

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2304324
Decision Date:	9/15/2023	Hearing Date:	06/26/2023
Hearing Officer:	Paul C. Moore	Record Closed:	09/06/2023

Appearance for Appellant:



pro se (by telephone)

Appearance for MassHealth:

Georges Jorcelin, Charlestown MassHealth
Enrollment Center (by telephone)

Spanish Interpreter:

Zully Rodriguez (Interpreters and Translators,
Inc.)



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied in part; Remanded	Issue:	Responsibility to Cooperate, Eligibility
Decision Date:	09/15/2023	Hearing Date:	06/26/2023
MassHealth Rep.:	Georges Jorcelin	Appellant Rep.:	Pro se
Hearing Location:	Board of Hearings (remote)		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

By a notice dated May 4, 2023, MassHealth notified the appellant that she was eligible for MassHealth Standard for a limited time only effective January 28, 2023 (Exh. 1).¹ The appellant filed a timely appeal with the Board of Hearings (BOH) on May 25, 2023 (130 CMR 610.015; Exh. 2). Limitations on the amount or scope of MassHealth assistance is valid grounds for appeal to the BOH (130 CMR 610.032).

Action Taken by MassHealth

MassHealth granted MassHealth Standard to the appellant for a limited time effective January 28, 2023.

Issue

The issue on appeal is whether MassHealth correctly granted MassHealth Standard to the

¹ The notice also states, "We need more information to decide if [the appellant and her family] can keep these benefits. [The appellant] will also get a Request for More Information letter and the List of Acceptable Documents for you and your family. Read this to find out what information we need, the due date and how [the appellant] can send it to us" (Exh. 1).

appellant on a limited basis.

Summary of Evidence

A MassHealth representative from the Charlestown MassHealth Enrollment Center testified by telephone that the appellant, who is under age 65 and has a minor child, has been enrolled in MassHealth Standard since January 28, 2023. The appellant, who is an undocumented alien, was granted one year of post-partum MassHealth coverage following the birth of her daughter on [REDACTED] (Testimony).² The appellant's daughter is also enrolled in MassHealth Standard. The appellant has no income, according to the MassHealth approval notice (Exh. 1).

The MassHealth representative noted that the appellant's coverage will continue until October 31, 2023, and then will likely change to MassHealth Limited because of the appellant's immigration status. He also noted that MassHealth recently requested that the appellant complete a non-custodial parent form and return it to MassHealth by August 2, 2023 (Testimony).

The MassHealth representative indicated that the completed non-custodial parent (NCP) form is needed to ensure that the appellant agrees to cooperate with MassHealth and with the Massachusetts Child Support Enforcement Division of the Department of Revenue in efforts to obtain medical support for her daughter from the non-custodial parent (Testimony).

The appellant, through a Spanish interpreter, testified that she submitted the completed NCP form to MassHealth by fax on the Friday prior to the hearing. She testified that she does not have a "green card" (Testimony).

The MassHealth representative testified that he was unable to locate the completed NCP form in the MassHealth computer system. At the close of the hearing, the hearing officer agreed to keep the record of this appeal open until July 7, 2023 for the MassHealth representative to locate the NCP form in the computer system, and/or for the appellant to fax the completed document again to MassHealth for its review (Exh. 4).

On July 12, 2023, the MassHealth representative reported to the hearing officer, by e-mail, that he had not yet received a copy of the completed NCP form (Exh. 5). The hearing officer extended the record-open period until August 2, 2023 for the appellant to submit the completed NCP form (Exh. 6).

On August 4, 2023, the MassHealth representative reported the following to the hearing officer:

² There is no evidence why the appellant's MassHealth coverage did not commence on [REDACTED], the date of her daughter's birth.

{T}he [appellant] sent us an incomplete noncustodial form. . . . [the NCP form] does not include the father's info.

(Exh. 7)

Thereafter, the hearing officer extended the record-open period again, until September 1, 2023, for the appellant to submit the correctly-completed NCP Form to MassHealth (Exh. 8).

On September 6, 2023, the MassHealth representative advised via e-mail to the hearing officer that he had not received the correctly-completed NCP Form (Exh. 9).

