

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2301376
Decision Date:	4/28/2023	Hearing Date:	04/24/2023
Hearing Officer:	Patricia Mullen		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Maria Rodrigues, 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

Appeal Decision:	Denied	Issue:	Buy In program
Decision Date:	4/28/2023	Hearing Date:	04/24/2023
MassHealth's Rep.:	Maria Rodrigues, Charlestown MEC	Appellant's Rep.:	Pro se
Hearing Location:	Charlestown MassHealth Enrollment Center		

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 February 7, 2023, MassHealth denied the appellant's application for MassHealth Medicare Savings Plan (MSP) Buy In benefits because MassHealth determined that the appellant's assets exceed the limit for the MassHealth MSP/Buy In program. (see 130 CMR 519.011(B) and Exhibit 1). The appellant filed this appeal in a timely manner on February 21, 2023. (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032). The hearing was originally scheduled for March 20, 2023 but was rescheduled for good cause. (Exhibit 5). The hearing was then scheduled for April 7, 2023, but was rescheduled for good cause. (Exhibits 6, 7).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth MSP/Buy In benefits.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.011(B), in determining that the appellant's assets exceed the limit for the MassHealth MSP/ Buy In program.

Summary of Evidence

The appellant appeared telephonically. MassHealth was represented telephonically by a worker from the MassHealth Enrollment Center (MEC) in Charlestown. The appellant was open on MassHealth CarePlus for persons under age 65 at the time of the notice.¹ The MassHealth representative stated that the appellant submitted an application for MassHealth MSP/Buy In benefits on January 13, 2023. The MassHealth representative stated that the appellant lives in a one person household and receives gross monthly Social Security income of \$1,277.00. The MassHealth representative stated that the appellant's income is below the limit for the MSP/Buy In program, but the appellant reported an annuity totaling \$100,000.00. The MassHealth representative stated that the asset limit for MassHealth MSP/Buy In is \$18,180.00 and because the appellant self attested to annuity assets that exceed this amount, he is not financially eligible for MSP/Buy In.

The appellant stated that he sold property in 2022 and put the proceeds into an annuity. The appellant stated that the annuity has about \$100,000.00 in it, but he cannot draw money from it for 5 years. The appellant stated that his only income is his Social Security income and he has no annuity income at this time.

The MassHealth representative stated that MassHealth accepted the appellant's self attestation of assets, but because the appellant now argues that the annuity should not be counted, MassHealth needs to review the annuity contract and statements to determine if the annuity is non-countable pursuant to MassHealth regulations. The appellant stated that he would send the annuity documentation to MassHealth.

Findings of Fact

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

1. The appellant was open on MassHealth CarePlus for persons under age 65 at the time of the notice.
2. The appellant submitted an application for MassHealth MSP/Buy In benefits on January 13, 2023.
3. The appellant lives in a one person household and receives gross monthly Social Security income of \$1,277.00.
4. The appellant has an annuity with a balance of around \$100,000.00.

Analysis and Conclusions of Law

519.010: MassHealth Senior Buy-In (for Qualified Medicare Beneficiaries (QMB))

¹ The appellant has turned 65 since the date of the notice; it does not appear that MassHealth has made a new determination of MassHealth eligibility since the change in the appellant's age.

(A) Eligibility Requirements. (Qualified Medicare Beneficiary (QMB) coverage is available to Medicare beneficiaries who

- (1) are entitled to hospital benefits under Medicare Part A;
- (2) have a countable income amount (including the income of the spouse with whom he or she lives) that is less than or equal to 130%² of the federal poverty level;
- (3) have countable assets less than or equal to two times the amount of allowable assets for Medicare Savings Programs as identified by the Centers for Medicare and Medicaid Services. Each calendar year, the allowable asset limits shall be made available on MassHealth's website; and
- (4) meet the universal requirements of MassHealth benefits in accordance with 130 CMR 503.000 : Health Care Reform: MassHealth Universal Eligibility Requirements or 517.000 : MassHealth Universal Eligibility Requirements, as applicable.

(B) Benefits. The MassHealth agency pays for Medicare Part A and Part B premiums and for deductibles and coinsurance under Medicare Parts A and B for members who establish eligibility for MassHealth Senior Buy-In coverage in accordance with 130 CMR 519.010(A).

(C) Begin Date. The begin date for MassHealth Senior Buy-In coverage is the first day of the calendar month following the date of the MassHealth eligibility determination.

(130 CMR 519.010).

519.011: MassHealth Buy-In

(A) MassHealth Buy-In for Specified Low Income Medicare Beneficiaries (SLMB).

(1) Eligibility Requirements. MassHealth Buy-In for Specified Low Income Medicare Beneficiaries (SLMB) coverage is available to Medicare beneficiaries who meet the eligibility requirements of MassHealth Senior Buy-In coverage at 130 CMR 519.010: MassHealth Senior Buy-In (Qualified Medicare Beneficiaries (QMB)) with the following exception: the countable income amount of the individual and his or her spouse must be greater than 130% of the federal poverty level and less than or equal to 150% of the federal poverty level³.

