

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed	Appeal Number:	2307913
Decision Date:	11/21/2023	Hearing Date:	10/3/2023
Hearing Officer:	Cynthia Kopka		

Appearance for Appellant:



Appearance for MassHealth:

Wil Colon, 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

Appeal Decision:	Dismissed	Issue:	CommonHealth premium
Decision Date:	11/21/2023	Hearing Date:	10/3/2023
MassHealth's Rep.:	Wil Colon, Karishma Raja	Appellant's Rep.:	Parent/guardian
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 notices dated February 2, 2023 and July 26, 2023, MassHealth approved Appellant for MassHealth's CommonHealth benefit with a monthly premium. Exhibits 1, 7. Appellant filed this appeal on August 31, 2023. Exhibit 2. 130 CMR 610.015(B). Challenging the scope of assistance is a valid basis for appeal. 130 CMR 610.032.

Action Taken by MassHealth

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

Issue

The appeal issue is whether MassHealth correctly determined the CommonHealth premium.

Summary of Evidence

The MassHealth eligibility representative appeared remotely and testified as follows, primarily reading from MassHealth's system notes. MassHealth had issued a request for information for verification of Appellant's household income in October 2022. At this time, Appellant had been approved for MassHealth CommonHealth and was the only member of the household requiring MassHealth coverage. In December 2022, Appellant's parent had submitted income information, but it was deemed insufficient. MassHealth sent an outreach letter to Appellant's household on January 3, 2023. On February 2, 2023, without receiving income information, MassHealth aggregated data using matches in other systems. Appellant's household income was deemed to have gone from 1115.69% to 3487.70% of the federal poverty level (FPL). The MassHealth representative said that the source of the income change appeared to be a paystub belonging to Appellant's father for \$5,342.25 biweekly. The MassHealth representative said that the 3487.70% was only attributable to Appellant's father, not to Appellant.

On February 2, 2023, MassHealth notified Appellant that Appellant was approved for CommonHealth with a monthly premium of \$1,740.80. Exhibit 7. This was based on the income for a household of four calculated to be 1705.48% of the FPL. *Id.* The MassHealth representative testified that the household yearly gross income was deemed to be \$156,621, broken down as follows: Appellant's father's income was \$152,301.94; Appellant's mother's yearly income was \$2,400, and Appellant's sibling's yearly income was \$1,920.

On April 14, 2023, after it was announced that the federal public health emergency was ending, MassHealth issued a premium outreach notice alerting Appellant that the monthly CommonHealth premium would be \$1,740.80. Exhibit 8. The notice informs Appellant that during the Covid-19 public health emergency, MassHealth did not increase premiums. The notice states that the premium covers "one or more of the people listed below" and lists Appellant and his two parents. *Id.* The notice states that if Appellant does not want to pay the premium, he would have to cancel by June 13, 2023. *Id.* This notice does not list appeal rights.

On July 5, 2023, MassHealth received from Appellant's mother tax return documents to verify income. Appellant sent the 1040 page 1 and 2, Schedule 1, and Schedule C. On July 6, 2023, MassHealth notified Appellant's household that the submitted proof was unacceptable. On July 11, 2023 and July 17, 2023, Appellant's parent submitted new documentation including a 1099-NEC summary. On July 19, 2023, MassHealth changed Appellant's household income from 3,487% to 3,250.54% and issued a notice that the 1099-NEC was unacceptable proof. On July 26, 2023, MassHealth changed the household FPL to 844.38%. On July 26, 2023, MassHealth notified Appellant that the new FPL calculation was 401.2% and the new premium would be \$148.40 beginning August 2023. Exhibit 1.

The Premium Billing representative testified that based on the February 2, 2023 notice, Appellant was billed \$1,740.80 for June and July 2023. After Appellant was redetermined on July 26, 2023, Premium Billing charged Appellant \$148.40 beginning in August. Appellant has an outstanding

balance of \$3,630.00. Exhibit 5 at 13. Premium Billing testified that Appellant did not receive a bill for March, April, or May 2023 because Premium Billing was waiving or reducing premiums during the pandemic, a practice that ended on May 31, 2023. Premium Billing's records indicate that Appellant received bills for \$267.40 from September 2021 through June 2022 and nothing from July 2022 through June 2023. The Premium Billing representative did not know why there was a gap in assessing the premium between 2022 and 2023.

Appellant's parent appeared at hearing remotely and issued a letter in support. Exhibit 4. A summary follows. Appellant's parent clarified that the issue in dispute is the incorrect calculation of the June and July 2023 premiums. Appellant's parent agrees with MassHealth's calculation of the premium from the July 26, 2023 notice.

