

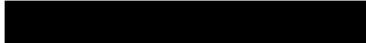
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in Part; Denied in Part	Appeal Number:	2310595
Decision Date:	01/23/2024	Hearing Date:	11/30/2023
Hearing Officer:	Rebecca Brochstein	Record Open Date:	01/11/2024

Appearances for Appellant:



Appearances for MassHealth:

Shelly-Ann Lewis, Charlestown MEC



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Approved in Part; Denied in Part	Issue:	Long-term care
Decision Date:	01/23/2024	Hearing Date:	11/30/2023
MassHealth's Rep.:	Shelly-Ann Lewis	Appellant's Rep.:	[REDACTED]
Hearing Location:	Charlestown MassHealth Enrollment Center (Telephonic)		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated October 12, 2023, MassHealth approved appellant's application for MassHealth long-term care benefits with an eligibility start date of April 15, 2023, and a monthly patient-paid amount of \$5,250.65 (Exhibit 1). Appellant filed a timely appeal on October 30, 2023 (Exhibit 1). A hearing was originally scheduled for November 30, 2023, but was rescheduled to December 20, 2023, at the appellant's request (Exhibit 4). Determination of an eligibility start date is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the appellant's application for MassHealth benefits with an eligibility start date of April 15, 2023, and a monthly patient-paid amount of \$5,250.65.

Issue

The issue on appeal is whether MassHealth correctly determined the long-term care eligibility start date and the patient-paid amount.

Summary of Evidence

A MassHealth eligibility caseworker appeared at the hearing telephonically and offered the following information through testimony and documentary evidence: The appellant was admitted to a nursing facility in [REDACTED]. On April 29, 2022, a MassHealth long-term care application was filed on his behalf, seeking coverage as of January 1, 2022. On June 13, 2022, MassHealth denied the application for failure to provide verifications, and the appellant filed an appeal. The appellant died on [REDACTED] leading to an extended administrative hold of the appeal. A hearing was eventually held on August 14, 2023; the record was held open after hearing and the appellant's representatives then withdrew the appeal, preserving the original application date. On October 12, 2023, the agency approved the application effective April 15, 2022, setting the patient-paid amount (PPA) at \$5,250.65 per month. On October 13, 2023, MassHealth sent a termination notice indicating that it would end the appellant's coverage as of the date of his death.

The MassHealth representative testified that as of the requested coverage date, January 1, 2022, the appellant had assets totaling \$48,015.01, consisting of the following:

Savings Bonds:	\$33,430.22
Checking Account:	\$3,509.49
Savings Account:	\$10,692.98
IOLTA Account:	\$382.32

From that total, MassHealth deducted funds tied to a funeral contract in the appellant's name (\$3,308) as well as the \$2,000 that the appellant is allowed to keep by regulation, arriving at an excess asset figure of \$42,707.01. MassHealth divided this figure by the nursing home's private rate of \$410 and determined that the excess assets would have paid for the appellant's nursing home stay for 104 days, through April 14, 2022. Accordingly, MassHealth approved the appellant for long-term care coverage as of April 15, 2022.

The MassHealth representative testified that the agency set the PPA by first determining the appellant's income. She stated that MassHealth determined the appellant's monthly income by taking the pension income he received for 2022 as reported on his Form 1099-R (\$45,617) and dividing by eight months (as he died on [REDACTED]), for a monthly figure of \$5,702.12. MassHealth then deducted a personal needs allowance (\$72.80) and the appellant's Blue Cross health insurance premium (\$378.67 per month, also derived from the 1099-R).¹ After these deductions, MassHealth set the resulting amount of \$5,250.65 as the PPA.

¹ The MassHealth representative testified that the appellant did not receive a monthly pension statement and that the parties agreed at a previous hearing to use the 1099-R from 2022 as verification of his income.

