

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2178198
Decision Date:	12/13/2021	Hearing Date:	12/01/2021
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:



Appearance for MassHealth:

Diane Braley

Interpreter:



*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:	Denied	Issue:	Eligibility
Decision Date:	12/13/2021	Hearing Date:	12/01/2021
MassHealth's Rep.:	Diane Braley	Appellant's Rep.:	██████████
Hearing Location:	All Parties Appeared by Telephone	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 12, 2021, MassHealth notified the appellant that her coverage will change to Buy-In as her income and/or assets are too high to get MassHealth Standard. (130 CMR 519.000; Exhibit 1). The appellant needs to meet a deductible in the amount of \$9,822 to become eligible for MassHealth Standard. (130 CMR 519.000; Exhibit 1). The appellant filed this appeal in a timely manner on October 25, 2021. (130 CMR 610.015; Exhibit 2). A determination regarding the scope or amount of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified the appellant that she is eligible for Buy-In and has to meet a deductible of \$9,822 to become eligible for MassHealth Standard.

Issue

Whether MassHealth was correct in their decision regarding the appellant's eligibility.

Summary of Evidence

The appellant is over 65-years old, in a family group of 2 and has a gross monthly income of \$2,307. The income includes benefits received by the appellant and her spouse from the Social Security Administration. This gross monthly income places the appellant's family group at 159% of the federal poverty level. The MassHealth representative testified that the appellant could become eligible for MassHealth Standard by meeting a deductible in the amount of \$9,822 or deemed eligible for a frail-elder waiver (FEW). The deductible period is from October 12, 2021 to May 1, 2022. The deductible period is based upon the date of the appellant's change in coverage to MassHealth Buy-In.

Eligibility for a FEW involves certification by MassHealth or its agent that the individual needs nursing-facility services and can receive certain waiver services at home. The MassHealth representative noted that MassHealth did not have a record of the appellant being determined clinically eligible for a FEW.

Prior to the hearing the appellant presented bills for services received and paid for prior to the deductible period. Most were paid in full by Medicare and MassHealth. Only one bill had a balance due in the amount of \$1,864. The MassHealth representative acknowledged receipt and review of all bills and concluded that \$1,864 could be applied toward the deductible of \$9,822 as that was a balance owed by the appellant and still outstanding during the deductible period. The bills paid in full by Medicare and MassHealth could not be applied toward the deductible as they were not incurred within the deductible period and the appellant did not owe or pay a balance on any of the bills. The MassHealth representative noted that any additional medical expenses incurred by the appellant during the deductible period could be applied toward the deductible amount. The appellant would have to submit bills to MassHealth for consideration in their application to the deductible.

The appellant and her daughter appeared by telephone and did not challenge the income calculation. The appellant did not provide testimony or evidence regarding certification of clinical eligibility for a FEW. The appellant's daughter did not agree with the application of bills toward the deductible. The appellant's daughter acknowledged that payment on all bills was made in full by MassHealth or Medicare prior to the deductible period except one with a remaining balance

of \$1,864. The appellant's daughter argued that costs applied to a deductible include the total cost for the medical service or procedure, not just an amount due by the patient or member. The appellant's daughter asked MassHealth to consider the full balance of the bills presented, not just a portion to be paid by the appellant.

Findings of Fact

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

1. The appellant is over 65-years old.
2. The appellant's family group of two has a gross monthly income of \$2,307 from benefits received by the Social Security Administration.
3. The income of the appellant's family group is equal to 159% of the federal poverty level.
4. The appellant has not received certification that she needs nursing facility services and can receive certain services at home.
5. The appellant has to meet a deductible in the amount of \$9,822 to become eligible for MassHealth Standard.
6. The deductible period is October 12, 2021 to May 1, 2022.
7. As of the hearing date, the appellant is responsible for payment of bills totaling \$1,864 during the deductible period of October 12, 2021 to May 1, 2022.

Analysis and Conclusions of Law

Financial eligibility for MassHealth is based on financial responsibility, countable income, and countable assets. (130 CMR 520.001). In determining eligibility for MassHealth, the total countable-income amount and countable assets of the individual is compared to an income standard and asset limit. (130 CMR 520.002(A)). An individual and the spouse's gross earned and unearned income less certain business expenses and standard income deductions is referred to as the countable income amount. (130 CMR 520.009(A)(1)). In determining gross monthly income, MassHealth multiplies the average weekly income by 4.333 unless the income is monthly. (130 CMR 520.009(A)(1)). For community residents,

the countable-income amount is compared to the applicable income standard to determine the individual's financial eligibility. (130 CMR 520.009(A)(2)).

