

Office of Medicaid BOARD OF HEARINGS


Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2309101
Decision Date:	12/18/2023	Hearing Date:	11/03/2023
Hearing Officer:	Christopher Jones		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Christina Prunier - HCR Tewksbury

Interpreter:
 ITI



*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:	Dismissed in part; Denied in part	Issue:	Under-65; Eligibility; Immigration; Income; CommonHealth
Decision Date:	12/18/2023	Hearing Date:	11/03/2023
MassHealth's Rep.:	Christina Prunier	Appellant's Rep.:	Pro se
Hearing Location:	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

Through a notice dated September 7, 2023, MassHealth approved the appellant for Family Assistance coverage. (Exhibit 1; 130 CMR 505.005.) The appellant filed this timely appeal on September 29, 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 downgraded the appellant from MassHealth Standard to Family Assistance based upon the immigration status reported on his renewal application. Subsequently, MassHealth determined the appellant's income to be too high to qualify for MassHealth Standard.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 504.003, in determining that the appellant was a Qualified Noncitizen Barred, and whether the appellant's countable income is too high to qualify for MassHealth Standard, pursuant to 130 CMR 505.002(E).

Summary of Evidence

The appellant is a disabled adult with a household of one. The appellant was covered by MassHealth Standard during the Federal Public Health Emergency for Covid-19 ("FPHE"). Prior to the FPHE, his immigration status was based upon a work-authorization visa, and he was further identified as a battered spouse. At the end of the FPHE, the appellant was sent a renewal application, and he reported that he is now a legal permanent resident as of April 2021, and he did not identify himself as a battered spouse.

Because the appellant's immigration status changed, MassHealth downgraded his eligibility to the Family Assistance benefit and requested verification of his residency, immigration status, and income. MassHealth's representative testified that the appellant has since been terminated from Family Assistance because his gross income was determined to be \$2,931.70. This was based upon monthly Social Security Disability Insurance ("SSDI") is \$1,812.70 and private disability income of \$1,119 per month. The federal poverty level for an individual is \$1,215 per month.

The appellant testified that his immigration status did change to being a permanent alien resident, but his status as a battered spouse should not have changed. MassHealth's representative updated his file and identified him as a battered spouse in MassHealth's computer system. However, she testified that he is not eligible based upon his income. She explained that the income threshold for a disabled individual, regardless of their immigration status, is only 133% of the federal poverty level to qualify for MassHealth Standard. It was pointed out that the appellant had been on CommonHealth in the past, and he could establish eligibility for that benefit again if he were able to submit a working letter or meet the one-time deductible.

The appellant testified that he could not work because he was shot in the back, and he is now wheelchair bound. He also disputed the income that MassHealth had on file for him. He testified that his private disability insurance only pays \$155 per month, and his SSDI is only \$1,647 because his Medicare premium is taken out of it. The appellant submitted income verifications and his permanent resident card as an exhibit.

Findings of Fact

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

- 1) The appellant is a disabled adult who is under the age of 65 with a household size of one. (Testimony by MassHealth's representative.)
- 2) The appellant has a permanent alien resident card, since April 2021, and he reports that he is a battered spouse. (Exhibit 5; testimony by the appellant.)
- 3) The appellant receives gross monthly RSDI income of \$1,812.70 and gross monthly private disability insurance of \$155. (Exhibit 5.)

Analysis and Conclusions of Law

MassHealth offers a variety of coverage types 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. As a preliminary matter, to be eligible for either MassHealth Standard or CommonHealth, the applicant must be "a citizen as described in 130 CMR 504.002: *U.S. Citizens* or a qualified noncitizen as described in 130 CMR 504.003(A)(1): *Qualified Noncitizens*" (130 CMR 505.002(E)(1)(c); 505.004(B)(4), (C)(4).)

(1) 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:

...

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.

...

(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);

...

(130 CMR 504.003(A)(1) (emphasis added).)

MassHealth accepted the appellant's attestation that he is a battered spouse, and it is clear from the regulation that an immigrant may hold more than one of the qualifying statuses in 130 CMR 504.003(A)(1)(b)1. Further, MassHealth acknowledged that the appellant's status as a battered spouse was in effect for more than five years. Therefore, the specific issue of the appellant's immigration status is moot. This appeal is DISMISSED in part with regards to the immigration issue because MassHealth accepted the appellant's eligibility as battered spouse who has held that status for five or more years. (See 130 CMR 610.035; 610.051(B).)

As a disabled individual, the appellant's income would need to be at or below 133% of the federal poverty level to qualify for MassHealth Standard. (130 CMR 505.002(E)(1)(b).) Countable income

generally includes “the total amount of taxable income that does not directly result from the individual’s own labor after allowable deductions on the U.S Individual Tax Return,” but it also specifically includes “ social security benefits” (130 CMR 506.003(B)(1)-(2).) The appellant’s applicable household income of \$1,967.70 is reduced by “[f]ive percentage points of the current federal poverty level” in order to determine his financial eligibility. (130 CMR 506.007(A)(3).) The resulting \$1,906.95 is equivalent to 157% of the federal poverty level. To the extent that this appeal seeks to have the appellant’s MassHealth Standard reinstated, it must be DENIED.

However, disabled adults between the ages of 19 and 64 can qualify for the CommonHealth program, regardless of their income, by meeting either a one-time deductible or working for 40 hours a month. (See 130 CMR 505.004(B)-(C), 506.009.) If not already done, MassHealth should calculate the appellant’s CommonHealth deductible and notify him of it. Alternately, if he is able to find someone to employ him for 40 hours per month, they may send a letter verifying his employment. This work does not need to be formal employment, it could be any task still within the appellant’s abilities, such as companionship. The letter would need to be signed and dated, provide the work being performed, the pay rate, and the number of hours per week performed.

Order for MassHealth

Issue a denial notice based upon the appellant’s income, if not already done. This notice should calculate the appellant’s deductible.

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 Rep: Sylvia Tiar, Tewksbury MEC, 367 East Street, Tewksbury, MA 01876