

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied in part; Remand	Appeal Number:	2307428
Decision Date:	2/15/2024	Hearing Date:	09/22/2023
Hearing Officer:	Radha Tilva	Record Open to:	01/09/2024

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Jonathan Gonzalez (Charlestown MEC Rep.)



*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 in part; Remand	Issue:	Eligibility – over 65 - income
Decision Date:	2/15/2024	Hearing Date:	09/22/2023
MassHealth's Rep.:	Jonathan Gonzalez	Appellant's Rep.:	Pro se
Hearing Location:	Charlestown MEC (telephonic)	Aid Pending:	Yes

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 August 12, 2023, MassHealth terminated appellant's MassHealth benefits effective August 26, 2023 because appellant's income exceeded MassHealth limits (Exhibit 1). The appellant filed this appeal in a timely manner on August 24, 2023 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

A hearing was held on September 22, 2023. At the hearing, the record was left open for appellant to apply for the Frail Elder Waiver. After extending the record open period numerous times the record closed on January 9, 2024, when the MassHealth representative reported that no determination was made from elder services as to the Frail Elder Waiver. (Exhibit 4).

Action Taken by MassHealth

MassHealth terminated appellant's MassHealth benefits because appellant's income exceeds the limit for MassHealth.

Issue

The appeal issue is whether MassHealth was correct in terminating appellant's MassHealth benefits.

Summary of Evidence

The MassHealth representative, who appeared at hearing via telephone, testified that appellant submitted a renewal on August 9, 2023, which was processed on August 12, 2023. The appellant is over the age of 65 and has a household size of one. Based on her gross monthly Social Security income of \$2,173.90, the appellant was terminated from MassHealth benefits with a coverage end date of August 26, 2023 (Exhibit 1 and MassHealth testimony). The notice issued under appeal, dated August 12, 2023, determined that appellant had a deductible of \$3,348.00 for the six month period of August 1, 2023 through February 1, 2024, in order to qualify for MassHealth Standard or MassHealth Limited (Exhibit 1). The notice also took into consideration a PCA disregard in the amount of \$1,094.00 to calculate the deductible (Exhibit 1, page 3).

The MassHealth representative explained that the income limit for MassHealth Standard benefits is 100% of the federal poverty level, which equates to \$1,215.00 for a family size of one. The appellant was previously on MassHealth Standard benefits which was protected through the timely appeal. The MassHealth representative testified that appellant has Medicare benefits, but is not qualified for Senior Buy-In unless she switches her application from a medical to a Buy-In application. The MassHealth representative explained that Buy-In has a higher income threshold of 225% of the federal poverty level, or \$2,734.00.

Since the August 12, 2023 notice was issued, the MassHealth representative stated that MassHealth received a letter stating that the appellant is working. MassHealth then found appellant eligible for MassHealth CommonHealth benefits on September 5, 2023 as there was a disability on file, but kept her on MassHealth Standard due to the protection from the appeal request. The MassHealth representative stated that appellant is presently enrolled in a Senior Care Options (SCO) plan called WellSense.

The MassHealth representative explained that if appellant isn't working, the only way for her to get on MassHealth benefits again is for her to apply for the Frail Elder Waiver and meet the clinical requirements for that program. Alternatively, the MassHealth representative explained that appellant could meet a deductible from August 1, 2023 to February 1, 2024 of \$3,348.00 in order to qualify. The MassHealth representative provided appellant with the number for Boston Senior Elder Services to determine whether she was eligible for the Frail Elder Waiver, and testified that he would send a Supplement A form for appellant to submit and would highlight the portion that appellant should fill out and send to MassHealth.

The appellant appeared by telephone and testified that her income changed because her ex-husband passed away. The appellant stated that Medicare takes \$164.90 from her check for her

Part B premium. In addition, the appellant stated that she has not worked, and has a home health aide assisting her in the home. The appellant stated that she was going to an adult day health center, but they will not let her return to the program because they said that MassHealth was no longer paying for her program. The appellant stated she does not work, and that the letter they received about her working was fake.

