

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2208780
Decision Date:	5/8/2023	Hearing Date:	12/23/2022
Hearing Officer:	Casey Groff, Esq.	Record Closed:	03/23/2023

Appearance for Appellant:




Appearance for MassHealth:

Morgan Burns, Tewksbury MEC; Zulema Medina, Premium Assistance (PA); Sara Prado, PA (post-hearing submissions only)



*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:	Premium Assistance
Decision Date:	5/8/2023	Hearing Date:	12/23/2022
MassHealth's Reps.:	Morgan Burns; Sarah Prado; Zulema Medina;	Appellant's Rep.:	
Hearing Location:	Board of Hearings (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 November 16, 2023, MassHealth informed Appellant that it was adjusting her premium assistance (PA) payment amount due to a “change in [her] family’s circumstances or change in premium payment.” See Exh. 1. Appellant filed this appeal in a timely manner on November 28, 2022. See Exhibit 2; 130 CMR 610.015(B). Reduction in the amount of assistance is valid grounds for appeal. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth adjusted downward Appellant’s PA payment to \$123.41 because of a reported increase in her household income.

Issue

The appeal issue is whether MassHealth was correct, in reducing Appellant’s monthly PA payments, as reflected in its 11/16/22 notice.

Summary of Evidence

At hearing, a MassHealth eligibility representative testified as follows: On October 24, 2022, MassHealth received updated eligibility information on behalf of Appellant, a MassHealth CommonHealth member. Specifically, the information received showed that Appellant's spouse received bi-weekly income of \$1,625.20. This amount was combined with Appellant's previously reported bi-weekly income \$2,582, placing Appellant at 581.37% of the federal poverty level (FPL). Appellant has remained on CommonHealth since the Covid-19 public health emergency (PHE) protections were implemented, without any downgrades or interruption in coverage.

The MassHealth eligibility representative noted that following the November 16, 2022 notice, at issue in this case, Appellant reported two additional income changes, which decreased her FPL to 224% and then down to 217%, where it has remained as of the hearing date.

Next, a MassHealth representative from the Premium Assistance (PA) unit provided the following testimony: Appellant has been receiving PA benefits since December of 1999. Appellant has an employer sponsored insurance (ESI) plan offered for Commonwealth of Massachusetts employees. Her monthly premium for the plan is \$505.41 per month. Additionally, Appellant, whose income exceeded 150% of the FPL, was assessed a MassHealth premium for her CommonHealth coverage. MassHealth calculates the PA payment by offsetting the member's MassHealth premium obligation from their ESI premium cost. Until the November 16th notice, Appellant had been receiving a PA payment of \$433.41, which represents her ESI cost of \$505.41 less her MassHealth premium of \$72 per-month. The last payment at this amount was issued in November 2022 to help pay for her ESI premium for the following month of coverage, i.e. December 2022. When MassHealth received the updated income information, Appellant's CommonHealth premium increased to \$382 per month, thereby decreasing her PA payment to \$123.41 per month (\$505.41 – \$382). Accordingly, on November 16, 2022, MassHealth informed Appellant it reduced her PA payment due to "a change in your family's circumstances or change in premium payment." See Exh. 1. Appellant received the adjusted (lower) PA payment starting in December 2022 for the cost of her January 2023 ESI premium.

At hearing, a Medicaid eligibility specialist appeared on behalf of Appellant and argued that there had been numerous changes to Appellant's household composition and income in 2022. Specifically, Appellant had her case exported from her ex-husband's case, and later, she removed her adult disabled son as part of her household. When these changes were reported to MassHealth, it caused systematic errors and changes to her coverage that should not have occurred. Because Appellant has been on CommonHealth and PA for many years, prior to the Covid-19 PHE, she should not have had a reduction in her benefits. Appellant believed that her Covid-19 protection became severed when her case was exported. This caused disruptions in both her CommonHealth benefits and her PA payments. For example, between April to June of 2022, Appellant did not receive any PA payments. Appellant separately appealed this issue, but

after PA assured Appellant it would retroactively reinstate payments, Appellant withdrew her appeal prior to hearing. According to Appellant's representative, PA had not, as of the hearing date resolved the issue.¹ Appellant appealed the November 16, 2022 notice as there continued to be errors in her PA payment amount. According to Appellant's representative, the PA amount should not have changed from once the PHE was implemented in March 2020.

