

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2307318
Decision Date:	11/17/2023	Hearing Date:	09/29/2023
Hearing Officer:	Christopher Jones	Record Open to:	10/13/2023

Appearance for Appellant:

 – Appeal Rep.

Appearance for MassHealth:

Karen Ryan – Intake Supervisor Tewksbury



*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:	Dismissed in part; Denied in part	Issue:	Over 65; Intake; Start Date; Asset Reduction
Decision Date:	11/17/2023	Hearing Date:	09/29/2023
MassHealth's Rep.:	Karen Ryan	Appellant's Rep.:	
Hearing Location:	Remote	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 June 20, 2023, MassHealth approved the appellant for long-term-care services starting on March 3, 2022, with a patient-paid amount of \$958.20 per month. (Exhibit 1.) The appellant filed this appeal in a timely manner on August 21, 2023. (Exhibit 1; 130 CMR 610.015(B).) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth approved the appellant's long-term-care benefits, but on a different day than the appellant wanted.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.004, in determining the day on which long-term-care benefits should start given the assets of the applicant.

Summary of Evidence

The decedent entered the nursing facility in [REDACTED]. An application was submitted for long-term-care services in [REDACTED]. This matter was previously appealed after MassHealth denied the appellant's application for having excess assets. During that appeal, the appellant submitted proof that their assets had been reduced below \$2,000, and MassHealth agreed to continue processing the application. This appeal was withdrawn without a decision. The parties agree that the countable excess assets as of the date benefits were requested should be divided by the private pay rate at the nursing facility. This is referred to as a "Haley calculation." The parties disagree as to what the countable assets are.

As part of the prior appeal, a letter dated June 13, 2023, was submitted from the nursing facility detailing payments made to privately pay for nursing facility care. This letter states that \$13,127.40 was paid by the applicant to cover the cost of his care through January 29, 2022. The letter requests MassHealth to start paying as of January 30, 2022. As of January 30, 2022, the applicant's primary bank account held \$22,913. The parties agree that the applicant's monthly Social Security income of \$2,164 should be deducted from this amount. The parties also agree that \$3,200 is non-countable Economic Impact Payments from the federal government paid during the Covid-19 Federal Public Health Emergency.

At the hearing, MassHealth's calculation used the statement's beginning balance, \$18,476, instead of the balance as of the benefits request date. To this amount, MassHealth added \$10 that remained in another bank account, and a \$1,766.75 credit on the applicant's nursing facility bill. From these total countable assets of \$20,252.75, MassHealth deducted the \$3,200 in EIP payments, \$2,580 for a burial contract funded on February 10, 2022, and \$2,350 for a cemetery monument purchased on June 4, 2023. This resulted in excess assets of \$10,122.75. Divided by the private pay rate of \$437 per day, the appellant's excess assets could have paid for 23.13 days in the nursing facility, or February 23, 2022. MassHealth's representative testified that the agency must round up when performing a Haley calculation.

The appellant objected to the inclusion of the \$1,766.75 credit on the applicant's facility bill. She testified that this money was paid to the nursing facility in December 2022 as an anticipated patient-paid amount ("PPA"). When the appellant later privately paid \$13,127.40, this shifted the benefits-request date, which would result in their being no PPA for December. She wanted this credit to be applied to future PPA payments that would be owed for March and April. The appellant testified that there is a new private pay letter from the facility, dated September 12, 2023, which explains that the \$1,766.75 credit was applied to anticipated PPA after the last private payment was made.

The record was left open until October 13, 2023, for the appellant to submit proof of what they believe is the correct benefits-start date. The appellant submitted a copy of the Haley calculation performed by the MassHealth employee who approved benefits through the June 20 notice on

appeal. This calculation started from \$18,479.05, deducted the two funeral costs, and divided \$13,819.05 by \$437.58 to arrive at the 32 days of long-term-care coverage ineligibility. The appellant's representative submitted their own calculations, starting from this \$13,819.05 figure. They deduct the \$3,200 in EIP, "\$2,880" contributed into the bank account by the applicant's partner, \$2,048.76 in purported medical expenses, and \$2,360.32 in additional private payments for the days of January 30 through February 2, 2022. The resulting \$3,329.97 in remaining excess assets only result in eight days of ineligibility.

