

## Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**

<b>Appeal Decision:</b>	Approved in part; Denied in part	<b>Appeal Number:</b>	0900749
<b>Decision Date:</b>	5/28/09	<b>Hearing Date:</b>	03/23/2009
<b>Hearing Officer:</b>	Susan Burgess-Cox	<b>Record Open to:</b>	05/19/2009

**Appellant Representative:**

**MassHealth Representative:**  
Paul Keegan



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
Two Boylston Street  
Boston, MA 02116*

## APPEAL DECISION

<b>Appeal Decision:</b>	Approved in part; Denied in part	<b>Issue:</b>	Patient Paid Amount
<b>Decision Date:</b>	5/28/09	<b>Hearing Date:</b>	03/23/2009
<b>MassHealth Rep.:</b>	Paul Keegan	<b>Appellant Rep.:</b>	
<b>Hearing Location:</b>	Revere 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 December 10, 2008, MassHealth notified the appellant that they will raise his patient paid amount from \$3,356.84 to \$3,422.54 on January 1, 2009 because his countable income has increased. (Exhibit 1). The appellant's guardian filed this appeal in a timely manner on January 6, 2009. (see 130 CMR 610.015(B); Exhibit 2; Exhibit 3). The Board of Hearings scheduled a hearing for March 23, 2009. (Exhibit 4). An agency determination regarding the scope and amount of assistance is valid grounds for appeal. (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth raised the appellant's patient paid amount from \$3,356.84 to \$3,422.54.

### Issue

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

## Summary of Evidence

The MassHealth representative, from the Revere MassHealth Enrollment Center, testified that MassHealth received an application for long-term care benefits on April 23, 2008. MassHealth approved this application with a start date of May 16, 2008. The MassHealth representative testified that an adjustment was made to the calculation of the appellant's patient-paid amount effective January 1, 2009 due to an increase in the appellant's social security benefits. The appellant did receive \$1,233 in Social Security benefits in 2008 and this was going to increase to \$1,310 in January 2009. The MassHealth representative testified that the appellant also receives a pension of \$397 each month and has rental income in the amount of \$1,799.34 each month.

The only income being challenged was the rental income. The MassHealth representative testified that the appellant has a total gross rental income of \$2,500 each month from a three-family home. MassHealth allowed \$700.66 each month for expenses which included monthly taxes, a water bill and insurance for the property. The appellant was represented by an attorney who appeared in person and testified that the appellant also incurred expenses regarding repairs to the property and costs for trash disposal. Additionally, the appellant went for 2 months without rental income and there is a mortgage of \$113,000 that was taken out on the property which was used to pay for the appellant's assisted living, a pre-paid burial, work on the property, legal fees and money owed to the long-term care facility. The appellant's attorney argued that MassHealth should utilize the appellant's tax return from 2008 to determine the net rental income. Using the rental income claimed on the appellant's 2008 tax return of \$14,350 and dividing that by 12 would equal \$1,195.83 as a net rental income each month.

The appellant's attorney presented a number of documents for MassHealth to consider in adjusting the calculation of the patient paid amount. These documents were incorporated into the hearing record as Exhibit 5. The record was held open until April 6, 2009 to give MassHealth the opportunity to review and respond to the records submitted at the hearing. (Exhibit 6). MassHealth reviewed the records and was willing to make some adjustments but asked for further verification regarding other adjustments. A copy of this response was incorporated into the record as Exhibit 7. The only adjustment was to allow for repair bills in the amount of \$9,533. The appellant's attorney submitted additional documents which were incorporated into the hearing record as Exhibit 8. MassHealth was given until May 1, 2009 to respond to these additional records to ensure that all arguments were presented to the hearing officer before issuing a decision. (Exhibit 9).

MassHealth issued a response which was incorporated into the record as Exhibit 10. In their response, MassHealth agreed to adjust the rental income for the months of July 2008 and August 2008 to reflect that \$1,000 in rental income was not received in either month. (Exhibit 10). Additionally, MassHealth allowed a deduction for the rental fee of \$475 to be used as a deduction from the rental income, this came to a monthly deduction of \$39.58 each month. (Exhibit 10). Regarding the loan in the amount of \$113,000, MassHealth allowed for expenses totaling \$95,838 but did not allow for \$17,162. (Exhibit 10). MassHealth stated that they cannot allow the full amount of mortgage payments to be considered a deduction. The appellant's attorney presented this mortgage payment as something for MassHealth to consider as it was taken out to assist the

appellant. (Exhibit 10). However, MassHealth did not receive verification of the full mortgage value as benefiting the appellant and still considered \$17,162 as not being verified as a benefit to the appellant. (Exhibit 10). MassHealth also stated that if the full mortgage is allowed as a deduction, and the repair bills were paid from the proceeds of the mortgage, then MassHealth would not allow for these expenses in addition to a deduction for the mortgage. The appellant's attorney was given the opportunity to submit verification of the \$17,162 but nothing was submitted. The record closed on May 20, 2009.