Findings of Fact

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

1. The appellant is under age 65, is enrolled in MassHealth Standard, and lives in a household of two (Testimony).
2. MassHealth sent the appellant a notice dated May 4, 2023, apprising her that she was eligible for MassHealth Standard for a limited time only effective January 28, 2023 (Exh. 1)
3. The appellant filed a timely appeal with the BOH on May 25, 2023 (Exh. 2).
4. The appellant gave birth to a daughter on [REDACTED] (Testimony).
5. The appellant does not have a "green card" (Testimony).
6. The appellant has no income (Exh. 1).
7. MassHealth had requested that the appellant complete a non-custodial parent (NCP) form and send it to MassHealth (Testimony).
8. MassHealth had not received the NCP form as of the hearing date, June 26, 2023.
9. The hearing officer left the record of this appeal open until September 1, 2023 for the appellant to complete and submit the NCP form.
10. A correctly-completed NCP form was not submitted to MassHealth as of September 6, 2023 (Exh. 9).

Analysis and Conclusions of Law

Pursuant to MassHealth regulation 130 CMR 505.002(C):

Eligibility Requirements for Parents and Caretaker Relatives.

(1) A parent or caretaker relative of a child younger than 19 years old is eligible for MassHealth Standard coverage if

(a) the modified adjusted gross income of the MassHealth MAGI household is less than or equal to 133% of the federal poverty level (FPL);

(b) the individual is a citizen as described at 130 CMR 504.002: U.S. Citizens or a qualified noncitizen as described in 130 CMR 504.003(A)(1): Qualified Noncitizens; and

(c) 1. the parent lives with their children, and assumes primary responsibility for the child's care in the case of a parent who is separated or divorced, has custody of their children, or have children who are absent from home to attend school; or

2. the caretaker relative lives with children to whom they are related by blood, adoption, or marriage (including stepsiblings), or is a spouse or former spouse of one of those relatives, and assumes primary responsibility for the child's care, if neither parent lives in the home.

(2) The parent or caretaker relative complies with 130 CMR 505.002(M).

(Emphasis added)

Also, 130 CMR 505.002(D)(4) states in relevant part:

Eligibility for postpartum care for pregnant individuals who meet the requirements of 130 CMR 505.002(B)(2) and (3), (C) through (H), and (L) continues for 12 months following the termination of the pregnancy plus an additional period extending to the end of the month in which the 12-month period ends.

Regulation 130 CMR 504.003(A)(1) states as follows:

Qualified Noncitizens. There are two groups of qualified noncitizens:

(a) those who are qualified, regardless of when they entered the U.S. or how long they had a qualified status. Such individuals are

1. persons granted asylum under § 208 of the INA;

2. Refugees admitted under § 207 of the INA;

3. persons whose deportation has been withheld under § 243(h) or 241(b)(3) of the INA, as provided by § 5562 of the federal Balanced Budget Act of 1997;

4. veterans, their spouses, and their children:

a. veterans of the United States Armed Forces with an honorable discharge not related to their noncitizen status;

- b. Filipino war veterans who fought under U.S. command during WWII;
 - c. Hmong and Highland Lao veterans who are admitted for legal permanent residence (LPR) and who fought under U.S. command during the Vietnam War;
 - d. persons with noncitizen status on active duty in the U.S. Armed Forces, other than active duty for training; or
 - e. the spouse, unremarried surviving spouse, or unmarried dependent children of the noncitizen described in 130 CMR 504.003(A)(1)(a)4.a. through d.;
 - 5. Conditional Entrants under § 203(a)(7) of the INA in effect before April 1, 1980;
 - 6. persons who entered as Cuban/Haitian entrants under § 501(e) of the Refugee Education Assistance Act of 1980;
 - 7. Native Americans with at least 50% American Indian blood who were born in Canada pursuant to § 289 of the INA or other tribal members born in territories outside of the U.S. pursuant to 25 U.S.C. 450b(e), under Medicaid;
 - 8. Amerasians as described in § 402(a)(2)(A)(i)(V) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA);
 - 9. Victims of severe forms of trafficking; and spouse, child, sibling or parent of the victim, in accordance with the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106-386);
 - 10. Iraqi Special Immigrants granted special immigrant status under § 101(a)(27) of the Immigration and Nationality Act, pursuant to § 1244 of Public Law 110-181 or § 525 of Public Law 110-161;
 - 11. Afghan Special Immigrants granted special immigrant status under § 101(a)(27) of the Immigration and Nationality Act, pursuant to § 525 of Public Law 110-161; or
 - 12. Migrants from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau who legally reside in the United States pursuant to a series of treaties with the United States known as the Compacts of Free Association (COFA), under Medicaid.
- a. COFA migrants who adjust to legal permanent residence (LPR) status will have a special five-year bar rule applied. The individual will be subject to the special five-year bar rule, unless they also have or had a status listed at 130 CMR 518.003(A)(1)(a). The special five-year bar rule that applies will depend upon the date the individual adjusted to LPR status.
 - b. COFA migrants who adjust to LPR status after the change of law on December 27, 2020, will be able to use the date they began residing in the United States as a COFA migrant or December 27, 2020, whichever is later, as the first day for purposes of meeting the five-year bar.
 - c. COFA migrants who adjusted to LPR status before the change of law on December 27, 2020, will have the five-year bar period begin on the date that they adjusted to LPR.
- (b) noncitizens who are qualified based on having a qualified status identified in 130 CMR 504.003(A)(1)(b)1. and who have satisfied one of the conditions listed in 130 CMR 504.003(A)(1)(b)2. Such individuals

