

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2311390
Decision Date:	01/26/2024	Hearing Date:	12/15/2023
Hearing Officer:	Christopher Jones		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Georges Jorcelin – Charlestown HCR

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; Eligibility; Immigration
Decision Date:	01/26/2024	Hearing Date:	12/15/2023
MassHealth's Rep.:	Georges Jorcelin	Appellant's Rep.:	Pro se
Hearing Location:	Remote	Aid Pending:	Yes

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 27, 2023, MassHealth approved the appellant for MassHealth Limited, effectively downgrading her from MassHealth Standard. (Exhibit 1; 130 CMR 504.000.) The appellant filed this timely appeal on November 14, 2023, and their Standard coverage is protected pending the outcome of this appeal. (Exhibit 2; 130 CMR 610.015(B); 610.036.) Limitations on assistance are valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth approved the appellant for MassHealth Limited and scheduled her MassHealth Standard coverage to end on December 31, 2023.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 504.003, in determining that the appellant is a Qualified Noncitizen Barred, and ineligible for MassHealth Standard or CarePlus until she has had her legal permanent resident status for five years.

Summary of Evidence

The appellant has been covered by MassHealth Standard since 2019. MassHealth's representative explained that this coverage was likely due to the appellant having been pregnant at the time, as the immigration status on file at the time was simply a foreign passport. He testified that this coverage was then protected during the Covid-19 Federal Public Health Emergency, and it was not reviewed again until the unwinding process that started in April 2023. MassHealth's representative testified that the appellant completed a renewal application and reported that her current immigration status is based upon a permanent resident card that she received in [REDACTED]. Because she has not had this immigration status for at least five years, she is barred from any MassHealth coverage other than Limited, unless she is pregnant.

The appellant testified that she needs more coverage because she has a very serious medical condition that she is in the process of having treated. Ultimately, she is going to require surgery, but she is receiving intensive antibiotics at this time. MassHealth's representative explained that she is eligible to enroll in a Health Connector insurance plan; otherwise, she can receive treatment through a Community Health Center and emergency services at any hospital, and those services would be covered by the Limited benefit.

Findings of Fact

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

- 1) The appellant was previously covered as a pregnant woman despite having an immigration status verified based upon a foreign passport. (Testimony by MassHealth's representative.)
- 2) The appellant received her legal permanent resident card in September 2023. (Testimony by MassHealth's representative and the appellant.)

Analysis and Conclusions of Law

MassHealth offers a variety of coverage types 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. As a preliminary matter, to be eligible for either MassHealth Standard, CarePlus, or CommonHealth, the applicant must generally be "a citizen as described in 130 CMR 504.002: *U.S. Citizens* or a qualified noncitizen as described in 130 CMR 504.003(A)(1): *Qualified Noncitizens*" (130 CMR 505.002(E)(1)(c); 505.004(B)(4), (C)(4); 505.008(A)(2).) "Former Foster-care Individuals" and "People who are Pregnant" are the only two MassHealth Standard subcategories available to individuals who are not either citizens or Qualified Noncitizens. (See 130 CMR 505.002(D)(1)(b); 505.002(H)(1)(b), (H)(2).)

- (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 § 208 of the INA;
2. Refugees admitted under § 207 of the INA;
3. persons whose deportation has been withheld under § 243(h) or 241(b)(3) of the INA, as provided by § 5562 of the federal Balanced Budget Act of 1997;
4. veterans, their spouses, and their children:

...

5. Conditional Entrants under § 203(a)(7) of the INA in effect before April 1, 1980;
6. persons who entered as Cuban/Haitian entrants under § 501(e) of the Refugee Education Assistance Act of 1980;
7. Native Americans with at least 50% American Indian blood who were born in Canada pursuant to § 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 § 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 § 101(a)(27) of the Immigration and Nationality Act, pursuant to § 1244 of Public Law 110-181 or § 525 of Public Law 110-161;
11. Afghan Special Immigrants granted special immigrant status under § 101(a)(27) of the Immigration and Nationality Act, pursuant to § 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.

...

(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, ...; or

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

(130 CMR 504.003(A)(1) (emphasis added).)

The appellant did not identify an immigration status that would make her a Qualified Noncitizen under 130 CMR 504.003(A)(1)(a), nor did she enter the country prior to 1996. Therefore, any coverage as a Qualified Noncitizen must be premised upon her legal permanent residency. This requires her to have held her qualifying immigration status for at least five years in order to get a MassHealth benefit other than Limited. MassHealth made no error, and this appeal is DENIED.

Order for MassHealth

Remove Aid Pending.

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: Nga Tran, Charlestown MassHealth Enrollment Center, 529 Main Street, Suite 1M, Charlestown, MA 02129