

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2308624
Decision Date:	1/3/2024	Hearing Date:	10/20/2023
Hearing Officer:	Christopher Jones	Record Open to:	11/10/2023

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Elizabeth Rodriguez - Tewksbury Ongoing



*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:	Approved	Issue:	Over-65; Eligibility; Income; Start Date
Decision Date:	1/3/2024	Hearing Date:	10/20/2023
MassHealth's Rep.:	Elizabeth Rodriguez	Appellant's Rep.:	Pro se
Hearing Location:	Telephonic	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

Through a notice dated September 6, 2023, MassHealth informed the appellant that she would need to satisfy a six-month deductible of \$5,704 in order to temporarily qualify for MassHealth Standard. (Exhibit 1; 130 CMR 520.002; 520.008.) The appellant filed this appeal in a timely manner on September 21, 2023. (Exhibit 2; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

Following the hearing, the hearing record was left open until November 10, 2023, for the appellant to submit a completed personal care attendant supplement, and for MassHealth to review and process it.

Action Taken by MassHealth

MassHealth terminated the appellant's MassHealth Standard coverage, approved her for the Medicare Savings Program for Qualified Medicare Beneficiaries, and assessed her a \$5,704 six-month premium to temporarily qualify for MassHealth Standard.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.002 and 520.013, in determining that the appellant's income is too high to qualify for MassHealth Standard.

Summary of Evidence

MassHealth's eligibility representative explained that the appellant had been protected on the MassHealth Standard coverage during the Federal Public Health Emergency for Covid-19 ("FPHE"). During the FPHE, the appellant turned [REDACTED] years old, and the rules governing her eligibility changed. MassHealth's representative testified the appellant completed an application for over-65 benefits on or around June 7, 2023. The appellant has a household of one, and she receives \$1,493 per month in gross Social Security benefits. Because this income over the federal poverty level of \$1,215 per month, the appellant was deemed not eligible for MassHealth Standard. She was approved for the Medicare Savings Program ("MSP") for Qualified Medicare Beneficiaries ("QMB"), which covers all of the copays, coinsurance, and premiums associated with Medicare Parts A and B. The appellant's MassHealth Standard coverage was ended on July 17, 2023.

The appellant testified that she needed MassHealth Standard coverage in order to cover her personal-care attendant ("PCA"), which she identified in her fair hearing request. Medicare does not cover her PCA, and her PCA has not been paid in months. MassHealth's representative testified the appellant did not complete the PCA supplement with her over-65 application in June, but if she had, she would have been eligible for MassHealth Standard because her income is below 133% of the federal poverty level. The appellant testified that she did not complete the PCA supplement because she already had a PCA, and thought the form was only needed to request additional PCA services.

The record was left open for the appellant to complete and submit the PCA supplement. The appellant submitted the PCA supplement on November 1, 2023, and MassHealth's representative reinstated her MassHealth Standard as of November 1, 2023.

Findings of Fact

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

- 1) The appellant is over the age of 65, has a household of one, and gross monthly Social Security benefits of \$1,493. (Testimony by MassHealth's representative.)
- 2) The appellant completed an over-65 application on June 7, 2023, which did not include a PCA supplement. (Testimony by MassHealth's representative.)
- 3) The appellant's under-65 MassHealth Standard coverage was terminated on July 17, 2023. (Testimony by MassHealth's representative.)
- 4) The appellant has always had a PCA assisting her in the community. She did not complete the PCA supplement because she believed it was a form to request additional PCA services. (Testimony by the appellant.)

- 5) The appellant submitted the PCA supplement on November 1, 2023, and MassHealth reinstated her Standard coverage as of the same date. (Exhibit 5.)

Analysis and Conclusions of Law

MassHealth offers a variety of benefits based upon an individual's circumstances and finances. To qualify for MassHealth, an individual must fit into a category of eligibility and fall below a certain financial threshold. The requirements for receiving MassHealth Standard for individuals over 65 who are living in the community are:

519.005: Community Residents 65 Years of Age and Older

(A) Eligibility Requirements. Except as provided in 130 CMR 519.005(C), 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 percent 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.

