

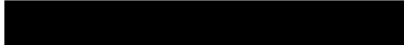
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied in part; Approved in part	Appeal Number:	2500407
Decision Date:	4/1/2025	Hearing Date:	02/03/2025
Hearing Officer:	Christopher Jones		

Appearance for Appellant:



Appearance for MassHealth:

Kathleen Towle for Krystina Trout



*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 in part; Approved in part	Issue:	Long Term Care; Coverage start date; Conservator Fees
Decision Date:	4/1/2025	Hearing Date:	02/03/2025
MassHealth's Rep.:	Kathleen Towle for Krystina Trout	Appellant's Rep.:	Personal Representative
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 two notices dated November 7, 2024, MassHealth approved the appellant's application for long-term-care benefits, starting Augst 31, 2023, with a patient-paid amount of \$202.20 per month and raised the patient-paid amount to \$1,417.20 as of September 1, 2023.¹ (Exhibit 1; Exhibit 2; 130 CMR 520.025; 520.026.) The appellant initially filed an appeal on September 6, 2024, and refiled a timely appeal on January 7, 2025, after MassHealth issued the appealable notices. (Exhibit 3; Exhibit 4; 130 CMR 610.015(B).) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth approved a benefits start date later than the appellant requested because the appellant reduced her assets on expenses that were not entitled to retroactive effect.

¹ On January 28, 2025, MassHealth updated the benefits start date to August 27, 2023, based upon \$1,930 that had been paid to another nursing facility.

Issue

The appeal issues are whether (1) was MassHealth correct, pursuant to 130 CMR 520.004, in determining the date of asset eligibility; and (2) did MassHealth correctly calculate the appellant's patient-paid amount, pursuant to 130 CMR 520.026.

Summary of Evidence

MassHealth's representative at the hearing was covering the appeal for a colleague. The MassHealth representative who processed the application submitted a document outlining that the appellant applied for MassHealth long-term-care benefits on August 28, 2023, requesting coverage start as of August 7, 2023. As of the benefits request date, the appellant had \$29,309 in a bank account. From this, MassHealth deducted the appellant's income, \$1,599 per month from Social Security, and the \$2,000 individual asset limit. The appellant submitted \$16,066 in expenses that were paid out from the remaining assets of \$25,704, including \$13,385 in burial and funeral expenses, and \$2,681 in incurred medical expenses.² The appellant's remaining countable assets totaled \$9,644.

In 2024, the appellant's estate paid \$1,332 for expenses related to the conservatorship and \$6,500 to an attorney retainer to close out the conservatorship in court. These expenses reduced the appellant's countable assets, however MassHealth determined that the spend down was not made on expenses that allow for retroactive coverage. MassHealth performed a "Haley" calculation, dividing \$9,644 by the private daily rate at the nursing facility, \$495. MassHealth rounded the resulting 19.5 up to 20 days of private pay. It was noted that there was still \$1,812 missing between the \$9,644 used in the Haley calculation and the expenses identified by MassHealth and the appellant. The parties stipulated that the money was reduced on the appellant's expenses and would not give rise to a disqualifying transfer.

The appellant's patient-paid amount was calculated at \$202.20 for August 2023, based upon income of \$1,599, and allowances of \$72.80 for personal needs, \$1,215 to maintain her home, and \$109 for health insurance premiums. The home-maintenance allowance was discontinued starting September 1, 2023. The applicant died shortly after being approved for long-term-care benefits. The personal representative of the appellant's estate represented the estate at the hearing.

The appellant's estate's representative is the appellant's granddaughter, and she testified that she had been the appellant's conservator for about five years prior to the appellant's death. The appellant's representative hired an attorney to help manage the probating of the appellant's estate and the closing out of the conservatorship after the appellant died. That attorney told the appellant's representative that legal fees were an allowable MassHealth spenddown.

² This figure includes the \$1,930 paid to a previous nursing facility that resulted in the January 28, 2025 notice.

The appellant's representative believed that these expenses were only problematic because the applicant had died while the application was pending. She understood that these expenses were only problematic because they occurred out of the decedent's estate, rather than from a living applicant's account. During probate, the appellant's representative learned that she was supposed to have hired a guardian ad litem to check the conservator's annual financial filings. This was the only time the appellant's representative had ever been a conservator, and she did not know she was supposed to have had a guardian ad litem review every year's financial statement. The probate court ordered those five years of conservator filings be checked by a guardian ad litem. The appellant's representative testified that she has been billed \$1,200 by the guardian ad litem for reviewing just one year's accounting. Since the appellant's estate has been reduced to qualify for MassHealth, there is no money left to pay the guardian ad litem. The appellant's representative was informed that she may need to pay these fees out of her own pocket.

MassHealth acknowledged that guardian fees are contemplated by the regulations for income deductions, but argued the submitted expenses were categorized as legal and conservator fees. The parties agreed that the sole issue remaining was how the money identified as legal and conservatorship fees should be treated under MassHealth's regulations.

Findings of Fact

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

- 1) The appellant applied for MassHealth long-term-care benefits on August 28, 2023, requesting coverage start as of August 7, 2023. (Exhibit 7.)
- 2) As of the benefits request date, the appellant had \$29,309 in a bank account. The appellant's income was \$1,599 per month from Social Security. (Exhibit 7.)
- 3) The appellant submitted \$16,066 in expenses that were paid out from these resources, including \$13,385 in burial and funeral expenses, and \$2,681 in incurred medical expenses. The remaining \$9,644 in excess assets was reduced on other legitimate expenses, including legal fees and fees paid by the appellant's conservator. (Exhibit 7; testimony by the appellant's representative.)
- 4) The private pay rate at the nursing facility was \$495 per day. (Exhibit 7.)
- 5) MassHealth approved benefits 20 days after [REDACTED] 2023, excluding the allowable incurred medical expenses and funeral and burial expenses from the start date calculation. (Exhibit 7; Exhibit 8.)
- 6) The appellant's patient-paid amount was \$202.20 for August 2023, and \$1,417.20, starting September 1, 2023. (Exhibit 1; Exhibit 2.)

