

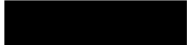
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2415987
Decision Date:	12/17/2024	Hearing Date:	11/12/2024
Hearing Officer:	Mariah Burns		

Appearance for Appellant:



Appearance for MassHealth:

Victoria Ragbir, Charlestown MassHealth
Enrollment Center



*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:	Approved in part; Denied in part	Issue:	Over 65; Long-Term Care; Patient-Paid Amount
Decision Date:	12/17/2024	Hearing Date:	11/12/2024
MassHealth's Rep.:	Victoria Ragbir	Appellant's Rep.:	
Hearing Location:	Remote	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 August 30, 2024, MassHealth approved the appellant for long-term care benefits with a start date of January 15, 2024, and a monthly Patient Paid Amount (PPA) of \$2479.10 to begin February 1, 2024. *See* 130 CMR 520.026 and Exhibit 1. The appellant filed this appeal in a timely manner on October 18, 2024. *See* 130 CMR 610.015(B) and Exhibit 2. During the pendency of this appeal, by notice dated October 31, 2024, MassHealth updated the PPA to \$1952.89 effective October 1, 2024. Exhibit 5 at 4. Agency determinations regarding scope and amount of assistance are valid grounds for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

MassHealth approved the appellant's long-term care benefits and calculated a monthly PPA for the appellant to pay to the nursing facility.

Issue

The appeal issue is whether MassHealth correctly calculated the appellant's PPA.

Summary of Evidence

The appellant is an adult over the age of 65 who is currently receiving MassHealth Standard long-term care benefits. She was represented at the hearing by her sister and personal representative. MassHealth was represented by a worker from the Charlestown MassHealth Enrollment Center. All parties appeared by telephone. The following is a summary of the testimony and evidence provided at the hearing:

On August 30, 2024, MassHealth approved the appellant for long-term care benefits with a MassHealth start date of January 15, 2024, and a monthly PPA of \$2479.10 to begin February 1, 2024. On October 31, 2024, MassHealth updated the appellant's PPA to \$1952.89, effective October 1, 2024, based on information she submitted regarding her rental property income. In calculating the PPA of \$1952.89, MassHealth verified that the appellant receives \$1514.80 in monthly social security benefits and determined that she receives countable monthly rental income of \$834.21, for total income of \$2,349.01. MassHealth then deducted the standard personal needs allowance of \$72.80 and the appellant's additional health insurance expenses of \$323.32 from her total gross income to calculate the PPA of \$1,952.89.

In preparation for the hearing, the appellant submitted numerous bills and documents in support of her argument that her rental income is not as high as MassHealth calculated. The property is a three-unit multi-family home. The first floor is vacant and unrented, the second floor is the appellant's unit, and the third floor is the only unit that is rented. The parties discussed each of the expenses and agreed that the documentation shows the following:

- Total Monthly Rent: \$1200.00
- Total Yearly Taxes: \$4137.94
- Total Yearly Insurance: \$3615.00
- Total Monthly Mortgage: \$673.57
- Total Monthly Water: \$14.00 only for rented unit
- Total Monthly Gas: \$13.31 for rented unit and appellant's unit
- Total Monthly Electricity: \$13.24 only for rented unit

The appellant also provided an invoice for an oil bill from November of 2023 for \$1188.71. Her representative testified that only the first-floor unit uses oil. The appellant's representative also argued that a \$532.31 past-due balance payment for Eversource should be included in the calculation.

The MassHealth representative testified that each of the expenses must be divided equally between the units, and that MassHealth can only consider expenses attributed to the rented unit toward a deduction to the rental income. Therefore, she expressed uncertainty about whether the oil payment was a countable deduction, because the oil is only used by the first-floor

apartment, which is not rented. She explained that MassHealth would calculate the total rental income as follows:

- Taxes: $4134.94 / 12 = 344.58 / 3 = \mathbf{114.86}$
- Insurance: $3615 / 12 = 301.25 / 3 = \mathbf{100.42}$
- Mortgage: $673.57 / 3 = \mathbf{224.52}$
- Water: **14.00**
- Electricity: **13.24**
- Gas: $13.31 / 2 = \mathbf{6.66}$

Based on that, the total deductions from the rental income would be \$473.70. When subtracted from the \$1200.00 rent, that leaves a total countable rental income of \$726.30.

