

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2410787
Decision Date:	11/18/2024	Hearing Date:	08/09/2024
Hearing Officer:	Scott Bernard	Record Open to:	09/17/2024

Appearance for Appellant:



Appearance for MassHealth:

Karen Ryan (Tewksbury 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

Appeal Decision:	Dismissed in part; Denied in part	Issue:	Long Term Care/Coverage start date/Patient Paid Amount
Decision Date:	11/18/2024	Hearing Date:	08/09/2024
MassHealth's Rep.:	Karen Ryan	Appellant's Rep.:	
Hearing Location:	Taunton MassHealth Enrollment Center	Aid Pending:	N/A

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 June 6, 2024, MassHealth informed the appellant that she was eligible for MassHealth Long Term Care (LTC) benefits beginning on May 1, 2023 with a Patient Paid Amount (PPA) of \$5,487.00. (See 130 CMR 520.026 and Exhibit (Ex.) 6, pp. 1-2). On June 11, 2024, MassHealth notified the appellant that beginning November 1, 2023, her PPA would change to \$5,486.28. (Ex. 1). The appellant, through her authorized representative, filed this appeal in a timely manner on July 11, 2024. (See 130 CMR 610.015(B) and Ex. 2). MassHealth determinations concerning coverage start dates and calculation of the PPA provide valid grounds for appeal. (See 130 CMR 610.032).

Prior to the conclusion of the hearing, the appellant's attorney requested that the hearing record remain open in order to submit further evidence to MassHealth and the hearing officer. The appellant's attorney was initially given until August 16 to do so and MassHealth was given until August 23 to respond. (Ex. 10). The record open was ultimately extended for both parties until it finally closed on September 17, 2024. (Exs. 12-14).

Action Taken by MassHealth

MassHealth approved the appellant for LTC benefits with a coverage start date of May 1, 2023 and a PPA of \$5,487.00. MassHealth subsequently notified the appellant that beginning November 1, 2023, her PPA would change to \$5,486.28.

Issue

The appeal issues are whether MassHealth correctly determined the coverage start date, and whether MassHealth correctly calculated the appellant's PPA, pursuant to 130 CMR 520.026.

Summary of Evidence

At the hearing, which occurred telephonically, MassHealth was represented by a benefits eligibility representative supervisor and the appellant was represented by her attorney.

The MassHealth representative testified to the following. The appellant is unmarried and over the age of 65. (Testimony; Ex. 3). The appellant was admitted to the nursing facility on [REDACTED] 2023. (Testimony; Exs. 8, 9). The appellant applied for Long Term Care (LTC) benefits on March 23, 2023. (Testimony).

The following is drawn from a combination of documents that the hearing officer requested the parties submit, as well as the hearing record for Appeal No. 2404057, which concerned the appellant's excess assets.¹ (See Exs. 7-9, 15). On August 22, 2023, the appellant submitted a Status Change (SC-1) form indicating an admission date in early 2023 and requesting a start date of February 7, 2023. (Ex. 9). The appellant's March 23, 2023 application was denied for failure to submit verifications, but such issue resolved and the March 23, 2023 application date was preserved. By notice dated February 15, 2024, MassHealth denied the appellant's LTC application because she had more countable assets than MassHealth benefits allowed. (Ex. 15, pp. 2-6). The notice stated that the appellant had countable assets totaling \$24,749.00 and she was therefore \$22,794.00 over the countable asset limit for a single person. (Ex. 15, p. 4). After the appellant (through her attorney at that time) appealed the denial in a timely fashion, BOH scheduled a hearing and such hearing was held on April 16, 2024. (Ex. 15, pp. 7, 17-18). At the conclusion of that hearing, the record was left open for the appellant's former attorney to submit proof of spend down, which was to include an updated private pay statement from the facility breaking down how payments were attributed, and an updated SC-1 with the requested start date. (Ex. 15, p. 19).

