

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Numbers:	2501664
Decision Date:	02/28/2025	Hearing Date:	02/27/2025
Hearing Officer:	David Jacobs		

Appearance for Appellant:



Appearance for MassHealth:

Stephanie Mowles, Quincy MEC Worker



*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:	PPA
Decision Date:	02/28/2025	Hearing Date:	02/27/2025
MassHealth's Rep.:	Stephanie Mowles	Appellant's Rep.:	[REDACTED]
Hearing Location:	Board of Hearings (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 December 13, 2024, MassHealth notified the appellant that she was approved for MassHealth long-term care benefits with a patient paid amount (PPA) of \$1,061.89 (Exhibit 1). The appellant filed a timely appeal of this notice on January 24, 2025 (Exhibit 2). A determination regarding a PPA is a valid basis for appeal. (130 CMR 610.032).

Actions Taken by MassHealth

MassHealth approved the appellant's application for MassHealth long-term care benefits with a PPA of \$1,061.89.

Issue

Whether MassHealth calculated the appellant's PPA correctly.

Summary of Evidence

The MassHealth representative appeared telephonically and presented the following evidence:

"The long-term care application for [REDACTED] was received on 6/21/2024. The first VC1 Request for Information was mailed on 6/28/2024. The application was initially denied on 10/2/2024. The application was reapped on 12/9/2024. The application was approved for long-term care on 12/13/2024. The MassHealth Requested Payment date on the SC-1 form is 6/28/2024. That date was granted for coverage to begin. [REDACTED] was screened short-term on both the SC-1 and the Nursing Facility Screening document. The clinical eligibility screening was completed by Aging Services Access Point (ASAP). With the short-term screening, Ms. Porter was eligible for the short-term allowance of \$1,255 for up to 6 months, based on her screening dates. [REDACTED] received this allowance from 6/2024 to 12/2024.

The PPA that was calculated by the System was not calculated to include the different pension amounts that changed beginning 7/1/2024. The MassHealth System also included the wrong Social Security Income gross amount. The Social Security Income (SSI) also increased in 11/2024, and then decreased in 1/2025. The self-payment of the Medicare Part B premium payment was also not included in the Patient Paid Amount (PPA) allowances from 6/2024 through 10/2024. [REDACTED] no longer self-paid the premium beginning 11/2024. Since the filing of this appeal, the PPA has been recalculated as follows:

6/2024: \$575.80

\$1,608.70 SSA + \$469.60 Pension - \$72.80 PNA - \$174.70 Medicare Part B - \$1,255 Home Allowance

7/2024: \$589.89

\$1,608.70 SSA + \$483.69 Pension - \$72.80 PNA - \$174.70 Medicare Part B - \$1,255 Home Allowance

11/2024: \$1,061.89

\$1,906 SSA + \$483.69 Pension - \$72.80 PNA - \$1,255 Home Allowance

1/2025: \$2,075.89

\$1,665 SSA + \$483.69 Pension - \$72.80 PNA"

(Exhibit 6, pg. 1 and Exhibit 7)

The appellant's sister appeared telephonically on her behalf and did not disagree with any of the facts about the appellant's income. However, she testified that she had not received exhibits 6 and 7 with the above calculations before the hearing. MassHealth responded that she had sent

those exhibits to all parties the previous day but re-sent them during the hearing. The appellant's representative confirmed she received them. The representative then testified that she was upset by how high the PPA amount was given that her sister has limited means to pay for her care. Moreover, she does not believe the personal needs allowance (PNA) amount of \$72.80 is enough for the appellant to buy the things she needs. Her other main contention relates to her interactions with the facility where the appellant is staying. She testified that they have not communicated well with the appellant or the representative about the MassHealth process and are making it difficult for the appellant to move out of the facility.

MassHealth responded that the PPA was calculated based on the appellant's income and the regulations and restated how the months were calculated and why they changed. The hearing officer explained that the appellant's issues with the facility are not relevant to these proceedings. The hearing officer then pressed the representative about whether she believed any part of the PPA was calculated wrong by MassHealth. The representative responded that she just believes the PPA amounts are too high in general for the appellant to pay. Furthermore, she argued that even if PPA calculations are set by regulation they are unfairly prejudicial to people without means like the appellant and thought they should be changed. She testified that she was not very knowledgeable about how the PPA is calculated and requested information from the regulation. (This information will be provided in the analysis section below).

