

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2300471

**Decision Date:** 2/27/2023

**Hearing Date:** 02/14/2023

**Hearing Officer:** Thomas J. Goode

**Appellant Representative:**



**MassHealth Representative:**

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>	Eligibility
<b>Decision Date:</b>	2/27/2023	<b>Hearing Date:</b>	2/14/2023
<b>MassHealth Rep.:</b>	Jonathan Gonzalez	<b>Appellant Rep.:</b>	
<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 January 10, 2023, MassHealth denied Appellant's MassHealth application and calculated a deductible because MassHealth determined that income exceeds program limits. (130 CMR 519.007, 520.028 and Exhibit 1). Appellant filed this appeal in a timely manner on January 19, 2023. (130 CMR 610.015(B) and Exhibit 2) Denial of assistance is valid grounds for appeal. (130 CMR 610.032)

## Action Taken by MassHealth

MassHealth denied Appellant's MassHealth application and calculated a deductible because MassHealth determined that income exceeds program limits.

## Issue

The appeal issue is whether MassHealth correctly denied Appellant's MassHealth application and calculated a deductible after determining that income exceeds program limits.

## Summary of Evidence

Appellant is [REDACTED] years old, lives in the community in a household size of 1 and was receiving personal care attendant (PCA) services under the Frail Elder Waiver. The MassHealth representative explained that Appellant met a deductible on March 3, 2020 to become eligible for MassHealth Standard under the Frail Elder Waiver program. However, due to the Public Health Emergency, her eligibility was not reviewed, and additional deductibles were not required to be met to continue services. On November 2, 2022, MassHealth received a renewal application which was processed on November 4, 2022 (Exhibit 5). The November 2, 2022 application indicated that Appellant was not applying for health insurance for herself (Exhibit 5, p. 2). MassHealth issued a request for verification on November 4, 2022 which again asked whether Appellant was applying for health insurance coverage, which was returned to MassHealth on November 23, 2022 stating that Appellant was not applying for health insurance coverage (Exhibit 6, p. 2). On December 14, 2022, MassHealth issued notice informing Appellant that her coverage would terminate on December 28, 2022 because she indicated she was not applying for benefits (Exhibit 6). On December 15, 2022, MassHealth received a Frail Elder Waiver application. Appellant's coverage terminated on December 28, 2022. On December 31, 2022, Appellant returned to MassHealth a copy of the November 4, 2022 request for verifications and changed her previous responses to indicate that she was applying for benefits (Exhibit 7, p. 2). The documentation was processed by MassHealth on January 10, 2023, and a notice issued informing Appellant that her income exceeded program guidelines and a deductible was required to be met for the period November 1, 2022 through May 1, 2023. Appellant receives \$3,517.83 gross unearned income per month. MassHealth applied a PCA disregard (\$985), MassHealth Income Standard (\$522), Health Insurance deduction (\$51.40), and Medicare payment deduction (\$164.90), Appellant's countable income exceeds \$1,133 which is 100% of the federal poverty level for a household of 1 person. MassHealth calculated a monthly deductible amount of \$1,793.70, and a 6-month deductible totaling \$10,762 (Exhibit 1). The MassHealth representative explained that for purposes of eligibility under the Frail Elder Waiver, Appellant's gross income minus \$20 cannot exceed 300% of the federal benefit rate per month for an individual, which was \$2,532 for 2022, and is \$2,742 for 2023. Because Appellant's income exceeds this mark, she is not eligible for services under the Frail Elder Waiver until she meets the deductible.

Appellant was represented by her daughter and son. Appellant's daughter testified that she incorrectly indicated that Appellant was not applying for benefits on the applications, and after a phone conversation with MassHealth she returned the November 4, 2022 information request to indicate that Appellant was applying for MassHealth which should have been evident in light of Appellant's age, medical conditions, and MassHealth history. Appellant continued to receive PCA services after her coverage terminated on December 28, 2022. Appellant's representatives questioned why the case closed while an appeal was pending.

The MassHealth representative stated that the cost of the PCA services could be applied toward the deductible, and that Appellant would be required to meet a deductible every 6 months due to her income exceeding program limits.

