

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied in part; Approved in part	Appeal Number:	2309718
Decision Date:	12/18/2023	Hearing Date:	11/14/2023
Hearing Officer:	Casey Groff	Record Closed:	12/18/2023

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Yassory Pena, Tewksbury MEC



*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-in-part; Approved-in-part	Issue:	Eligibility; Over 65; Income; Notice of Termination
Decision Date:	12/18/2023	Hearing Date:	11/14/2023
MassHealth's Rep.:	Yassory Pena	Appellant's Rep.:	<i>Pro se</i>
Hearing Location:	BOH – Tewksbury (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 9/29/2023, MassHealth denied the appellant's senior application for benefits because MassHealth determined that his income exceeded program limits. See Exhibit 1. The appellant filed this appeal in a timely manner on 10/13/23. See 130 CMR 610.015(B) and Exhibit 2. Denial of assistance is valid grounds for appeal. See 130 CMR 610.032.

At the scheduled hearing on 11/14/23, Appellant raised the issue that MassHealth never notified him that his pre-existing MassHealth benefit ended on 8/13/23. Pursuant to MassHealth's Fair Hearing Rules, the Board of Hearings (BOH) must receive a request for a fair hearing "120 days from...(c) the date of MassHealth agency action *when the MassHealth agency fails to send written notice of the action...*" See 130 CMR 610.015(B)(2) (emphasis added). Accordingly, Appellant's 10/13/23 fair hearing request was received within the allowable time to challenge MassHealth's 8/13/23 termination of benefits. See id.¹ At Appellant's request, the hearing record remained open until 12/18/23 to allow the hearing officer to obtain and consider additional evidence relating to the termination of benefits. See Exhibits 4-5.

¹ As this Decision states herein, Appellant sufficiently demonstrated that MassHealth did not provide adequate notice of the 8/13/23 termination date.

Action(s) Taken by MassHealth

MassHealth terminated Appellant's Under-65 benefit on 8/13/23; and on 9/29/23, denied his application for senior MassHealth benefits because his income exceeded program limits.

Issue(s)

The appeal issues are: (1) whether MassHealth appropriately terminated Appellant's benefit on 8/13/23; and (2) whether MassHealth appropriately denied Appellant's application for senior benefits based on its determination that his income exceeded program limits.

Summary of Evidence

A MassHealth eligibility representative appeared at hearing and testified as follows: Appellant is over the age of 65 and lives in the community in a household size of one (1). Appellant was enrolled in a MassHealth benefit for individuals under the age of 65 since 2013. This benefit remained protected during the pendency of the federal Covid-19 Public Health Emergency (PHE). When the PHE lifted in April of 2023, Appellant was no longer eligible for his "under-65" benefit and was prompted to submit a renewal for MassHealth senior benefits. On June 1, 2023, Appellant sent MassHealth an application for benefits for individuals over the age of 65. On 6/23/23, MassHealth processed Appellant's application, and, on the same date, sent Appellant a request for information (RFI) seeking additional verifications with a due date of 9/21/23. On 9/29/23, after receiving all requested verifications, MassHealth notified Appellant that he did not qualify for benefits because his household income exceeded program limits.

The MassHealth representative testified that according to the information provided, Appellant receives income of \$2,793 per-month. To be eligible for MassHealth Standard, individuals 65 years of age or older cannot have assets that exceed \$2,000 and cannot have income that exceeds 100% of the federal poverty level (FPL). For 2023, 100% of the FPL for a household size of one, is \$1,215 per-month. As such, MassHealth appropriately determined that Appellant was not eligible for MassHealth benefits.

When asked whether the 9/29/23 determination resulted in the termination of Appellant's pre-existing benefit, MassHealth clarified that it did not as Appellant did not have an active MassHealth benefit at the time the eligibility decision was rendered. The representative confirmed that, per the system notes, Appellant's benefit, which had been protected under the PHE, ended on 8/13/23.

Appellant appeared at the hearing and testified that he did not dispute that he receives the income amount as stated by MassHealth. Appellant testified, however, that a portion of the

reported income consisted of a survivor benefit he received from social security after his wife's passing. He questioned whether this type of income was countable for purposes of determining his eligibility. Appellant also testified that he has two children, now in their 20's, who had previously been on his case, and he questioned whether they were still covered and included in his household composition.

Appellant testified that he received the 9/29/23 notice, but it came as a surprise. On July 6, 2023, Appellant spoke with an agent of MassHealth who confirmed that his supplemental Standard benefit remained active through June of 2024, and only then would need to re-apply for coverage for over-65 at that time. Based on this conversation, Appellant was led to believe he had supplemental MassHealth coverage for the next year, and on this basis, declined to enroll in Medicare Part B. By the time he received the 9/29/23 notice, the offer to enroll in Medicare Part B had passed.