Findings of Fact

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

1. The appellant is an individual over the age of 65.
2. The appellant was admitted to a facility in early June 2024.
3. On June 21, 2024, the appellant applied for MassHealth benefits.
4. The appellant's PPA was calculated as follows:

6/2024: \$575.80: \$1,608.70 SSA + \$469.60 Pension - \$72.80 PNA - \$174.70 Medicare Part B - \$1,255 Home Allowance

7/2024 – 10/2024: \$589.89: \$1,608.70 SSA + \$483.69 Pension - \$72.80 PNA - \$174.70 Medicare Part B - \$1,255 Home Allowance

11/2024 – 12/2024: \$1,061.89: \$1,906 SSA + \$483.69 Pension - \$72.80 PNA - \$1,255 Home Allowance

01/2025 onward: \$2,075.89: \$1,665 SSA + \$483.69 Pension - \$72.80 PNA

5. On December 13, 2024, the appellant received a notice that she was approved for MassHealth Long-term benefits with a PPA of \$1,061.89 with a start date of June 1, 2024.
6. On January 24, 2025, the appellant appealed the notice.

Analysis and Conclusions of Law

“MassHealth is a cooperative Federal and State undertaking that provides payment for medical services to eligible individuals and families who are unable to pay for their own medical care.” *Shelales v. Dir. of the Office of Medicaid*, 75 Mass. App. Ct. 636, 637 (2009). MassHealth is “a needs-based program aimed at maximizing the use of personal funds for long-term care before relying on public funds. Medicaid is, and always has been, a program to provide basic health coverage to people who do not have sufficient income or resources to provide for themselves.” *Id.* at 641.

MassHealth’s regulations define a medical institution as a facility public or private “providing acute, chronic, or long-term care, unless otherwise defined within 130 CMR 515.000 through 522.000: *Other Division Programs*. This includes acute inpatient hospitals, licensed nursing facilities, state schools, intermediate-care facilities for the mentally retarded, public or private institutions for mental diseases, freestanding hospices, and chronic-disease and rehabilitation hospitals.” 130 CMR 515.001.

An individual is considered institutionalized for MassHealth purposes if he or she is placed in one or more medical institutions where the placement lasts or is expected to last for a continuous period of at least 30 days. 130 CMR 515.001. Members in a long-term-care facility must contribute to the cost of care under the laws of the Commonwealth of Massachusetts; this contribution is referred to as the “patient-paid amount” or PPA. 130 CMR 515.001. Institutionalized members of MassHealth are not subject to a countable income limit but are required to pay a portion of their income to the nursing facility (minus specific deductions set forth in 130 CMR 520.026). 130 CMR 520.009(A)(3).

Pursuant to 130 CMR 520.026, the following applies for long-term care general income deductions (By request of the representative I will include the full regulation):

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.

(A)Personal-needs Allowance.

- (1) The MassHealth agency deducts \$72.80 for a long-term-care resident's personal-needs allowance (PNA).*
- (2) If an individual does not have income totaling the standard, the MassHealth agency will pay the individual an amount up to that standard on a monthly basis.*
- (3) The PNA for SSI recipients is \$72.80.*

(B)Spousal-maintenance-needs-deduction. If the community spouse's gross income is less than the amount he or she needs to live in the community (minimum-monthly-maintenance-needs allowance, MMMNA) as determined by the MassHealth agency, the MassHealth agency may deduct an amount from the institutionalized spouse's countable-income amount to meet this need. This amount is the spousal-maintenance-needs deduction. 130 CMR 520.026(B) applies to the first month of eligibility in an institution and terminates the first full calendar month in which the spouse is no longer in an institution or no longer has a spouse in the community. This deduction is the amount by which the minimum-monthly-maintenance-needs allowance exceeds the community spouse's gross income.

- (1) The MassHealth agency determines the MMMNA by adding the following amounts:*
 - (a) \$1,822 (the federal standard maintenance allowance); and*
 - (b) an excess shelter allowance determined by calculating the difference between the standard shelter expense of \$547 and the shelter expenses for the community spouse's principal residence, including*
 - 1. the actual expenses for rent, mortgage (including interest and principal), property taxes and insurance, and any required maintenance charge for a condominium or cooperative; and*
 - 2. the applicable standard deduction under the Supplemental Nutrition Assistance Program for utility expenses. If heat is included in the rent or condominium fee, this amount is \$375. If heat is not included in the rent or condominium fee, this amount is \$611.*
- (2) The maximum-monthly-maintenance-needs allowance is \$2,739.00 per month, unless it has been increased as the result of a fair-hearing decision based on exceptional circumstances in accordance with 130 CMR 520.017(D).*
- (3) 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.*

(C)Deductions for Family-maintenance Needs.

