

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in part	<b>Appeal Number:</b>	2307697
<b>Decision Date:</b>	11/14/2023	<b>Hearing Date:</b>	10/6/2023
<b>Hearing Officer:</b>	Cynthia Kopka	<b>Record Open to:</b>	10/20/2023

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Sarah Sordella, Charlestown  
Karishma Raja, Premium Billing



*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 in part	<b>Issue:</b>	Under 65, CommonHealth, premium calculation
<b>Decision Date:</b>	11/14/2023	<b>Hearing Date:</b>	10/6/2023
<b>MassHealth's Rep.:</b>	Sarah Sordella and Karishma Raja	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Virtual	<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

By notice dated July 13, 2023, MassHealth approved Appellant for MassHealth's CommonHealth benefit with a monthly premium of \$662.40. Exhibit 1. Appellant filed this timely appeal on August 29, 2023. Exhibit 2. 130 CMR 610.015(B). Challenging the scope of assistance is a valid basis for appeal. 130 CMR 610.032. The hearing record was held open through October 20, 2023. Exhibit 4.

### Action Taken by MassHealth

MassHealth approved Appellant for MassHealth's CommonHealth benefit with a monthly premium.

### Issue

The appeal issue is whether MassHealth correctly calculated the CommonHealth Premium.

### Summary of Evidence

The MassHealth eligibility representative testified as follows. MassHealth received Appellants application on July 10, 2023 along with the following 2022 tax return documents: 1040 form, W2, Schedule 1, Schedule A, Schedule B, and Schedule D. MassHealth processed the application on July 13, 2023 using these documents to calculate income. MassHealth added Appellant's taxable gross yearly income of \$111,437, interest of \$1,220, and dividend of \$3,145 and subtracted the loss of capital gains of \$3,000, coming to a gross income of \$112,802. There were no other deductions listed on the schedules provided. The eligibility representative noted that some of the schedules were missing, which could have further deductions.

On July 13, 2023, MassHealth notified Appellant that he was eligible for MassHealth's CommonHealth benefit. As Appellant's income for a household of one was 938.75% of the federal poverty level (FPL), MassHealth notified Appellant that his monthly CommonHealth premium would be \$662.40 beginning August 2023.

On September 28, 2023, Premium Assistance updated Appellants case and changed the premium amount owed from \$662.40 to \$566.34 beginning September 18, 2023.

The Premium Billing representative testified as follows. Appellant owes \$662.40 for August and September and the lower premium of \$566.34 is due beginning in October 2023. Appellant made partial payments of \$51.63 in September and October, which were applied to the balance of the August premium.

Appellant testified as follows. Appellant was confused as to how the premium was calculated. Appellant made several phone calls to MassHealth and spoke to several people, who explained that the premium was based on the income calculated and deductions. Appellant was unclear as to whether his health insurance payments for his Blue Cross Blue Shield plan were factored into the calculation.

The hearing record was held open through October 13, 2023 for Appellant to submit the complete tax return with all schedules, and through October 20, 2023 for MassHealth to review and respond with an explanation of how the countable income was calculated. Exhibit 4.

After the parties exchanged information, MassHealth reported that based on Appellant's submission, Appellant's MAGI income is 841.56% of the FPL. Exhibit 5. MassHealth used the figures on the 1040 form after cross-checking the schedules to ensure the numbers were correct:

1a	Total amount from form W2	111,437
2b	Taxable interest	1,220
3b	Ordinary dividends	3,145
7	Capital loss	-3,000
8	Other income from Schedule 1, line 10	10,626

Total income	123,428
Adjusted gross income	<b>123,428</b>

Appellant's premium, after adjustment from Premium Assistance, changed from \$566.34 to \$440.34. Exhibit 5 at 1, 15; Exhibit 7. Appellant acquiesced to MassHealth using the numbers on the 2022 tax return 1040 form to calculate his projected yearly income for 2023. Exhibit 6. Appellant's tax return is included in Exhibit 6. There are no adjustments to income listed on the form (such as educator expenses, health savings account deduction, alimony, or penalty on early withdrawal of savings). *Id.* at 8.

