

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2303054
Decision Date:	5/26/2023	Hearing Date:	05/16/2023
Hearing Officer:	Patricia Mullen		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Kim Daughtry, Springfield 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:	Approved	Issue:	Eligibility
Decision Date:	5/26/2023	Hearing Date:	05/16/2023
MassHealth's Rep.:	Kim Daughtry, Springfield MEC	Appellant's Rep.:	Pro se
Hearing Location:	Springfield MassHealth Enrollment Center (remote)		

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 12, 2022, MassHealth terminated the appellant's MassHealth coverage because MassHealth determined that the appellant requested to be disenrolled from MassHealth. (see 130 CMR 502.009 and Exhibit 1). The appellant filed this appeal in a timely manner on April 14, 2023¹. (see 130 CMR 610.015(B) and Exhibit 2). Termination of assistance is valid grounds for appeal (see 130 CMR 610.032).

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends;
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

Action Taken by MassHealth

MassHealth terminated the appellant's MassHealth coverage.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.009, in determining that the appellant requested to be disenrolled from MassHealth.

Summary of Evidence

The appellant appeared telephonically. MassHealth was represented telephonically by a worker from the MassHealth Enrollment Center (MEC) in Springfield. Pursuant to a Medicaid Management Information Systems (MMIS) screen in the record, the appellant is under age 65 and was open on MassHealth CarePlus with a start date of September 29, 2022. (Exhibit 5). By MassHealth notice dated December 12, 2022, the appellant was terminated from MassHealth Care Plus as of December 26, 2022 because she "withdrew the application". (Exhibit 1). By MassHealth notice dated April 13, 2023, MassHealth determined that the appellant was not eligible for MassHealth based on income equal to 187.97% of the federal poverty level (FPL), but was eligible for a ConnectorCare plan. The appellant's MMIS screen shows that she was on a subsidized Health Connector plan from 2019 through November 26, 2021. (Exhibit 5). The appellant was then open on MassHealth CarePlus from September 29, 2022 through December 26, 2022. (Exhibit 5). The appellant was then approved for a ConnectorCare plan as of March 20, 2023. (Exhibit 5). The appellant testified that she is enrolled in a ConnectorCare plan as of May 1, 2023.

In her appeal, the appellant reported that she withdrew her MassHealth application in error and was misled to believe that she needed to discontinue MassHealth coverage in order to get on a Health Connector health plan. (Exhibit 2).

The Hearing Officer asked the MassHealth representative to explain how MassHealth determined the appellant eligible for CarePlus with a start date of September 29, 2022, specifically the appellant's income at that time. The MassHealth representative stated that she would need a minute to check the system. The MassHealth representative stated that the MassHealth system shows the appellant's income was 90.77% of the federal poverty level (FPL) at that time. The Hearing Officer asked what the dollar amount was for the appellant's income that amounted to 90.77% of the FPL. The MassHealth representative stated that the appellant's income was listed as self employment income totaling \$2,500.00 a month. The MassHealth representative stated that the MassHealth system was showing the appellant's income as 90.77% of the FPL and 188% of the FPL. The Hearing Officer noted that the income limit for MassHealth CarePlus is 133% of the FPL and the MassHealth representative stated that 133% of the FPL for a family of one is \$1,616.00 a

month. The Hearing Officer pointed out that 133% of the FPL for a family of one was \$1,507.00 in 2022, and the appellant's income of \$2,500.00, as reported by MassHealth, exceeds this amount. The Hearing Officer again asked what the appellant's income was at the time of the approval for MassHealth CarePlus in September, 2022. The MassHealth representative stated that it appeared the appellant was on the Health Connector. The Hearing Officer pointed out that the appellant was opened on MassHealth CarePlus and presumably income below 133% of the FPL was verified in MassHealth's system at that time. The Hearing Officer asked what income was used by MassHealth to make the determination of eligibility for CarePlus. The MassHealth representative stated that a renewal was completed on October 9, 2022, and the MassHealth system upgraded the appellant's case to CarePlus. The MassHealth representative stated that that MassHealth's system shows the appellant self reported self employment income totaling \$2,500.00 a month. The MassHealth representative stated that the MassHealth system shows the appellant's income was 90.77% of the FPL in October, 2022 and was also showing 188% of the FPL. The Hearing Officer noted that the listed income of \$2,500.00 not only did not match 90% of the FPL, but, in addition, exceeded 188% of the FPL in 2022, thus it was not clear as to how MassHealth approved the appellant for MassHealth CarePlus in October, 2022. The Hearing Officer asked if MassHealth took any deductions from the \$2,500.00 self employment income and the MassHealth representative stated that she would check to see if deductions were taken. The MassHealth representative stated that applicants/members are supposed to report net self employment. The MassHealth representative stated that the MassHealth system reports the income was 90.77% FPL, and, per the system, the appellant reported income of 188% of the FPL in October, 2022. The Hearing Officer pointed out that the income amounts do not make sense as \$2,500.00 a month is neither 90% of the FPL nor 188% of the FPL, and the income of \$2,500.00 exceeds the income limit for MassHealth CarePlus.

