

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: APPROVED

Appeal Number: 2300550

Decision Date: 2/14/2023

Hearing Date: 02/08/2023

Hearing Officer: Christopher Taffe

Appearances for Appellant:




Appearance for MassHealth:

Victoria Murphy, BERS, of the Tewksbury
MEC (by phone)



*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:	Termination of benefits – disabled adult
Decision Date:	2/14/2023	Hearing Date:	02/08/2023
MassHealth's Rep.:	V. Murphy	Appellant's Reps.:	
Hearing Location:	Tewksbury MassHealth Enrollment Center (Remote Hearing)	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 December 5, 2022, MassHealth informed Appellant that he was not eligible for MassHealth benefits because “*Your family’s income is too high for you to get MassHealth Standard or your immigration status does not meet the rules for MassHealth Standard. You have a deductible of \$6,240 to meet to become eligible for MassHealth CommonHealth. The deductible period is 11/25/2022 to 05/27/2023.*” See Exhibits 1 and 2; 130 CMR 505.002; 130 CMR 506.009. Appellant, via his Legal Guardian, filed a timely appeal with the Board of Hearings on January 23, 2023. See Exhibit 1; 130 CMR 610.015(B). Challenging a MassHealth notice announcing an adverse eligibility determination is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth issued an eligibility denial notice stating that Appellant wasn’t eligible for MassHealth benefits. Although not explicit, the appealable action notice constituted a termination notice, with MassHealth Standard benefits ending on December 19, 2022.

Issue

Did MassHealth have grounds to terminate Appellant's MassHealth benefits and not replace it with any other form of medical assistance? If not, what is the correct outcome for Appellant at the current time?

Summary of Evidence

At the time of hearing, Appellant was a [REDACTED] single adult male. He has received MassHealth benefits or other forms of state medical assistance, almost continuously and for most of the time, since the end of calendar year 2006. Appellant has previously been determined by the MassHealth program to be disabled, with a disability onset date of 09/01/2006. Appellant appeared and testified at hearing along with his current legal guardian, and one other appeal representative who works for the Boston Center for Independent Living (BCIL).

Ms. Murphy, an eligibility or BERS worker from the Tewksbury MassHealth Enrollment Center, represented the MassHealth agency at hearing. Ms. Murphy indicated that she typically does eligibility work for individuals who are 65 years old or older who live in the community and not those adults who are, like Appellant, reside in the community under the age of 65 (commonly referred to as the "HCR" or "Health Care Reform" population); however because Appellant's recent benefit history involved some recent eligibility for community waiver programs, and because such waivers at times often use the same regulations for determining eligibility as the Medicaid applicants who are 65 or older, she was assigned to this appeal.

At some point in 2022, Appellant was a MassHealth member receiving MassHealth Standard benefits through the MFP or "Moving Forward Plan" waiver. The MFP program is one of the current home-and-community-based services (HCBS) waivers available through the MassHealth program, which are designed to help MassHealth-eligible persons move from a nursing facility or chronic disease, rehabilitation, or psychiatric hospital back to their community. The MFP waivers help by making the move from the facility to the community easier and by providing community-based services that complement the more traditional health insurance benefits of the MassHealth Standard program.

Appellant had a previous Fair Hearing before the Board of Hearings over a March 29, 2022 notice on May 19, 2022. That appeal from May 2022 involved MassHealth's termination of his participation in the MFP program because, at that time, the agency believed Appellant could not be safely served in the community. A decision (BOH # 2202775) issued on June 14, 2022, denying his appeal. MassHealth stated that Appellant should have been terminated by the agency of April 11, 2022.¹

MassHealth however never terminated Appellant's Standard benefits immediately after that appeal.

¹ As a general rule, MassHealth often has to provide advance notice of a termination of benefits and, to that end, MassHealth usually terminates approximately two weeks after the date of the termination notice. April 11th would have been 13 days after the March 29th appealable action in Appeal # 2202775.

Appellant had a medical institutionalization over the summer and was discharged back to the community in late [REDACTED]. At that time he was still on MassHealth Standard. At some point in October and November 2022, Appellant, with his newly established guardian (appointed in the summer of 2022), began to do planning for Appellant's community stay. This included requesting, and receiving approval for, MassHealth Personal Care Attendant (PCA) services. On or around mid-October 2022, Appellant received approval from the MassHealth program for over 22 hours of weekly PCA services to help Appellant with his physical activities of daily living, as well as instrumental household activities. Appellant also began re-applying for a MassHealth waiver for community support services that he would need after his return to the community setting.

Appellant's Guardian testified that after a recently completed application process, she had been told, over the phone, that the MassHealth Waiver Unit had made a decision on his most recent waiver application. However, the outcome (approval or denial) could not be revealed to her over the phone, and as of the day of the hearing, Appellant was still waiting to hear on that agency decision.

