

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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|-------------------------|---------------|------------------------|-----------|
| Appeal Decision: | Approved | Appeal Number: | 2305023 |
| Decision Date: | 09/21/2023 | Hearing Date: | 7/28/2023 |
| Hearing Officer: | Cynthia Kopka | Record Open to: | 8/11/2023 |

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Matthew Hemberger, Premium Assistance
Georges Jorcelin, Charlestown 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

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|---------------------------|---|--------------------------|--------------------|
| Appeal Decision: | Approved | Issue: | Premium Assistance |
| Decision Date: | 09/21/2023 | Hearing Date: | 7/28/2023 |
| MassHealth's Rep.: | Matthew Hemberger and Georges Jorcelin | Appellant's Rep.: | Pro se |
| Hearing Location: | Charlestown (remote) | 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

By notice dated June 7, 2023, MassHealth terminated Appellant's premium assistance payments. Exhibit 1. Appellant filed this appeal in a timely manner on June 20, 2023. 130 CMR 610.015(B). Termination of assistance is a valid basis for appeal. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth terminated Appellant's premium assistance payments.

Issue

The appeal issue is whether MassHealth was correct in denying Appellant premium assistance.

Summary of Evidence

MassHealth was represented at remote hearing by an eligibility representative and a Premium Assistance representative. Appellant appeared by phone and submitted documents in support of the appeal. Exhibit 2. A summary of documentation and testimony follows.

Appellant's adult disabled child (hereinafter "the child") qualifies for MassHealth Standard benefits administered through the Social Security Administration (SSA) under Category 03. Because the child's benefit is not determined by MassHealth but by SSA, the income and household composition are not recorded in MassHealth's system. SSA lists the child's address as [REDACTED]

The child has been eligible for MassHealth Premium Assistance payments since 2001. The child is covered by Appellant's employer sponsored insurance, and Premium Assistance previously paid \$522.02 per month to Appellant for the full amount of his premium. After receiving Appellant's annual review on May 25, 2023, Premium Assistance determined that the child did not qualify for Premium Assistance payments. The review showed Appellant's address as [REDACTED]

[REDACTED] Citing 130 CMR 506.012(B)(2), Appellant does not qualify for premium assistance because his child, the MassHealth eligible member, does not reside with the policy holder and is not part of the premium billing family group (PBFGE). Therefore, on June 7, 2023, MassHealth notified Appellant that his Premium Assistance payments would be terminated (Case ID: PAP14). Exhibit 1.

Appellant testified that he and his spouse divorced in 2012. Both Appellant and his ex-wife are legal guardians to the child. Exhibit 2 at 6. As part of the custody arrangement, the child spends part of the time living with Appellant (at the [REDACTED]) and part of the time living with his ex-wife (at [REDACTED]). Additionally, Appellant and his ex-wife alternate claiming the child as a tax dependent on their taxes. *Id.* at 8. This arrangement and the addresses have not changed since 2012. Appellant's Premium Assistance has been approved every year with this arrangement.

On June 12, 2017, MassHealth denied Appellant's Premium Assistance (Case ID: PAP14). *Id.* at 4. After calling Premium Assistance at the number provided on the notice, Appellant was told that he was denied due to the child's residency being listed as the [REDACTED]. Upon explaining the situation, Appellant received an approval letter dated June 23, 2017. *Id.* at 5. In 2022, Appellant received another denial due to the different addresses and requested a fair hearing (Appeal No. 2204474). After the fair hearing held July 18, 2022, Premium Assistance agreed to continue Appellant's Premium Assistance benefit retroactively to the time of the denial (Case ID: PAP14). *Id.* at 10. Appellant withdrew Appeal No. 2204474.

Pursuant to the divorce agreement, Appellant and his ex-wife have joint legal custody of the child. Exhibit 2 at 7. The child resides with the ex-spouse, with Appellant receiving parenting time including Wednesdays, weekends, school vacation weeks, and half of the week during July. *Id.*

Appellant argued that it is cheaper for MassHealth to keep the child on Appellant's private insurance, rather than be the primary insurer for Appellant. Appellant seeks to have the premium assistance payments reinstated and covered retroactively back to the date of denial.

