

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2310936
Decision Date:	02/16/2024	Hearing Date:	12/28/2023
Hearing Officer:	Emily T. Sabo		

Appearance for Appellant:



Appearance for MassHealth:

Cathy Tobin, 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	Issue:	Eligibility; Under 65: Citizenship & Immigration Status
Decision Date:	02/16/2024	Hearing Date:	12/28/2023
MassHealth's Rep.:	Cathy Tobin	Appellant's Rep.:	Daughter
Hearing Location:	Tewksbury MassHealth Enrollment Center (Telephone)	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 October 16, 2023, MassHealth notified the Appellant that she had been auto renewed for MassHealth Limited and Health Safety Net 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. Denial of assistance is valid grounds for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

MassHealth found that the Appellant was eligible only for MassHealth Limited and Health Safety Net benefits.

Issue

The appeal issue is whether MassHealth was correct in determining that the Appellant is ineligible for benefits beyond MassHealth Limited and Health Safety Net due to her citizenship and

immigration status.

Summary of Evidence

The hearing was held telephonically. The MassHealth representative testified as follows: the Appellant is an adult under the age of 65 who has a household size of one and zero income. The MassHealth representative testified that the Appellant is eligible for MassHealth Limited and Health Safety Net. The MassHealth representative testified that the Appellant had submitted a copy of her green card, which was issued on [REDACTED]. The MassHealth representative testified that as a noncitizen, the Appellant would not become eligible for more MassHealth benefits until she had resided in the United States for at least five years.

The Appellant was represented at the hearing by her daughter, who verified the Appellant's identity.¹ The Appellant's representative agreed that the Appellant's green card was issued on [REDACTED]. The Appellant's representative testified that she understood that a noncitizen would have to reside in the United States as a legal permanent resident for five years, in order to receive federal benefits. However, the Appellant's representative testified that when she had researched the MassHealth website, it did not state that that was required to qualify for more MassHealth benefits, which is why the Appellant appealed MassHealth's determination.

Findings of Fact

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

1. The Appellant is an adult, between the ages of 21-64, who resides in a household of one (Testimony, Exhibit 4).
2. The Appellant has no income (Testimony, Exhibit 1).
3. As of [REDACTED], the Appellant has obtained Permanent Residency status and is lawfully present in the United States (Testimony, Exhibit 2).
4. The Appellant is financially eligible for MassHealth Limited and Health Safety Net (Testimony, Exhibit 1).

Analysis and Conclusions of Law

¹ The Appellant's representative said she spoke and understood English, and an interpreter was not needed.

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:

504.003: Immigrants

(A) Lawfully Present Immigrants. Qualified noncitizens, qualified noncitizens barred, and nonqualified individuals lawfully present are considered lawfully present immigrants. The applicable coverage for qualified noncitizens, qualified noncitizens barred, and nonqualified individuals lawfully present is listed in 130 CMR 504.006.

(1) Qualified Noncitizens. There are two groups of qualified noncitizens:

(a) those who are qualified regardless of when they entered the U.S. or how long they had a qualified status. Such individuals are

1. persons granted asylum under section 208 of the INA;
2. Refugees admitted under section 207 of the INA;
3. persons whose deportation has been withheld under section 243(h) or 241(b)(3) of the INA, as provided by section 5562 of the federal Balanced Budget Act of 1997;
4. veterans, their spouses, and their children
 - a. veterans of the United States Armed Forces with an honorable discharge not related to their noncitizen status;
 - b. Filipino war veterans who fought under U.S. command during WWII;
 - c. Hmong and Highland Lao veterans who are admitted for legal permanent residence (LPR) and who fought under U.S. command during the Vietnam War;
 - d. persons with noncitizen status on active duty in the U.S. Armed Forces, other than active duty for training; or
- e. the spouse, unremarried surviving spouse, or unmarried dependent children of the noncitizen described in 130 CMR 504.003(A)(1)(a)4. a. through d.;
5. Conditional Entrants under section 203(a)(7) of the INA in effect before April 1, 1980;
6. persons who entered as Cuban/Haitian entrants under section 501(e) of the Refugee Education Assistance Act of 1980;
7. Native Americans with at least 50 percent American Indian blood who were born in Canada, pursuant to section 289 of the INA or other tribal members born in territories outside of the U.S. pursuant to 25 U.S.C. 450b(e), under Medicaid;
8. Amerasians as described in section 402(a)(2)(A)(i)(V) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA);
9. Victims of severe forms of trafficking; and spouse, child, sibling, or parent of the victim, in accordance with the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106-386);
10. Iraqi Special Immigrants granted special immigrant status under section 101(a)(27) of the Immigration and Nationality Act, pursuant to section 1244 of

