

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2202743
Decision Date:	8/24/2022	Hearing Date:	07/14/2022
Hearing Officer:	Casey Groff	Record Open to:	07/28/2022

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Mark Carey, Auditor, Office of Compliance
and Program Integrity, MassHealth



*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:	Recovery of Overpayment
Decision Date:	8/24/2022	Hearing Date:	07/14/2022
MassHealth's Rep.:	Mark Carey	Appellant's Rep.:	<i>Pro se</i>
Hearing Location:	Board of Hearings (Remote)	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 March 23, 2022, MassHealth notified Appellant that she received MassHealth benefits to which she was not entitled and that it sought to recoup an overpayment in the amount of \$1,056.00. See Exhibit 1 and 130 CMR 501.012. Appellant filed this appeal in a timely manner on April 12, 2022. See Exh. 2; 130 CMR 610.015(B). Determination of an overpayment is valid grounds for appeal. See 130 CMR 610.032. On April 14, 2022, the Board of Hearings (BOH) notified Appellant that a hearing was scheduled to take place on June 2, 2022. See Exh. 3. On May 13, 2022, Appellant requested BOH reschedule the hearing because she would be out of the country. See Exh. 4. BOH approved the request and rescheduled the hearing for July 14, 2022. See Exh. 5. The hearing record was left open until July 29, 2022 for Appellant to submit additional evidence. See Exh. 7.

Action Taken by MassHealth

MassHealth found that Appellant received MassHealth benefits to which she was not entitled and, on that basis, notified Appellant that she must repay \$1,056 for such benefits.

Issue

The appeal issue is whether Appellant received MassHealth benefits to which she was not entitled, and, on that basis, whether she must repay the overpayment amount.

Summary of Evidence

An Auditor from MassHealth's Office of Compliance and Program Integrity appeared at the hearing by telephone. Through testimony and document submissions, MassHealth provided the following evidence: The Appellant, who is under the age of 65, first enrolled in MassHealth on January 7, 2018 pursuant to her submission of a MassHealth application. During the application process, Appellant reported that she lived at [REDACTED] (hereinafter "Address 1") with her three grandchildren as dependents. She indicated she was not married, nor had anyone else aside from her and her grandchildren living in the home. The only income reported on the application was her income.

The MassHealth representative testified that the Bureau of Special Investigations (BSI), within the state Auditor's office, received a complaint alleging that Appellant failed to report on her MassHealth application that she was married and living with her husband [REDACTED]. The complainant also alleged she had underreported her income to MassHealth. BSI investigated the complaint, which revealed the following:

Records from the Registry of Motor Vehicles revealed that Appellant and [REDACTED] both reported Address #1 as their residence on their driver's license, and on November 17, 2021 they both changed their addresses on their licenses to [REDACTED] (hereinafter "Address #2"). Database records indicated that Appellant owned two vehicles (a Toyota and a Chrysler). [REDACTED] was the primary policy holder for both vehicles. Additionally, in registering to vote, both Appellant and PJ reported to reside at Address #1. During the investigation, BSI obtained verification from the landlord of Address #1 that both Appellant and [REDACTED] resided at this address from 10/12/2017 through 6/20/2021 and are both listed as tenants on the lease together. Postal verifications obtained from the town's postmaster confirm that both Appellant and [REDACTED] have mail delivered to Address #1.

BSI confirmed that on September 16, 2021, Appellant and [REDACTED] jointly purchased the property located at Address #2 for \$450,000 as tenants by the entirety, listing themselves as husband and wife. They filed a Declaration of Homestead on the property.

For tax years 2018 and 2020, [REDACTED] and Appellant filed their taxes as "married filing separately" with [REDACTED] naming Appellant as his spouse in his tax return. For 2018, [REDACTED] reported earned income of \$16,570 and Appellant reported earned income in the amount of \$22,993. For tax year 2020, Appellant reported income of \$44,114 and [REDACTED] reported income of \$9,560. For tax year 2019, [REDACTED] and Appellant filed their taxes as "married filing jointly" According to the 2019 tax return, they listed their residence at Address #1 and reported a combined income of \$58,531.

