

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2202767
Decision Date:	7/14/2022	Hearing Date:	05/05/2022
Hearing Officer:	Sara E. McGrath		

Appearances for Appellant:

 Appellant
Son/HCP

Appearances for MassHealth:

Jonathan Gonzalez, Charlestown MassHealth
Brian Hatch (observing)
Sophie Beauport (observing)



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Eligibility
Decision Date:	7/14/2022	Hearing Date:	05/05/2022
MassHealth Rep.:	Jonathan Gonzalez	Appellant Rep.:	Son/HCP
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 notice dated March 23, 2022, MassHealth notified the appellant that he is not eligible for MassHealth benefits because his assets and income are too high. The appellant filed this appeal in a timely manner on April 12, 2022 (130 CMR 610.015(B)). The denial of assistance is a valid ground for appeal (130 CMR 610.032(A)). At the conclusion of the hearing, the record was held open for the appellant to submit additional documentation and for MassHealth to review and respond (Exhibit 4).

Action Taken by MassHealth

MassHealth notified the appellant that is not eligible for MassHealth benefits because his assets and income are too high.

Issue

The appeal issue is whether appellant is financially eligible for MassHealth benefits.

Summary of Evidence

The MassHealth representative appeared at the hearing by telephone and testified to the following chronology: The appellant is a community resident who is over the age of 65. On February 24, 2022, the appellant submitted a MassHealth senior application. On March 23, 2022, MassHealth notified the appellant that he is not eligible for MassHealth benefits because both his income and assets exceed MassHealth program limits (Exhibit 1). As of the date of the March notice, the appellant's countable assets consisted of four bank accounts with a total value of \$18,460.17. The MassHealth representative noted that one of the four accounts is an account that the appellant holds jointly with his ex-spouse, and the appellant claims that the funds in this account belong solely to his ex-spouse.¹ MassHealth reviewed documentation submitted by the appellant regarding the couple's divorce, but because there was no court mandate concerning an account to be set up for the ex-spouse, MassHealth was unable to conclude that the appellant should not be considered an owner of this account.

The MassHealth representative further testified that the appellant's income totals \$4,801.63, which includes a gross monthly pension of \$2,267.53 and a monthly Social Security benefit of \$2,534.10. Because the appellant's income exceeds 100% of the federal poverty level for his family size (\$1,133), he must meet a deductible every six months in order to qualify for MassHealth Standard coverage.²

The appellant and his son appeared at hearing by telephone. The appellant's son testified first about the appellant's assets. He noted that the statements for the joint account are addressed to his mother, not his father, which is an indication that the account belongs to his mother. He explained that as part of the couple's divorce agreement, the appellant was to purchase life insurance and name his ex-spouse as a beneficiary of the policy. The appellant was unable to afford life insurance, and his ex-spouse subsequently filed a contempt action in the probate court. The son explained that because of that court proceeding, the parties agreed that instead of purchasing life insurance, the appellant would set up a joint account and deposit a set amount into the account (\$400) on a monthly basis. The account is a joint account so that the appellant has access to make the deposits into the account, and so that he can access account statements for his attorney.

In support of the appellant's position, he submitted a 2018 pleading that he claims was filed in the probate court in the State of New Hampshire, Hillsborough County, 9th Circuit, Family Division, Manchester, entitled Emergency Motion to Continue Contempt Hearing. The pleading is unsigned but appears to have been prepared by the appellant's attorney. The appellant directed the parties to paragraph 9, which provides as follows:

¹ The MassHealth representative noted that as of April 2022, the joint account had a balance of \$19,403, and the four accounts together had a total balance of \$19,660.64.

² MassHealth calculated the deductible as follows: \$4,801.63 (income) - \$985 (PCA disregard) - \$522 (MA income standard) - \$187.10 (health insurance) - \$193.07 (health insurance) = \$2,913.83 x 6 = \$17,482. The appellant did not dispute the method by which MassHealth calculated the deductible.

The crux of my Emergency Motion to Continue is that I've just become aware of exactly what monies may not be available at present even if the Defendant was found in Contempt to fund whatever relief the Plaintiff is asking for. In addition, the Defendant has tried to obtain term Life Insurance and was refused due to his Diabetes. Even if he could obtain Life Insurance at age 66 the cost would be unaffordable.

(Exhibit 3).

