

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Remand	Appeal Number:	2308993
Decision Date:	12/19/2023	Hearing Date:	10/25/2023
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:  
Pro se

Appearance for MassHealth:  
Michael Richelson



*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

<b>Appeal Decision:</b>	Remand	<b>Issue:</b>	Eligibility; Over 65
<b>Decision Date:</b>	12/19/2023	<b>Hearing Date:</b>	10/25/2023
<b>MassHealth's Rep.:</b>	Michael Richelson	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	All Parties Appeared by Telephone	<b>Aid Pending:</b>	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 9, 2023, MassHealth notified the appellant that her coverage will change to Buy-In (SLMB – Part B) as her income and/or assets are too high to get MassHealth Standard and her income is too high to get MassHealth Senior Buy-In. (130 CMR 519.000; Exhibit 1). The appellant needs to meet a deductible in the amount of \$6,372 to become eligible for MassHealth Standard. (130 CMR 519.000; Exhibit 1). The appellant filed this appeal in a timely manner on September 28, 2021. (130 CMR 610.015; Exhibit 2). A decision regarding the scope or amount of assistance is valid grounds for appeal. (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth notified the appellant that her coverage will change to Buy-in (SLMB-Part B) because her income and/or assets are too high to get MassHealth Standard and her income is too high to get MassHealth Senior Buy-In.

### Issue

Whether MassHealth was correct in their decision to change the appellant's coverage from the MassHealth Senior Buy-In to the MassHealth Specified Low Income Medicare Beneficiary (SLMB) Buy-In.

## **Summary of Evidence**

The appellant is over 65-years old, in a family group of 1 and has a gross monthly income of \$1,604. The income includes benefits from the Social Security Administration. After applying a \$20 disregard, the appellant's income places her at 130.41% of the federal poverty level. The MassHealth representative testified that the appellant could become eligible for MassHealth Standard by meeting a deductible in the amount of \$6,327. The deductible period is from June 1, 2023 to December 1, 2023.

The appellant has been eligible for the MassHealth Senior Buy-In since June 2020. In September 2023, the appellant's eligibility changed to the Specified Low Income Medicare Beneficiary (SLMB) Buy-In due to a change in income that the appellant receives from the Social Security Administration. The MassHealth representative at hearing testified that the agency received this income information through a match with the Social Security Administration. The appellant was not sure how much she receives from the Social Security Administration as payments go directly to her bank or the office of the housing authority where she currently resides. As stated on the notice, under the SLMB Buy-In, MassHealth will continue to pay for the appellant's Medicare premiums but will no longer pay for Medicare deductibles and copayments as they did under the Senior Buy-In.

The MassHealth representative testified that individuals looking for full MassHealth coverage can be determined eligible for the MassHealth Senior Buy-In if they have income less than 130% of the federal poverty level. The MassHealth representative testified that if an individual submits an application for a Medicare Savings Plan (MSP) alone, there are different rules and the appellant would likely qualify for the Senior Buy-In through that application process as the income standards are higher. The MassHealth representative noted that applying for the MSP alone will no longer provide the appellant with the opportunity to qualify for MassHealth Standard by meeting a deductible. The MassHealth representative did not cite any regulations or guidance when presenting testimony and information about the eligibility decision.

During the hearing, the hearing officer raised questions regarding an Eligibility Operations Memo (EOM) issued in February 2023 that discusses MSP programs. (MassHealth EOM 23-04). It was noted at hearing that neither the text of EOM 23-04 or regulations amended in May 2023 clearly differentiate eligibility for MSP through two separate application processes. Both the EOM and current regulations speak to eligibility for MSP through an application for MSP. The EOM only has a chart indicating different eligibility requirements without any regulatory citations or explanations regarding a separate application process.

The MassHealth representative testified that if he took the information provided by the appellant at hearing, the agency could process an application for the MSP alone and coverage would be effective as of the date of the hearing. The MassHealth representative testified that eligibility for the MassHealth Senior Buy-In program starts the first month in which you apply.

## **Findings of Fact**

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

1. The appellant is over 65-years old.
2. The appellant is a family group of 1 with a gross monthly income of \$1,604.
3. The income includes benefits from the Social Security Administration.
4. After applying a \$20 disregard, the appellant's income places her at 130.4% of the federal poverty level.
5. The appellant can become eligible for MassHealth Standard by meeting a deductible in the amount of \$6,327.
6. The deductible period is from June 1, 2023 to December 1, 2023.
7. The appellant has been eligible for the MassHealth Senior Buy-In since June 2020.
8. In September 2023, the appellant's eligibility changed to the Specified Low Income Medicare Beneficiary (SLMB) Buy-In due to a change in income that the appellant receives from the Social Security Administration.
9. The appellant has not received certification that she needs nursing facility services and can receive certain services at home.