- 7) The appellant's conservator had not hired a guardian ad litem during the appellant's life to verify the annual accountings. The appellant's personal representative has been ordered to pay guardian ad litem fees to review the accounting. The appellant's personal representative has been billed \$1,200 to date for these fees. (Testimony by the appellant's representative; Exhibit 7.)
- 8) The appellant died shortly after being approved for MassHealth benefits (Exhibit 3, p. 2.)

Analysis and Conclusions of Law

MassHealth Standard benefits "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 or member would have been eligible at the time services were provided." (130 CMR 516.006(A)(2).) MassHealth applicants must establish financial eligibility, including having countable assets of \$2,000 or less for individuals seeking MassHealth Standard over the age of 65. (130 CMR 520.003(A).)

If an applicant has assets in excess of this limit, they only become eligible for coverage

- (a) as of the date the applicant reduces his or her excess assets to the allowable asset limit without violating the transfer of resource provisions ... or
- (b) as of the date ... the applicant incurs medical bills that equal the amount of the excess assets and reduces the assets to the allowable asset limit within 30 days after the date of the notification of excess assets.

(130 CMR 520.004(A)(1).)

Only medical expenses "incurred [after] the first day of the third month prior to the date of application" may be deducted from assets. (130 CMR 520.004(C).) This manner of reducing assets is referred to as a "Haley calculation." (See Haley v. Comm'r of Pub. Welfare, 394 Mass. 466 (1985).) Furthermore, excess assets used to fund burial and funeral arrangements are considered "to have been in existence on the first day of the third month before the application." (130 CMR 520.008(F)(3).) There are no other expenses that are similarly entitled to retroactive reduction in this manner. (See 130 CMR 520.000.)

Under the Haley calculation, as described by 130 CMR 520.004(A)(1)(b), the relevant facts are: the amount of excess assets, the earliest date that medical expenses exceed the excess assets, and whether the assets are reduced. It is irrelevant whether the appellant reduced their assets on medical expenses, so long as the assets were reduced without violating the disqualifying transfer rules at 130 CMR 520.018-.019. MassHealth accepts that the appellant's legal fees and expenses do not give rise to disqualifying transfers, so the question is when did the applicant's incurred medical expenses exceed their excess assets?

In this case, the appellant applied for MassHealth in August 2023. The earliest that MassHealth Standard coverage could have started was May 1, 2023. The appellant requested coverage start on August 7, 2023, and at that time she had \$29,309 in a bank account. MassHealth appropriately excluded \$13,385 used for funeral and burial expenses. Similarly, MassHealth excluded \$2,681 in medical expenses incurred between May 1, 2023, and August 6, 2023. MassHealth correctly calculated the appellant as being over assets by \$9,644. Given the private pay rate at the nursing facility was \$495, the earliest the appellant's medical expenses could have exceeded her excess assets was 20 days after MassHealth coverage was requested.

The appellant's death resulted in the application process continuing for much longer than normal, but it does not change the question of when the money was spent. The appellant did not spend down her assets until allowed by the probate court in 2024. Whether these expenses were allowable, they are later in time than August 27, 2023. Therefore, MassHealth was correct in determining the benefits start date. This appeal is DENIED with regard to the MassHealth start date issue.

Regarding the appellant's patient paid amount, MassHealth allows a deduction from a member's income, not assets, "for fees for guardianship services related to the MassHealth application process when the guardian has been appointed by the probate court to assist an incompetent person with the MassHealth application when the securing of MassHealth benefits is essential for the member to gain access to medical treatment." (130 CMR 520.026(E)(3).) This deduction is taken from an applicant's patient-paid amount, and it is capped at \$750, where an administrative hearing is held. (130 CMR 520.026(E)(3)(b)2.) There is no similar regulation allowing conservator fees.³

The remainder of the patient-paid amount calculation is not in dispute, and the appellant only had a patient-paid amount for a few months. Importantly, the probate court ordered the conservator to hire a guardian ad litem to review the financial accountings that were necessary to the MassHealth application. The appellant's conservator has already been billed \$1,200 for these services, and the expenses may continue to grow. Therefore, I find that the appellant is entitled to a deduction of \$750 from her patient-paid amount for payment of these fees. Typically, these income deductions are annualized. (See 130 CMR 520.026(E)(3)(b)3.) For administrative ease, this deduction shall be allowed from September 2023's patient-paid amount. This appeal is APPROVED in part for to allow a deduction from the appellant's patient-paid amount in September 2023.

Order for MassHealth

Allow a \$750 deduction from Appellant's patient-paid amount in September 2023, to cover the costs of the guardianship fees and related expenses as per 130 CMR 520.026(E)(3)(b)2.

³ MassHealth will treat an applicant's assets as inaccessible for six months if a conservator is appointed during the application process. (See 130 CMR 520.006.) As the conservator was in place for years prior to application, this regulation is irrelevant here.

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.

Christopher Jones
Hearing Officer
Board of Hearings

[REDACTED]

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104