A representative from the nursing facility appeared on behalf of the appellant's estate. She testified that following his admission the appellant had Medicare coverage until [REDACTED] he was then "on private pay" from [REDACTED]. She stated that the appellant's savings bonds were inaccessible for a period because of the bureaucratic hurdles involved in redeeming them.² Once they were redeemed, she argued, these funds should have been applied toward a private payment for his stay between [REDACTED]. Accordingly, she argued, he should have been eligible for MassHealth coverage starting January 1, 2022.

The appellant's representative also argued that MassHealth calculated the patient-paid amount using an incorrect figure for the appellant's monthly income. She pointed out that MassHealth used an annual pension figure for 2022 (as well as an annual figure for health insurance premiums based on the same document) but erroneously divided it by eight months rather than twelve months. She stated that the pension company continued to make payments for several months after the appellant's death in [REDACTED] but that these funds were sent back to the pension company in March 2023. She argued that the PPA should have been \$3,476.18, which is the result when the \$45,617 annual pension figure is divided by twelve (\$3,801.42) and then the insurance (\$252.44) and PNA (72.80) are deducted.

In response, the MassHealth representative argued that the appellant cannot apply the excess assets to cover private payment before the three-month "retro" period preceding the April 2022 application. She stated that she would take another look at the PPA calculation and requested additional time to do so. The record was held open until January 11, 2024, for MassHealth to review the PPA determination and report back. On that date, the MassHealth representative reported that she had reviewed the case "and corrected the following":

PPA from \$5,250.65 to \$4,073.07 monthly.

Total Pension for the year	\$45,617
\$3,476.81 (monthly pension which was returned to the Federal Government multiplied by 3)	\$10,430.43
Total BCBS for the year: \$3,029.38 divided by 12 months	\$252.45 monthly

$\$45,617 - \$10,430.43 = \$35,186.57$ divided by 8 months = \$4,398.32 monthly gross Pension

² The appellant's hearing packet includes an email from the appellant's personal representative (who was involved in the bond redemption) describing the process and the reasons for the delay, which were in summary "due to the redemption request (1) being made under [power of attorney]; and (2) multiple attempts for a Medallion Signature from the financial institution that was acceptable to Treasury Retail Services." See Exhibit 7.

Minus \$72.80 (PNA)
Minus BCBS \$252.45
= \$4,073.07 monthly PPA.

I am unable to minus the \$33,430.22 (cashed out bonds) because it was paid towards bills outside the retro period [based on 130 CMR 520.004(B) and (C)].

See Exhibit 9.

The appellant's representative responded that she is "not in agreement with the PPA it should be deducted by 4 months not 3 months. The 4th payment was rejected but was still put on the 1099. See prior years. I also do not agree that the facility should not be paid for private room and board with the sale of the bonds" [sic]. See Exhibit 9.

Findings of Fact

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

1. The appellant was admitted to a nursing facility in [REDACTED]
2. On April 29, 2022, a MassHealth long-term care application was filed on his behalf, seeking coverage as of January 1, 2022.
3. On June 13, 2022, MassHealth denied the application for failure to provide all requested verifications. The appellant filed a timely appeal.
4. The appellant died on [REDACTED].
5. The appeal on the verification denial was subsequently resolved, preserving the original application date.
6. On October 12, 2023, MassHealth approved the long-term care application effective April 15, 2022, with a patient-paid amount of \$5,250.65 per month.
 - a. The appellant had excess assets of \$42,707.01 as of the requested start date of January 1, 2022. MassHealth divided the excess figure by the nursing home's private rate of \$410 and determined these assets would have paid for the nursing home stay for 104 days, through April 14, 2022.
 - b. MassHealth calculated the PPA using a monthly income figure of \$5,702.12 and deducting the personal needs allowance (\$72.80) and private health insurance premium (which it calculated to be \$378.67).

7. On October 13, 2023, MassHealth sent a termination notice indicating the coverage would end as of the date of the appellant's death.
8. On October 30, 2023, the appellant's personal representative filed a timely appeal of the approval notice, challenging the start date and the PPA.
9. After hearing on December 20, 2023, the record was held open for MassHealth to review its calculation of the patient-paid amount. It revised its determination of the appellant's monthly income to \$4,398.32, deducted \$72.80 for the PNA and \$242.45 for the health insurance, for an updated PPA of \$4,073.07.
10. The annual income from the appellant's pension in 2022 was \$45,617, or \$3,801.42 per month. The annual cost of his private health insurance was \$3,029.38, or \$252.45 per month.