The record remained open for appellant to speak with her elder services provider and submit the Supplement A form. On December 14, 2023, the MassHealth representative stated that MassHealth completed processing of the same Supplement A form that she previously submitted, but that MassHealth was still awaiting a decision from Elder services in regard to whether she was clinically approved or denied for the Frail Elder Waiver. As of January 9, 2024, the MassHealth representative stated that the last document received was on October 10, 2023, implying that no elder services decision was in the system yet.

Findings of Fact

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

1. Appellant submitted a renewal on August 9, 2023, which was processed by MassHealth on August 12, 2024.
2. The appellant is over the age of 65, disabled, and has a household size of one.
3. The appellant has a gross monthly income from Social Security income of \$2,173.90.
4. The notice under appeal, dated August 12, 2023, terminated appellant's MassHealth benefits, and determined that appellant had a deductible of \$3,348.00 for a period of August 1, 2023 through February 1, 2024.
5. The income limit for MassHealth Standard benefits is 100% of the federal poverty level, or \$1,215.00 monthly.
6. Appellant previously had MassHealth Standard benefits, which were protected through the pendency of the appeal.
7. Appellant was approved for MassHealth CommonHealth benefits on September 5, 2023, as MassHealth received a letter that appellant was working and that there was a disability on file, but appellant remained on Standard as a result of the appeal.
8. The appellant is not working, and did not mean to send a disabled working adult letter to MassHealth.

9. The appellant goes to a day program at a health center that she would like to continue attending, and also has a home health aide assisting her in her home.
10. The record was left open for appellant to submit a Supplement A form and to contact her local elder services office to have them do an evaluation so that MassHealth could determine her clinical eligibility under the Frail Elder Waiver.
11. A supplement A form was received by MassHealth during the record open period, but there was no record of a clinical approval or denial from elder services.
12. MassHealth did not make a determination regarding MassHealth Buy-In

Analysis and Conclusions of Law

The issue under appeal is whether MassHealth erred in terminating appellant's MassHealth Standard benefits and determining that appellant was ineligible for MassHealth.

519.001: Introduction

(A) Categorical Requirements and Financial Standards. 130 CMR 519.000 explains the categorical requirements and financial standards that must be met to qualify for a MassHealth coverage type. The rules of financial responsibility and the calculation of financial eligibility are detailed in 130 CMR 520.000: MassHealth: Financial Eligibility.

(B) MassHealth Coverage Types. The MassHealth coverage types available to individuals 65 years of age and older, institutionalized individuals, and those who would be institutionalized without community-based services are the following:

- (1) MassHealth Standard;
- (2) MassHealth Limited;
- (3) Medicare Savings Programs (MSP) for Qualified Medicare Beneficiaries (QMB) (Senior Buy-In);
- (4) Medicare Savings Programs (MSP) for Specified Low Income Medicare Beneficiaries and Qualifying Individuals (Buy-In);
- (5) MassHealth CommonHealth; and
- (6) MassHealth Family Assistance.

(C) Determining Eligibility. The MassHealth agency determines eligibility for the most comprehensive coverage available to the applicant, although the applicant has the right to choose to have eligibility determined only for MSP for Qualified Medicare Beneficiaries (QMB) or MSP for Specified Low Income Medicare Beneficiaries and Qualifying Individuals coverage. If no choice is made by the applicant, the MassHealth agency determines eligibility for all available coverage types.

