

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; denied in part	Appeal Number:	2309070
Decision Date:	12/12/2023	Hearing Date:	11/3/2023
Hearing Officer:	Cynthia Kopka		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Donavan Sorhaindo, Taunton



*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 in part; denied in part	Issue:	Long term care, patient paid amount
Decision Date:	12/12/2023	Hearing Date:	11/03/2023
MassHealth's Rep.:	Donovan Sorhaindo	Appellant's Rep.:	Pro se
Hearing Location:	Taunton (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

By notice dated August 22, 2023, MassHealth approved Appellant for long term care benefits beginning February 7, 2023 with a patient paid amount (PPA) of \$1,160.10. Exhibit 1. Appellant filed this appeal in a timely manner on September 29, 2023. Exhibit 2. 130 CMR 610.015(B). Challenging the scope of assistance is a valid basis for appeal. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth approved Appellant for long term care benefits beginning February 7, 2023 with a PPA of \$1,160.10.

Issue

The appeal issue is whether MassHealth was correct in calculating the PPA.

Summary of Evidence

The MassHealth representative appeared by phone and testified as follows. Appellant entered the nursing facility in January 2022 and was approved for short-term coverage until August 2022. MassHealth received another application on June 28, 2023 and issued a VC-1 notice on July 12, 2023. MassHealth received the information it requested and approved Appellant for long term care benefits beginning February 7, 2023 with a patient paid amount (PPA) of \$1,160.10. Exhibit 1. At the time, it appeared Appellant was also open on MassHealth Buy-In benefit and her Medicare premium was being covered by MassHealth. MassHealth calculated Appellant's PPA by deducting \$72.80 for Appellant's personal needs account (PNA) from Appellant's gross income of \$1,232.90 for a total PPA of \$1,160.10.

Appellant appeared by phone and provided documents in support, Exhibit 2. A summary follows. Appellant received a letter from Social Security stating that Massachusetts will no longer pay her Medicare Part B premium after July 2023. Exhibit 2. The letter states that Appellant will receive \$1,068.00 for July 2023 and each subsequent month, after \$164.90 is deducted for the Medicare Part B premium. *Id.* Appellant also disputed that she should have to pay over \$1,000 a month to the facility. Appellant has bills to pay when she gets out of the facility, including her rent. Appellant argued that MassHealth is not taking other necessary expenses into account. Appellant had been in the facility for over 2 years, though she was back and forth between the facility and the hospital when she had knee surgery in February 2023.

Findings of Fact

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

1. Appellant entered the nursing facility in January 2022 and was approved for short-term coverage until August 2022.
2. On June 28, 2023, MassHealth received another long term care application.
3. On August 22, 2023, MassHealth approved Appellant for long term care benefits beginning February 7, 2023 with a PPA of \$1,160.10. Exhibit 1.
4. MassHealth calculated Appellant's PPA by deducting \$72.80 for Appellant's personal needs account (PNA) from Appellant's gross income of \$1,232.90 for a total PPA of \$1,160.10.
5. Appellant filed this timely appeal on September 29, 2023. Exhibit 2.
6. On August 1, 2023, Appellant received a letter from Social Security stating that Massachusetts will no longer pay her Medicare Part B premium after July 2023. Exhibit 2.

7. The letter states that Appellant will receive \$1,068.00 for July 2023 and each subsequent month, after \$164.90 is deducted for the Medicare Part B premium. *Id.*

Analysis and Conclusions of Law

Appellant seeks relief from MassHealth's calculation of the PPA, arguing that Appellant is not able to pay her expenses if she owes the nursing facility \$1,160.10 each month. Appellant also argued that MassHealth erred in calculating her PPA, as it exceeded her Social Security check each month.

In calculating the PPA, the regulations allow certain deductions to be made from an institutionalized member's income. 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. 130 CMR 520.025. MassHealth allows a deduction for current health-insurance premiums made directly to the insurer. 130 CMR 520.026(E)(1).

The regulation regarding the home maintenance needs allowance is found at 130 CMR 520.026(D):

(D) Deductions for Maintenance of a Former Home.

- (1) 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.
- (2) The amount deducted is the 100 percent federal-poverty-level income standard for one person.

The evidence shows that Appellant is entitled to an adjustment of the PPA for health-care coverage beginning August 1, 2023, as Appellant began paying her Part B premium of \$164.90 at that time. To the extent Appellant's PPA should be adjusted for health-care coverage, this appeal is approved in part.

To the extent Appellant seeks other relief from the PPA, this appeal is denied in part. Appellant did not establish that she is entitled to a home maintenance needs allowance, as she has resided in the facility for more than six months. Additionally, there is no deduction for Appellant's other expenses, such as phone, set forth in the regulations.

Order for MassHealth

Adjust Appellant's PPA from \$1,160.10 to \$995.20 beginning August 1, 2023.

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.

Cynthia Kopka
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

General Counsel's Office –Sharon Boyle