Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2307309
Decision Date:	12/11/2023	**Hearing Date:**	09/29/2023
Hearing Officer:	Emily T. Sabo	**Record Open:**	11/14/2023- 12/12/2023[1]

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Hajar Bantour, Quincy MEC
Gladys Pacheco, Premium Assistance

[1] The record was reopened.

APPEAL DECISION

Appeal Decision:	Denied	**Issue:**	Premium Assistance; Basic Benefit Level
Decision Date:	12/11/2023	**Hearing Date:**	09/29/2023
MassHealth's Rep.:	Hajar Bantour, Quincy MEC; Gladys Pacheco, Premium Assistance	**Appellant's Rep.:**	Pro se
Hearing Location:	Quincy Harbor South (Telephone)	**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 July 26, 2023, MassHealth notified the Appellant that she was no longer eligible for premium assistance and that MassHealth had stopped the Appellant's premium assistance payments (see 130 CMR 506.012 and Exhibit 1). The Appellant filed this appeal in a timely manner on August 21, 2023 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth terminated the Appellant's premium assistance payments.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 506.012, in determining that the Appellant is not eligible for premium assistance.

Summary of Evidence

MassHealth was represented telephonically at hearing by a worker from Maximus, which operates MassHealth's Premium Assistance program and a worker from the Quincy MassHealth Enrollment Center. The following is a summary of the testimony and evidence presented at hearing: the Appellant is an adult under the age of 65, with a household size of two, which includes the Appellant's minor child. The MassHealth representative testified that the Appellant's household monthly income was 170.87% of the Federal Poverty Level. The MassHealth representative testified that for an employer-sponsored health plan to meet the basic benefit level, and qualify for premium assistance, it cannot have an annual deductible greater than $2,000 for an individual plan and $4,000 for a family plan. The MassHealth representative testified that the Appellant's plan, [redacted], has an annual deductible of $6,800 for a family plan.

The MassHealth representative testified that based on material the Appellant's employer submitted in 2022, MassHealth mistakenly concluded that the deductible for the family plan was $2,000 annually. The MassHealth representative testified that a plan remains a high-deductible plan even if an employer pays a portion of the deductible.

The Appellant appeared telephonically and verified her identity. The Appellant testified that she had previously been eligible for MassHealth Standard, until three years ago, when she was directed to enroll in her employer-sponsored health plan. The Appellant testified that her [redacted] child is disabled. The Appellant testified that she had successfully appealed denial of premium assistance in 2021 and 2022. The Appellant testified that during 2021-2022 she was enrolled in the same [redacted] plan. The Appellant testified that she did not understand why she was no longer eligible for premium assistance when her job and health insurance had not changed. The Appellant testified that she only has a $2,000 yearly deductible for her family health insurance plan.

Under 130 CMR 610.081, the record was reopened from November 14, 2023, until December 12, 2023, for the Appellant to provide additional information and for MassHealth to review and respond. The Appellant provided evidence that she is only responsible for a $2,000 yearly deductible with her family plan. Her employer contributes the remaining $4,800 directly toward the deductible. The MassHealth representative stated that the [redacted] plan still does not meet the Basic Benefit Level as the plan deductible is too high.

Findings of Fact

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

1. The Appellant is an adult under the age of 65 who resides in a household of two with her

minor child. Testimony, Exhibit 4.

2. The Appellant's household monthly income is 170.87% of the Federal Poverty Level. Testimony.

3. For an employer-sponsored health plan to meet the basic benefit level, and qualify for premium assistance, it cannot have an annual deductible greater than $2,000 for an individual plan and $4,000 for a family plan. Testimony.

4. The [redacted] plan has an annual deductible of $6,800 for a family plan. Testimony, Exhibit 2 at 5.

5. The Appellant's employer, through Benemax, contributes $4,800 directly toward the Appellant's deductible, such that the Appellant has a $2,000 annual deductible for the [redacted] family plan. Testimony, Exhibit 5.

Analysis and Conclusions of Law

Through its Premium Assistance program, MassHealth provides financial assistance to eligible members that have access to private health insurance, to help cover the cost of their health insurance premiums. *See* 130 CMR 506.012(C). Eligibility for this benefit is based on "the individual's coverage type and the type of private health insurance the individual has or has access to." *See* 130 CMR 506.012(C). Once enrolled, MassHealth issues "premium assistance payments" to the policyholder of the plan. The premium assistance payment is the amount MassHealth contributes to the cost of health insurance coverage for the member. *See* 130 CMR 501.001.

