

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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|-------------------------|----------------|------------------------|------------|
| Appeal Decision: | Denied | Appeal Number: | 2177017 |
| Decision Date: | 12/13/2021 | Hearing Date: | 10/18/2021 |
| Hearing Officer: | Marc Tonaszuck | Record Open to: | 11/08/2021 |

Appearance for Appellant:




Appearance for MassHealth:

Susan Decker, Springfield MEC



*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: | Eligibility |
| Decision Date: | 12/13/2021 | Hearing Date: | 10/18/2021 |
| MassHealth's Rep.: | Susan Decker | Appellant's Rep.: |  |
| Hearing Location: | Springfield 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 08/05/2021, MassHealth informed the appellant that it approved his application for MassHealth CommonHealth with a monthly premium of \$12.00 (Exhibit 1). The appellant filed this appeal in a timely manner on 09/13/2021, challenging MassHealth's decision to deny his application for MassHealth Buy-In benefits^{1 2}. (130 CMR 610.015(B); Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

¹ Through a benefit named "Buy-In Benefits," MassHealth pays eligible members' Medicare premiums. The appellant asserts that his application for Buy-In benefits was denied, though he did not receive a notice from MassHealth to that effect.

² In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

Upon request of the appellant, the record remained open in this matter for additional evidence. The record was open until 10/25/2021 for the appellant's submission and until 11/08/2021 for MassHealth's response (Exhibits, 5-7).

Action Taken by MassHealth

MassHealth approved the appellant for MassHealth CommonHealth benefits and denied his application for MassHealth Buy-In benefits.

Issue

The appeal issue is whether MassHealth correctly determined the appellant's eligibility for MassHealth programs.

Summary of Evidence

The MassHealth representative testified that the appellant, who is over the age of 65, applied for MassHealth benefits. He has gross monthly income of 161.9% of the federal poverty level and has been determined to be disabled. He also receives Social Security and Medicare benefits. MassHealth received his application on 02/22/2021. Pursuant to the MassHealth operations memorandum, a member can receive Buy-In benefits with countable income up to 165% of the federal poverty level. Alternatively, the member can be eligible for MassHealth CommonHealth benefits at the appellant's income level; however, a member cannot receive both benefits if the income is between 150-165% of the FPL. In this case the appellant was determined to be eligible for MassHealth CommonHealth benefits as a working disabled adult³ with a \$12.00 monthly premium. Because he has CommonHealth, he is not eligible for Buy-In benefits.

An advocate from Community Legal Aid represented the appellant at the fair hearing. The appellant applied for Buy-In benefits in October 2020 and again in February 2021. He argued that the appellant never received written notice of a denial of his Buy-In benefits; therefore, once approved, his eligibility should be made retroactive to 07/01/2020. That is the date which is 120 days prior to the date the appellant learned he was denied the Buy-in benefits. The advocate next argued that the appellant is eligible for both Buy-In benefits and MassHealth CommonHealth benefits. According to regulations at 130 CMR 519.011, the appellant is not eligible for MassHealth benefits under the state plan. CommonHealth is not included in the state plan because the Commonwealth of Massachusetts funds it separately from the other MassHealth benefits that are funded through the federal program. CommonHealth falls under the waiver and is therefore not a state plan under the regulations. Accordingly, the appellant is eligible for both CommonHealth benefits and

³ A working disabled adult can receive MassHealth CommonHealth benefits as a disabled adult who works at least 40 hours per month, as an alternative to meeting a six-month deductible.

Buy-In benefits (Exhibit 4).

The hearing officer requested additional evidence from the parties regarding the waiver and whether or not MassHealth CommonHealth benefits are included in the definition of “MassHealth benefits under the Medicaid State Plan,” in MassHealth regulations at 130 CMR 519.011. The record remained open until 10/25/2021 for the appellant’s submission and until 11/01/2021 for MassHealth’s written response (Exhibit 5). MassHealth requested an extension of the record open period and it was granted. MassHealth’s submission was due on 11/08/2021 (Exhibit 6).

On 10/25/2021, the appellant’s advocate submitted his memorandum. In it, he argues that under the 1115 Demonstration Waiver, CommonHealth benefits are made available to those who are not eligible for benefits under the State Plan. The advocate argues that the appellant’s eligibility for Buy-In benefits be made retroactive to July 2020 (Exhibit 7).