The Premium Billing representative was able to adjust the September and October premiums to \$440.34 but would not be able to adjust August without a hearing decision. Exhibit 7.

Due to MassHealth issuing a termination notice to Appellant for failure to pay outstanding premiums, Exhibit 8 at 16, Appellant paid his balance in full on November 6, 2023. *Id.* at 1. The \$1,439.82 paid by Appellant included payment of \$662.40 for the August 2023 premium:

Transaction Type	Transaction Date	Invoice Amount	Payment Amount	Invoice Adjustment Amount	
Invoice	21-Aug-2023	662.40			
Payment	4-Sep-2023		(51.63)		
Invoice	21-Sep-2023	662.40		(222.06)	
Payment	4-Oct-2023		(51.63)		
Invoice	21-Oct-2023	566.34		(126.00)	Total:
		<b>1,891.14</b>	<b>(103.26)</b>	<b>(348.06)</b>	<b>\$ 1,439.82</b>

*Id.* at 14.

## 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. He is disabled and working.
2. MassHealth determined that Appellant's projected gross yearly income for 2023 was \$123,428 without allowable deductions. Exhibit 5, Exhibit 6 at 8.
3. In 2023, the monthly FPL for a household of one was \$1,215 and yearly FPL was \$14,580; 133% of the FPL was \$1,616 monthly and \$19,392 yearly.

4. On November 6, 2023, Appellant paid \$1,439.82, the full outstanding balance which included an August 2023 premium amount of \$662.40. Exhibit 8.

## Analysis and Conclusions of Law

At issue here is the calculation of Appellant's income and the premium assessed. Appellant did not dispute the income numbers used by MassHealth in making its calculation but requested clarity of how it was determined.

MassHealth regulations at 130 CMR 505.000 *et seq.* explain the categorical requirements and financial standards that must be met to qualify for a MassHealth coverage type. The rules of financial responsibility and calculation of financial eligibility are detailed in 130 CMR 506.000: *Health Care Reform: MassHealth: Financial Requirements*. The MassHealth coverage types are:

- (1) MassHealth Standard – for people who are pregnant, children, parents and caretaker relatives, young adults, disabled individuals, certain persons who are HIV positive, individuals with breast or cervical cancer, independent foster care adolescents, Department of Mental Health (DMH) members, and medically frail as such term is defined in 130 CMR 505.008(F);
- (2) MassHealth CommonHealth – for disabled adults, disabled young adults, and disabled children who are not eligible for MassHealth Standard;
- (3) MassHealth CarePlus – for adults 21 through 64 years of age who are not eligible for MassHealth Standard;
- (4) MassHealth Family Assistance – for children, young adults, certain noncitizens, and persons who are HIV positive who are not eligible for MassHealth Standard, MassHealth CommonHealth, or MassHealth CarePlus;
- (5) MassHealth Limited – for certain lawfully present immigrants as described in 130 CMR 504.003(A): *Lawfully Present Immigrants*, nonqualified PRUCOLs, and other noncitizens as described in 130 CMR 504.003: *Immigrants*; and
- (6) MassHealth Medicare Savings Programs – for certain Medicare beneficiaries.

130 CMR 505.001(A).

In order to establish eligibility for MassHealth benefits, applicants must meet both the categorical and financial requirements. MassHealth determines financial eligibility based on an applicant's modified adjusted gross income. MassHealth takes the countable income, which includes earned income as described in 130 CMR 506.003(A) and unearned income described in 130 CMR 506.003(B) and subtracts deductions described in 130 CMR 506.003(D). 130 CMR 506.007. Per 130 CMR 506.003, the regulatory definitions of earned income, unearned income and deductions are as follows:

(A) Earned Income.

(1) Earned income is the total amount of taxable compensation received for work or services performed less pretax deductions. Earned income may include wages, salaries, tips, commissions, and bonuses.

(2) Earned taxable income for the self-employed is the total amount of taxable annual income from self-employment after deducting annual business expenses listed or allowable on a U.S. Individual Tax Return. Self-employment income may be a profit or a loss.

(3) Earned income from S-Corporations or Partnerships is the total amount of taxable annual profit (or loss) after deducting business expenses listed or allowable on a U.S. Individual Tax Return.

