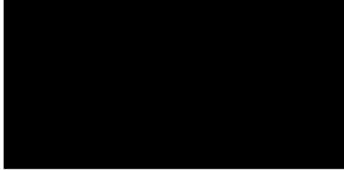


Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2305850
Decision Date:	09/29/2023	Hearing Date:	8/16/2023
Hearing Officer:	Patrick Grogan	Record Open to:	N/A

Appearance for Appellant:



Appearance for MassHealth:

Ernetta Finch-Reeves, Charlestown MEC
Sarah Prado, Premium Assistance

Interpreter:

N/A

¹ The Appellant is [REDACTED] [REDACTED] is the Appeal Representative and the Appellant's mother. Notice #33464541 dated June 27, 2023 was sent to the Appellant, [REDACTED] and changes [REDACTED] coverage to MassHealth CommonHealth without Premium Assistance which is the issue under appeal. (See Exhibit 1)



*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:	Premium Assistance
Decision Date:	09/29/2023	Hearing Date:	8/16/2023
MassHealth's Rep.:	Ernetta Finch-Reeves, Sara Prado	Appellant's Rep.:	[REDACTED]
Hearing Location:	Remote (Tel)	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 June 27, 2023, MassHealth informed the Appellant that benefits would change from CommonHealth plus Premium Assistance to MassHealth CommonHealth without Premium Assistance (see 130 CMR 506.012(B)(1), 956 CMR 5.03(2)(B)(3) and Exhibit 1). The Appellant filed this appeal in a timely manner on July 17, 2023 (see 130 CMR 610.015(B) and Exhibit 2). A decision regarding the scope or amount of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth changed the Appellant's benefits from CommonHealth plus Premium Assistance to MassHealth CommonHealth without Premium Assistance (see 130 CMR 506.012(B)(1), 956 CMR 5.03(2) and Exhibit 1).

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 506 and 956 CMR 5.03, in determining that the Appellant's coverage would change from CommonHealth plus Premium Assistance to MassHealth CommonHealth without Premium Assistance.

Summary of Evidence

The Appellant is a MassHealth member under the age of 19, who was represented by her mother. (Testimony, Exhibit 2). MassHealth was represented by a MassHealth Enrollment Center (MEC) worker and a representative from Premium Assistance. (Testimony). The Appellant received a notice that her MassHealth coverage would change from CommonHealth with Premium Assistance to CommonHealth without Premium Assistance. (Testimony, Exhibit 1). The instant appeal followed.

Premium Assistance testified that the Appellant had been receiving Premium Assistance in the past, however, due to the Regulations and changes with the Appellant's insurance through her mother, the Appellant no longer qualified for Premium Assistance. (Testimony) Premium Assistance explained that beginning on January 1, 2023, MassHealth was no longer accepting Health Reimbursement Arrangements (HRA) since HRAs cannot be used to reduce the health insurance deductible in order to meet the basic-benefit level plan requirements in accordance with MassHealth Regulations. (Testimony, 130 CMR 506) Additionally, in order for a plan to qualify for Premium Assistance, any deductible(s) that are provided as part of the plan benefits shall not in combination exceed \$2,000 for an individual and \$4,000 for a family. (Testimony, 956 CMR 5.03(2)(B)(2)) However, the Premium Assistance representative explained that individuals who had been receiving payments with Premium Assistance were "grandfathered in" provided that there was no change in a member's health insurance plan, no change in the carrier, and that it was the same HRA. (Testimony)

Premium Assistance testified that the Appellant's prior plan with United HealthCare had a \$3000 individual and \$6000 family deductible as well as an HRA that had been used to cover part of the deductible. (Testimony) However, Premium Assistance explained the Appellant had been receiving Premium Assistance and continued to receive Premium Assistance after January 1, 2023, because the Appellant's prior health insurance plan had been "grandfathered in." (Testimony)

In May of 2023, the Appellant's mother's employer² faxed Premium Assistance information that the employer had changed the plan to a new carrier, Cigna effective July of 2023. The summary of benefits revealed that the Cigna plan had a deductible of \$3000 for an individual and \$6000 for the family. (Testimony)

The Appellant's representative/mother testified that she was upset that she did not receive notice of the change prompting the denial of Premium Assistance coverage³. (Testimony). Furthermore, the Appellant's Representative/mother testified that she had no

² The Appellant's mother provides health insurance to the Appellant through the Appellant's mother's employer.