- (1) The MassHealth agency allows a deduction from the income of a long-term-care resident to provide for the maintenance needs of the following family members if they live with the*

community spouse:

- (a) a minor child - a child younger than 21 years old of either member of the couple;*
 - (b) a dependent child - a child 21 years of age and older who is claimed as a dependent by either spouse for income-tax purposes under the Internal Revenue Code;*
 - (c) a dependent parent - a parent of either spouse who lives with the community spouse and who is claimed as a dependent by either spouse for income-tax purposes under the Internal Revenue Code; and*
 - (d) a dependent sibling - a brother or sister of either spouse (including a half-brother or half-sister) who lives with the community spouse and who is claimed as a dependent by either spouse for income-tax purposes under the Internal Revenue Code.*
- (2) The deduction for family-maintenance needs is a of the amount by which the federal standard maintenance allowance exceeds the monthly gross income of the family member. The federal standard maintenance allowance is \$1,822.*

(D) Deductions for Maintenance of a Former Home.

- (1) The MassHealth agency allows a deduction for maintenance of a home when a competent medical authority certifies in writing that a single individual, with no eligible dependents in the home, is likely to return home within six months after the month of admission. This income deduction terminates at the end of the sixth month after the month of admission regardless of the prognosis to return home at that time.*
- (2) The amount deducted is the 100% federal poverty level income standard for one person.*

(E) Deductions for Health-care Coverage and Other Incurred Expenses.

- (1) Health-insurance Premiums or Membership Costs. The MassHealth agency allows a deduction for current health-insurance premiums or membership costs when payments are made directly to an insurer or a managed-care organization.*
- (2) Incurred Expenses.*
- (a) After the applicant is approved for MassHealth, the MassHealth agency will allow deductions for the applicant's necessary medical and remedial-care expenses. These expenses must not be payable by a third party. These expenses must be for medical or remedial-care services recognized under state law but not covered by MassHealth.*
- (b) These expenses must be within reasonable limits as established by the MassHealth agency. The MassHealth agency considers expenses to be within reasonable limits provided they are*
- 1. not covered by the MassHealth per diem rate paid to the long-term-care facility; and*
 - 2. certified by a treating physician or other medical provider as being medically necessary.*
- (3) Guardianship Fees and Related Expenses. The MassHealth agency allows deductions from a member's income for guardianship fees and related expenses when a guardian is essential to enable an incompetent applicant or member to gain access to or consent to medical*

treatment, as provided below.

(a) Expenses Related to the Appointment of a Guardian.

- 1. The MassHealth agency allows a deduction for fees and expenses related to the appointment of a guardian if the guardian's appointment is made for the purpose of*
 - a. assisting an incompetent applicant to gain access to medical treatment through MassHealth; or*
 - b. consenting to medical treatment on behalf of a MassHealth member.*
- 2. The MassHealth agency allows a deduction for reasonable costs, including attorney fees, as approved by the probate court, not to exceed \$500 for the appointment, except as provided in 130 CMR 520.026(E)(3)(a)3.*
- 3. The MassHealth agency may allow a deduction, as approved by the probate court, of up to \$750 for the appointment when the medical issues before the court are more complex. An example of such complexities includes providing evidence of the need for anti-psychotic medications.*
- 4. The deduction is made from the member's monthly patient-paid amount over a 12-month period.*

(b) Guardianship Services Related to the Application Process.

- 1. The MassHealth agency allows a deduction 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.*
- 2. The MassHealth agency allows a deduction for reasonable costs related to the MassHealth application process, as approved by the probate court, not to exceed \$500. In cases where an administrative hearing is held, the total deduction may not exceed \$750 for the costs related to the application process and hearing.*
- 3. The deduction is made from the member's monthly patient-paid amount over a 12-month period.*

(c) Guardianship Services Related to the Redetermination Process.

- 1. The MassHealth agency allows a deduction for fees for guardianship services related to the MassHealth redetermination process when the guardian has been appointed by the probate court to assist an incompetent person with securing continued access to medical treatment.*
- 2. The MassHealth agency allows a deduction for reasonable costs related to the MassHealth redetermination process, as approved by the probate court, not to exceed \$250. In cases where an administrative hearing is held, the total deduction may not exceed \$375 for the costs related to the redetermination process and hearing.*
- 3. The deduction is made from the member's monthly patient-paid amount over a 12-month period.*

(d) Monthly Guardianship Services.

