

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2304429
Decision Date:	7/24/2023	Hearing Date:	06/15/2023
Hearing Officer:	Susan Burgess-Cox	Record Open to:	06/30/2023

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Kelly Souza



*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:	Eligibility
Decision Date:	7/24/2023	Hearing Date:	06/15/2023
MassHealth's Rep.:	Kelly Souza	Appellant's Rep.:	Pro se
Hearing Location:	All Parties Appeared by Telephone	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 May 23, 2023, MassHealth notified the appellant that they are ending coverage because she has more countable income than MassHealth allows. (130 CMR 519.000; Exhibit 1). The appellant needs to meet a deductible in the amount of \$15,766 to become eligible for MassHealth Standard. (130 CMR 519.000; Exhibit 1). The appellant appealed this decision in a timely manner on May 30, 2023. (130 CMR 610.015; Exhibit 2). Denial of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified the appellant that she is not eligible for MassHealth and has a deductible of \$15,766 to become eligible for MassHealth Standard.

Issue

Whether MassHealth was correct in their decision regarding the appellant's eligibility.

Summary of Evidence

The appellant is a disabled adult over 65-years of age is in a family group of two and has a gross monthly income of \$3,551. This places the appellant at approximately 216% of the federal poverty level. Since appellant's income exceeds 133% of the federal poverty level which is \$2,186 each month for a family group of two, the agency determined that she is not eligible for MassHealth Standard. The MassHealth representative testified that the appellant could become eligible if she presents medical bills to meet a deductible in the amount of \$15,766 or can provide information showing that she is working at least 40 hours each month. (Testimony; Exhibit 1).

The appellant did not dispute the gross income amount presented by MassHealth. The appellant testified that she has been eligible for MassHealth CommonHealth in the past and has not been working since 2010 so was not sure why her coverage changed. The appellant asked MassHealth to consider other expenses, such as car payments, in determining eligibility. The MassHealth representative responded that MassHealth looks to the gross income of an applicant or member and does not consider deductions for Medicare premiums or non-medical expenses in determining eligibility. The MassHealth representative noted that the appellant could present medical bills to meet a deductible and qualify for MassHealth Standard as indicated on the notice. The appellant did not provide testimony or evidence regarding the receipt of any home-based services.

The MassHealth representative also noted that the regulations governing eligibility change when an individual turns 65. The appellant turned 65 during the time that the agency had COVID protections in place. For that reason, the appellant's coverage did not change until after that protection was lifted and MassHealth began redetermining members' eligibility for MassHealth.

The MassHealth representative noted that the appellant's coverage is still in effect due to her filing of the appeal. At hearing, the MassHealth representative could not present the reasons for the agency determining the appellant eligible for CommonHealth in the past if she was not working. The record was held open for MassHealth to see if the agency had a record of the appellant working or meeting a deductible to become eligible for MassHealth CommonHealth. (Exhibit 4).

During the record open period, MassHealth reviewed the appellant's case and noted that the records do not indicate that the appellant was deemed a working disabled adult in the past and neither party noted if the appellant met a deductible in the past. The MassHealth representative noted that the appellant needs to meet a deductible, as stated in the notice on appeal, or present documents showing that she is working at least 40 hours each month if she wants to be deemed eligible for MassHealth Standard or CommonHealth. The MassHealth representative also noted that the appellant could be eligible as a frail elder if she undergoes an assessment and presents it to MassHealth to review and consider in determining eligibility.

Findings of Fact

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

1. The appellant is over 65-years old and in a family group of 2.
2. The appellant's family group has a gross monthly income of \$3,551 each month.
3. The appellant has not received certification that she is in need of nursing facility services or eligible to receive certain services at home.
4. The appellant is not working.

Analysis and Conclusions of Law

MassHealth administers and is responsible for delivery of healthcare benefits to MassHealth members. (130 CMR 515.002). 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for non-institutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by M.G.L. c. 118E, and certain Medicare beneficiaries. (130 CMR 515.002(B)). The appellant falls under these requirements since he is over 65-years old. (130 CMR 515.002). Under these requirements, the type of coverage for which a person is eligible is based on their income and assets, as described in 130 CMR 519.000 and 520.000. (130 CMR 515.003(B)).

Financial eligibility for MassHealth is based on financial responsibility, countable income, and countable assets. (130 CMR 520.001). In determining eligibility for MassHealth, the total countable-income amount and countable assets of the individual and the spouse who are living together is compared to an income standard and asset limit. (130 CMR 520.002(A)). An individual and the spouse's gross earned and unearned income less certain business expenses and standard income deductions is referred to as the countable income amount. (130 CMR 520.009(A)(1)). In determining gross monthly income, MassHealth multiplies the average weekly income by 4.333 unless the income is monthly. (130 CMR 520.009(A)(1)). For community residents, the countable-income amount is compared to the applicable income standard to determine the individual's financial eligibility. (130 CMR 520.009(A)(2)).

The types of income that are considered in the determination of eligibility are described in 130 CMR 520.009, 520.018, 520.019, and 520.021 through 520.024. (130 CMR 520.009(A)(4)). These include income to which the applicant, member, or spouse would be entitled whether or not actually received when failure to receive such income results from the action or inaction of the applicant, member, spouse, or person acting on his or her behalf. (130 CMR 520.009(A)(4)).

MassHealth considers both earned income and unearned income as countable in determining eligibility. (130 CMR 520.009). The appellant only receives unearned income.

Unearned income includes, but is not limited to, social security benefits, railroad retirement benefits, pensions, annuities, federal veterans' benefits, rental income, interest, and dividend income. (130 CMR 520.009(D)). The applicant or member must verify gross unearned income. (130 CMR 520.009(D)). The appellant did not dispute that she and her spouse have a total gross monthly income of \$3,551 with benefits received by the Social Security Administration.

