

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2309238
Decision Date:	12/18/2023	Hearing Date:	11/1/2023
Hearing Officer:	Cynthia Kopka		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Jacob Sommer, Charlestown



*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:	Under 65, household composition, income
Decision Date:	12/18/2023	Hearing Date:	11/1/2023
MassHealth's Rep.:	Jacob Sommer	Appellant's Rep.:	Pro se
Hearing Location:	Charlestown (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 September 7, 2023, MassHealth downgraded Appellant's coverage from MassHealth Standard to Health Safety Net. Exhibit 1. Appellant filed this appeal in a timely manner on October 2, 2023 and was eligible to keep the previous benefit level pending the outcome of the appeal. Exhibit 2. 130 CMR 610.015(B), 130 CMR 610.036. Termination, modification, or denial of assistance is a valid basis for appeal. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth downgraded Appellant's coverage from MassHealth Standard to Health Safety Net.

Issue

The appeal issue is whether MassHealth was correct in determining that Appellant no longer qualified for MassHealth Standard.

Summary of Evidence

The MassHealth representative appeared by phone and testified as follows. On September 7, 2023, MassHealth notified Appellant that she would not longer receive MassHealth Standard after October 31, 2023, and that her coverage would downgrade to Health Safety Net. Exhibit 1. The notice listed Appellant's household size as four people with monthly income that was 256.22% of the federal poverty level (FPL). *Id.*

On September 7, 2023, Appellant reported changes to her household and income. Appellant revised her tax-filing status, removing some dependents from her case. As a result, Appellant's household new household size was one with no minor children. Additionally, Appellant's income changed from zero to \$1,584 per month for self-employment and \$1,480 from Social Security. This exceeds 133% of the FPL, which is \$1,616 for a household of one.

The MassHealth representative testified that for self-employment income, MassHealth prefers to use an average number to reflect the income picture. Otherwise, members may lose eligibility if their income fluctuates.

Appellant appeared by phone and testified as follows. Appellant was concerned that her income was averaged over a 12 month period, because she only began receiving her deceased husband's survivor benefits in May 2023. Appellant has not received this income for a year and felt penalized that her income was extrapolated over a period of time she did not get this income. Appellant is currently homeless and living in a hotel with her disabled daughter. Appellant's other children now live separately. Appellant cannot afford any health insurance because all of her income goes towards the hotel fee and caring for her disabled daughter. Appellant works part time three or four days a week for a taxi business, which is losing money to rideshare apps. Appellant's income from this employment is unpredictable. Appellant also lost her food stamps because she is not on MassHealth. Appellant's daughter also lost her food stamps. Appellant's daughter receives 17 hours and 45 minutes of personal care attendant (PCA) services per month. Appellant herself requires health insurance because she needs to get a mammogram and blood pressure medication. Appellant has been suffering from knee pain for over a month and needs fluid drained. Appellant is losing sight in her right eye due to glaucoma.

The MassHealth representative testified that MassHealth does not take an average of one's monthly steady income, as Social Security benefits would be. Rather, it will look at the fluctuating self-employment income and calculating the monthly average of that income. MassHealth used the number that was reported by Appellant, \$1,584, but asked for confirmation that it was a true average. The MassHealth representative emphasized the importance of taking an average of multiple months, and reporting any periods of time when there was no income. The MassHealth representative testified that in lieu of relying on the prior year's tax documents, Appellant can submit a profit/loss statement from the most recent quarter as a better reflection of Appellant's current income picture.

Appellant estimated in the last quarter, she earned \$3,200. Divided by 3, the average monthly income based on this estimate was \$1,067. The MassHealth representative testified that updating this information yielded a determination that Appellant was eligible for temporary Health Safety Net and a Health Connector Type 3A, with advance premium tax credit. Appellant's daughter qualified for MassHealth Standard with Buy-In, which would cover her Medicare premium. The MassHealth representative testified that the lowest premium plan he could find for Appellant would be \$93. The MassHealth representative testified that Appellant could seek a hardship waiver for the premium. The MassHealth representative also encouraged Appellant to apply for disability, as she has multiple serious conditions.

Findings of Fact

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

1. Appellant is in a household of one and under the age of 64.
2. Appellant receives \$1,480 from Social Security monthly and her self-employment income averages \$1,067 monthly.
3. In 2023, the monthly FPL for a household of one was \$1,215; 133% of the FPL was \$1,616.
4. On September 7, 2023, MassHealth notified Appellant that she would not longer receive MassHealth Standard after October 31, 2023, and that her coverage would downgrade to Health Safety Net. Exhibit 1.
5. Appellant filed this timely appeal on October 2, 2023. Exhibit 2.

