

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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| Appeal Decision: | DENIED | Appeal Number: | 2175996 |
| Decision Date: | 10/14/2021 | Hearing Date: | 09/15/2021 |
| Hearing Officer: | Christopher Taffe | | |

Appearance for Appellant:



Appearances for MassHealth:

Heather Prunier of the Tewksbury MEC,
and Gladys Pacheco of the MassHealth
Premium Assistance Unit (both by phone)



*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

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|---------------------------|--|--------------------------|--------------------------------|
| Appeal Decision: | DENIED | Issue: | Premium Assistance Termination |
| Decision Date: | 10/14/2021 | Hearing Date: | 09/15/2021 |
| MassHealth's Rep.: | H. Prunier & G. Pacheco | Appellant's Rep.: | |
| Hearing Location: | Tewksbury 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 July 28, 2021 sent to Appellant's mother,¹ MassHealth's Premium Assistance Program informed Appellant's family that they would no longer get premium assistance. See Exhibit 1. Appellant, via his mother who is his court-appointed legal guardian, filed an appeal with the Board of Hearings on August 9, 2021. See 130 CMR 610.015(B) and Exhibit 1. Challenging a denial or termination of MassHealth agency assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032.

¹ Per 130 CMR 610.013, the two members of the family in this case will be referred to as "mother" and "son". The only MassHealth **member** in this case is the 30-year old son. The son's mother is neither an applicant nor a MassHealth member. Technically the Board of Hearings only has jurisdiction over appeals for MassHealth members and applicants. See definition of "Appellant" in 130 CMR 610.004. It is unclear why Premium Assistance sent the appealable action notice in Exhibit 1 directly to the mother and gave her an independent appeal right. However, this distinction and issue can be avoided as the mother, via her authority as legal guardian, has the legal ability to appeal on behalf of her 30-year old son. See section (1)(b) of the definition of "Appeal Representative" 130 CMR 610.004 and 130 CMR 610.016(A). The relevant Guardianship Appointment paper dated January 11, 20210 from a Massachusetts Probate Court was submitted with the appeal filing in Exhibit 1.

Action Taken by MassHealth

MassHealth stopped premium assistance payments for Appellant.

Issue

Were there any regulatory grounds to support the MassHealth action? If not, what is the appropriate remedy at the current time?

Summary of Evidence

Appellant is currently a 30-year old MassHealth member. He has received MassHealth benefits for several years and since at least 2004, when he was a minor child. He has had a guardianship in place for at least 10 years as an adult with incapacity related to severe intellectual disability, with his mother serving as his legal guardian. Appellant currently resides in a group home in [REDACTED] Massachusetts, where he has continuously resided in a community setting for the past seven years.

Since approximately 2014, MassHealth has approved Appellant for Premium Assistance payments, which resulted in a monthly check sent on his behalf from the agency to his mother to help pay for the son's enrollment in his mother's employer-sponsored health insurance. For all times from when Premium Assistance benefits began through July 2021, his mother resided in [REDACTED] Massachusetts. Appellant's mother is in her early 60s and has lived in [REDACTED] at the same house for approximately 55 years until the summer of 2021. Appellant's mother currently works for the [REDACTED] Public Schools where she has worked at the high school for over 20 years, and, through this employer, she enrolled in a BlueCross/BlueShield health insurance. Because of the premium assistance, she has obtained a family plan from her employer for several years (since 2017, if not earlier) as opposed to an individual health plan. MassHealth Premium Assistance indicated that the agency was paying approximately \$636/monthly during the 2021 year prior to termination.² Appellant's mother also indicated that even though Appellant was past the age (generally 26 years old) for dependents to stay on her insurance plan, her employer's health plan allowed Appellant to stay and remain insured on the plan, even as an adult of 29 or 30 years of age, due to his disabled status. Appellant's mother also testified that she was told by the agency to take actions to enroll her son in her employer-sponsored health plan at some point in the past.