Public Law 110-181 or section 525 of Public Law 110-161;

11. Afghan Special Immigrants granted special immigrant status under section 101(a)(27) of the Immigration and Nationality Act, pursuant to section 525 of Public Law 110-161; or

12. Migrants from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau who legally reside in the United States pursuant to a series of treaties with the United States known as the Compacts of Free Association (COFA), under Medicaid.

a. COFA migrants who adjust to legal permanent residence (LPR) status will have a special five-year bar rule applied. The individual will be subject to the special five-year bar rule unless they also have or had a status listed at 130 CMR 504.003(A)(1)(a). The special five-year bar rule that applies will depend upon the date the individual adjusted to LPR status.

b. COFA migrants who adjust to LPR status after the change of law on December 27, 2020, will be able to use the date they began residing in the United States as a COFA migrant or December 27, 2020, whichever is later, as the first day for purposes of meeting the five-year bar.

c. COFA migrants who adjusted to LPR status before the change of law on December 27, 2020, will have the five-year bar period begin on the date that they adjusted to LPR.

(b) noncitizens who are qualified based on having a qualified status identified in 130 CMR 504.003(A)(1)(b)1. and who have satisfied one of the conditions listed in 130 CMR 504.003(A)(1)(b)2. Such individuals

1. have one or more of the following statuses:

a. admitted for legal permanent residence (LPR) under the Immigration and Nationality Act (INA); or

b. granted parole for at least one year under section 212(d)(5) of the INA; or

c. are the battered spouse, battered child, or child of battered parent or parent of battered child who meets the criteria of section 431(c) of PRWORA; and also

2. satisfy at least one of the three following conditions:

a. they have had a status in 130 CMR 504.003(A)(1)(b)1. for five or more years (a battered noncitizen attains this status when the petition is accepted as establishing a prima facie case);

b. they entered the U.S. prior to August 22, 1996, regardless of status at the time of entry, and have been continuously present in the U.S. until attaining a status listed in 130 CMR 504.003(A)(1)(b)1.; for this purpose an individual is deemed continuously present who has been absent from the U.S. for no more than 30 consecutive days or 90 nonconsecutive days prior to attaining a status listed in 130 CMR 504.003(A)(1)(b)1.; or

c. they also have or had a status listed in 130 CMR 504.003(A)(1)(a).

(2) Qualified Noncitizens Barred. Individuals who have a status listed at 130 CMR 504.003(A)(1)(b)1. (Legal Permanent Resident, parolee for at least one year, or battered noncitizen) and do not meet one of the conditions in 130 CMR 504.003(A)(1)(b)2. Qualified noncitizens barred, like qualified noncitizens, are lawfully present nonqualified individuals.

(3) Nonqualified Individuals Lawfully Present. Nonqualified individuals lawfully present are not defined as qualified under PRWORA, 8 U.S.C. 1641, but are lawfully present.

Nonqualified individuals lawfully present are as follows:

