

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed in part; Denied in part	<b>Appeal Number:</b>	2200091
<b>Decision Date:</b>	7/28/2022	<b>Hearing Date:</b>	February 28, 2022
<b>Hearing Officer:</b>	Brook Padgett	<b>Record Open:</b>	March 28, 2022

**Appellant Representative:**

 (Paralegal)  
Community Legal Aid

**MassHealth Representative:**

Millie Behnk



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, 6<sup>th</sup> floor  
Quincy, MA 02171*

# APPEAL DECISION

<b>Appeal Decision:</b>	Dismissed in part; Denied in part	<b>Issue:</b>	130 CMR 505.004 130 CMR 504.007
<b>Decision Date:</b>	7/28/2022	<b>Hearing Date:</b>	February 28, 2022 <sup>1</sup>
<b>MassHealth Rep.:</b>	M. Behnk	<b>Appellant Rep.:</b>	██████████
<b>Hearing Location:</b>	Springfield		

## Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

## Jurisdiction

The appellant received a notice dated December 13, 2021 stating: You do not qualify for MassHealth benefits because your income is too high (146.75% of the FPL). (Exhibit 1).

The appellant filed this appeal timely on December 31, 2021. (130 CMR 610.015(B); Exhibit 2).

The determination of eligibility is valid grounds for appeal. (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth determined the appellant's income exceeds the program limits for MassHealth Standard.

## Issue

Did MassHealth correctly determine the appellant's MassHealth eligibility?

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<sup>1</sup> This hearing was originally scheduled on January 26, 2022 and rescheduled at the appellant's request.

## Summary of Evidence

MassHealth testified the appellant applied for MassHealth Standard and was denied on December 13, 2021 as her income was 146.75% of the federal poverty level (FPL) and over the MassHealth criteria of 133% for a household of one. The appellant currently is eligible for CommonHealth with income of \$1,678.10 (\$1,585.50 Social Security Disability Insurance (SSDI) + \$43.00 employment income). The appellant applied for Buy-In benefits in February 2022 but was denied as MassHealth maintains the appellant can have Buy-In benefits or CommonHealth, but she cannot have both.

The appellant was represented by an advocate from Community Legal Aid who argued the appellant is eligible for both Buy-In and CommonHealth retroactively to March 2021. The representative stated the appellant, who receives SSDI due to a brain injury and hearing loss, moved to Massachusetts in 2020. She applied for MassHealth Buy-In on January 19, 2021 and was approved on February 01, 2021 effective October 2020. At this same time MassHealth determined the appellant was eligible for MassHealth CommonHealth; however, in December 2021 she discovered she was not receiving Buy-In benefits. The appellant contacted MassHealth and was informed she was ineligible for Buy-In benefits because she was receiving CommonHealth. The representative maintained this is the first time the appellant was made aware that she was not receiving Buy-In benefits as she had never received any MassHealth notification of termination. The appellant contacted MassHealth and was instructed to appeal the verbal denial of Buy-In benefits as a written termination notice could not be generated to a CommonHealth member. The appellant submitted into evidence Buy-In approval notice dated January 02, 2021, verification of Social Security, MassHealth Medicaid Section 1115 Demonstration letter, appeal #1314853 and 2100163 and regulations 130 CMR 509.011, 610.015 and 610.026. (Exhibit 4).

At the request of the hearing officer the record remained open for MassHealth to determine if the appellant was eligible for both Buy-In and CommonHealth coverage and if such coverage is retroactive. (Exhibit 5).

MassHealth responded within the required timeline stating the appellant is under 65 years of age and currently eligible only for CommonHealth. MassHealth stated the appellant was initially approved for MassHealth Buy-In on January 19, 2021, with income of \$1,607.00. On January 26, 2021, the appellant submitted an on-line application reporting income of \$1,628.50 (\$1,585.50 SSDI + \$43.00 employment). On February 04, 2021, the appellant withdrew her Buy-In application and requested CommonHealth coverage beginning January 16, 2021.<sup>2</sup> MassHealth indicated MassHealth will pay the cost of the monthly Medicare Part B premium on behalf of a member who meets the requirements of 130 CMR 505.004 and who have a modified adjusted gross income of a MassHealth disabled adult household that is less than 135% of the FPL. The appellant's current verified income is \$1,721.10 (\$1,698.10 SSDI + \$43.00 employment) or 160% of the FPL and above 135% of the FPL income threshold (\$1,449.00). The Medicare

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<sup>2</sup> MassHealth indicated the appellant contacted MassHealth on the telephone and spoke to a supervisor at which time she made the decision to withdraw her Buy-In application so she could keep her CommonHealth.

Savings Program (MSP) is tied into the MassHealth Buy-In Application which is an over 65 benefit per current MassHealth regulations. The appellant is under 65 and is disabled so she would qualify for assistance with payment of her Medicare Part B premium if she was eligible for MassHealth Standard. The appellant's income is over 133% of the FPL and therefore she is not eligible for MassHealth Standard and as a result she is ineligible for Buy-In (130 CMR 505.004(L)) and only eligible for CommonHealth as the working disabled adult. (Exhibit 6).