Appellant also testified, in response to MassHealth statement that his coverage ended on 8/13/23, that he never received notice of this, and this was the first time he was aware that his coverage ended. Appellant confirmed that he has not changed addresses and never had a problem receiving notices from MassHealth. Appellant confirmed that he received both the 6/23/23 RFI and the 9/29/23 denial notice, but never a termination notice. Because he was unaware his benefit ended, he attended scheduled health care appointments, including a dermatology visit and most recently, a surgery consultation on 10/11/23. Following the appointments, Appellant received medical bills exceeding \$1,000, related to these appointments, and which alerted him to there being an issue with his coverage. Appellant expressed concern about how an upcoming surgery would be covered now that he does not have MassHealth.

In response to Appellant's testimony, the MassHealth representative first explained that because Appellant is over 65 years old, MassHealth does not include his adult children for determining household size. Additionally, she confirmed that the survivor benefit that Appellant receives is a countable form of income for purposes of determining MassHealth eligibility; and based on the total amount of income received, Appellant does not qualify.

Next, the MassHealth representative reviewed the MassHealth computer system to locate additional information on the events leading to Appellant's 8/13/23 termination. Consistent with Appellant's testimony, the notes reflected a 7/6/23 conversation with MassHealth during which the agent informed Appellant that his next renewal would not be due until June of 2024. The MassHealth representative clarified, however, that the agent's notes did not reflect telling Appellant that he would remain covered for the next year. The MassHealth representative testified that Appellant's application had not been finalized by the 7/6/23 call; thus MassHealth would not have told Appellant that his benefit was approved. Finally, the MassHealth representative indicated that after performing a cursory search of notices issued to Appellant over the past year, she was unable to locate any notice of the 8/13/23 termination.

Following the hearing, the record remained open for additional evidence related to this issue of failure to send notice of an agency action. During the record open period, MassHealth, confirmed, after conducting a search of all applicable database systems (including the under-65 “HIX” system and the over-65 “MMIS” systems), that it could not locate any notice that referenced a benefit termination of 8/13/23, or similar notice informing Appellant of an end date to his existing coverage.

Findings of Fact

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

1. Appellant is over the age of 65 and lives in the community in a household size of one.
2. On June 1, 2023, Appellant, who was enrolled in MassHealth at the time, sent MassHealth an application for senior benefits.
3. On 6/23/23, MassHealth processed Appellant’s application, and, on the same date, sent Appellant a RFI seeking verification of information to determine his eligibility for benefits with a due date of 9/21/23.
4. On 8/13/23, MassHealth terminated Appellant’s existing MassHealth benefit.
5. MassHealth did not provide Appellant with advance written notice, or notice via any other means, that it would be ending his coverage on 8/13/23.
6. Unaware his coverage ended, Appellant attended medical appointments following the 8/13/23 termination date, and incurred out-of-pocket medical expenses as a result.
7. In response to MassHealth’s 6/23/23 RFI, Appellant provided timely verifications to MassHealth showing a gross countable household income of \$2,793 per-month, which included unearned survivor benefit income from social security.
8. On 9/29/23, MassHealth notified Appellant that he did not qualify for benefits because his household income exceeded program limits.

Analysis and Conclusions of Law

The issues on appeal are: (1) whether MassHealth correctly determined, pursuant to its 9/29/23 notice, that Appellant did not qualify for benefits because his income exceeded program limits, and (2) whether MassHealth terminated Appellant's pre-existing coverage on 8/13/23.

1. Eligibility for MassHealth Senior Benefits

To qualify for MassHealth Standard, individuals ages 65 and older who live in the community, such as Appellant, must have countable income at or below 100% of the federal poverty level (FPL) *and* have countable assets under \$2,000. See 130 CMR 519.005. MassHealth regulations define countable income amount as "an individual's and the spouse's gross earned and unearned income, less certain business expenses and standard income deductions."² See 130 CMR 520.009(A)(1). Examples of unearned income that MassHealth counts in determining eligibility include, but are not limited to social security benefits, pensions, annuities, federal veterans' benefits, and rental income. See 130 CMR 520.009(D).³

In consideration of the above-referenced regulations and the evidence submitted at hearing, MassHealth did not err in determining that Appellant's income exceeded program income standards to qualify for MassHealth. It is undisputed that Appellant has a total household income of \$2,793 per-month. For 2023, 100% of the FPL for a household size of one, is \$1,215 per-month.⁴ Thus, Appellant exceeds the income limits to qualify for MassHealth senior benefits. MassHealth did not err in denying Appellant's application for senior benefits, pursuant to its 9/29/23 notice. This portion of the appeal is DENIED.

2. Termination of Benefits

The evidence does show, however, that MassHealth prematurely and thus, erroneously, terminated Appellant's coverage on 8/13/23 by failing to provide him with adequate notice of his coverage end date.

Federal and state regulations require that all state Medicaid agencies, such as MassHealth, provide individuals with advance written notice of any action relating to their eligibility,

² For community and institutionalized individuals, MassHealth allows certain standard earned and unearned income deductions from gross income, which are described in 130 CMR 520.012 and 520.014. See 130 CMR 520.011. For unearned income, MassHealth applies a \$20 unearned income deduction, and a "PCA deduction" as set forth in 130 CMR 520.013(B) which is permitted for individuals receiving personal-care attendant services. As of the hearing date, there was no evidence that Appellant met the conditions to qualify for the PCA deduction.

