

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2204277
<b>Decision Date:</b>	7/28/2022	<b>Hearing Date:</b>	07/22/2022
<b>Hearing Officer:</b>	Thomas J. Goode		

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Mark Carey, Program Integrity



*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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Recovery of Overpayment of Member Benefits
<b>Decision Date:</b>	7/28/2022	<b>Hearing Date:</b>	07/22/2022
<b>MassHealth's Rep.:</b>	Mark Carey	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Remote		

## 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 May 11, 2022, MassHealth notified Appellant of an overpayment of member benefits and recoupment action totaling \$1,588.70 for MassHealth benefits received in 2018 and 2019 (130 CMR 501.012 and Exhibit 1). Appellant filed this appeal in a timely manner on June 7, 2022 (130 CMR 610.015(B) and Exhibit 2). Notice of an overpayment and recoupment action is valid grounds for appeal (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth notified Appellant of an overpayment and recoupment action totaling \$1,588.70 for MassHealth benefits received in 2018 and 2019.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 501.012, in notifying Appellant of an overpayment and recoupment action totaling \$1,588.70 for MassHealth benefits received in 2018 and 2019.

## Summary of Evidence

The MassHealth Program Integrity representative testified that the Bureau of Special Investigation (BSI) received a referral alleging that Appellant was receiving MassHealth benefits while not reporting her child's father's income or that he was living in the home. The MassHealth database revealed that Appellant has an active MassHealth profile listing herself and her child as living in the same household. The child's father was also enrolled in MassHealth until August 7, 2021 and listed the same address. Registry of Motor Vehicles data shows that Appellant and her child's father both have active driver's licenses issued with the same address. Registry of Motor Vehicles data also show that Appellant and her child's father co-own a 2015 Dodge Dart registered to the same address. The United States Postal Service (USPS) identified Appellant and her child's father as both receiving mail at the same address. Employment verification received from the child's father's employer shows that he listed the same address as Appellant. The Department of Revenue (DOR) tax information shows that the child's father filed taxes for 2106-2018 as Head of Household and listed Appellant's address as his address, and reported total income of \$33,456 for 2016, \$37,231 for 2017, and \$38,206 for 2018. There is no record of taxes being filed for 2019 and 2020, but DOR wage records show that the child's father earned \$56,814.40 in 2019, and \$24,109.33 in 2020. No income was confirmed for Appellant. The BSI examiner determined that Appellant has been residing in the home with the father of her child for the period 7/9/2016-8/11/2021, and that Appellant owes MassHealth \$1,588.70. For years 2016, 2017, 2020, and 2021, Appellant owes \$0 because either Appellant incurred no expenses to MassHealth, or the household income was low enough to qualify for MassHealth benefits without a premium due. For 2018, income of \$38,206 for a household of 3 results in a federal poverty level (FPL) of 183% and qualified the household for ConnectorCare with a \$44 monthly premium. Appellant incurred \$76.70 in MassHealth expenses in 2018, which is the only amount MassHealth seeks to recoup. For 2019, income of \$56,814.40 for a household of 3 results in a FPL of 266%, and qualified the household for ConnectorCare with a \$126 premium totaling \$1,512 for the year. MassHealth therefore seeks to recover \$1,588.70.

Appellant testified that she and her child's father did live in the same house that was owned by her grandmother, but he rented a room separate from her and her son. She stated that her grandmother has since died, and her mother now owns the house, and her child's father continues to live there a majority of the time, but also stays at different places. She stated that the arrangement is for convenience so that the child's father has an address. She acknowledged that they co-own a car because he needed a cosigner and needs the car for work. Appellant stated that she was unemployed from 2019 through 2021, and worked for a couple of months in 2022, but is now unemployed. Appellant explained that she received unemployment compensation for part of the time she was not working, but the child's father did not contribute to household expenses. Appellant testified that the child's father only started coming around more often in 2020-2021, but they are not a household.