In response, MassHealth eligibility confirmed that Appellant remained on CommonHealth with no interruptions in coverage and has been in the same aid category since March of 2017. Additionally, the MassHealth eligibility representative testified that Appellant's Covid-19 protection was active and did not appear to have been severed at any time.²

When the PA representative was asked if any further adjustments to Appellant's PA payment amount had been made given her FPL decreased to 217%, the representative explained that the system does not update itself and she would have to manually go into the system to update the figures and re-calculate Appellant's PA payment. At hearing, this was attempted but the system returned the same PA payment of \$123.41.

At the conclusion of the hearing, the record was left open for Appellant to provide additional explanation and information in support of her case; and for MassHealth to review its PA payment calculation to determine if the Appellant's current FPL level of 217% generated a lower MassHealth premium, and thus increased PA payment. After numerous correspondences and outreach, PA, through a different representative, provided a response detailing the calculations used to determine the following PA payments, all of which were to offset Appellant's ESI premium cost of \$505.41 per month:

9/27/22 Determination

FPL = 243.7%

Required Member Contribution = $\$40 + (8 \times 4) = \72

Premium Assistance = $505.41 - 72 = \$433.41$

11/16/22 Determination

FPL = 581.3%

Required Member Contribution = $\$202 + (10 \times 18) = \382.00

Premium Assistance = $505.41 - 382.00 = \$123.41$

¹ According to Appellant's representative, Appellant withdrew the earlier appeal (No. 2206874) prior to hearing after PA informed her that it would re-issue her PA payments. As of the hearing date, Appellant had not received any retroactive payments for the months in question. Although the parties were advised that the instant appeal could only address the November 16, 2022 notice, the MassHealth PA representative reviewed notes in Appellant's case to provide context and background for the hearing record. According to system notes, MassHealth had been unable to verify Appellant's ESI plan as it was showing it was terminated. After this matter was escalated, PA verified that Appellant did have a continuous and active ESI plan. Her PA benefit was reinstated in September but changed her PA payment amount. According to the PA representative, the change in premium was strictly due to income levels, and not due to an elimination in her Covid-19 protection.

² MassHealth eligibility also reassured Appellant that her ex-husband was not included in her case since it was exported, nor could he access any documentation coming in under her case.

3/21/23 Determination

FPL = 217%

Required Member Contribution = \$40+8=\$48

Premium Assistance = \$457.41

See Exh. 6.

In its correspondence, PA acknowledged that MassHealth underpaid Appellant from December 2022 through February 2023; however, did not specify the basis or amount of underpayment. See Exh. 7.

Findings of Fact

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

1. Appellant is a MassHealth CommonHealth member and is enrolled in the MassHealth premium assistance program.
2. Appellant has, or should have, remained enrolled in both programs continuously since the covid-19 PHE protection was implemented on March 18, 2020.
3. Appellant receives primary insurance through ESI health plan, which costs her a premium of \$505.41 per month.
4. Appellant, whose income for all relevant times exceeded 150% of the FPL, was assessed an additional premium to contribute to the cost of her CommonHealth coverage (also referred to as her “MassHealth premium” or “required member contribution” (RMC).
5. Under the PA program, MassHealth calculates the PA payment by offsetting the member’s MassHealth premium obligation from their ESI premium cost.
6. For at least the months of October and November 2022, Appellant’s MassHealth premium/RMC was \$72 per month based on reported FPL of 243%, giving her a PA payment calculation of \$ 433.41 per month (\$505.41 – \$72).
7. On October 24, 2022, MassHealth received updated information showing that Appellant’s spouse received bi-weekly income of \$1,625.20.
8. In November 2022, MassHealth processed the updated income information which increased Appellant’s FPL and associated premium obligation from 243% (\$72) to 581.37% and \$382.
9. With the increased MassHealth premium/RMC, MassHealth informed Appellant, via its November 16, 2022 notice, that her PA payment would be reduced to \$123.41 per month (\$505.41 - \$382).

