

# Office of Medicaid BOARD OF HEARINGS

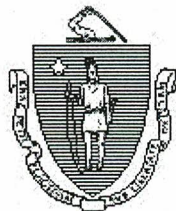
**Appellant Name and Address:**

<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	1612965
<b>Decision Date:</b>	2/2	<b>Hearing Date:</b>	01/18/2017
<b>Hearing Officer:</b>	Susan Burgess-Cox		

**Appellant Representative:**

**MassHealth Representative:**

Gloria Medeiros



*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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Patient Paid Amount
<b>Decision Date:</b>	2/2	<b>Hearing Date:</b>	01/18/2017
<b>MassHealth Rep.:</b>	Gloria Medeiros	<b>Appellant Rep.:</b>	
<b>Hearing Location:</b>	Taunton MassHealth Enrollment Center		

## 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 19, 2016, MassHealth determined that they would change the appellant's patient paid amount from \$1,845.12 to \$1,775.42 on September 1, 2016 because of a change in circumstances. (Exhibit 1A). Through a notice dated October 17, 2016, MassHealth determined that they would change the appellant's patient paid amount from \$1,775.42 to \$1,806.52 on November 11, 2016 because of a change in circumstances. (Exhibit 1B). Both decisions were appealed in a timely manner and consolidated as the issue and parties were common to both decisions.<sup>1,2</sup> (130 CMR 610.000; Exhibit 2A; Exhibit

<sup>1</sup> The Board of Hearings did not initially have a record of an appeal filed on September 6, 2016 upon receiving a request for hearing through the MassHealth Electronic Document for Existing Management Center (EDMC) on September 29, 2016. (Exhibit 3). Since an appeal filed on September 29, 2016 was not timely for a notice issued on August 19, 2016, the Board of Hearings dismissed that appeal. (130 CMR 610.015; 130 CMR 610.035; Exhibit 3). The appellant's son appealed the dismissal and the Board of Hearings obtained a record of an appeal filed on September 6, 2017. (Exhibit 2A; Exhibit 3). The Board of Hearings vacated the dismissal and scheduled a hearing for January 18, 2017. (130 CMR 610.047; 130 CMR 610.048; Exhibit 4).

<sup>2</sup> The appellant's son appeared at the hearing on his own. While the request for hearing filed in October 2016 names the appellant's son as an appeal representative, the signature and writing on that request for hearing

2B). An action regarding the scope and amount of assistance is valid grounds for appeal. (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth determined that they would change the appellant's patient paid amount from \$1,845.12 to \$1,775.42 on September 1, 2016 and then from \$1,775.42 to \$1,806.52 on November 11, 2016.

## Issue

Whether MassHealth was correct in calculating the appellant's patient paid amount.

## Summary of Evidence

The MassHealth representative, from the Taunton MassHealth Enrollment Center, testified that MassHealth received an application for long-term care on July 13, 2016 seeking coverage as of July 23, 2016. (Testimony; Exhibit 6). The appellant was admitted into a long-term care facility on July 11, 2016. (Testimony; Exhibit 6). The appellant was approved for MassHealth with a patient paid amount (PPA) that was adjusted in September 2016 due to information regarding the payment of Medicare Part D. (Testimony; Exhibit 1A). In October 2016, MassHealth received information from the Social Security Administration increasing the appellant's benefit amount so adjusted the appellant's PPA as of November 1, 2016. (Testimony; Exhibit 1B).

A PPA of \$1,775.42 was based on the appellant's monthly income and allowances including:

<b>Income:</b>	Social Security:	\$1,388.30
	Pension(s):	\$635.70

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appear the same as the requests received in September 2016 that do not name an appeal representative. The appellant and his son have the same first and last name with a different middle name. There is no suffix to identify and neither the request for hearing or notice issued by MassHealth utilized a middle initial for the appellant. Therefore, at the hearing, the appellant's son produced a copy of a durable power of attorney naming him as the appellant's attorney-in-fact. A copy of this durable power of attorney was incorporated into the hearing record as Exhibit 8.

