

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2206813
<b>Decision Date:</b>	11/3/2022	<b>Hearing Date:</b>	October 27, 2022
<b>Hearing Officer:</b>	Brook Padgett		

**Appellant Representative:**

Pro se

**MassHealth Representative:**

Mark Carey, Program Integrity Unit  
Sherri Paiva, Taunton MEC



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, 6<sup>th</sup> floor  
Quincy, MA 02171*

# APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	130 CMR 510.012
<b>Decision Date:</b>	11/3/2022	<b>Shearing Date:</b>	October 27, 2022
<b>MassHealth Rep.:</b>	M. Carey S. Paiva	<b>Appellant Rep.:</b>	Pro se
<b>Shearing Location:</b>	Quincy		

## Authority

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

## Jurisdiction

The appellant received a Recovery of Overpayment of Member Benefits notice dated August 31, 2022 stating: An investigation was done by the Bureau of Special Investigations pursuant to Massachusetts General Law, Chapter 11, Section 17. Based on this review, we have determined that you or other members of your household received MassHealth benefits from January 01, 2018 to December 31, 2019 to which you were not entitled. You owe \$3,440.35<sup>1</sup> for those benefits. 130 CMR 501.012 and 515.010. (Exhibit 1).

The appellant appealed the notice timely on September 13, 2022. (130 CMR 610.015(B); Exhibit 2).

Determination of an overpayment is valid grounds for appeal. (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth determined the appellant received MassHealth benefits to which she was not entitled.

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<sup>1</sup> Prior to the hearing a calculation error was discovered. The amount for recoupment was reduced to \$2,302.03 and a notice was sent to the appellant on October 05, 2022.

## Issue

Did the appellant receive MassHealth benefits to which she was not entitled, and can the Commonwealth of Massachusetts recoup the benefit overpayment?

## Summary of Evidence

A representative from the Bureau of Special Investigations (BSI) testified a MassHealth review revealed the appellant failed to report the children's father's income as required by MassHealth despite living with the children's father. MassHealth alleged the appellant, and father of their two children were all living at the same address.<sup>2</sup> As a result the appellant and her children received MassHealth benefits to which they were not entitled. MassHealth testified that although the appellant enrolled in MassHealth as a household of three, listing only herself and two children in the household, local accessor lists the appellant and the father of the two children as the current owners of the appellant's listed address having purchased the home together on June 30, 2016. The local post office also confirmed that both the appellant and the father of the two children have their mail delivered to the listed address. The Registry of Motor Vehicle (RMV) lists the appellant and the father of the two children living at the listed address since 2017. Further school record request indicates the two children live with both parents at the listed address. The father of the two children's employer verified the father of the two children is an active employee, first hired in 2011 and is living at the listed address. DOR Tax information also indicates that in 2018 and 2019, both the appellant and the father of the two children listed the current address as their home address. MassHealth stated that in 2018 the appellant reported income of \$20,871.00 and \$41,518.00 for 2019; and the father of the two children reported income of \$67,010.00 for 2018 and \$67,531.00 for 2019. The representative stated because the appellant and her two children were living with the father of the two children and failed to provide verification of his income, the household was approved for MassHealth benefits to which they were not entitled. Based on the household income BSI determined the appellant owes Commonwealth \$2,302.03.<sup>3</sup> (Exhibit 4).

The appellant's mother responded she has had an on again, off again relationship with the father of the children. She testified that the father of the children would only live with them for a few months and then something would happen, and he would leave and stay with his mother. The appellant stated the father of the children also travels a lot for work and is not home very often. The appellant

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<sup>2</sup> 165 Maple Street, New Bedford, MA, 02740.

<sup>3</sup> The \$2,302.03 was calculated as follows: For year 2018, combined income of \$87,881.00 for a household of four produces a federal poverty level percentage (FPL%) of 350%, qualifying the appellant for Health Safety Net (HSN). The appellant had no claims and capitation for that year, so only the two children received benefits to which they were not entitled. The children qualified for Children's Medical Security Plan (CMSP) with a premium of \$16.57 per month each for 12 months or \$397.68. For year 2019, combined income of \$109,049.00 for a household of four produces an FPL% of 423%, over the limit to qualify for MassHealth benefits. The appellant incurred \$368.35 in claims and the two children qualified for CMSP with a premium \$64.00 per month each for 12 months or \$1,536.00. The total owed was calculated to be \$2,302.03. (\$397.68 + \$368.35 + \$1,536.00).

argued she still continues to get the father of the children's mail because his parents do not speak English and there is mail that must be opened and read so she does that for him. The appellant maintains that the children's father was never in the house long enough that she felt she should be reporting his income to MassHealth.