³ MassHealth lists the categories of income it considers "noncountable" in 130 CMR 520.015; however, none of listed exceptions are present in this case.

⁴ See 2023 MassHealth Income Standards and Federal Poverty Guidelines (Rev. 3/23).

including notice of a termination, reduction, or suspension of benefits. See 42 C.F.R. § 435.917; see also 130 CMR §§ 502.008, 516.008. The contents of the notice must include, among other required information, a statement of what action the agency intends to take and the effective date of such action; a clear statement of the specific reasons supporting the intended action; and the individual's right to request a hearing. See 42 CFR § 431.210; see also 130 CMR 610.026. Typically, the agency must send notice at least 10 days before the date of the intended action. See 42 C.F.R. § 431.211 and 130 CMR 610.015(A). In addition to its standard 10-day notice requirement, MassHealth implements a heightened 14-day notice requirement for actions involving the loss of a member's coverage, as indicated as follows:

(D) End Date of Coverage. Except as specified in 130 CMR 502.003(H)(2),⁵ ***MassHealth benefits terminate or downgrade no sooner than 14 days from the date of termination or downgrade notice.***

See 130 CMR 502.006(D); see also 130 CMR 516.006.⁶

At hearing, Appellant provided credible testimony indicating that MassHealth never sent notice that his coverage would end on 8/13/23. Unaware that he no longer had coverage, Appellant incurred significant out-of-pocket medical expenses. At hearing and through the record open process, there was a diligent effort by MassHealth to find evidence that it notified Appellant of the 8/13/23 termination. Despite its search, MassHealth was unable to locate any such evidence. While it is, indeed, MassHealth's practice to send advance notice of an upcoming change in eligibility, there is nothing in the record to suggest MassHealth, in this instance, followed this practice.

As provided in 130 CMR 502.006(D) and 130 CMR 516.006, above, the 14 day advance notice requirement, is effectively, a prerequisite the agency must satisfy before it can reduce or terminate a member's benefit. Because MassHealth did not complete this necessary procedural step, its 8/13/23 termination of Appellant's coverage was erroneous and must be rescinded.

As the MassHealth representative testified, Appellant's renewal was pending from 6/23/23 (when his application was received/processed) through 9/29/23 (when MassHealth sent Appellant notice that he did not qualify for benefits). The 9/29/23 eligibility determination,

⁵ This provision concerns coverage start and end dates for individuals that receive temporary benefits through the hospital presumptive eligibility process. As there is no evidence Appellant's was receiving a presumptive eligibility benefit as determined by a qualified hospital, this exception would not apply in this case.

⁶ Where § 502.006(D) pertains to eligibility determinations for individuals under the age of 65; § 516.006 pertains to eligibility determinations for those over the age of 65 and/or institutionalized individuals. Both provisions include the requirement that "MassHealth benefits terminate or downgrade no sooner than 14 days from the date of termination or downgrade notice."

while correct, does not negate MassHealth's earlier premature termination of Appellant's benefit on 8/13/23. As stated above, MassHealth must provide *advance* notice before it can terminate a member's benefit. Because the contents of the 9/29/23 notice, which Appellant received, provided adequate explanation of why he no longer qualified for benefits, MassHealth should adjust the end date of Appellant's prior coverage to a date no sooner than October 13, 2023 - 14 days after 9/29/23.⁷ This portion of the appeal is APPROVED-in-part.

Order for MassHealth

Adjust Appellant's MassHealth coverage end date from 8/13/23 to a date no sooner than 10/13/23 ensuring no gaps in coverage. Send Appellant notice of updated termination date.

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

⁷ While the implementation of this Decision may help offset some of the medical expenses Appellant incurred after 8/13/23, it will not address his concern regarding his waiver of a Medicare Part B supplement. It is noted, however, that CMS created a Special Enrollment Period (SEP) for older adults who have lost their Medicaid due to the unwinding of the PHE continuous coverage protection, and thus may be outside the General Enrollment Period (GEP) to enroll in Medicare Part A or B coverage. Qualifying individuals can use the SEP to enroll in Medicare within 6 months of losing Medicaid without facing a late enrollment penalty, and if eligible, may seek retroactive coverage to their Medicaid end date to ensure no lapse in coverage. See SSA Program Operations Manual Systems (POMS), HI 00805.385 Exceptional Conditions Special Enrollment Period (SEP) for Termination of Medicaid Eligibility (10/10/23); see also 42 C.F.R. §§ 406.27 (Medicare Part A); 407.27 (Medicare Part B). Appellant may contact Medicare to inquire whether he would qualify for the SEP should he wish to enroll in a Medicare Part B plan following his adjusted Medicaid termination date.

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.

Casey Groff, Esq.
Hearing Officer
Board of Hearings

cc:

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