	VA Benefits:	\$133.17
<b>Total Income:</b>		<b>\$2,157.17</b>
<b>Allowances:</b>	Personal Needs Allowance:	(\$72.80)
	Other Health Insurance:	(\$308.95)
<b>Total Allowances:</b>		<b>(\$381.75)</b>
<b>PPA:</b>	<b>(Income – Allowances)</b>	<b>\$1,775.42</b>

A PPA of \$1,806.62 was based on income and allowances of:

<b>Income:</b>	Social Security:	\$1,419.40
	Pension(s):	\$635.70
	VA Benefits:	\$133.17
<b>Total Income:</b>		<b>\$2,188.27</b>
<b>Allowances:</b>	Personal Needs Allowance:	(\$72.80)
	Other Health Insurance:	(\$308.95)
<b>Total Allowances:</b>		<b>(\$381.75)</b>
<b>PPA:</b>	<b>(Income – Allowances)</b>	<b>\$1,806.62</b>

The MassHealth representative testified that MassHealth could not consider other allowances for the appellant in calculating the PPA as he does not have a spouse living in the community and did not indicate intent to return home.

The appellant's son appeared in person and testified that the appellant's ex-wife is also in a long-term care facility and receives MassHealth long-term care benefits. A Judgement of Divorce Nisi from October 1989 orders the appellant to pay \$125 each week in alimony to his ex-wife. (Exhibit 7). The order does not contain a provision that would limit or terminate alimony payments. (Exhibit 7). The payments are direct deductions from the appellant's income and paid through the Family Service Office of the Norfolk County Probate Court. (Testimony; Exhibit 7). As of July 2016, the appellant has had deductions of \$125 each week paid to his ex-wife. This \$125 each week is utilized as income in calculating the ex-wife's PPA.

The appellant's son asked that MassHealth deduct these weekly payments in calculating the appellant's PPA since they have already been made each month going back to the start date in July 2016 and he does not have any income or resources to satisfy this debt to the facility. Additionally, the appellant cannot continue to have these deductions and pay the facility the PPA calculated by MassHealth going forward. The appellant's son argued that MassHealth is counting the same income for both the appellant and his ex-wife in calculating each PPA. The appellant's son thought it would be easier for MassHealth to consider these payments as an allowance for the appellant rather than having to make changes to the divorce decree and change his ex-wife's PPA.

The MassHealth representative responded that this is not a deduction that can be made in calculating the appellant's PPA. The MassHealth representative testified that MassHealth also has to continue to consider this as income for the appellant's ex-wife in calculating her PPA. The MassHealth representative testified that even if the appellant stops making payments to his ex-wife, MassHealth would consider it as income that she is entitled to receive. The appellant's son stated that he did not think it was fair for MassHealth to count this income twice as both parties are recipients of MassHealth long-term care. The MassHealth representative informed the appellant's son that he would have to present an order from the court terminating payments of alimony in order for MassHealth to no longer consider them in calculating the ex-wife's patient paid amount.

## **Findings of Fact**

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

1. MassHealth received an application for long-term care on July 13, 2016 seeking coverage as of July 23, 2016.
2. The appellant was admitted into a long-term care facility on July 11, 2016.
3. The appellant was approved for MassHealth with a PPA.
4. As of September 1, 2016, MassHealth calculated a PPA of \$1,775.42.
5. In September 2016, the appellant had gross income of \$2,157.17 that included: \$1,388.30 from the Social Security Administration, a pension of \$635.70 and \$133.17 in benefits from the Veteran's Administration.

6. In October 2016, the appellant's Social Security income increased resulting in an increase in the PPA as of November 1, 2016.
7. MassHealth considered a personal needs allowance of \$72.80 and health insurance costs of \$308.95 in calculating the appellant's PPA.
8. The appellant is divorced.
9. Under a Judgement of Divorce Nisi, the appellant shall continue to pay alimony in the amount of \$125.00 weekly to his ex-wife through the Family Service Office of the Norfolk Probate and Family Court.
10. The appellant's ex-wife is in a long-term care facility and is eligible for MassHealth long-term care with a PPA.
11. MassHealth includes alimony payments paid by the appellant in calculating his ex-wife's PPA.