In a post hearing submission, Appellant's ex-spouse attested that the child resides with both the ex-spouse and Appellant at the same addresses as per the agreement signed in 2012. Exhibit 5. Appellant's ex-spouse last claimed the daughter as a tax dependent in 2022. *Id.*

Findings of Fact

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

1. On June 7, 2023, MassHealth terminated Appellant's premium assistance payments. Exhibit 1.
2. Appellant filed this appeal in a timely manner on June 20, 2023.
3. Appellant's child receives MassHealth Standard benefits administered through the SSA under Category 03 (SSI Disabled).
4. SSA lists the child's address as [REDACTED].
5. The child is covered primarily by Appellant's employer sponsored insurance, with MassHealth as a secondary.
6. Appellant and his ex-spouse divorced in 2012. Exhibit 2.
7. Appellant and his ex-spouse have joint legal custody of the child. *Id.* at 7.
8. The child lives with both Appellant's ex-spouse and Appellant pursuant to the custody arrangement agreed to in 2012. *Id.*, Exhibit 5.
9. Appellant and his ex-spouse alternate claiming the child as a tax-dependent. Appellant's ex-spouse last claimed the child as a tax dependent in 2022. Exhibit 5.

Analysis and Conclusions of Law

Premium assistance payments are available to MassHealth members who are eligible for the coverage types listed in 130 CMR 506.012(A), including MassHealth Standard and CommonHealth. For MassHealth to provide a premium assistance payment the following criteria must be met:

- (1) The health-insurance coverage meets the Basic Benefit Level (BBL) as defined in 130 CMR 501.001: Definition of Terms.

(2) The health-insurance policy holder is either in the [Premium Billing Family Group] PBFG or resides with the individual who is eligible for the premium assistance benefit.

(3) At least one person covered by the health-insurance policy is eligible for MassHealth benefits as described in 130 CMR 506.012(A) and the health-insurance policy is a policy that meets the criteria of the MassHealth coverage type for premium assistance benefits as described in 130 CMR 506.012(C).

130 CMR 506.012(B) (emphasis added).

Eligibility for MassHealth premium assistance is determined by the individual's coverage type and the type of private health insurance. Premium assistance payments are available to MassHealth members who are eligible for the following coverage types:

- (1) MassHealth Standard, as described in 130 CMR 505.002: *MassHealth Standard*;
- (2) MassHealth Standard for Kaileigh Mulligan, as described in 130 CMR 519.007: *Individuals Who Would Be Institutionalized*;
- (3) MassHealth CommonHealth, as described in 130 CMR 505.004: *MassHealth CommonHealth*;
- (4) MassHealth CarePlus, as described in 130 CMR 505.008: *MassHealth CarePlus*;
- (5) MassHealth Family Assistance for HIV-positive adults and HIV-positive young adults, as described in 130 CMR 505.005(E): *Eligibility Requirements for HIV-Positive Individuals Who Are Citizens or Qualified Noncitizens with Modified Adjusted Gross Income of the MassHealth MAGI Household Greater than 133 and Less than or Equal to 200 Percent of the Federal Poverty Level*

130 CMR 506.012 (A).

MassHealth calculates its premium formulas based on premium billing family groups (PBFG) per 130 CMR 506.011(A), set forth in pertinent part and emphasis added:

- (1) Premium formula calculations for MassHealth and CMSP premiums are based on premium billing family groups (PBFG). A PBFG is comprised of
 - (a) an individual;
 - (b) a couple who are two persons married to each other according to the rules of the Commonwealth of Massachusetts and are living together; or
 - (c) **a family who live together and consist of**
 - (i) **a child** or children under the age of 19, any of their children, **and their parents**;

- (ii) siblings under the age of 19 and any of their children who live together, even if no adult parent or caretaker is living in the home; or
 - (iii) a child or children under the age of 19, any of their children, and their caretaker relative when no parent is living in the home.
- (2) A child who is absent from the home to attend school is considered as living in the home.
- (3) A parent may be natural, adoptive, or a stepparent. Two parents are members of the same PBFG as long as they are mutually responsible for one or more children who live with them.

Here, Appellant's daughter currently receives MassHealth Standard benefits administered through SSI under Category 03 and is therefore categorically eligible for premium assistance per 130 CMR 506.012 (A)(1). MassHealth terminated premium assistance because Social Security lists Appellant's daughter as living at the Meadowlark address.

Appellant has provided sufficient evidence to show that his daughter lives at both his [REDACTED] address and his ex-spouse's [REDACTED] address, as they share custody and guardianship of the child. This arrangement has been in place since the divorce in 2012 and has been approved by MassHealth for over a decade. As Appellant's daughter lives at Appellant's home, they are in the same PBFG and qualify for premium assistance under 130 CMR 506.011(A)(1)(c)(i). Accordingly, this appeal is approved.

Order for MassHealth

Rescind the June 7, 2023 termination of premium assistance payments. Resume premium assistance payments retroactive to June 7, 2023.

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 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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Nga Tran, Charlestown MassHealth Enrollment Center, 529 Main Street, Suite 1M, Charlestown, MA 02129

Premium Assistance – Kim Johnson-Cheek

General Counsel's Office –Sharon Boyle