

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

[REDACTED]

Appeal Decision:	Denied	Appeal Number:	2308364
Decision Date:	10/23/2023	Hearing Date:	10/11/2023
Hearing Officer:	Paul C. Moore		

Appearance for Appellant:

[REDACTED] pro se (by telephone)

Appearance for MassHealth:

Elizabeth Nickoson, Taunton MassHealth Enrollment Center (by telephone)

Portuguese Interpreter:

[REDACTED]



*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	Issue:	Eligibility – Health Care Reform
Decision Date:	10/23/2023	Hearing Date:	10/11/2023
MassHealth Rep.:	Elizabeth Nickoson	Appellant Rep.:	Pro se
Hearing Location:	Board of Hearings (remote)	Aid Pending:	

Authority

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

Jurisdiction

By a notice dated September 1, 2023, MassHealth notified the appellant that her coverage would change from MassHealth Standard to MassHealth Limited, effective September 15, 2023, due to the fact that the appellant is no longer pregnant (Exh. 1). The appellant filed a timely appeal with the Board of Hearings (BOH) on September 14, 2023 (130 CMR 610.015; Exh. 2). A change in the scope of MassHealth assistance is valid grounds for appeal to the BOH (130 CMR 610.032).

Action Taken by MassHealth

MassHealth apprised the appellant that her coverage would change from MassHealth Standard to MassHealth Limited because the appellant is no longer pregnant.

Issue

The issue on appeal is whether MassHealth correctly planned to change the appellant's coverage from MassHealth Standard to MassHealth Limited.

Summary of Evidence

A MassHealth representative from the Taunton MassHealth Enrollment Center testified by telephone that the appellant is under age 65, and lives in a household of five. The members of the household are the appellant, her spouse, and their three minor children. For a household of five, the family's modified adjusted gross income (MAGI) is at 56.47% of the 2023 federal poverty level (FPL). The MAGI consists of earned income of \$1,800.00 monthly, from the appellant's spouse's employment. The MassHealth representative noted the family does not expect to file a tax return. (Testimony, Exh. 1).

The appellant's spouse is also enrolled in MassHealth Limited, and two of their children are enrolled in MassHealth Family Assistance. The appellant's youngest child was born in [REDACTED] 2022, and is enrolled in MassHealth Standard. The MassHealth representative testified that the appellant enrolled in MassHealth Standard in July, 2021, when she was pregnant. She continued to be enrolled in MassHealth Standard through September, 2023. The MassHealth representative added that the appellant was eligible for one year of "post-partum" MassHealth Standard coverage following the birth of her youngest child in [REDACTED] 2022. That year has now expired. Because the appellant's immigration status is "pending," and because she is a nonqualified person residing in the United States under color of law, the only MassHealth coverage for which she is now eligible is MassHealth Limited, according to the MassHealth representative (Testimony).¹

The appellant testified through a Portuguese interpreter that she arrived in the United States in April, 2021 from Brazil, and enrolled in MassHealth Standard in July, 2021 when she became pregnant. She had a miscarriage in August or September, 2021. She did not report the miscarriage to MassHealth. She became pregnant again shortly thereafter, which resulted in the birth of her youngest child in [REDACTED] 2022. She does not have a "green card" at this time (Testimony).

The MassHealth representative testified that MassHealth Limited covers mostly emergency services, and Health Safety Net will provide free care at community health centers. In order to remain enrolled in MassHealth Standard, the appellant would need to have a green card for at least five years, according to the MassHealth representative (Testimony).

The appellant testified that she has sleep apnea, and an artificial heart valve. Because of these ongoing health problems, she would like to remain enrolled in MassHealth Standard (Testimony).

Findings of Fact

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

1. The appellant is under age 65 and lives in a household of five, consisting of herself, her

¹ MassHealth indicated that the appellant is also eligible for Health Safety Net.

spouse, and three minor children (Testimony).

2. In July, 2021, when she was pregnant, the appellant enrolled in MassHealth Standard (Testimony).
3. The appellant suffered a miscarriage in August or September of 2021, but became pregnant again shortly thereafter (Testimony).
4. The appellant gave birth to a daughter in [REDACTED] 2022 (Testimony).
5. The appellant does not have a “green card” (Testimony).
6. The appellant’s household modified adjusted gross income (MAGI) is at 56.47% of the 2023 federal poverty level (FPL), consisting of \$1,800.00 in earned income monthly (Testimony).
7. By a notice dated September 1, 2023, MassHealth notified the appellant that her coverage would change from MassHealth Standard to MassHealth Limited, effective September 15, 2023, due to the fact that the appellant is no longer pregnant (Exh. 1).
8. The appellant filed a timely appeal with the BOH on September 14, 2023 (Exh. 2).
9. Due to several ongoing health conditions, the appellant would like to remain enrolled in MassHealth Standard (Testimony).

Analysis and Conclusions of Law

Pursuant to MassHealth regulation 130 CMR 505.002(C):

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)

Also, 130 CMR 505.002(D)(4) states in relevant part:

Eligibility for postpartum care for pregnant individuals who meet the requirements of 130 CMR 505.002(B)(2) and (3), (C) through (H), and (L) continues for 12 months following the termination of the pregnancy plus an additional period extending to the end of the month in which the 12-month period ends.

