

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2302677
Decision Date:	6/23/2023	Hearing Date:	05/03/2023
Hearing Officer:	Scott Bernard		

Appearance for Appellant:



Appearance for MassHealth:

Meghan Adie (Tewksbury MEC) via telephone
Stephen Diaz (Tewksbury MEC) (observing) via
telephone



*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:	Programs of All-Inclusive Care for the Elderly (PACE) Income Calculation
Decision Date:	6/23/2023	Hearing Date:	05/03/2023
MassHealth's Rep.:	Meghan Adie	Appellant's Rep.:	
Hearing Location:	Taunton 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 March 16, 2023, MassHealth approved the appellant's application for MassHealth Standard/PACE with a deductible of \$2,076 *per* month. (See 130 CMR 519.007(C)(2),(3), 520.028-520.035 and Exhibit (Ex.) 1; Ex. 6, pp. 1-3). The appellant filed this appeal in a timely manner on April 3, 2023. (See 130 CMR 610.015(B) and Ex. 2). Assessment and calculation of a deductible provides valid grounds for appeal. (See 130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant was eligible for PACE but was required to pay a deductible.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.007(C)(2),(3), 520.028 through 520.035, in determining that the appellant was required to pay a deductible.

Summary of Evidence

The MassHealth representative testified to the following. MassHealth received the appellant's application for PACE on February 8, 2023. MassHealth processed and approved the application on March 16, 2023, with coverage retroactive to February 1, 2023. MassHealth determined that the appellant's countable income was \$2,763.00¹. (See Ex. 1; Ex. 6, pp. 1-3). This was over 300% of the Federal Benefit Rate (FBR), which is currently \$2,742 per month.² Because the appellant's income exceeded 300% of the FBR, the appellant was required to meet a deductible in order to be eligible to receive MassHealth Standard as part of PACE. The MassHealth representative then described how she calculated the deductible. She subtracted the income standard for a household of one³ (\$522) as well as the amount the appellant pays towards his Medicare (\$164.90) from the appellant's countable income of \$2,763 to reach the deductible of \$2,076.10. (Ex. 1; Ex. 6, p. 3).

The appellant's representative, who is his spouse, testified to the following. The appellant's representative stated that she did not dispute the figure MassHealth used. The appellant's representative stated that the appellant is only \$41 over the 300% of FBR limit. It would be extremely difficult for the appellant to pay the deductible in order to be eligible to receive services. The appellant's representative stated that she retired from her work to take care of the appellant. The appellant's representative stated that the appellant need PACE services. He has advanced Alzheimer's disease. The appellant was a teacher, and his pension is from the state. The appellant's representative stated that she had enough quarters of work in order to receive Social Security for herself, but she fell under the Windfall Elimination Provision and only gets \$103 per month. The appellant needs services in order to keep him in the home, which is the appellant's representative's goal.

Findings of Fact

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

1. MassHealth received the appellant's application for PACE on February 8, 2023. (Testimony of the MassHealth representative)

¹ The appellant receives \$2,783.90 per month consisting of Social Security (\$1,922.90) and a pension (\$861), which are both unearned income. (See Ex. 1; Ex. 6, p.3; 130 CMR 520.009(D)). MassHealth then applied the unearned income deduction of \$20 per individual or married couple, thereby reaching the countable income figure of \$2,763. (Ex. 1; 130 CMR 520.013(A)). MassHealth evidently rounded this figure down from \$2,763.90. (Ex 1; ex. 6, p. 3).

² These figures are determined on an annual basis and are effective from January 1. The current figure is located at <https://www.mass.gov/info-details/program-financial-guidelines-for-certain-masshealth-applicants-and-members#eligibility-figures-for-community-residents-age-65-or-older>.

³ The MassHealth representative explained that although the appellant does have a spouse, MassHealth does not consider the spouse in making calculations under PACE.

2. MassHealth processed and approved the application on March 16, 2023, with coverage retroactive to February 1, 2023. (Testimony of the MassHealth representative; Ex. 1; Ex. 6, pp. 1-3).
3. MassHealth determined that the appellant's countable income was \$2,763.00. (Ex. 1; Ex. 6, p. 3).
4. This was over 300% of the FBR, which is currently \$2,742 per month. (Testimony of the MassHealth representative).
5. Because the appellant's income exceeded 300% of the FBR, the appellant was required to meet a deductible in order to be eligible to receive MassHealth Standard as part of PACE. (Testimony of the MassHealth representative).
6. In order to calculate the deductible MassHealth subtracted the income standard for a household of one (\$522) as well as the amount the appellant pays towards his Medicare (\$164.90) from the appellant's countable income of \$2,763 to reach the deductible of \$2,076.10. (Ex. 1; Ex. 6, p. 3).