## Findings of Fact

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

1. Appellant is [REDACTED] years old, lives in the community in a household size of 1 and was receiving personal care attendant (PCA) services under the Frail Elder Waiver.
2. Appellant met a deductible on March 3, 2020 to become eligible for MassHealth Standard under the Frail Elder Waiver program. However, due to the Public Health Emergency, her eligibility was not reviewed, and additional deductibles were not required to be met to continue services.
3. On November 2, 2022, MassHealth received a renewal application which was processed on November 4, 2022 that indicated Appellant was not applying for health insurance for herself.
4. MassHealth issued a request for verification on November 4, 2022 which again asked whether Appellant was applying for health insurance coverage, which was returned to MassHealth on November 23, 2022 stating that Appellant was not applying for health insurance coverage.
5. On December 14, 2022, MassHealth issued notice informing Appellant that her coverage would terminate on December 28, 2022 because she indicated she was not applying for benefits.
6. On December 15, 2022, MassHealth received a Frail Elder Waiver application.
7. Appellant's coverage terminated on December 28, 2022.
8. On December 31, 2022, Appellant returned to MassHealth a copy of the November 4, 2022 request for verifications and changed her previous responses to indicate that she was applying for benefits which was processed by MassHealth on January 10, 2023.
9. Appellant receives \$3,517.83 gross unearned income per month.
10. In determining eligibility for Standard coverage, MassHealth applied a PCA disregard (\$985), and deductions for the MassHealth Income Standard (\$522), Health Insurance (\$51.40), and Medicare payment (\$164.90).
11. 100% of the federal poverty level for a household of 1 person is \$1,133.
12. 300% of the federal benefit rate was \$2,532 for 2022, and \$2,742 for 2023.
13. MassHealth calculated a monthly deductible amount of \$1,793.70, and a 6-month deductible totaling \$10,762 for the period November 1, 2022 through May 1, 2023.

## Analysis and Conclusions of Law

Financial eligibility for the Frail Elder Waiver is outlined at 130 CMR 519.007(B)(2):

- (2) Eligibility Requirements. In determining eligibility for MassHealth Standard and for waiver services, the MassHealth agency determines income eligibility based solely on the applicant's or member's income regardless of his or her marital status. The applicant or member must
- (a) meet the requirements of 130 CMR 519.007(B)(1)(a) and (b);
  - (b) have a countable-income amount less than or equal to 300% of the federal benefit rate (FBR) for an individual; and
  - (c) have countable assets of \$2,000 for an individual and, for a married couple if the initial Waiver eligibility determination was on or after January 1, 2014, have assets that are less than or equal to the standards at 130 CMR 520.016(B): *Treatment of a Married Couple's Assets When One Spouse Is Institutionalized*; and
  - (d) have not transferred resources for less than fair market value, as described at 130 CMR 520.018: *Transfer of Resources Regardless of the Transfer Date* and 520.019: *Transfer of Resources Occurring on or After August 11, 1993*.

Appellant's gross income is \$3,517.83 per month. For purposes of determining eligibility for services through the Frail Elder Waiver, a \$20 deduction from income is allowed, to arrive at a countable income of \$3,497.83, which exceeds 300% of the federal benefit rate for an individual, currently \$2,742 per month (130 CMR 520.013(A)). Therefore, Appellant is not financially eligible for services under the Frail Elder Wavier.

To determine eligibility for MassHealth Standard for a community resident 65 years of age and older, the applicable regulation is 130 CMR 519.005:

- (A) Eligibility Requirements. Except as provided in 130 CMR 519.005(C)<sup>1</sup>, 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

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<sup>1</sup> This section does not apply as it addresses eligibility for parents and caretaker relatives of children younger than 19 years old.

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.

Because Appellant has been determined to be in need of PCA services, MassHealth correctly applied a \$985 disregard to reduce Appellant's \$3,517.83 gross income to \$2,532 countable income (130 CMR 520.013(B)). Pursuant to 130 CMR 520.028, community-based individuals whose countable income exceeds 100 percent of the federal-poverty level, in this case \$1,133, can establish eligibility for MassHealth by meeting a deductible. Appellant's countable income exceeds this mark. Regulation 130 CMR 520.030 further directs that countable income is reduced by the monthly income Standard, in this case \$522 for an individual (130 CMR 520.030). After an allowance for Medicare and health insurance premiums totaling \$216.30 allowed by MassHealth, the monthly deductible is \$1,793.70 for the period November 1, 2022 through May 1, 2023.

Because MassHealth correctly determined Appellant's financial eligibility for services through the Frail Elder Waiver based on Appellant's income, and correctly calculated a deductible for Standard coverage, the appeal must be DENIED.<sup>2</sup>

## Order for MassHealth

None.

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<sup>2</sup> With regard to aid pending protection during the pendency of the appeal, the January 10, 2023 notice is the only notice appealed by Appellant, and was received at the Board of Hearings on January 19, 2023. Appellant's coverage terminated on December 28, 2022 pursuant to the notice dated December 14, 2022 which was not appealed, and the reasons for that termination cannot be substantively addressed here. Pursuant to 130 CMR 610.036, when the appealable action involves the reduction, suspension, termination, or restriction of assistance, such assistance will be continued until the Board of Hearings decides the appeal or, where applicable, the rehearing decision is rendered if the Board of Hearings receives the initial request for the fair hearing before the implementation date of the appealable action. If such appealable action was implemented before a timely request for a hearing, such assistance will be reinstated if the Board of Hearings receives the request for the fair hearing within 10 days of the mailing of the notice of the appealable action. Neither condition applies to the facts at hand.

## **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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Thomas J. Goode  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Appeals Coordinator, Charlestown MEC