

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part	Appeal Number:	2202786
Decision Date:	5/25/2022	Hearing Date:	05/17/2022
Hearing Officer:	Paul C. Moore	Record Closed:	05/18/2022

Appellant Representative:



MassHealth Representatives:

Elaine Vincent, Charlestown MassHealth Enrollment Center (MEC); Brittany O'Garro, Premium Billing Unit; Sarah Prado, Premium Assistance Unit (all by telephone)



*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:	Approved in part	Issue:	Premium Assistance
Decision Date:	5/25/2022	Hearing Date:	05/17/2022
MassHealth Reps.:	Elaine Vincent, Sarah Prado, Brittany O'Garro	Appellant Rep.:	Pro se
Hearing Location:	Board of Hearings (remote)		

Authority

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

Jurisdiction

Through a notice dated February 8, 2022, MassHealth informed the appellant that it approved the appellant for premium assistance benefits and would issue him a premium assistance check monthly in the amount of \$469.57 (Exhibit 1). The appellant filed a timely appeal with the Board of Hearings (BOH) on April 12, 2022 challenging the premium assistance amount (Exhibit 2).¹ Challenging the amount or scope of MassHealth assistance is a ground for appeal to BOH (130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified the appellant that he was approved for premium assistance benefits and that he would receive a premium assistance check of \$469.57 per month.

¹ MassHealth Eligibility Operations Memo 20-09, "MassHealth Response to Coronavirus Disease 2019 (COVID-19)," issued April 7, 2020, states in relevant part: "In response to the current Coronavirus Disease 2019 (COVID-19) national emergency, MassHealth is implementing the following protocols to support the public health efforts to expedite medical care and maintain care for both new MassHealth applicants and existing members. Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of the month in which such national emergency period ends: All appeal hearings will be telephonic; and **Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.**"

Issue

Did MassHealth correctly determine that the amount of the appellant's premium assistance is \$469.57 per month?

Summary of Evidence

The MassHealth representative from the Charlestown MEC ("MEC representative") testified by telephone that the appellant lives in a household of three, including his spouse and a minor child. The MEC representative testified that the household income, as of February, 2022, was \$1,700.00 per week, placing the family at 938.86% of the 2022 federal poverty level (FPL) for a household of three. She noted that the appellant's minor child has been deemed disabled, and is enrolled in MassHealth CommonHealth as secondary insurance, for which the family pays a monthly premium. The MassHealth representative stated the appellant is enrolled in employer-sponsored health insurance (ESI), which covers the entire family. The appellant has been receiving premium assistance from MassHealth to help pay the monthly cost of the ESI. In February, 2022, MassHealth "auto-renewed" the appellant, resulting in a change in the appellant's monthly premium assistance benefits. The MEC representative stated that according to a notice issued by MassHealth on February 8, 2022, the monthly premium assistance amount the appellant began receiving was \$469.57 (Exh. 1).

A representative from the MassHealth premium billing unit ("premium billing representative") testified by telephone that as of June, 2020, the premium billing unit stopped billing the appellant for his daughter's CommonHealth premium because the amount of premium assistance the appellant receives is greater than the CommonHealth premium owed. The appellant's daughter is the only member of the household enrolled in a MassHealth benefit. The premium billing representative explained that the CommonHealth premium owed is deducted from the amount of the appellant's premium assistance check (Testimony).

A representative from the MassHealth premium assistance unit ("premium assistance representative") testified that MassHealth is covering the entire amount of the appellant's portion of his ESI monthly premium, or \$811.57.² However, as of February 8, 2022, the premium billing unit is withholding \$352.00 per month from this amount to cover the cost of the CommonHealth premium. The premium assistance checks are mailed out to members to cover the cost of ESI premiums owed during the following month (Testimony).

The appellant testified that he does not understand why the amount of the premium assistance he receives was reduced in February, 2022. He agreed that the amount he owes monthly for his ESI is \$811.57. His earned income of \$1,700.00 per week has not changed in several years. He is the only member of his household with any income (Testimony).

² In ESI, the employer typically pays a portion of the employee's monthly premium.

The MEC representative stated that in February, 2022, in order to verify household income, MassHealth performed a “data match” with other sources, which she explained may be the Massachusetts Department of Revenue or federal data sources, such as the I.R.S. She stated that this “data-match” may have shown higher earnings on the appellant’s part (Testimony).³

The MEC representative stated that the appellant’s projected annual income on file with MassHealth for 2022 was \$88,393.00 (Testimony).