At some point in November, MassHealth received some updated information on Appellant which led to the December 5, 2022 notice at issue in this appeal. Appellant's side speculated that it was the waiver application which may have triggered the December 5, 2022 notice. On December 5, 2022, MassHealth sent out the notice stating that Appellant was over income for Standard. The limit for an adult under the age of 65 for MassHealth Standard is 133% of the FPL or \$1,507/month. Because Appellant has Social Security benefits of \$1,719/month, he is not eligible for Standard under traditional income test. (If one is eligible for a waiver, which may have a different or higher income, limit, they would get MassHealth Standard per 130 CMR 519.007 despite that income). The December 5, 2022 notice also stated that Appellant could obtain CommonHealth benefits if he either met a one-time medical deductible of \$6,240, or obtained working disabled status. See Exhibit 2.

Even though the December 5, 2022 notice did not announce a termination date, testimony and the newMMIS sheet in Exhibit 4 verified that Appellant was effectively terminated from MassHealth Standard on December 19, 2022 as a result of that notice, and only approved for the Health Safety Net.² Testimony of the parties suggested that there was no other termination notice or other correspondence from MassHealth in November or December informing Appellant of the end date of Standard benefits.³

Both the Hearing Officer and Representative Forman raised issues about the agency action and whether it was compliant with two MassHealth Eligibility Operations Memo issued during the pandemic by Heather Rossi, the Director of Eligibility Policy for the agency. Specifically MassHealth Eligibility Operations Memo 22-10⁴ discusses how, for the remainder of any Federal

² See fn. 1, *supra*. This period between December 5, 2022 and December 19, 2022 is the traditional two-week period between termination notice and effective termination. The only difference is, in this notice, there was no explicit mention of the termination date, nor does any word indicating a termination, cessation, or end of benefits appear anywhere in the notice. See Exhibit 2.

³ MassHealth did not submit any written materials for the hearing. All exhibits in the appeal file were generated or created by the Board of Hearings.

⁴ See [https://www.mass.gov/doc/eom-22-10-updated-masshealth-response-to-coronavirus-disease-covid-](https://www.mass.gov/doc/eom-22-10-updated-masshealth-response-to-coronavirus-disease-covid-19)

Public Health Emergency (FPHE) period, there should be no loss of MassHealth Standard benefits or downgrade in benefits for the remainder of the FPHE.

In addition, in December of 2022, Director Rossi issued MassHealth Eligibility Operations Memorandum 22-17 (titled “*Changes to Streamline MassHealth CommonHealth Eligibility for Adults*”⁵), which stated that disabled adults between ages 21 and 64 (like Appellant) who are over the income for MassHealth Standard would no longer have to meet the one-time deductible (or other conditions such as working disabled status) to gain eligibility for CommonHealth benefits. In other words, the conditions listed on the December 5, 2022 MassHealth notice, referencing the requirements to satisfy a one-time medical deductible or obtain working disabled status would no longer apply or be a barrier to CommonHealth coverage.

In response, the MassHealth Representative indicated she could not do anything in terms of protection regarding the first memo and that, as to the second memo, she believed that if Appellant filled out an HCR application, he would be determined eligible for MassHealth CommonHealth, and she was going to advise the Appellant’s side to do that to maximize his eligibility.

Appellant has been without coverage from December 19, 2022 through the hearing date, and has had PCA’s during that time from December through the hearing date, and the PCA’s have been working on an unpaid basis as a result of the loss of MassHealth coverage.

Findings of Fact

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

1. Appellant is a single MassHealth member between the ages of 21 and 64 who is disabled. (Testimony and Exhibit 4)
2. For MassHealth eligibility purposes, at all relevant times, Appellant is a household of one person. (Testimony)
3. Appellant has countable income greater than 133% of the Federal Poverty Level due to his Social Security benefit. (Testimony and Exhibit 1)
4. In March of 2022, Appellant was a MassHealth Standard member, who received his benefits because he qualified for a waiver. (Testimony)
5. At some point during the first half of 2022, Appellant lost his clinical eligibility for the waiver program. (Testimony)

[19-0/download](#) (last viewed on February 10, 2023). The FPHE has been in place since the early part of calendar year 2020 and is set to end on May 11, 2023.

⁵ See <https://www.mass.gov/doc/eom-22-17-changes-to-streamline-masshealth-commonhealth-eligibility-for-adults-0/download> (last viewed on February 10, 2023).

- a. Appellant's benefits were never terminated from March 2022 through December 5, 2022. (Testimony and Exhibit 4)
6. Through a notice dated December 5, 2022, MassHealth informed Appellant that he was not eligible for MassHealth benefits because *"Your family's income is too high for you to get MassHealth Standard or your immigration status does not meet the rules for MassHealth Standard. You have a deductible of \$6,240 to meet to become eligible for MassHealth CommonHealth. The deductible period is 11/25/2022 to 05/27/2023."* (Testimony and Exhibits 1 and 2)
 - a. Although this notice did not mention a coverage end date, this notice effectively acted as a termination notice, and Appellant's benefits came to an end two weeks later on December 19, 2022. (Testimony and Exhibit 4)
7. The MassHealth Director of Eligibility Policy has issued a series of Eligibility Operations Memoranda in 2022, during the FPHE period, including 22-10 and 22-17 which the agency is supposed to apply to its eligibility determinations. (Testimony)
8. The FPHE related to the COVID-19 pandemic that has been in place since early 2020 is set to end on May 11, 2023, but it has not yet expired.
9. While this appeal was pending, Appellant is awaiting a response on his re-application for a MassHealth waiver that may allow for Standard benefits and community services to be received in the future. As of the hearing date, Appellant's Guardian has been told that a decision has been made on his waiver application but the results of that determination were not known by any party as of the date and time of the hearing. (Testimony)

