

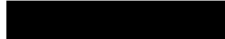
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied in part; Remanded	Appeal Number:	2308287
Decision Date:	10/20/2023	Hearing Date:	10/3/2023
Hearing Officer:	Paul C. Moore	Record Closed:	10/16/2023

Appearance for Appellant:

 pro se (by telephone)

Appearances for MassHealth:

Stacey Ridel, Springfield MassHealth
Enrollment Center; Karishma Raja, MassHealth
Premium Billing Unit (both by telephone)



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied in part; Remanded	Issue:	CommonHealth Premium; Eligibility
Decision Date:	10/20/2023	Hearing Date:	10/3/2023
MassHealth Reps.:	Stacey Ridel, Karishma Raja	Appellant Rep.:	Pro se
Hearing Location:	Board of Hearings (remote)	Aid Pending:	Yes

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated September 5, 2023, MassHealth notified the appellant that her coverage would change from MassHealth Standard to MassHealth CommonHealth due to a change in her circumstances (Exh. 1). The appellant filed a timely appeal of the notice with the Board of Hearings (BOH) on September 12, 2023 (130 CMR 610.015; Exh. 2). A change in MassHealth coverage is valid grounds for appeal to the BOH (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant's coverage would change from Standard to CommonHealth.

Issue

Was MassHealth correct in downgrading the appellant's MassHealth coverage?

Summary of Evidence

A MassHealth representative from the Springfield MassHealth Enrollment Center (“MEC representative”) testified by telephone that the appellant is under age 65, disabled and lives in a household of two, consisting of the appellant and her spouse. The appellant’s spouse is also disabled. In March, 2023, MassHealth performed a health data match, in which MassHealth learned that the family made slightly higher income than MassHealth Standard benefits allow. The MEC representative testified that the appellant receives \$1,795.00 a month in Social Security disability benefits (gross amount), and her spouse receives \$1,535.00 a month in Social Security disability benefits (gross amount). These amounts, when added together, equal \$3,330.00 per month, placing the household at 197.64% of the federal poverty level (FPL) for a household of two. In April, 2023, the public health emergency due to Covid-19 ended, and MassHealth stopped protecting members in the coverage types in which they were enrolled as of March 18, 2020 (at the beginning of the Covid-19 public health emergency).¹

On September 5, 2023, MassHealth notified the appellant in writing that her coverage would change from MassHealth Standard with Buy-in to MassHealth CommonHealth due to a change in her circumstances. The notice apprised the appellant that she is eligible for CommonHealth coverage effective August 26, 2023, with a household monthly premium of \$21.00 (Exh. 1).²

The appellant testified by telephone that she believes she should be considered to be part of a household of four, rather than two, persons. She has permanent legal custody of her two minor grandsons, who are ages ■ and ■. They live with the appellant and her spouse. The appellant claims her grandsons as dependents on her federal tax return, which she files jointly with her spouse annually. She and her spouse do not take any income deductions on their federal tax return. Moreover, the appellant and her spouse financially support her grandsons (Testimony).

The appellant added that her spouse is now on hospice care (Testimony).

The MEC representative explained that for a MassHealth “disabled adult” household, the regulations specify that natural or adopted children, and stepchildren younger than 19 years old, are considered to be members of the household, if they live with the disabled adult member. Here, although the appellant has legal custody of her grandsons, they are not natural or adopted children, nor are they stepchildren. The MEC representative testified that the appellant’s grandsons are both enrolled in MassHealth Standard because they receive cash

¹ MassHealth Eligibility Operations Memo 20-09, “MassHealth Response to Coronavirus Disease 2019” (April 7, 2020), addresses this circumstance, as follows: “MassHealth will protect coverage for all individuals who have Medicaid coverage as of March 18, 2020, and for all individuals newly approved for coverage during the COVID-19 outbreak national emergency, and through the end of the month in which such national emergency period ends. **These members will not lose coverage or have a decrease in benefits during this time period.**”

² The MEC representative explained that the appellant’s spouse is also enrolled in MassHealth CommonHealth, and that the family will be responsible to pay one CommonHealth premium monthly.

assistance from the Department of Transitional Assistance (DTA) (Testimony).

The MEC representative testified that even if the appellant were considered to belong to a household of four, rather than two, 133% of the FPL (the upper limit to receive MassHealth Standard), in 2023, is \$3,325.00 monthly; the couple's income is \$3,330.00 monthly.