The appellant testified that his spouse gave birth to a baby in [REDACTED], and that his household size has therefore changed. The MEC representative stated that she would update the MassHealth computer system with this information following the appeal hearing.

On May 17, 2022, the MEC representative sent an e-mail to the hearing officer stating as follows:

I spoke with [the appellant] and updated his case. I added his newborn and also updated the member’s income.

That update did result in a change to the FPL and the Premium Assistance amount.

[Modified Adjusted Gross Income] FPL changed from 938.86% to 623.59%

Premium Assistance Amount changed from \$469.57 to \$691.57

(Exh. 4)⁴

On the same date, the premium assistance representative sent e-mail correspondence to the hearing officer and to the appellant, stating in relevant part:

I confirm that now [the appellant’s] premium assistance is \$691.57 beginning [June 5, 2022].

(Exh. 5)

At the close of the hearing, the hearing officer left the record open for the MEC representative to confirm with the hearing officer what the appellant’s daughter’s CommonHealth premium was in February, 2022.

On May 18, 2022, the MEC representative reported to the hearing officer by e-mail that “using the calculation formula and FPL [as of February, 2022],” the CommonHealth premium was \$342.00 (Exh. 6).

³ The MEC representative testified that in February, 2022, the appellant’s daughter’s FPL increased to 548.59%. When asked by the hearing officer why the FPL% for the household differed from the FPL% for the appellant’s daughter, who is part of the same household, she stated she did not know why.

⁴ This correspondence was not copied to the appellant; therefore, the hearing officer forwarded a copy to the appellant by e-mail.

Findings of Fact

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

1. In February, 2022, the appellant lived in a household of three, consisting of himself, his spouse, and a disabled daughter, who is a minor (Testimony).
2. Through his employer, the appellant is enrolled in ESI, and he owes \$811.57 toward the monthly ESI premium (Testimony).
3. In February, 2022, the appellant's household income consisted of weekly earnings of \$1,700.00, or \$7,366.10 monthly (\$1,700.00 times 4.333) (Testimony).
4. The appellant has been receiving MassHealth premium assistance since at least 2020 to assist with the cost of his monthly ESI premium (Testimony).
5. The premium assistance unit has been paying the entire cost of the appellant's ESI premium responsibility, or \$811.57 per month (Testimony).
6. A premium assistance check issued to a member covers the cost of the member's ESI premium for the following month (Testimony).
7. In February, 2022, MassHealth assessed a premium for the appellant's daughter's enrollment in CommonHealth coverage of \$342.00 per month (Exh. 6).
8. MassHealth offsets the amount of a CommonHealth premium against premium assistance paid to a member (Testimony).
9. In February, 2022, MassHealth automatically renewed the appellant's CommonHealth coverage by verifying his household earnings against state and federal databases, and determined that the household was at 938.86% of the FPL for a household of that size (Testimony).
10. On February 8, 2022, MassHealth sent the appellant a notice apprising him that the appellant's monthly premium assistance amount decreased to \$469.57 (\$811.57 less \$342.00) (Exh. 1).
11. The appellant filed a timely appeal of February 8, 2022 notice with the BOH (Exh. 2).
12. For a household of three, 100% of the 2022 FPL is \$1,920.00 per month (87 *Federal Register* 3315, pp. 3315-3316 (January 21, 2022)).
13. For a household of three in 2022, modified adjusted gross income of \$7,366.10 is at 383% of the FPL.

14. Due to a change in the appellant's household size, as of June 5, 2022, the premium assistance unit will now be paying \$691.57 toward the cost of the appellant's monthly ESI premium (Exh. 5).

Analysis and Conclusions of Law

Pursuant to 130 CMR 506.012, "Premium Assistance Payments:"

(A) Coverage Types. Premium assistance payments are available to MassHealth members who are eligible for the following coverage types:

(1) MassHealth Standard, as described in 130 CMR 505.002: MassHealth Standard, with the exception of those individuals described in 130 CMR 505.002(F)(1)(d);

(2) MassHealth Standard for Kaileigh Mulligan, as described in 130 CMR 519.007: Individuals Who Would Be Institutionalized;

(3) MassHealth CommonHealth, as described in 130 CMR 505.004: MassHealth CommonHealth;

(4) MassHealth CarePlus, as described in 130 CMR 505.008: MassHealth CarePlus;

