One should not expect coverage for long-term care so they can continue to make loan payments or incur similar expenses. Additionally, the regulations governing undue hardship have specific circumstances for the agency to consider in making such a determination including: a denial of MassHealth depriving a nursing-facility resident of medical care such that his or her health or life would be endangered, or the nursing-facility resident would be deprived of food, shelter, clothing, or other necessities such that he or she would be at risk of serious deprivation. (130 CMR 520.019(L)(1)(a)). The regulations require an individual to present evidence of a notice to discharge the resident because the resident has not paid for his or her institutionalization. (130 CMR 520.019(L)(1)(c)). The regulations specifically state that undue hardship does not exist when imposition of the period of ineligibility would merely inconvenience or restrict the nursing-facility resident without putting the nursing facility resident at risk of serious deprivation. (130 CMR 520.019(L)(2)). Failure to cover costs for services provided in the community and pay for debt incurred prior to admission does not place the appellant at risk of serious deprivation. Instead, as counsel for the appellant stated, it may impact the appellant's credit report which is not something that MassHealth considers in determining eligibility for healthcare coverage.

The decisions made by MassHealth were correct. This appeal is denied as to the calculation of the patient paid amount in all of the eligibility determinations made up to the date of this hearing decision. Should the appellant be able to clearly demonstrate a change in income, they can present that information to MassHealth to consider an adjustment to the PPA calculations.

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: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104, 413-785-4186

Appellant Representative: [REDACTED]