Appellant's mother lived with her own mother in [REDACTED] for many years. In March of 2021, Appellant's maternal grandmother passed away. Due to the death of the grandmother, Appellant's mother could no longer financially continue to live in the [REDACTED] home, as at least two lines of equity had previously been taken out during the elder's life. After Appellant's maternal

² If MassHealth Premium Assistance was cutting a check for more than \$636, then this means that MassHealth thought the cost of the premium check was less than the MassHealth cost of providing direct and primary health insurance through MassHealth. See 130 CMR 506.012(E)(2)(c) and 130 CMR 506.012(E)(3)(c). In the future, 130 CMR 610.062(A) and (D) suggests it would be a better practice for the Premium Assistance Unit to produce some written materials to assist at hearing.

grandmother had passed, Appellant's mother had to sell the home. After being unable to find anything affordable in [REDACTED] or the surrounding area, she eventually was able to find a location in [REDACTED] where she moved in June 2021. Appellant's mother timely notified MassHealth of her move. She has moved but she has not switched jobs and continues to work at the same school. Her health insurance remains unchanged. At all relevant times, Appellant's mother has permissibly claimed the son as a financial dependent on her federal income tax forms for the last few years.

MassHealth Premium Assistance explained that the July 28, 2021 termination notice was generated because her unit received a notification that the policy holder had moved to New Hampshire. MassHealth initially stated it was "in the regulation" that the insurance had to be closed per 130 CMR 506.012(B)(2) because the policy holder no longer lived with the member. When questioned why that mattered, as the member and his mother had lived apart for several years, the Premium Assistance Representative amended her answer to be that the policyholder lived out of state and that is what triggered the agency termination action, implying that the Appellant and his mom could live apart so long as they both lived in Massachusetts. The Premium Assistance Representative stated that the program is not allowed to mail checks and other items out of state.

The termination notice in Exhibit 1 states, in a section literally titled "*How did we make this decision?*", that "*MassHealth has determined that you or your family member no longer has health insurance or the health insurance no longer meets MassHealth rules for Premium Assistance. This is according to MassHealth regulations at 130 CMR 506.012.*" The termination notice also lists the following bullet points as possible reasons why for this action

"This may be because:

- *your health insurance ended*
- *your job ended*
- *your employer changed the amount they contributed towards your coverage*
- *your employer changed health plans and/or your plan no longer meets MassHealth rules*
- *you are eligible for Medicare*
- *other reasons."*

(Exhibit 1)

At hearing, all parties agreed that neither the health insurance nor the job with the health insurance had ended or been interrupted prior to the letter, and that there was no change in health plans or substantive changes in the amounts of contribution for the health insurance. All parties agree that Appellant was never on, and continues to be ineligible for, Medicare.

When asked if there was support anywhere in 130 CMR 506.012 for the action, MassHealth stated that the termination notice was just a form letter, that there was actually no specific rule in 130 CMR 506 that spoke to this Appellant's situation, and that the decision was based more on the residency rules in the Universal Eligibility regulations in 130 CMR 503.000. No specific citation to 130 CMR 503 was given.

MassHealth last mailed out a Premium Assistance check (dated July 14, 2021) in July, which would be payment for the month ahead (insurance costs for August 2021). Appellant's mother testified that she was somehow able to, with the help of her employer, shift from a family plan to an individual plan during the late summer of 2021, and that she did that in response to the letter.³ As a result her deductions from her paycheck would decrease from \$636 to something between \$200 to \$300/month, but, without the premium assistance payments which were more than \$300, it was still a net loss.⁴ Appellant's mother stated that, had she known this move would disrupt anything, she would have done everything in her power to stay in Massachusetts. She was never told that moving could jeopardize this benefit, and she claims in Exhibit 1 she was in fact told the contrary years ago when she asked when her son went into the group home. Appellant's mother included in the appeal filing within Exhibit 1 a Department of Public Health flyer on the Standard/CommonHealth Premium Assistance Program; this flyer states that the disabled adult or child member (the son) must currently be eligible for MassHealth, must have MassHealth through SSI or the state program, the family must have an appropriate health insurance, and it must be in the state's interest to do this only when it is cost-effective for the state. Appellant's mother questioned how it was cost-effective in the past, but how that wasn't a factor now. She also stated that she often uses that money to help supplement her son for things he regularly needs; she cited as more recent examples the purchase of a new mattress and laptop for her son.

Findings of Fact

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

1. Appellant is currently a 30-year old disabled MassHealth member who has received Standard or CommonHealth benefits for over 10 years. (Testimony)
2. For a period of at least 4 years, Appellant has been eligible for a Premium Assistance benefit through the MassHealth program. This has resulted in monthly checks made payable to Appellant's mother so that she may keep him on as a beneficiary for a family plan through her employer-sponsored health insurance benefit. (Testimony)
3. In early 2021, MassHealth was sending checks of approximately \$636/month to Appellant's mother. The last check was mailed in July 2021, and this was to be used for insurance in the month of August 2021. (Testimony)
 - a. Appellant's mother was able to remove Appellant from the family plan, and downgrade to an individual health insurance plan for herself during the period of time between August and September of 2021. (Testimony)
4. Appellant has lived in a group home in [REDACTED] Massachusetts continuously since 2014. (Testimony and Exhibit 1)

³ It is unclear if this was August or September 2021, and the effective date of when the insurance shut off.