10. The first payment at the reduced rate of \$123.41 was issued in December 2022, to cover the cost of Appellant's ESI premium for the following month of coverage, January 2023.
11. Following the November 16, 2022 notice, Appellant reported two additional income changes resulting in a decreased FPL of 224% and then further down to 217% of the FPL, where it remained as of the hearing date.
12. As of the hearing date, MassHealth PA had not made any updates to Appellant's PA payment of \$123.41.
13. The appropriate MassHealth premium/RMC for an adult CommonHealth member with household income at 217% of the FPL is \$48 per month.

Analysis and Conclusions of Law

The sole issue on appeal is whether MassHealth was correct in adjusting Appellant's premium assistance payment to \$123.41 per month, pursuant to its November 16, 2022 notice.

The MassHealth Premium Assistance (PA) program offers financial assistance to qualifying members, who have access to employer-sponsored health insurance (ESI), to help cover the cost of their ESI monthly premium. Once enrolled, MassHealth calculates a monthly PA payment amount, which is sent to the policyholder of the ESI plan. See 130 CMR 506.012(F)(1). Each monthly PA payment is intended to cover, or reduce, the cost of the ESI premium for the *following* month of coverage. Id. Thus, if MassHealth sends the member a PA payment in November, it is intended to cover the cost of the member's ESI premium for the month of December.

The methodologies for calculating a member's PA payment are set forth under 130 CMR 506.012(D)-(F). In determining the PA payment amount, MassHealth may subtract a member's premium or "required member contribution" (RMC) owed for their MassHealth policy.³ See 130 CMR 506.011; see also 130 CMR 506.012(D).⁴

³ Despite the different terms, the MassHealth "premium" identified in section 506.011 is, for all purposes, synonymous with the term "required member contribution" in § 506.012. Specifically, both terms refer to the same financial obligation imposed on MassHealth members at FPL's that exceed certain thresholds, such as adult CommonHealth members with income exceeding 150% of the FPL. Under 506.011, the term "premium" applies to any adult CH member, regardless of whether they are simultaneously enrolled in premium assistance. Under the following subsection – 506.012 – this same premium obligation is referred to as the "required member contribution" which is used to offset the PA payment amount. For this decision, these terms are used interchangeably.

⁴ The relevant portions of 130 CMR 506.012(D) state the following: "MassHealth may require that a member contribute towards the cost of their health insurance coverage. MassHealth refers to this amount as the MassHealth required member contribution... [which is based on MAGI household income and size]...as it relates to federal poverty guidelines and PBFG rules described at 130 CMR 506.011(A)." Additionally, subsection (2)(a) states that "MassHealth CommonHealth premium-assistance eligible members who have MassHealth MAGI household income ... greater than 150% of the FPL have the following required member contribution amounts." The

Under normal circumstances, the member's premium is subject to adjustment any time MassHealth receives information impacting the member's FPL percentage. See 130 CMR §§ 506.011(I), 506.012(F)(2). However, through the Families First Coronavirus Response Act, (FFCRA), Act, States were required to maintain coverage for Medicaid beneficiaries enrolled on or after March 18, 2020 through the end of the declared PHE period, even if a member has a change in circumstances that would otherwise render him/her ineligible for benefits. See FFCRA, § 6008(b), Pub.L. 116-127, (Mar 18, 2020); see also 42 CFR 433.400 et. seq. Consistent with the federal mandate, MassHealth put protections in place to ensure validly enrolled members would have "continuous coverage" of their benefits.⁵ In August of 2022, MassHealth published the following guidance with respect to the PHE requirements:

Adjustments to the FPHE Continuous Coverage Rules

[E]ffective 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.