(B) Financial Standards Not Met. Except as provided in 130 CMR 519.005(C), individuals whose income, assets, or both exceed the standards set forth in 130 CMR 519.005(A) may establish eligibility for MassHealth Standard by reducing their assets in accordance with 130 CMR 520.004: *Asset Reduction*, meeting a deductible as described at 130 CMR 520.028: *Eligibility for a Deductible* through 520.035: *Conclusion of the Deductible Process*, or both.

(130 CMR 519.005(A)-(B) (emphasis in **bold**).)

The financial rules set out at 130 CMR 520.000 explain that all of an individual's "gross earned and unearned income less certain business expenses and standard income deductions" is countable, and "the countable-income amount is compared to the applicable income standard to determine the individual's financial eligibility." (130 CMR 520.009(A)(1)-(2).) There are only two income deductions for community residents with unearned income: (1) "a deduction of \$20 per individual or married couple" or

(B) in determining eligibility for MassHealth Standard, a deduction that is equivalent to the difference between the applicable MassHealth deductible-

income standard at 130 CMR 520.030 and 133% of the federal poverty level. This deduction includes, and is not in addition to, the \$20 disregard.^[1]

(1) This deduction from gross unearned income is allowed only for persons who

(a) are 65 years of age and older;

(b) are receiving personal-care attendant services paid for by the MassHealth agency, or have been determined by the MassHealth agency, through initial screening or by prior authorization, to be in need of personal-care attendant services; and

(c) prior to applying the deduction at 130 CMR 520.013(B), have countable income that is over 100% of the federal poverty level.

(2) The MassHealth agency will redetermine eligibility without this deduction if

(a) after 90 days from the date of the MassHealth agency eligibility approval notice, the person is not receiving personal-care attendant services paid for by the MassHealth agency or has not submitted, upon request from the MassHealth agency, proof of efforts to obtain personal-care attendant services paid for by the MassHealth agency; or

(b) the MassHealth agency denies the prior-authorization request for personal-care attendant services.

(3) If countable income, prior to applying the deduction at 130 CMR 520.013(B), is greater than 133% of the federal poverty level, eligibility is determined under 130 CMR 519.005(B): *Financial Standards Not Met*.

(130 CMR 520.013(A)-(B).)

After the \$1,094 PCA deduction, the appellant's countable monthly income is well below the federal poverty level. MassHealth has already approved the appellant for MassHealth Standard based upon this fact, but the agency chose not to allow any retroactive eligibility and offered no explanation for why it would not do so. I find that the appellant's MassHealth Standard should be reinstated without a gap in coverage.

Generally, the start date for MassHealth Standard coverage is "the first day of the third calendar month before the month of application, if covered medical services were received during such period, and the applicant or member would have been eligible at the time services were

¹ In 2023, 133% of the federal poverty level for an individual is \$1,616; the deductible-income standard for an individual is \$522. The difference is \$1,094.

provided.”² (130 CMR 516.006(A).) More advantageously, a fair hearing decision must be based upon the evidence submitted during the hearing process, and “[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.” (130 CMR 610.071(A)(2).) Here, the appellant was always eligible for MassHealth Standard. Regardless of the fact that the appellant did not complete the PCA supplement, she was eligible for the PCA deduction because she was “receiving personal-care attendant services paid for by the MassHealth agency,” and met all of the other criteria for the deduction.³ Therefore, MassHealth shall reinstate the appellant’s Standard coverage back to July 17, the day it was terminated. This appeal is APPROVED.

Order for MassHealth

Reinstate the appellant’s Standard benefits so that she has no gap in coverage.

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.

Christopher Jones
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957

² If this were the only available timeline under the regulations, the appellant would still be eligible to have no gap in her Standard coverage. MassHealth’s representative was aware that the appellant had a MassHealth covered PCA at the hearing, and therefore this retroactive window should be allowed to run from October, not November, allowing retroactive coverage to July 1.

³ MassHealth does not assert that completing a PCA Supplement is an “eligibility condition.”