Appellant is over the age of 65, and lives in the community. Because the appellant stated at hearing that she has not worked recently, appellant is ineligible for MassHealth CommonHealth as that coverage requires that appellant be a working disabled adult (130 CMR 515.012(A)). Pursuant to 130 CMR 519.005(A), noninstitutionalized individuals 65 years of age and older may establish eligibility for MassHealth Standard coverage provided they have a countable-income less than or equal to 100% of the federal poverty level. 100% of the federal poverty level for a household size of one is \$1,215.00 gross monthly income. Appellant does not dispute that her gross monthly Social Security income of \$2,173.90 is over that threshold. However, pursuant to 130 CMR 520.011, the MassHealth agency allows certain standard earned and unearned income deductions from gross income which are described at 130 CMR 520.012 through 520.014, including, but not limited to a deduction for persons receiving PCA services paid for by MassHealth, or who have been determined by MassHealth, through initial screening or by prior authorization, to be in need of personal-care attendant services. While the appellant testified that she has a home health aide, that does not equate to a PCA. There is no evidence to support that there has been an initial screening or prior authorization request for PCA services here. As such, the PCA deduction cannot be applied. Further, for persons with income over 133% of the federal poverty level, the PCA deduction is used only to determine the deductible amount, and not to determine eligibility. (130 CMR 520.013(B)(3)).

Thus, the analysis turns to whether the appellant can still obtain MassHealth coverage under the Frail Elder waiver program which allows for an individual in the community to have income up to 300% of the federal benefit rate (130 CMR 519.007(B)). This program requires a clinical determination, certified by MassHealth or its agent, that the applicant would be institutionalized in a nursing facility, unless he or she receives one or more of the services administered by the Executive Office of Elder Affairs under the Home and Community-Based Services Waiver-Frail Elder. (130 CMR 519.007(B)(1)(b)). The record was left open at the hearing for appellant to submit a Supplement A form and to contact her local elder services office to have them do an evaluation. As of January 9, 2024, however, the MassHealth system was indicating no determination from elder services as to whether appellant meets clinical eligibility. Thus, MassHealth was correct in terminating appellant's MassHealth Standard benefits, and this appeal is **DENIED** in part.

Individuals not eligible for MassHealth Standard may still be eligible to have MassHealth pay the individual's Medicare premium if they qualify for a Medicaid Savings Program (MSP or Buy-in) plan. Effective November 24, 2023, MassHealth offers three MSP coverage types: Qualified Medicare Beneficiaries (QMB), Specified Low-Income Medicare Beneficiaries (SLMB), and Qualifying Individuals (QI).

Under 130 CMR 519.010(A) (emphasis added):

(A) Eligibility Requirements. MSP (Buy-in) QMB coverage is available to Medicare beneficiaries who

(1) are entitled to hospital benefits under Medicare Part A;

(2) have a **countable income amount (including the income of the spouse with**

whom he or she lives) that is less than or equal to 190% of the federal poverty level;

(3) Effective until February 29, 2024, have countable assets less than or equal to two times the amount of allowable assets for Medicare Savings Programs as identified by the Centers for Medicare and Medicaid Services. Each calendar year, the allowable asset limits shall be made available on MassHealth's website.

Effective March 1, 2024, MassHealth will disregard all assets or resources when determining eligibility for MSP-only benefits; and

(4) meet the universal requirements of MassHealth benefits in accordance with 130 CMR 503.000 : Health Care Reform: MassHealth: Universal Eligibility Requirements or 130 CMR 517.000 : MassHealth: Universal Eligibility Requirements, as applicable.

(B) Benefits. The MassHealth agency pays for Medicare Part A and Part B premiums and for deductibles and coinsurance under Medicare Parts A and B for members who establish eligibility for MSP coverage in accordance with 130 CMR 519.010(A).

(C) Begin Date. The begin date for MSP coverage is the first day of the calendar month following the date of the MassHealth eligibility determination

Given that appellant's income is less than 190% of the federal poverty level, which equates to \$2,309.00, this case is **REMANDED** for MassHealth to make a determination as to appellant's eligibility for MSP QMB coverage based on the other eligibility factors.

Order for MassHealth

Remove aid pending. Redetermine appellant's eligibility for MSP QMB coverage under 130 CMR 519.010(A).

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.

Radha Tilva
Hearing Officer
Board of Hearings

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