⁴ It appears that, in cutting a check for premium assistance, the scope of the check was used to cover some of Appellant's mother's enrollment costs.

5. From 2014 to June 2021, Appellant's mother has lived and resided separately from Appellant while in her family home in [REDACTED], Massachusetts. In June 2021, she moved to [REDACTED] New Hampshire. (Testimony and Exhibit 1)

Analysis and Conclusions of Law

The most pertinent set of regulations for analysis of this appeal is found in 130 CMR 506, which has the Financial Requirements regulations for those members under the age of 65 who reside in the community (or non-medical institutional) setting. The most relevant portions of 130 CMR 506.012 read as follows:

506.012: Premium Assistance Payments

(A) Coverage Types. Premium assistance payments are available to MassHealth members who are eligible for the following coverage types:

- (1) MassHealth Standard, as described in 130 CMR 505.002: MassHealth Standard, with the exception of those individuals described in 130 CMR 505.002(F)(1)(d);
- (2) MassHealth Standard for Kaileigh Mulligan ...
- (3) MassHealth CommonHealth, as described in 130 CMR 505.004: MassHealth CommonHealth; ...

(B) Criteria. MassHealth may provide a premium assistance payment to an eligible member **when all of the following criteria are met**.

- (1) The health insurance coverage meets the Basic Benefit Level (BBL) as defined in 130 CMR 501.001: Definition of Terms. Instruments including, but not limited to, Health Reimbursement Arrangements, Flexible Spending Arrangements, as described in IRS Pub. 969, or Health Savings Accounts, as described at IRC § 223(c)(2), cannot be used to reduce the health insurance deductible in order to meet the basic-benefit level requirement.
- (2) **The health insurance policy holder is either**
 - (a) **in the PBFG; or**
 - (b) **resides with the individual who is eligible for the premium assistance benefit and is related to the individual by blood, adoption, or marriage.**
- (3) At least one person covered by the health-insurance policy is eligible for MassHealth benefits as described in 130 CMR 506.012(A) and the health-insurance policy is a policy that meets the criteria of the MassHealth coverage type for premium assistance benefits as described in 130 CMR 506.012(C).
(**Bolded** emphasis added.)

In this case, regardless of whether his mother lives in Massachusetts or New Hampshire, it is clear that Appellant doesn't satisfy 130 CMR 506.012(B)(2)(b), because he does not reside with his mother the policy holder. The two live in separate residences and have lived separately for several years going back to 2014, if not earlier.

Because Appellant has been receiving Premium Assistance benefits for several years while living apart from his mother, it was thought at hearing that Appellant's mother and Appellant were part of the same PBFG, which is the Premium Billing Family Group, and that is how the family was

eligible to receive Premium Assistance.

However, a review of the pertinent and related MassHealth regulation in 130 CMR 501.000 reveals how Premium Billing Family Groups are defined. 130 CMR 501.001 reads in relevant part as follows.

501.001: Definition of Terms

The terms listed in 130 CMR 501.001 have the following meanings for the purposes of MassHealth, as described in 130 CMR 501.000 through 508.000: Health Care Reform: MassHealth: Managed Care Requirements. In the event that a definition conflicts with federal law, the federal law supersedes.

...

Premium Billing Family Group (PBFG) — *a group of persons who live together.*

(1) The group can be an individual, a couple who are two persons married to each other according to the rules of the Commonwealth of Massachusetts, or a family.

(2) Two parents are members of the same premium billing family group if they are mutually responsible for one or more children who live with them.

(3) A family making up a PBFG may consist of

(a) a child or children younger than 19 years old, any of their children, and their parents. A child who is absent from the home to attend school is considered as living in the home;

(b) siblings younger than 19 years old and any of their children who live together even if no adult parent or caretaker relative is living in the home; or

(c) a child or children younger than 19 years old, any of their children, and their caretaker relative when no parent is living in the home.