1. have one or more of the following statuses:
 - a. admitted for legal permanent residence (LPR) under the Immigration and Nationality Act (INA); or
 - b. granted parole for at least one year under section 212(d)(5) of the INA; or
 - c. are the battered spouse, battered child, or child of battered parent or parent of battered child who meets the criteria of section 431(c) of PRWORA; and also
2. satisfy at least one of the three following conditions:
 - a. they have had a status in 130 CMR 504.003(A)(1)(b)1. for five or more years (a battered noncitizen attains this status when the petition is accepted as establishing a prima facie case);
 - b. they entered the U.S. prior to August 22, 1996, regardless of status at the time of entry, and have been continuously present in the U.S. until attaining a status listed in 130 CMR 504.003(A)(1)(b)1.; for this purpose an individual is deemed continuously present who has been absent from the U.S. for no more than 30 consecutive days or 90 nonconsecutive days prior to attaining a status listed in 130 CMR 504.003(A)(1)(b)1.; or
 - c. they also have or had a status listed in 130 CMR 504.003(A)(1)(a).

The evidence in the record shows that the appellant is not a citizen of the United States. In addition, there is no evidence that she meets any of the above-cited criteria to be considered a qualified non-citizen.

However, regardless of citizenship status, the appellant is entitled to one year of post-partum MassHealth Standard coverage after the birth of her daughter in October, 2022, per 130 CMR 505.002(D)(4). Because of her immigration status, she will not qualify for MassHealth Standard as a parent under 130 CMR 505.002(C) after October 31, 2023.

Next, pursuant to 130 CMR 501.010, "Responsibilities of Applicants and Members:"

(A) Responsibility to Cooperate. The applicant or member must cooperate with the MassHealth agency in providing information necessary to establish and maintain eligibility, and must comply with all the rules and regulations of MassHealth, including recovery and obtaining or maintaining available health insurance. The MassHealth agency may request corroborative information necessary to maintain eligibility, including obtaining or maintaining available health insurance. **The applicant or member must supply such information within 30 days of the receipt of the agency's request. If the member does not cooperate, MassHealth benefits may be terminated.**

(Emphasis added)

Here, the appellant has not cooperated with MassHealth in filing the requested NCP Form.

Despite several extensions of the record-open period by the hearing officer, the appellant has failed to submit the correctly-completed form.

Therefore, MassHealth's decision to approve the appellant for MassHealth Standard coverage only through October 31, 2023 was correct.

The appeal is DENIED in part, and REMANDED to MassHealth.

Order for MassHealth

Proceed with the planned downgrade of coverage for the appellant from Standard to Limited effective November 1, 2023. Issue a notice to the appellant to this effect, without appeal rights.

If the appellant submits the requested NCP Form and/or additional information about her immigration status to MassHealth on or before October 31, 2023, determine whether the appellant is eligible for an upgrade in coverage, and issue a new eligibility decision to the appellant, with appeal rights.

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.

Implementation of this Decision

If you experience problems with the implementation of this decision, you should report this in writing to your local MassHealth Enrollment Center, or to the Director of the Board of Hearings.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Nga Tran, Appeals Coordinator, Charlestown MEC