A prolonged record open period then ensued. (Ex. 15, pp. 1, 20-30). During the record open period, MassHealth received a letter from the facility dated April 16, 2024 stating that "\$33,555.96

¹ The written record for Appeal No. 2404057 has been incorporated into this hearing record, and will be cited from this point forward as Exhibit 15.

has been paid to this facility” and the facility was requesting Medicaid Eligibility effective January 1, 2023. (Ex. 7). No detailed billing statement was provided. (Ex. 7). MassHealth also received a revised SC-1 dated April 16, 2024 requesting a start date of January 1, 2023, but indicating an admission date of [REDACTED] 2017. (Ex. 8, p. 3). In an email dated May 24, 2024, the MassHealth representative wrote to the appellant’s attorney and the nursing facility stating the following:

an initial SC-1 Form dated 08/22/2023 for your facility was previously received listing appellants admit date of [REDACTED] 2023 and a request date of 02/07/2023 with no private payments reported. You then submitted updated nursing home documents indicating an admit date of [REDACTED] 2017, a request date of 01/01/2023, and a private pay statement reporting \$33,555.96 in private payments. The latest SC-1 Form was sent to GIC and forwarded by them to [REDACTED] the Intake Supervisor still lists the 2017 admit date but now has a 02/07/2023 request date. The 2017 admit date conflicts with previous information from the facility and it is unclear how \$33,555.96 in private payments would generate a 01/01/2023 or a 02/07/2023 request date with a 2017 admit date. If the correct admit date is [REDACTED] 2023, it is unclear why after receiving \$33,555.96 in private payments you would need a start date prior to her admit date or a [REDACTED] 2023 admit date. I did not see any indication that she was on previous assistance. MassHealth cannot proceed without clarification and corrected forms.

(Ex. 15, p. 26).

In another email dated May 24, 2024, addressed to the hearing officer and the appellant’s attorney, the MassHealth representative noted:

MassHealth is unable to comply with the most recent record open deadline of 05/29/2024 as the facility still has not clarified the admit date, attribution of private payments and request date. I will be unavailable for the remainder of today as well as next week. If the discrepancies are resolved timely by the facility, MassHealth should be able to resolve the matter no later than 06/12/2024. Below is the email sent this morning to [REDACTED] in the Business Office and attached are the conflicting documents provided. It is MassHealth's recollection that appellant's representatives at hearing agreed with the January 2023 admit date.

The appellant’s attorney requested that the record open period be extended to June 20, 2024 and the hearing officer allowed the extension. On June 6, 2024, MassHealth received the requested information including the SC-1 dated May 29, 2024, showing an admission date of [REDACTED] 2023 and requested MassHealth start date of May 4, 2023. (Ex. 8, p. 2; Ex. 15, p. 21). In an email dated June 6, 2024, MassHealth informed the hearing officer and appellant’s attorney that it had processed the appellant’s application and issued an approval on the same date. (Ex. 15, p. 21; Ex. 6, pp. 1-2). On June 7, 2024, the hearing officer asked the appellant’s former attorney whether he would agree to withdraw since the issue on appeal had been resolved, the appellant had been approved, and had continuing appeal rights. (Ex. 15, p. 21). The appellant’s former attorney agreed to withdraw the appeal. (Ex. 15, p. 21).

Based on the submission of the requested documentation, MassHealth issued the notice dated June 6, 2024, approving the appellant for LTC benefits with a start date of May 1, 2023 and a PPA of \$5,487.00. (Testimony; Ex. 6, pp. 1-2).