A second MassHealth representative from the premium billing unit testified by telephone that starting in October, 2023, the household will owe a premium, \$21.00, for CommonHealth coverage every month. This premium is based on the gross monthly income of both the appellant and her spouse (Testimony).

On or about October 12, 2023, the hearing officer briefly reopened the record of this appeal to clarify how the household's \$21.00 CommonHealth premium was calculated (Exh. 4).³ On October 16, 2023, the MassHealth representative, by e-mail to the hearing officer, responded that the \$21.00 premium was calculated pursuant to 130 CMR 506.011(B)(2)(c) (Exh. 5), and also asserted that "both [the appellant and her spouse] actually have Medicare. [The appellant] is currently aid-pending in MassHealth Standard Plus Medicare Buy-In, therefore MassHealth is still assisting her the Part B premium payments. Once BOH removes the protection and the member gets her true determination of CommonHealth, MassHealth will no longer assist with her Part B premiums" (Exh. 6).

Findings of Fact

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

1. The appellant is under age 65, disabled and lives in a household of two, consisting of herself and her disabled spouse (Testimony).
2. The appellant was enrolled in MassHealth Standard with Buy-In since at least March 18, 2020 (Exh. 6).
3. In March, 2023, MassHealth performed a health data match, in which MassHealth learned that the family made slightly higher income than MassHealth Standard benefits allow (Testimony).
4. On September 5, 2023, MassHealth notified the appellant in writing that her coverage would change from MassHealth Standard with Buy-in to MassHealth CommonHealth

³ Pursuant to the Fair Hearing Rules at 130 CMR 610.081, "Reopening Before Decision:" "After the close of the hearing and before a decision, the hearing officer may reopen the record or, if appropriate, the hearing if he or she finds need to consider further testimony, evidence, materials or legal rules before rendering his or her decision. . . ."

due to a change in her circumstances, that her MassHealth CommonHealth was effective August 26, 2023, and that the household would be charged a monthly CommonHealth premium of \$21.00 (Exh. 1).

5. The appellant filed a timely appeal of this notice with the BOH on September 12, 2023 (Exh. 2).
6. Both the appellant and her spouse are enrolled in Medicare (Exh. 6).
7. The appellant's spouse is on hospice care (Testimony).
8. The appellant receives \$1,795.00 a month in Social Security disability benefits (gross amount), and her spouse receives \$1,535.00 a month in Social Security disability benefits (gross amount) (Testimony).
9. The appellant's household income is \$3,330.00 monthly (Testimony).
10. The appellant has legal custody of both of her minor grandsons, and she and her spouse claim them as dependents on their federal tax return (Testimony).
11. The appellant has not legally adopted her grandsons (Testimony).
12. The appellant's grandsons live with the appellant and her spouse, and they support the grandsons financially (Testimony).
13. 133% of the 2023 FPL for a household of two is \$2,186.00 monthly (88 Federal Register 3424, pp. 3424-3425 (January 19, 2023)).
14. 135% of the 2023 FPL for a household of two is \$2,219.00 monthly (88 Federal Register 3424, pp. 3424-3425 (January 19, 2023)).

Analysis and Conclusions of Law

MassHealth regulation 130 CMR 505.000 explains the categorical requirements and financial standards that must be met to qualify for a MassHealth coverage type.

130 CMR 505.001(A) notes in relevant part:

(A) The MassHealth coverage types are the following:

(1) Standard – for pregnant women, 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 members, and medically frail as such term is defined in 130 CMR 505.008(F);

(2) CommonHealth – for disabled adults, disabled young adults, and disabled children who are not eligible for MassHealth Standard;

(3) CarePlus – for adults 21 through 64 years of age who are not eligible for MassHealth Standard;

(4) Family Assistance – for children, young adults, certain noncitizens, and persons who are HIV positive who are not eligible for MassHealth Standard, CommonHealth, or CarePlus;

(5) Small Business Employee Premium Assistance – for adults or young adults who

(a) work for small employers;

(b) are not eligible for MassHealth Standard, CommonHealth, Family Assistance, or CarePlus;

(c) do not have anyone in their premium billing family group who is otherwise receiving a premium assistance benefit; and

(d) have been determined ineligible for a Qualified Health Plan with a Premium Tax Credit due to access to affordable employer-sponsored insurance coverage;

(6) Limited – for certain lawfully present immigrants as described in 130 CMR 504.003(A), nonqualified PRUCOLs, and other noncitizens as described in 130 CMR 504.003: *Immigrants*; and

(7) Senior Buy-In and Buy-In – for certain Medicare beneficiaries.