Analysis and Conclusions of Law

MassHealth regulations at 130 CMR 505.000 *et seq.* explain the categorical requirements and financial standards that must be met to qualify for a MassHealth coverage type. The rules of financial responsibility and calculation of financial eligibility are detailed in 130 CMR 506.000: *Health Care Reform: MassHealth: Financial Requirements*. The MassHealth coverage types are:

- (1) MassHealth Standard – for people who are pregnant, children, parents and caretaker relatives, young adults, disabled individuals, certain persons who are HIV positive, individuals with breast or cervical cancer, independent foster care adolescents, Department of Mental Health (DMH) members, and medically frail as such term is defined in 130 CMR 505.008(F);
- (2) MassHealth CommonHealth – for disabled adults, disabled young adults, and

disabled children who are not eligible for MassHealth Standard;

(3) MassHealth CarePlus – for adults 21 through 64 years of age who are not eligible for MassHealth Standard;

(4) MassHealth Family Assistance – for children, young adults, certain noncitizens, and persons who are HIV positive who are not eligible for MassHealth Standard, MassHealth CommonHealth, or MassHealth CarePlus;

(5) MassHealth Limited – for certain lawfully present immigrants as described in 130 CMR 504.003(A): *Lawfully Present Immigrants*, nonqualified PRUCOLs, and other noncitizens as described in 130 CMR 504.003: *Immigrants*; and

(6) MassHealth Medicare Savings Programs – for certain Medicare beneficiaries.

130 CMR 505.001(A).

In order to establish eligibility for MassHealth benefits, applicants must meet both the categorical and financial requirements. MassHealth determines financial eligibility based on an applicant's modified adjusted gross income. MassHealth takes the countable income, which includes earned income as described in 130 CMR 506.003(A) and unearned income described in 130 CMR 506.003(B) and subtracts deductions described in 130 CMR 506.003(D). 130 CMR 506.007. Per 130 CMR 506.003, the regulatory definitions of earned income, unearned income and deductions are as follows:

(A) Earned Income.

(1) Earned income is the total amount of taxable compensation received for work or services performed less pretax deductions. Earned income may include wages, salaries, tips, commissions, and bonuses.

(2) Earned taxable income for the self-employed is the total amount of taxable annual income from self-employment after deducting annual business expenses listed or allowable on a U.S. Individual Tax Return. Self-employment income may be a profit or a loss.

(3) Earned income from S-Corporations or Partnerships is the total amount of taxable annual profit (or loss) after deducting business expenses listed or allowable on a U.S. Individual Tax Return.

(4) Seasonal income or other reasonably predictable future income is taxable income derived from an income source that may fluctuate during the year. Annual gross taxable income is divided by 12 to obtain a monthly taxable gross income with the following exception: if the applicant or member has a disabling illness or accident during or after the seasonal employment or other reasonably predictable future income period that prevents the person's continued or future employment, only current taxable income will be considered in the eligibility determination.

(B) Unearned Income.

(1) Unearned income is 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.

(2) Unearned income may include, but is not limited to, social security benefits, railroad retirement benefits, pensions, annuities, certain trusts, interest and dividend income, state or local tax refund for a tax you deducted in the previous year, and gross gambling income.

(C) Rental Income. Rental income is the total amount of taxable income less any deductions listed or allowable on an applicant's or member's U.S. Individual Tax Return.

(D) Deductions. Under federal law, the following deductions are allowed when calculating MAGI countable income. Changes to federal law may impact the availability of these deductions:

- (1) educator expenses;
- (2) reservist/performance artist/fee-based government official expenses;
- (3) health savings account;
- (4) moving expenses, for the amount and populations allowed under federal law;
- (5) one-half self-employment tax;
- (6) self-employment retirement account;
- (7) penalty on early withdrawal of savings;
- (8) alimony paid to a former spouse for individuals with alimony agreements finalized on or before December 31, 2018. Alimony payments under separation or divorce agreements finalized after December 31, 2018, or pre-existing agreements modified after December 31, 2018, are not deductible;
- (9) individual retirement account (IRA);
- (10) student loan interest;
- (11) scholarships, awards, or fellowships used solely for educational purposes; and
- (12) other deductions described in the Tax Cut and Jobs Act of 2017, Public Law 115-97 for as long as those deductions are in effect under federal law.

An adult under the age of 64 is eligible for MassHealth's CarePlus benefit if their income at or below 133% of the FPL. 130 CMR 505.008(A)(2)(c). An adult caretaker of a child under the age of 19 years old may be eligible for MassHealth Standard if their income is below 133% of the FPL. 130 CMR 505.002(C)(1)(a).

Here, Appellant's monthly income averages at \$2,547, which is approximately 209% of the FPL. This is higher than the 133% limit to qualify for a MassHealth benefit. Appellant is eligible for a Health Connector plan and should enroll.

This appeal is denied.

Order for MassHealth

Remove aid pending.

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Nga Tran, Charlestown MassHealth Enrollment Center, 529 Main Street, Suite 1M, Charlestown, MA 02129