³ The Appellant did receive the Notice dated July 27, 2022, prompting the request for this appeal. (Exhibit 2)

control over her employer's changing of the health insurance plan, and that she was only provided an option of 2 new health insurance plans, both which kept the prior deductible amounts. (Testimony) The Appellant's Representative/mother argued that this constituted "sneakiness" on the part of MassHealth and that she didn't appreciate it and that they relied on the Premium Assistance they had been receiving since the Appellant was young. (Testimony)

Premium Assistance responded that the Regulation had always been in place and Premium Assistance should not have accepted individuals with plans that did not conform to the Regulations, however, the state had been lenient, especially in consideration of the prior Public Health Emergency protections related to COVID pandemic. (Testimony). Based upon the adherence to the Regulations, Premium Assistance had adopted the "grandfathered in" policy provided there was no change. (Testimony)

The Appellant's Representative/mother testified that this was also "a little bit shady" because they were suffering the consequences of the mother's employer's choice to change the health insurance plan. (Testimony) The Appellant's Representative/mother stated she did not believe this was fair. (Testimony) The Appellant's Representative/mother expounded she had been required to obtain health insurance, that the Appellant has health care needs as she is considered medically fragile within Massachusetts and has MassHealth as her secondary insurance due to her medical costs. (Testimony)

Premium Assistance responded with a few options, including verifying the employer does not have a plan that qualifies or having the Appellant have MassHealth as her primary insurance. (Testimony). The Appellant's Representative/ mother stated that she did not think MassHealth as a primary insurance would benefit the Appellant and reiterated that her employer only offered her 2 plans, both with a \$3000 individual member deductible. (Testimony) The Appellant's Representative/mother testified that she had heard a lot of complaints about this issue, that she did not understand how some people were "grandfathered in" and other were not⁴, that she had no choice in the change of plan from her employer, and stated that she did not understand how this could be done. (Testimony)

Findings of Fact

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

1. The Appellant is a MassHealth member under the age of 19, who was represented by her mother. (Testimony, Exhibit 2).
2. The Appellant had been receiving Premium Assistance in the past, however, due to the

⁴ The Appellant had been "grandfathered in" until the change of her health insurance plan carrier, effective July, 2023. (Testimony)

Regulations and changes with the Appellant's insurance, MassHealth determined that the Appellant no longer qualified for Premium Assistance. (Testimony)

3. Effective January 1, 2023, MassHealth no longer accepted Health Reimbursement Arrangements (HRA) for deductible reduction, since HRAs cannot be used to reduce the health insurance deductible in order to meet the basic-benefit level plan requirements in accordance with MassHealth Regulations. (Testimony, 130 CMR 506) Additionally, in order for a plan to qualify for Premium Assistance, any deductible(s) that are provided as part of the plan benefits shall not in combination exceed \$2,000 for an individual and \$4,000 for a family. (Testimony, 956 CMR 5.03(2)(B)(2))

4. The Appellant's prior health insurance plan with United HealthCare had a \$3000 individual and \$6000 family deductible as well as an HRA that had been used to cover part of the deductible. (Testimony)

5. The Premium Assistance Representative explained that individuals who had been receiving payments with Premium Assistance were "grandfathered in" provided that there was no change in a member's health insurance plan, no change in the carrier, and that it was the same HRA. (Testimony)

6. The Appellant had been receiving Premium Assistance and continued to receive Premium Assistance after January 1, 2023, because the Appellant's prior health insurance plan had been "grandfathered in." (Testimony)

7. In May of 2023, the Appellant's mother's employer faxed Premium Assistance information that the employer had changed the plan to a new carrier, Cigna, effective July of 2023.

8. The summary of benefits revealed that the Cigna plan had a deductible of \$3000 for an individual and \$6000 for the family. (Testimony)

Analysis and Conclusions of Law

The Appellant is challenging MassHealth's determination that the Appellant no longer qualifies for Premium Assistance Payments. The definition of Premium Assistance Payments is codified within 130 CMR 501.001:

Premium Assistance Payment — an amount contributed by the MassHealth agency toward the cost of health insurance coverage for certain MassHealth members who meet the criteria in 130 CMR 506.012: Premium Assistance Payments.

The criteria for Premium Assistance Payments are further codified at 130 CMR 506.012(B):

(B) Criteria. MassHealth may provide a premium assistance payment to an eligible member when all of the following criteria are met.

(1) The health insurance coverage meets the Basic Benefit Level (BBL) as defined in 130 CMR 501.001: Definition of Terms. Instruments including, but not limited to, Health Reimbursement Arrangements, Flexible Spending Arrangements, as described in IRS Pub. 969, or Health Savings Accounts, as described at IRC § 223(c)(2), cannot be used to reduce the health insurance deductible in order to meet the basic-benefit level requirement.

(2) The health insurance policy holder is either

(a) in the PBFG; or

(b) resides with the individual who is eligible for the premium assistance benefit and is related to the individual by blood, adoption, or marriage.

(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).

The definition of Basic Benefit Level (BBL) is outlined at 130 CMR 501.001:

Basic-benefit Level (BBL)

(1) benefits provided under a health insurance plan that include a broad range of medical benefits as defined in the minimum creditable coverage core services requirements in 956 CMR 5.03(1)(a); provided that the annual deductible and the annual maximum out-of-pocket costs under that plan do not exceed the maximum amounts the Massachusetts Health Connector sets for deductibles and out-of-pocket costs in order for a plan to be considered minimum creditable coverage, as set forth at 956 CMR 5.03(2)(b)2. and 3., and 956 CMR 5.03(2)(c), respectively, and as may be illustrated in administrative bulletins published by the Massachusetts Health Connector, and as are in effect on the first day coverage under that plan begins.

