

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2305223
Decision Date:	9/5/2023	Hearing Date:	07/26/2023
Hearing Officer:	Patricia Mullen	Record Open to:	08/02/2023

Appearance for Appellant:



Appearance for MassHealth:

Wesley Swan, Springfield 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

Appeal Decision:	Denied	Issue:	Financial eligibility/PACE program
Decision Date:	09/05/2023	Hearing Date:	07/26/2023
MassHealth's Rep.:	Wesley Swan, Springfield MEC	Appellant's Rep.:	Invoked HCP
Hearing Location:	Springfield MassHealth Enrollment Center (remote)		

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 June 6, 2023, MassHealth adjusted the appellant's 6 month deductible because of a change in income. (see 130 CMR 520.028 and Exhibit 1). The appellant filed this appeal in a timely manner on June 26, 2023. (see 130 CMR 610.015(B) and Exhibit 2). Change in deductible amount is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined a 6 month deductible of \$13,183.00 based on the appellant's income.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.028, in determining that the appellant must meet a deductible of \$13,183.00 every six months before

eligibility for MassHealth Standard could be established.

Summary of Evidence

The appellant was represented telephonically at the hearing by her invoked Health Care Proxy. (Exhibit 6). The appellant's representative verified the appellant's identity. MassHealth was represented telephonically by a worker from the MassHealth Enrollment Center (MEC) in Springfield. The MassHealth representative stated that the appellant is over age 65 and lives in a one person household. The MassHealth representative explained that the appellant had been determined clinically eligible for MassHealth's PACE program, and as a result her spouse's assets and income were not countable in the MassHealth eligibility determination. The MassHealth representative stated that the appellant was open on MassHealth Standard, under the PACE program, because her assets were less than \$2,000.00, and her income was less than 300% of the Federal Benefit Rate (FBR), which is \$2,742.00 a month for an individual. The MassHealth representative noted that the appellant was open on MassHealth Standard through the PACE program from June 1, 2021 to May 15, 2023. (Exhibit 5).

The MassHealth representative stated that the appellant receives gross Social Security income of \$862.90 a month. The MassHealth representative noted that the appellant's spouse was recently admitted to a nursing facility and MassHealth awarded the appellant a monthly spousal allowance of \$2,206.79 from the spouse's income, to meet her minimum monthly maintenance needs allowance. The MassHealth representative stated that, as a result of the spousal allowance, the appellant's gross monthly income is now \$3,069.69. In determining countable income, MassHealth deducts \$20.00 from unearned income, and thus, the appellant's countable income is \$3,049.69. (Testimony). The MassHealth representative stated that because the appellant's income exceeds the limit for the MassHealth PACE program, \$2,742.00 a month, she is not financially eligible for PACE. The MassHealth representative stated further that the appellant's assets exceed \$2,000.00 and would need to be reduced to the MassHealth limit. The MassHealth representative testified that the appellant verified a bank account balance of \$5,011.00 and cash surrender value of a life insurance policy of \$1,126.00, for assets totaling \$6,137.00.

In the letter for appeal, the appellant's representative stated that the appellant has deteriorating dementia and had attended an elder care program twice a week for safety and therapy, covered by MassHealth. (Exhibit 3). The appellant's representative stated that the appellant also had meal services, Lifeline, drug coverage, and access to in home support, among other things, that were covered by MassHealth. (Exhibit 3). The appellant's representative stated that the appellant's rapid cognitive loss necessitates additional supports in the home. (Exhibit 3). The appellant's representative stated that they would rather pay a patient paid amount to the nursing facility for her father, than have the appellant lose her MassHealth coverage. (Exhibit 3). The appellant's representative stated that the appellant's MassHealth benefits ended on May 31, 2023. The appellant's representative stated that the appellant's net Social Security is \$698.00 after

she pays for Medicare, and she pays an additional \$20.00 a month for a Tufts health plan. The appellant's representative stated that the appellant's total assets are now below \$2,000.00.

