

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in Part; Denied in Part	Appeal Number:	2401577
Decision Date:	3/4/2024	Hearing Date:	02/29/2024
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:



Appearance for MassHealth:

Donovan Sorhaindo



*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:	Patient Paid Amount
Decision Date:	3/4/2024	Hearing Date:	02/29/2024
MassHealth's Rep.:	Donovan Sorhaindo	Appellant's Rep.:	[REDACTED]
Hearing Location:	All Parties Appeared by Telephone		

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 December 7, 2023, MassHealth determined the appellant eligible for payment of nursing facility services as of May 1, 2023 with a monthly patient paid amount (PPA) of \$1,686.30. (130 CMR 515.000; Exhibit 1C). At hearing, the parties agreed that this issue has been resolved as MassHealth corrected this action and calculated a patient paid amount of \$0 as of May 1, 2023. The appellant's representative agreed that issue regarding the calculation of a patient paid amount from May 2023 through November 2023 was no longer in dispute as the change made by MassHealth was in favor of the appellant. This part of the appeal is dismissed as the parties reached an agreement in favor of the appellant. (130 CMR 610.035; 130 CMR 610.051).

Through a notice dated December 15, 2023, MassHealth determined that the appellant's monthly patient paid amount will change from \$0.00 to \$1,686.30 as of December 1, 2023. (130 CMR 520.000; Exhibit 1A). Through a notice dated January 3, 2023, MassHealth determined that the appellant's monthly patient amount will change from \$1,686.30 to \$1,947.40 as of January 1, 2024. (130 CMR 520.000; Exhibit 1B). The appellant appealed both decisions in a timely manner on January 31, 2024. (130 CMR 610.015; Exhibit 2).

An agency determination regarding the scope and amount of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant's monthly patient paid amount will change from \$0.00 to \$1,686.30 as of December 1, 2023. (130 CMR 520.000). MassHealth determined that the appellant's monthly patient amount will change from \$1,686.30 to \$1,947.40 as of January 1, 2024. (130 CMR 520.000).

Issue

Whether MassHealth was correct in calculating monthly patient paid amounts as of December 1, 2023 and January 2024.

Summary of Evidence

All parties appeared by telephone. Documents submitted by the appellant were incorporated into the hearing record as Exhibit 4.

The appellant was admitted into a long-term care facility in the spring of [REDACTED] with the intent to return to the community. On August 30, 2023, MassHealth received information regarding the appellant's admission and a request for coverage for the stay in the nursing facility. On September 25, 2023, MassHealth issued a request for information. On December 7, 2023, the appellant was deemed eligible for nursing facility coverage with a patient paid amount (PPA) of \$0.00 from June 2023 through November 2023.

It was noted at hearing and listed in the notice on appeal that the agency can consider the following allowances in calculating a PPA: personal needs allowance (PNA); home maintenance needs allowance (HMNA); spousal maintenance needs allowance (SMNA); family maintenance needs allowance (FMNA) for qualified family members; health care coverage; guardianship fees and expenses; and incurred remedial and medical-care expenses. All allowances have specific regulatory requirements for the agency to consider in applying them in the calculation of a PPA.

During the initial 6-month period, the agency considered a deduction for a home maintenance needs allowance (HMNA) as it appeared that the appellant was likely to return home within 6 months after the month of admission. At the end of the 6-month period, MassHealth terminated this deduction as the regulations require the agency to take such action regardless of the prognosis to return home at that time.

The appellant's representative argued that in June 2023 and September 2023, the appellant was deemed clinically eligible for payment of nursing facility services on a short-term basis. (Testimony; Exhibit 4). The June 2023 notice states that the appellant is clinically eligible until September 25, 2023. (Testimony; Exhibit 4). The September 2023 notice states that the appellant is clinically eligible until December 25, 2023. (Testimony; Exhibit 4). The appellant's

representative argued that since the appellant was deemed clinically eligible for short-term care, MassHealth should consider the appellant income-eligible for short-term care at least through December 2023 and include a deduction for a HMNA. (Testimony; Exhibit 4).

