

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2307455
<b>Decision Date:</b>	10/27/2023	<b>Hearing Date:</b>	09/21/2023
<b>Hearing Officer:</b>	Alexis Demirjian	<b>Record Open to:</b>	10/06/2023

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Josephine Porte



*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

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Under 65; Immigration Status; Eligibility
<b>Decision Date:</b>	10/27/2023	<b>Hearing Date:</b>	09/21/2023
<b>MassHealth's Rep.:</b>	Ms. Porte	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Quincy Harbor South 5	<b>Aid Pending:</b>	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 31, 2023, MassHealth approved the appellant's application for MassHealth Limited benefits. (Exhibit 3). The appellant filed this appeal in a timely manner on August 24, 2023. (see 130 CMR 610.015(B) and Exhibit 2). Determinations of scope of assistance is valid grounds for appeal before the Board of Hearings. (see 130 CMR 610.032).

## Action Taken by MassHealth

MassHealth approved the appellant for MassHealth Limited benefits.

## Issue

The appeal issue is whether MassHealth was correct in determining the appellant was eligible for MassHealth Limited benefits.

## Summary of Evidence

The appellant is a household of 1 and has no income, she is at 0.00% FPL. The appellant has legal resident status under Deferred Action for Childhood Arrivals (“DACA”).

After the lifting of the Public Health Emergency (“PHE”), MassHealth began to redetermine the eligibility of members that had been enrolled in MassHealth. After reviewing the appellant’s eligibility, including the member’s family size, income, and citizenship/immigration status, it was determined that the appellant was eligible for MassHealth Limited. MassHealth testified and reaffirmed during the record open period that they had determined the appellant was considered a Nonqualified Individual Lawfully Present under MassHealth regulations and as such may only receive MassHealth Limited.

The appellant maintains that MassHealth Limited is insufficient to address her coverage needs and MassHealth Limited does not provide her access to the physicians or medications she needs to manage her health conditions. The appellant previously had MassHealth Family Assistance and maintains that she is entitled to that coverage. The appellant submitted documentation attesting to her status as a DACA recipient.

## 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 one. (Exhibit 1, Exhibit 4.)
2. The appellant has legal residency status under DACA. (Exhibit Testimony; Exhibit 4)
3. The appellant is a Non-Qualified PRUCOL. (Exhibit 4)

## Analysis and Conclusions of Law

Certain noncitizens may qualify for MassHealth benefits, depending on their legal status. The MassHealth regulations at 130 CMR 504.003 detail the circumstances in which these applicants may receive benefits. These regulations are divided in to four different categories: Lawfully Present Immigrants (504.003(A)), Protected Noncitizens (504.003(B)), Nonqualified Persons Residing under Color of Law (504.003(C)), and Other Noncitizens (504.003(D)). As there is no evidence that the appellant has ever received MassHealth CommonHealth, she cannot be considered a Protected Noncitizen pursuant to 504.003(B).

Within the category of Lawful Present Immigrant, there exist three separate categories: Qualified Noncitizen (504.003(A)(1)), Qualified Noncitizens Barred (504.003(A)(2)), and Qualified Individuals Lawfully Present (504.003(A)(3)). For the sake of clarity, certain noncitizens may qualify for MassHealth benefits, depending on their legal status. The MassHealth regulations at 130 CMR 504.003 detail the circumstances in which these applicants may receive benefits.

MassHealth has maintained throughout this appeal that the appellant is a Nonqualified Lawfully Present Immigrant.

### **Lawfully Present Immigrants**

Pursuant to 130 CMR 504.003 (A)(3):

Nonqualified individuals lawfully present are not defined as qualified under PRWORA, 8 U.S.C. 1641, but are lawfully present. 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).

(Emphasis added.)

MassHealth repeatedly maintained that the appellant falls under the provisions of 130 CMR 504 (A) (3) (c) (6), however upon careful reading that provision specifically exempts DACA recipients.

**Nonqualified Persons Residing under Color of Law (Nonqualified PRUCOLs)**

Under 130 CMR 504.003 (C):

Certain noncitizens who are not described in 130 CMR 504.003(A) or (B) may be permanently living in the United States under color of law. The applicable coverage types for nonqualified PRUCOLs are listed in 130 CMR 504.006. If not otherwise described in 504.003(A) or (B) the following are considered nonqualified PRUCOLs:

- (1) noncitizens living in the United States in accordance with an Indefinite Stay of Deportation;
- (2) noncitizens living in the United States in accordance with an Indefinite Voluntary Departure;
- (3) noncitizens and their families who are covered by an approved immediate relative petition, who are entitled to Voluntary Departure, and whose departure the U.S. Department of Homeland Security (DHS) does not contemplate enforcing;
- (4) noncitizens granted Voluntary Departure by the DHS or an Immigration Judge, and whose deportation the DHS does not contemplate enforcing;
- (5) noncitizens living under Orders of Supervision who do not have employment authorization under 8 CFR 274a.12(c);
- (6) noncitizens who have entered and continuously lived in the United States since before January 1, 1972;
- (7) noncitizens granted Suspension of Deportation, and whose departure the DHS does not contemplate enforcing;
- (8) noncitizens with pending applications 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 have not been granted employment authorization, or are under the age of 14 and have not had an application pending for at least 180 days;
- (9) noncitizens granted Deferred Action for Childhood Arrivals status or who have a pending application for this status;**
- (10) noncitizens who have filed an application, petition, or request to obtain a lawfully present status that has been accepted as properly filed, but who have not yet obtained

employment authorization and whose departure DHS does not contemplate enforcing; or (11) any noncitizen living in the United States with the knowledge and consent of the DHS, and whose departure the DHS does not contemplate enforcing. (These include persons granted Extended Voluntary Departure due to conditions in the noncitizen's home country based on a determination by the U.S. Secretary of State.)

(Emphasis Added)

Based on the appellant's testimony and corroborating documentation, MassHealth should have found that the appellant's immigration status fell under Nonqualified Persons Residing under Color of Law (Nonqualified PRUCOLs). See 130 CMR 504.003 (C). MassHealth's determination that the appellant was a Nonqualified Individual Lawfully Present applicant has direct bearing on what MassHealth benefits the appellant may receive.

Because MassHealth erred in determining the appellant's immigration status under the regulations, and that error has direct impact on whether the appellant may qualify for more benefits, this matter shall be remanded to determine the appellant's eligibility based on her status as a nonqualified PRUCOL.

For those reasons, the appeal is APPROVED.

## **Order for MassHealth**

MassHealth is ordered to rescind the July 31 2023 notice, which is under appeal, and determine the appellant's eligibility based on her immigration status which is a nonqualified PRUCOL applicant. Once MassHealth determines the appellant's eligibility status based on the correct immigration status, MassHealth shall issue a new notice and include appeal rights.

## **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.

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Alexis Demirjian  
Hearing Officer  
Board of Hearings

cc:

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