The appellant's monthly income was \$5,830.52 consisting of \$1,920 from Social Security, \$3,639.72 from an annuity, and \$270.80 from a trust. (Testimony; Ex. 6, p. 2). From this monthly income, MassHealth then subtracted the Personal Needs Allowance (PNA) of \$72.80 and the cost of her health insurance, which was \$270.72. (Id.). On June 11, 2024, MassHealth issued a notice informing the appellant that as of November 1, 2023, her PPA would decrease to \$5,486.28. (Testimony; Ex. 1; Ex. 6, pp. 3-5). The appellant's monthly income was \$5,829.80 consisting of \$1,920 from Social Security, and \$3,909.80 from "Other". (Testimony; Ex. 1; Ex. 6, p. 4). From this monthly income, MassHealth again subtracted the PNA of \$72.80 and the health insurance of \$270.72 in order to calculate the PPA. (Id.). For both notices, MassHealth calculated the PPA using the regulations at 130 CMR 520.026. (Testimony).

The appellant's attorney first apologized, explaining that she had only been assigned to the case two days prior to the hearing and acknowledged that she might not have all the necessary information. (Testimony). The appellant's attorney stated that prior to the date MassHealth issued the approval notice, when the appellant was still over the asset limit, the focus of the spend down concerned the contents of one particular checking account. According to the appellant's bank account statements from December 25, 2022, to February 29, 2024, the only funds deposited into this checking account were the appellant's monthly Social Security payments. (Testimony). From 2022 through 2023, this amount was \$1,920 per month, which increased to \$1,977 per month starting January 3, 2024. (Testimony). On April 16, 2024, the nursing facility sent MassHealth the letter stating that \$33,555.96 (representing the appellant's excess assets) was paid to the facility then spent down as private pay for the appellant's care. (Testimony; Ex. 7). The appellant's attorney was unsure who made the decision to apply these funds in this way. (Testimony). She argued that the funds should have instead been used to pay the appellant's PPA to the facility, as it appears the only deposits into the account were the appellant's Social Security income, which should have been directed to the facility as PPA. (Testimony).

The appellant's attorney stated that because these funds were used privately, the start date for MassHealth eligibility was delayed. (Testimony). The new eligibility start date was determined to be May 1, 2023. (Testimony; Ex. 6, pp. 1-2). This spending down of funds as private pay appears to have reduced the excess assets in the checking account, but this left the appellant without sufficient funds to cover her PPA. (Testimony). As a result, she has outstanding PPA obligations from May 2023 to the present. (Testimony). The appellant's attorney requested that MassHealth change the start date to January 1, 2023. (Testimony).

The MassHealth representative explained that MassHealth determined the appellant's MassHealth start date based on the requested MassHealth start date in the SC-1 form provided by the nursing facility, and the verification of asset spend down provided after the prolonged record open period and numerous requests for documentation during the previous appeal. (Testimony). The

MassHealth representative emphasized that it was the responsibility of the appellant to submit accurate verifications. (Testimony). The MassHealth representative also asserted that MassHealth's role was to process the documents it received and it relied on the appellant and nursing facility when it was asserted that the May 29, 2024 SC-1 was accurate.

The appellant's attorney argued that the May 4, 2023 start date was incorrect and sought a backdated Medicaid eligibility start of February 2023. (Testimony). The attorney referred to the payment of \$33,555 made to the nursing facility and argued that this amount should be counted as part of the PPA, rather than being classified as private pay. (Testimony). The attorney's position was that the correct Medicaid eligibility date should reflect this payment. (Testimony). The appellant's attorney also stated that the spend down was made through multiple payments all in 2024. (Testimony). The appellant's attorney was able to detail four of the installments totaling \$16,455.96: January 5, 2024 \$3,755.96; March 1, 2024, separate bank checks of \$800.00 and \$1,900.00; and April 8, 2024, \$10,000.00. (Testimony).

The appellant's attorney raised an additional issue concerning the calculation of the PPA, specifically related to the Social Security amount and an annuity. (Testimony). The attorney noted that the Social Security payment had increased from \$1,920.00 to \$1,977.00, but the PPA was still calculated using the lower amount. (Testimony). The attorney also asked about the long-term care insurance (misclassified in the system as an annuity), which provides a daily benefit of \$120.00 for the nursing home, but had not been applied or cashed out yet. (Testimony).