- (a) are in a valid nonimmigrant status as otherwise defined in 8 U.S.C. 1101(a)(15) or otherwise under immigration laws (as defined in 8 U.S.C. 1101(a)(17));
- (b) are paroled into the United States in accordance with 8 U.S.C. 1182(d)(5) for less than one year, except for an individual paroled for prosecution, for deferred inspection or pending removal proceedings;
- (c) belong to one of the following classes:
 - 1. granted Temporary Resident Status in accordance with 8 U.S.C. 1160 or 1255a, respectively;
 - 2. granted Temporary Protected Status (TPS) in accordance with 8 U.S.C. 1254a, and individuals with pending applications for TPS who have been granted employment authorization;
 - 3. granted employment authorization under 8 CFR 274a.12(c);
 - 4. Family Unity beneficiaries in accordance with section 301 of Public Law 101–649;
 - 5. under Deferred Enforced Departure (DED) in accordance with a decision made by the President;
 - 6. granted Deferred Action status, except for applicants or individuals granted status under Department of Homeland Security (DHS) Deferred Action for Childhood Arrivals Process (DACA);
 - 7. granted an administrative stay of removal under 8 CFR part 241; or
 - 8. beneficiaries of approved visa petitions who have pending applications for adjustment of status;
- (d) have a pending application for asylum under 8 U.S.C. 1158, or for withholding of removal under 8 U.S.C. 1231, or under the Convention Against Torture Treaty who:
 - 1. have been granted employment authorization; or
 - 2. are younger than 14 years old and have had an application pending for at least 180 days;
- (e) have been granted withholding of removal under the Convention Against Torture Treaty; or
- (f) is a child who has a pending application for Special Immigrant Juvenile status as described in 8 U.S.C. 1101(a)(27)(J).

(B) Protected Noncitizens. Noncitizens who are not qualified noncitizens as described in 130 CMR 504.003(A)(1) but who are qualified noncitizens barred as described in 130 CMR

504.003(A)(2); nonqualified individuals lawfully present as described in 130 CMR 504.003(A)(3); nonqualified persons residing under color of law (PRUCOLs) as described in 130 CMR 504.003(C); or other noncitizens as described in 130 CMR 504.003(D) and who were receiving medical assistance or CommonHealth on June 30, 1997, are considered protected noncitizens and may continue to receive MassHealth regardless of immigration status, if they are otherwise eligible. This status continues until a determination of ineligibility due to failure to meet categorical or financial eligibility requirements has been made.

(C) Nonqualified Persons Residing under Color of Law (Nonqualified PRUCOLs). Certain noncitizens who are not described in 130 CMR 504.003(A) or (B) may be permanently living in the United States under color of law. The applicable coverage types for nonqualified PRUCOLs are listed at 130 CMR 504.006. If not otherwise described in 504.003(A) or (B) the following are considered nonqualified PRUCOLs:

- (1) noncitizens living in the United States in accordance with an Indefinite Stay of Deportation;
- (2) noncitizens living in the United States in accordance with an Indefinite Voluntary Departure;
- (3) noncitizens and their families who are covered by an approved immediate relative petition, who are entitled to Voluntary Departure, and whose departure the U.S. Department of Homeland Security (DHS) does not contemplate enforcing;
- (4) noncitizens granted Voluntary Departure by the DHS or an Immigration Judge, and whose deportation the DHS does not contemplate enforcing;
- (5) noncitizens living under Orders of Supervision who do not have employment authorization under 8 CFR 274a.12(c);
- (6) noncitizens who have entered and continuously lived in the United States since before January 1, 1972;
- (7) noncitizens granted Suspension of Deportation, and whose departure the DHS does not contemplate enforcing;
- (8) noncitizens with pending applications for asylum under 8 U.S.C. 1158, or for Withholding of Removal under 8 U.S.C. 1231, or under the Convention Against Torture Treaty who have not been granted employment authorization, or are under the age of 14 and have not had an application pending for at least 180 days;
- (9) noncitizens granted Deferred Action for Childhood Arrivals status or who have a pending application for this status;
- (10) noncitizens who have filed an application, petition, or request to obtain a lawfully present status that has been accepted as properly filed, but who have not yet obtained employment authorization and whose departure DHS does not contemplate enforcing; or
- (11) any noncitizen living in the United States with the knowledge and consent of the DHS, and whose departure the DHS does not contemplate enforcing. (These include persons granted Extended Voluntary Departure due to conditions in the noncitizen's home country based on a determination by the U.S. Secretary of State.)

(D) Other Noncitizens. Noncitizens whose status is not described in 130 CMR 504.003(A) through (C), are considered other noncitizens. The applicable coverage types for other noncitizens are listed in 130 CMR 504.006.