A similar but not identical definition for PBFG appears in 130 CMR 506.011(A)(1)

506.011: MassHealth Premiums and the Children's Medical Security Plan (CMSP) Premiums

*The MassHealth agency may charge a monthly premium to MassHealth Standard, CommonHealth, or Family Assistance members who have income above 150% of the federal poverty level (FPL), as provided in 130 CMR 506.011. The MassHealth agency may charge a monthly premium to members of the Children's Medical Security Plan (CMSP) who have incomes at or above 200% of the FPL. MassHealth and CMSP premiums amounts are calculated based on a member's household modified adjusted gross income (MAGI) and their household size as described in 130 CMR 506.002 and 506.003 and **the premium billing family group (PBFG) rules as described in 130 CMR 506.011(A).** ...*

(A) Premium Billing Family Groups.

(1) Premium formula calculations for MassHealth and CMSP premiums are based on premium billing family groups (PBFG). A PBFG is comprised of

(a) an individual;

(b) a couple who are two persons married to each other according to the rules of the Commonwealth of Massachusetts and are living together; or

(c) a family who live together and consist of

1. a child or children under the age of 19, any of their children, and their

parents;

2. siblings under the age of 19 and any of their children who live together, even if no adult parent or caretaker is living in the home; or

3. a child or children under the age of 19, any of their children, and their caretaker relative when no parent is living in the home.

(2) A child who is absent from the home to attend school is considered as living in the home.

(3) A parent may be natural, adoptive, or a stepparent. Two parents are members of the same PBFG as long as they are mutually responsible for one or more children who live with them.

(4) In a family with more than one child, any child with a MAGI household income that does not exceed 300% FPL will have its premium liability determined based on the MAGI household income of the child in the family PBFG with the lowest percentage of the FPL. If a child in the PBFG has an income percentage of the FPL at or below 150% of the FPL, premiums for all children in the PBFG are waived.

(5) MassHealth and CMSP premiums for children with a MassHealth MAGI household income greater than 300% of the FPL and all premiums for young adults and adults are calculated using the individual's FPL and the corresponding premium amount as described in 130 CMR 506.011.

(6) For individuals within a PBFG that is approved for more than one premium billing coverage type, ...

(Bolded emphasis added.)

Because Appellant's mother does not reside with her son, she is not in his PBFG per 130 CMR 501.001 or 130 CMR 506.011(A). Therefore, because the mother and son are not in the same PBFG, it is not possible for Appellant to satisfy the criteria in 130 CMR 506.012(B)(2) or to be eligible for continued Premium Assistance payments. This appeal must therefore be DENIED. There is no entitlement in the regulation that can allow for such Premium Assistance benefits to continue. The decision to end Premium Assistance is justified under the regulations.

Even if eligibility was found, the fact that Appellant is no longer on his mother's health insurance plan would likely also cause another issue leading to a cessation of benefits.⁵ There is no longer a private health insurance benefit in place for Appellant, so how could MassHealth justify paying a form of premium assistance when there is no premium being paid for Appellant.

What is unclear and a bit strange is how Appellant and his mother were eligible to receive payments the past few years when they did not reside together. Based on the current text of the regulation it appears MassHealth made a mistake when they encouraged Appellant and/or his mother to enroll in the family sponsored plan back in 2017.⁶ Either that or MassHealth has some other rules or policies

⁵ That said, it is noted that the mother only took the son off the plan once MassHealth made its decision to terminate.

⁶ Although MassHealth has an arguable right to recover overpayments for benefits improperly awarded, it would seem extremely unjust in this case for MassHealth in the future to consider going after any overpayments in this matter, especially because (1) the record suggests MassHealth encouraged Appellant's mother to enroll Appellant in

which it has not disclosed and which it had used in the past to find someone to be otherwise eligible for such Premium Assistance. Nevertheless, it appears that the reported move of the mother from Massachusetts to New Hampshire triggered a re-evaluation of the living arrangement of the family and led to this action. As stated above, these facts about the whereabouts and separate residences of Appellant and his mother led to this decision to terminate Premium Assistance benefits, which is permissible under the regulations.

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.

Christopher Taffe
Hearing Officer
Board of Hearings

cc: Tewksbury MEC Appeals Coordinator
Premium Assistance Appeals Coordinator

her insurance, which seems credible and consistent based on knowledge of agency practice and how the agency gets people to enroll with Premium Assistance, and (2) the agency itself likely benefitted financially from the enrollment, as enrollment in a private health insurance plan is only allowed when the agency determines it's cost-effective for the agency. See 130 CMR 506.011 and <https://www.mass.gov/info-details/masshealth-premium-assistance-pa> (stating qualification for Premium Assistance is contingent on enrollment being cost-effective for the agency) (last viewed on October 7, 2021).