

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2308991
Decision Date:	12/12/2023	Hearing Date:	10/25/2023
Hearing Officer:	Christopher Jones		

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:	Denied	Issue:	Over-65; Community; Excess Assets
Decision Date:	12/12/2023	Hearing Date:	10/25/2023
MassHealth's Rep.:	Elizabeth Rodriguez	Appellant's Rep.:	Pro se
Hearing Location:	Remote - Virtual ¹	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 18, 2023, MassHealth terminated the appellant's MassHealth coverage because the appellant had assets in excess of \$2,000. (Exhibit 1; 130 CMR 520.003, 520.004; Exhibit 1.) The appellant filed this timely appeal on September 27, 2023. (Exhibit 2; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth terminated the appellant's benefits following the end of the protections put in place by the Covid-19 Federal Public Health Emergency because she had assets in excess of the eligibility limits.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.003 and 520.007, in determining that the appellant's had countable assets in excess of \$2,000.

¹ This appeal was scheduled to be held via Teams videoconference. The appellant was unable to join the videoconference, and the appeal proceeded telephonically.

Summary of Evidence

MassHealth's representative explained that the appellant had been approved for MassHealth Standard while she was under the age of 65 as a disabled adult with income below 133% of the federal poverty level. The appellant turned 65 during the [REDACTED], during which the federal government prevented any terminations of Medicaid benefits based upon a change in eligibility status. For individuals over the age of 65, the income limit for MassHealth Standard is lowered to 100% of the federal poverty level, and there is an asset limit of \$2,000.

The appellant filed an over-65 application during the unwinding of the FPHE protections. MassHealth requested verifications and received bank statements and an annuity statement. The bank account was verified as having \$43,377.22, and the annuity was deemed to have a value of \$50,424.89. MassHealth's representative testified that the agency had inappropriately counted the annuity as an asset when it should have been counted as income. However, the appellant still had an IRA with over \$43,000. Regarding income, MassHealth's representative testified that the appellant currently has income around \$13,000 per year, which was less than the federal poverty level of \$1,215 per month. The appellant could convert her assets into an annuity and that they would no longer be countable as an asset, but that doing so would generate additional income that may affect her eligibility.

The appellant did not think that her retirement account should be countable as an asset because it had never been counted before. Otherwise, she was going to investigate her options further as the best manner in which to proceed.

Findings of Fact

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

1. The appellant is over the age of 65. She turned 65 during the [REDACTED]. (Testimony by MassHealth's representative and the appellant.)
2. During the FPHE unwinding process, the appellant completed an over-65 application, and MassHealth issued a notice terminating her MassHealth Standard coverage because she had assets in excess of \$2,000. (Exhibit 1.)
3. The appellant verified a bank account with \$43,377.22 and an annuity worth \$50,424.89. (Exhibit 1; testimony by MassHealth's representative.)
4. Her income was verified as under the federal poverty level. (Testimony by MassHealth's representative.)

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. One of the major dividing lines for eligibility is the age of 65. Individuals aged 65 and older are generally governed by the regulations at 130 CMR 515.000-520.000, and those under 65 are typically determined by the regulations at 130 CMR 501.000-508.000. 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 added).)

Countable assets include:

(C) Individual Retirement Accounts, Keogh Plans and Pension Funds.

- (1) Individual Retirement Accounts. An Individual Retirement Account (IRA) is a tax-deductible savings account that sets aside money for retirement. Funds in an IRA are counted as an asset in their entirety less the amount of penalty for early withdrawal.

...

(J) Annuities, Promissory Notes, Loans, Mortgages, and Similar Transactions.

(1) Treatment of Annuities Established Before February 8, 2006. Payments from an annuity are countable income in accordance with 130 CMR 520.009. **If the annuity can be converted to a lump sum, the lump sum, less any penalties or costs of converting to a lump sum, is a countable asset.** Purchase of an annuity is a disqualifying transfer of assets for nursing-facility residents as defined at 130 CMR 515.001: Definition of Terms in the following situations

(130 CMR 520.007(C)(1), (J)(1) (emphasis added).)

MassHealth is correct that the entire value of an individual's IRA is countable as an asset, and that an individual over the age of 65 cannot be eligible for MassHealth Standard with assets in excess of \$2,000. Though MassHealth's representative indicated that the appellant's annuity should not be considered an asset, that annuity was not in the record, and MassHealth does consider some annuities to be countable assets when they can be cashed out. (See 130 CMR 520.007(J)(2) (convertible annuities funded after February 8, 2006, are also countable assets).)

Therefore, MassHealth was correct that the appellant is ineligible for MassHealth Standard. This appeal is DENIED.

As the appellant is disabled, and she may qualify for CommonHealth coverage with income in excess of the federal poverty level and without regards to her assets. Financial eligibility for CommonHealth is determined using the rules applicable to the under-65 community. (See 130 CMR 519.012 ("MassHealth CommonHealth for working disabled adults is available to community residents 65 years of age or older in the same manner as it is available to those younger than 65 years old.")) However, CommonHealth coverage for individuals over 65 is only for "working disabled adults ... [which] means that eligible applicants must meet the requirements of 130 CMR 505.004(B)(2), (3) and (5) to be eligible for CommonHealth." (130 CMR 519.012(A)(1).) Those additional criteria are:

(2) be employed at least 40 hours per month, or if employed less than 40 hours per month, have been employed at least 240 hours in the six-month period immediately preceding the month of receipt of the application or MassHealth's eligibility review;

(3) be permanently and totally disabled (except for engagement in substantial gainful activity) as defined in 130 CMR 501.001: Definition of Terms;

... [and]

(5) be ineligible for MassHealth Standard

(130 CMR 505.004(B)(2), (3), (5).)

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.

Christopher Jones
Hearing Officer
Board of Hearings

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