

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2310849
Decision Date:	12/12/2023	Hearing Date:	12/04/2023
Hearing Officer:	Mariah Burns		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Michael Richelson, Tewksbury MassHealth
Enrollment Center



*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; Immigration Status
Decision Date:	12/12/2023	Hearing Date:	12/04/2023
MassHealth's Rep.:	Michael Richelson	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 30, 2023, MassHealth approved the appellant for MassHealth Family Assistance coverage. Exhibit 1. The appellant filed this appeal in a timely manner on August 2, 2023. *See* 130 CMR 610.015(B) and Exhibit 2. Denial of assistance is valid grounds for appeal. *See* 130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the appellant for coverage of MassHealth Family Assistance.

Issue

The appeal issue is whether MassHealth correctly determined that, based on the appellant's immigration status, she does not qualify for MassHealth Standard.

Summary of Evidence

The appellant is an adult over the age of 65 who has been active on MassHealth Family Assistance for several years. The MassHealth representative is a worker from the Tewksbury MassHealth

Enrollment Center. All parties appeared by telephone. The following is a summary of the testimony given and the evidence provided at hearing:

The notice at issue stems from a renewal application submitted by the appellant on July 17, 2023. MassHealth records reflect that the appellant is permanent resident of the United States but has possessed that status for less than five years. The MassHealth representative reported that the appellant's income and assets would otherwise qualify her for MassHealth Standard, but due to her immigration status, the regulations require that she be placed on MassHealth Family Assistance

The appellant testified that she obtained permanent residency in December 2020. She reported that some unknown person informed her that she had been receiving MassHealth Standard benefits and was downgraded to MassHealth Limited. She also testified that, around the time that she was informed of this, her Social Security payments decreased. She thought that it may have had something to do with MassHealth, which is the reason for her appeal. She asked to be placed on MassHealth Standard

The MassHealth representative reported that there is no indication that the appellant has ever received MassHealth Standard, nor that she is currently on MassHealth Limited. He stated that MassHealth records show that she has always received MassHealth Family Assistance, and he saw nothing on her account that would explain a decrease in her Social Security benefits.

Findings of Fact

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

1. The appellant is an adult over the age of 65 who is currently active on MassHealth Family Assistance. Exhibit 1, Exhibit 4, Testimony.
2. The appellant submitted a renewal application on July 17, 2023, and was determined to still be eligible for Family Assistance on September 30, 2023. Exhibit 1, Testimony.
3. The appellant has been a permanent resident of the United States since December 2020. Testimony.
4. The appellant is financially eligible for MassHealth Standard. Testimony.
5. The appellant has always received MassHealth Family Assistance benefits. She has never received MassHealth Standard nor Limited. Nothing contained within her MassHealth account explains an alleged decrease in Social Security benefits. Testimony.

Analysis and Conclusions of Law

Certain noncitizens may qualify for MassHealth benefits, depending on their legal status. The MassHealth regulations at 130 CMR 504.003 detail the circumstances in which these applicants may receive benefits. These regulations are divided into four different categories: Lawfully Present Immigrants (518.003(A)), Protected Noncitizens (518.003(B)), Nonqualified Persons Residing under Color of Law (518.003(C)), and Other Noncitizens (518.003(D)). Within the category of Lawful Present Immigrant, there exist three separate categories: Qualified Noncitizen (518.003(A)(1)), Qualified Noncitizens Barred (518.003(A)(2)), and Qualified Individuals Lawfully Present (518.003(A)(3)). As the appellant argues that she should be eligible for MassHealth Standard, at issue is whether she is a qualified noncitizen or protected noncitizen that could receive MassHealth under any coverage type, or a qualified noncitizen barred or nonqualified individual lawfully present. *See generally* 130 CMR 518.006.

Qualified noncitizens fall into two categories; the first category is considered “qualified regardless of when they entered the U.S. or how long they had a qualified status.” 130 CMR 518.003(A)(1)(a). An entire list of such persons can be found at 518.00(A)(1)(a)(1)-(12) and include asylees, refugees, and victims of human trafficking. The second category includes individuals who have been admitted for legal permanent residence but requires that such people have either possessed such status of five or more years, have been in the U.S. since 1996, or also fall into the first category of Qualified Noncitizen. *See* 130 CMR 518.003(A)(1)(b). An individual who is a permanent resident but has not possessed the status for at least five years is considered a Qualified Noncitizen Barred under 130 CMR 518.003(A)(2).

Protected noncitizens can fall under any number of immigration statuses and may continue to receive MassHealth regardless of that status if they were receiving medical assistance or had applied for or were receiving long-term care in 1997. *See* 130 CMR 518.003(B). There is no evidence that the appellant possesses such qualifications, nor is there any evidence that she is a Nonqualified Individual Lawfully Present pursuant to 130 CMR 518.003(A)(3).

Citizens, qualified noncitizens, and protected noncitizens “may receive MassHealth under any coverage types for which they are [financially] eligible.” 130 CMR 518.006(A). Qualified Noncitizens Barred may receive MassHealth Family Assistance or Limited if they are over the age of 65 depending on their financial eligibility, but they may only receive MassHealth Standard if they are younger than 21 years old or pregnant. *See id.* at 518.006(B).

Although the appellant is a legal permanent resident of the United States, she and MassHealth both agree that she has only possessed that status since 2020, which is less than the five years required for her to be considered a qualified noncitizen. As such, she is a qualified noncitizen barred, and was rightly placed on MassHealth Family Assistance given her financial eligibility. I find

that the appellant has not met her burden of proof that MassHealth erred in issuing the September 30, 2023, notice.¹ Based on the foregoing, the appeal is hereby denied.

Order for MassHealth

None.

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.

Mariah Burns
Hearing Officer
Board of Hearings

cc:

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

¹ As the appellant provided no evidence of the decrease in her Social Security benefits and MassHealth has no information as to the cause, I make no finding related to that assertion by the appellant.