Regulation 130 CMR 504.003(A)(1) states as follows:

Qualified Noncitizens. There are two groups of qualified noncitizens:

(a) those who are qualified, regardless of when they entered the U.S. or how long they had a qualified status. Such individuals are

1. persons granted asylum under § 208 of the INA;
2. Refugees admitted under § 207 of the INA;
3. persons whose deportation has been withheld under § 243(h) or 241(b)(3) of the INA, as provided by § 5562 of the federal Balanced Budget Act of 1997;
4. veterans, their spouses, and their children:
 - a. veterans of the United States Armed Forces with an honorable discharge not related to their noncitizen status;
 - b. Filipino war veterans who fought under U.S. command during WWII;
 - c. Hmong and Highland Lao veterans who are admitted for legal permanent residence (LPR) and who fought under U.S. command during the Vietnam War;
 - d. persons with noncitizen status on active duty in the U.S. Armed Forces, other than active duty for training; or
 - e. the spouse, unremarried surviving spouse, or unmarried dependent children of the noncitizen described in 130 CMR 504.003(A)(1)(a)4.a. through d.;
5. Conditional Entrants under § 203(a)(7) of the INA in effect before April 1, 1980;
6. persons who entered as Cuban/Haitian entrants under § 501(e) of the Refugee Education Assistance Act of 1980;
7. Native Americans with at least 50% American Indian blood who were born in Canada pursuant to § 289 of the INA or other tribal members born in territories outside of the U.S. pursuant to 25 U.S.C. 450b(e), under Medicaid;
8. Amerasians as described in § 402(a)(2)(A)(i)(V) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA);
9. Victims of severe forms of trafficking; and spouse, child, sibling or parent of the victim, in accordance with the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106-386);

10. Iraqi Special Immigrants granted special immigrant status under § 101(a)(27) of the Immigration and Nationality Act, pursuant to § 1244 of Public Law 110-181 or § 525 of Public Law 110-161;

11. Afghan Special Immigrants granted special immigrant status under § 101(a)(27) of the Immigration and Nationality Act, pursuant to § 525 of Public Law 110-161; or

12. Migrants from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau who legally reside in the United States pursuant to a series of treaties with the United States known as the Compacts of Free Association (COFA), under Medicaid.

a. COFA migrants who adjust to legal permanent residence (LPR) status will have a special five-year bar rule applied. The individual will be subject to the special five-year bar rule, unless they also have or had a status listed at 130 CMR 518.003(A)(1)(a). The special five-year bar rule that applies will depend upon the date the individual adjusted to LPR status.

b. COFA migrants who adjust to LPR status after the change of law on December 27, 2020, will be able to use the date they began residing in the United States as a COFA migrant or December 27, 2020, whichever is later, as the first day for purposes of meeting the five-year bar.

c. COFA migrants who adjusted to LPR status before the change of law on December 27, 2020, will have the five-year bar period begin on the date that they adjusted to LPR.

(b) noncitizens who are qualified based on having a qualified status identified in 130 CMR 504.003(A)(1)(b)1. and who have satisfied one of the conditions listed in 130 CMR 504.003(A)(1)(b)2. Such individuals

1. have one or more of the following statuses:

a. admitted for legal permanent residence (LPR) under the Immigration and Nationality Act (INA); or

b. granted parole for at least one year under section 212(d)(5) of the INA; or

c. are the battered spouse, battered child, or child of battered parent or parent of battered child who meets the criteria of section 431(c) of PRWORA; and also

2. satisfy at least one of the three following conditions:

a. they have had a status in 130 CMR 504.003(A)(1)(b)1. for five or more years (a battered noncitizen attains this status when the petition is accepted as establishing a prima facie case);

b. they entered the U.S. prior to August 22, 1996, regardless of status at the time of entry, and have been continuously present in the U.S. until attaining a status listed in 130 CMR 504.003(A)(1)(b)1.; for this purpose an individual is deemed continuously present who has been absent from the U.S. for no more than 30 consecutive days or 90 nonconsecutive days prior to attaining a status listed in 130 CMR 504.003(A)(1)(b)1.; or

c. they also have or had a status listed in 130 CMR 504.003(A)(1)(a).

The evidence in the record shows that the appellant is not a citizen of the United States. In addition, there is no evidence that she meets any of the above-cited criteria to be considered a qualified non-citizen.

However, regardless of citizenship status, the appellant was entitled to one year of post-partum MassHealth Standard coverage after the birth of her daughter in [REDACTED] 2022, per 130 CMR 505.002(D)(4). That one year of coverage ended in [REDACTED] 2023. Because of her immigration status, she no longer qualifies for MassHealth Standard as a parent.

MassHealth's decision that the appellant now qualifies for MassHealth Limited (*see generally*, 130 CMR 505.006) was correct.

The appeal is DENIED.

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.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Justine Ferreira, Appeals Coordinator, Taunton MEC