As of December 1, 2023, MassHealth determined that the appellant continued to be eligible for coverage with a PPA \$1,686.30. The calculation of the December 2023 PPA was based upon monthly income from the Social Security Administration in the amount of \$1,759.10. MassHealth determined that, as of December 1, 2023, the only deduction that the appellant qualified for was a PNA. In deducting a PNA of \$72.80 from the appellant's income of \$1,759.10, the agency calculated a PPA of \$1,686.30 [$\$1,759.10 - \$72.80 = \$1,686.30$]. (Testimony; Exhibit 1A). In January 2024, the appellant's income from the Social Security Administration increased to \$2,020.20 each month. This change increased the appellant's PPA to \$1,947.40 [$\$2,020.20 - \$72.80 = \$1,947.40$]. (Testimony; Exhibit 1B).

The appellant's representative testified that the appellant still intends to return to the community. The appellant has a home in the community with a mortgage. The appellant's adult children live in the home and the appellant is the primary source of income for the household. The appellant's spouse has been deceased for approximately 20 years. The appellant's daughter has been deemed disabled by the Social Security Administration. The appellant's representative testified that although the appellant's son has not been deemed disabled by the Social Security Administration or other government agencies, he requires assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs). The appellant's representative testified that the appellant continues to manage all financial and personal decisions for her disabled adult children while she is in the facility as they are completely dependent on her. In the past, the appellant has not claimed either adult child as a dependent on her tax return. Upon speaking to an accountant, the appellant will likely claim at least her disabled daughter as a dependent on her 2023 tax return. The appellant's representative argued that MassHealth should consider a family maintenance needs allowance in calculating the PPA as the appellant's children are financially and personally dependent on the appellant and will likely end up homeless if the appellant is unable to continue to pay for their mortgage and household expenses.

In December 2023, the appellant applied for the Moving Forward Plan Home- and Community-Based Waiver Program (MFP-Waiver). During the waiver application and nursing-facility discharge process, the appellant's home was deemed an inappropriate location for discharge as it was not safe. The appellant's representative testified that someone recommended that the appellant sell the home and move to a location that was handicap accessible to deem a discharge safe and appropriate. The appellant's representative testified that there was still a mortgage on the home and the building itself was deemed uninhabitable making any sale of the property a financial loss for the appellant. The appellant's representative noted that until the appellant can find a safe and appropriate discharge location and plan, she is likely to remain in the facility and requiring her to have a patient paid amount would likely result in her having to sell the property and lose housing for her children as they are unable to make mortgage

payments and maintain the home without her assistance. The appellant's representative argued that it was not fair or appropriate for MassHealth to not consider such circumstances in calculating a patient paid amount.

Findings of Fact

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

1. The appellant was admitted into a long-term care facility in the spring of [REDACTED] with the intent to return to the community.
2. On August 30, 2023, MassHealth received information regarding the appellant's admission and a request for coverage for the stay in the nursing facility.
3. On September 25, 2023, MassHealth issued a request for information.
4. On December 7, 2023, the appellant was deemed financially eligible for nursing facility coverage with a patient paid amount (PPA) of \$0.00 from June 2023 through November 2023.
5. The appellant was deemed clinically eligible for MassHealth payment for nursing facility services on a short-term basis through December 25, 2023.
6. During the initial 6-month period of admission, the agency considered a deduction for a home maintenance needs allowance (HMNA) as it appeared that the appellant was likely to return home within 6 months after the month of admission.
7. At the end of the 6-month period, MassHealth terminated this deduction.
8. As of December 1, 2023, MassHealth determined that the appellant continued to be eligible for coverage with a PPA.
9. The calculation of the December 2023 PPA was based upon monthly income from the Social Security Administration in the amount of \$1,759.10.
10. MassHealth determined that, as of December 1, 2023, the only deduction that the appellant qualified for was a PNA of \$72.80.
11. Deducting a PNA of \$72.80 from the appellant's income of \$1,759.10, resulted in a PPA of \$1,686.30 as of December 1, 2023.
12. In January 2024, the appellant's income from the Social Security Administration increased to \$2,020.20 each month.

