

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2304474
<b>Decision Date:</b>	7/7/2023	<b>Hearing Date:</b>	07/03/2023
<b>Hearing Officer:</b>	Christopher Jones		

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Anna Martinez – Tewksbury Ongoing



*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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Traditional – Eligibility
<b>Decision Date:</b>	7/7/2023	<b>Hearing Date:</b>	07/03/2023
<b>MassHealth’s Rep.:</b>	Anna Martinez	<b>Appellant’s Rep.:</b>	Pro se
<b>Hearing Location:</b>	Remote	<b>Aid Pending:</b>	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 1, 2023, MassHealth denied the appellant's application for MassHealth benefits because the appellant’s income was too high. (Exhibit 1; 130 CMR 505.004.) The appellant filed this appeal in a timely manner on June 1, 2023. (Exhibit 3; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

### Action Taken by MassHealth

MassHealth denied the appellant’s application for over-65 benefits because her income is too high.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 505.004, 519.005, and 519.012, in determining that the appellant is ineligible for MassHealth Standard and CommonHealth.

### Summary of Evidence

The appellant is a disabled individual filed an over-65 application about a month before her birthday. Because the Federal Public Health Emergency (“FPHE”) related to COVID-19 was still in

effect, the appellant's under-65 benefits were protected. MassHealth's representative testified that the appellant's application was not processed until May 1, 2023, after the FPHE was lifted.

The appellant receives Social Security benefits in the amount of \$2,090 per month, as well as an annuity payment of \$531.34 per month. MassHealth's representative explained the appellant is ineligible for MassHealth Standard because her income is over the federal poverty level. The appellant could become eligible for the CommonHealth benefit as a disabled adult if she was working at least 10 hours per week. MassHealth's representative confirmed that this employment did not need to be a formal arrangement; it could entail any task for which the appellant was paid. Their employer would need to sign a letter explaining what services the appellant was providing, confirming that the appellant was paid at least one dollar per hour, and that the appellant worked for at least 10 hours per week. The appellant was concerned about this requirement, as she did not believe she would be able to perform any work. She testified that she uses a walker to get around.

MassHealth's representative also testified that several unverified bank accounts associated with the appellant were identified. The testimony became very confused at this point. MassHealth's representative initially believed that the appellant had self-identified the bank accounts, but the appellant testified that she had never had accounts at the banks MassHealth identified. MassHealth's representative was eventually able to confirm that these accounts were identified through the agency's asset verification system, and one of them is listed as having over \$81,000. The appellant is not the sole account holder on either of the accounts, but at this point the appellant needs to verify what her relationship is to these accounts.

The appellant has a new application pending as of June 22. Based upon her income, she may be eligible for the Buy-in benefit to cover her Medicare premium, but she would need to complete her asset verifications. If she completes her asset verifications before September 24, 2023, MassHealth would be able to continue processing the June application.

## **Findings of Fact**

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

1. The appellant is a disabled individual who is 65 years of age or older. (Testimony by MassHealth's representative.)
2. The appellant receives \$2,090 per month in Social Security benefits and \$531.34 per month from an annuity. (Testimony by MassHealth's representative.)
3. The appellant's name appeared on two bank accounts during an asset verification match. One of these accounts held over \$81,000. (Testimony by MassHealth's representative.)

## Analysis and Conclusions of Law

MassHealth offers a variety of benefits based upon an individual's circumstances and finances. To qualify for MassHealth, an individual must fit into a category of eligibility and fall below a certain financial threshold. One of the major dividing lines for eligibility is the age of 65. Individuals aged 65 and older are generally governed by the regulations at 130 CMR 515.000-520.000, and those under 65 are typically determined by the regulations at 130 CMR 501.000-508.000. The requirements for receiving MassHealth Standard for individuals over 65 who are living in the community are:

### 519.005: Community Residents 65 Years of Age and Older

(A) Eligibility Requirements. Except as provided in 130 CMR 519.005(C), noninstitutionalized individuals 65 years of age 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: *Countable-Income Amount*, 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.

(B) Financial Standards Not Met. Except as provided in 130 CMR 519.005(C), 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: *Asset Reduction*, meeting a deductible as described at 130 CMR 520.028: *Eligibility for a Deductible* through 520.035: *Conclusion of the Deductible Process*, or both.

(130 CMR 519.005(A)-(B) (emphasis in **bold**).)

A disabled adult aged 65 or older may qualify for CommonHealth coverage with income in excess of the federal poverty level. However, CommonHealth coverage for individuals over 65 is only for "working disabled adults ... [which] means that eligible applicants must meet the requirements of 130 CMR 505.004(B)(2), (3) and (5) to be eligible for CommonHealth." (130 CMR 519.012(A)(1).) Those additional criteria are:

- (2) be 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) be permanently and totally disabled (except for engagement in substantial gainful activity) as defined in 130 CMR 501.001: Definition of Terms;

... [and]

(5) be ineligible for MassHealth Standard ... .

(130 CMR 505.004(B)(2), (3), (5).)

Medicare recipients may qualify for a Medicare Savings Program with income at or below 225% of the federal poverty level. (See 130 CMR 519.010-519.011; EOM 23-04 (Feb. 2023).) MassHealth refers to these benefits as “Buy-In” benefits, and the amount of assistance provided depends on the member’s income.

The financial rules set out at 130 CMR 520.000 explain that all of an individual’s “gross earned and unearned income less certain business expenses and standard income deductions” is countable, and “the countable-income amount is compared to the applicable income standard to determine the individual’s financial eligibility.” (130 CMR 520.009(A)(1)-(2).) There are only two income deductions for community residents with unearned income: (1) “a deduction of \$20 per individual or married couple” or (2) a larger deduction that is allowed if the individual “requires assistance from a personal care attendant.” (130 CMR 520.013(A)-(B).)

After the \$20 standard deduction, the appellant’s monthly income is \$2,601.34. This is equivalent to 214% of the federal poverty level of \$1,215.<sup>1</sup> This income would make the appellant eligible for MassHealth Buy-In for Qualifying Individuals, which would cover her monthly Medicare Parts A & B premium. (See 130 CMR 519.011(B).) However, at this stage she would first need to verify her assets are below \$18,180. (See EOM 23-04; 130 CMR 516.003.)

The appellant mentioned that she uses a walker to get around. If she requires physical assistance in the community, she may be eligible for a larger income deduction, but she would need to update her application to indicate that she requires Personal Care Assistance. Similarly, she may qualify for the Frail Elder Wavier. (See 130 CMR 519.007(B).) This coverage category allows MassHealth Standard to members with income up to 300% of the federal benefits rate, or \$2,742 per month. However, this benefit requires a separate application process along with a clinical assessment of the member’s status.

At this time, the appellant is not eligible for either MassHealth Standard or MassHealth CommonHealth. Her income is too high for MassHealth Standard, and she is not a “working disabled adult.” For these reasons, this appeal must be DENIED.

---

<sup>1</sup> The applicable federal poverty level data is published on MassHealth’s website. (See <https://www.mass.gov/doc/2023-masshealth-income-standards-and-federal-poverty-guidelines-0/download>; last visited July 6, 2023.)

## 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.

---

Christopher Jones  
Hearing Officer  
Board of Hearings

cc: MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957