

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2208361
Decision Date:	12/29/2022	Hearing Date:	12/08/2022
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:

Via telephone:

Pro se

Appearance for MassHealth:

Via telephone:

Lisa Duffney, Springfield MEC

Mark Carey, Auditor



*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	Issue:	Recovery of Overpayment
Decision Date:	12/29/2022	Hearing Date:	12/08/2022
MassHealth's Rep.:	Lisa Duffney Mark Carey	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South 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 a notice dated October 18, 2022, MassHealth determined that the appellant received MassHealth benefits to which she was not entitled and MassHealth seeks to recover the benefit amount (see 130 CMR 501.012 and Exhibit 1). The appellant filed this appeal in a timely manner on November 9, 2022 (see 130 CMR 610.015(B) and Exhibit 2). MassHealth agency actions to recover payments for benefits to which the member was not entitled are valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant received MassHealth benefits for which she was not entitled and seeks to recover \$9,997.49 for those benefits.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 501.012 and 130 CMR 501.010, in determining that the appellant owes \$9,997.49 for benefits to which she was not entitled.

Summary of Evidence

MassHealth was represented at hearing by an eligibility worker as well as an auditor from the Office of Compliance and Program Integrity. The auditor testified that the Bureau of Special Investigations (BSI) received a complaint alleging that the appellant has been underreporting her income while in receipt of benefits from MassHealth. BSI conducted an investigation that determined the following:

A HIX database review was conducted by the examiner and found that [appellant] is active on MassHealth as a household of 1, with the address of [address]. On all applications dated 11-15-2020, 03-10-2021, and 3-14-2021, [appellant] reported yearly income of \$12,061.20.

On 03-16-2022 Department of Revenue records show that [appellant] earned \$57,582.81 in 2020 and \$73,046.46 in 2021.

On 06-01-2022 employment verification received from [employer] verified that [appellant] has been employed since 04-17-2020 to present (07-11-22). Payroll records show that [appellant] earned \$40,312.00 YTD thru 07-11-2022, or \$6,238.75/month.

Based on the information compiled by the examiner, it has been determined that [appellant] failed to report her accurate income to MassHealth while in receipt of benefits for the period 04-17-2020 – 06-01-2022. As a result, the member now owes \$9,997.49.

The \$9,997.49 is calculated as follows: For year 2020, income of \$57,582 for a household of 1 produces an FPL% of 450%, over the limit to qualify for MassHealth benefits. For year 2021, income of \$73,046 for a household of 1 produces an FPL% of 572%, over the limit to qualify for MassHealth. Lastly, for year 2022, income of \$6,238/month for a household of 1 produces and FPL% of 586%, over the limit to qualify for MassHealth. All claims and capitulation of \$9,997.49 are owed....

The MassHealth eligibility worker testified that her system shows that there was a renewal on November 15, 2020 that showed an FPL of 89.5% that was data matched at 92%. That renewal was automatically generated by the system. There was another automatically generated renewal done by the system on December 5, 2021 which had the appellant at an FPL of 88.64%. Prior to the November 2020 renewal, the last renewal in her records was on April 7, 2019, at which point the appellant was approved for MassHealth Standard with Buy-In based on Social Security Income (SSI) of \$1,033. The system showed that the appellant's only income was SSI through March 14, 2022. On November 1, 2022, the appellant reported income of \$2,833.60 every two weeks, which put her at an FPL of 537.2%.

The MassHealth worker explained that since March 2020 (the beginning of the COVID-19 Public Health Emergency (PHE)) and the implementation of various COVID-19 protections and

flexibilities, MassHealth has not sent out any renewals. Furthermore, even if someone did report a change in income, MassHealth cannot downgrade or terminate anyone's benefits due to the COVID-19 protections.

The auditor responded that this is the first time he has heard of this and he does not have any flexibility. Even if it is not necessarily fraud, the appellant makes too much money to qualify for MassHealth. Per the regulations, it was her duty to report a change in income within ten days.

The appellant explained that she was enrolled in a back to work program through Social Security, run by Allsup. She was under the impression that it would not affect her MassHealth eligibility. She did not dispute the income, but stated that she thought Allsup was taking care of all the logistics.

The MassHealth worker stated that even if the appellant had reported her income on time, MassHealth would not have been able to downgrade or terminate her benefits due to the COVID-19 protections and would have kept her on MassHealth Standard.