The MassHealth representative stated that the appellant called MassHealth to disenroll from MassHealth on December 12, 2022. The MassHealth representative stated that MassHealth updated the appellant's income on March 30, 2023, and the system shows the income as 187.97% of the FPL at that time. The MassHealth representative stated that more updates occurred on March 30, 2023 first showing income of 193.38% of the FPL, and then 207.03% of the FPL. The MassHealth representative stated that another worker updated the appellant's case on April 13, 2023 and listed income of 187.97% of the FPL. The appellant was approved for Health Safety Net and a ConnectorCare plan by notice dated April 13, 2023. (Exhibit 2). The Hearing Officer noted that the April 13, 2023 MassHealth notice lists the appellant's income as 187.97% of the FPL. The Hearing Officer asked the MassHealth representative what amount MassHealth had for the appellant's verified income in April, 2023. The MassHealth representative stated that the MassHealth system shows self employment income of \$1,084.58 and Social Security income of \$1,570.00 for total income of \$ 2,344.58. The Hearing Officer pointed out that \$1,084.58 plus \$1,570.00 equals \$2,654.58, not \$2,344.58. The MassHealth representative stated that the self reported income on April 13, 2023 was \$2,344.58, so there may have been deductions taken. The Hearing Officer asked how MassHealth calculated the income of \$2,344.58 from the reported self employment income of \$1,084.58 and the Social Security income of \$1,570.00. The Hearing Officer

noted further that both the incomes of \$2,654.58 and \$2,344.58 exceed 200% of the FPL (\$2,430.00 for a family of one) and asked how MassHealth determined the income was 187.97% of the FPL in April, 2023. The MassHealth representative stated that she is providing the numbers she is seeing on the screen. The MassHealth representative stated that on April 18, 2023, the appellant's income was verified in the system as \$1,084.58 in self employment and \$1,570.00 in Social Security income and she can see deductions were taken. The Hearing Officer asked if \$1,084.58 was the net self employment income, and if not, what was that amount. The MassHealth representative asked for a moment to figure it out. The Hearing Officer asked the MassHealth representative to do the calculation and report the net self employment income used by MassHealth in making the appellant's eligibility determinations.

While the MassHealth representative was calculating the appellant's net self employment income, the Hearing Officer turned to the appellant for her testimony. The appellant testified that she was open on a ConnectorCare plan prior to September, 2022, and then began receiving MassHealth notifications, including one stating she was being dropped from the ConnectorCare plan. The appellant stated that she believed the MassHealth notifications were sent in error since she did not apply for MassHealth and had not recently submitted anything to MassHealth. The appellant contacted customer service for the Health Connector, but they were unable to provide her with information regarding why she was dropped from her ConnectorCare plan. (Testimony). The appellant testified that she panicked and purchased what she thought was a subsidized health insurance plan from a vendor. After a while, the appellant realized it was not really a health insurance plan, so she canceled such plan and purchased a more comprehensive plan, that she believed to be a state sponsored health insurance plan. (Testimony). The appellant stated that the representative for the health insurance plan told her she would need to cancel MassHealth to stay on the plan. The appellant contacted MassHealth on December 12, 2022 and asked that her MassHealth be terminated. (Testimony). The appellant testified that she broke her wrist in January, 2023 and, after receiving multiple bills, realized her health insurance plan did not provide adequate coverage. The appellant contacted the Health Connector again and was told that her MassHealth or ConnectorCare coverage could possibly be reinstated retroactively. The appellant stated that after she did not receive anything in the mail from the Connector, she called the Health Connector again in March, 2023 and was told she was eligible for Health Safety Net, but not for ConnectorCare. The appellant stated that during another phone call with MassHealth, her eligibility for ConnectorCare was activated, but she didn't hear anything more and she called MassHealth again. The appellant stated that after countless phone calls, she received the approval notice for ConnectorCare and was enrolled as of May 1, 2023. The appellant stated that if she had known that she did not need to cancel MassHealth coverage, in order to be on the private health insurance, or that canceling MassHealth would not reinstate her ConnectorCare plan, she would not have disenrolled from MassHealth in December, 2022.