Analysis and Conclusions of Law

The PACE program is a comprehensive health program that is designed to keep frail, older individuals who are certified eligible for nursing-facility services living in the community. (130 CMR 519.007(C)(1)). Under PACE a designated community-based program provides all medical and social services, which a team of health professionals coordinates. (130 CMR 519.007(C)(1)(a)). Persons enrolled in PACE have services delivered through managed care in day-health centers, at home, and in specialty or inpatient settings, if needed. (130 CMR 519.007(C)(1)(c)).

In order to determine PACE eligibility, MassHealth counts the income and assets of only the applicant or member regardless of marital status. (130 CMR 519.007(c)(2)). Amongst the criteria an individual must meet in order to qualify for PACE is that their countable income must be less than or equal to 300% of the FBR for an individual. (130 CMR 519.007(C)(2)(g)). Individuals whose income exceeds 300% of the FBR may establish eligibility for MassHealth Standard by meeting a deductible. (130 CMR 519.007(C)(3), 520.028 through 520.035).

The deductible is determined by multiplying the excess monthly income by six. (130 CMR 520.030). Excess monthly income is the amount by which the applicant's countable-income amount exceeds the MassHealth deductible-income standard, which is \$522 for an individual in the community. (*Id.*). The deductible period is a six-month period that starts on the first day of the month of application or may begin up to three months before the first day of the month of application. (130 CMR 520.029). The applicant is eligible for this

period of retroactivity only if the applicant incurred medical expenses covered by MassHealth and was otherwise eligible. (Id.).

To establish eligibility by meeting a deductible, the individual must submit verification of medical bills whose total equals or exceeds the deductible and that meet the following criteria:

- (1) The bill must not be subject to further payment by health insurance or other liable third-party coverage, including the Health Safety Net.
- (2) The bill must be for an allowable medical or remedial-care expense in accordance with 130 CMR 520.032(B). A remedial-care expense is a nonmedical support service made necessary by the medical condition of the individual or the spouse.
- (3) The bill must be unpaid and a current liability or, if paid, paid during the current six-month deductible period.
- (4) Any bill or portion of a bill used to meet a deductible may not be applied to any other deductible period. However, any portion of a bill not used to meet the current deductible may be used in a future deductible period. The MassHealth agency will not pay any bills or portions of bills that are used to meet the deductible. These bills remain the responsibility of the applicant. (130 CMR 520.032(A)).

MassHealth applies bills to meet the deductible in the following order:

- (1) Medicare and other health-insurance premiums credited prospectively for the cost of six months' coverage, deductibles, enrollment fees, or coinsurance charges incurred by the individual and the spouse including copayments imposed under [130 CMR 520.036](#);
- (2) expenses incurred by the individual and the spouse for necessary medical and remedial-care services that are recognized under state law but are not covered by MassHealth, including guardianship fees and related expenses as described in and allowed under [130 CMR 520.026\(E\)\(3\)](#); and
- (3) expenses incurred by the individual, a family member, or financially responsible relative for necessary medical and remedial-care services that are covered by MassHealth. (130 CMR 032(B)).

Expenses that may not be applied to meet the deductible include, but are not limited to cosmetic surgery; rest-home care; weight-training equipment; massage therapy; special diets; and room-and-board charges for individuals in residential programs. (130 CMR 520.032(C)).

A preponderance of the evidence shows MassHealth correctly assessed that the appellant was eligible for PACE only if he paid a deductible. The record shows that the appellant receives monthly countable income totaling \$2,763.00. The record also shows that this amount exceeds 300% of the FBR, which currently is \$2,742. For that reason, the appellant is not eligible to receive MassHealth/PACE unless he pays a deductible. The record shows that MassHealth also correctly calculated that deductible by subtracting \$522 from the appellant's countable income, as well as the amount that the appellant pays towards Medicare.

For the above stated reasons, 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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780