

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2403161
Decision Date:	5/30/2024	Hearing Date:	04/05/2024
Hearing Officer:	Scott Bernard		

Appearance for Appellant:



Appearance for MassHealth:

Kelly Souza (Taunton MEC) *via* telephone



*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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Long Term Care/PPA Calculation/Guardianship Deduction
<b>Decision Date:</b>	5/30/2024	<b>Hearing Date:</b>	04/05/2024
<b>MassHealth's Rep.:</b>	Kelly Souza	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Taunton MassHealth Enrollment Center	<b>Aid Pending:</b>	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 February 7, 2024, MassHealth notified the appellant that his patient paid amount (PPA) would change from \$1,111.20 to \$1,011.20 on February 1, 2024 due to the application of a \$100 allowance for guardianship fees and expenses. (See 130 CMR 520.026 and Exhibit (Ex.) 1, pp. 3-4). The appellant, through his court appointed guardian, filed this appeal in a timely manner on March 1, 2024. (See 130 CMR 610.015(B) and Ex. 2). Any MassHealth action to suspend, reduce, terminate, or restrict a member's assistance is valid grounds for appeal. (See 130 CMR 610.032).

### Action Taken by MassHealth

MassHealth informed the appellant that his PPA would decrease by \$100 beginning on February 1, 2024 because of the implementation of a guardianship deduction.

### Issue

The appeal issue is whether MassHealth correctly determined the start date for the

implementation of the deduction.

## Summary of Evidence

At the hearing, MassHealth was represented by an eligibility worker from the Taunton MassHealth Enrollment Center (MEC) and the appellant was represented by his court appointed guardian. (See Ex. 1, pp. 4-6).

On February 7, 2024, MassHealth issued a Guardianship Expense Deduction Notice (deduction notice) approving the appellant's guardian's request to deduct his \$100 monthly guardianship fees from the appellant's PPA from February 1, 2024 through January 31, 2025. (Testimony; Ex. 1, pp. 8-9; Ex. 4, pp. 13-14). As a result, MassHealth issued a notice on the same date informing the appellant that his PPA would change from \$1,111.20 to \$1,011.20 on February 1, 2024 due to the application of a \$100 allowance for guardianship fees and expenses. (Testimony; Ex. 1, pp. 3-4; Ex. 4, pp. 4-5).

The MassHealth representative stated that the appellant's guardian is asking that MassHealth issue a revised deduction notice stating that the deduction would start on October 1, 2023 and extend through September 30, 2024. (Testimony; Ex. 1, p. 7). The MassHealth representative stated that while MassHealth is willing to ensure that the deduction is applied back to October 1, 2023, it was currently not possible to issue a revised deduction notice with a term that would run from October 1, 2023 through September 30, 2024. (Testimony). The computer system which issues those notices will not let MassHealth backdate the beginning of term to before the month in which the notice issues. (Testimony). This particular technical problem first cropped up during the Public Health Emergency (PHE), and has continued since that time. (Testimony).

The MassHealth representative indicated that a similar issue arose with the deduction notice sent to the appellant's guardian last year. (Testimony). On November 1, 2022, the appellant's guardian faxed MassHealth stating that the term of the deduction ended on September 30, 2022, and requested that MassHealth reinstitute the deduction from October 1, 2022 to September 30, 2023. (Ex. 4, pp. 8-10; Testimony). He also sent a MassHealth notice dated October 3, 2022, saying that the appellant's PPA was increasing by \$100 on October 1, and indicating the deduction was not applied. (Testimony; Ex. 4, pp. 9-10). On December 2, 2022, MassHealth issued a deduction notice approving the fee from December 1, 2022 through November 30, 2023. (Testimony; Ex. 4, pp. 11-12).

The MassHealth representative stated that despite the terms of the 2022 deduction notice, MassHealth applied the deduction back to October 1, 2022. (Testimony). Similarly, MassHealth issued a revised PPA notice on March 21, 2024 informing the appellant that it reduced his PPA by \$100 starting on November 1, 2023, and showing that the deduction had been applied from that date. (Testimony; Ex. 4, pp. 2-3). The MassHealth representative stated that despite the confusion caused by the inaccurate deduction notices, MassHealth would continue to correct them by ensuring the deduction continues to apply for any month prior to the beginning of the term laid

out in the deduction notice, as long as the appellant's guardian asks when reapplying for the deduction every year. (Testimony).

The appellant's guardian expressed frustration over receiving conflicting deduction notices. (Testimony). The appellant's guardian stated that the December 2, 2022 notice was not the one that MassHealth sent him in 2022. (Testimony). The appellant's guardian stated that he received one dated December 27, 2022, approving the deduction from October 1, 2022, to September 30, 2023. (Testimony). The appellant's guardian went on to emphasize the permanence of guardianship. (Testimony). The Probate and Family Court appointed the appellant's guardian in [REDACTED] (Testimony; Ex. 1, pp. 4-6). He lamented the repetitive nature of this annual process, considering it a waste of time. (Testimony). The guardian further criticized MassHealth's lack of responsiveness to his requests, and asserted that this has led to multiple appeals and significant time investment with no tangible results. (Testimony). He questioned the necessity of such bureaucratic hurdles, emphasizing the inefficiency and frustration it caused for both him and the state. (Testimony).

