

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied in part;
Remanded

Appeal Number: 2208622

Decision Date: 12/21/2022

Hearing Date: 12/20/2022

Hearing Officer: Paul C. Moore

Record Closed: 12/21/2022

Appearance for Appellant:



Appearance for MassHealth:

Dianne Braley, Taunton MassHealth
Enrollment Center (by telephone)



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied in part; Remanded	Issue:	Eligibility, Countable Income
Decision Date:	12/21/2022	Hearing Date:	12/20/2022
MassHealth Rep.:	Dianne Braley	Appellant Rep.:	Pro se
Hearing Location:	Board of Hearings (remote)		

Authority

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

Jurisdiction

Through a notice dated November 10, 2022, MassHealth notified the appellant that he is not eligible for MassHealth Standard or Limited due to excess income, and that he may meet a six-month deductible of \$4,122.00 to qualify for MassHealth (Exh. 1).¹ The appellant filed a timely appeal of the denial with the Board of Hearings (BOH) on November 18, 2022 (130 CMR 610.015; Exh. 2). Denial of MassHealth assistance is valid grounds for appeal to the BOH (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant is not eligible for MassHealth Standard due to excess income.

Issue

The issue on appeal is whether MassHealth correctly determined that the appellant does not qualify for MassHealth benefits due to income.

¹ The notice also apprises the appellant that he is eligible for Health Safety Net effective October 1, 2022 (Exh. 1).

Summary of Evidence

A MassHealth representative from the Taunton MassHealth Enrollment Center testified by telephone that the appellant is over age 65 and lives in a household of one. The appellant filed an application for MassHealth benefits on October 19, 2022. On October 31, 2022, MassHealth processed the appellant's application, and requested a bank statement from the appellant to corroborate his assets and income. The MassHealth representative testified that the responsive bank statement was received. On November 10, 2022, MassHealth sent the appellant a notice that his countable income exceeds the limit for him to qualify for MassHealth Standard, because it is more than 100% of the 2022 federal poverty level for a household of one, or \$1,133.00 gross income monthly. The MassHealth representative added that the appellant is asset-eligible for MassHealth Standard, as his countable assets are less than \$2,000.00 (Testimony).

The MassHealth representative added that the appellant's countable income consists of Veterans Affairs (VA) benefits in the gross amount of \$1,229.00 monthly (Testimony, Exh. 4). She noted that she does not believe these benefits are "aid and attendance" benefits; if they were, they would not be considered countable income (Testimony).

The MassHealth representative also testified that the appellant could qualify for MassHealth Standard by meeting a six-month deductible; the total amount of his deductible is \$4,122.00 for the period October 1, 2022 through April 1, 2023 (Testimony, Exh. 1). The appellant may submit bills to MassHealth for health care services he received before or during the deductible period, which may be paid or unpaid, totaling \$4,122.00 or more. If MassHealth determines that the deductible has been met, the appellant would qualify for MassHealth Standard on October 1, 2022 (Testimony).

MassHealth calculated the appellant's deductible as follows: \$1,229.00 unearned income (VA award), less \$20.00 unearned income disregard, less monthly-income standard of \$522.00, equals \$687.00; this figure was then multiplied by six months to arrive at a deductible of \$4,122.00 (Exh. 1).

The MassHealth notice also apprises the appellant that he is eligible for full Health Safety Net (HSN) effective October 1, 2022 (Exh. 1).²

The MassHealth representative submitted via e-mail to the hearing officer, prior to the hearing, a copy of an award letter the appellant received from the Department of Veterans Affairs (VA) dated September 28, 2022, which states that the appellant receives \$1,229.00 per month (Exh. 4). The letter does not specify if this is a pension amount or disability award.

The appellant testified by telephone that he is a disabled veteran, as determined by the VA many

² 130 CMR 515.001 defines Health Safety Net as a source of funding for certain health care under 101 CMR 613.00: Health Safety Net Eligible Services and 101 CMR 614.00: Health Safety Net Payments and Funding.

years ago. He moved to Massachusetts from California in September, 2022. He is not enrolled in Medicare, and he was told by the Social Security Administration that he did not work enough quarters to qualify for these benefits. He was told he would have to forfeit his “disability pension” in order to qualify for Medicare benefits. He gets his health care at the VA Hospital in [REDACTED]. In September 2022, he had two visits to the [REDACTED] Hospital emergency department, and has received a bill from them in the total amount of \$562.00 (Testimony).

The appellant noted that he submitted a September, 2022 bank statement to MassHealth with his MassHealth application. The MassHealth representative located a copy of the appellant’s bank statement for September 2022 and was therefore able to “back-date” the appellant’s Health Safety Net benefits effective September 1, 2022. She noted that the appellant should inform [REDACTED] Hospital to rebill the Health Safety Net for the emergency department visits he had in September, 2022 (Testimony).