The appellant's son also testified about the appellant's income. He explained that per the divorce decree, the appellant must transfer half of his pension to his ex-spouse every month. Therefore, MassHealth should deduct an amount equal to half the pension from the appellant's countable income. Further, the additional \$400 that the appellant transfers to his ex-spouse every month (in lieu of obtaining life insurance) should likewise be deducted from his income. In support of his position, the appellant pointed to the same pleading referenced above. The appellant directed the parties to paragraph 6, which provides as follows:

The Plaintiff, [appellant's ex-spouse], received on February 9, 2016 the sum of \$16,066.00 and again received in the year 2016 the sum of \$26,840.40 totaling \$42,901.00. These amounts have never been reflected in her Financial Statements. In addition, the Defendant, [appellant] has split his pension from the City of Manchester given in the amount of \$1,787.22 with the Plaintiff receiving a grayer [sic] proportion amounting to \$1,078.08, the Defendant receiving \$808.00. The difference in the amounts split were justified because [appellant's] amount is not taxable but [the ex-spouse's] account is taxable and yet she has paid no taxes whatsoever according to her Financial Statement and Tax Return. (See copy of [REDACTED] dated April 10, 2017 indicating what was paid out to the wife into her account – Exhibit [sic].

(Exhibit 3).

At the conclusion of the hearing, the record was held open for the appellant to submit documentation from the probate court regarding the appellant's ongoing financial obligations to his ex-spouse (Exhibit 4). The appellant did not submit any further documentation during the record-open period.

Findings of Fact

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

1. The appellant is over the age of 65 and lives in the community.
2. On February 24, 2022, the appellant submitted a MassHealth senior application.
3. On March 23, 2022, MassHealth notified the appellant that he is not eligible for MassHealth benefits because both his assets and income exceed MassHealth program limits.
4. As of March 2022, the appellant's countable assets totaled \$18,460.17; these assets consisted of four bank accounts, three owned solely by the appellant and one owned jointly by the appellant and his ex-spouse.
5. As of March 2022, the appellant's monthly income totaled \$4,801.63, which included a gross monthly pension of \$2,267.53 and a monthly Social Security benefit of \$2,534.
6. On April 12, 2022, the appellant timely appealed the MassHealth's eligibility determination.
7. After a hearing held on May 5, 2022, the record was held open to allow the appellant to submit additional documentation and to allow MassHealth to review and respond.
8. The appellant did not submit any additional documentation during the record-open period.

Analysis and Conclusions of Law

The appeal arises out of a MassHealth determination that the appellant is not financially eligible for MassHealth benefits. Under 130 CMR 519.005, 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% 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. 130 CMR 520.000 describes the rules governing financial eligibility for MassHealth.

MassHealth determined that both the appellant's countable income and countable assets exceed MassHealth program limits; the appellant disputes this determination.

Under 130 CMR 520.009(A)(1), an individual's gross earned and unearned income less certain business expenses and standard income deductions is referred to as the countable-income amount. Here, MassHealth determined that the appellant has monthly countable unearned income of \$4,801.63, which includes his pension and his Social Security benefit (130 CMR 520.009(D)). In addition to business expenses described at 130 CMR 520.010, the MassHealth agency allows the deductions listed below from the total gross unearned income (130 CMR 520.013).³ The deductions allowed from the total gross unearned income are the following:

(A) a deduction of \$20 per individual or married couple; or

(B) in determining eligibility for MassHealth Standard, a deduction that is equivalent to the difference between the applicable MassHealth deductible-income standard at 130 CMR 520.030 and 133% of the federal poverty level. This deduction includes, and is not in addition to, the \$20 disregard.

(1) This deduction from gross unearned income is allowed only for persons who

(a) are 65 years of age and older;

(b) are receiving personal-care attendant services paid for by the MassHealth agency, or have been determined by the MassHealth agency, through initial screening or by prior authorization, to be in need of personal-care attendant services; and

(c) prior to applying the deduction at 130 CMR 520.013(B), have countable income that is over 100% of the federal poverty level.

(2) The MassHealth agency will redetermine eligibility without this deduction if

(a) after 90 days from the date of the MassHealth agency eligibility approval notice, the person is not receiving personal-care attendant services paid for by the MassHealth agency or has not submitted, upon request from the MassHealth agency, proof of efforts to obtain personal-care attendant services paid for by the MassHealth agency; or

(b) the MassHealth agency denies the prior-authorization request for personal-care attendant services.

(3) If countable income, prior to applying the deduction at 130 CMR 520.013(B), is greater than 133 percent of the federal poverty level, eligibility is determined under 130 CMR 519.005(B): *Financial Standards Not Met*.