(4) Seasonal income or other reasonably predictable future income is taxable income derived from an income source that may fluctuate during the year. Annual gross taxable income is divided by 12 to obtain a monthly taxable gross income with the following exception: if the applicant or member has a disabling illness or accident during or after the seasonal employment or other reasonably predictable future income period that prevents the person's continued or future employment, only current taxable income will be considered in the eligibility determination.

(B) Unearned Income.

(1) Unearned income is the total amount of taxable income that does not directly result from the individual's own labor after allowable deductions on the U.S. Individual Tax Return.

(2) Unearned income may include, but is not limited to, social security benefits, railroad retirement benefits, pensions, annuities, certain trusts, interest and dividend income, state or local tax refund for a tax you deducted in the previous year, and gross gambling income.

(C) Rental Income. Rental income is the total amount of taxable income less any deductions listed or allowable on an applicant's or member's U.S. Individual Tax Return.

(D) Deductions. Under federal law, the following deductions are allowed when calculating MAGI countable income. Changes to federal law may impact the availability of these deductions:

- (1) educator expenses;
- (2) reservist/performance artist/fee-based government official expenses;
- (3) health savings account;
- (4) moving expenses, for the amount and populations allowed under federal law;
- (5) one-half self-employment tax;

- (6) self-employment retirement account;
- (7) penalty on early withdrawal of savings;
- (8) alimony paid to a former spouse for individuals with alimony agreements finalized on or before December 31, 2018. Alimony payments under separation or divorce agreements finalized after December 31, 2018, or pre-existing agreements modified after December 31, 2018, are not deductible;
- (9) individual retirement account (IRA);
- (10) student loan interest;
- (11) scholarships, awards, or fellowships used solely for educational purposes; and
- (12) other deductions described in the Tax Cut and Jobs Act of 2017, Public Law 115-97 for as long as those deductions are in effect under federal law.

To be eligible for MassHealth Standard as a disabled adult, Appellant's monthly income would have to be less than or equal to 133% of the FPL. 130 CMR 505.002(E)(1)(b). The undisputed evidence in the record demonstrates that Appellant's household gross yearly income totaled \$123,428. MassHealth had determined that Appellant's MAGI income was 841.56% % of the FPL.<sup>1</sup> Accordingly, Appellant's household income is too high to be eligible for MassHealth Standard.

The eligibility requirements for MassHealth CommonHealth are set forth in pertinent part:

(B) Disabled Working Adults. Disabled working adults must meet the following requirements:

- (1) be 21 through 64 years of age (For those 65 years of age and older, see 130 CMR 519.012: *MassHealth CommonHealth*);
- (2) be employed at least 40 hours per month, or if employed less than 40 hours per month, have been employed at least 240 hours in the six-month period immediately preceding the month of receipt of the application or MassHealth's eligibility review;
- (3) be permanently and totally disabled (except for engagement in substantial gainful activity) as defined in 130 CMR 501.001: *Definition of Terms*;
- (4) be 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*;
- (5) be ineligible for MassHealth Standard; and
- (6) comply with 130 CMR 505.004(J).

(C) Disabled Adults. Disabled adults must meet the following requirements:

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<sup>1</sup> My calculation based on the numbers provided was 846.5%. While unclear why this is slightly different from MassHealth's determination, it does not affect the premium calculation as explained *infra*.

- (1) be 21 through 64 years of age;
- (2) be permanently and totally disabled, as defined in 130 CMR 501.001: *Definition of Terms*;
- (3) be ineligible for MassHealth Standard;
- (4) be 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*;
- (5) (a) meet a one-time-only deductible in accordance with 130 CMR 506.009: *The One-Time Deductible*; or  
 (b) have modified adjusted gross income of the MassHealth Disabled Adult household that is less than or equal to 200% of the federal poverty level (FPL) and provide verification that they are HIV positive; and
- (6) comply with 130 CMR 505.004(J).

...

**(I) MassHealth CommonHealth Premium.** Disabled adults, disabled working adults, disabled young adults, and disabled children who meet the requirements of 130 CMR 505.004 may be assessed a premium in accordance with the premium schedule provided in 130 CMR 506.011(B)(2). No premium is assessed during a deductible period.

