

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2402530
Decision Date:	6/27/2024	Hearing Date:	04/24/2024
Hearing Officer:	Christopher Jones		

Appearances for Appellant:




Appearance for MassHealth:

Jennifer Carroll – Taunton MEC



*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:	Denied	Issue:	Long Term Care; Patient Paid Amount; Family Maintenance Needs Allowance
Decision Date:	6/27/2024	Hearing Date:	04/24/2024
MassHealth's Rep.:	Jennifer Carroll	Appellant's Reps.:	
Hearing Location:	Telephonic	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 January 18, 2024, MassHealth increased the appellant's patient-paid amount from \$1,584.20 to \$1,637.20. (Exhibit 1; 130 CMR 520.025; 520.026.) The appellant filed this appeal in a timely manner on February 20, 2024. (Exhibit 1; 130 CMR 610.015(B).) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

This matter had originally been scheduled for April 1, 2024, but it was rescheduled at the appellant's request. (Exhibit 6.)

Action Taken by MassHealth

MassHealth updated the appellant's patient-paid amount. In doing so, MassHealth continued to deny the appellant's income from being diverted to the appellant's long-term partner or child.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.026(B)-(C), in

determining that the appellant's long-term partner and child are ineligible to receive any portion of the appellant's income as a deduction to his patient-paid amount.

Summary of Evidence

The appellant is under the age of [REDACTED] but he suffered a stroke early in [REDACTED]. He was admitted to a rehabilitation facility in the spring of [REDACTED] and applied for MassHealth benefits. MassHealth approved the appellant for nursing-facility coverage as of April 2023, but he was not assessed a patient-paid amount ("PPA") because he was coded as a short-term resident. This coverage converted to long-term-care coverage automatically on November 1, 2023, and MassHealth informed him that he owed the entirety of his income, less a personal-needs allowance of \$72.80 toward the cost of his care. The appealed notice was automatically generated when the appellant's Social Security benefits were increased based upon the annual cost of living adjustment. The appellant argues that his long-term partner and child should receive the spousal maintenance needs allowance and family maintenance needs allowance, to which they would be entitled if the appellant and his partner were married.

The appellant is now receiving Social Security Disability benefits in the amount of \$1,710 per month. In the community, the appellant resides with his long-time partner and child, and he had been the primary income earner in the family. The appellant and his partner testified that they have been living together for 10 years, consider each other as spouses, and are raising their child as a family. They had consciously chosen not to get married for a variety of reasons. In particular, her parents had gone through a divorce during an early part of her relationship with the appellant, and the experience made her view marriage in a less favorable light. She also noted the extraordinary expense of getting married. The appellant testified that he trusts his partner implicitly and has named her his health care proxy and durable power of attorney.

The appellant's partner is only able to work while their child is at school, as childcare would cost more than she would earn. At this time, she is only able to work 10-15 hours per week. The appellant anticipates returning to live with his partner and child as soon as he is able to leave the facility. Regardless of her views of marriage as an institution, she considers her relationship with the appellant just as deep and loving as any married couple's and argues that she and their child should receive the spousal-maintenance-needs allowance and the family-maintenance-needs allowance that they would receive if they were married.

The appellant's community rent is \$1,200 per month, not including utilities. The appellant's partner earns approximately \$500 per month in gross income, though this amount fluctuates based upon how much she is able to work.

The appellant's attorney submitted a brief arguing that "dissimilar treatment for married and unmarried persons who are similarly situated...violate[s] the Equal Protection Clause." (Quoting [REDACTED] 405 U.S. 438, 454–55, 92 S. Ct. 1029, 1039, 31 L. Ed. 2d 349 (1972).) The appellant further argues that the spirit and purpose of the Medicaid statute is to provide assistance

for the 'categorically needy.' [REDACTED] Commissioner of Division of Medical Assistance, 424 Mass.743, 746 (Mass. 1997).) Therefore, it is unconstitutional for MassHealth's regulations to limit spousal and family maintenance needs deduction to situations involving a "community spouse." The appellant concedes that Massachusetts regulations mirror the requirements set forth in the federal enacting legislation, 42 USC § 1396r-5(d), and that the Board of Hearings lacks jurisdiction to find state or federal regulation or laws unconstitutional.