(5) MassHealth Family Assistance for HIV-positive adults and HIV-positive young adults, as described in 130 CMR 505.005(E): Eligibility Requirements for HIV-positive Individuals Who Are Citizens or Qualified Noncitizens with Modified Adjusted Gross Income of the MassHealth MAGI Household Greater than 133 and Less than or Equal to 200% of the Federal Poverty Level;

(6) MassHealth Family Assistance for disabled adults whose Disabled Adult MassHealth household income is at or below 100% of the FPL and who are qualified noncitizens barred, nonqualified individuals lawfully present, and nonqualified PRUCOLs, as described in 130 CMR 505.005(C): Eligibility Requirements for Children and Young Adults Who Are Nonqualified PRUCOLs with Modified Adjusted Gross Income of the MassHealth MAGI Household at or below 150% of the Federal Poverty Level;

(7) MassHealth Family Assistance for children younger than 19 years old and young adults 19 and 20 years of age whose household MAGI is at or below 150% of the FPL and who are nonqualified PRUCOLs, as described in 130 CMR 505.005(C): Eligibility Requirements for Children and Young Adults Who Are Nonqualified PRUCOLs with Modified Adjusted Gross Income of the MassHealth MAGI Household at or below 150% of the Federal Poverty Level;

(8) MassHealth Family Assistance for children younger than 19 years old whose household MAGI is between 150% and 300% of the FPL and who are citizens, protected noncitizens, qualified noncitizens barred, nonqualified individuals lawfully present, and nonqualified PRUCOLs, as described in 130 CMR 505.005(C): Eligibility Requirements for Children and Young Adults Who Are Nonqualified PRUCOLs with Modified Adjusted Gross Income of the MassHealth MAGI Household at or below 150% of the Federal Poverty Level; and

(9) MassHealth Small Business Employee Premium Assistance Program, the rules and requirements of which are described in 130 CMR 506.013.

(B) Criteria. MassHealth may provide a premium assistance payment to an eligible member when all of the following criteria are met.

(1) The health insurance coverage meets the Basic Benefit Level (BBL) as defined in 130 CMR 501.001: Definition of Terms. Instruments including, but not limited to, Health Reimbursement Arrangements, Flexible Spending Arrangements, as described in IRS Pub. 969, or Health Savings Accounts, as described at IRC § 223(c)(2), cannot be used to reduce the health insurance deductible in order to meet the basic-benefit level requirement.

(2) The health insurance policy holder is either (a) in the Premium Billing Family Group or (b) resides with the individual who is eligible for the premium assistance benefit and is related to the individual by blood, adoption, or marriage.

(3) At least one person covered by the health-insurance policy is eligible for MassHealth benefits as described in 130 CMR 506.012(A) and the health-insurance policy is a policy that meets the criteria of the MassHealth coverage type for premium assistance benefits as described in 130 CMR 506.012(C).

(C) Eligibility. Eligibility for MassHealth premium assistance is determined by the individual's coverage type and the type of private health insurance the individual has or has access to. MassHealth has three categories of health insurance for which it may provide premium assistance.

(1) Employer-sponsored Insurance (ESI) 50% Plans are employer-sponsored health insurance plans to which the employer contributes at least 50% towards the monthly premium amount. MassHealth provides premium assistance for individuals with ESI 50% Plans who are eligible for MassHealth coverage types as described in 130 CMR 506.012(A).

(2) Other Group Insurance Plans are employer-sponsored health insurance plans to which the employer contributes less than 50% towards the monthly premium amount, Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage, and Other Group Health insurance. MassHealth provides premium assistance for individuals with Other Group Health Insurance Plans who are eligible for MassHealth coverage types as described in 130 CMR 506.012(A), except for individuals described in 130 CMR 506.012(A)(8).

(3) Non-group unsubsidized Health Connector individual plans for children only, provided that such plans shall no longer be eligible for premium assistance as of January 1, 2019, and the last premium assistance payment for these plans shall be for coverage through December 31, 2018;

(4) Members enrolled in any of the following types of health-insurance coverage are not eligible for premium assistance payments from MassHealth:

(a) Medicare supplemental coverage, including Medigap and Medex coverage;

(b) Medicare Advantage coverage;

(c) Medicare Part D coverage; and

(d) Qualified Health Plans (QHP).