The types of income that are considered in the determination of eligibility are described in 130 CMR 520.009, 520.018, 520.019, and 520.021 through 520.024. (130 CMR 520.009(A)(4)). These include income to which the applicant, member, or spouse would be entitled whether or not actually received when failure to receive such income results from the action or inaction of the applicant, member, spouse, or person acting on his or her behalf. (130 CMR 520.009(A)(4)). MassHealth considers both earned income and unearned income as countable in determining eligibility. (130 CMR 520.009). The appellant only receives unearned income.

Unearned income includes, but is not limited to, social security benefits, railroad retirement benefits, pensions, annuities, federal veterans' benefits, rental income, interest, and dividend income. (130 CMR 520.009(D)). The applicant or member must verify gross unearned income. (130 CMR 520.009(D)).

The appellant did not dispute that her family group of 2 has a gross monthly unearned income of \$2,307 through benefits received from the Social Security Administration. MassHealth allows deductions for unearned income but only under certain circumstances which include receiving personal-care attendant services or being determined by MassHealth, through an initial screening or prior authorization, that such services are needed. (130 CMR 520.013). The appellant did not indicate at the hearing or on the review form that she receives or is in need of personal care attendant services. MassHealth made the correct deductions to the appellant's income.

Pursuant to 130 CMR 519.005(A), noninstitutionalized individuals aged 65 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, 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.

As noted by the MassHealth representative at hearing, the appellant's monthly income of \$2,307 exceeds 100% of the federal-poverty level for a family of two. (130 CMR 520.000). Therefore, the appellant is not eligible for MassHealth Standard.

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, meeting a deductible as described at 130 CMR 520.028 et seq., or both. (130 CMR 519.005(B)). MassHealth correctly determined that to become eligible the appellant would have to meet a deductible in the amount of \$9,822. The appellant's representative presented several bills to apply toward the deductible.

The MassHealth regulations at 130 CMR 515.001 define a deductible as the total dollar amount of incurred medical expenses that an applicant whose income exceeds MassHealth income standards must be responsible for before the applicant is eligible for MassHealth, as described at 130 CMR 520.028: Eligibility for a Deductible. As noted in the definition, the member must be responsible for the incurred expenses.

The deductible period is a six-month period that starts on the first day of the month of application or may begin up to three months before the first day of the month of application. (130 CMR 520.029). The applicant is eligible for this period of retroactivity only if the applicant incurred medical expenses covered by MassHealth and was otherwise eligible. (130 CMR 510.028). While the appellant could be eligible for a period of retroactivity, the bills presented do not meet the definition of a deductible.

The appellant's daughter acknowledged, and the bills presented show, payments made by Medicare and MassHealth. The services and payments were made before the deductible period of October 12, 2021 to May 1, 2022. Only one bill had a balance due by the appellant during the deductible period. MassHealth was correct in applying this one incurred medical expense toward the deductible as it was the only one that the appellant had a responsibility to pay. The remaining bills cannot be applied toward a deductible as they are not expenses incurred by the appellant during the deductible period. While the bills were for services received by the appellant, the expenses were incurred by Medicare and MassHealth, the entities who paid the bills. The only expenses that could be applied to the deductible were on a bill totaling \$1,864 as the appellant is responsible for those expenses and they are still outstanding for payment during the deductible period.

The appellant is not eligible for MassHealth Standard until she meets the deductible with bills for which she is responsible during the deductible period.

MassHealth Senior Buy-In coverage is available to Medicare beneficiaries who:

- (1) are entitled to hospital benefits under Medicare Part A;
- (2) have a countable income amount (including the income of the spouse with whom he or she lives) that is less than or equal to 130% of the federal poverty level;
- (3) 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 and Medicaid Services. Each calendar year, the allowable asset limits shall be made available on MassHealth's website; and
- (4) meet the universal requirements of MassHealth benefits in accordance with 130 CMR 503.000 : Health Care Reform: MassHealth Universal Eligibility Requirements or 517.000 : MassHealth Universal Eligibility Requirements, as applicable. (130 CMR 519.010(A)).

Since the appellant's income exceeds 130% of the federal-poverty level, she is not eligible for the MassHealth Senior Buy-In. (130 CMR 519.010(A)).

Since the appellant's income is less than 165% of the federal poverty level, which is \$2,396 for a family of two, she is eligible for the MassHealth Buy-In which is available to Qualifying Individuals 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 517.000, as applicable. (130 CMR 519.011(B)(1)).

Under this program, MassHealth 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 meet the requirements of 130 CMR 519.011(B) and have a countable income amount that is less than 165% of the federal poverty level. (130 CMR 519.011(B)(2)).

MassHealth correctly determined that the appellant is not eligible for MassHealth Standard but is eligible for the Buy-In program.

This appeal is denied.

Order for MassHealth

Release the appellant's aid pending.

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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616