(2) Exceptions.

(a) For the avoidance of doubt, instruments including, but not limited to, Health Reimbursement Arrangements, Flexible Spending Arrangements, as described in IRS Pub. 969, or Health Savings Accounts, as described at IRC § 223(c)(2), cannot be used to reduce the health insurance deductible in order to meet the basic-benefit level requirement.

(b) The MassHealth agency reserves the right to set its own annual deductible and maximum out-of-pocket limits. If the MassHealth agency deems it appropriate to set its own annual

deductible and maximum out-of-pocket limits, a sub-regulatory bulletin will be issued.

As referenced in the Regulation *supra*, the Health Benefit Plan requirements are explained at 956 CMR 5.03(2):

(2) A Health Benefit Plan, or the aggregate of multiple Health Benefit Plans, that otherwise meets the requirements of 956 CMR 5.03(1) may incorporate the following and continue to be considered as providing minimum creditable coverage:

(a) A Health Benefit Plan may impose reasonable exclusions and limitations, including different benefit levels for in-network and out-of-network providers. Exclusions and limitations on benefits should be identified in plain language and non-discriminatory in their design and application. For a Health Benefit Plan that does not have a network design, the overall Health Benefit Plan design must meet the requirements of 956 CMR 5.03(1) to be considered as providing minimum creditable coverage.

(b) A Health Benefit Plan may impose varied levels of Co-payments, Deductibles and Co-insurance, provided that:

1. the plan must disclose to Covered Persons the Deductible, Co-payment and Co-insurance amounts applicable to in-network and out-of-network Covered Services;
2. any Deductible(s) for in-network Covered Services that are provided as part of the plan benefits shall not in combination exceed \$2,000 for an individual and \$4,000 for a family;
3. the dollar amounts for individuals specified in 965 CMR 5.03(2)(b)2. shall, unless the Connector Board establishes otherwise for a given calendar year, be adjusted each year by an amount equal to the product of that amount and the premium adjustment percentage for a calendar year as determined by the United States Secretary of Health and Human Services pursuant to 42 U.S.C. § 18022(c)(4). Such amounts are typically published by the Secretary in the annual Notice of Benefit and Payment Parameters regulations. If the amount of any adjustment is not a multiple of \$50, such adjustment shall be rounded down to the next lowest multiple of \$50. The dollar amounts for a family specified in 956 CMR 5.03(2)(b)2. shall be increased each year to an amount equal to twice the amount in effect for an individual, as adjusted pursuant to 956 CMR 5.03(2)(b)3.; and
4. the dollar amount of any separate Deductible imposed for prescription drug coverage shall, unless the Connector Board

establishes otherwise for a given calendar year, not exceed an amount equal to 12.5% of the total Deductible limits for individuals and families, respectively, as determined by 956 CMR 5.03(2)(b)3. If the amount of any adjustment is not a multiple of \$10, such adjustment shall be rounded down to the nearest multiple of \$10.

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998). Although with the Appellant's past health insurance plan, Premium Assistance allowed the Appellant to utilize an HRA to reduce the health insurance deductible in order to meet the BBL requirement, the Regulations explicitly prohibits use of an HRA for this purpose. (130 CMR 501.001 Basic-benefit Level (BBL) (B)(2)(a)). As Premium Assistance testified, this policy was contrary to the Regulation, however, in fairness to a member who had been receiving Premium Assistance Payments, the member was "grandfathered in" provided there was no change in a member's health insurance plan, no change in the carrier, and that it was the same HRA. (Testimony).

Here, the Appellant's carrier changed from United HealthCare to Cigna. (Testimony) Therefore, the Appellant's carrier and HRA changed. The Appellant's deductible with the new carrier, Cigna, is \$3000 for an individual, and exceeds the maximum of \$2000 for an individual explicitly delineated within the Regulation. (956 CMR 5.03(2)(b)(2)). Additionally, the Appellant's new HRA, pursuant to the Regulation, cannot be used to reduce the health insurance deductible in order to meet the basic-benefit level requirement. (130 CMR 501.001 Basic-benefit Level (BBL) (B)(2)(a)) Based upon these Regulations, and in consideration of the Appellant's change of health insurance plan, the determination was made that the Appellant's new plan does not meet the Regulatory requirements for eligibility for Premium Assistance Payments. Based upon the evidence in this case, the Appellant has not met her burden by a preponderance of evidence that MassHealth's determination, which adheres to the Regulations, is invalid. Therefore, 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.

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.

Patrick Grogan
Hearing Officer
Board of Hearings

cc:

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

Premium Assistance