(5) The following MassHealth members are not eligible for premium assistance payments as described in 130 CMR 506.012(C) from MassHealth:

(a) MassHealth members who have Medicare coverage. However, for those members who meet the eligibility requirements set forth in 130 CMR 505.002(O), Medicare buy-in benefits may be available;

(b) all nondisabled nonqualified PRUCOL adults, as described in 130 CMR 505.005(D): Eligibility Requirements for Adults and Young Adults 19 and 20 Years of Age Who Are Nonqualified PRUCOLs with Modified Adjusted Gross Income of the MassHealth MAGI Household at or below 300% of the Federal Poverty Level; and

(c) disabled nonqualified PRUCOL adults with MassHealth Disabled Adult household income above 100% of the FPL, as described in 130 CMR 505.005(F): Eligibility Requirements for Disabled Adults Who Are Qualified Noncitizens Barred, Nonqualified Individuals Lawfully Present, and Nonqualified PRUCOLs with Modified Adjusted Gross Income of the MassHealth Disabled Adult Household at or below 100% of the Federal Poverty Level.

...

(Emphases added)

Here, the appellant is enrolled in ESI and receives premium assistance to help pay his portion of the monthly ESI premium. MassHealth has determined that his particular ESI plan meets the criteria set forth at 130 CMR 506.012(B), above. MassHealth has determined that it will pay the entire cost of the appellant's responsibility toward payment of his ESI premium, or \$811.57 monthly.

The appellant's daughter has been deemed disabled, and is enrolled in MassHealth CommonHealth as secondary insurance. As set forth at 130 CMR 506.011:

The MassHealth agency may charge a monthly premium to MassHealth Standard, CommonHealth or Family Assistance members who have income above 150% of the federal poverty level (FPL), as provided in 130 CMR 506.011.

In order to calculate the appellant's daughter's monthly CommonHealth premium, the regulations at 130 CMR 506.011(B)(2)(b) instruct:

The full premium formula for young adults with household income above 150% of the FPL, adults with household income above 150% of the FPL, **and children with household income above 300% of the FPL is provided as follows. The full premium is charged to members who have no health insurance and to members for whom the MassHealth agency is paying a portion of their health-insurance premium.**

Above 200% FPL—start at \$40

Add \$8 for each additional 10% FPL until 400% FPL

(Emphases added)

Despite MassHealth's testimony that the appellant's monthly modified adjusted gross income (MAGI)⁵ was at 938.86% for a household of three in February, 2022, the evidence shows that the appellant's household MAGI at that time (\$7,366.10 monthly) was actually at 383% of the FPL for a household of three.⁶

Using the above full premium formula located at 130 CMR 506.011(B)(2)(b), the appellant's daughter's CommonHealth premium in February, 2022 should have been calculated as \$40.00 plus \$144.00 (\$8 times 18 (for each 10% increment of the FPL above 200% of the FPL)), or \$184.00 per month. Instead, MassHealth assessed a premium of \$342.00 per month.

A CommonHealth premium amount of \$184.00 should have been used to offset the amount of the appellant's premium assistance from February, 2022 through May, 2022.

Therefore, the correct premium assistance amount the appellant should have received per month for that time period was \$811.57 less \$184.00, or \$627.57.

MassHealth underpaid the appellant's premium assistance by \$158.00 per month for four months.

Therefore, this appeal is APPROVED IN PART.

Order for MassHealth

Rescind notice of February 8, 2022. Send the appellant a check for \$158.00 times four, or \$632.00, to reimburse premium assistance amounts MassHealth should have paid from February, 2022 through May, 2022.

Notify the appellant in writing of the appellant's new premium assistance amount as of June 5, 2022, if MassHealth has not already done so.

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

⁵ Modified adjusted gross income is defined at 130 CMR 501.001 as modified adjusted gross income as it is defined in section 36(B)(d)(2) of the Internal Revenue Code with the following exceptions: (1) an amount received as a lump sum only counts as income in the month received; (2) scholarships, awards, or fellowship grants used for education purposes, and not for living expenses, are excluded from income; (3) certain taxable income received by American Indians and Alaska Natives is excluded from income as described in 42 CFR § 435.603(e).

⁶ 130 CMR 506.007(A)(2)(c) notes "in determining monthly income, the MassHealth agency multiplies average weekly income by 4.333."

Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Acting Director of the Board of Hearings, Office of Medicaid, at the address on the first page of this decision.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Jennifer Vitt, Appeals Coordinator, Charlestown MEC

cc: Jeanne Nechanicky, Premium Billing Manager, Maximus, 55 Summer Street, 8th Floor,
Boston, MA 02110

cc: Kim Johnson-Cheek, Premium Assistance Unit