...

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.

Important Notes

.....

- ***Premium bills will continue to be adjusted to ensure households do not experience premium increases.***

See MassHealth Eligibility Operations Memo (EOM) 22-10 (August 2022).

MassHealth's prohibition on increasing a member's premium's during the PHE is further addressed in its recently published "MassHealth Renewal Help Guide," which provides the following:

During the Public Health Emergency (PHE) from January 2020 – May 2023, MassHealth did not raise premiums on any members. MassHealth also did not close any cases due to failure to pay premiums.

"premium" and "required member contribution" formulas for Adult CommonHealth members with FPL between 150% and 300% of the FPL are identical. See 130 CMR 506.011(B)(2)(b) and 130 CMR 506.012(D)(2)(a).

⁵ The law provides several exceptions to the continuous enrollment mandate, including members who request voluntary termination of benefits; individuals that no longer reside in-state; and individuals that were not "validly enrolled" for benefits. See FFCRA § 6008(b)(3); see also MassHealth EOM 22-10. None of the listed exceptions apply to this case. While testimony indicated that Appellant's PA payments stopped when the agency could not verify Appellant's ESI plan was active; MassHealth acknowledged that it eventually received such verification which should have resolved the issue and Appellant should not have had any interruption in her PA benefit.

See <https://www.mass.gov/doc/masshealth-renewal-help-guide/download>

It is undisputed that Appellant has been validly and continuously enrolled in both MassHealth's CommonHealth and Premium Assistance programs prior to January 2020, before the PHE protections went into effect. Upon implementation of the PHE mandate in March of 2020, MassHealth appropriately placed a covid-19 protection on Appellant's case. Despite conflicting testimony as to whether Appellant's covid-19 protection was severed because of systematic updates to Appellant's case, both parties agree that Appellant's case should have retained PHE protections until this federal mandate is lifted. As indicated above, this PHE protection insulated Appellant from having any increases in premium obligation, regardless of the reported change in household income. Appellant's MassHealth premium should not have exceeded the amount in effect in March 2020. Thus, the November 16th decrease in Appellant's PA payment, which was a result of an increase in her CommonHealth premium, should not have occurred.

Based on the foregoing, this appeal is APPROVED.

Any PA payments sent to Appellant in accordance with the amount reflected in the November 16th notice should be increased to reflect the higher of either: (1) Appellant's PA payment in effect March 18, 2020, or (2) the PA payment of \$457.41 (reflecting Appellant's FPL of 217% for the December premium date).⁶

Order for MassHealth

Rescind Notice dated November 16, 2022. In accordance federal PHE protection, ensure Appellant's PA payment is not offset by premium/RMC amounts that exceed those in effect on March 18, 2020 (the "covid protected amount"). Any PA payments issued pursuant to November 16, 2022 notice should be increased to reflect the Covid protected amount, or if more favorable to Appellant, \$457.41 (reflecting her FPL of 217% for December 2022).⁷

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.

⁶ MassHealth confirmed that following its November 16th notice, Appellant reported additional changes to her income placing her at 217% of the FPL during December 2022. During the record open period, MassHealth PA confirmed that an FPL of 217% resulted in a premium/RMC of \$48 for a PA payment of \$457.41. See Exh. 6.

⁷ This order relates solely to PA payments that resulted from the November 16, 2022 notice, and does not impact any subsequent actions that MassHealth has taken that are either more beneficial to Appellant, or unrelated to the scope of this appeal.

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.

Casey Groff, Esq.
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957

MassHealth Representative: Premium Assistance, UMASS – Schrafft's Center

[REDACTED]