MassHealth clarified that the long-term care insurance is considered income, not an asset, and should be applied as income once the individual is eligible for it. (Testimony). She noted that the nursing facility was likely responsible for submitting the necessary paperwork to activate the insurance, which should have started from the date of the appellant's admission in November 2022. (Testimony). The representative also explained how MassHealth would calculate the income from the insurance (either using the daily rate multiplied by 30.5 or calculating it annually). (Testimony).

The appellant's attorney further questioned why trust income had not been properly accounted for, noting that they did not have access to information about the trust. (Testimony). The MassHealth representative indicated that this information had likely been submitted previously and suggested the facility or the previous attorney might have the relevant documents. (Testimony).

The record was kept open until August 16 to allow the appellant's attorney to gather and submit any additional trust information. (Testimony). MassHealth had until August 23 to respond if needed. (Testimony; Ex. 10). During the record open period, which was extended to September 17, the appellant's attorney submitted documents, which MassHealth processed and used to adjust the PPA's as requested. (Exs. 11-15). The appellant's attorney stated that she was satisfied with this result and accepted MassHealth's new PPA determination. (Ex. 14).

Findings of Fact

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

1. The appellant is unmarried and is over the age of 65. (Testimony; Ex. 3).
2. The appellant was admitted to the nursing facility on [REDACTED] 2023. (Testimony; Exs. 8, 9).
3. The appellant applied for LTC benefits on March 23, 2023. (Testimony).
4. On August 22, 2023, the appellant submitted an SC-1 form indicating an admission date in early 2023 and requesting a start date of February 7, 2023. (Ex. 9).
5. On February 15, 2024 MassHealth denied the appellant's LTC application because she had more countable assets than MassHealth benefits allowed. (Ex. 15, pp. 2-6).
6. The notice stated that the appellant had countable assets totaling \$24,749.00 and she was therefore \$22,794.00 over the countable asset limit for a single person. (Ex. 15, p. 4).
7. The appellant submitted a timely appeal of the denial and it was heard on April 16, 2024 as Appeal No. 2404057. (Ex. 15, pp. 7, 17-18).
8. The appellant was represented by an attorney at that hearing.
9. At the conclusion of that hearing, the record was left open for the appellant's attorney to submit proof of spend down, which would include an updated private pay statement from the facility breaking down how payments were attributed; and an updated SC-1 with a new request date. (Ex. 15, p. 19).
10. During the record open period, MassHealth received a letter from the facility dated April 16, 2024 stating that "\$33,555.96 has been paid to this facility" and the facility was requesting Medicaid Eligibility effective January 1, 2023; there was no detailed accounting as to how the funds were applied to the appellant's nursing facility expenses, as had been requested. (Ex. 7).
11. MassHealth also received a revised SC-1 dated April 16, 2024 requesting a start date of January 1, 2023, but indicating an admission date of [REDACTED] 2017. (Ex. 8, p. 3).
12. In a May 24, 2024 email to the appellant's former attorney and the hearing officer for the previous appeal, the MassHealth representative stated the following:
 - a) The facility submitted conflicting information on SC-1 forms, the first listing an admission date from early 2023, and the second listing an admission date from 2017;