13. This change in income increased the appellant's PPA to \$1,947.40.
14. The appellant still intends to return to the community.
15. The appellant was deemed clinically eligible for short-term care.
16. The appellant has a home in the community with a mortgage.
17. The appellant's adult children live in the home.
18. The appellant's spouse is deceased.
19. The appellant's daughter has been deemed disabled by the Social Security Administration.
20. The appellant's son requires assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs).
21. The appellant continues to manage all financial and personal decisions for her disabled adult children while she is in the facility.
22. The appellant has not claimed either adult child as a dependent on her tax return.
23. In December 2023, the appellant applied for the Moving Forward Plan Home- and Community- Based Waiver Program (MFP-Waiver).
24. The appellant's home was deemed an inappropriate location for discharge as it was not safe.

Analysis and Conclusions of Law

MassHealth administers and is responsible for the delivery of health-care services to MassHealth members. (130 CMR 515.002). The regulations governing MassHealth at 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for noninstitutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by M.G.L. c. 118E, and certain Medicare beneficiaries. (130 CMR 515.002). The appellant in this case is an institutionalized person. Therefore, the regulations at 130 CMR 515.000 through 522.000 apply to this case. (130 CMR 515.002).

The issue on appeal is MassHealth's calculation of the appellant's patient-paid amount (PPA). For institutionalized individuals, specific deductions described in 130 CMR 520.026 are applied

against the individual's countable income amount to determine the PPA. (130 CMR 520.009(A)(3)). Countable income is defined as an individual's and the spouse's gross earned and unearned income less certain business expenses and standard income deductions. (130 CMR 520.009(A)(1)). The types of income that are considered in the determination of eligibility are described in 130 CMR 520.009, 520.018, 520.019, and 520.021 through 520.024. (130 CMR 520.009(A)(4)).

In this case, the appellant's countable income includes benefits received from the Social Security Administration. (130 CMR 520.009). In determining the monthly patient-paid amount, general 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. (130 CMR 520.026). MassHealth correctly deducted \$72.80 for the appellant's personal-needs allowance (PNA). (130 CMR 520.026(A)).

MassHealth allows a deduction from the income of a long-term-care resident to provide for the maintenance needs of the following family members if they live with the community spouse:

- (a) a minor child — a child younger than 21 years old of either member of the couple;
- (b) a dependent child — a child 21 years of age and older who is claimed as a dependent by either spouse for income-tax purposes under the Internal Revenue Code;
- (c) a dependent parent — a parent of either spouse who lives with the community spouse and who is claimed as a dependent by either spouse for income-tax purposes under the Internal Revenue Code; and
- (d) a dependent sibling — a brother or sister of either spouse (including a half-brother or half-sister) who lives with the community spouse and who is claimed as a dependent by either spouse for income-tax purposes under the Internal Revenue Code. (130 CMR 520.026(C)).

The appellant does not have any family members who meet these requirements. One of the primary reasons is that the appellant does not have a spouse in the community. (130 CMR 520.026(C)). As noted above, the appellant's spouse passed away approximately 20 years ago. It is not clear why the agency would include such a requirement in making this deduction when a family member is likely to be even more dependent on the income of the institutionalized individual when there is no spouse in the community. However, such a requirement exists in the regulations making the agency action of applying this requirement correct. Even without the regulatory requirement of a family member living with the community spouse, the appellant would not be eligible for this deduction as she does not claim either child as a dependent for income-tax purposes under the Internal Revenue Code. (130 CMR 520.026(C)). Therefore, MassHealth was correct in not including a deduction of a family maintenance needs allowance in calculating the patient paid amount for December 2023 and beginning January 2024.

MassHealth correctly included a deduction for the maintenance of the appellant's former home in the first six months of admission due to the written certification from a competent medical authority that the appellant is a single individual, with no eligible dependents in the home and likely to return home within six months after the month of admission. (130 CMR 520.026(D)). 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. (130 CMR 520.026(D)(1)). Therefore, although the appellant continued to have a competent medical authority certify in writing that she was likely to return home within 6 months after the month of admission, the regulations do not allow the agency to make such a deduction after the sixth month of admission. Therefore, MassHealth was also correct in not utilizing a deduction for the maintenance of the appellant's former home in calculating patient paid amounts for December 2023 and beginning January 2024.

As MassHealth correctly followed the regulatory requirements for calculating a patient paid amount for December 2023 and beginning January 2024, this part of the appeal is denied.

This appeal is dismissed in part and denied in part.

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.

Susan Burgess-Cox
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

[REDACTED]