

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2177196
Decision Date:	11/29/2021	Hearing Date:	10/22/2021
Hearing Officer:	Christopher Jones	Record Open to:	11/05/2021

Appearance for Appellant:

Pro se



Appearance for MassHealth:

Adele Fiandaca



*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

Appeal Decision:	Approved	Issue:	HCR - Eligibility
Decision Date:	11/29/2021	Hearing Date:	10/22/2021
MassHealth's Rep.:		Appellant's Rep.:	Pro se
Hearing Location:	Chelsea MassHealth Enrollment Center	Aid Pending:	No

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 23, 2021, MassHealth denied the appellant's August 3, 2021 application for MassHealth benefits. Exhibit 2. The MassHealth notice identified four possible bases for the denial: income was too high; lack of special circumstances; immigration status; or the person is over 65. Exhibit 2; see 130 CMR 506.007, 502.003, 505.002, 505.004, and 501.002. The appellant filed this appeal in a timely manner on September 21, 2021. Exhibit 3; 130 CMR 610.015(B). Denial of assistance is valid grounds for appeal. 130 CMR 610.032.

Following the hearing, MassHealth requested additional time to investigate the appeal and to determine if MassHealth benefits should have been allowed. The record was left open until November 5, 2021.

Action Taken by MassHealth

MassHealth denied the appellant's household's application for MassHealth benefits because it did not have sufficient information regarding her immigration status and because her household income was too high.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 505.000 and 506.000, in determining that that the appellant's household income was too high to qualify her for MassHealth coverage.

Summary of Evidence

The appellant and her husband both have work authorization visas and are asylees under § 208 of the Immigration and Naturalization Act. The husband has been residing in the Commonwealth for over a year, and he applied for MassHealth benefits on his own shortly after arriving. At that time, he reported zero income and he was approved for MassHealth CarePlus benefits.¹ Once he began working his verified income would have put him as an individual over the income limit for MassHealth. His MassHealth coverage has continued despite his change in income due to the protections in place during the COVID-19 State of Emergency. See EOM 20-09 (Apr. 7, 2020); EOM 21-17 (Nov. 2021).

In late Spring of this year, the appellant arrived with the family's four children. On or around August 3, 2021, a new application was completed for the family of six. The application listed the husband's employment income was \$1,040 per week, though the expected annual income was listed as \$40,000. Three weekly paystubs were submitted with the application to verify income: \$1,040 for 07/05 – 07/11/2021; \$1,003.08 for 06/21 – 06/27/2021; and \$884 for 06/07 – 06/13/2021. The average weekly gross income was \$975.69, which equates to average monthly income of \$4,227.68. In 2021, the federal poverty level for a household of six was monthly income of \$2,965, or annual income of \$35,580. Therefore, the household's verified monthly income was 142.59% of the federal poverty level for a household of six.

MassHealth denied the application on August 23, 2021 and listed four possible reasons for denial. At the hearing, it was explained that the primary reason for denial was that MassHealth had been unable to verify the appellant's immigration status and the status of some of her children. MassHealth's representative further testified that the appellant was ineligible for MassHealth based upon the reported income of \$1,040 per week listed on the application. She explained that adults are only eligible for MassHealth when their household income is below 133% of the federal poverty level. Because the reported income was above that number, the adults should be covered by an insurance plan through the Health Connector. It was explained that they would receive assistance in purchasing insurance and would likely have access to a plan with a zero-dollar monthly premium.

The husband testified that the verified income submitted with the application included his final paystub at that job. He testified that he was out of work from July 9, 2021 through September 20, 2021. He recently started a new job paying \$5,838.72 per month, which would put the household income at 197% of the federal poverty level. The appellant asked that her eligibility be determined based upon the family's actual income at the time of the application, which was zero.

MassHealth's objection is that the household's income was not reported to be zero until after the husband had already started a new job with a higher income. MassHealth agrees that the appellant's children are eligible for MassHealth coverage because the reported household income on August 3 was under 150% of the federal poverty level. MassHealth's representative points out that the

¹ Though not discussed during the hearing, the fact that the husband was treated as a single individual is likely because federal tax law excludes non-American, foreign domiciled family from being counted as dependents. See 130 CMR 506.002(B); IRS Pub. 501 (2020).

husband's coverage would normally be changed to a Connector plan, except for the protections in place due to the pandemic.

At the hearing, the immigration status of several of the household members was still unclear, as was the exact timeline of their household income. The record was left open for MassHealth's representatives to further investigate the application and respond. Meanwhile, the appellant was encouraged to reach out to the Health Connector.

In its record open response, MassHealth reviewed all communications between the appellant and MassHealth that were logged in MassHealth's computer system. MassHealth's review showed that the application was initially processed on August 4, but it was denied based upon a data entry error regarding household members' immigration status. The application was eventually processed using the \$1,040 weekly gross income figure listed on the application, which MassHealth also noted was in error since the average of the three submitted paystubs should have been used. On August 16, 2021, MassHealth's notes stated: "call received to correct spelling of names for several family members." On August 23, the appellant called again "to verify her income of \$0." The notes do not reflect whether her spouse's income was discussed.² MassHealth also noted that the fair hearing request indicated that the appellant's spouse "is a full time student and only working on contract basis at the moment." It does not state that there was zero income at any time.