Findings of Fact

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

- 1) The appellant is under the age of [REDACTED] (Exhibit 7.)
- 2) The appellant suffered a stroke in early [REDACTED] and has been institutionalized ever since. (Testimony by the appellant; Exhibit 9, p. 1.)
- 3) The appellant was approved for MassHealth long-term-care benefits as of November 1, 2023. MassHealth calculated a PPA allowing only the deduction of \$72.80 for his PNA. (Exhibit 1; Exhibit 8.)
- 4) Prior to his stroke, the appellant lived with his long-term partner and child. He was the primary source of income for the family. The appellant and his partner lived together the same as if they had been married. As of the hearing date, they were not married. (Testimony by the appellant and his partner.)
- 5) The appellant currently receives \$1,710 per month in gross Social Security Disability benefits. (Exhibit 1; testimony by the appellant.)

Analysis and Conclusions of Law

MassHealth counts 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). "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." (130 CMR 520.009(A)(3).) These deductions must be made "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. The specific regulatory provisions governing each relevant deduction are:

(A) Personal-Needs Allowance.

- (1) The MassHealth agency deducts \$72.80 for a long-term-care resident's personal-needs allowance (PNA).

...

(B) Spousal-maintenance-needs-deduction. If the **community spouse's** gross income is less than the amount he or she needs to live in the community (minimum-monthly-maintenance-needs allowance, MMMNA) as determined by the MassHealth agency, the MassHealth agency may deduct an amount from the institutionalized spouse's countable-income amount to meet this need. ...

(C) Deductions for Family-Maintenance Needs.

(1) The MassHealth agency 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 ■ years old of either member of the couple;

...

(2) The deduction for family-maintenance needs is one-third of the amount by which the federal standard maintenance allowance exceeds the monthly gross income of the family member. The federal standard maintenance allowance is \$1,822.

(130 CMR 520.026(A)-(C) (emphasis added).)

This language mirrors the limitations on deductions that are set out in the federal Medicaid statute, which limits "the term 'family member' [to] only include[] minor or dependent children, dependent parents, or dependent siblings of the institutionalized or community spouse **who are residing with the community spouse**." (42 U.S.C. §1396r-5(d)(1) (emphasis added).) Furthermore, MassHealth has long included payments under domestic relations orders as available income in calculating a PPA. (■ v. Comm'r of the Div. of Med. Asst., 424 Mass. 743 (1997) (applying older version of regulations to determine that child support payments are "available" income to an institutionalized applicant).) It must further be noted that ■ specifically addresses the appellant's constitutional, equal protection claims.

The equal protection clauses of the Fourteenth Amendment to the United States Constitution and art. 1 of the Massachusetts Declaration of Rights, as amended by art. 106 of the Amendments, "do not protect against burdens and disabilities as such but against their unequal imposition." Opinion of the Justices, 423 Mass. 1201, 1232 (1996). In enacting social welfare legislation, 'a government does not deny equal protection merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality.' ■ 429 U.S. 181, 185 (1976), quoting ■ 397 U.S. 471, 485 (1970).

■ at 755.)

The appellant's partner is not legally his spouse, and as such, the appellant is not entitled to a deduction from his PPA to support her or their child.¹ Based upon the plain regulatory language and caselaw, this appeal must be DENIED.

Because the appellant indicated their intention to challenge the legality of MassHealth's regulations, I note that a

hearing officer must not render a decision regarding the legality of federal or state law If the legality of such law or regulations is raised by the appellant, the hearing officer must render a decision based on the applicable law or regulation as interpreted by the MassHealth agency. Such decision must include a statement that the hearing officer cannot rule on the legality of such law or regulation and must be subject to judicial review in accordance with 130 CMR 610.092.

(130 CMR 610.082(C).)

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.

Christopher Jones
Hearing Officer

¹ The appellant's situation is even more sympathetic than [REDACTED] the applicant and spouse had divorced, and the PPA adjustment sought was agreed-to child-support payments subsequent to the ex-spouse's receiving the entirety of the marital assets. Here, the appellant's relationship with his partner remains intact, there is no division of resources, and they anticipate returning to their communal cohabitation.

Board of Hearings

cc: MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780