The appellant stated that he does not believe he has enough outstanding medical bills to meet the six-month deductible of \$4,122.00 (Testimony).

In post-hearing correspondence from the MassHealth representative, she indicated that the appellant is not disabled “through the Social Security Administration or MassHealth” (Exh. 5).

Findings of Fact

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

1. The appellant is over age 65, and lives in a household of one (Testimony).
2. The appellant filed an application for MassHealth benefits on October 19, 2022 (Testimony).
3. Based on the appellant’s bank statement, MassHealth determined that the appellant has less than \$2,000.00 in assets (Testimony).
4. MassHealth determined that the appellant’s gross monthly countable income is \$1,229.00, consisting of benefits awarded by the VA (Exh. 4).
5. 100% of the FPL for a household of one in 2022 is \$1,133.00 monthly gross income (87 *Federal Register* 3315, pp. 3315-3316 (January 21, 2022)).
6. Through a notice dated November 10, 2022, MassHealth notified the appellant that he is not eligible for MassHealth Standard or Limited due to excess income, and that he may meet a six-month deductible of \$4,122.00 to qualify for MassHealth (Exh. 1).

7. The appellant filed a timely appeal with the BOH on November 18, 2022 (Exh. 2).
8. MassHealth calculated the appellant's deductible as follows: \$1,229.00 unearned income, less \$20.00 unearned income disregard, less monthly-income standard of \$522.00, equals \$687.00; this figure was then multiplied by six months to arrive at a deductible of \$4,122.00 (Exh. 1).
9. The appellant is not enrolled in Medicare (Testimony).
10. The VA determined that the appellant is disabled (Testimony).
11. At hearing, MassHealth was able to adjust the appellant's Health Safety Net coverage date to September 1, 2022 (Testimony).

Analysis and Conclusions of Law

MassHealth regulation 130 CMR 519.005, "Community Residents Age 65 or Older," states in relevant part:

(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% 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.

MassHealth regulation 130 CMR 520.009(D), "Countable-Income Amount," defines unearned income as follows:

Unearned Income. Income that does not directly result from an individual's own labor or services is unearned. Unearned income includes, but is not limited to, social security benefits, railroad retirement benefits, pensions, annuities, **federal veterans' benefits**, rental income, interest, and dividend income. . . .

(Emphasis added)

Here, the appellant's VA benefits are countable, unearned income. The appellant's gross monthly award amount of \$1,229.00 exceeds 100% of the FPL for a household of one in 2022, or \$1,133.00. Thus, the appellant is not eligible for MassHealth Standard.

Pursuant to 130 CMR 520.028, the appellant may establish eligibility for MassHealth Standard by meeting a six-month deductible. MassHealth calculated the appellant's deductible by taking the appellant's monthly award amount of \$1,229.00, less a community unearned-income deduction of \$20.00, as authorized by 130 CMR 520.013(A), less a monthly-income standard deduction for a household of one of \$522.00, as set forth at 130 CMR 520.030. The resulting figure, \$687.00, was then multiplied by six to arrive at the six-month deductible of \$4,122.00. This deductible calculation was correct.

If the appellant has unpaid medical bills, or medical bills paid during the current six-month deductible period, totaling \$4,122.00 or more, he may submit these to MassHealth to determine whether he meets the deductible in order to qualify for MassHealth Standard (*see*, 130 CMR 520.032(A)(3)).

Also relevant to this appeal, MassHealth regulation 130 CMR 519.012, "MassHealth CommonHealth," states in pertinent part:

MassHealth CommonHealth for working disabled adults is available to community residents 65 years of age or older in the same manner as it is available to those younger than 65 years old. This means that eligible applicants must meet the requirements of 130 CMR 505.004(B)(2), (3) and (5) to be eligible for CommonHealth.

130 CMR 505.004(B)(2) and (3), in turn, state that in order to qualify for MassHealth CommonHealth, a member be employed at least 40 hours per month, or if employed less than 40 hours per month, have been employed at least 240 hours in the six-month period immediately preceding the month of receipt of the application or MassHealth's eligibility review; and must be permanently and totally disabled.

It is unclear whether the appellant's monthly award from the VA is a pension or disability award (Exh. 4). If, in fact, the appellant is permanently and totally disabled, MassHealth should allow him an opportunity to qualify for MassHealth CommonHealth if he can meet the requirements set forth at 130 CMR 519.012, above.

Based on the above, this appeal is DENIED IN PART, and remanded to MassHealth to determine whether the appellant may qualify for MassHealth CommonHealth based on his disability.

Order for MassHealth

Notify the appellant in writing of his eligibility for Health Safety Net effective September 1, 2022. Within 45 days of the date of this decision, notify the appellant in writing if he is eligible for MassHealth CommonHealth pursuant to 130 CMR 519.012.

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.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Justine Ferreira, Appeals Coordinator, Taunton MassHealth Enrollment Center