

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in Part; Remanded	<b>Appeal Number:</b>	2308329
<b>Decision Date:</b>	1/5/2024	<b>Hearing Date:</b>	10/11/2023
<b>Hearing Officer:</b>	Rebecca Brochstein	<b>Record Open Date:</b>	01/05/2024

**Appearances for Appellant:**



**Appearances for MassHealth:**

Alain Michel, Tewksbury MEC



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

## APPEAL DECISION

<b>Appeal Decision:</b>	Approved in Part; Remanded	<b>Issue:</b>	Eligibility
<b>Decision Date:</b>	1/5/2024	<b>Hearing Date:</b>	10/11/2023
<b>MassHealth Rep.:</b>	Alain Michel	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Tewksbury MassHealth Enrollment Center (Telephonic)	<b>Aid Pending:</b>	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 August 29, 2023, MassHealth notified the appellant that her MassHealth coverage would change to Buy In (SLMB) because her income and/or assets are too high for MassHealth Standard, and her income is too high for Senior Buy-In (Exhibit 1). The appellant filed a timely appeal on September 14, 2023 (Exhibit 2). A downgrade of benefits is a valid basis for appeal (130 CMR 610.032). While a decision was pending, the record was reopened for additional information (Exhibit 6).

### Action Taken by MassHealth

MassHealth determined that the appellant is not eligible for MassHealth Standard or Senior Buy-In (QMB) and downgraded her coverage to Buy-In (SLMB).

### Issue

The appeal issue is whether MassHealth correctly determined the appellant's eligibility.

## Summary of Evidence

An eligibility worker from the Tewksbury MassHealth Enrollment Center appeared at the hearing telephonically and testified as follows: The appellant, who is over the age of 65, filed a MassHealth application on June 8, 2023.<sup>1</sup> MassHealth requested and received verifying documentation, and processed her completed application on August 26, 2023. MassHealth determined that she was not eligible for MassHealth Standard but approved her for the Senior Buy-In/Qualified Medicare Beneficiary (QMB) program. Two days later, MassHealth received a system update from the Social Security Administration indicating that the appellant's income had increased. As a result, her coverage type was downgraded to the Buy-In/Specified Low-income Medicare Beneficiary (SLMB) program. MassHealth sent the appellant a notice dated August 29, 2023, stating that her coverage would change to SLMB as of September 12, 2023.

The MassHealth representative testified that the appellant's income was first verified at \$1,562, but with the Social Security increase it is now up to \$1,645 per month. This consists of the appellant's own Social Security benefits of \$1,204 plus a survivor's benefit of \$441 per month. He added that these figures are based on the gross income, before any deductions. In addition, the MassHealth representative stated that MassHealth will be paying the appellant's Medicare Part B premium, so that will not be deducted from her income. He further testified that MassHealth determined the appellant has countable assets totaling \$15,824.17, consisting of funds in several bank accounts.

The appellant appeared at the hearing telephonically and testified on her own behalf. She stated that she only receives \$1,039 for her own Social Security benefits, plus the survivor's benefit of \$441. She argued that it is "ridiculous" for MassHealth to count the gross figure when she does not actually receive that amount. She also testified that one of the bank accounts that MassHealth identified is actually her 91-year-old mother's account, explaining that her own name is only on the account for convenience. She expressed confusion and displeasure over MassHealth's determination as to her countable income and assets.

The appellant submitted a letter that she wrote to summarize her position. It states as follows:

I am here to explain why I believe I should be eligible for continued MassHealth coverage.

I have been a member of MassHealth since April 2012. Due to my mother's deteriorating health and the death of my father I moved into her home to be her caregiver in 2015; a full-time position that provides no income. My sole source of income is from Social Security. Without MassHealth coverage I would be unable to afford my psychiatric medication, see my psychologist, or receive routine medical and dental care.

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<sup>1</sup> A system printout of the appellant's eligibility history indicates the appellant was eligible for MassHealth prior to turning 65. The financial standards for MassHealth eligibility are different for those over 65.

I have included a breakdown of my monthly income and expenses below. I urge you to take all factors into account when determining my eligibility for continued MassHealth coverage.

Income:

Social Security Disability: \$1,039

Social Security Widow's Benefits: \$441

Total Income: \$1480

Expenses:

Shared food expenses: \$100

Gas (picking up my mother's medication, doctor appointments, day trips for recreation): \$115

TV streaming channels for her entertainment: \$60

Cell phone: \$84

Car insurance: \$87

Car maintenance: \$66

Misc. Household expenses: \$150

U-H Storage unit: \$74

Total Expenses: \$736

See Exhibit 4.

While a decision was pending, the hearing officer reopened the record to seek information concerning MassHealth's use of new income and asset guidelines for the Medicare Savings (Buy-In) Programs. The letter to the parties stated as follows:

I am writing concerning the above-referenced appeal, which is currently pending a decision. In researching the case, it came to my attention that the MassHealth regulations concerning the various Medicare Savings or Buy-In programs were updated in January 2023 with new, higher, income and asset limits. I believe MassHealth's testimony at hearing was relative to the older guidelines, which had much lower limits. It does not appear MassHealth considered [appellant's] eligibility for these programs under the new regulations.