Appellant testified that she never received the February 2023 notice. Appellant does not have an online account with MassHealth but has been trying to get help in setting up an account. Appellant's family had always been paying \$267 for a premium. Appellant testified that in April 2023, she received notice that they would have to pay a new premium of \$1,740.80. Appellant's parent was surprised, as the Commonwealth premium is supplemental insurance for one person, not a household. Appellant's parent testified that their household income was now 60% lower than in 2019, when the premium was \$267.

Appellant's parent assumed that there was a mistake when she received notice of the premium increasing, assuming that it was applied for full coverage of the whole household. Appellant's parent called customer service on April 20, 2023 to report that Appellant's household had private insurance. During this call, the customer service representative Theresa did not mention that there were missing income verifications at the time.

On July 5, 2023, Appellant's parent received the bill for the \$1,740.80. Appellant's parent called customer service on July 5, 2023 to find out why the premium was so high. Appellant's parent spoke to [REDACTED] in customer service, [REDACTED] in Premium Assistance, [REDACTED] in eligibility, and [REDACTED] in enrollment. It was [REDACTED] who informed Appellant's parent that she was missing income verifications. Appellant's parent was told to send in the 1040, Schedule 1, and Schedule C from the 2022 tax return. Appellant's parent faxed those items on July 5, 2023. Appellant's parent learned at this time that she had missed a notice requesting income verification from February 2023.

On July 17, 2023, Appellant's parent received the notice that the documents she submitted were insufficient. Appellant's parent faxed recent paystubs and a 1099 form for her self-employment. On July 26, 2023, Appellant's parent received another notice that the documentation was insufficient and instructing Appellant to send a sales and marketing verification for her self-employment.

On July 26, 2023, Appellant's parent received notice that the premium was \$148.40. This made sense to Appellant's parent, as their income was lower than in 2019. However, Appellant's parent

received another bill stating that she had to pay the \$1,740.80. Appellant's parent called again, arguing that the \$1,740.80 was not based on an accurate income calculation. Appellant's parent was told that MassHealth did not have her income, so it was estimated as an aggregate and used to calculate the \$1,740.80 premium. However, because Appellant had not sent in proper income verifications, Appellant still owed the incorrect premium. Appellant argued that the bill for over \$3,000 is effectively a penalty for not submitting the right documents

Appellant's parent testified that she is willing to pay \$148.40 for the June and July premiums because it is the correct calculation based on the household income. Appellant's parent argued that she should not have to pay \$1,740.80 because it was not based on a correct calculation.

Appellant did not appeal the notices in question because Appellant's parent thought that it was something incorrect in the system. Appellant's parent spoke to someone about appealing but was told not to appeal because that is enrollment. Appellant's parent testified that she was told if she gets her documents in, she will be fine. Appellant's parent finally appealed after she received the July 2023 notice with the correct premium and a bill for the higher premium amount.

Findings of Fact

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

1. Appellant is in a household of four, under the age of 64, and disabled.
2. On February 2, 2023, MassHealth notified Appellant that Appellant was approved for CommonHealth with a monthly premium of \$1,740.80. This was based on the income for a household of four calculated to be 1705.48% of the FPL. Exhibit 7.
3. The February 2, 2023 notice explains appeal rights and includes an appeal form. *Id.*
4. On April 14, 2023, MassHealth issued a premium outreach notice alerting Appellant that the monthly CommonHealth premium would be \$1,740.80. Exhibit 8.
5. The April 14, 2023 letter states that the premium covers "one or more of the people listed below" and lists Appellant and his two parents. *Id.*
6. The letter states that if Appellant does not want to pay the premium, he would have to cancel by June 13, 2023. This notice does not list appeal rights. *Id.*
7. MassHealth billed Appellant a premium of \$1,740.80 for June 2023 and \$1,740.80 for July 2023. Exhibit 4 at 13.

8. On July 26, 2023, after receiving income verification, MassHealth notified Appellant that the new FPL calculation was 401.2% and the new premium would be \$148.40 beginning August 2023. Exhibit 1.
9. Appellant filed this appeal on August 31, 2023. Exhibit 2.