During 2019 through 2020, MassHealth paid approximately \$68,000 for medical services rendered to Appellant's household, \$60,000 of which were claims solely paid on Appellant's behalf. [REDACTED] was

not enrolled in MassHealth at any point during this timeframe.

As a result of the information compiled by the BSI examiner, MassHealth determined that Appellant's income was underreported to MassHealth for years 2019 and 2020. For 2019, Appellant's actual combined household income of \$58,531 for a household of 5 would have put her at 185% of the federal poverty level (FPL). For 2020, Appellant's actual combined income of \$53,674 for a household of 5, would have put her at 175% of the FPL. Had Appellant reported the correct household information, including identifying her spouse and his income, Appellant would have exceeded the MassHealth income limit of 133% of the FPL and therefore been ineligible for benefits.

In accordance with these findings, on March 23, 2022, MassHealth's Operations Integrity Unit sent Appellant a "Recovery of Overpayment of Member Benefits" notice. See Exh. 1. The notice informed Appellant that pursuant to BSI's investigation, MassHealth determined that she received MassHealth benefits from 3/15/2018 through 1/20/22, to which she was not entitled and as a result owed \$1,056 in overpayments. The notice explained that MassHealth determined "that you failed to report that you are legally married, and both are employed and underreported your household income. Because this information was withheld, you or other members of your household were no longer eligible for MassHealth benefits from 3/15/2018 through 1/20/22." Id.

The MassHealth representative testified that in establishing the overpayment amount, MassHealth was not seeking recovery of the total amount of claims it improperly paid on the members behalf. Rather, MassHealth determined the overpayment by assessing what Connector plan Appellant would have been eligible for based on her actual income, had she reported it correctly. MassHealth explained that for 2019 and 2020, an FPL of 185% and 175%, respectively, for a household of 5 would qualify Appellant for a Connector plan with a \$44/month premium, or a yearly premium amount of \$528.00. Combining both 2019 and 2020 together, MassHealth determined Appellant would have paid \$1,056.00 (\$44 x 24 months) had she reported her income and household size correctly.

Appellant appeared at the hearing by telephone and testified as follows: She is legally married to [REDACTED] and has been for all relevant times. However, at no point during this time did they live together. Although they are legally married, they do not have an actual relationship as husband and wife. They are more like friends and are involved to the extent of dealing with the children. Appellant explained that she previously lived in New York, while [REDACTED] was in Massachusetts. She began having health issues and moved to Massachusetts in 2017. After she moved, she enrolled in MassHealth. She did not include him on the MassHealth application because he was not living with her and she does not consider him her husband, other than for legal purposes. To help her with the move, [REDACTED], with his mother's help, got her an apartment and paid her rent. He tried to provide a home for her and the children. Although he is highly involved with the children, he owes her child support and does not contribute with any family care. Appellant testified that she has had a lot of surgeries and has had to rely on her neighbors, not [REDACTED], to bring her to medical appointments. They never got divorced because it is against their religion and because they have children together. Appellant testified that she did not know his current

address because she has never visited him, but it is somewhere in Massachusetts. Appellant did not dispute the income amounts reported by MassHealth. Appellant explained that she has extensive health issues and has needed all the medical services she has received.

The record was left open for Appellant to submit the following additional evidence supporting her position that she did not live with her husband:

- A piece of mail that had been sent to ■ at a different address than Addresses #1 or #2.
- In invoice from Dept. of Revenue to ■ for overdue child support owed in the amount of \$134,612.33. *Id.* at 3. The applicable billing period for the invoice is through March 11, 2021 and was mailed to ■ at Address #1.
- A letter, dated April 28, 2022, signed Appellant's neighbor "of the past 5 years." *Id.* at 4. The neighbor indicated she helped Appellant with groceries, taking her children to doctor's appointments and school, and helped her when she had surgery in October 2021.
- A letter signed by ■, which corroborated Appellant's claim that they are "not together," they have been separated since 2015, but do stuff together for the benefits of the children. Additionally, the letter stated the following: all vehicles and the house belong to him; he had an ex-wife that tried to take his money and assets; Appellant helps him with taxes and that she is very sick.

