

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2310897
Decision Date:	1/5/2024	Hearing Date:	12/21/2023
Hearing Officer:	Mariah Burns	Record Open to:	

Appearance for Appellant:



Appearance for MassHealth:

Elizabeth Nickoson, Taunton MassHealth
Enrollment Center

Interpreter:



*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; Immigration
Decision Date:	1/5/2024	Hearing Date:	12/21/2023
MassHealth's Rep.:	Elizabeth Nickoson	Appellant's Rep.:	
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 19, 2023, MassHealth approved the appellant for MassHealth Limited coverage. Exhibit 1. The appellant filed this appeal in a timely manner on November 2, 2023. *See* 130 CMR 610.015(B) and Exhibit 2. Challenging agency action regarding scope and amount of assistance is valid grounds for appeal. *See* 130 CMR 610.032(A)(5).

Action Taken by MassHealth

MassHealth found that the appellant was eligible only for MassHealth Limited benefits.

Issue

The appeal issue is whether MassHealth was correct in determining that the appellant is ineligible for benefits beyond MassHealth Limited.

Summary of Evidence

The appellant is an adult under the age of 65 who resides in a household of four. She was represented at hearing by her husband, who was assisted by a Hindi interpreter secured by the

Board of Hearings. The MassHealth representative is a worker from the Taunton MassHealth Enrollment Center. All parties appeared by telephone. The following is a summary of the testimony given and the evidence provided at hearing:

MassHealth records initially reflected that the appellant lacks legal immigration status, but most recent verifications show that she has received a B2 visitor visa. She began receiving MassHealth Standard in 2020 due to being pregnant, and she then received COVID protections until the end of the federal public health emergency. When her 2023 renewal application was submitted, she was determined to be eligible for MassHealth Limited, given her immigration status and that she is no longer pregnant. The appellant's total household income is \$0.00.

The appellant's husband confirmed that she has a B2 visitor visa and that she will be applying for permanent residency in January. The appellant recently underwent surgery to remove an ovary and fallopian tube due to the possibility of ovarian cancer, but she has not been diagnosed with breast cancer or cervical cancer. She is not currently pregnant. He reported that the family signed up for a Health Connector plan, but a \$100.00 monthly premium was imposed, which they cannot afford.

Findings of Fact

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

1. The appellant is an adult, under the age of 65, who resides in a household of four. Exhibit 1, Exhibit 4.
2. On September 19, 2023, MassHealth determined that the appellant is eligible for MassHealth Limited benefits. Exhibit 1.
3. The appellant filed a timely appeal on November 2, 2023. Exhibit 2.
2. As of the date of the hearing, the appellant possesses a B2 visitor visa. Testimony.
3. The appellant's household had no income and she is financially eligible for MassHealth Limited. 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 (504.003(A)), Protected Noncitizens (504.003(B)), Nonqualified Persons

Residing under Color of Law (504.003(C)), and Other Noncitizens (504.003(D)). As there is no evidence that the appellant has ever received MassHealth CommonHealth, she cannot be considered a Protected Noncitizen pursuant to 504.003(B); furthermore, there is no evidence that her current status qualifies her as a Nonqualified Persons Residing under Color of Law based on the myriad of options contained within 504.003(C). Thus, at issue for this appeal is whether she can be considered a Lawful Present Immigrant for purposes of MassHealth eligibility, or whether she is presently an Other Noncitizen under the regulations.

Within the category of Lawful Present Immigrant, there exist three separate categories: Qualified Noncitizen (504.003(A)(1)), Qualified Noncitizens Barred (504.003(A)(2)), and Qualified Individuals Lawfully Present (504.003(A)(3)). For the sake of clarity, there is no evidence in the record to suggest that the appellant is a Qualified Noncitizen Barred or a Qualified Individual Lawfully Present. Therefore, the question at issue is whether the appellant can be considered a Qualified Noncitizen or an Other Noncitizen.

It is relevant and necessary to determine whether this criterion applies to the appellant because each category results in different eligibility for MassHealth. For instance, “qualified noncitizens...may receive MassHealth under any coverage type if they meet the eligibility requirements described in 130 CMR 505.000.” 130 CMR 504.006(A). However, Other Noncitizens may only receive the following coverage pursuant to 130 CMR 504.006(D):

- (1) MassHealth Standard, if they are pregnant and meet the categorical requirements and financial standards as described in 130 CMR 505.002: MassHealth Standard;
- (2) MassHealth Limited, if they meet the categorical requirements and financial standards as described in 130 CMR 505.006: MassHealth Limited; and
- (3) Children’s Medical Security Plan, if they are children younger than 19 years old and meet the categorical requirements and financial standards as described in 130 CMR 522.004: Children’s Medical Security Plan (CMSP).

Therefore, is essential to determine which category applies to the appellant to decide whether she qualifies for coverage beyond MassHealth Limited.

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 504.003(A)(1)(a). An entire list of such persons can be found at 504.006(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 for 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 504.003(A)(1)(b).

Here, there is no evidence in the record that the appellant is an asylee, refugee, or otherwise qualifies in the first category of Qualified Noncitizen. Further, there is no evidence that meets the pre-1996 entry exception of 130 CMR 504.003(A)(1)(b). Finally, the appellant's representative reported that she has not yet applied for permanent residency, and the evidence shows that she currently possesses a B2 visitor visa. The appellant's representative provided no argument, nor was I able to find regulatory support, that the appellant's immigration status qualifies her as anything but an Other Noncitizen.

Thus, under the regulations, the appellant is considered as such and can only qualify for MassHealth coverage pursuant to 130 CMR 504.006(D). There is no evidence that the appellant is pregnant, and the evidence shows that she is over the age of 19, so she may not qualify for MassHealth Standard nor the CMSP. *Id.* Although her representative reported that she recently underwent a surgical procedure to remove an ovary and fallopian tube, there is no evidence that the appellant has been diagnosed with breast or cervical cancer, nor that she is pregnant or positive for HIV. The appellant has not met her burden of proof to demonstrate that she qualifies for coverage beyond MassHealth Limited. Because she meets the income requirement, MassHealth rightly determined that the appellant is eligible for MassHealth Limited under the regulations. The appeal is denied. The appellant can direct any questions about Health Connector plans to 1-877-MA-ENROLL (1-877-623-6765).

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: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616