- b) It was therefore unclear how the private payment amount of \$33,555.96 related to a 2017 admission date or why a request date of [REDACTED] 2023 or [REDACTED] 2023 was needed; and
 - c) MassHealth could not proceed without clarification and corrected forms. (Ex. 15, p. 26).
13. The appellant's attorney requested the record open period be extended to June 20, 2024 to allow for the opportunity to submit the requested documentation and such request was allowed by the hearing officer.
14. On June 6, 2024, requested documentation including a SC-1 dated May 29, 2024, was submitted; the SC-1 showed an admission date of [REDACTED] 2023 and requested MassHealth start date of May 4, 2023. (Ex. 8, p. 2; Ex. 15, p. 21).
15. On June 6, 2024, MassHealth informed the hearing officer and appellant's attorney in Appeal No. 2404057 that it had processed the appellant's application and issued an approval on the same date. (Ex. 15, p. 21; Ex. 6, pp. 1-2).
16. In a notice dated June 6, 2024, MassHealth approved the appellant for LTC benefits
- a) MassHealth stated that the start date of benefits was May 1, 2023. (Testimony; Ex. 6, pp. 1-2).
 - b) MassHealth stated that the appellant was required to pay a monthly PPA of \$5,487.00. calculated the PPA in the following manner:
 - i) The appellant's monthly income was \$5,830.52 consisting of \$1,920 from Social Security, \$3,639.72 from an annuity, and \$270.80 from a trust. (Testimony; Ex. 6, p. 2).
 - ii) From this monthly income, MassHealth then subtracted the PNA of \$72.80 and the cost of her health insurance, which was \$270.72. (Testimony; Ex. 6, p. 2).
17. On June 7, 2024, the hearing officer in Appeal No. 2404057 asked the appellant's former attorney whether he would agree to withdraw since the issue on appeal had been resolved, the appellant had been approved, and had continuing appeal rights and the appellant's former attorney agreed to withdraw. (Ex. 15, p. 21).
18. On June 11, 2024, MassHealth issued a notice informing the appellant that as of November 1, 2023, her PPA would decrease to \$5,486.28, which it calculated in the following manner:
- a) The appellant's monthly income was \$5,829.80 consisting of \$1,920 from Social Security, and \$3,909.80 from "Other". (Testimony; Ex. 1; Ex. 6, p. 4).

- b) From this monthly income, MassHealth again subtracted the PNA of \$72.80 and the cost of the appellant's health insurance, which was \$270.72. (Testimony; Ex. 1; Ex. 6, p. 4).

19. The appellant appealed the notices dated June 6 and June 11, 2024. (Ex. 2).

20. At the hearing, the appellant's attorney contested the start date of coverage as well as MassHealth's calculation of the PPA. (Testimony).

21. At the conclusion of the hearing, the appellant's attorney requested that the record remain open to allow her to submit documents that would allow MassHealth to update the appellant's PPA. (Testimony; Ex. 10).

22. During the record open period the appellant's attorney submitted documents to MassHealth, MassHealth updated the appellant's PPA, and the appellant's attorney stated that she was satisfied with the result concerning the PPA. (Exs. 11-15).

23. The record closed on September 17, 2024. (Ex. 14).

Analysis and Conclusions of Law

MassHealth may make an adjustment in the matters at issue before or during an appeal period and if the parties' adjustment resolves one or more of the issues in dispute in favor of the appellant, the hearing officer, by written order, may dismiss the appeal in accordance with 130 CMR 610.035 as to all resolved issues, noting as the reason for such dismissal that the parties have reached agreement in favor of the appellant. (130 CMR 610.051(B)). The appellant's attorney raised an issue concerning MassHealth's calculation of the appellant's PPA. She requested a record open in order to submit documents and asked that MassHealth adjust the PPA. The appellant's attorney submitted the documents to MassHealth and using these documents MassHealth was able to adjust the appellant's PPA in a way that was satisfactory to the appellant's attorney. As this adjustment resolves the dispute in favor of the appellant with regard to the calculation of the PPA, the appeal is hereby DISMISSED.

The begin date of MassHealth coverage is determined by the coverage type for which the applicant may be eligible. (130 CMR 516.006(A)(1)). For applicants seeking MassHealth coverage of the cost of their institutional care, the begin date of coverage may be retroactive to the first day of the third calendar month before the month of application, if covered medical services were received during such period, and the applicant would have been eligible at the time services were provided. (130 CMR 516.006(A)(2)). In order for these applicants to be eligible for MassHealth Standard, they must, amongst other requirements not at issue in this appeal, have countable assets of \$2,000 or less. (130 CMR 519.006(A); 520.016(A)).