MassHealth regulation 130 CMR 506.002, “Household Composition,” states as follows:

MassHealth Disabled Adult Household. The household consists of

(1) the individual;

(2) the individual's spouse if living with them;

(3) the individual's natural, adopted, and stepchildren younger than 19 years old if living with them; and

(4) if any individual described in 130 CMR 506.002(C)(1), (2) or (3) is pregnant, the number of expected children.

Although the appellant has legal custody of her grandsons, they are not her natural or adopted children, nor her stepchildren. Thus, MassHealth’s determination that the appellant’s household size is two, rather than four, is correct.

130 CMR 505.002(C) states that in order to qualify for MassHealth Standard as a caretaker relative:

Eligibility Requirements for Parents and Caretaker Relatives.

(1) A parent or caretaker relative of a child younger than 19 years old is eligible for MassHealth Standard coverage if

(a) the modified adjusted gross income of the MassHealth MAGI household is less than or equal to 133% of the federal poverty level (FPL);

(b) the individual is a citizen as described at 130 CMR 504.002: U.S. Citizens or a qualified noncitizen as described in 130 CMR 504.003(A)(1): Qualified Noncitizens;

and (c) 1. the parent lives with their children, and assumes primary responsibility for the child's care in the case of a parent who is separated or divorced, has custody of their children, or have children who are absent from home to attend school; or

2. the caretaker relative lives with children to whom they are related by blood, adoption, or marriage (including stepsiblings), or is a spouse or former spouse of one of those relatives, and assumes primary responsibility for the child's care, if neither parent lives in the home. (2) The parent or caretaker relative complies with 130 CMR 505.002(M).

(Emphasis added)

Next, 130 CMR 505.002(F), "MassHealth Standard," states as follows:

Disabled Individuals.

(1) Disabled Adults. A disabled adult 21 through 64 years old or a disabled young adult 19 through 20 years old who does not meet the requirements described at 130 CMR 505.002(B)(3)(a)1. is eligible for MassHealth Standard coverage if they meet the following requirements:

(a) the individual is permanently and totally disabled as defined in 130 CMR 501.001: Definition of Terms;

(b) the modified adjusted gross income of the MassHealth Disabled Adult household as described in 130 CMR 506.002(C): MassHealth Disabled Adult Household is less than or equal to 133% of the federal poverty level (FPL), or the individual is eligible under § 1634 of the Social Security Act (42 U.S.C. § 1383c) as a disabled adult child or as a disabled widow or widower, or is eligible under the provisions of the Pickle Amendment as described at 130 CMR 519.003: Pickle Amendment Cases;

(c) the individual is 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;

and (d) the individual complies with 130 CMR 505.002(M).

...

(Emphasis added)

There is no dispute that the appellant's household income exceeds 133% of the 2023 FPL for a household of two. Thus, she no longer qualifies for MassHealth Standard as a caretaker relative or as a disabled adult.

As a disabled MassHealth member, the appellant does qualify for MassHealth CommonHealth under 130 CMR 505.004(C), as follows:

Disabled Adults. Disabled adults must meet the following requirements:

- (1) be 21 through 64 years old;
- (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).

Also, MassHealth regulation 130 CMR 505.004(L) states:

MassHealth also pays the cost of the monthly Medicare Part B premium on behalf of [CommonHealth] members who meet the requirements of 130 CMR 505.004 and who have modified adjusted gross income of the MassHealth Disabled Adult household that is less than 135% of the FPL.

Since the appellant's household income exceeds 135% of the FPL for a household of two, MassHealth will no longer pay the appellant's Medicare Part B premium.

Next, pursuant to 130 CMR 506.011, "MassHealth Premiums:"

The MassHealth agency may charge a monthly premium to MassHealth Standard, CommonHealth or Family Assistance members who have income above 150% of the federal poverty level (FPL), as provided in 130 CMR 506.011. The MassHealth agency may charge a monthly premium to members of the Children's Medical Security Plan (CMSP) who have incomes at or above 200% of the FPL. MassHealth and CMSP premiums amounts are calculated based on a member's household modified adjusted gross income (MAGI) and their household size as described in 130 CMR 506.002 and 130 CMR 506.003 and the premium billing family group (PBF) rules as described in 130 CMR 506.011(A). Certain members are exempt from paying premiums, in accordance with 130 CMR 506.011(J).

