

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2411690
Decision Date:	10/23/2024	Hearing Date:	08/26/2024
Hearing Officer:	Thomas Doyle	Record Open to:	

Appearance for Appellant:



Appearance for MassHealth:

Eileen Smith, Charlestown MEC

Interpreter:



*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
Decision Date:	10/23/2024	Hearing Date:	08/26/2024
MassHealth's Rep.:	Eileen Smith	Appellant's Rep.:	
Hearing Location:	Remote (phone)	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 July 10, 2024, MassHealth found appellant eligible for long term care and notified him that his monthly patient paid amount (PPA) is \$6,430.13 beginning August 1, 2023. (Ex. 1; Testimony). The appellant filed this appeal in a timely manner on July 29, 2024, disputing the PPA. (Ex. 2). Dispute of a PPA is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth calculated the amount of PPA appellant must pay as \$6,430.13 monthly, beginning August 1, 2023.

Issue

Was MassHealth correct, pursuant to 130 CMR 520.026, in not allowing a spousal maintenance needs deduction (SMND) for a court-ordered payment of \$2,652.60 per month to appellant's ex-wife.

Summary of Evidence

The MassHealth worker (worker), the appeal representative and appellant's wife appeared by telephone and were sworn. The worker testified that appellant's application was received on September 21, 2023. (Testimony). Appellant was admitted to the facility on [REDACTED] (Testimony; Ex. 6, p. 19). Appellant was seeking a start date of coverage of August 11, 2023. (Testimony; Ex. 6, p. 19). In calculating appellant's PPA, the worker stated appellant has monthly Social Security income of \$262 and a monthly pension of \$6,470, for a total monthly income of \$6,732. (Testimony; Ex. 1). Pursuant to the regulations, MassHealth deducted a monthly personal needs allowance of \$72.80 and \$229.07 for health insurance. (Testimony; Ex. 1). This resulted in a monthly PPA amount of \$6,430. (Testimony; Ex. 1). The worker stated that MassHealth did not deduct a SMNA, pursuant to 130 CMR 520.026 (B)(3), because even though appellant is subject to a court order from his divorce, that order is not for the support of his current community spouse, it is for the support of appellant's ex-spouse. (Testimony; Ex. 7).

The appeal representative called appellant's current wife to testify. Appellant's current wife stated that she has been married to appellant for 31 years. She stated appellant has \$2,652.60 deducted from his pension and that money goes to appellant's ex-wife. (Testimony). The appeal representative argued that, while he understands the regulations do not cover the issue of a court order regarding an ex-spouse, he argued that there should be room for interpretation. He stated that the spirit of the regulation should include a court order for an ex-spouse. Finally, he stated that, just because the regulations do not cover this deduction to the ex-spouse, it should not be dispositive. He argued for a commonsense approach and a community standard of fair play.

Findings of Fact

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

1. Appellant was admitted to the facility on [REDACTED] On September 21, 2024, a MassHealth long-term care application was filed on his behalf, seeking a coverage start date of August 11, 2023. (Testimony; Ex. 6, p. 19).
2. Appellant has a monthly Social Security income of \$262 and a monthly pension of \$6,470, for a total monthly income of \$6,732. (Testimony; Ex. 1).
3. MassHealth deducted a monthly personal needs allowance of \$72.80 and \$229.07 for health insurance. This resulted in a monthly PPA amount of \$6,430. (Testimony; Ex. 1).
4. Appellant is under a court order to pay his ex-wife \$2,652.60 a month. (Ex. 7).
5. Appellant is not subject to any court order to support his community spouse.

Analysis and Conclusions of Law

The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). Moreover, "[p]roof by a preponderance of the evidence is the standard generally applicable to administrative proceedings." Craven v. State Ethics Comm'n, 390 Mass. 191, 200 (1983).

130 CMR 520.026: Long-Term-Care General Income Deductions:

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. These deductions are used in determining the monthly patient-paid amount. (130 CMR 520.026).

First, appellant argues that because he is under a court order, he should receive a deduction pursuant to the regulations. The pertinent regulation is clear. It states, "if the institutionalized individual is subject to a court order for the support of the **community** spouse the court-ordered amount of support must be used as the spousal maintenance needs deduction when it exceeds the spousal-maintenance-needs deduction calculated according to 130 CMR 520.026(B) or resulting from a fair hearing." (130 CMR 520.026 (B)(3)(emphasis added)). Appellant is under no court order to support his community spouse but is under a court order to support his ex-spouse. (Ex. 7).

Secondly, the appeal representative, while acknowledging the regulations do not cover the issue of a court order to an ex-spouse, encourages me to interpret the regulations in a way that they do cover an ex-spouse by invoking common sense and community standards of fair play. I am prohibited from doing what the appeal representative requests.

Pursuant to 130 CMR 610.082 Basis of Fair Hearing Decisions,

...

(C) The decision must be rendered in accordance with the law.

(1) The law includes the state and federal constitutions, statutes, and duly promulgated regulations, as well as decisions of the state and federal courts.

(2) Notwithstanding 130 CMR 610.082(C)(1), the hearing officer must not render a decision regarding the legality of federal or state law including, but not limited to, the MassHealth regulations. 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.

(3) The hearing officer must give due consideration to Policy Memoranda and any other MassHealth agency representations and materials containing legal rules, standards, policies, procedures, or interpretations as a source of guidance in applying a law or regulation.

The regulation states if the institutionalized individual is subject to a court order for the support of the community spouse, then the court ordered amount of support must be used as the SMNA. Appellant is not subject to a court order for the support of the community spouse, therefore, MassHealth committed no error in not allowing the amount in the court order for the SMND.

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.

Thomas Doyle
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Nga Tran, Charlestown MassHealth Enrollment Center, 529 Main Street, Suite 1M, Charlestown, MA 02129