Findings of Fact

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

1. On October 18, 2022, MassHealth issued a notice of Recovery of Overpayment of Member Benefits seeking to recover \$9,997.49 for benefits received from April 17, 2020 to June 1, 2022 (Testimony and Exhibit 1).
2. The appellant earned \$57,582.81 in 2020 (FPL of 450%) and \$73,046.46 in 2021 (FPL of 572%) (Testimony and Exhibit 4).
3. The appellant has been employed since 04-17-2020 to present (07-11-22) and payroll records show that the appellant earned \$40,312.00 YTD thru 07-11-2022, or \$6,238.75/month (FPL of 586%) (Testimony and Exhibit 4).
4. The appellant completed a renewal on April 7, 2019 and was approved for MassHealth Standard with Buy-In based on SSI of \$1,033 (Testimony).
5. The system automatically generated a renewal on November 15, 2020 that showed an FPL of 89.5% which was data matched at 92% and another automatically generated renewal on December 5, 2021 which showed an FPL of 88.64% (Testimony).
6. On November 1, 2022, the appellant reported income of \$2,833.60 every two weeks, which put her at an FPL of 537.2% (Testimony).
7. Since March 2020 and the implementation of various COVID-19 protections and flexibilities, MassHealth has not sent out any renewals and cannot downgrade or terminate anyone's benefits, even if changes are reported (Testimony).

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.

Additionally, 130 CMR 501.012, the Recovery of Overpayment of Medical Benefits states the following:

The MassHealth agency 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 or not there was fraudulent intent. No provision under 130 CMR 501.012 will limit the MassHealth agency's right to recover overpayments. (Emphasis added).

In response to the COVID-19 national emergency, MassHealth implemented certain protocols for both new MassHealth applicants and existing members. The Eligibility Operations Memorandum (EOM) 20-09, published on April 7, 2020 regarding "MassHealth Response to Coronavirus Disease 2019 (COVID-19)", stated the following, in relevant part:

MassHealth will protect coverage for all individuals who have Medicaid coverage as of March 18, 2020, and for all individuals newly approved for coverage during the COVID-19 outbreak national emergency, and through the end of the month in which such national emergency period ends. **These members will not lose coverage or have a decrease in benefits during this time period...**

Existing MassHealth members who have Medicaid coverage as of March 18, 2020, or who are newly approved on or after March 18, 2020, through the end of the month in which such national emergency period ends, will not be terminated or downgraded during the COVID-19 outbreak national emergency, and through the end of the month in which such national emergency period ends.

An “Updated MassHealth Response to Coronavirus Disease (COVID-19),” EOM 22-10, was released in August 2022. It states the following, in relevant part:

MassHealth will continue to maintain coverage for most individuals who had health coverage as of March 18, 2020, and for all individuals newly approved for health coverage during the FPHE, through the end of the month in which the FPHE ends. These individuals will not lose coverage, except for limited circumstances.

For example, coverage will end if an individual

- requests termination of eligibility;
- is no longer a resident of Massachusetts; or
- is deceased...

In preparation for activities that must happen once the FPHE officially ends, MassHealth has implemented a new workaround to replace the existing COVID workaround that was put into effect in November 2021. Under the new workaround, effective August 1, 2022, **members’ coverage types (e.g. Standard, CommonHealth, Family Assistance, CarePlus) will change only if the program determination results in an upgrade. There will be no lateral or downgrade transitions between coverage types.**

This new workaround complies with **federal unwind guidance for the end of the FPHE that prohibits any adverse action, including a downgrade within the same tier of coverage, without first completing a full renewal** of the member’s eligibility status.

For example, despite a change in circumstances, members would not transition from comprehensive MassHealth (e.g. Standard) to a Medicare Savings Plan (MSP) only benefit...

Members who were protected from coverage loss or downgrade during the FPHE **will not be subject to adverse action on their case after the FPHE ends** until they go through a full MassHealth renewal after the FPHE ends.

(Emphasis added).

Due to the COVID-19 protections in place, this appeal is approved. If these eligibility memoranda and protections did not exist, there may have been a different outcome; however, the MassHealth regulations and supporting memoranda must be taken as a whole.

Pursuant to 130 CMR 501.012, MassHealth “has the right to recover payment for medical benefits **to which the member was not entitled** at the time the benefit was received...” Based on the eligibility memoranda issued, MassHealth members will not lose coverage or have a decrease in benefits during the Public Health Emergency. The most recent update of the eligibility memorandum, EOM 22-10, clearly states that “there will be **no** lateral or downgrade

transitions between coverage types.” The Federal Public Health Emergency (FPHE) is still in effect and federal unwind guidance for the end of the FPHE prohibits any adverse action such as terminating or downgrading coverage.

Thus, even if the appellant had timely and correctly reported her income, the outcome would have been the same – MassHealth could not have terminated or downgraded her coverage and she would have remained on MassHealth Standard. The appellant should not be penalized in this situation. Considering the COVID-19 protections provided by the eligibility operations memoranda, the appellant was entitled to the benefits she received and MassHealth does not have the right to recover here. For these reasons, the MassHealth decision was incorrect and the appeal is APPROVED.

Order for MassHealth

Rescind the Recovery of Overpayment of Member Benefits notice dated October 18, 2022.

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 Director of the Board of Hearings, at the address on the first page of this decision.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104

Mark Carey, MassHealth, One Ashburton Place – 11th Floor, Boston, MA 02108