Analysis and Conclusions of Law

The Board of Hearings must receive a request for a fair hearing within certain time frames per regulation 130 CMR 610.015(B), set forth in pertinent part:

(B) Time Limitation on the Right of Appeal. The date of request for a fair hearing is the date on which BOH receives such a request in writing. BOH must receive the request for a fair hearing within the following time limits:

- (1) 60 days after an applicant or member receives written notice from the MassHealth agency of the intended action. Such notice must include a statement of the right of appeal and the time limit for appealing. In the absence of evidence or testimony to the contrary, it will be presumed that the notice was received on the fifth day after mailing;
- (2) unless waived by the BOH Director or his or her designee, 120 days from
 - (a) the date of application when the MassHealth agency fails to act on an application;
 - (b) the date of request for service when the MassHealth agency fails to act on such request;
 - (c) the date of MassHealth agency action when the MassHealth agency fails to send written notice of the action; or
 - (d) the date of the alleged coercive or otherwise improper conduct, but up to one year from the date of the conduct if the appellant files an affidavit with the BOH Director stating the following, and can establish the same at a hearing (Failure to substantiate the allegation either before or at the hearing will be grounds for dismissal.):
 1. he or she did not know of the right to appeal, and reasonably believed that the problem was being resolved administratively or he or she was justifiably unaware of the conduct in question; and
 2. the appeal was made in good faith.

See also 130 CMR 610.034 (“The request for a fair hearing must be received by BOH within the time limits set forth in 130 CMR 610.015.”). If the Board of Hearings does not receive the appeal within the regulatory time limits, it will dismiss the request for hearing. 130 CMR 610.035(A)(1). During the public health emergency for Covid-19, the time for requesting a fair hearing was

extended to 120 days. Eligibility Operations Memo (EOM) 20-09.

Appellant's parent requested a fair hearing on August 31, 2023 to challenge MassHealth's calculation that Appellant owed a premium of \$1,740.80 for June and July 2023. MassHealth issued two notices regarding the \$1,740.80 premium: on February 2, 2023 and April 14, 2023. Exhibits 7 and 8. Appellant's parent testified that she did not receive the February 2, 2023 notice but did receive the April 14, 2023 outreach letter.

Due to the public health emergency, Appellant's time to file an appeal of either the February or April notice was 120 days. Factoring in 5 mailing days, the deadline to appeal February 2, 2023 notice was June 7, 2023. Assuming the outreach letter carried appeal rights, the deadline to appeal this letter was August 17, 2023. The outreach letter informed Appellant that the deadline to cancel coverage to avoid paying the high premium was June 13, 2023.

The August 31, 2023 is not timely to challenge MassHealth's action in calculating the premium of \$1,740.80. The only way Appellant's appeal filed on August 31, 2023 could be considered a timely request for a fair hearing for MassHealth's action in assessing the \$1,740.80 premium based on aggregate data matches would be if Appellant met the one year provisions established in 130 CMR 610.015(B)(2)(d). To appeal under those parameters, Appellant would have had to establish that MassHealth engaged in coercive or otherwise improper conduct, defined by 130 CMR 610.033:

610.033: Coercive or Otherwise Improper Conduct

(A) Definitions.

- (1) Coercive conduct means knowingly compelling an applicant, member, or former member by force, threat, intimidation, or other abuse of position to take action that is injurious to his or her best interest and that he or she would not otherwise have done.
- (2) Improper conduct means reckless and unreasonable abuse of authority that interferes with the applicant's, member's, or former member's exercise of rights under MassHealth.

(B) Remedies. When a hearing officer has found coercive or otherwise improper conduct on the part of any MassHealth agency employee directly involved in the applicant's, member's, or former member's case at a fair hearing, the enrollment center director will

- (1) assign a different worker; and
- (2) initiate appropriate personnel action including the insertion of a written reprimand and a copy of the written findings, if any, in the worker's personnel file.

Appellant testified that she was told she did not have to appeal because it would have to go

through enrollment. Appellant did not allege who specifically made this statement to her, or when it was made. Appellant also testified that she believed that the high premium had been assessed in error against the whole family as opposed to one member. The April 14, 2023 outreach letter could have contributed to that confusion, as it listed three family members for which the premium may have been assessed. The April 14, 2023 letter also did not explain how a party could file an appeal, which could have been helpful as Appellant would have received it during the appeal window of the February 2, 2023 notice. Finally, Appellant's parent alleged that the customer service representative did not inform her that Appellant needed to provide updated income information during the April 20, 2023 call.

While the record supports Appellant's parent's understandable confusion, there is not enough evidence in the hearing record to support a finding of coercive or otherwise improper conduct that prevented Appellant's parent from appealing the premium assessment in a timely manner. As the present appeal was not timely to challenge the February 2, 2023 or April 14, 2023 notices, this appeal is dismissed pursuant to 130 CMR 610.035(A)(1).

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

Premium Billing