## **Analysis and Conclusions of Law**

Financial eligibility for MassHealth is based on financial responsibility, countable income, and countable assets. (130 CMR 520.001). In determining eligibility for MassHealth, the total countable-income amount and countable assets of the individual is compared to an income standard and asset limit. (130 CMR 520.002(A)). An individual and the spouse's gross earned and unearned income less certain business expenses and standard income deductions is referred to as the countable income amount. (130 CMR 520.009(A)(1)). In determining gross monthly income, MassHealth multiplies the average weekly income by 4.333 unless the income is monthly. (130 CMR 520.009(A)(1)). For community residents, the countable-income amount

is compared to the applicable income standard to determine the individual's financial eligibility. (130 CMR 520.009(A)(2)).

The types of income that are considered in the determination of eligibility are described in 130 CMR 520.009, 520.018, 520.019, and 520.021 through 520.024. (130 CMR 520.009(A)(4)). These include income to which the applicant, member, or spouse would be entitled whether or not actually received when failure to receive such income results from the action or inaction of the applicant, member, spouse, or person acting on his or her behalf. (130 CMR 520.009(A)(4)). MassHealth considers both earned income and unearned income as countable in determining eligibility. (130 CMR 520.009). The appellant only receives unearned income.

Unearned income includes, but is not limited to, social security benefits, railroad retirement benefits, pensions, annuities, federal veterans' benefits, rental income, interest, and dividend income. (130 CMR 520.009(D)). The applicant or member must verify gross unearned income. (130 CMR 520.009(D)).

The appellant did not dispute that her family group of 1 has a gross monthly unearned income of \$1,604 through benefits received from the Social Security Administration. MassHealth allows deductions for unearned income but only under certain circumstances which include receiving personal-care attendant services or being determined by MassHealth, through an initial screening or prior authorization, that such services are needed. (130 CMR 520.013). The appellant did not indicate at the hearing or on the review form that she receives or is in need of personal care attendant services. MassHealth made the correct deductions to the appellant's income.

Pursuant to 130 CMR 519.005(A), noninstitutionalized individuals aged 65 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, 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.

As noted by the MassHealth representative at hearing, the appellant's monthly income of \$1,604 exceeds 100% of the federal-poverty level for a family of one. (130 CMR 520.000). Therefore, the appellant is not eligible for MassHealth Standard.

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, meeting a deductible as described at 130 CMR 520.028 et

seq., or both. (130 CMR 519.005(B)). MassHealth correctly determined that to become eligible the appellant would have to meet a deductible in the amount of \$6,327.

The MassHealth representative at hearing testified that MassHealth Senior Buy-In coverage is available to Medicare beneficiaries who have a countable income amount that is less than or equal to 130% of the federal poverty level. No regulations were cited by the MassHealth representative to support this testimony.

Regulations that were amended in May 2023 state that MassHealth Senior Buy-In coverage is available to Medicare beneficiaries who:

- (1) are entitled to hospital benefits under Medicare Part A;
- (2) are applying for only MSP benefits and not full Medicaid, and have a countable income amount (including the income of the spouse with whom he or she lives) that is less than or equal to 190% of the federal poverty level;
- (3) have countable assets less than or equal to two times the amount of allowable assets for Medicare Savings Programs as identified by the Centers for Medicare & Medicaid Services. Each calendar year, the allowable asset limits shall be made available on MassHealth's website; and
- (4) meet the universal requirements of MassHealth benefits in accordance with 130 CMR 503.000: Health Care Reform: MassHealth: Universal Eligibility Requirements or 130 CMR 517.000: MassHealth: Universal Eligibility Requirements, as applicable. (130 CMR 519.010(A) - effective May 12, 2023).

Prior the implementation of regulations requiring an individual to apply for only MSP benefits and not full Medicaid, the regulations governing eligibility for the MassHealth Senior Buy-In coverage state that it is available to Medicare beneficiaries who:

- (1) are entitled to hospital benefits under Medicare Part A;
- (2) have a countable income amount (including the income of the spouse with whom he or she lives) that is less than or equal to 130% of the federal poverty level;
- (3) have countable assets less than or equal to two times the amount of allowable assets for Medicare Savings Programs as identified by the Centers for Medicare and Medicaid Services. Each calendar year, the allowable asset limits shall be made available on MassHealth's website; and
- (4) meet the universal requirements of MassHealth benefits in accordance with 130 CMR 503.000 : Health Care Reform: MassHealth Universal Eligibility Requirements or 517.000: MassHealth Universal Eligibility Requirements, as applicable. (130 CMR 519.010(A) – effective as of January 1, 2020).