(130 CMR 520.013).

The appellant has argued that the income he transfers to his ex-spouse should be deducted from his income. As set forth above, the applicable regulations do not allow for a deduction of this sort. MassHealth allowed from the appellant's income all permissible deductions, including the

³ MassHealth regulations allow for certain business expense deductions related to self-employment, room and board, and rental income (130 CMR 510.010). Business expenses are not relevant here.

standard income deduction and the deduction cited above related to the appellant's need for a personal care attendant (130 CMR 520.011; 520.013). After applying these deductions, MassHealth determined that the appellant's countable income still exceeds MassHealth's program limits. The appellant has not demonstrated that MassHealth erred in its determination.⁴

The appellant has also argued that his countable assets do not exceed MassHealth's program limits. The total value of countable assets owned by or available to an individual applying for MassHealth benefits may not exceed \$2,000 (130 CMR 520.003(A)(1)). In calculating the appellant's assets, MassHealth included the assets held in a bank account that the appellant owns jointly with his ex-spouse. By including the value of these bank assets (\$19,403 in April 2022), the appellant's total assets exceed MassHealth's \$2,000 limit. Per 130 CMR 520.006(C)(2), when the applicant or member is a joint owner of a bank account, the entire amount on deposit is considered available to the applicant or member. If the applicant or member claims partial ownership of the funds in the joint account, he or she must verify the amount owned by each joint depositor (130 CMR 520.005(C)(3)). Individual or joint ownership of any countable asset must be verified by a written document providing reasonable evidence of ownership (130 CMR 520.005(D)).

Acceptable verification includes, but is not limited to, the following:

- (1) a title;
- (2) a purchase contract;
- (3) documents establishing ownership of joint bank accounts that demonstrate the following:
 - (a) the origin of the funds in a joint bank account, who opened the account, or whose money was used to open the account;
 - (b) federal and state tax records as to which joint account holders pay the tax on interest credited to the account as income;
 - (c) records of who makes deposits and withdrawals and, if appropriate, how withdrawn funds are spent;
 - (d) any evidence of written or oral agreements made between the parties at the time of the creation of the account;
 - (e) evidence of age, relationship, physical or mental condition, or place of residence of the co-holders when the applicant or member states that he or she does not own the account but is listed as a co-holder solely as a convenience to the other co-holder to conduct bank transactions on his or her behalf; and
 - (f) why the applicant or member is listed on the account;
- (4) certification of ownership;
- (5) financial-institution records indicating the establishment of an account that accurately reflect the ownership interest of funds from the joint account;

⁴ The appellant did not specifically argue that the income at issue is noncountable income. Nevertheless, it bears noting that the income in question does not fit into any of the categories that can be considered noncountable income (130 CMR 520.015).

- (6) other documentation that indicates ownership, asset value, and restrictions on access;
- (7) a notarized affidavit, sworn to under penalty of perjury, signed by all owners of the asset, and attesting to the distribution of ownership; or
- (8) the self-declaration of the individual who is applying solely for MassHealth Senior Buy In for Qualified Medicare Beneficiaries (QMB) as described in 130 CMR 519.010: MassHealth Senior Buy-In (for Qualified Medicare Beneficiaries (QMB)) or MassHealth Buy-In for Specified Low Income Medicare Beneficiaries (SLMB) or MassHealth Buy-In for Qualifying Individuals (QI) both as described in 130 CMR 519.011: *MassHealth Buy-In*, provided that the MassHealth agency may use electronic data sources to verify eligibility, and at its discretion, request additional verification from the individual.

(130 CMR 520.005(D)).

The appellant concedes that he is the sole depositor of funds into this account but maintains that all of the assets in the account belong to his ex-spouse. Specifically, the appellant has alleged that as part of his divorce agreement, he was mandated to open a joint account into which he would deposit a sum certain on a monthly basis. To substantiate this assertion, the appellant submitted an unsigned motion that appears to have been prepared by this attorney (Exhibit 3). The pleading refers to the appellant's inability to obtain life insurance but does not discuss the creation of a separate account. Because there is no evidence that the probate court has addressed the creation of this joint account, the appellant's argument falls short. The appellant has not adequately demonstrated that the funds in this account are unavailable to him, and thus has not demonstrated partial or non-ownership of these funds.

For these reasons, the appeal is denied.

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.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc: Charlestown MassHealth Enrollment Center

