

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2206602
<b>Decision Date:</b>	11/7/2022	<b>Hearing Date:</b>	10/07/2022
<b>Hearing Officer:</b>	Christopher Jones		

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Jonathan Gonzalez – Charlestown MEC



*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>	Traditional Eligibility
<b>Decision Date:</b>	11/7/2022	<b>Hearing Date:</b>	10/07/2022
<b>MassHealth's Rep.:</b>	Jonathan Gonzalez	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Charlestown MassHealth Enrollment Center	<b>Aid Pending:</b>	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 May 5, 2022, MassHealth approved the appellant for the Senior Buy-in benefit, implicitly denying her eligibility for MassHealth Standard coverage because her income was too high. (Exhibit 2.) The appellant filed this appeal in a timely manner on September 2, 2022. (Exhibit 3; see 130 CMR 610.015(B); EOM 22-10 (Aug. 2022).)<sup>1</sup> Limitation of assistance is valid grounds for appeal. (130 CMR 610.032.)

## Action Taken by MassHealth

MassHealth determined that the appellant's income is too high to qualify for MassHealth Standard and approved her for the Senior Buy-in benefit.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.000 and 520.000, in determining that the appellant's income is too high for MassHealth Standard.

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<sup>1</sup> EOM 22-10 extends the appeal timeline to 120 days. September 2 is 120 days after May 5.

## Summary of Evidence

The appellant is over the age of 65, and she receives gross monthly Social Security income in the amount of \$1,357 per month. MassHealth's representative testified that the appellant filed an application for MassHealth benefits in Spring 2022. MassHealth issued a notice identifying a revocable burial account that the appellant had as a countable asset. This notice stated that the burial account would be non-countable if the appellant made it irrevocable. The appellant converted this burial account into an irrevocable account, and then she received the appealed notice.

The appellant is very upset that she converted her burial account into an irrevocable account and was still not approved for MassHealth Standard. She testified that she was told that she would be approved for MassHealth Standard if she converted her burial account into an irrevocable account. When asked who told her this, and when, she could not recall any specifics regarding how she received this information or when. She was adamant that she would not have converted the burial account if she had not been informed explicitly that it was all she needed to do in order to be eligible for MassHealth Standard.

MassHealth's representative explained that the appellant's income would need to be at or below the federal poverty level to qualify for MassHealth Standard and she would need to have assets below \$2,000. Therefore, it was necessary that the appellant's burial account be reduced or made non-countable to be eligible for Standard, but it is not the only requirement. The income limit for MassHealth Standard is \$1,133 per month, but for the Senior Buy-in benefit the income limit is higher, 130% of the federal poverty limit or \$1,473.<sup>2</sup> Typically there is only a \$20 disregard for unearned income, however it was further discussed that a larger deduction exists for those who require assistance with their Activities of Daily Living.

The appellant was asked if she required physical assistance with any daily tasks, and she testified that she receives help from others. It was suggested that she complete a Personal Care Attendant supplement. If she were deemed eligible for this supplement, she would be income eligible for MassHealth Standard. MassHealth's representative agreed to mail her out a Personal Care Supplement to complete.

The appellant continued to believe she had been lied to and coerced into converting her burial account into an irrevocable account. However, she could not recall who had lied to her or any further detail about the communication.

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<sup>2</sup> MassHealth Standard is a comprehensive health insurance coverage that includes pharmaceutical benefits. Senior Buy-in covers the premiums and non-pharmaceutical deductibles and coinsurance costs associated with Parts A and B of Medicare. (See 130 CMR 519.002; 519.010.)

## Findings of Fact

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

1. The appellant is over the age of 65 and she has monthly Social Security income in the amount of \$1,357 per month. (Testimony by MassHealth's representative.)
2. The appellant applied for MassHealth benefits in the Spring of 2022. On May 5, 2022, she was approved for MassHealth Senior Buy-in benefits. (Testimony by MassHealth's representative; Exhibit 2.)
3. During the application process, the appellant received a notice that said her burial account was a countable asset, and that it would be non-countable if she made it irrevocable. (Testimony by MassHealth's representative.)
4. The appellant believes that someone at MassHealth had told her that all she needed to do to become eligible for MassHealth Standard was to make her burial account irrevocable. (Testimony by the appellant.)