The appellant testified that she began receiving Social Security retirement benefits in October, 2022 and does not have Medicare coverage at this time. The appellant stated that prior to October, 2022, her only income was her self employment income. The appellant testified that her

net self employment income, after deductions and business expenses, averages to \$1,084.00 a month and \$1,084.00 is the net monthly amount listed on her tax return. The appellant stated that she reported this net self employment income to MassHealth on April 13, 2023.

After reviewing the MassHealth system, the MassHealth representative reported that the appellant's net self employment income is \$774.00 a month. The MassHealth representative stated that \$3,457.00 in annual health insurance premiums, and \$263.00 for contributions to self employment, were deducted from the appellant's annual self employment income. The MassHealth representative stated that the appellant's annual self employment income is \$9,288.00. The Hearing Officer ask how such amount was calculated and the MassHealth representative responded that the appellant's self employment income of \$1,084.00 was multiplied by 12, and from that amount, \$13,008.00, \$3,457.00 in annual health costs, and \$263.00 for contributions to self employment, were deducted for a net annual amount of \$9,288.00. The MassHealth representative stated that the net monthly self employment of \$774.00 ($\$9,288/12$) was added to the Social Security income of \$1,570.00, for total countable monthly income of \$2,344.00. The Hearing Officer noted that even the income of \$2,344.00 a month exceeds 187.97% of the FPL, ($190\% = \$2,309.00$ a month) so it still wasn't clear how MassHealth determined the FPL of 187.97%. The Hearing Officer noted that MassHealth should be able to provide the exact calculation as to how the appellant's percentage of the FPL was determined. The MassHealth representative stated that she never had to provide the deductions calculation before, and never had to provide documentation of appeal prep for a hearing before. The Hearing Officer noted that it was still not clear how the appellant was approved for MassHealth CarePlus because the appellant's October, 2022 income of \$2,500.00, as reported by MassHealth, exceeds 133% of the FPL.

The Hearing Officer asked the MassHealth representative if MassHealth would reinstate the appellant's CarePlus retroactive to December 26, 2022 and protect it under the Federal Public Health Emergency (FPHE) until May 1, 2023 when she enrolled with the ConnectorCare plan. The MassHealth representative stated that retroactive coverage could only be done through a Board of Hearings decision and she could not go back as far as December, 2022. The MassHealth representative stated that she did not have authority to reinstate the appellant's CarePlus and only an appeal process could do that. The Hearing Officer asked the MassHealth representative to check with a supervisor or manager to see if anything could be done for the appellant and the MassHealth representative stated that she would inquire into this. The MassHealth representative stated that the PHE ended March 31, 2023 and as of April 1, 2023, MassHealth protections have been taken away.

After the hearing, the MassHealth representative's manager submitted an email stating that MassHealth took the appropriate action. (Exhibit 6) The manager noted that "consideration for retroactive coverage reinstatement of CarePlus benefits is dependent on CMS guidance and FPHE continuous coverage provisions [and] [p]ost review of these relevant guidelines a decision can be rendered regarding relevance to this particular case." (Exhibit 6). The manager wrote "a

precedent for retroactive coverage in similar situation has not been established and is not within MEC management purview to make that decision.” (Exhibit 6).

Findings of Fact

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

1. The appellant is under age 65 and was open on MassHealth CarePlus with a start date of September 29, 2022.
2. By MassHealth notice dated December 12, 2022, the appellant was terminated from MassHealth Care Plus as of December 26, 2022 because she “withdrew the application”.
3. By MassHealth notice dated April 13, 2023, MassHealth determined that the appellant was not eligible for MassHealth based on income equal to 187.97% of the FPL, but was eligible for a ConnectorCare plan.
4. The appellant’s MMIS screen shows that she was on a subsidized Health Connector plan from 2019 through November 26, 2021; the appellant was then open on MassHealth CarePlus from September 29, 2022 through December 26, 2022; the appellant was then approved for a ConnectorCare plan as of March 20, 2023; the appellant was enrolled in a ConnectorCare plan as of May 1, 2023.
5. The MassHealth system showed the appellant’s income was 90.77% of the FPL at the time she was approved for CarePlus in October, 2022.
6. The MassHealth representative stated that the appellant’s income was listed as self employment income of \$2,500.00 a month at the time she was approved for MassHealth CarePlus in October, 2022.
7. 133% of the FPL for a family of one is \$1,616.00 a month, and 133% of the FPL for a family of one was \$1,507.00 a month in 2022.
8. On October 9, 2022, MassHealth automatically upgraded the appellant’s case to MassHealth CarePlus, retroactive to September 29, 2022.
9. The appellant did not provide any information to MassHealth or the Health Connector in October, 2022.
10. Prior to October 9, 2022, the appellant was open on a subsidized ConnectorCare health plan.
11. On December 12, 2022, the appellant called MassHealth to disenroll from MassHealth

because she believed in doing so, she would be reinstated on her ConnectorCare plan.

