

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2309553
Decision Date:	1/3/2024	Hearing Date:	11/08/2023
Hearing Officer:	Christopher Jones		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
John Gerardi – Tewksbury Ongoing Manager



*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; Eligibility; Income
Decision Date:	1/3/2024	Hearing Date:	11/08/2023
MassHealth's Rep.:	John Gerardi	Appellant's Rep.:	Pro se
Hearing Location:	Telephonic	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 30, 2023, MassHealth downgraded the appellant's MassHealth benefits from Standard to Buy-in for Specified Low Income Medicare Beneficiaries based upon her income. (Exhibit 1; 130 CMR 519.002; 519.010.) The appellant filed this appeal in a timely manner on October 11, 2023, and her benefits are protected pending the outcome of this appeal. (Exhibit 2; 130 CMR 610.015(B); 610.036.) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth terminated the appellant's MassHealth Standard that she was receiving from the under-65 department and approved her for the Medicare Savings Program for Specified Low Income Medicare Beneficiaries. MassHealth eventually approved the appellant for the CommonHealth benefit for working-disabled adults.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.002 and 519.010-519.012, in determining that the appellant's income is too high to qualify for MassHealth Standard.

Summary of Evidence

Prior to the pandemic, the appellant was covered by MassHealth Standard through the under-65 department. During the Federal Public Health Emergency for Covid-19 ("FPHE"), the appellant's benefits were protected even after she turned 65. The rules governing eligibility change when members turn 65, and at the end of the FPHE protections, MassHealth sent the appellant an application for over-65 benefits. The appellant completed an application for over-65 benefits on or around September 1, 2023. The appellant has a household of one, and she receives \$1,742 per month in gross Social Security Disability benefits. Because this income over the federal poverty level of \$1,215 per month, the appellant was not eligible for MassHealth Standard. This income equates to about 141% of the federal poverty level, and the appellant was approved for a Medicare Buy-in benefit for Specified Low Income Medicare Beneficiaries ("SLMB").

MassHealth's representative testified that the appellant later verified that she was working for 40 hours a week for one dollar per hour. This letter made her eligible for the CommonHealth benefit, with a zero dollar monthly premium because the appellant's income is below 150% of the federal poverty level. CommonHealth provides the same coverage as MassHealth Standard, but it does not cover the member's Medicare premiums at incomes over 135% of the federal poverty level.

The appellant was upset that she was no longer eligible for Standard coverage, and she was concerned that her Medicare premiums would not be covered. She was informed that she could apply for the Frail Elder Waiver, which increases the income threshold for MassHealth Standard.

Findings of Fact

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

- 1) The appellant is a disabled individual over the age of 65. (Testimony by MassHealth's representative.)
- 2) The appellant receives gross monthly Social Security benefits in the amount of \$1,742, plus \$40 per week according to her working disabled letter. (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).)

The financial rules set out at 130 CMR 520.000 explain that all of an individual's "gross earned and unearned income less certain business expenses and standard income deductions" is countable, and "the countable-income amount is compared to the applicable income standard to determine the individual's financial eligibility." (130 CMR 520.009(A)(1)-(2).) Weekly income is multiplied by 4.333 to determine monthly income. (130 CMR 520.009(A)(1).) There are only two income deductions for community residents with unearned income: (1) "a deduction of \$20 per individual or married couple" or (2) a larger deduction if the individual "requires assistance from a personal care attendant." (130 CMR 520.013(A)-(B).) If the applicant's income is over 133% of the federal poverty level prior to the PCA deduction, the applicant receives a deductible. (130 CMR 520.013(C).) Earned income receives a deduction of \$65, and then only half of the remaining income is countable. (130 CMR 520.012.)

The appellant's income as verified from her working-disabled letter is \$173.32 per month. This results in countable earned income of \$54.16. After the \$20 standard deduction from the appellant's unearned income, the appellant's monthly income is \$1,776.16. This is equivalent to 146% of the federal poverty level. As this is greater than 133% of the federal poverty level, the appellant would not be eligible for MassHealth Standard without a deductible, even with the larger PCA-deduction. Therefore, MassHealth is correct that the appellant is ineligible for Standard coverage, and this appeal is denied.

As a disabled adult aged 65 or older, however, the appellant is eligible for CommonHealth coverage with income in excess of the federal poverty level. (See 130 CMR 519.012.) Countable income is

calculated differently for CommonHealth benefits, as the under-65 rules apply. Under these rules, employment income is countable only to the extent that it is taxable, though non-taxable Social Security benefits are included in income. (130 CMR 506.003(A), (B).) In calculating eligibility, five percent of the relevant federal poverty level is deducted. (130 CMR 506.007(A)(3).) Under this calculation, the appellant's income is only 138.4% of the federal poverty level.

There are no CommonHealth premiums for disabled individuals with income below 150% of the federal poverty. (130 CMR 506.011(B)(2)(b).) However, CommonHealth only "pays the cost of the monthly Medicare Part B premium behalf of members ... who have [income] that is less than or equal to 135% of the FPL." (130 CMR 519.012(D).) If the appellant "would be institutionalized in a nursing facility," she may be eligible for the Frail Elder Waiver. (130 CMR 519.007(B).) This program requires a separate application which is not part of this appeal. The appellant has already been approved for CommonHealth, and MassHealth made no error in calculating the appellant's eligibility for MassHealth benefits. Therefore, this appeal is DENIED.

Order for MassHealth

Remove Aid Pending, place the appellant into CommonHealth coverage with a \$0 premium.

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