(J) Use of Potential Health Insurance Benefits. Applicants and members must use potential health insurance benefits, in accordance with 130 CMR 503.007: *Potential Sources of Health Care*, and must enroll in health insurance, including Medicare, if available at no greater cost to the applicant or member than he or she would pay without access to health insurance, or if purchased by the MassHealth agency in accordance with 130 CMR 505.002(O) and 506.012: *Premium Assistance Payments*. Members must access those other health insurance benefits and must show their private health insurance card and their MassHealth card to providers at the time services are provided.

130 CMR 505.004 (emphasis added). Here, Appellant is categorically eligible for CommonHealth as a disabled working adult pursuant to 130 CMR 505.004(B). According to 130 CMR 505.004(I), adults eligible for CommonHealth may be assessed a premium in accordance with the premium schedule provided in 130 CMR 506.011(B)(2). For adults above 150% of the FPL, MassHealth uses the following formula:

<p><b>CommonHealth Full Premium Formula Young Adults and Adults above 150% of the FPL and Children above 300% of the FPL</b></p>
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Base Premium	Additional Premium Cost	Range of Monthly Premium Cost
Above 150% FPL—start at \$15	Add \$5 for each additional 10% FPL until 200% FPL	\$15 — \$35
Above 200% FPL—start at \$40	Add \$8 for each additional 10% FPL until 400% FPL	\$40 — \$192
Above 400% FPL—start at \$202	Add \$10 for each additional 10% FPL until 600% FPL	\$202 — \$392
Above 600% FPL—start at \$404	Add \$12 for each additional 10% FPL until 800% FPL	\$404 — \$632
Above 800% FPL—start at \$646	Add \$14 for each additional 10% FPL until 1000%	\$646 — \$912
Above 1000% FPL—start at \$928	Add \$16 for each additional 10% FPL	\$928 + greater

130 CMR 506.011(B)(2)(b). Members who have health insurance to which MassHealth does not contribute may receive a lower supplemental premium, as follows.

CommonHealth Supplemental Premium Formula	
% of Federal Poverty Level (FPL)	Monthly Premium Cost
Above 150% to 200%	60% of full premium
Above 200% to 400%	65% of full premium
Above 400% to 600%	70% of full premium
Above 600% to 800%	75% of full premium
Above 800% to 1000%	80% of full premium
Above 1000%	85% of full premium

130 CMR 506.011(B)(2)(c).

According to the chart, at either 841 or 846% of the FPL, Appellant's full CommonHealth premium would be \$702 per month. Appellant has other insurance and is entitled to only pay 80% of the supplemental premium, which would be \$561.60. 130 CMR 506.011(B)(2)(c). Premium Assistance has provided additional assistance, reducing the monthly premium to \$440.34.<sup>2</sup>

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<sup>2</sup> Premium Assistance did not appear at hearing and it is not clear how the reduction was calculated.

Having determined that Appellant does not owe a \$662.40 as calculated in the appealed notice, the next issue is whether the new calculation of \$440.34 may be retroactively applied. Pursuant to 130 CMR 610.071(A)(2), “[t]he effective date of any adjustments to the appellant's eligibility status is the date on which all eligibility conditions were met, regardless of when the supporting evidence was submitted.” Here, MassHealth used 2022 income figures to calculate Appellant’s projected 2023 income and used this to calculate the premium. These eligibility conditions were met at the time the July 13, 2023 notice issued. Therefore, Appellant is entitled to pay a \$440.34 premium beginning August 2023. Premium Billing had adjusted Appellant’s premium to \$440.34 as of September 2023. This appeal is approved in part, and MassHealth and Premium Billing shall adjust the August 2023 premium to \$440.34. As Appellant had already paid the full \$662.40 for August, MassHealth must credit or reimburse Appellant for the overpayment.

## **Order for MassHealth**

Adjust Appellant’s August 2023 premium to \$440.34. Credit or reimburse Appellant \$222.06 for overpayment made for the August 2023 premium.

## **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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Cynthia Kopka  
Hearing Officer  
Board of Hearings

cc:

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

Premium Billing

General Counsel's office – Sharon Boyle