An applicant whose countable assets exceed the asset limit may still be eligible for MassHealth, either when they reduce their excess assets to the allowable asset limit without violating the transfer of resource provisions for nursing-facility residents; or when they incur medical bills equal to the amount of the excess assets. (130 CMR 520.004(A)(1)). In the latter case, the applicant must reduce their assets to the allowable limit within 30 days of receiving notification of excess assets. (130 CMR 520.004(A)(1)(b)). Additionally, the applicant must be otherwise eligible for MassHealth. (130 CMR 520.004(A)(2)).

MassHealth does not pay the portion of medical bills that corresponds to the excess assets. (130 CMR 520.004(B)). The bills used to establish eligibility must meet certain criteria: they cannot be incurred before the first day of the third month prior to the date of application; and the same bills or portions of bills cannot be used to meet a deductible based on income. (130 CMR 520.004(B)).

The date of eligibility for individuals who are otherwise eligible for MassHealth is determined by when their incurred allowable medical expenses equal or exceed the amount of their excess assets. (130 CMR 520.004(C)). If, after eligibility is established, an individual submits an allowable bill with a medical service date that precedes the established eligibility date, MassHealth will readjust the eligibility date accordingly. (130 CMR 520.004(C)(1)). However, in no event will the first day of eligibility be earlier than the first day of the third month before the date of application, as long as the coverage type allows for it. (130 CMR 520.004(C)(2)).

Finally, MassHealth requires the applicant to verify that they incurred the necessary amount of medical bills and that their excess assets were reduced to the allowable asset limit within the required timeframes. (130 CMR 520.004(D)).

The appellant applied for LTC benefits in March 2023. During the lengthy history of the subsequent application process, the nursing facility submitted multiple SC-1 forms requesting various coverage start dates. The application was denied for failure to submit verifications, appealed, and resolved with preservation of the March 23, 2023 application date. On February 15, 2024, the application was again denied because the appellant was over the asset limit at the time of her application. The denial was appealed and a hearing was held. The appellant was represented at the hearing by an attorney. The appellant's attorney requested that the record be kept open to submit verification of spend down of assets. During the record open period, the nursing facility submitted a letter stating the appellant had paid \$33,555.96 towards reducing her excess assets. The appellant did not submit the requested billing statement showing how such funds were applied to her nursing facility expenses. Further, MassHealth noted that various SC-1's had conflicting information and MassHealth needed the correct SC-1 to make a determination. MassHealth noted that it could not make a decision during the record open period because as of May 24, 2024, the appellant still had not clarified the admit date, attribution of private payments and requested start date. The appellant's attorney requested that the record open period be extended to June 20, 2024 and the hearing officer allowed such request. By email dated June 6, 2024 to appellant's attorney and the hearing officer, the MassHealth representative stated that the requested information had been submitted and the application was approved. As noted during the hearing

for the present appeal, the corrected SC-1 is dated May 29, 2024 and lists an admission date of [REDACTED] 2023 and requested start date of May 4, 2023. MassHealth determined that the appellant's asset spend down allowed for a May 1, 2023 start date.

In the present appeal, the appellant's attorney argued that the nursing facility made a mistake in having the appellant pay the excess assets towards private pay and asked MassHealth to revise the start date to January 1, 2023. The appellant's attorney, however, did not submit any new information or documentation that would allow this hearing officer to reach a different conclusion than that agreed upon in the appellant's previously adjudicated appeal. No documentation, including billing statements with corresponding bank statements, was submitted showing how the appellant's assets were applied to her nursing facility expenses. Further, the current SC-1 in the record was submitted after multiple requests for a correct SC-1 during a prolonged record open period, as well as clarification of attribution of private payments. In the absence of updated documentation and explanations regarding the previously submitted verifications which were claimed to be accurate, MassHealth's previous determination that the asset spend-down corresponded with the May 1, 2023, start date will stand.

For the above stated reasons, and with regard to the start date, 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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

[REDACTED]

[REDACTED]

[REDACTED]

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