Using the average weekly income verified with the family's application, MassHealth approved three of the appellant's children for Standard, but indicated that it still did not have the correct immigration documentation for one of their minor children. MassHealth further indicated that the household's countable income had been 137.56% of the federal poverty level, therefore the adults should be on an insurance plan through the Health Connector.³

The appellants reported that they had been in contact with the Health Connector. The wife was offered the opportunity to enroll in a Connector plan as of September 1, but she was uncertain as to whether her primary care physician would be accepted by a Connector plan.

Findings of Fact

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

1. The appellant and her husband are asylees with four dependent children. Exhibit 4; testimony by parties.
2. The husband was approved for MassHealth CarePlus coverage at time when his household income was below 133% of the federal poverty level, and his coverage is protected during

² At the hearing, the appellant never specifically alleged that she definitively reported the household's income as zero.

³ This number is based upon the average monthly income of the three submitted bank statements (\$975.69); it also appears to be reduced by five percent, as $975.69 * 4.333 = 4,227.679$. Divided by \$2,965, the result is 142.59. This presumably based upon 130 CMR 506.007(A)(3).

the pendency of the COVID-19 State of Emergency. Testimony by MassHealth's representative; Exhibit 4.

3. On August 3, 2021, a new application was filed for all six of the family members. The husband's income was reported as \$1,040 per week, but the anticipated annual income was only \$40,000. Exhibit 5.
4. Income verifications were submitted with the application verifying average monthly income of \$4,227.68. This is equivalent to 142.59% of the federal poverty level for a household of six. Exhibits 4-5; testimony by MassHealth.
5. The income reported on the August 3 application had ended on or around July 9, 2021. The household had zero income from July 9 through September 20, 2021. Testimony by appellant and husband.
6. The appellant called MassHealth on August 23 to "verify her income of \$0," but the conversation did not touch upon the husband's income. Exhibit 4.
7. As of the time of the hearing, the appellant's household income had increased above the income limit for the adults to qualify for MassHealth coverage. Testimony by the appellant and husband; Exhibit 6.

Analysis and Conclusions of Law

MassHealth offers a variety of benefits based upon an individual's circumstances and finances. To qualify for MassHealth, an individual must fit into a category of eligibility and fall below a certain financial threshold. Parents of minor children may qualify for MassHealth Standard if they have countable income below 133% of the federal poverty level. 130 CMR 505.002(C). To calculate a member's financial eligibility, MassHealth determines the household's size according to 130 CMR 506.002, and then counts all gross income of the household, allowing only certain deductions or exclusions. 130 CMR 506.003. The income found in this manner is then reduced by five percent of the applicable FPL. 130 CMR 506.007(A).

The facts of this case are largely undisputed. When the husband is employed, the adults in the household are ineligible for MassHealth coverage. At the time of the application for MassHealth, the household had zero income and all household members were income eligible. However, because the appellant did not sufficiently express that their household had zero income prior to the date of the hearing, MassHealth never had the opportunity to review the appellant's eligibility at the same time that she was actually eligible for MassHealth.

One of the complicating features of this case is that the August 3 application was an initial application for the appellant, but technically a report of change for the husband. MassHealth regulations generally holds a member responsible for reporting changes that affect their eligibility. See 130 CMR 501.010(B) ("The applicant or member must report to the MassHealth agency, within ten days or as soon as possible, changes that may affect eligibility.") Any changes for existing

members can only go back to “ten days prior to ... the receipt of the requested verifications [or] ... the date of [MassHealth’s] eligibility determination [based on] reported changes” 130 CMR 502.006(B)(1)(a), (c). Therefore, MassHealth is correct that it cannot change the appellant’s husband’s benefits before 10-days earlier than they received verification that he was eligible for MassHealth.

However, coverage changes for new applicants are effective “ten days prior to the date of application.” 130 CMR 502.006(A). The appellant was eligible for MassHealth Standard at the time the application was made, based upon the “eligibility conditions” at that time, regardless of what may have been reported. Therefore, the appellant is eligible for MassHealth Standard as of July 23, 10 days prior to the date of application. In a fair hearing, the “effective date of any adjustments to the appellant’s eligibility status is the date on which all eligibility conditions were met, regardless of when the supporting evidence was submitted.” 130 CMR 610.071(A)(2).⁴

Typically, this decision would have also terminated benefits as of the date the appellant was no longer eligible, September 20, 2021. However, “MassHealth will maintain coverage for most individuals who have health coverage as of March 18, 2020, **and for all individuals newly approved for health coverage during the COVID-19 Federal Public Health Emergency (FPHE), through the end of the month in which the FPHE ends.**” EOM 21-17 (Nov. 2021). The fact that the appellant’s eligibility, once approved, is protected pending the end of the COVID-19 FPHE does not alter the fact that she was eligible for MassHealth Standard at the time she applied. For these reasons, the appeal is APPROVED.

Order for MassHealth

Approve the appellant’s MassHealth Standard 10 days prior to August 3, 2021, the date of her application.

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.

⁴ For the husband, the reporting of a change may be seen an “eligibility condition” itself. This decision does not determine this issue.

Christopher Jones
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Nancy Hazlett, Chelsea MassHealth Enrollment Center, 45-47
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