The appellant's representative submitted a memorandum within the required time in response to the MassHealth submission and argued the appellant as a CommonHealth member is also eligible for Buy-In benefits retroactive to March 2021 as she was never provided written notice by MassHealth that her Buy-In benefits had been terminated. Further the appellant is eligible for Buy-In benefits as her income and assets are below statutory limits and she is a Medicare Part A beneficiary and CommonHealth coverage does not fall under the Medicaid state plan. Finally, the representative asserts the 120-day time period to appeal a MassHealth action should be waived in the interest of justice and due process as no written notice was issued to the appellant. (Exhibit 7).

## Findings of Fact

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

1. The appellant is under 65 years of age, disabled and lives in the community. (Testimony).
2. The appellant has countable earned and unearned income of \$1,712.10. (Testimony).
3. Countable income of \$1,712.10 is 160% of the FPL. (Testimony).
4. The appellant has been approved for CommonHealth coverage. (Testimony).

## Analysis and Conclusions of Law

The appellant is under 65 years old, and a member of a household of one with income of \$1,721.10 (\$1,698.10 SSDI + \$43.00 employment) or 160% of the FPL. To be eligible for MassHealth Standard, household income must be below 133% of the FPL for a household of one (\$1,385.00). The appellant is over income for MassHealth Standard and therefore she is ineligible for MassHealth Standard coverage. The appellant has been determined disabled and is working and therefore qualifies for MassHealth CommonHealth.<sup>3</sup>

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<sup>3</sup> 130 CMR 505.000 explains the categorical requirements and financial standards that must be met to qualify for a MassHealth coverage type (130 CMR 505.001). As described in 130 CMR 505.001, the MassHealth coverage types are as follows: (1) Standard - for families (with minor children), pregnant women, children and disabled individuals, including extended benefits; must have income under 133% of federal poverty limit; (2) Prenatal - for pregnant women; **(3) CommonHealth - for disabled adults, disabled children, and certain individuals who are HIV positive, and not eligible for MassHealth Standard;** (4) Family Assistance - for children, certain employed adults who have access to health insurance from their employers and have income under 200% of the federal poverty limit, and certain individuals

MassHealth will pay the cost of the monthly Medicare Part B premium on behalf of members who meet the requirements of 130 CMR 505.004 and who have modified adjusted gross income of the MassHealth Disabled Adult household that is less than 135% of the FPL. The appellant's income is 160% of the FPL which is above 135% of the FPL and is therefore she is ineligible for Buy-In coverage.<sup>4</sup>

It is unclear whether in February 2021, MassHealth terminated the appellant's Buy-In coverage or the appellant herself withdrew her request for Buy-In benefits; however, in either instance it is clear no such written notice was ever received by the appellant terminating her Buy-In coverage. The regulations require MassHealth provide an individual with written notice when taking an appealable action (130 CMR 610.015).<sup>5</sup> When MassHealth fails to provide written notice of a MassHealth action an appellant has 120 days from the date of the MassHealth action to file a timely appeal. Since the appellant did not dispute the February 2021, termination of her Buy-In benefits until December 13, 2021, she is outside of the 120-day time limit and as a result any appeal regarding this issue is DISMISSED.

The appellant is under 65, disabled and living in the community as a household of one with monthly earned and unearned income of \$1,721.10. MassHealth has properly determined the appellant is eligible for CommonHealth coverage and over the income limit for MassHealth Standard and this appeal is DENIED.

## Order for MassHealth

None.

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who are HIV positive, and are not eligible for MassHealth Standard or CommonHealth; (5) Basic or Buy-In - for the long-term or chronically unemployed, and certain qualified aliens; (6) Essential – for long term unemployed who have income at or below 100% of the federal poverty limit and are not eligible for Basic; and (7) Limited - coverage for non-qualified aliens and certain qualified aliens. (*Emphasis added*).

<sup>4</sup> 130 CMR 505.004: MassHealth CommonHealth (L) Medicare Premium Payment. **(1) MassHealth also pays the cost of the monthly Medicare Part B premium on behalf of members who meet the requirements of 130 CMR 505.004 and who have modified adjusted gross income of the MassHealth Disabled Adult household that is less than 135% of the FPL.** (*Emphasis added*).

130 CMR 505.007: MassHealth Senior Buy-In and Buy-In (A) MassHealth Senior Buy-In and Buy-In coverage are available to Medicare beneficiaries who are not eligible for MassHealth Standard, in accordance with 130 CMR 519.010: *MassHealth Senior Buy-In* and 519.011: *MassHealth Buy-In*. MassHealth Standard members receive this benefit under 130 CMR 505.002(O). MassHealth CommonHealth members receive this benefit in accordance with 130 CMR 505.004(L).

<sup>5</sup> **130 CMR 610.015 Time Limits** (B) Time Limitation on the Right of Appeal. The date of request for a fair hearing is the date on which BOH receives such a request in writing. BOH must receive the request for a fair hearing within the following time limits: (1) 30 days after an applicant or member receives written notice from the MassHealth of the intended action. Such notice must include a statement of the right of appeal and the time limit for appealing. In the absence of evidence or testimony to the contrary, it will be presumed that the notice was received on the third day after mailing; (2) unless waived by the Director or his or her designee, 120 days from: (c) the date of Division action when the Division fails to send written notice of the action;

## 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.

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Brook Padgett  
Hearing Officer  
Board of Hearings

cc: MassHealth representative: Springfield MEC

[REDACTED]