## **Findings of Fact**

Based on a preponderance of the evidence, I find:

1. MassHealth determined the appellant's household received MassHealth benefits from January 01, 2018 to December 31, 2019 to which the household was not entitled. (Exhibit 1).
2. On June 30, 2016, the appellant and the father of their two children purchased the appellant's listed home together. (Exhibit 4).
3. Postal verifications revealed that both the appellant and the father of the appellant's two children receive mail at the same listed home address. (Exhibit 4).
4. The RMV has verified both the appellant and the father of the appellant's children live at the same listed address on their active Massachusetts driver's licenses since 2017. (Exhibit 4).
5. Since 2011, the father of the appellant's children has indicated on his employment verification his residence as the same listed address as the appellant. (Exhibit 4).
6. In 2018 and 2019 DOR Tax information lists the appellant and the father of the two children living at the same address. (Exhibit 4).
7. The appellant reported income of \$20,871.00 in 2018 and \$41,518.00 in 2019. (Exhibit 4).
8. The father of the two children reported income of \$67,010.00 in 2018 and \$67,531.00 in 2019. (Exhibit 4).
9. Combined income of \$87,881.00 in 2018 for a household of four is 350% of the FPL. (Exhibit 4).
10. Combined income of \$109,049.00 in 2019 for a household of four is 423% of the FPL. (Exhibit 4).

## Analysis and Conclusions of Law

The definition of a “Family” for MassHealth purposes consists of persons who live together such as a child under age 19, and their parents. (130 CMR 501.001).<sup>4</sup> Although the appellant testified that she and her children only occasionally lived with children’s father, the evidence from the local accessor, post office, children’s father’s employer, RMV, DOR and school is over whelming to demonstrate the appellant and the father of their children were living at the same address from January 2018 through December 2019, while the appellant and her children were on MassHealth. MassHealth BSI determined the appellant’s household income during this period was 350% of the federal poverty level in 2018, 423% of the FPL in 2019. The appellant’s failure to report her correct household income, as required by MassHealth regulations<sup>5</sup>, allowed the appellant and her children to receive MassHealth benefits which they were not entitled.<sup>6</sup>

Whether an overpayment of MassHealth benefits is the mistake of MassHealth or a member, the Commonwealth has the right and the duty to recover the payments of benefits to which a household was not entitled, regardless of who was responsible and regardless if there was or was not fraudulent intent. (130 CMR 501.012).<sup>7</sup>

MassHealth has provided sufficient evidence that after recalculation of eligibility based on the appellant's correct income and household size the appellant received an overpayment of \$2,302.03 in MassHealth benefits during the period January 2018 to December 2019. (See footnote 3).

This appeal is DENIED.

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<sup>4</sup> 130 CMR 501.001 Family Definition: Family - persons who live together, and consist of: (1) a child or children under age 19, any of their children, and their parents; ...

<sup>5</sup> 130 CMR 501.010: Responsibilities of Applicants and 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 ten 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.

<sup>6</sup> 130 CMR 505.000 explains the categorical requirements and financial standards that must be met to qualify for a MassHealth coverage type (130 CMR 505.001). As described in 130 CMR 505.001, the MassHealth coverage types are as follows: (1) Standard - for families (with minor children), pregnant women, children and disabled individuals, including extended benefits; must have income under 133% of federal poverty limit; (2) Prenatal - for pregnant women; (3) CommonHealth - for disabled adults, disabled children, and certain individuals who are HIV positive, and not eligible for MassHealth Standard; (4) Family Assistance - for children, certain employed adults who have access to health insurance from their employers and have income under 200% of the federal poverty limit, and certain individuals who are HIV positive, and are not eligible for MassHealth Standard or CommonHealth; (5) Basic or Buy-In - for the long-term or chronically unemployed, and certain qualified aliens; and (6) Essential – for long term unemployed who have income at or below 100% of the federal poverty limit and are not eligible for Basic; and (7) Limited - coverage for non-qualified aliens and certain qualified aliens.

<sup>7</sup> 130 CMR 510.012 Recovery of Overpayment of Medical Benefits MassHealth has the right to recover payments of medical benefits to which the member was not entitled regardless of who was responsible or whether or not there was fraudulent intent. No provision under 130 CMR 501.012 shall limit MassHealth’s right to recover overpayments.

## **Order for MassHealth**

Proceed with the recovery of the \$2,302.03 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.

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Brook Padgett  
Hearing Officer  
Board of Hearings

cc: MassHealth representative: Mark Carey, MassHealth Program Integrity Unit, One Ashburton Place, Boston, MA 02108