

State: Massachusetts

Section: Condition or Requirement

**REASONABLE LIMITS ON AMOUNTS FOR NECESSARY MEDICAL
OR REMEDIAL CARE NOT COVERED UNDER MEDICAID**

Guardianship Fees and Related Expenses.

The Division 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.

(i) The Division 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:

1. assisting an incompetent applicant to gain access to medical treatment through MassHealth; or
2. consenting to medical treatment on behalf of a MassHealth member.

(ii) The Division 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 (a)(iii).

(iii) The Division 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.

(iv) 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.

(i) The Division 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.

(ii) The Division 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.

(iii) 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.

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(i) The Division 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.

(ii) The Division 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.

(iii) The deduction is made from the member's monthly patient-paid amount over a 12-month period.

(d) Monthly Guardianship Services.

(i) The Division 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.

(ii) The Division 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.

(iii) The Division 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.

(iv) The Division allows this deduction only if each year the guardian submits to the Division a copy of the affidavit that describes the guardianship services provided to the member.

(v) 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.

(i) The Division 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.

(ii) If monthly guardianship services are provided, these expenses are included in the affidavit of services required under (d)(iv).

(iii) The deduction is made from the member's monthly patient-paid amount in the month following receipt of the affidavit of services.

(f) Hardship.

(i) If exceptional circumstances exist that make the deductions allowed for guardianship expenses 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

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appeal to the Board of Hearings for an increased deduction.

(ii) 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.

(iii) Extraordinary circumstances may exist when:

1. 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
2. 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 in (a) or (b).

(g) Guardianship Services and Expenses that are not Deductible.

The following fees and costs are not allowed as a deduction.

- (i) Amounts that are also used to reduce a member's assets.
- (ii) Amounts that are also used to meet a deductible or any other deduction allowed under Division regulations.
- (iii) 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.
- (iv) 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.
- (v) 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.
- (vi) Expenses, fees, or costs for transportation or travel time.
- (vii) Attorney fees, except when payment of the fees is required for the appointment of the guardian.
- (viii) Fees for guardianship services provided by a parent, spouse, sibling, or child, even if appointed by the probate court. However, the Division allows a deduction for guardianship expenses in accordance with (a) and (c).

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