130 CMR 506.011(J) states as follows:

Members Exempted from Premium Payment. **The following members are exempt from premium payments:**

- (1) MassHealth members who have verified that they are American Indians or Alaska Natives who have received or are eligible to receive an item or service furnished by the Indian Health Service, an Indian tribe, a tribal organization, or an urban Indian organization, or by a non-Indian health care provider through referral, in accordance with federal law;
- (2) MassHealth members with MassHealth MAGI household income or MassHealth Disabled Adult household income at or below 150% of the federal poverty level;
- (3) pregnant individuals and children younger than one year old;
- (4) children when a parent or guardian in the PBFG is eligible for a Qualified Health Plan (QHP) with Premium Tax Credits (PTC) who has enrolled in and has begun paying for a QHP;
- (5) children for whom child welfare services are made available under Part B of Title IV of the Social Security Act on the basis of being a child in foster care and individuals receiving benefits under Part E of that title, without regard to age;
- (6) individuals receiving hospice care;**
- (7) independent former foster care children younger than 26 years old; and
- (8) members who have accumulated premium and copayment charges totaling an amount equal to 5% of the member's MAGI income of the MassHealth MAGI household or the MassHealth Disabled Adult household, as applicable, in a given calendar quarter do not have to pay further MassHealth premiums during the quarter in which the member reached the 5% cap.

(Emphasis added)

MassHealth indicated that the appellant and her spouse pay one CommonHealth premium per household. However, the appellant testified that her husband is now on hospice care. Therefore, he is exempt from paying a CommonHealth premium.

Nonetheless, the appellant may still owe a premium payment for her own CommonHealth coverage.

Pursuant to 130 CMR 506.011(B)(2)(b):

The premium formulas for MassHealth CommonHealth members whose eligibility is described in 130 CMR 505.004(B): Disabled Working Adults through (G): Disabled Children Younger than 18 Years Old are as follows.

The full premium formula for young adults with household income above 150% of the FPL, adults with household income above 150% of the FPL, and children with household income above 300% of the FPL is provided as follows. The full premium is

charged to members who have no health insurance and to members for whom the MassHealth agency is paying a portion of their health insurance premium.

Base Premium	Additional Premium Cost	Range Monthly
Above 150% of FPL – start at \$15	Add \$5 for each additional 10% FPL	\$15 to \$35

Here, the household income is at 197.64% of the 2023 for a household of two. Therefore, the premium is calculated as follows: \$15.00 base premium, plus \$5 times four (representing four 10% increments above 150%), per the above regulation, yielding a premium of \$35.00.

Next, MassHealth regulation 130 CMR 506.011(B)(2)(c) states:

The supplemental premium formula for young adults, adults, and children with household income above 300% of the FPL is provided as follows. **A lower supplemental premium is charged to members who have health insurance to which the MassHealth agency does not contribute.** Members receiving a premium assistance payment from the MassHealth agency are not eligible for the supplemental premium rate.

CommonHealth Supplemental Premium Formula
% of Federal Poverty Level (FPL) Monthly Premium Cost Above 150% to 200%
60% of full premium

(Emphases added)

Since the appellant has Medicare insurance, to which MassHealth will no longer contribute, pursuant to 130 CMR 506.011(B)(2)(c), 60% of the full CommonHealth premium of \$35.00 should be charged to the household monthly, equivalent to \$21.00 per month.⁴

For these reasons, the appeal is DENIED IN PART, and REMANDED to MassHealth on the issue of whether the appellant should be charged a premium for CommonHealth coverage.

Order for MassHealth

Rescind aid pending. Inform the appellant in writing that as a member of a household of two, she is eligible for CommonHealth coverage, and that MassHealth will no longer pay her Medicare Part B premium.

⁴ This decision remands the case to MassHealth to determine whether any CommonHealth premium should be charged to the household, given that the appellant's husband is on hospice.

Determine whether the household should be charged a CommonHealth premium at all, since the appellant's spouse (also enrolled in CommonHealth) is on hospice care. Notify the appellant of same in writing, within thirty days of the date of this decision.

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 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.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Dori Mathieu, Appeals Coordinator, MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104

cc: Gretchen Whitworth, Senior Manager, Premium Billing Unit, Maximus