For individuals residing in the community who are over 65-years of age, MassHealth allows a standard deduction of \$20 from total gross unearned income per individual or married couple. (130 CMR 520.013). This deduction results in a countable income of \$3,531 for the appellant and income at approximately 215% of the federal poverty level. MassHealth allows additional deductions for unearned income but only under certain circumstances which include receiving personal-care attendant services or being determined by MassHealth, through an initial screening or prior authorization, that such services are needed. (130 CMR 520.013). The appellant appeared by telephone on her own and did not provide evidence of undergoing a screening or prior authorization that personal care services are needed. MassHealth made the correct deductions to the appellant's income.

Pursuant to 130 CMR 519.005(A), noninstitutionalized individuals aged 65 and older may establish eligibility for MassHealth Standard coverage provided they meet the following requirements:

- 1) the countable-income amount, as defined in 130 CMR 520.009, of the individual or couple is less than or equal to 100 percent of the federal poverty level; and
- 2) the countable assets of an individual are \$2,000 or less, and those of a married couple living together are \$3,000 or less.

The appellant's countable income of \$3,531 exceeds 100% of the federal-poverty level for a family of two. (130 CMR 520.000). Therefore, the appellant is not eligible for MassHealth Standard. Individuals whose income, assets, or both exceed the standards set forth in 130 CMR 519.005(A) may establish eligibility for MassHealth Standard by reducing their assets in accordance with 130 CMR 520.004, meeting a deductible as described at 130 CMR 520.028 et seq., or both. (130 CMR 519.005(B)). MassHealth correctly determined that to become eligible the appellant would have to meet a deductible in the amount of \$15,766. Therefore, until she meets that deductible, the appellant is not eligible for MassHealth Standard.

Medicare Savings Program (MSP) Buy-In for Qualified Medicare Beneficiaries (QMB) is available to Medical beneficiaries who:

- (1) are entitled to hospital benefits under Medicare Part A;

- (2) are applying for only MSP benefits and not full Medicaid, and have a countable income amount (including the income of the spouse with whom he or she lives) that is less than or equal to 190% 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 & 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 130 CMR 517.000: MassHealth: Universal Eligibility Requirements, as applicable. (130 CMR 519.010(A)).

Since the appellant's income exceeds 190% of the federal poverty level, she is not eligible for the Medicare Savings Program (MSP) Buy-In for Qualified Medicare Beneficiaries (QMB). (130 CMR 519.010(A)).

The Medicare Savings Program (MSP) Buy-In for Specified Low Income Medicare Beneficiaries (SLMB) is available for Specified Low Income Beneficiaries who:

- (a) are entitled to hospital benefits under Medicare Part A;
- (b) have a countable income amount (including the income of the spouse with whom they live) greater than 190% and less than or equal to 210% of the federal poverty level;
- (c) are applying only for MSP benefits, and have countable assets less than or equal to two times the amount of allowable assets for Medicare Savings Programs as identified by the Centers & Medicare and Medicaid Services. Each calendar year, the allowable asset limits will be made available on MassHealth's website; and
- (d) meet the universal requirements of MassHealth benefits in accordance with 130 CMR 503.000: Health Care Reform: MassHealth: Universal Eligibility Requirements or 130 CMR 517.000: MassHealth: Universal Eligibility Requirements, as applicable. (130 CMR 519.011(A)(1)).

Since the appellant's income exceeds 210% of the federal-poverty level, she is not eligible for the MSP Buy-In for SLMB. (130 CMR 519.011(A)(1)).

The Medical Savings Program for Qualifying Individuals (QI) is available to Medicare beneficiaries who:

- (a) are entitled to hospital benefits under Medicare Part A;
- (b) have a countable income amount (including the income of the spouse with whom he or she lives) that is greater than 210% of the federal poverty level and less than or equal to 225% of the federal poverty level;
- (c) are applying only for MSP benefits, and 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 will be made available on MassHealth's website; and
- (d) meet the universal requirements of MassHealth benefits in accordance with 130 CMR 503.000 or 130 CMR 517.000, as applicable. (130 CMR 519.011(B)).

While appellant's income is less than 225% of the federal poverty level, the records do not show that the appellant was applying only for MSP benefits.

Pursuant to 130 CMR 519.012, MassHealth CommonHealth for working disabled adults is available to community residents aged 65 and older in the same manner as they are available to those under age 65. This means they must meet the requirements of 505.004(B)(2), (3), and (5) to be eligible for CommonHealth. (130 CMR 519.012(A)(1)). These requirements include:

- (2) being employed at least 40 hours per month, or if employed less than 40 hours per month, have been employed at least 240 hours in the six-month period immediately preceding the month of receipt of the application or MassHealth's eligibility review;
- (3) being permanently and totally disabled (except for engagement in substantial gainful activity) as defined in 130 CMR 501.001; and
- (5) being ineligible for MassHealth Standard. (130 CMR 519.012; 130 CMR 505.004(B)).

As MassHealth determined correctly, the appellant does not meet these requirements as she did not provide verification or testimony to demonstrate that she is employed at least 40 hours each month. (130 CMR 519.012; 130 CMR 505.004(B)).

The appellant can provide verification of employment at any time and MassHealth can make a new eligibility determination. Additionally, the appellant could become eligible for MassHealth Standard if she can provide medical bills to meet the deductible or provide evidence of undergoing a screening or prior authorization that personal care services are needed. Finally, the appellant may be eligible for one of the Medicare Savings Programs if that is a type of coverage which she may want to apply for.

The decision made by MassHealth was correct.

This 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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616