12. The appellant purchased what she believed was a state sponsored health insurance plan.
13. The appellant broke her wrist in January, 2023 and learned her health insurance plan did not provide adequate coverage when she started receiving bills.
14. On March 30, 2023, MassHealth updated the appellant's income to 193.38% of the FPL, then to 207.03% of the FPL, and finally to 187.97% FPL.
15. MassHealth updated the appellant's case on April 13, 2023 and listed income of 187.97% of the FPL; the appellant was approved for Health Safety Net and a ConnectorCare plan by notice dated April 13, 2023.
16. On April 13, 2023, the appellant reported net self employment income of \$1,084.58 and Social Security income of \$1,570.00; the appellant began receiving Social Security retirement benefits in October, 2022.
17. 200% of the FPL is \$2,430.00 for a family of one.
18. The appellant does have Medicare coverage.
19. After reviewing the MassHealth system, the MassHealth representative reported that the appellant's net self employment income was \$774.00 a month; the net self employment income was calculated by deducting annual health costs of \$3,457.00, and \$263.00 for annual contribution to self employment, from the annual self employment income of \$13,008.00 (\$1,084 x 12).
20. MassHealth determined that the appellant's net monthly self employment income of \$774.00 and monthly Social Security income of \$1,570.00, totaled \$2,344.00 a month.

Analysis and Conclusions of Law

Voluntary Withdrawal The applicant or authorized representative may voluntarily withdraw his or her application for MassHealth. (130 CMR 502.009).

MassHealth CarePlus

(A) Overview

(1) 130 CMR 505.008 contains the categorical requirements and financial standards for MassHealth CarePlus. This coverage type provides coverage to adults 21 through 64 years of age.

(2) Persons eligible for MassHealth CarePlus direct coverage are eligible for medical benefits, as described in 130 CMR 450.105(B): *MassHealth CarePlus* and 130 CMR 508.000: *Managed Care Requirements* and must meet the following conditions.

- (a) The individual is an adult 21 through 64 years of age.
- (b) The individual is a citizen, as described in 130 CMR 504.002: *U.S. Citizens*, or a qualified noncitizen, as described in 130 CMR 504.003(A)(1): *Qualified Noncitizens*.
- (c) The individual's modified adjusted gross income of the MassHealth MAGI household is less than or equal to 133 percent of the federal poverty level.
- (d) The individual is ineligible for MassHealth Standard.
- (e) The adult complies with 130 CMR 505.008(C).
- (f) The individual is not enrolled in or eligible for Medicare Parts A or B.

(130 CMR 505.008(A)).

Deductions. The following are allowable deductions from countable income when determining MAGI:

- (1) educator expenses;
- (2) reservist/performance artist/fee-based government official expenses;
- (3) health savings account;
- (4) moving expenses;
- (5) self-employment tax;
- (6) self-employment retirement account;
- (7) penalty on early withdrawal of savings;
- (8) alimony paid to a former spouse;
- (9) individual retirement account (IRA);
- (10) student loan interest; and
- (11) higher education tuition and fees.

(130 CMR 506.003(D)).

Financial eligibility for coverage types that are determined using the MassHealth MAGI household rules and the MassHealth Disabled Adult household rules is determined by comparing the sum of all countable income, less deductions for the individual's household as described at 130 CMR 506.002, with the applicable income standard for the specific coverage type. In determining monthly income, the MassHealth agency multiplies average weekly income by 4.333. Five percentage points of the current federal poverty level (FPL) is subtracted from the applicable household total countable income to determine eligibility of the individual under the coverage type with the highest income standard. (130 CMR 506.007(A)).

Eligibility Operations Memo 22-10 dated August 2022, entitled "Updated MassHealth Response to Coronavirus Disease (COVID-19)" states the following:

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.

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

- Individuals may still experience changes in aid categories when they are within the same coverage type.
- Premium bills will continue to be adjusted to ensure households do not experience premium increases.