Analysis and Conclusions of Law

Under 130 CMR 520.004(A)(1), an applicant whose countable assets exceed the asset limit of MassHealth Standard, Family Assistance, or Limited may be eligible for MassHealth (a) 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(F); or (b) 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. Paragraph (B) of the same regulation provides as follows:

- (B) Evaluating Medical Bills. The MassHealth agency does not pay that portion of the medical bills equal to the amount of excess assets. Bills used to establish eligibility
- (1) cannot be incurred before the first day of the third month prior to the date of application as described at 130 CMR 516.002: *Date of Application*; and
 - (2) must not be the same bills or the same portions of the bills that are used to meet a deductible based on income.

In this case, MassHealth calculated the appellant's long-term care coverage start date based on his excess assets as of January 1, 2022, the requested start date. In accordance with 130 CMR 520.004(A), MassHealth determined that the excess assets would have paid for 104 days of nursing home care and approved his coverage to begin on April 15, 2022. The appellant argues that the savings bonds that made up the bulk of the excess assets, once redeemed, should have been applied to the appellant's expenses for the period between September and December 2021. However, as MassHealth points out, this period preceded the three-month "retro" period described at 130 CMR 520.004(B)(1), as it was "before the first day of the third month

prior to the date of application.” With an April 2022 application, that “first day” was January 1, 2022. MassHealth correctly determined that these assets could not be offset by his nursing facility expenses incurred before that date.³

The appellant also challenges MassHealth’s calculation of the patient-paid amount, both as originally determined and as revised during the record-open period. MassHealth’s most updated calculation set the PPA at \$4,073.07. It arrived at this figure as follows:

\$45,617.00	Total pension income the appellant (or his estate) received in 2022
<u>-10,430.43</u>	Three months of 2022 pension payments later returned
\$35,186.57	

$\$35,186.57 \div 8$ (months the appellant was living in 2022) = \$4,398.32

\$4,398.32	
252.45	Private health insurance premium
<u>- 72.80</u>	Personal needs allowance (PNA)
\$4,073.07	Patient-paid amount (PPA)

The appellant’s representative contends that MassHealth’s revised calculation is still inaccurate, as it erroneously assumes that only three months of payments, rather than four, were eventually returned after the appellant’s death. However, the income calculation can be articulated more simply: The record indicates the appellant received twelve months of pension payments in 2022, for a total of \$45,617. Simply dividing the total by twelve provides the monthly income figure of \$3,801.42 (regardless of how many months’ worth of payments were later returned due to the appellant’s death). The PNA (\$72.80) and the health insurance premium (\$252.45) are then deducted from the monthly income, resulting in a PPA of \$3,476.17.⁴ See 130 CMR 520.026. The appellant is correct that MassHealth’s calculation was erroneous.

This appeal is denied as to the long-term care start date and approved as to the calculation of the patient-paid amount.

³ The appellant suggested at hearing that the bonds were inaccessible for the time it took to redeem them, pointing to the logistical hurdles involved in the process. Under 130 CMR 520.006(A), an inaccessible asset is an asset to which the applicant or member has no legal access. The MassHealth agency does not count an inaccessible asset when determining eligibility for MassHealth for the period that it is inaccessible or is deemed to be inaccessible under 130 CMR 520.006. Here, the appellant has not persuasively argued that the appellant had no legal access to the bonds during the redemption process. As such, the record does not indicate that they were inaccessible under the terms of 130 CMR 520.006.

⁴ The appellant’s representative advocated at hearing for this method of calculating the PPA.

Order for MassHealth

Revise the monthly patient-paid amount to \$3,476.17 retroactive to the long-term care coverage start date.

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.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Charlestown MEC

