

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2305976
Decision Date:	12/01/2023	Hearing Date:	10/3/2023
Hearing Officer:	Cynthia Kopka	Record Open to:	10/13/2023

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Jaime Medeiros, Charlestown

Interpreter:



*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:	Under 65, eligibility, immigration status
Decision Date:	12/01/2023	Hearing Date:	10/3/2023
MassHealth's Rep.:	Jaime Medeiros	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 July 11, 2023, MassHealth determined that Appellant is eligible for MassHealth Limited effective June 27, 2023. Exhibit 1. Appellant filed this appeal in a timely manner on July 20, 2023. Exhibit 2. 130 CMR 610.015(B). Termination or modification of assistance is a valid basis for appeal. 130 CMR 610.032. The hearing was originally scheduled for August 21, 2023 but Appellant failed to appear and the appeal was dismissed. Exhibit 3 at 2. Appellant requested that the dismissal be vacated on August 26, 2023.

Action Taken by MassHealth

MassHealth determined that Appellant is eligible for MassHealth Limited.

Issue

The appeal issue is whether Appellant is eligible for MassHealth CarePlus or Standard.

Summary of Evidence

The MassHealth representative appeared by phone and testified as follows. Appellant is in a household of one and has no income. On July 11, 2023, Appellant was approved for MassHealth Limited and Health Safety Net. MassHealth only has an employment authorization card, valid through October 2024, verified in its system and would require immigration documents to upgrade Appellant's coverage. MassHealth would need to see that Appellant either has citizenship or a permanent residency for five years.

Appellant appeared by phone and testified as follows. Appellant has had MassHealth before based on Temporary Protected Status (TPS) documents she has submitted in the past. Appellant has had MassHealth since 2019. Appellant does not have a permanent resident card. Appellant always sends in the same documents and has been approved. Appellant had to cancel all of her appointments after losing CarePlus.

The MassHealth representative did not know why Appellant had been approved for CarePlus in the past with the TPS document. The MassHealth representative reviewed Appellant's coverage history. In 2019, Appellant had a Connector Care plan. In 2020, Appellant had MassHealth Limited. On March 10, 2020, Appellant had MassHealth CarePlus, then Limited. On August 19, 2022, Appellant had Health Safety Net, then went back to CarePlus. Appellant's immigration status has changed in the system back and forth.

The hearing record was held open through October 6, 2023 for Appellant to submit updated immigration documents and through October 13, 2023 for MassHealth to review and respond. Appellant submitted documents including her driver's license and an employment authorization card which was difficult to read. Appellant also sent an I-797C document regarding "Case Type I821 – Application for Temporary Protected Status" notifying Appellant that she is approved for TPS from February 22, 2023 to March 10, 2024. Exhibit 6. The notice indicated that a Form I-94 was attached, but this was not included in Appellant's submission. *Id.* Appellant also submitted an I-797C document regarding "Case Type I765 – Application for Employment Authorization" notifying Appellant that she is approved for employment authorization from October 18, 2022 to October 17, 2024. *Id.*

On October 13, 2023, MassHealth provided a response to the documents received. The MassHealth representative testified that Appellant's immigration status is Nonqualified Individual Lawfully Present (identified as ILP in MassHealth's HIX system). Based on this immigration status, Appellant is eligible for MassHealth Limited and Health Safety Net. As she is lawfully present, she is also eligible for a Health Connector plan with Advance Premium Tax Credit. Exhibit 5. To clarify Appellant's question about why she had received MassHealth CarePlus in the past, the MassHealth representative found that another MassHealth worker had entered Appellant in the system as having been granted asylum on March 20, 2020. However, the documents submitted by Appellant do not reflect that she has been granted asylum. Appellant's CarePlus coverage continued throughout the Covid-19 public health emergency. *Id.*

Findings of Fact

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

1. Appellant is in a household of one and under the age of 64. Appellant has no income.
2. On July 11, 2023, MassHealth determined that Appellant is eligible for MassHealth Limited effective June 27, 2023. Exhibit 1.
3. Appellant filed this timely appeal on July 20, 2023. Exhibit 2.
4. Pursuant to an I-797C document regarding “Case Type I821 – Application for Temporary Protected Status”, Appellant is approved for TPS from February 22, 2023 to March 10, 2024. Exhibit 6.
5. Pursuant to an I-797C document regarding “Case Type I765 – Application for Employment Authorization”, Appellant is approved for employment authorization from October 18, 2022 to October 17, 2024. *Id.*

Analysis and Conclusions of Law

Eligibility for MassHealth benefits is determined based on both categorical requirements and financial standards. Citizens, qualified noncitizens, and protected noncitizens may receive MassHealth under any coverage type for which they are eligible. 130 CMR 504.006(A). The regulations that define qualified noncitizen, protected noncitizen, and nonqualified persons residing under color of law (PRUCOL) for individuals under the age of 65 are set forth at 130 CMR 504.003. According to 130 CMR 504.003(A)(3) (emphasis added), nonqualified individuals lawfully present include:

(3) Nonqualified Individuals Lawfully Present. Nonqualified individuals lawfully present are not defined as qualified under PRWORA,. Nonqualified individuals lawfully present are as follows:

(a) are in a valid nonimmigrant status as otherwise defined in 8 U.S.C. 1101(a)(15) or otherwise under immigration laws (as defined in 8 U.S.C. 1101(a)(17))

(b) are paroled into the United States in accordance with 8 U.S.C. 1182(d)(5) for less than one year, except for an individual paroled for prosecution, for deferred inspection or pending removal proceedings;

(c) belong to one of the following classes:

1. granted Temporary Resident Status in accordance with 8 U.S.C.