To support their additional deductions, the appellant submitted bank statements showing the EIP payments. They also submitted a bank statement showing a deposit of \$2,580 was made on January 6, 2022; they handwrote "cash from [partner]" on this deposit slip. This amount also appears in a check image, available in an earlier submission from the appellant. The check is written out to the bank, and the subject line simply states the decedent's name. There is nothing else in the record to indicate why this money was moved into the account shared by the applicant and his partner.

To support the medical expenses, the appellant submitted bank statements showing expenses were paid in May 2022, and internet searches showing the payees of those amounts were medical providers. However, nothing in this submission indicates for whom these services were paid or why.

Finally, the appellant submitted an updated private pay letter dated September 12, 2023. This letter shows a second private payment of \$4,128.90 on February 28, 2022, and states \$172.42 was applied to the balance owed for January 29, 2022. The remainder was attributed to:

- 1/30/2022-1/31/2022 = 2 days at the private rate of \$437.58 = \$1,312.74
- 2/1/2022-2/2/2022 = 2 days at the private rate of \$437.58 = \$875.16
- Remaining balance of \$1,768.58 went towards estimated Patient Paid Amount

(Exhibit 5, p. 53.)¹

The letter goes on to state that a later check, dated March 28, 2022, for "\$1,883.95 was applied towards estimated Patient Paid Amount." In her record open response, the appellant's representative states she had informed the applicant's family that he would owe \$1,766.75 per

¹ Two privately paid days equals \$875.16, as this letter correctly calculates once. It is unclear where the "\$1,312.74" number comes from, but the total payment for four days should be \$1,750.32. Together with \$172.42 to close out January 29, the amount applied to private payment is only \$1,944.74. The remainder applied toward "estimate" PPA should therefore be \$2,206.16.

month as a PPA, but that they only paid for February and March and never paid again.² On February 3, 2022, the appellant's main bank account held \$20,233.05, but his income was not deposited until the 9th. The appellant's representative felt that MassHealth was unfairly holding responsible pre-payment of an estimated PPA against the appellant, where MassHealth did not calculate the PPA until June 2023 (when the approval notice was sent out), and the final PPA was actually much less.³

MassHealth's representative responded that they could not accept alleged medical bills because there was no evidence of dates of services, type of care provided, and when it was paid. MassHealth also did not accept the updated private pay letter, arguing that any payments made after the benefits request date should be treated as being made out of income and should be attributed to PPA. MassHealth repeated their argument that there is no such thing as "anticipated" PPA from the agency's perspective. The PPA does not exist until it is set by MassHealth in the approval notice. MassHealth did recalculate the benefits-start date, using the actual assets in the appellant's primary checking account on January 30, 2022. His income, EIP, and funeral expenses were deducted, resulting in \$10,619 in excess assets. This resulted in 25 days of ineligibility, and a benefits-start date of February 24, 2022.

Findings of Fact

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

1. The decedent was admitted to the nursing facility in the [REDACTED] An application for long-term-care benefits was submitted on his behalf in [REDACTED]. (Testimony by MassHealth's representative; Exhibit 5, pp. 34, 53.)
2. On June 13, 2023, the nursing facility informed MassHealth that the appellant paid \$13,127.40 to cover the cost of the decedent's care through part of January 29, 2022. Coverage was requested as of January 30, 2023. (Exhibit 5, p. 34.)
3. On June 20, 2023, MassHealth approved this application as of March 3, 2022. (Exhibit 1.)
4. This start date was premised upon excess assets of \$13,819.05, as calculated by the MassHealth worker who approved the application. (Exhibit 5, p. 39.)

² The only document in the administrative record discussing an estimated patient-paid amount credit is this September 12 private-pay letter. The figure in the private pay letter reflects two amounts applied to estimated PPA, neither of which is the \$1,766.75 amount.

³ This matter was not thoroughly discussed at the hearing, but the appellant was allowed a home-maintenance deduction in addition to the more typical deductions for a personal-needs allowance and health insurance costs. It is ultimately irrelevant.