On 11/05/2021, MassHealth submitted its memorandum. In it, MassHealth stated

At this time, MassHealth does not have federal authority granted through the MassHealth Medicaid Section 1115 Demonstration to provide Buy-In benefits for a CommonHealth-eligible member with income over 135% FPL. Mr. Hosmer’s FPL is 161.9%. At age 66 and with income in excess of 100% FPL, Mr. Hosmer would have to meet a deductible to become eligible for MassHealth Standard. However, since Mr. Hosmer has paid employment of 40 or more hours per month, he is, instead, eligible for CommonHealth benefits as a result of the existing MassHealth Medicaid Section 1115 Demonstration which exempts him from the State Plan requirements of an asset test and meeting a deductible.

(Exhibit 8.)

Findings of Fact

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

1. Appellant is over 65 years of age and lives in the community. He has been determined to be disabled (Testimony).
2. The appellant has Medicare benefits (Testimony).
3. The appellant has countable income that equals 161.9% of the federal poverty level (FPL) (Testimony).
4. The appellant works at least 40 hours per month (Testimony).

5. Through a notice dated 08/05/2021, MassHealth informed the appellant that it approved his application for MassHealth CommonHealth with a monthly premium of \$12.00 (Testimony; Exhibit 1).
6. In October 2020 and again in February 2021, the appellant applied for MassHealth Buy-In benefits (Testimony).
7. MassHealth did not issue a denial notice to the appellant regarding his application for Buy-In benefits (Testimony).

Analysis and Conclusions of Law

MassHealth regulations at 130 CMR 519.011 address MassHealth Buy-in as follows:

(A) MassHealth Buy-in for Specified Low Income Medicare Beneficiaries (SLMB).

(1) Eligibility Requirements. MassHealth Buy-in for Specified Low Income Medicare Beneficiaries (SLMB) coverage is available to Medicare beneficiaries who meet the eligibility requirements of MassHealth Senior Buy-in coverage at 130 CMR 519.010 with the following exception: the countable income amount of the individual and his or her spouse must be greater than 130% of the federal poverty level and less than or equal to 150% of the federal poverty level.

(2) Benefits. The MassHealth agency pays the cost of the monthly Medicare Part B premium for members who establish eligibility for MassHealth Buy-in for SLMB coverage in accordance with 130 CMR 519.011(A). (3) Begin Date. MassHealth Buy-in for SLMB coverage, in accordance with 130 CMR 519.011(A), begins with the month of application and may be retroactive up to three calendar months before the month of application.

(B) MassHealth Buy-in for Qualifying Individuals (QI).

(1) Eligibility Requirements. MassHealth Buy-in for Qualifying Individuals (QI) coverage is available to Medicare beneficiaries who

(a) are entitled to hospital benefits under Medicare Part A;

(b) ***are not eligible for MassHealth benefits under the Medicaid State Plan;***

(c) have a countable income amount (including the income of the spouse with whom he or she lives) that is equal to or greater than 150% of the federal poverty level and less than or equal to 165% of the federal poverty level;

(d) have countable assets less than or equal to two times the amount of allowable assets for Medicare Savings Programs as identified by the

Centers for Medicare & Medicaid Services. Each calendar year the allowable asset limits shall be made available on MassHealth's website; and

(e) meet the universal requirements of MassHealth benefits in accordance with 130 CMR 503.000 or 130 CMR 517.000, as applicable.

(2) Benefits. The MassHealth agency pays the entire Medicare Part B premium, in accordance with section 1933 of the Social Security Act (42 U.S.C. § 1396u-3), for members who establish eligibility for MassHealth Buy-in for QI coverage in accordance with 130 CMR 519.011(B).

(2) Eligibility Coverage Period.

(a) MassHealth Buy-in for QI coverage, in accordance with 130 CMR 519.011(B), begins with the month of application. Coverage may be retroactive up to three months before the month of application provided

1. the retroactive date does not extend into a calendar year in which the expenditure cap described at 130 CMR 519.011(B)(4) has been met; and

2. the applicant was not receiving MassHealth benefits under the Medicaid State Plan during the retroactive period.

(b) Once determined eligible, a member who continues to meet the requirements of 130 CMR 519.011(B) is eligible for the balance of the calendar year. Such members are not adversely impacted by the provisions of 130 CMR 519.011(B)(4).

(3) Cap on Expenditures.

(a) The MassHealth agency does not extend eligibility to individuals who meet the requirements of the MassHealth Buy-in for QI in accordance with 130 CMR 519.011(B), if the MassHealth agency estimates the amount of assistance provided to these members during the calendar year will exceed the state's allocation, as described in the Social Security Act § 1933.