Analysis and Conclusions of Law

Although the Appellant has an unusual history with the MassHealth program in that he has received several benefits and coverage types over the past 16+ years, the issue in this appeal and the resulting analysis of whether the MassHealth action in the appealable action notice of December 5, 2022 was proper and should stand, are relatively simple. For all dates of 2022, up until December 19, 2022, Appellant was a MassHealth member receiving MassHealth Standard benefits. The December 5, 2022 notice served as an effective, if unclear, termination notice, and Appellant's MassHealth Standard benefits ended two weeks later on December 19, 2022.

Due to the COVID-19 pandemic, the MassHealth agency is operating under certain restrictions and rules which protects MassHealth members as well as certain applicants. To help carry out its mission and guide its eligibility program during the FPHE, MassHealth issued certain written guidance related to eligibility operations and policy during this period. Such written material must be given appropriate due consideration when determining whether a MassHealth action was done in accordance with the law. See 130 CMR 610.082(C)(3). The most relevant and currently applicable Eligibility Operations Memorandum is 22-10, issued during the month of August 2022. Text from

the first part of that memorandum is extremely relevant to the situation facing this Appellant, so it is reprinted in its entirety below:

Introduction

As part of the ongoing response to the COVID-19 Federal Public Health Emergency (FPHE), MassHealth, with federal approval, authorized certain flexibilities to expedite access to MassHealth coverage for eligible individuals. This memo provides updates to these flexibilities and supersedes Eligibility Operations Memo 21-17, published in November 2021. This EOM is effective as of August 1, 2022.

Updates to Eligibility Flexibilities that Remain in Effect through the End of the FPHE

Maintaining MassHealth Coverage

*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.*

MassHealth is not required to maintain coverage during the FPHE for individuals with time limited HSN, HSN Dental only, or CMSP only, and CHIP children who turn 19. These members will have benefits reduced or closed based on regular program determination rules.

Adjustments to the FPHE Continuous Coverage Rules

*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.

*(**Bolded** emphasis from original; underlined emphasis added.)*

The record is clear and undisputed that Appellant was a MassHealth Standard member who had such active MassHealth Standard benefits in 2022 as of the time of the December 5, 2022 appealable action. Equally clear is the policy laid out by the Eligibility Operations Memorandum above, which states that, during the FPHE and for its duration, no MassHealth member should lose their benefits unless they die, move out of state, or request that benefits should end. None of those exceptions apply here. There is also no carveout stating that the protection should not apply to those who receive MassHealth Standard because of a waiver; the Eligibility Operations Memo treats all MassHealth Standard members the same, regardless of how they obtained such Standard beneficiary status.

I thus conclude that the MassHealth notice terminating Appellant's Standard benefits was improper and did not follow Eligibility Operations Memorandum 22-20.⁶ This appeal is APPROVED and Appellant's Standard benefits should be restored and remain for the duration of the FPHE.

Order for MassHealth

Within 30 days of the date of this decision, the MassHealth agency must:

- Rescind the December 5, 2022 notice and reinstate Appellant's MassHealth Standard benefits back with a retroactive start date of December 19, 2022 so there is no gap in coverage. (If Appellant's Standard benefits status has already been reinstated due to a pending waiver decision, MassHealth must still change the start date.)
- Take any additional appropriate steps to ensure that Appellant, like all other current MassHealth Standard beneficiaries, remains properly protected on Standard benefits for the duration of the FPHE in accordance with the agency's current Eligibility Operations Memoranda.
- To ease with the post FPHE transition, MassHealth is also encouraged to send this Appellant the appropriate HCR application that may be needed to verify his eligibility status once the FPHE ends.
- MassHealth must also send a Written Notice of Implementation, confirming the above actions have been taken to Appellant, Appellant's Guardian, and Appellant's other Appeal Representative. MassHealth is strongly encouraged to complete these steps as quickly as possible because Appellant's PCA services have been affected for more than a month due to the improper termination action in December.

Implementation of this Decision

⁶ Even if the FPHE had ended prior to hearing, the other Eligibility Operations Memorandum (22-17) would have required that Appellant be given MassHealth CommonHealth benefits without having to meet a deductible or satisfy any other prerequisite.

If this decision is not implemented within 30 days after the date of this decision, you should contact the Appeals Coordinator at your MassHealth Enrollment Center who is identified below. 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.

Christopher Taffe
Hearing Officer
Board of Hearings

cc: Sylvia Tiar, Appeals Coordinator
Tewksbury MEC
367 East Street
Tewksbury, MA 01876-1957

[REDACTED]

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