5. On January 30, 2022, the appellant's primary checking account held \$22,913. The appellant's income had been deposited on January 12, 2022. On February 2, 2022, the balance was \$20,233.05, but his income was not deposited until February 9. (Exhibit 5, p. 28, 31.)
6. The decedent received monthly income from Social Security in the amount of \$2,164. He also received \$3,200 in EIP during the Covid-19 Public Health Emergency. (Testimony by MassHealth and appellant's representatives.)
7. On February 10, 2022, the appellant paid \$2,580 for a burial contract, and on June 4, 2023, the appellant paid \$2,350 for a cemetery monument. (Testimony by MassHealth's representatives; see Exhibit 5.)
8. At all relevant times, the nursing facility charged private individuals \$437 per day for care. (Exhibit 5, pp. 34, 53.)
9. On September 12, 2023, the nursing facility submitted an updated letter, indicating that the appellant paid \$4,128.90 on February 28, 2022. This payment included the remainder balance owed for January 29, 2022, \$172.42, the last two days of January, and the first two days of February 2022, for a total private payment of \$1,922.74. The remaining balance, \$2,206.16, was applied to "estimated Patient Paid Amount." (Exhibit 5, p. 53.)
10. A third check from March 28, 2022 for \$1,883.95 was also "applied towards estimated Patient Paid Amount." (Exhibit 5, p. 53.)
11. The appellant's representative calculated the excess asset amount to be \$3,329.97. Their calculation started from the original worker's \$13,819.05 excess asset number, deducted \$3,200 in EIP, "\$2,880" contributed into the bank account by the applicant's partner, \$2,048.76 in purported medical expenses, and \$2,360.32 in additional private payments for the days of January 29 through February 2, 2022. The resulting \$3,329.97 in remaining excess assets only result in eight days of ineligibility. (Exhibit 4, p. 5; Exhibit 5, p. 40-52.)
12. The bank records reflect a deposit slip on January 6, 2022, for \$2,580, and the appellant's representative has handwritten "Cash from [partner]" on the bank record. This amount corresponds to a check to the bank dated January 6, 2022, that is "for [the decedent." (Exhibit 5, pp. 29, 47.)
13. The evidence regarding medical expenses includes a bank statement with several payments from May 2022 circled and a google search printed out identifying some of the payees as medical service providers. A check is also written out to a medical provider for \$1,170. (Exhibit 5, pp. 49-52)

14. MassHealth recalculated the appellant's excess assets during the record open period. This calculation used the bank balance on January 30, deducted the decedent's income, EIP, funeral expenses, and MassHealth asset limit to arrive at an excess asset figure of \$10,619.00. This equated to 24.37 days at the private pay rate. Running from January 30, MassHealth offered to approve benefits as of February 24, 2022. (Exhibit 4, p. 1-2.)

Analysis and Conclusions of Law

An individual applying for MassHealth long-term-care benefits must have countable assets below \$2,000. (130 CMR 520.003(A).) If an otherwise eligible applicant's assets exceed the limit for MassHealth Standard, they may become eligible "as of the date the applicant reduces his or her excess assets to the allowable asset limit without violating the transfer of resource provisions for nursing-facility residents at 130 CMR 520.019;" or "as of the date, described in 130 CMR 520.004(C), the applicant incurs medical bills that equal the amount of the excess assets and reduces the assets to the allowable asset limit within 30 days after the date of the notification of excess assets." (130 CMR 520.004(A)(1).)

(C) Date of Eligibility. The date of eligibility for otherwise eligible individuals described at 130 CMR 520.004(A)(1)(b) is **the date that his or her incurred allowable medical expenses equaled or exceeded the amount of his or her excess assets**.

(1) If after eligibility has been established, an individual submits an allowable bill with a medical service date **that precedes the date** established under 130 CMR 520.004(C), the MassHealth agency readjusts the date of eligibility.

(2) In no event will the first day of eligibility be earlier than the first day of the third month before the date of the application, if permitted by the coverage type.