(2) Benefits. The MassHealth agency pays the cost of the monthly Medicare Part B premium for members who establish eligibility for MassHealth Buy-In for SLMB coverage in accordance with 130 CMR 519.011(A).

(3) Begin Date. MassHealth Buy-In for SLMB coverage, in accordance with 130 CMR 519.011(A), begins with the month of application and may be retroactive up to three calendar months before the month of application.

(B) MassHealth Buy-In for Qualifying Individuals (QI).

² Pursuant to MassHealth Eligibility Operations Memo (EOM) 23-04, February, 2023, the countable income limit for the QMB program is now at or below 190% of the federal poverty level (FPL).

³ Pursuant to EOM 23-04, the countable income limit for the SLMB program is now greater than 190% and less than or equal to 210% of the FPL.

(1) Eligibility Requirements. MassHealth Buy-In for Qualifying Individuals (QI) coverage available to Medicare beneficiaries who

- (a) are entitled to hospital benefits under Medicare Part A;
- (b) are not eligible for MassHealth benefits under the Medicaid State Plan
- (c) have a countable income amount (including the income of the spouse with whom he or she lives) that is equal to or greater than 150% of the federal poverty level and less than or equal to 165% of the federal poverty level;⁴
- (d) have countable assets less than or equal to two times the amount of allowable assets for Medicare Savings Programs as identified by the Centers for Medicare & Medicaid Services. Each calendar year, the allowable asset limits shall be made available on MassHealth's website and
- (e) meet the universal requirements of MassHealth benefits in accordance with 130 CMR 503.000 or 517.000, as applicable.

(2) Benefits. The MassHealth agency pays the entire Medicare Part B premium, in accordance with section 1933 of the Social Security Act (42 U.S.C. § 1396u-3), for members who establish eligibility for MassHealth Buy-In for QI coverage in accordance with 130 CMR 519.011(B).

(3) Eligibility Coverage Period.

- (a) MassHealth Buy-In for QI coverage, in accordance with 130 CMR 519.011(B), begins with the month of application. Coverage may be retroactive up to three months before the month of application provided
 - 1. the retroactive date does not extend into a calendar year in which the expenditure cap described at 130 CMR 519.011(B)(4) has been met; and
 - 2. the applicant was not receiving MassHealth benefits under the Medicaid state plan during the retroactive period.

(b) Once determined eligible, a member who continues to meet the requirements of 130 CMR 519.011(B) is eligible for the balance of the calendar year. Such members are not adversely impacted by the provisions of 130 CMR 519.011(B)(4).

(4) Cap on Expenditures.

- (a) The MassHealth agency does not extend eligibility to individuals who meet the requirements of MassHealth Buy-In for QI in accordance with 130 CMR 519.011(B), if the MassHealth agency estimates the amount of assistance provided to these members during the calendar year will exceed the state's allocation, as described in section 1933 of the Social Security Act.
- (b) The MassHealth agency gives preference to members who were eligible for MassHealth Buy-In, as described in 130 CMR 519.011, or MassHealth Senior Buy-In, as described in 130 CMR 519.010, in December of the previous calendar year when

⁴ Pursuant to EOM 23-04, the countable income limit for the QI program is now greater than 210% and less than or equal to 225% of the FPL.

determining an individual's eligibility for MassHealth Buy-In for QI, as described in 130 CMR 519.011(B), in the subsequent calendar year.

(130 CMR 519.011).

MassHealth Eligibility Operations Memo (EOM) 23-04 dated February, 2023, amended the MassHealth MSP/Buy In regulations. The EOM states that effective January 1, 2023, MSP income and asset limits for each coverage type are as follows.

- The countable income limit for the QMB program is at or below 190% of the federal poverty level (FPL).
- The countable income limit for the SLMB program is greater than 190% and less than or equal to 210% of the FPL.
- The countable income limit for the QI program is greater than 210% and less than or equal to 225% of the FPL.
- 2023 Asset Limits
Individual — \$18,180; Married couple — \$27,260

(MassHealth EOM 23-04, February, 2023).

The appellant reported annuity assets totaling around \$100,000.00. Because the appellant's assets exceed \$18,180.00, he is not financially eligible for the MassHealth MSP/Buy In program. The appellant stated that he would submit his annuity contract and statements for MassHealth to review to determine if the annuity might not be countable⁵. At this time, MassHealth's action is upheld and the appeal is denied.

Order for MassHealth

None.

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.

⁵ The MassHealth regulation pertaining to annuities is at 130 CMR 520.007(J) and states in part, "Payments from an annuity are countable income in accordance with 130 CMR 520.009. If the annuity can be converted to a lump sum, the lump sum, less any penalties or costs of converting to a lump sum, is a countable asset."

Patricia Mullen
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Nga Tran, Charlestown MassHealth Enrollment Center