## Findings of Fact

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

1. The appellant applied for long-term care benefits on April 23, 2008.
2. MassHealth approved this application with a start date of May 16, 2008.
3. MassHealth adjusted the appellant's patient paid amount on January 1, 2009 due to an increase in the appellant's social security benefits.
4. The appellant's social security increased from \$1,233 to \$1,310.
5. The appellant receives a pension of \$397 each month.
6. The appellant has rental income which MassHealth originally calculated as \$1,799.34 each month.
7. The appellant only challenged the calculation of the rental income.
8. The appellant presented bills and other expenses for MassHealth to consider in calculating the rental income.
9. The property has a gross rental income in the amount of \$2,500 each month.
10. MassHealth originally considered expenses in the amount of \$700.66 each month giving the appellant a net rental income of \$1,799.34 each month.
11. The appellant took out a mortgage on the property in the amount of \$113,000.
12. MassHealth verified that \$95,838 was used from this mortgage to pay for expenses for the appellant or the home.
13. MassHealth would not consider the entire mortgage payment as a deduction as the appellant did not present evidence that the entire mortgage was used for the deduction.

14. MassHealth verified that \$9,533 was used for repairs to the property and agreed to consider this in calculating the net income.
15. The appellant demonstrated that there were two months in 2008 where the appellant did not receive rental income and MassHealth agreed to consider this in calculating the net income.
16. The appellant paid a rental fee in the amount of \$475 for the property and MassHealth agreed to consider this in calculating the net income.

## **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 patient paid amount that the appellant contributes. For institutionalized individuals, specific deductions described in 130 CMR 520.026 are applied against the individual's countable-income amount to determine the patient-paid amount. (130 CMR 520.009(A)(3)). The methods for the calculation of the countable-income amount are explained in 130 CMR 520.000. (130 CMR 520.001(B)).

Pursuant to 130 CMR 520.009, an individual's gross earned and unearned income less certain business expenses and standard income deductions is referred to as the countable income amount. (130 CMR 520.009(A)(1)). Income from property that is owned by an individual who is not a real-estate broker or is owned by the individual's spouse is considered unearned income. (130 CMR 520.009(C)). Gross rental income is the countable rental-income amount received less business expenses as described in 130 CMR 520.010(C). (130 CMR 520.009(D)).

Allowable business expenses from rental income include carrying charges, cost of fuel and utilities provided to tenants, and any maintenance and repair costs. (130 CMR 520.010(C)(1)). If the individual occupies an apartment in the same building from which he or she receives rental income, carrying charges are prorated per unit. (130 CMR 520.010(C)(2)). The cost of fuel and utilities are prorated if they are paid through a single heating unit or meter. (130 CMR 520.010(C)(2)). The Division may deduct actual maintenance and repair costs, other than cosmetic changes, from the amount of rental income if the individual verifies such expenses. (130 CMR 520.010(C)(3)). In calculating the appellant's gross rental income, MassHealth originally did not correctly apply the allowable business expenses as the maintenance and repair costs were not considered. However, MassHealth agreed to adjust their decision based on the information that was presented during the record open period and at the hearing. (130 CMR

520.010(C); 130 CMR 610.051). The appellant was given the opportunity to explain the remaining amount of \$17,162 to the hearing officer but no additional response or evidence was presented other than the evidence that was presented prior to the adjustment. The appellant's attorney is asking the hearing officer to consider \$10,000 that is being held for emergency expenses by the appellant's daughters as an expense for repairs or maintenance to the home. This is not an actual expense and not something that the appellant can have and be eligible for MassHealth as eligible individuals can only have \$2,000 in excess assets. Considering the availability of this \$10,000 would disqualify the appellant from MassHealth.

Therefore, this appeal is approved in part and denied in part as MassHealth has agreed to adjust the appellant's patient paid amount based on the evidence presented but will not honor the entire amount requested by the appellant. This decision was correct.

## **Order for MassHealth**

Adjust the original patient paid amount and consider the expenses which were going to be considered by MassHealth in adjusting the patient paid amount. Do not consider the entire mortgage payments as the appellant has not demonstrated that the entire mortgage was utilized for his expenses or actually spent on the home.

## **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.

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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

cc:  
MassHealth Representative: Mr. Paul Alford