(130 CMR 520.004(A), (C) (emphasis added).) This manner of reducing assets is referred to as a "Haley calculation." (See Haley v. Comm'r of Pub. Welfare, 394 Mass. 466 (1985).)

Fair hearings exist to give an appellant the opportunity to present evidence regarding why they believe MassHealth's decision was in error. (See 130 CMR 610.061.) A hearing officer must facilitate the orderly presentation of evidence at the hearing, can consider evidence's effect on a member's eligibility as of the date it existed, and afford the parties the opportunity to respond to evidence first presented at a hearing. (See 130 CMR 610.065; 130 CMR 610.071.) An applicant for MassHealth benefits has the burden to prove his or her eligibility. (130 CMR 515.001, 520.004; and G.L. ch. 118E, § 20.)

The insurmountable legal hurdle for the appellant is that medical expenses are not all treated equally in determining eligibility for long-term-care coverage. The asset reduction rules clearly

create a timeline for how existing assets should be treated. The starting point of this timeline is the “first day of the third month before the date of the application,” and end point of this timeline is the day on which the applicant reduces their assets below \$2,000. (130 CMR 520.004(C).) This endpoint, however, can be brought backward in time to “the date that his or her incurred allowable medical expenses equaled or exceeded the amount of his or her excess assets.” (130 CMR 520.004(C).)

There is insufficient information regarding the nature of the medical services paid for in May 2022, but the ultimate problem with them is that they occurred after the applicant’s other medical expenses had exceeded his excess assets. Any medical expenses the appellant may have paid after he became eligible for MassHealth should be billed to MassHealth. If they are payable services, the provider should reimburse the appellant, if not, they can result in a PPA adjustment under 130 CMR 520.026(E).⁴

This leads to the appellant’s second legal error. The PPA cannot impact the asset reduction calculation under 130 CMR 520.004. 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.” A “member” is “a person **determined by the MassHealth agency to be eligible** for MassHealth.” (130 CMR 515.001 (emphasis added).) Here, the appellant did not become eligible until their medical expenses exceeded their countable assets, and their assets are reduced below \$2,000. These medical expenses implicitly cannot include a PPA that is only incurred after eligibility. Moreover, PPA is meant to be paid out of a member’s income. It is determined by taking specific income deductions from the member’s income in a specific order. (See 130 CMR 520.026.)

I also find that the appellant has not shown, as an evidentiary matter, that the \$2,580 deposited into the jointly held bank account on January 6, 2022, was the co-owner’s money intended for use by the co-owner of that account. (See 130 CMR 520.005.)

In their record open response, MassHealth used the bank balance on January 30, 2022: \$22,913.00. No estimated PPA was added back in, and the income, EIP, and funeral expenses were removed. The result was \$12,619 in assets, or \$10,619 over the asset limit of \$2,000 set out in 130 CMR 520.003. Divided by the private pay rate of \$437.58, this resulted in a Haley calculation of 25 days, running from January 30, 2022.

The appellant is correct that the EIP should be deducted from the excess asset amount. Were the original excess asset amount reduced by \$3,200, the resulting \$10,619.05 is exactly the same as MassHealth presented in its calculations following the record open period (\$10,619). However, the remainder of the appellant’s assertions are full of typographical, factual, and legal errors. Because

⁴ Medical expenses are treated differently from funeral expenses under 130 CMR 520.008(F)(3), which allows funeral expenses to be treated as if “the arrangement [had] been in existence on the first day of the third month before the application.”

MassHealth agreed to this additional reduction, that aspect of the appeal is DISMISSED in part. The remainder of the appeal is DENIED in part.⁵

Order for MassHealth

Adjust the start date to the date MassHealth determined during the record open period, February 24, 2022, if not already done.

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.

Christopher Jones
Hearing Officer
Board of Hearings

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

⁵ Applying the September 12, 2022 private-pay letter results in a start date of February 27. On February 2, the appellant's bank account held \$20,233.05. Deducting the EIP, funeral expenses, and asset limit, the resulting figure is \$10,103.05. Income was not received for February by February 2. The number of private pay days is only 24 days, but it runs from February 3, 2022.