

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2306661
<b>Decision Date:</b>	11/07/2023	<b>Hearing Date:</b>	11/03/2023
<b>Hearing Officer:</b>	Alexis Demirjian		

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Mul Oeur, 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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Over 65; PPA Amount
<b>Decision Date:</b>	11/07/2023	<b>Hearing Date:</b>	11/03/2023
<b>MassHealth's Rep.:</b>	Ms. Oeur	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Telephonic	<b>Aid Pending:</b>	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 July 20, 2023, MassHealth notified the appellant that it would change the appellant's Patient Paid Amount effective August 1, 2023 because of a change in circumstances. (see 130 CMR 520.025 and 130 CMR 520.026 and Exhibit 1). The appellant filed this appeal in a timely manner on July 26, 2023. (see 130 CMR 610.015(B) and Exhibit 2). Challenging the scope of services is valid grounds for appeal before the Board of Hearing. (see 130 CMR 610.032).

## Action Taken by MassHealth

MassHealth changed the appellant's Patient Paid Amount ("PPA") from \$0.00 to \$875 per month.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.026, in determining the appellant's PPA Amount.

## Summary of Evidence

On March 6, 2023, the appellant was approved for long-term care effective [REDACTED] 2023. At the time of that approval, the appellant had indicated that she would return home at the end of her stay within six months of admission. As the appellant maintained a home and was expected to return within six months, MassHealth allowed a home maintenance deduction in the amount of \$1,215.00. MassHealth testified that the change in PPA amount was triggered when the appellant's skilled nursing changed from short-term care to long-term care, as the appellant required skilled nursing care for longer than six months.

At the conclusion of six months, the appellant remained in the nursing facility and did not return home. Accordingly, MassHealth removed the home maintenance deduction and recalculated the appellant's PPA.

The appellant receives \$930 per month from Social Security. MassHealth deducted \$72.80 Personal Needs Allowance from the appellant's countable income and determined that the appellant owed the remainder to the nursing facility in the amount of \$857.20 per month.

The appellant testified that she did not understand the circumstances regarding the change in PPA amount. After it was explained to her, the appellant argued that she is being kept at the nursing facility against her will. The appellant claims that she has numerous out of pocket expenses for medical treatment and medications because the nursing facility will not provide the care that she needs for her medical ailments. The hearing officer noted that the appellant submitted two documents with her appeal, the first is a letter from her doctor attesting to the need for the appellant to remain in long-term care and the second is a report on an MRI, neither are bills for medical services.

The appellant appealed to the hearing officer to find a way for her to keep some of her social security so that she could leave the nursing facility and find senior housing.

## Findings of Fact

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

1. The appellant was admitted to a nursing facility on [REDACTED], 2023, for short term level of care through July 20, 2023. (Testimony)
2. On July 20, 2023, MassHealth received a long-term care conversion indicating that the appellant would be a long-term care resident of his nursing facility. (Testimony)

3. Based on the conversion from short-term stay to long-term care longer than six months, MassHealth determined the appellant would have a PPA amount of \$857.20. This calculation was based on the Appellant's social security income of \$930 less the personal needs allowance of \$72.80. (Testimony; Exhibit 3)

4. On July 7, 2023, the appellant's physician opined that the appellant needs to be placed in a skilled nursing facility and can not live independently. (Exhibit 4)

## 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 (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. 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).

In calculating the PPA, the regulations allow certain deductions to be made from an institutionalized member's income. See 130 CMR 520.009. 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).

130 CMR 520.026 (D)(1) provides the following:

The MassHealth 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. 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.**

(Emphasis added.)

The crux of the appellant's testimony focused on her displeasure with the nursing facility and her desire to leave the facility. Despite her protestations that she did not need long term skilled nursing care, the appellant submitted documentation from her own physician, dated July 7, 2023, stating that it is medically necessary that the appellant receive skilled nursing care in an inpatient facility, and that it is unsafe for her to live independently.

If the appellant is unhappy with her current nursing facility, she should follow up with her provider and social worker to determine a suitable placement given her unique needs.

The evidence is clear that the appellant has been admitted to a skilled nursing facility for more than six months and submitted medical documentation that indicates that the appellant should not return to her home. Accordingly, MassHealth's removal of the home maintenance allowance was proper and the calculation of her PPA consistent with the governing regulations.

Accordingly, 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.

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Alexis Demirjian  
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