(b) The MassHealth agency gives preference to members who were eligible for MassHealth Buy-in, as described in 130 CMR 519.011, or MassHealth Senior Buy-in, as described in 130 CMR 519.010, in December of the previous calendar year when determining an individual's eligibility for MassHealth Buy-in for QI, as described in 130 CMR 519.011(B), in the subsequent calendar year.

Fair hearing regulations at 130 CMR 610.082 address the basis of fair hearing decisions as follows:

- (A) The hearing officer's decision is based upon evidence, testimony, materials, and legal rules, presented at the hearing, including the MassHealth agency's interpretation

of its rules, policies, and regulations. Any evidence, testimony, materials, legal rules, or arguments presented after the close of the hearing will be excluded, unless the record or hearing is reopened by the hearing officer pursuant to 130 CMR 610.081, or the parties stipulate procedures for response, or the parties otherwise waive the right to respond.

(B) The decision must be based upon a preponderance of evidence.

(C) The decision must be rendered in accordance with the law.

(1) The law includes the state and federal constitutions, statutes, and duly promulgated regulations, as well as decisions of the state and federal courts.

(2) Notwithstanding 130 CMR 610.082(C)(1), the hearing officer must not render a decision regarding the legality of federal or state law including, but not limited to, the MassHealth regulations. If the legality of such law or regulations is raised by the appellant, the hearing officer must render a decision based on the applicable law or regulation as interpreted by the MassHealth agency. Such decision must include a statement that the hearing officer cannot rule on the legality of such law or regulation and must be subject to judicial review in accordance with 130 CMR 610.092.

(3) The hearing officer must give due consideration to Policy Memoranda and any other MassHealth agency representations and materials containing legal rules, standards, policies, procedures, or interpretations as a source of guidance in applying a law or regulation.

Undisputed in this case are the following: the appellant is over 65 years of age, he has income equal to 161.9% of the FPL, he has been determined to be disabled, he works at least 40 hours per month, he is eligible for MassHealth CommonHealth benefits as a working disabled adult and for Medicare benefits. Appellant's advocate argues that the appellant is also simultaneously eligible for MassHealth Buy-In benefits. MassHealth's position is that a member who is eligible for MassHealth CommonHealth benefits at the appellant's income level is either eligible for CommonHealth benefits or Buy-In benefits, but not both, at the same time.

The operative language of the above regulation addresses whether or not the applicant is "*eligible for MassHealth benefits under the Medicaid State Plan.*" The appellant argues that the appellant's MassHealth CommonHealth benefits are not under the Medicaid State Plan. MassHealth argues that CommonHealth benefits are under the State Plan.

Appellant's advocate provided language addressing the 1115 Demonstration Waiver, and that under the Waiver, CommonHealth benefits are made available to those who are not eligible for benefits under the State Plan. MassHealth makes a distinction between MassHealth CommonHealth benefits, which it argues is a benefit under the State Plan and MassHealth Standard benefits which is not. MassHealth's submission supports its position. In Table A of the first attachment to MassHealth's post-hearing

memorandum,⁴ the distinction is made for a member who is over 65, with income that exceeds 100% of the FPL and who qualifies for MassHealth Standard as a disabled person by meeting a deductible. In this chart, this situation is addressed as a State Plan benefit. Alternatively, a disabled member who is over 65 with income over 100% of the FPL who is eligible for MassHealth by working at least 40 hours per month (working disabled adult), is eligible for MassHealth CommonHealth benefits, not under the State Plan.

Further, pursuant to the above fair hearing regulation, I “give due consideration to Policy Memoranda and any other MassHealth agency representations and materials containing legal rules, standards, policies, procedures, or interpretations as a source of guidance in applying a law or regulation.” Accordingly, MassHealth’s position that the appellant is not eligible for both MassHealth CommonHealth benefits and Buy-In benefits simultaneously is supported by the relevant regulations, policies, procedures and interpretations.

Therefore this appeal is denied.

Order for MassHealth

None.

⁴ See Exhibit 8, Attachment 1: Centers for Medicare & Medicaid services special terms & conditions, No: 11-W-00030/1, Title: MassHealth Medicaid Section 1115 Demonstration, Table A. MassHealth Demonstration Expansion Populations (page 22 of 116).

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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104

[REDACTED]