## Analysis and Conclusions of Law

MassHealth offers a variety of benefits based upon an individual's circumstances and finances. To qualify for MassHealth, an individual must fit into a category of eligibility and fall below a certain financial threshold. Individuals aged 65 and older are generally governed by the regulations at 130 CMR 515.000-520.000. The requirements for receiving MassHealth Standard for individuals over 65 who are living in the community are:

### 519.005: Community Residents 65 Years of Age and Older

(A) Eligibility Requirements. Except as provided in 130 CMR 519.005(C), 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 percent 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.

(B) Financial Standards Not Met. Except as provided in 130 CMR 519.005(C), individuals whose income, assets, or both exceed the standards set forth in 130 CMR 519.005(A) may establish eligibility for MassHealth Standard by reducing their assets in accordance with 130 CMR 520.004: *Asset Reduction*, meeting a deductible as described at 130 CMR 520.028: *Eligibility for a Deductible* through 520.035: *Conclusion of the Deductible Process*, or both.

(130 CMR 519.005(A)-(B) (emphasis in **bold**).)

For individuals who qualify for Medicare but have countable income between 100% and 150% of the federal poverty level, MassHealth “pays for Medicare Part A and Part B premiums and for deductibles and coinsurance under Medicare Parts A and B ... .”<sup>3</sup> (130 CMR 519.010(B).) This benefit is called MassHealth Senior Buy-In or Buy-In for Qualified Medicare Beneficiaries/QMB. Other Buy-In benefits exist for members with income between 130% and 165% of the federal poverty level, but these benefits only cover the Medicare premium, not the deductibles and coinsurance.

The financial rules set out at 130 CMR 520.000 explain that all of an individual’s “gross earned and unearned income less certain business expenses and standard income deductions” is countable, and “the countable-income amount is compared to the applicable income standard to determine the individual’s financial eligibility.” (130 CMR 520.009(A)(1)-(2).) There are only two standard income deductions for community residents with only unearned income: (1) “a deduction of \$20 per individual or married couple” or (2) a larger deduction that is allowed if the individual requires assistance from a personal care attendant.” (130 CMR 520.013(A)-(B).)

The appellant’s countable income is only \$1,337 after the \$20 deduction, but this still results in countable income over 100% of the federal poverty level. Therefore, MassHealth is correct that he is over income for MassHealth Standard for individuals 65 and older. This appeal must be DENIED. If the appellant is eligible for the larger personal care attendant deduction, she may be eligible for MassHealth Standard.

Regarding the appellant’s allegations that she was improperly coerced into converting her burial account into an irrevocable account, the Board of Hearings has no authority to redress this matter. The Board of Hearings has limited jurisdiction to review the actions of the MassHealth agency, certain contractors, and some medical providers. (See 130 CMR 610.032.) This does not allow the Board of Hearings the authority to make the appellant’s irrevocable burial arrangements revocable. Even where substantiated allegations of coercion or improper conduct are leveled, the available remedies are limited to “assign[ing] a different worker; and ... initiat[ing] appropriate personnel action ... .” (130 CMR 610.033(B).) However, a request for a hearing regarding coercive or improper action must specifically “state the name of the employee and the place, date, and nature of the incident or incidents.” (130 CMR 610.034(B).) Without more detail regarding who purportedly coerced the appellant into taking action that was injurious to her interests, even the limited remedies allowable are unavailable.

## **Order for MassHealth**

None.

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<sup>3</sup> Pharmaceutical benefits for Medicare are covered under Part D.

## **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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Christopher Jones  
Hearing Officer  
Board of Hearings

cc: MassHealth Representative: Jennifer Vitt, Charlestown MassHealth Enrollment Center, 529 Main Street, Suite 1M, Charlestown, MA 02129