130 CMR 504.003.

Here, there is no evidence that the Appellant has ever received MassHealth CommonHealth, so she cannot be considered a Protected Noncitizen pursuant to 130 CMR 504.003(B). Exhibit 4. Furthermore, there is no evidence that the Appellant is a Nonqualified Person Residing under Color of Law under 130 CMR 504.003(C).

Within the category of Lawful Present Immigrant, there exist three separate categories:

- Qualified Noncitizen (130 CMR 504.003(A)(1)),
- Qualified Noncitizens Barred (130 CMR 504.003(A)(2)), and
- Qualified Individuals Lawfully Present (130 CMR 504.003(A)(3)).

There is no evidence in the record that the Appellant is a Qualified Noncitizen, who is “qualified regardless of when they entered the U.S. or how long they had a qualified status,” under the categories listed in 130 CMR 504.003(A)(1)(a).²

Based on the evidence presented, the Appellant is a noncitizen who is lawfully present as a permanent resident, and thus meets the criteria provided for in 130 CMR 504.003(A)(1)(b)1.a. However, 130 CMR 504.003(A)(1)(b) requires that a Qualified Noncitizen must also meet at least one of the three following conditions:

- that they have or had a status listed in 130 CMR 504.003(A)(1)(a),
- that they entered the U.S. prior to August 22, 1996, and have been continuously present in the U.S., or
- that they have had a status listed in 130 CMR 504.003(A)(1)(b)1. for five or more years.

130 CMR 504.003(A)(1)(b)2.

As discussed above, no evidence was presented that the Appellant has a status listed in 130 CMR 504.003(A)(1)(a). There was also no evidence presented that the Appellant entered the U.S. prior to August 22, 1996, and has been continuously present. Additionally, the evidence presented is that the Appellant has had a status listed in 130 CMR 504.003(A)(1)(b)1. since [REDACTED], which is less than five years. Exhibit 2. Although the Appellant is a permanent resident, she cannot be considered a Qualified Noncitizen for purposes of applying to MassHealth because she has not had that status for more than five years. Accordingly, because Appellant meets the first criteria of 130 CMR 504.003(A)(1)(b), but not the second criteria, she is a Qualified Noncitizen Barred, as provided for in 130 CMR 504.003(A)(2).

² The regulation is quoted above and includes certain refugees and asylees.

The MassHealth regulations at 130 CMR 504.006 provide:

504.006: Applicable Coverage Types

(A) Citizens, qualified noncitizens, and protected noncitizens may receive MassHealth under any coverage type if they meet the eligibility requirements described in 130 CMR 505.000: Health Care Reform: MassHealth: Coverage Types.

(B) Qualified noncitizens barred and nonqualified individuals lawfully present may receive the following coverage.

- (1) MassHealth Standard, if they are younger than 19 years old, young adults 19 and 20 years of age, or people who are pregnant and meet the categorical requirements and financial standards described in 130 CMR 505.002: MassHealth Standard; independent foster care children 18 through 20 years of age, and children younger than 19 years old and young adults age 19 and 20 years of age who are receiving EAEDC.
- (2) MassHealth CommonHealth, if they are younger than 19 years old and meet the categorical requirements and financial standards as described in 130 CMR 505.004: MassHealth CommonHealth;
- (3) MassHealth Family Assistance, if they are children younger than 19 years old, disabled adults 21 through 64 years of age and meet the categorical requirements and financial standards as described in 130 CMR 505.005: MassHealth Family Assistance or adults 21 through 64 years of age who are receiving EAEDC;
- (4) MassHealth Limited, if they are adults 21 through 64 years of age and meet the categorical requirements and financial standards as described in 130 CMR 505.006: MassHealth Limited; and
- (5) 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).

130 CMR 504.006(A), (B).

The Appellant is an adult between the ages of 21 through 64, and there is no evidence in the record that the Appellant is pregnant or disabled. Exhibit 4. Therefore, as a Qualified Noncitizen Barred, MassHealth did not err in determining that the Appellant is only eligible for MassHealth Limited. 130 CMR 504.006(B)(4). The appeal is 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.

Emily T. Sabo, Esq.
Hearing Officer
Board of Hearings

cc:

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

[REDACTED]