- 1. The MassHealth agency allows a deduction for monthly fees for a guardian to the extent the guardian's services are essential to consent to medical treatment on behalf of the member.*

2. The MassHealth agency allows a deduction, as approved by the probate court, for up to 24 hours per year at a maximum of \$50 per hour for guardianship services.
3. The MassHealth agency allows the deduction only if the guardianship services provided include the attendance and participation of the guardian in quarterly care meetings held by the nursing facility where the member lives.
4. The MassHealth agency allows this deduction only if each year the guardian submits to the MassHealth agency a copy of the affidavit that describes the guardianship services provided to the member.
5. The deduction is made from the member's monthly patient-paid amount over a 12-month period.

(e) Expenses Incurred by the Guardian in Connection with Monthly Guardianship Services.

1. The MassHealth agency allows a deduction up to, but not exceeding, the member's monthly patient-paid amount for filing and court fees incurred by the guardian in connection with monthly guardianship services that are essential to consent to medical treatment for the member.
2. If monthly guardianship services are provided, these expenses are included in the affidavit of services required under 130 CMR 520.026(E)(3)(d)4.
3. The deduction is made from the member's monthly patient-paid amount in the month following receipt of the affidavit of services.

(f) Hardship.

1. If exceptional circumstances exist that make the deductions allowed under 130 CMR 520.026(E) insufficient to cover the expenses required for a guardian to provide essential guardianship services needed to gain access to or consent to medical treatment, the guardian, on behalf of the member, may appeal to the Office of Medicaid Board of Hearings for an increased deduction.
2. A hearing officer may allow for an increased deduction for guardianship expenses only in circumstances where the issues surrounding the member's need to gain access to or consent to medical treatment are extraordinary.
3. Extraordinary circumstances may exist when
 - a. there is a need for a guardian to consistently spend more than 24 hours per year providing guardianship services to appropriately consent to medical treatment needed by the member; or
 - b. the circumstances of a MassHealth member cause the guardian appointment or application process to be particularly complex and significantly more costly than the deduction allowed at 130 CMR 520.026(E)(3)(a) or (b).

(g) Guardianship Services and Expenses that are not Deductible. The following fees and costs are not allowed as a deduction under 130 CMR 520.026(E):

1. amounts that are also used to reduce a member's assets under 130 CMR 520.004;
2. amounts that are also used to meet a deductible or any other deduction allowed under MassHealth regulations;
3. expenses related to the appointment of a guardian for an applicant when the appointment is made more than six months before submission of a MassHealth application;

- 4. expenses related to the appointment of a guardian for an applicant or member when the applicant or member does not request a deduction for the appointment within six months of the date of application or date of appointment, whichever is later. However, these expenses may be used as allowed pursuant to 130 CMR 506.009: The One-time Deductible or 520.032 to meet a deductible;*
- 5. expenses, fees, or costs for expenses that are not essential to obtain medical treatment for the ward including financial management, except when the management is necessary to accurately complete a MassHealth application or redetermination form;*
- 6. expenses, fees, or costs for transportation or travel time;*
- 7. attorney fees, except when payment of the fees is required for the appointment of the guardian; and*
- 8. fees for guardianship services provided by a parent, spouse, sibling, or child, even if appointed by the probate court. However, the MassHealth agency allows a deduction for guardianship expenses in accordance with 130 CMR 520.026(E)(3)(a) and (e).*

The appellant representative disputes the amount of the personal needs allowance, but the PNA, \$72.80 per month, is set by the above regulation and cannot be changed (130 CMR 520.026(A)). With regard to the “home allowance,” the regulation states that the home maintenance deduction “terminates at the end of the sixth month after the month of admission” (130 CMR 520.026(D)). MassHealth did not err in following the wording of the regulation when it deducted 100% federal poverty level income standard for one person from June 2024 to December 2024. The appellant’s representative did not dispute MassHealth’s determination of her short-term screening or countable income, and did not present any evidence that any of the additional PPA deductions would apply here (130 CMR 520.026).

As for the appellant’s argument that the regulations are unfair for the appellant, the Board of Hearings has no authority to change MassHealth regulations (130 CMR 610.082). Furthermore, the appellant’s arguments about the facility’s behavior and communication with the appellant are not relevant to these proceedings.

For the above reasons and based on the evidence and testimony presented at hearing, the appellant has not demonstrated that MassHealth incorrectly calculated the appellant’s PPA.

As such 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.

David Jacobs
Hearing Officer
Board of Hearings

cc:

Quincy MEC