See Exh. 7.

Findings of Fact

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

1. Appellant, who is under the age of 65, first enrolled in MassHealth on January 7, 2018.
2. During the application process, Appellant reported that she lived at Address #1 with her three grandchildren as dependents and that she was not married, nor had anyone else aside from her and her grandchildren living in the home.
3. Appellant listed only her income on the MassHealth application.
4. BSI began an investigation into Appellant after receiving a complaint alleging that Appellant failed to report her husband, and his income, on her MassHealth application, and accordingly underreported her income.
5. Appellant and ■ both reported Address #1 as their residence on their driver's license, and on November 17, 2021, both changed their addresses on their licenses to Address #2.

6. Appellant owns two motor vehicles, both of which are insured under her husband's name.
7. Both Appellant and ■ reported to reside at Address #1 when registering to vote.
8. Both Appellant and ■ co-leased, and resided at, the property at Address #1 from 10/12/2017 through 6/20/2021.
9. On September 16, 2021, Appellant and ■ jointly purchased the property located at Address #2 for \$450,000 as tenants by the entirety, listing themselves as husband and wife and filed a Declaration of Homestead on the property.
10. For tax years 2018 and 2020, ■ and Appellant filed their taxes as "married filing separately" with ■ naming Appellant as his spouse in his tax return.
11. For tax year 2020, Appellant reported income of \$44,114 and ■ reported income of \$9,560.
12. For tax year 2019, ■ and Appellant filed their taxes as "married filing jointly;" listed their residence at Address #1; and reported a gross combined income of \$58,531.
13. During 2019 through 2020, MassHealth paid over \$60,000 in medical claims on Appellant's behalf.
14. ■ was not enrolled in MassHealth at any point during this timeframe.
15. In 2019, a total gross income of \$58,531 for a household of 5 was 185% of the FPL.
16. In 2020, a total gross income of \$53,674 for a household of 5 was 175% of the FPL.

Analysis and Conclusions of Law

This appeal arises out of an investigation and determination by BSI that between March 15, 2018 and January 20, 2022 Appellant received MassHealth benefits to which she was not entitled.

MassHealth adopted these findings and notified Appellant that she would have to repay \$1,056 to the agency, which is based on the sum of monthly health care premium payments that would have been due for years 2019 and 2020 had Appellant reported the correct eligibility information.¹

According to MassHealth eligibility regulations, MassHealth applicants and members are subject to the following responsibilities:

(A) Responsibility to Cooperate. The applicant or member must cooperate with the MassHealth agency in providing information necessary to establish and maintain eligibility, and must comply with all the rules and regulations of MassHealth, including recovery and obtaining or maintaining available health insurance.

(B) Responsibility to Report Changes. The applicant or member must report to the MassHealth agency, within 10 days or as soon as possible, changes that may affect eligibility. Such changes include, but are not limited to, income, the availability of health insurance, and third-party liability.

See 130 CMR 501.010

Additionally, MassHealth has the right to recover payments for medical services paid on behalf of a member, if it determines that member was not in fact eligible to receive such benefits. The applicable regulation provides the following:

The MassHealth agency has the right to recover payment for medical benefits to which the member was not entitled at the time the benefit was received, regardless of who was responsible and whether or not there was fraudulent intent. No provision under 130 CMR 501.012 will limit the MassHealth agency's right to recover overpayments.

See 130 CMR 501.012.