## Findings of Fact

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

1. The Bureau of Special Investigation (BSI) received a referral alleging that Appellant was receiving MassHealth benefits while not reporting her child's father's income or that he was living in the home.
2. The MassHealth database revealed that Appellant has an active MassHealth profile listing herself and her child as living in the same household. The child's father was also enrolled on MassHealth until August 7, 2021 and listed the same address.
3. Registry of Motor Vehicles data shows that Appellant and her child's father both have active driver's licenses issued with the same address.
4. Registry of Motor Vehicles data show that Appellant and her child's father co-own a 2015 Dodge Dart registered to the same address.
5. The United States Postal Service identified Appellant and her child's father as both receiving mail at the same address.
6. Employment verification received from the child's father's employer shows that he listed the same address as Appellant.
7. The Department of Revenue (DOR) tax information shows that the child's father filed taxes for 2106-2018 as Head of Household and listed Appellant's address as his address, and reported total income of \$33,456 for 2016, \$37,231 for 2017, and \$38,206 for 2018.
8. There is no record of taxes being filed for 2019 and 2020, but DOR wage records show that the child's father earned \$56,814.40 in 2019, and \$24,109.33 in 2020. No income was confirmed for Appellant.
9. The BSI examiner determined that Appellant has been residing in the home with the father of her child for the period 7/9/2016-8/11/2021, and that Appellant owes \$1,588.70.
10. For years 2016, 2017, 2020, and 2021, Appellant owes \$0 because either Appellant incurred no expenses to MassHealth, or the household income was low enough to qualify for MassHealth benefits without a premium due.
11. For 2018, income of \$38,206 for a household of 3 results in a federal poverty level (FPL) of 183% and qualified the household for ConnectorCare with a \$44 monthly premium.
12. Appellant incurred \$76.70 in MassHealth expenses in 2018, which is the only amount MassHealth seeks to recoup for 2018.

13. For 2019, income of \$56,814.40 for a household of 3 results in a FPL of 266%, and qualified the household for ConnectorCare with a \$126 premium totaling \$1,512 for the year.

## **Analysis and Conclusions of Law**

MassHealth regulation 130 CMR 501.010 outlines responsibilities of applicants and MassHealth members:

(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.

MassHealth determined fraudulent activity from 2018 through 2019 based on evidence compiled by a BSI examiner which purports to show that the father of Appellant's child resided in the household, which was unreported to MassHealth, and therefore his income was not factored into MassHealth eligibility for the household. The evidence presented by MassHealth is limited to a summary of the BSI Investigator's report and the MassHealth representative's sworn testimony to the contents of that report. None of the records obtained and reviewed by the BSI examiner were submitted into evidence. The lack of underlying substantive evidence notwithstanding, in the context of an administrative hearing Appellant bears the burden of showing that the MassHealth determination is incorrect.<sup>1</sup> The factual evidence accumulated by the BSI investigator and summarized by MassHealth diminishes the credibility of Appellant's testimony that her child's father lived as a separate household while living at the same address. The child's father filed as head of household for tax years 2016-2018 at the same address. Further, as there is no tax filing documentation available for 2019, there is no evidence that Appellant and her child were part of another MassHealth household. Additional facts such as USPS records, employer information, a co-owned vehicle at the same address, and Appellant's unemployment status during the period in question further erodes the credibility of Appellant's testimony. Therefore, Appellant has not carried the burden of showing the invalidity of the MassHealth determination that the father of Appellant's child lived in the same household, and his income was not reported.

MassHealth 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 there was fraudulent intent. No provision under 130 CMR 501.012 will limit the MassHealth

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<sup>1</sup> Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds, 27 Mass. App. Ct. 470, 474 (1989).

agency's right to recover overpayments (130 CMR 501.012). MassHealth has shown that updating the household to include Appellant's child's father's unreported income results in Appellant owing \$1,588.70 to MassHealth for unpaid premiums that would have been due in 2019 and recovery of expenses incurred in 2018.

The appeal is DENIED.

## **Order for MassHealth**

Proceed with recoupment of \$1,588.70.

## **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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Thomas J. Goode  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Mark Carey, MassHealth Operations Integrity Unit, 100 Hancock Street, Quincy, MA 02171