

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2312237
Decision Date:	1/16/2024	Hearing Date:	12/28/2023
Hearing Officer:	Sara E. McGrath		

Appearances for Appellant:




Appearances for MassHealth:

Mary Vieira, Taunton 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:	Denied	Issue:	Patient Paid Amount; Countable Income
Decision Date:	1/16/2024	Hearing Date:	12/28/2023
MassHealth Rep.:	Mary Vieira Taunton MEC	Appellant Rep:	
Hearing Location:	Board of Hearings (Remote)		

Authority

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

Jurisdiction

By a notice dated October 27, 2023, MassHealth notified the appellant that he is eligible for MassHealth Standard benefits beginning on November 17, 2022, with a patient paid amount of \$2,581.83 (Exhibit 1). The appellant filed a timely appeal on November 29, 2023 (130 CMR 610.015; Exhibit 2). The calculation of a patient paid amount is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified the appellant that he is eligible for MassHealth Standard benefits beginning on November 17, 2022, with a patient paid amount of \$2,581.83.

Issue

The issue is whether MassHealth correctly determined appellant's patient paid amount effective November 17, 2022.

Summary of Evidence

The MassHealth representative appeared at the hearing by telephone and testified as follows: The appellant resides in a skilled nursing facility and on January 5, 2023, submitted a MassHealth long-term care application. On October 27, 2023, MassHealth notified the appellant that he is eligible for MassHealth Standard benefits beginning on November 17, 2022, with a patient paid amount of \$2,581.83. The MassHealth representative testified that the appellant's monthly patient paid amount was calculated as follows: \$2,832 (Social Security benefit less Medicare premium) - \$72.80 (personal needs allowance) - \$177.37 (other health insurance premium) = \$2,581.83 (Exhibit 1).

The appellant was represented at the hearing by an attorney and a paralegal, both of whom appeared at the hearing by telephone. They dispute MassHealth's determination of the appellant's countable income, which affects the patient paid amount, and argue that MassHealth should allow two additional deductions. They argue that there is a monthly deduction from the appellant's Social Security benefit (in addition to the Medicare premium deduction), and MassHealth should not include this amount as part of his countable income. Specifically, the U.S. Department of the Treasury's Bureau of Fiscal Services garnishes \$464.85 each month to settle a "non-tax federal debt" (Exhibit 1, p. 24). The appellant's representatives explained that they have endeavored to find out the source of this debt, but despite writing to and speaking with representatives from the Bureau of Fiscal Services, they have not been able to find out any specifics about this debt. Additionally, after the appellant's Social Security benefit is deposited in his bank account each month, \$335 is debited from his bank account (one debit in the amount of \$93.11 and another in the amount of \$241.89); each has the following notation next to it: "USATAXPYMT IRS" (Exhibit 1, p. 26). The appellant's representatives spoke to the appellant's family (he has dementia), and the family does not know the source of any tax debt. They explained that the appellant once served as a board member for a non-profit organization for which he may have received some type of stipend; the debt could be related to that. The documentation related to the debt specifies that the balance is \$21,692.98 (Exhibit 1, p. 29). They argue that this amount should not be included in the appellant's countable income either.

The appellant's representatives cite to 130 CMR 520.009 as support for their argument that these two debts should not be included as part of the appellant's countable income. They specifically reference 130 CMR 520.009(A)(4), which describes income to which the applicant would be entitled when failure to receive such income results from the action or inaction of the applicant or person acting on his behalf. They point to the provision that states that in determining whether failure to receive such income is reasonably considered to result from such action or inaction, the MassHealth agency will consider the specific circumstances involved. They argue that the hearing officer should consider that despite the best efforts of the appellant's family and his attorney, these debts will not go away and are placing the appellant at risk of discharge

from the skilled nursing facility where he resides.¹

The MassHealth responded and stated that the applicable regulations mandate that MassHealth count an applicant's gross Social Security amount (less the Medicare premium), and that there is no regulatory provision that would allow MassHealth to deduct a debt from unearned income.

Findings of Fact

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

1. The appellant resides in a skilled nursing facility.
2. On January 5, 2023, submitted a MassHealth long-term care application.
3. On October 27, 2023, MassHealth notified the appellant that he is eligible for MassHealth Standard benefits beginning on November 17, 2022, with a patient paid amount of \$2,581.83.
4. The appellant's monthly patient paid amount was calculated as follows: \$2,832 (Social Security benefit less Medicare premium) - \$72.80 (personal needs allowance) - \$177.37 (other health insurance premium) = \$2,581.83.
5. The U.S Department of the Treasury's Bureau of Fiscal Services garnishes \$464.85 each month from the appellant's Social Security benefit to settle a "non-tax federal debt;" the source of and balance due on this debt is unknown.
6. In addition, \$335 is debited from his bank account each month (one debit in the amount of \$93.11 and another in the amount of \$241.89); each has the following notation next to it: "USATAXPYMT IRS."
7. The source of the IRS debt is unknown; the balance is approximately \$21,692.
8. The appellant timely appealed MassHealth's October 27 determination.

¹ The appellant's representatives explained that he owes the skilled nursing facility over \$16,000.

Analysis and Conclusions of Law

The issue in this case is whether MassHealth correctly calculated the appellant's countable income. MassHealth maintains that it properly included his gross Social Security benefit amount when calculating the appellant's countable income. The appellant disputes this determination and argues that MassHealth should not have counted funds that the federal government garnishes from the appellant each month. Each month, the federal government garnishes \$464.85 from his Social Security benefit to satisfy a non-tax debt, as well as \$335 from his bank account to settle a tax debt. The appellant argues that these amounts are not countable to the appellant because he does not receive these funds and despite best efforts, has been unable to have the debts waived.

130 CMR 520.009(A) describes countable income as follows:

Overview.

(1) An individual's and the spouse's gross earned and unearned income, less certain business expenses and standard income deductions, is referred to as the countable-income amount. In determining gross monthly income, the MassHealth agency multiplies the average weekly income by 4.333, unless the income is monthly.

(2) For community residents, the countable-income amount is compared to the applicable income standard to determine the individual's financial eligibility.

(3) 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.

(4) The types of income that are considered in the determination of eligibility are described in 130 CMR 520.009, 520.018, 520.019, and 130 CMR 520.021 through 520.024. These include income to which the applicant, member, or spouse would be entitled whether or not actually received when failure to receive such income results from the action or inaction of the applicant, member, spouse, or person acting on his or her behalf. In determining whether or not failure to receive such income is reasonably considered to result from such action or inaction, the MassHealth agency will consider the specific circumstances involved.

MassHealth includes Social Security benefits as a type of unearned income (130 CMR 520.009(D)).

The appellant relies on section (4) of the above regulation in support of his argument that MassHealth should deduct his monthly federal debt payments from his otherwise countable income. He argues that the specific circumstances involved – that he has tried his best but is unable to determine the source of the debts and/or secure some type of debt waiver, thus jeopardizing his housing – gives the hearing officer discretion to exclude this income. This argument is not persuasive. The evidence here suggests that the appellant's failure to receive

the income in question is directly related to some action (or inaction) on this part, likely including a failure to pay some amount of income tax, as well as some other amount owed to the federal government for other reasons (Exhibit 1). These specific circumstances support MassHealth's determination that this income is countable under section (4) of this regulation.

The appellant has not demonstrated that MassHealth erred in its calculation of his countable income, or of the resulting patient paid amount.

This appeal is therefore 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.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc: Taunton MassHealth Enrollment Center
