

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2304537
Decision Date:	08/18/2023	Hearing Date:	July 13, 2023
Hearing Officer:	Brook Padgett		

Appellant Representative:




MassHealth Representative:
Christopher Champagne



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th floor
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Dismissed in part; Denied in part	Issue:	Buy-In Start Date 130 CMR 610.051 130 CMR 519.011
Decision Date:	08/18/2023	Hearing Date:	July 13, 2023
MassHealth Rep.:	C. Champagne	Appellant Rep.:	
Hearing Location:	Springfield		

Authority

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

Jurisdiction

The appellant received a notice dated June 01, 2023, stating: "MassHealth has decided you are eligible for Buy-In benefits. Effective date May 01, 2023." (Exhibit 1).

The appellant timely appealed the MassHealth action on June 02, 2023. (Exhibit 2).

Start date of benefits is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the appellant for Buy-In benefits beginning May 01, 2023.

Issue

Did MassHealth correctly determine the appellant's Buy-In start date?

Summary of Evidence

MassHealth testified the appellant submitted a Medicare Savings Program (MSP)¹ application on May 23, 2023, which was approved on June 01, 2023 with a start date of May 01, 2023. In preparation for the appeal, MassHealth stated the appellant's eligibility was approved retroactively to February 01, 2023.²

The appellant's representative stated that the appellant is requesting Buy-In approval as of January 01, 2023 (Buy-In pays the \$164.90 Medicaid Part B premium). The representative maintains that the appellant submitted an Application for Health Coverage for Seniors and People Needing Long Term Care Services (SACA-2 or SACA) application on November 16, 2022, which MassHealth reviewed; MassHealth, however, never notified the appellant of an eligibility determination. The appellant submitted an MSP application in May 2023 which MassHealth subsequently approved. The appellant is requesting MassHealth honor the appellant's initial application for coverage submitted on November 16, 2022. The appellant submitted into evidence a request for an appeal with additional documentation (Exhibit 4, p1-34).

MassHealth responded the appellant was ineligible for MassHealth Standard when he submitted the SACA application in November 2022 as he was over the income standard. The standard was raised from 165% of the federal poverty level (FPL) to 225% but not until January 01, 2023. MassHealth maintains the appellant's eligibility for the Buy-In program was not determined until the appellant submitted an MSP application. MassHealth stated MassHealth Operations Memorandum (Ops-Memo) 23-04³, explains effective January 01, 2023, the countable income limit for the QI program was increased to greater than 210% and less than or equal to 225% of the FPL. These amounts are specific to MSP and do not apply to individuals looking for full MassHealth coverage or full MassHealth coverage with MSP. The appellant submitted a SACA in November 2022 and it was not until the appellant completed the correct MSP application in May 2023 that his eligibility for the Buy-In program could be determined. MassHealth submitted into evidence Ops-memo 23-04. (Exhibit 5).

¹ Massachusetts offers three different MSP coverage types: Qualified Medicare Beneficiaries (QMB); Specified Low-Income Medicare Beneficiaries (SLMB); Qualifying Individuals (QI).

² 130 CMR 510.001 Eligibility Coverage Period. B (3) MassHealth Buy-in for QI coverage, in accordance with 130 CMR 519.011(B), begins with the month of application. Coverage may be retroactive up to three months before the month of application provided 1. the retroactive date does not extend into a calendar year in which the expenditure cap described at 130 CMR 519.011(B)(4) has been met; and 2. the applicant was not receiving MassHealth benefits under the Medicaid State Plan during the retroactive period. (b) Once determined eligible, a member who continues to meet the requirements of 130 CMR 519.011(B) is eligible for the balance of the calendar year. Such members are not adversely impacted by the provisions of 130 CMR 519.011(B)(4).

³ Eligibility Operations Memo 23-04, published on January 01, 2023. MassHealth MSP (MHBI) Application The MassHealth MSP application (MHBI) can be found at www.mass.gov/lists/applications-to-become-a-masshealth-member and should be used by individuals applying for MSP-only coverage. Applicants ages 65 or over who need to apply for full MassHealth coverage should use the Application for Health Coverage for Seniors and People Needing Long-Term-Care Services (SACA-2).