The appellant's representative argued that the entirety of the expenses for the home should be counted towards business expense deductions to the rental income. She testified that the family has made every effort to rent the first-floor apartment, but that they have been unsuccessful in doing so.

The MassHealth representative agreed that whatever new PPA is calculated based on this appeal should be applied retroactively to February 1, 2024.

Findings of Fact

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

1. The appellant is an adult over the age of 65 who is currently receiving MassHealth Standard long-term care benefits. Testimony, Exhibit 1, Exhibit 4.
2. On August 30, 2024, MassHealth calculated a Patient-Paid Amount (PPA) of \$2479.10, retroactive to February 1, 2024. Testimony, Exhibit 1. On October 31, 2024, MassHealth decreased that PPA amount to \$1952.89. Testimony, Exhibit 5 at 4.
3. The appellant filed a timely request for fair hearing on October 18, 2024. Exhibit 2.
4. The appellant currently receives \$1514.80 in monthly Social Security benefits. Testimony, Exhibit 1.
5. The appellant owns a three-unit, multi-family residential property. The first-floor unit is vacant, the second-floor unit is the appellant's, and the third-floor unit is rented for \$1200.00 per month. Testimony.

6. The appellant provided documentation that demonstrates the property has the following expenses:

- Total Yearly Taxes: \$4137.94
- Total Yearly Insurance: \$3615.00
- Total Monthly Mortgage: \$673.57
- Total Monthly Water: \$14.00 only for rented unit
- Total Monthly Gas: \$13.31 for rented unit and appellant's unit
- Total Monthly Electricity: \$13.24 only for rented unit.

Testimony, Exhibit 6. That equates to total monthly expenses of \$473.70 that are attributable just to the rented apartment. Testimony.

7. The appellant provided documentation that shows that she incurred a \$1188.71 oil bill on November 8, 2023. Exhibit 6 at 7. Only the first-floor, vacant apartment uses oil for heating. Testimony. The Eversource gas bill also reflects a past-due balance of \$532.31. Exhibit 6 at 10.

8. The appellant has monthly health insurance expenses of \$323.32. Exhibit 5 at 5.

9. There is no evidence that the appellant supports a spouse or dependent child in the community, or pays any guardianship fees. Testimony.

Analysis and Conclusions of Law

MassHealth administers and is responsible for delivery of healthcare benefits to MassHealth members. See 130 CMR 515.002. Eligibility for MassHealth benefits differs depending on an applicant's age. 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for non-institutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, and certain Medicare beneficiaries. 130 CMR 515.002(B). As the appellant is over 65 years old and an institutionalized person, she is subject to the requirements of the provisions of Volume II. 130 CMR 515.002.

Long-term care residents over the age of 65 may establish eligibility for MassHealth Standard coverage of their care if they meet the following requirements:

- (1) be younger than 21 years old or 65 years of age or older...
- (2) be determined medically eligible for nursing facility services by the MassHealth agency or its agent as a condition for payment...
- (3) *contribute to the cost of care as defined at 130 CMR 520.026: Long-term-care General Income Deductions;*

- (4) have countable assets of \$2,000 or less for an individual... and
- (5) not have transferred resources for less than fair market value...

130 CMR 519.006(A) (emphasis added). That contribution to the cost of care is known as the Patient-Paid Amount (PPA). See 130 CMR 515.001. It is calculated by deducting certain costs listed at 130 CMR 520.026 from the member's monthly countable income. 130 CMR 520.009(A)(3). Countable unearned income includes, in relevant part, "social security benefits, railroad retirement benefits, pensions, annuities, federal veterans' benefits, rental income, interest, and dividend income." 130 CMR 520.009(D). MassHealth will allow certain business expenses to be subtracted from a member's income calculation, including the following:

(C) Rental Income.