Members who were protected from coverage loss or downgrade during the FPHE will not be subject to adverse action on their case after the FPHE ends until they go through a full MassHealth renewal after the FPHE ends.

Although the appellant's CarePlus coverage should have been protected through the end of the FPHE, and continued until a full MassHealth renewal after FPHE ended, the appellant requested that her coverage be terminated on December 12, 2022. Requesting termination of eligibility is

one of the limited circumstances under which MassHealth is not required to protect benefits through the end of the FPHE. The appellant testified that she disenrolled mistakenly believing that her ConnectorCare plan would be reinstated as a result. Although the appellant appealed the December 12, 2022 termination notice timely, MassHealth would not retroactively reinstate her benefits for the remaining FPHE period.

Prior to October, 2022, the appellant was open on a ConnectorCare health insurance plan through Tufts. The case is somewhat confusing as the ConnectorCare coverage is not showing on MMIS. The appellant testified that she had a Tufts ConnectorCare plan at the time of the October, 2022 upgrade. MassHealth upgraded the appellant's case to CarePlus in October, 2022 without any submission from the appellant to trigger such upgrade, thus the appellant must have had an active ConnectorCare case at that time. Since a member cannot be open on both MassHealth and a ConnectorCare plan at the same time, MassHealth terminated the appellant's ConnectorCare plan.

The MassHealth representative stated that MassHealth used income of \$2,500.00 in making its October, 2022 determination. Such income exceeds the limit for CarePlus for a one person household, so it follows that MassHealth did not approve the appellant using that income amount. The appellant testified that her Social Security income began in October, 2022, and her self employment income at that time was \$1,084.00. The appellant's self employment income alone is below the 133% FPL income limit for CarePlus, so perhaps MassHealth automatically upgraded her before her Social Security income began. Although if that is the case, it is curious why the appellant was not automatically upgraded prior to September, 2022, since the self employment income was her only income prior to October, 2022. Regardless, MassHealth upgraded the appellant to CarePlus effective September 29, 2022. Such coverage was terminated by notice dated December 12, 2022 and the appellant timely appealed that notice, testifying that she called to cancel her MassHealth in error as she did not understand that such action would also preclude her from getting her ConnectorCare plan back. I find that this is a reasonable mistake. Based on the appellant's testimony that she mistakenly requested to disenroll from MassHealth, I determine that the reason for MassHealth's termination notice dated December 12, 2022 no longer holds true. The appellant timely appealed the December 12, 2022 termination and because the reason for the termination no longer holds true, MassHealth shall rescind the December 12, 2022 notice and reinstate the appellant's MassHealth CarePlus benefits retroactive to the termination date of December 26, 2022. MassHealth did not make a substantive determination of eligibility when it terminated the appellant's MassHealth benefits in December, 2022, because MassHealth coverage was still protected under the FPHE at that time. The appellant's CarePlus benefits would have remained in place until MassHealth conducted a full MassHealth review after the FPHE ended.

MassHealth shall rescind the notice dated December 12, 2022 and reinstate the appellant's CarePlus benefits retroactive to December 26, 2022. It would follow that MassHealth would then redetermine the appellant's eligibility after the end of the FHPE period, but it has already

done so, approving her for a ConnectorCare subsidized health plan which began May 1, 2023. Accordingly, the appellant's MassHealth CarePlus shall be reinstated for the limited period from December 26, 2022 through April 30, 2023. The appeal is approved.

The MassHealth representative could not testify as to how MassHealth calculated the incomes of 90.77% of the FPL, nor 187.97% of the FPL. The appellant's total countable income in April, 2023 was \$2,344.58. Pursuant to 130 CMR 506.007(A), five percentage points of the FPL, or \$60.75 for a family of one, is deducted from the income to determine MassHealth countable income. The appellant's countable income was thus \$2,283.83 (\$2,344.58 - \$60.75), which is 187.97% of the FPL. The appellant's self employment income in 2022 was \$1,084.00 and there was no Social Security prior to October, 2022. Five percentage points of the FPL in 2022 was \$56.65 for a one person household. The appellant's income of \$1,084.00, less \$56.65, equals \$1,027.35, which was 90.67% of the FPL for a one person household in 2022. The MassHealth representative stated that the income of \$2,500.00 was in the system for October, 2022. Such amount does not correspond to any of the reported FPLs and further research and review would have made for a more efficient hearing.

Order for MassHealth

Rescind the notice dated December 12, 2022 and reinstate the appellant's MassHealth CarePlus retroactive to December 26, 2022 through April 30, 2023.

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

Patricia Mullen
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center