- 1160 or 1255a, respectively;
- 2. **granted Temporary Protected Status (TPS) in accordance with 8 U.S.C. 1254a, and individuals with pending applications for TPS who have been granted employment authorization;**
- 3. **granted employment authorization under 8 CFR 274a.12(c);**
- 4. Family Unity beneficiaries in accordance with § 301 of Public Law 101-649;
- 5. under Deferred Enforced Departure (DED) in accordance with a decision made by the President;
- 6. granted Deferred Action status, except for applicants or individuals granted status under Department of Homeland Security (DHS) Deferred Action for Childhood Arrivals Process (DACA);
- 7. granted an administrative stay of removal under 8 CFR part 241; or
- 8. beneficiaries of approved visa petitions who have pending applications for adjustment of status;
- (d) have a pending application for asylum under 8 U.S.C. 1158, or for withholding of removal under 8 U.S.C. 1231, or under the Convention Against Torture Treaty who:
 - 1. have been granted employment authorization; or
 - 2. are younger than 14 years old and have had an application pending for at least 180 days;
- (e) have been granted withholding of removal under the Convention Against Torture Treaty; or
- (f) is a child who has a pending application for Special Immigrant Juvenile status as described in 8 U.S.C. 1101(a)(27)(J).

“Qualified noncitizens” are described in 130 CMR 504.003(A)(1) and include persons granted asylum under § 208 of the INA. 130 CMR 504.003(A)(1)(a)(2). Qualified noncitizens are eligible for more MassHealth coverage types than nonqualified individuals lawfully present. See, e.g., 130 CMR 130 CMR 504.006(A), 130 CMR 505.008(A)(2)(b).

Applicable coverage types are set forth in 130 CMR 504.006 (emphasis added):

504.006: Applicable Coverage Types

- (A) Citizens, qualified noncitizens, and protected noncitizens may receive MassHealth under any coverage type if they meet the eligibility requirements described in 130 CMR 505.000: Health Care Reform: MassHealth: Coverage Types.
- (B) **Qualified noncitizens barred and nonqualified individuals lawfully present** may receive the following coverage.

- (1) MassHealth Standard, if they are younger than 19 years old, young adults 19 and 20 years of age, or people who are pregnant and meet the categorical requirements and financial standards described in 130 CMR 505.002: MassHealth Standard; independent foster care children 18 through 20 years of age, and children younger than 19 years old and young adults 19 and 20 years of age who are receiving EAEDC.
- (2) MassHealth CommonHealth, if they are younger than 19 years old and meet the categorical requirements and financial standards as described in 130 CMR 505.004: MassHealth CommonHealth;
- (3) MassHealth Family Assistance, if they are children younger than 19 years old, disabled adults 21 through 64 years of age and meet the categorical requirements and financial standards as described in 130 CMR 505.005: MassHealth Family Assistance or adults 21 through 64 years of age who are receiving EAEDC;
- (4) **MassHealth Limited, if they are adults 21 through 64 years of age and meet the categorical requirements and financial standards as described in 130 CMR 505.006: MassHealth Limited;** and
- (5) Children's Medical Security Plan, if they are children younger than 19 years old and meet the categorical requirements and financial standards as described in 130 CMR 522.004: Children's Medical Security Plan (CMSP).

MassHealth CarePlus is available for individuals between the ages of 21 and 64 if they are “a citizen, as described in 130 CMR 504.002: *U.S. Citizens*, or a qualified noncitizen, as described in 130 CMR 504.003(A)(1): *Qualified Noncitizens*.” 130 CMR 505.008(A)(2)(b).

The records submitted by Appellant demonstrate that she is a nonqualified individual lawfully present, as she has TPS status and employment authorization. 130 CMR 504.003(A)(3)(c)(2) and (3). With this immigration status, Appellant is eligible for MassHealth Limited. 130 CMR 504.006(B)(4). Appellant is currently ineligible for MassHealth CarePlus because she is not a qualified noncitizen. 130 CMR 505.008(A)(2)(b). If Appellant is granted asylum or otherwise meets a qualified noncitizen status as defined by 130 CMR 504.003(A)(1), she may be determined categorically eligible for MassHealth CarePlus at that time and would have to demonstrate financial eligibility. According to MassHealth, Appellant is currently eligible to enroll in a plan through the Health Connector.

As MassHealth’s decision was not made in error, 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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

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