The appellant's representative responded that the appellant was never notified that he was required to submit an MSP application. Prior to the Ops-Memo 23-04 a SACA application would result in a determination for both SACA or MSP programs and there was no need to file a separate application. The representative maintains that while the Ops-Memo 23-04 states that MSP application *should* be used by individuals applying for MSP, it does not say it is required for a determination of eligibility. The representative argues state and federal regulations require MassHealth screen for coverage of all programs and it should not impose or restrict eligibility based on a change in an internal Ops-Memo. The representative stated he was requesting the MassHealth lack of determination regarding the November application be incorporated into this current appeal.

The MassHealth representative acknowledged the appellant would have been found eligible for MSP at the time of his November 2022 SACA application.

Findings of Fact

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

1. The appellant submitted an Application for Health Coverage for Seniors and People Needing Long Term Care Services (SACA) on November 16, 2022. (Testimony).
2. The appellant submitted a Medicare Savings Program (MSP) application on May 23, 2023. (Testimony).
3. The appellant was approved for the QI Buy-In on June 01, 2023, with a start date of May 01, 2023. (Exhibit 1).
4. The appellant appealed the start date of the QI Buy-In on June 02, 2023. (Exhibit 2).
5. MassHealth approved the appellant's QI Buy-In coverage retroactive to February 01, 2023. (Exhibit 2).

Analysis and Conclusions of Law

The appellant submitted an MSP application on May 23, 2023 and was approved for QI Buy-In with a start date retroactive to February 01, 2023. The appellant appealed the start date of the QI Buy-In on June 02, 2023, requesting coverage as of January 01, 2023, based on his submission of a SACA (long term care application) on November 16, 2022. The appellant argues that MassHealth has the responsibility to provide access to healthcare by determining eligibility for the coverage type that provides the most comprehensive benefits for an individual or family who may be eligible.

While MassHealth has the duty to determine eligibility for all MassHealth programs available to applicants regardless of the application;⁴ appealing the failure of MassHealth to make such a determination or to notify an individual of its failure to make such a determination is limited by the regulations. The appellant submitted a SACA application on November 01, 2022. MassHealth acknowledges that, in error, the appellant was never notified of any MassHealth determination regarding this application. The appellant submitted an MSP application and was approved for Buy-In coverage on June 01, 2023.

The appellant is attempting to use the June 01, 2023 MassHealth MSP approval to appeal the lack of response to his November 16, 2022 SACA application; the regulations, however, are clear that an individual has 60 days from the receipt of a notice to request an appeal if they disagree with a MassHealth action and 120 days from the date of application when the MassHealth agency fails to act on an application; the date of request for service when the MassHealth agency fails to act on such request; or the date of MassHealth agency action when the MassHealth agency fails to send written notice of the action. (130 CMR 610.015).⁵ The appellant filed an appeal on June 02, 2023 arguing his November 01, 2022 application was not timely reviewed. Since the request for an appeal of this MassHealth failure to act was not received by the Board of Hearings within the required 120 day time limit (the request was made 199 days after the SACA application) any request for an appeal regarding the MassHealth inaction is not filed timely must be dismissed.

Per the regulations QI Buy-in coverage begins with the month of application. MassHealth may approve coverage retroactive up to three months before the month of application provided coverage is retroactive only to the first day of the third month prior to the month of initial application and the individual would have been eligible at the time.⁶ After the initial determination MassHealth reviewed the appellant's application and approved the appellant's Buy-In coverage retroactive to February 01, 2023 which is three months prior to the month of initial MSP application on May 23, 2023. MassHealth correctly determined the appellant's QI Buy-in coverage and therefore any additional Buy-in coverage is denied.

⁴ 130 CMR 519.001: Introduction (C) Determining Eligibility. The MassHealth agency determines eligibility for the most comprehensive coverage available to the applicant, although the applicant has the right to choose to have eligibility determined only for Senior Buy-in or Buy-in coverage. If no choice is made by the applicant, the MassHealth agency determines eligibility for all available coverage types.

130 CMR 501.003: MassHealth Coverage Types (A) The MassHealth agency provides access to health care by determining eligibility for the coverage type that provides the most comprehensive benefits for an individual who may be eligible.

⁵ 130 CMR 610.015 (B) Time Limits Time Limitation on the Right of Appeal.

⁶ 130 CMR 519.011: MassHealth Buy-in (B) MassHealth Buy-in for Qualifying Individuals (QI).

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.

Brook Padgett
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Chris Champagne Springfield MEC