MassHealth establishes the following criteria to determine eligibility for premium assistance:

> (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).[2]

130 CMR 506.012(B) (emphasis added).

In this appeal, MassHealth argues that Appellant does not qualify for premium assistance payments because her employer sponsored insurance plan ([redacted]) does not meet the criteria specified in subsection (B)(1), above. Specifically, MassHealth determined that Appellant's plan does not meet the basic benefit level (BBL) because the plan's annual deductible exceeds the maximum limit. MassHealth defines the BBL as follows:

(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.

130 CMR 501.001.

[2] Subsection (C) of 130 CMR 506.012 includes employer sponsored insurance as one of the enumerated qualifying policy types.

Under this definition, the inquiry for determining whether a plan meets the BBL is two-fold. First, the plan must cover the following "core services" enumerated in 956 CMR 5.03(1)(a), as follows:

> (1) …
>
> (a) A health benefit plan provides core services and a broad range of medical benefits, in accordance with at least the minimum standards set by state and federal statutes and regulations governing the particular health benefit plan. "A broad range of medical benefits" shall include, at a minimum, coverage for:
>
> 1. Ambulatory patient services, including outpatient, day surgery and related anesthesia;
> 2. Diagnostic imaging and screening procedures, including x-rays;
> 3. Emergency services;
> 4. Hospitalization (including at a minimum, inpatient acute care services which are generally provided by an acute care hospital for covered benefits in accordance with the member's subscriber certificate or plan description);
> 5. Maternity and newborn care, including prenatal care, post-natal care, and delivery and inpatient services for maternity care;
> 6. Medical/surgical care, including preventive and primary care;
> 7. Mental health and substance abuse services;
> 8. Prescription drugs;
> 9. Radiation therapy and chemotherapy.

956 CMR 5.03(1)(a).

In this case, MassHealth does not allege that Appellant's insurance plan stopped covering the core services cited above.[3] Rather, MassHealth's decision to terminate Appellant's premium assistance benefit is based solely on the deductible amount. The central issue on appeal, therefore, turns to the second inquiry posited under the BBL definition and whether the Appellant's deductible is in line with the regulations set by the Health Connector. *See* 130 CMR 501.001.[4]

The Health Connector calculates minimum creditable coverage pursuant to 956 CMR 5.03(2)(b)(2) and (3). The regulation provides as follows:

> (2) …
>
> (b)…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] MassHealth previously approved Appellant's employer sponsored insurance plan for premium assistance payments based on a determination that it met the BBL. Absent any evidence to indicate otherwise, it is presumed this part of her insurance plan continues to comply with 956 CMR 5.03(1)(a).

> 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…

The Appellant's employer sponsored insurance plan contains a deductible of $3,400 for an individual and $6,800 for families, which exceeds this limit. Based on the regulatory definition of BBL, instruments cannot be used to reduce the deductible to meet the BBL. 130 CMR 501.001. Accordingly, the employer's contribution to the Appellant's deductible cannot be used to reduce the [redacted] plan deductible to meet the BBL.

The Appellant raises a fair point, that her employment and health care plan have not changed since she was previously approved for premium assistance and that her annual deductible is $2,000. However, the Fair Hearing Rules do not authorize hearing officers to issue decisions based on fairness or equity. *See* 130 CMR 610.082. A hearing officer's decision must be rendered in accordance with the law and may be based only upon "evidence, testimony, materials, and legal rules presented at hearing, including the MassHealth agency's interpretation of its rules, policies and regulations." *Id.* An argument of fairness is better served in the courts. As such, MassHealth was within its discretion to terminate the Appellant's premium assistance based on the $6,800 deductible of the Harvard Pilgrim Health Care plan. Therefore, 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.

Emily T. Sabo, Esq.
Hearing Officer
Board of Hearings

cc:
MassHealth Representative: Quincy MEC, Attn: Appeals Coordinator, 100 Hancock Street, 6th Floor, Quincy, MA 02171

Premium Assistance