The record was left open until August 2, 2023, to give the appellant's representative the opportunity to submit the appellant's most recent bank statement. (Exhibit 7). The appellant's representative submitted the appellant's most recent bank statement during the record open period, and MassHealth determined that the appellant's assets are under the MassHealth limit for Standard and for the PACE program. (Exhibits 8, 10). The MassHealth representative reported that the appellant was approved for the PACE program by notice dated July 27, 2023, with a premium of \$2,197.00 a month to be paid to the PACE provider. (Exhibits 10, 11). The MassHealth representative noted that if the appellant wishes not to have a premium, the appellant's spouse can write a letter to stop the spousal maintenance needs allowance, which would result in a Patient Paid Amount to the nursing facility. (Exhibit 10).

Findings of Fact

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

1. The appellant is over age 65 and lives in a one person household.
2. 300% of the Federal Benefit Rate (FBR) is \$2,742.00 a month for an individual.
3. The appellant was open on MassHealth Standard through the PACE program from June 1, 2021 to May 15, 2023.
4. The appellant's spouse recently entered a nursing facility and MassHealth is covering the spouse's nursing facility expenses.
5. The appellant receives gross Social Security income of \$862.90 a month and a monthly spousal allowance of \$2,206.79 from her spouse's income, for a total gross monthly income of \$3,069.69.
6. The appellant's total assets are below \$2,000.00.

Analysis and Conclusions of Law

Program of All-Inclusive Care for the Elderly (PACE).

(1) Overview. The PACE program is a comprehensive health program that is designed to keep frail, older individuals who are certified eligible for nursing-facility services living in the community.

(a) A complete range of health-care services is provided by one designated

community-based program with all medical and social services coordinated by a team of health professionals.

(b) The MassHealth agency administers the program in Massachusetts as the Elder Service Plan (ESP).

(c) Persons enrolled in PACE have services delivered through managed care

1. in day-health centers;
2. at home; and
3. in specialty or inpatient settings, if needed.

(2) Eligibility Requirements. In determining PACE eligibility, the MassHealth agency counts the income and assets of only the applicant or member regardless of his or her marital status. The applicant or member must meet all of the following criteria:

- (a) be 55 years of age or older;
- (b) meet Title XVI disability standards if 55 through 64 years of age;
- (c) be certified by the MassHealth agency or its agent to be in need of nursing-facility services;
- (d) live in a designated service area;
- (e) have medical services provided in a specified community-based PACE program;
- (f) have countable assets whose total value does not exceed \$2,000 or, if assets exceed these standards, reduce assets in accordance with 130 CMR 520.004: Asset Reduction; and
- (g) have a countable-income amount less than or equal to 300% of the federal benefit rate (FBR) for an individual.

(3) Income Standards Not Met. Individuals whose income exceeds the standards set forth in 130 CMR 519.007(C)(2) may establish eligibility for MassHealth Standard by meeting a deductible as described at 130 CMR 520.028: Eligibility for a Deductible through 520.035: Conclusion of the Deductible Process.

(130 CMR 519.007(C)).

The appellant receives gross Social Security of \$862.90 a month and receives a spousal maintenance allowance from her spouse, totaling \$2,206.79 a month, for total gross monthly income of \$3,069.69. MassHealth allows a \$20.00 deduction from unearned income to determine countable income. (130 CMR 520.012). The appellant's countable income of \$3,049.69 exceeds 300% of the FBR, which is \$2,742.00 for a one person household. Because the appellant's income exceeds 300% of the FBR, she is not financially eligible for MassHealth Standard through the PACE program.

The appellant would need to meet a deductible before MassHealth eligibility can be established. (130 CMR 520.028). The appellant's countable income for the deductible calculation is \$3,049.00. The MassHealth Income Standard applicable to an individual age 65 or older residing in the community is \$522.00 per month for a household of one. (130 CMR 520.030). The deductible is the total dollar amount of incurred medical expenses that an individual is responsible for

before MassHealth eligibility is established. (130 CMR 520.031). The excess monthly income is the amount by which the appellant's countable income exceeds the MassHealth Income Standard. (130 CMR 520.030). In the present case, the appellant's countable income of \$3,049.00, as calculated above, exceeds the MassHealth income standard of \$522.00 by \$2,527.00. From this amount, the appellant's Medicare premium of \$329.80 a month is deducted. The remaining \$2,197.020 is the monthly amount the appellant is responsible for paying her PACE provider to remain eligible for MassHealth. (Exhibit 11).

Accordingly, the appellant is responsible for paying \$2,197.00 a month to her PACE provider to remain eligible for MassHealth. MassHealth's action is upheld and the 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.

Patricia Mullen
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center