The MassHealth representative stated that she and another eligibility worker in Taunton spoke with the appellant's guardian a number of times prior to the hearing to explain this situation to him. (Testimony). She disputed the appellant's guardian's assertion that MassHealth issued a different Guardianship Expense Deduction Notice on December 27, 2022. (Testimony). The only Expense Deduction Notice sent to the appellant's guardian in 2022 was the December 2 notice. (Testimony; Ex. 4, pp. 11-12). The appellant's guardian indicated that the last term ended on September 30, 2023, and was upset because he has not been able to receive his fees for five months. (Testimony).

## Findings of Fact

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

1. The appellant's guardian was first appointed by the Probate and Family Court in [REDACTED], and has been the guardian since that time. (Testimony; Ex. 1, pp. 4-5).
2. On December 2, 2022, MassHealth issued a Guardianship Expense Deduction Notice approving the appellant's guardian's request to deduct his \$100 monthly guardianship fees from the appellant income from December 1, 2022 through November 30, 2023. (Testimony; Ex. 4, pp. 11-12).
3. On February 7, 2024, MassHealth issued a Guardianship Expense Deduction Notice approving the appellant's guardian's request to deduct his \$100 monthly guardianship fees from the appellant income from February 1, 2024 through January 31, 2025. (Testimony; Ex. 1, pp. 8-9; Ex. 4, pp. 13-14).

4. As a result, MassHealth issued a notice on the same date informing the appellant that his PPA would change from \$1,111.20 to \$1,011.20 on February 1, 2024 due to the application of a \$100 allowance for guardianship fees and expenses. (Testimony; Ex. 1, pp. 3-4; Ex. 4, pp. 4-5).
5. The appellant's guardian is asking that MassHealth issue a revised deduction notice stating that the deduction would start on October 1, 2023 and extend through September 30, 2024. (Testimony; Ex. 1, p. 7).
6. It is not currently possible for MassHealth to issue revised deduction notices because of a computer glitch. (Testimony).
7. MassHealth has been issuing revised PPA determinations in order to ensure that the deduction is applied in any month after the previous term lapses but before the approval of a new term. (Testimony; Ex. 4, pp. 2-3).
8. On March 21, 2024, MassHealth issued a notice stating that the appellant's PPA was decreased by \$100 from November 1, 2023, and showing that the guardianship deduction had been applied. (Testimony; Ex. 4, pp. 2-3).

## **Analysis and Conclusions of Law**

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. (130 CMR 520.009(A)(1)). For institutionalized individuals, specific deductions are applied against the individual's countable-income amount to determine the patient-paid amount. (130 CMR 520.009(C)(1); 520.026)).

MassHealth allows deductions from a member's income for monthly guardianship fees to the extent that the guardian's services are essential for consenting to medical treatment on behalf of the member. (130 CMR 520.026(E)(3)(d)1.). Monthly guardian fees, as approved by the probate court, can be deducted for up to 24 hours per year at a maximum rate of \$50 per hour. (130 CMR 520.026(E)(3)(d)2.). To qualify for the deduction, guardianship services must include the guardian's attendance and participation in quarterly care meetings held by the nursing facility where the member resides. (130 CMR 520.026(E)(3)(d)3.). Furthermore, this deduction is contingent upon the submission of an annual affidavit to MassHealth, detailing the guardianship services provided to the member. (130 CMR 520.026(E)(3)(d)4.). The deduction is made from the member's monthly patient-paid amount over a 12-month period. (130 CMR 520.026(E)(3)(d)5.).

On February 7, 2024, MassHealth issued a deduction notice with a term that ran from February 1, 2024 through January 31, 2025. MassHealth previously issued a deduction notice on December 2, 2022 with a term that ran from December 1, 2022 through November 30, 2023.

The appellant's guardian's testimony indicates that MassHealth likely issued a deduction notice at some point in the previous year with a term that ran from October 1, 2021 through September 30, 2022. The result of this is that, at least according to these notices, there have been periods, spanning an increasing number of months, where MassHealth seemingly does not apply the guardianship deduction in determining the appellant's PPA. The appellant's guardian has indicated that in the months where that deduction is not applied, he is not able to collect his court sanctioned fees and, from what I gather, he would like this practice to stop.

The MassHealth representative testified that MassHealth is aware of the problems with these deduction notices and ascribes the non-syncing terms to ongoing technical issues which first cropped up during the PHE. She also stated, however, that MassHealth has come up with a fix that appears to address the appellant's guardian's biggest problem. She stated that once the guardian submits his annual request, and it is approved for the next year, MassHealth will redetermine the PPA by applying the guardianship deduction starting from the month the deduction lapsed. To show this, she submitted a MassHealth notice dated March 21 2024, showing that MassHealth did, in fact, reduce the appellant's PPA from November 1, 2023 by applying the guardianship deduction.

It is acknowledged that that this is a galling difficulty. It may be that the guardian goes unpaid for months until the issuance of the new deduction notice, at which point MassHealth does repair any lapse that occurred. It is also acknowledged that the appellant's guardianship is of lengthy history. That said, the regulations do require that guardians request the deduction on a yearly basis. The regulations also state that the term that the deduction will be applied is for a term of 12 months. The regulations do not require that MassHealth go about processing requests for this deduction in any particular way. Ultimately, the appellant's guardian has not shown that either he or the appellant has undergone the type of injury that this hearing officer has the power to mend.

For the above stated reasons, the appeal is 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.

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Scott Bernard  
Hearing Officer  
Board of Hearings

cc:

Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA  
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