I am reopening the record for a brief period for MassHealth to report which eligibility guidelines were used in this determination and, if it was not the current guidelines, whether the agency can redetermine her MSP eligibility using the updated regulations. MassHealth will have until December 22, 2023, to respond to this request. If [appellant] would like to respond to MassHealth's submission, she can do so by January 5, 2024. At the conclusion of this record-open period, I will write a decision on any issues that remain in dispute. (Exhibit 6)

The MassHealth representative did not submit anything in response to the letter.

## Findings of Fact

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

1. The appellant was previously eligible for MassHealth as an individual under 65.
2. On June 8, 2023, after the appellant had turned 65, she filed a new MassHealth application.
3. On August 26, 2023, MassHealth determined she was not eligible for MassHealth Standard due to her income and assets but approved her for the Senior Buy-In (Qualified Medicare Beneficiary, or QMB) program.
4. On August 28, 2023, MassHealth received a system update from the Social Security Administration that indicated the appellant's Social Security income had increased.
5. On August 29, 2023, MassHealth updated her case and notified her that her coverage type would change from Senior Buy-In (QMB) to Buy-In (Specified Low-Income Medicare Beneficiary, or SLMB) as of September 12, 2023.
6. The appellant has countable income of \$1,645 per month, consisting of her own Social Security benefits of \$1,204 plus a Social Security survivor's benefit of \$441.
7. The appellant's countable assets were verified at \$15,824.17, consisting of funds in several bank accounts. The appellant has not yet verified that she does not have an ownership interest in an account she holds jointly with her mother.

## Analysis and Conclusions of Law

The MassHealth eligibility criteria for community residents who are age 65 and older are found at 130 CMR 519.005. Part (A) of that regulation states that except as provided in 130 CMR 519.005(C)<sup>2</sup>, noninstitutionalized individuals 65 years of age and older may establish eligibility for MassHealth Standard coverage provided they meet the following requirements:

(1) the countable income amount, as defined in 130 CMR 520.009: *Countable-income Amount*, of the individual or couple is less than or equal to 100% of the federal poverty level; and

(2) the countable assets of an individual are \$2,000 or less, and those of a married couple living together are \$3,000 or less.

In this case, MassHealth correctly determined that the appellant's income and assets exceed

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<sup>2</sup> The exceptions in section (C) are reserved for parents and caretaker relatives of children under age 19.

the program limits for MassHealth Standard. The appellant's gross countable income of \$1,645 per month is over the limit of 100% of the federal poverty level (currently \$1,215 for a household of one). Further, her assets, which were verified at \$15,824.17, are above the \$2,000 regulatory limit for her to qualify for MassHealth Standard.<sup>3</sup>

MassHealth also correctly determined that the appellant is eligible for a Medicare Savings Program, also known as a "Buy-In" program. The Medicare Savings Programs are federally funded programs administered by individual states that pay for some or all of their low-income Medicare recipients' premiums, deductibles, copayments, and co-insurance. Effective January 1, 2023, the income limits for the three Massachusetts MSP coverage types were as follows:

**Qualified Medicare Beneficiaries (QMB)**: The countable income limit is at or below 190% of the federal poverty level.

**Specified Low-Income Medicare Beneficiaries (SLMB)**: The countable income limit is greater than 190% and less than or equal to 210% of the FPL.

**Qualifying Individuals (QI)**: The countable income limit for the QI program is greater than 210% and less than or equal to 225% of the FPL.

For 2023, the asset limits for the MSP programs were \$18,180 for an individual and \$27,260 for a married couple. The asset limits were removed entirely as of November 24, 2023. See MassHealth Eligibility Operations Memo 23-04 and MassHealth Eligibility Letter 246 (December 2023); 130 CMR 519.010 and 519.011.

The notice on appeal in this case was MassHealth's determination that the appellant no longer met the eligibility criteria for the QMB coverage type, and that her coverage would downgrade to the SLMB type. However, it appears that MassHealth used outdated income and asset standards in making this determination.<sup>4</sup> As set forth above, as of January 1, 2023, the QMB income limit was 190% of the federal poverty level, or \$2,309 per month for a single individual, while the asset limit was \$18,180 (and the asset limits have since been eliminated). Under these new guidelines, the appellant appears to be eligible for the QMB coverage type. The case will be remanded to MassHealth to make a new determination of the appellant's eligibility for the MSP programs using the new standards that became effective in January 2023 and were updated in November 2023.

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<sup>3</sup> The appellant argued at hearing that some of these assets are held in a bank account that actually belongs to her mother, and that she is only on the account for convenience. Under 130 CMR 520.005(C)(2), when the applicant or member is a joint owner of a bank account, the entire amount on deposit is considered available to the applicant or member. Part (3) of the regulation provides that if the applicant or member claims partial ownership of the funds in the joint account, he or she must verify the amount owned by each joint depositor. When such a partial ownership is verified, the countable value of the assets is attributed to each owner in proportion to the ownership interest.

<sup>4</sup> As noted above, the record was reopened to request that MassHealth clarify which guidelines had been used in this determination, but MassHealth did not respond.

This case is approved in part and remanded.

### **Order for MassHealth**

Redetermine the appellant's eligibility for a Medicare Savings Program using the income and asset standards that became effective in January 2023, as updated in November 2023.

### **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 hereon, you should contact your MassHealth Enrollment Center. If you experience further problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, Office of Medicaid, at the address on the first page of this decision.

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Rebecca Brochstein  
Hearing Officer  
Board of Hearings

cc: Tewksbury MEC