## **Analysis and Conclusions of Law**

MassHealth administers and is responsible for the delivery of health-care services to MassHealth members. (130 CMR 515.002). The regulations governing MassHealth at 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for noninstitutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by M.G.L. c. 118E, and certain Medicare beneficiaries. (130 CMR 515.002). The appellant in this case is an institutionalized person. Therefore, the regulations at 130 CMR 515.000 through 522.000 apply to this case. (130 CMR 515.002).

The issue on appeal is the PPA that the appellant contributes. The appellant is asking for an adjustment in the PPA calculated by MassHealth. (130 CMR 520.002(B)). In calculating a PPA, MassHealth looks to both the countable income and allowable deductions. (130 CMR 520.009; 130 CMR 520.026). The regulations define the countable income amount as an individual's and the spouse's gross earned and unearned income less certain business expenses and standard income deductions. (130 CMR 520.009(A)(1)). For institutionalized individuals, specific deductions described in 130 CMR 520.026 are applied

against the individual's countable-income amount to determine the PPA. (130 CMR 520.009(A)(3)).

The types of income that are considered in the determination of eligibility are described in 130 CMR 520.009, 520.018, 520.019, and 520.021 through 520.024. (130 CMR 520.009(A)(4)). These include income to which the applicant, member, or spouse would be entitled whether or not actually received when failure to receive such income results from the action or inaction of the applicant, member, spouse, or person acting on his or her behalf. (130 CMR 520.009(A)(4)). In determining whether or not failure to receive such income is reasonably considered to result from such action or inaction, the MassHealth agency will consider the specific circumstances involved. (130 CMR 520.009(A)(4)). The appellant did not dispute his income, only the deductions allowed.

Long-term care 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; health-care coverage and incurred medical and remedial-care expenses. (130 CMR 520.026). These deductions are used in calculating a PPA. (130 CMR 520.026). The regulations define a spouse as a person married to the applicant or member according to the laws of the Commonwealth of Massachusetts. (130 CMR 515.001). The appellant did not dispute the fact that the individual to whom he makes payments is not his spouse. Instead, the appellant asked that MassHealth consider alimony payments made to his former spouse as an income deduction.

Although certain deductions including the maximum-monthly-maintenance-needs allowance for a community spouse may be adjusted as a result of a fair-hearing decision, there are specific guidelines for allowing such an increase and the appellant does not meet any of those conditions. (130 CMR 520.026). Specifically, the appellant is a single adult who is asking for an adjustment to accommodate his payment of alimony to his former spouse. The regulations governing MassHealth do not allow for a deduction for payments to a former spouse. (130 CMR 520.026; 130 CMR 515.001). Therefore, this appeal is denied.

The appellant's ex-wife is also on MassHealth and receives alimony payments from the appellant that are utilized by MassHealth in calculating her PPA. While the MassHealth representative at the hearing stated that the appellant's failure to make such payments would not result in an adjustment to his ex-wife's PPA that does not appear consistent with the regulations. Under the regulations

governing MassHealth, the types of income that are considered in the determination of eligibility include income to which the applicant, member, or spouse would be entitled whether or not actually received when failure to receive such income results from the action or inaction of the applicant, member, spouse, or person acting on his or her behalf. (130 CMR 520.009(A)(4)). The appellant's failure or refusal to make payments to his ex-wife in order to accommodate payment of his own PPA is not something that she can control. That is a decision of the appellant. The impact of such a decision on his ex-wife's patient paid amount would be the subject of another appeal. While I agree with the appellant's son that MassHealth is counting the same funds twice in using the same stream of income in calculating two separate patient paid amounts, the current regulations do not make exceptions for parties who are both on MassHealth unless they are married. (130 CMR 520.000). Therefore, the decision made by MassHealth regarding the calculation of the appellant's patient paid amount was correct.

This 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.

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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira