

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2308983
Decision Date:	12/12/2023	Hearing Date:	10/24/2023
Hearing Officer:	Cynthia Kopka		

Appearance for Appellant:



Appearance for MassHealth:

Aline Teixeira, Tewksbury



*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:	Eligibility; CarePlus; Medical frailty
Decision Date:	12/12/2023	Hearing Date:	10/24/2023
MassHealth's Rep.:	Aline Teixeira	Appellant's Rep.:	Advocate
Hearing Location:	Tewksbury (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 notice dated August 4, 2023, MassHealth downgraded Appellant's eligibility from MassHealth Standard to MassHealth CarePlus. Exhibit 1. Appellant filed this appeal in a timely manner on September 28, 2023. Exhibit 2. 130 CMR 610.015(B). Termination or modification of assistance is a valid basis for appeal. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth downgraded Appellant's eligibility from MassHealth Standard to MassHealth CarePlus.

Issue

The appeal issue is whether MassHealth was correct in issuing the August 4, 2023 notice and in downgrading Appellant's MassHealth Standard after August 18, 2023.

Summary of Evidence

The MassHealth representative appeared by phone and testified as follows. Appellant is under 65 years old and has received MassHealth Standard since August 26, 2019. The MassHealth

representative testified that this was due to either medical frailty or disability status. Appellant self-attested as disabled in May 2020 and was protected with coverage throughout the pandemic. In February 2023, notes in MassHealth's system indicate that Appellant called MassHealth to provide an update, but the call was disconnected.

When the pandemic ended, MassHealth began redeterminations of eligibility. On August 4, 2023, MassHealth downgraded Appellant's Standard coverage to CarePlus on July 25, 2023. Exhibit 1. The notice states that this downgrade occurred "because of a change in their circumstances." *Id.* at 1. The notice states that Appellant's MassHealth Standard would end after August 18, 2023 because Appellant "no longer meets the disability requirement for this benefit. 130 CMR 505.002(E) and 505.004." *Id.* at 2. The MassHealth representative did not explain what this meant, other than that MassHealth was waiting on a disability form. The notice states that MassHealth sent Appellant a disability supplement form to complete and return. The MassHealth representative testified that MassHealth sent Appellant no written notification that he needed to take an action to continue his MassHealth Standard coverage prior to the August 4, 2023 notice.

On September 27, 2023, Appellant called and reported that he is medically frail. MassHealth approved Appellant for MassHealth Standard effective September 17, 2023.

Appellant's representative appeared by phone and testified as follows. Appellant's medical frailty has been present during the requisite time period and he has received personal care attendant (PCA) services to help him with daily tasks due to his condition.¹ When Appellant received the downgrade notice on August 4, 2023, he was not aware that CarePlus did not cover PCA services. Appellant was hospitalized between [REDACTED] 2023 and [REDACTED] 2023. Appellant received a bill for PCA services that were not covered between August 19, 2023 and September 3, 2023. Appellant immediately called MassHealth to report his medical frailty and filed this timely appeal of the August 4, 2023 downgrade notice.

Appellant argued that under 130 CMR 610.071(A)(2), he is entitled to retroactive approval of his MassHealth Standard benefit to August 19, 2023. The eligibility circumstances that MassHealth approved as of September 17, 2023 existed on August 19, 2023. Appellant also challenges MassHealth's August 4, 2023 notice, as there was no basis to downgrade his coverage.

Findings of Fact

¹ PCA Services are defined in MassHealth's regulations as "physical assistance with [activities of daily living] ADLs and [instrumental activities of daily living] IADLs provided to a member by a PCA in accordance with the member's authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410." 130 CMR 422.402.

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

1. Appellant is under 65 years old and has received MassHealth Standard since August 26, 2019.
2. On August 4, 2023, MassHealth downgraded Appellant's Standard coverage to CarePlus on July 25, 2023. Exhibit 1.
3. The notice states that this downgrade occurred "because of a change in their circumstances." *Id.* at 1.
4. The notice states that Appellant's MassHealth Standard would end after August 18, 2023 because Appellant "no longer meets the disability requirement for this benefit. 130 CMR 505.002(E) and 505.004." *Id.* at 2.
5. Appellant filed this timely appeal on September 28, 2023. Exhibit 2.
6. Appellant received a bill for PCA services that were not covered between August 19, 2023 and September 3, 2023.

Analysis and Conclusions of Law

Appellant challenged MassHealth's determination that his coverage should be downgraded due to a change in his circumstance, or because Appellant no longer meets the disability requirement for the benefit to continue pursuant to 130 CMR 505.002(E) and 505.004.

Eligibility criteria for MassHealth Standard as a disabled adult is found at 130 CMR 505.002(E):

(E) Disabled Individuals.

(1) Disabled Adults. A disabled adult 21 through 64 years of age or a disabled young adult 19 or 20 years of age who does not meet the requirements described at 130 CMR 505.002(B)(3)(a)1. is eligible for MassHealth Standard coverage if he or she meets 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 section 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*;

MassHealth testified that it did not have evidence that Appellant is permanently and totally disabled, as it had only received a self-attestation of disability in May 2020.

However, as MassHealth acknowledged, Appellant's MassHealth Standard eligibility predates the attestation of disability, as he was approved August 26, 2019. As Appellant argued, he was eligible for MassHealth Standard at that time because he is medically frail, as defined by 130 CMR 505.008(F) below. *See* 130 CMR 505.001(A)(1).

(F) Medically Frail. If an individual is determined medically frail or is an individual with special medical needs and has been determined to meet the eligibility criteria for MassHealth CarePlus as described in 130 CMR 505.008, the individual may elect at any time to receive MassHealth Standard benefits, as described in 130 CMR 505.002(J). If at any time after enrolling in MassHealth CarePlus an individual becomes medically frail or is determined to be medically frail, the individual may elect to receive MassHealth Standard benefits. The effective date of MassHealth Standard is the date of the reported change. To be considered medically frail or a person with special medical needs, an individual must be

- (1) an individual with a disabling mental disorder (including children with serious emotional disturbances and adults with serious mental illness);
- (2) an individual with a chronic substance use disorder;
- (3) an individual with a serious and complex medical condition;
- (4) an individual with a physical, intellectual, or developmental disability that significantly impairs their ability to perform one or more activities of daily living; or
- (5) an individual with a disability determination based on Social Security criteria.

MassHealth did not dispute that Appellant is eligible for CarePlus or that he is medically frail, as it approved Appellant for CarePlus coverage on August 4, 2023 and for Standard on September 17, 2023, 10 days prior to Appellant's election to receive MassHealth Standard benefits.

Appellant seeks retroactive MassHealth Standard coverage to August 19, 2023. Appellant's representative testified that Appellant was medically frail at the time but did not realize that his PCA services would not be covered by CarePlus. MassHealth argued that it could not provide retroactive coverage beyond the ten days permitted by 130 CMR 505.002(P)(2). Appellant asked the hearing officer for a finding that Appellant met the eligibility criteria as of August 19, 2023 pursuant to 130 CMR 610.071(A)(2) (emphasis added):

(A) General.

(1) The rules of evidence observed by courts do not apply to fair hearings, but the hearing officer observes the rules of privilege recognized by law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Unduly repetitious or clearly irrelevant evidence may be excluded.

(2) The hearing officer may not exclude evidence at the hearing for the reason that it had not been previously submitted to the acting entity, provided that the hearing officer may permit the acting entity representative reasonable time to respond to newly submitted evidence.

The 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.

Given that Appellant previously had MassHealth Standard as a medically frail individual, and given that Appellant's representative testified credibly that Appellant required coverage of PCA services (defined as services provided for assistance with ADLs) on August 19, 2023, Appellant established that his eligibility for MassHealth Standard as a medically frail individual was met on August 19, 2023. Accordingly, this appeal is approved.

Order for MassHealth

Adjust Appellant's start date for MassHealth Standard to August 19, 2023.

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957, 978-863-9290

[REDACTED]

General Counsel's Office –Sharon Boyle