

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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|-------------------------|-------------------|-----------------------|------------|
| Appeal Decision: | Denied | Appeal Number: | 2177941 |
| Decision Date: | 1/05/2022 | Hearing Date: | 11/19/2021 |
| Hearing Officer: | Christopher Jones | | |

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Sean Duffy – Tewksbury Ongoing



*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: | Traditional – Income |
| Decision Date: | 1/05/2022 | Hearing Date: | 11/19/2021 |
| MassHealth’s Rep.: | Sean Duffy | Appellant’s Rep.: | Pro se |
| Hearing Location: | Tewksbury MassHealth Enrollment Center | Aid Pending: | Yes |

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 October 4, 2021, MassHealth planned to downgrade appellant’s MassHealth coverage to Senior Buy-In on October 18, 2021. Exhibit 2; 130 CMR 519.002.¹ The appellant filed this appeal in a timely manner on October 15, 2021, and his MassHealth Standard coverage is protected pending the outcome of this appeal. Exhibit 3; 130 CMR 610.015(B), 610.036. MassHealth actions regarding the scope of coverage are appealable actions. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth downgraded the appellant’s MassHealth coverage from Standard to Senior Buy-In.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.002 and 520.009, in determining that the appellant is no longer eligible for MassHealth Standard.

¹ MassHealth’s notice erroneously stated the reason for the downgrade was based upon assets. In actuality, the basis for the downgrade is based on income.

Summary of Evidence

The appellant receives \$1,154 per month in Social Security income and he is over the age of 65. MassHealth's representative explained that MassHealth Standard is available for people under 65 years old up to 133% of the federal poverty level, or \$1,428 per month. However, the income cutoff for people 65 and older is only 100% of the federal poverty level, or \$1,074 in 2021. The appellant is no longer eligible for MassHealth Standard because his income is over 100%, but he is eligible for the Senior Buy-In benefit, which will pay for his Medicare Part A and Part B premiums and for deductibles and coinsurance under Medicare Parts A and B.

The appellant felt he was being treated worse for being elderly and felt that this was unfair. It was explained that, because he was disabled, he could qualify for the CommonHealth program by working for 40 hours per month. The work does not need to be traditional employment, and it could be for any amount of money. His employer would need to write a letter explaining what job he was doing, what his rate of pay was, and confirm that he was working for at least 10 hours per week or 40 hours per month. The letter must also be signed and dated. For instance, if there was someone in his community who needed assistance around their home, they would write a letter explaining that the appellant provided assistance with household chores like dishwasher and laundry for 10 hours per week and he is paid \$1 per hour. The employer would then sign and date the letter.

MassHealth's representative also testified that the appellant needs to complete a new application for people over the age of 65 to start receiving the new Senior Buy-In coverage.

Findings of Fact

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

1. The appellant is over the age of 65. Testimony by MassHealth's representative.
2. The federal poverty level for an individual is \$1,074. Testimony by MassHealth's representative.
3. The appellant receives \$1,154 per month in Social Security income. Testimony by the appellant and MassHealth's representative.

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. One of the major dividing lines for eligibility is the age of 65. Individuals aged 65 and older are generally governed by the regulations at 130 CMR 515.000-520.000, and those under 65 are typically determined by the regulations at 130 CMR 501.000-508.000. A disabled adult under 65 qualifies for MassHealth Standard if their income is equal to or below 133% of the

federal poverty level. 130 CMR 505.002(E). The requirements for receiving MassHealth Standard for individuals over 65 who are living in the community are:

519.005: Community Residents 65 Years of Age and Older

(A) Eligibility Requirements. Except as provided in 130 CMR 519.005(C), noninstitutionalized individuals 65 years of age and older may establish eligibility for MassHealth Standard coverage provided they meet the following requirements:

- (1) the countable-income amount, as defined in 130 CMR 520.009: *Countable-Income Amount*, of the individual or couple is less than or **equal to 100 percent of the federal poverty level**; and
- (2) the countable assets of an individual are \$2,000 or less, and those of a married couple living together are \$3,000 or less.

(B) Financial Standards Not Met. Except as provided in 130 CMR 519.005(C), individuals whose income, assets, or both exceed the standards set forth in 130 CMR 519.005(A) may establish eligibility for MassHealth Standard by reducing their assets in accordance with 130 CMR 520.004: *Asset Reduction*, meeting a deductible as described at 130 CMR 520.028: *Eligibility for a Deductible* through 520.035: *Conclusion of the Deductible Process*, or both.

130 CMR 519.005(A)-(B) (emphasis in **bold**).

For individuals who qualify for Medicare, but have countable income between 100% and 130% of the federal poverty level, MassHealth “pays for Medicare Part A and Part B premiums and for deductibles and coinsurance under Medicare Parts A and B” 130 CMR 519.010(B). This benefit is called MassHealth Senior Buy-In or Buy-In for Qualified Medicare Beneficiaries/QMB. Other Buy-In benefits exist for members with income between 130% and 165% of the federal poverty level, but these benefits only cover the Medicare premium, not the deductibles and coinsurance.

The financial rules set out at 130 CMR 520.000 explain that all of an individual’s “gross earned and unearned income less certain business expenses and standard income deductions” is countable, and “the countable-income amount is compared to the applicable income standard to determine the individual’s financial eligibility.” 130 CMR 520.009(A)(1)-(2). There are only two standard income deductions for community residents with only unearned income: (1) “a deduction of \$20 per individual or married couple” or (2) a larger deduction that is allowed if the individual requires assistance from a personal care attendant.” 130 CMR 520.013(A)-(B).

The appellant’s countable income is only \$1,134 after the \$20 deduction, but this still results in countable income equivalent to 105.6% of the federal poverty level. Therefore, MassHealth is

correct that he is over income for MassHealth Standard. This appeal must be DENEID.² The appellant must complete a new “Over-65” application to enroll in the Senior Buy-In (QMB) benefit for which he is eligible. As part of this application, the appellant may also submit a working letter to support his eligibility for MassHealth CommonHealth. See 130 CMR 519.012(A); see also 130 CMR 505.004.

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 Jones
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957

² This change in coverage is allowed during the COVID-19 Federal Public Health Emergency (“FPHE”) according to EOM 21-17 (Nov. 2021). This change in coverage is an allowable adjustment within Tier 1 coverages, as the appellant is going from MassHealth Standard to a Medicare Savings Program (Medicare Buy-In). Id., p. 2.