- (1) Allowable business expenses from rental income include carrying charges, cost of fuel and utilities provided to tenants, and any maintenance and repair costs.
- (2) If the individual occupies an apartment in the same building from which he or she receives rental income, carrying charges are prorated per unit. The cost of fuel and utilities are prorated if they are paid through a single heating unit or meter.
- (3) The MassHealth agency may deduct actual maintenance and repair costs, other than cosmetic changes, from the amount of rental income if the individual verifies such expenses.

Furthermore, the deductions MassHealth uses to calculate the PPA include the following:

- The standard Personal-needs Allowance of \$72.80. 130 CMR 520.026(A);
- The spousal-maintenance needs deduction if the member has a community spouse. *Id.* at 520.026(B);
- Deductions for family maintenance needs if the member has a minor child, a dependent child, a dependent parent, or a dependent sibling who resides with the community spouse. *Id.* at 520.026(C);
- Deductions for maintenance of a former home. *Id.* at 520.026(D);
- Deductions for Health-care Coverage and other incurred expenses, including guardianship fees. *Id.* at 520.026(E).

The regulations provide no other deductions to calculate a member's PPA.

The appellant contends that MassHealth incorrectly calculated her rental income when determining her monthly PPA. An appellant bears the burden of proof at fair hearings "to demonstrate the invalidity of the administrative determination." *Andrews v. Division of Medical Assistance*, 68 Mass. App. Ct. 228, 231 (2006). The fair hearing decision, established by a preponderance of evidence, is based upon "evidence, testimony, materials, and legal rules, presented at hearing, including the MassHealth agency's interpretation of its rules, policies and

regulations.” 130 CMR 610.085(A).

In this case, the main issue is whether MassHealth is correct that the business expenses deduction may only be applied to one of the three units of the multi-family property in question. The regulations make clear that only business expenses from rental income may be deducted, and that if a member resides at the property that those expenses must be prorated. It logically follows that any costs attributed to the upkeep of the vacant apartment cannot be considered business expenses, because the unit is not rented. It further follows that any expenses for the appellant’s apartment are also not business expenses. Therefore, I agree with MassHealth’s assertion that each of the shared expenses must be divided by three, and only those for the rented apartment may be considered deductible business expenses.

Accordingly, I further find that the oil bill cannot be used as a business expense where it is a payment that was made only for the first-floor, vacant apartment. Finally, there is no evidence to suggest that the past-due Eversource bill should be counted, as it is not a recurring expense and, presumably, is accounted for in every month that the PPA is backdated. The appellant’s total countable rental income is, as discussed at hearing, \$726.30.

To complete the calculation of the appellant’s PPA, MassHealth must take her total countable gross monthly income and subtract any deductions to which she is entitled. When adding together her social security benefits of \$1514.80 and her countable rental income of \$726.30, the appellant’s total gross monthly income is \$2241.10. MassHealth determined that the appellant is entitled to the standard personal needs allowance of \$72.80 as well as a deduction of \$323.32 for her additional monthly health insurance expenses, which adds up to a total of \$396.12 in deductions. Therefore, the appellant’s monthly PPA should be \$1844.98.

Because that PPA amount differs from the calculation made by MassHealth in the October 31, 2024, notice, but the appellant argues different deductions should apply, the appeal is hereby approved insofar as the PPA is now \$1,844.98 retroactive to February 1, 2024, but denied in that the PPA is not a lower amount as argued by the appellant.

Order for MassHealth

Issue a new notice reflecting a monthly Patient-Paid Amount of \$1844.98, retroactive to February 1, 2024, as agreed to at the hearing.

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.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Mariah Burns
Hearing Officer
Board of Hearings

cc: [REDACTED]
[REDACTED]

MassHealth Representative: Nga Tran, Charlestown MassHealth Enrollment Center