It is undisputed that Appellant is legally married and that she did not identify her spouse, or his income, when applying for MassHealth benefits in 2018. According to MassHealth, not only did Appellant fail to report this necessary information as required under 130 CMR 501.010(A), but in doing so, Appellant underreported her income and was financially ineligible for MassHealth benefits. Although MassHealth alleges Appellant was never eligible for MassHealth benefits, it only seeks overpayments associated with enrollment years 2019 and 2020. At hearing, Appellant

¹ Rather than seeking to recoup the full amount of claims MassHealth paid on Appellant's behalf, which exceeded \$100,000.00, MassHealth seeks to recoup only the total amount of monthly premiums (\$44/mo) that Appellant would have owed had she correctly reported her income and household composition information and enrolled in a qualifying Connector program. In addition, although BSI determined that Appellant was ineligible for benefits during her entire period of enrollment, MassHealth based the overpayment amount solely on years 2019 and 2020.

argued that she did not identify her spouse in the application because they were not living together and did not have a marital relationship, aside from their legal status as such.

The determination of whether an applicant is financially eligible for benefits, is based on several factors, including household composition, countable income, and deductibles. See 130 CMR 506.001(A). MassHealth uses the following MassHealth Modified Adjusted Gross Income (MAGI) rules to determine household composition:

(B) MassHealth MAGI Household Composition.

(1) Taxpayers Not Claimed as a Tax Dependent on His or Her Federal Income Taxes.

For an individual who expects to file a tax return for the taxable year in which the initial determination or renewal of eligibility is being made and who is not claimed as a tax dependent by another taxpayer, *the household consists of*

(a) the taxpayer including his or her spouse, if the taxpayers are married and filing jointly regardless of whether they are living together;

(b) the taxpayer's spouse, if living with him or her regardless of filing status;

(c) all persons the taxpayer expects to claim as tax dependents; and

(d) if any woman described in 130 CMR 506.002(B)(1)(a) through (c) is pregnant, the number of expected children.

See 130 CMR 506.002(B) (emphasis added).

With respect to enrollment year 2019, the question of whether Appellant lived with her spouse is irrelevant. The evidence indicates that Appellant and her spouse filed their tax returns jointly for 2019. Therefore, for purposes of MassHealth eligibility, Appellant's husband (and his income) is included in the household composition "regardless of whether they [were] living together." See *id.*

With respect to enrollment year 2020, the evidence indicates Appellant and her spouse filed their taxes as married but filing separately. As such, Appellant's spouse must be included in the household composition "if living with [her]." See *id.* In this case, the overwhelming evidence presented at hearing suggests that Appellant was living with her spouse at all relevant times, including in 2020. Through various independent sources detailed above, BSI determined that from October 2017 to September 2021, Appellant and her spouse lived at Address #1. On September 16, 2021, they purchased a home together as tenants by the entirety, listed themselves as "husband and wife" on the deed, and filed a Declaration of Homestead on the property. One month later, they both updated their driver's license to reflect their new address at Address #2. In contrast, the evidence produced by Appellant (i.e. her own testimony and letters from her neighbor and spouse stating they lived separately), lacked the neutral corroborating evidence that had been obtained through BSI's investigation. Although Appellant produced a copy of an envelope that appeared to be mailed to Appellant's spouse at a different address, there were no dates indicating when it was mailed, nor did Appellant provide any explanation accompanying the letter. Accordingly, for both 2019 and 2020, MassHealth correctly determined Appellant was ineligible for benefits by factoring her spouse and his income to determine the actual household MAGI.² MassHealth established that

² In 2019, 133% of the federal poverty level (FPL) for a family size of 5 was \$40,128/year. See 2019 MassHealth Income Standards and Federal Poverty Guidelines (Rev. 03/19). The evidence indicates the combined

it made overpayments when it paid claims on Appellant's behalf during these years, and as such, correctly issued its notice of overpayment in accordance with MassHealth

Therefore, the appeal is DENIED.

Order for MassHealth

Proceed to recover overpayment.

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.

Casey Groff
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Mark Carey, MassHealth OPS Integrity Unit, One Ashburton Place, Boston, MA 02108

income for Appellant and her spouse in 2019 exceeded the FPL at \$58,531.

In 2020, 133% of the FPL for a family size of 5 was \$40,812/year. See 2020 MassHealth Income Standards and Federal Poverty Guidelines (Rev. 03/20). The evidence indicates the combined income for Appellant and her spouse in 2019 exceeded the FPL at \$53,674