Under the former regulations, since the appellant's income exceeds 130% of the federal-poverty level, she would not be eligible for the MassHealth Senior Buy-In. (130 CMR 519.010(A))

– effective January 1, 2020). Under the current regulations, although the appellant’s income is within the required limits, she would have to undergo a separate application process. (130 CMR 519.010(A) – effective May 12, 2023). The MassHealth representative at hearing could not clearly explain the reason for this separate process except to note that one would not be able to meet a deductible to qualify for MassHealth Standard if they submit an MSP application alone. While the current regulations do not speak to eligibility restrictions or MSP coverage for those with income less than or equal to 130% of the federal poverty level, the agency issued an Eligibility Operations Memo (EOM) that has a summary of coverage types and states that the income limit for MSP and Standard is less than or equal to 130% of the federal poverty level. Utilizing this EOM, it appears that the appellant does not qualify for the MassHealth Senior Buy-In as a qualified Medicare beneficiary. (MassHealth EOM 23-04).

MassHealth EOM 23-04 and regulations in effect as of January 1, 2020 state that MassHealth Buy-In for Specified Low Income Medicare Beneficiaries (SLMB) is available to Medicare beneficiaries who meet the eligibility requirements of MassHealth Senior Buy-In coverage at 130 CMR 519.010 and have countable income greater than 130% of the federal poverty level and less than or equal to 150% of the federal poverty level. (MassHealth EOM 23-04; 130 CMR 519.011(A) – effective as of January 1, 2020). The published regulations in effect at the time of this hearing did not cite these eligibility requirements despite the issuance of an EOM in February 2023 and implementation of final regulations in May 2023. (130 CMR 519.011(A) – effective May 12, 2023).

In combining these two sources of law, as required under the regulations governing the powers and duties of the hearing officer, the decision made by MassHealth regarding the appellant’s eligibility for MassHealth Buy-In for Specified Low Income Medicare Beneficiary (SLMB) was correct. (130 CMR 610.065; 130 CMR 519.011).

At the time of this hearing, the neither the current regulations nor Eligibility Operations Memo 23-04 spoke clearly to the eligibility requirements and coverage for MSP for individuals looking for full MassHealth coverage with MSP where MassHealth has a lower bar for income eligibility.

On December 14, 2023, MassHealth issued Eligibility Letter 246 to notify the public of the final adoption of regulations governing coverage types to clarify Medicare Savings Programs. The effective date of the regulations is November 24, 2023. These new regulations do not require individuals to submit a separate application to qualify for MSP alone. (130 CMR 519.010(A) – effective November 24, 2023). Under the new regulations, MassHealth Buy-In for Qualified Medicare Beneficiaries (QMB) coverage is available to Medicare beneficiaries who:

- (1) are entitled to hospital benefits under Medicare Part A;
- (2) have a countable income amount (including the income of the spouse with whom he or she lives) that is less than or equal to 190% of the federal poverty level. MassHealth will disregard all assets or resources when determining eligibility for MSP only benefits; and

- (3) meet the universal requirements of MassHealth benefits in accordance with 130 CMR 503.000 : Health Care Reform: MassHealth: Universal Eligibility Requirements or 130 CMR 517.000 : MassHealth: Universal Eligibility Requirements, as applicable. (130 CMR 519.010(A) – effective November 24, 2023).

As the appellant now meets eligibility requirements for the MassHealth Buy-In for Qualified Medicare Beneficiaries (QMB) coverage, this appeal is being remanded for MassHealth to make a new eligibility determination without requiring the appellant to submit a new application. As the regulations reflect an effective date of November 24, 2023, MassHealth should make an eligibility determination regarding coverage for the MassHealth Buy-In for Qualified Medicare Beneficiaries as of that date.

As noted above, the eligibility decision on appeal was correct as of the date of the hearing but this appeal is being remanded for MassHealth to make a new eligibility determination without requiring the submission of a separate application.

This appeal is remanded.

## **Order for MassHealth**

Process the appellant's eligibility redetermination to determine her eligibility for the MassHealth Buy-In for Qualified Medicare Beneficiaries (QMB) coverage.

## **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 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.

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Susan Burgess-Cox  
Hearing Officer



Board of Hearings

cc:

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