

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied in part, Remanded	Appeal Number:	2312423
Decision Date:	02/22/2024	Hearing Date:	01/05/2024
Hearing Officer:	Thomas Doyle		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Michael Richelson, 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, Remanded	Issue:	Eligibility; Over Income; Over 65
Decision Date:	02/22/2024	Hearing Date:	01/05/2024
MassHealth's Rep.:	Michael Richelson	Appellant's Rep.:	Pro se
Hearing Location:	Remote (phone)	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 November 6, 2023, MassHealth downgraded appellant's eligibility to Buy-In because MassHealth determined that her income was too high to get MassHealth Standard (Ex. 1). The appellant filed this appeal in a timely manner on November 29, 2023. (130 CMR 610.015(B); Ex. 2). A change in the amount or scope of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth changed the appellant's eligibility to Buy-In because her income was too high to get MassHealth Standard.

Issue

The issue is whether MassHealth was correct in finding appellant was ineligible for Standard due to being over income.

Summary of Evidence

Appellant and the MassHealth worker (worker) appeared by telephone and were sworn. The worker stated that appellant is over 65, and lives in a one-person household. He stated a renewal was submitted by appellant in September 2023. Appellant was found to be over assets, and over income. Since that submission, appellant provided updated bank statements and a reassessment showed appellant is under assets at the time of the hearing but still over income. Appellant's income includes a monthly amount from Social Security of \$1,268.00 and a monthly pension of \$1,067.61. The worker testified that the total gross monthly income of the household was \$2,335.61, exceeding the limit for MassHealth Standard. Pursuant to regulation, there is a \$20.00 deduction for unearned income. (130 CMR 520.013(A)).¹ The worker stated that the income limit for MassHealth Standard for persons aged 65 and older is 100% of the federal poverty level, or \$1,215.00 a month for a household of one. The worker stated that the appellant could be found eligible for MassHealth Standard after meeting a deductible of \$11,035.80 every six months.² The MassHealth representative stated that based on income and the applicable federal poverty level, appellant was eligible for MassHealth Buy-In and Health Safety Net.

Appellant testified on her own behalf. She did not dispute her monthly income from Social Security and her pension.

Findings of Fact

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

1. Appellant is over age 65, lives in a one-person household and is not disabled. (Ex. 6; Testimony).
2. Appellant has a monthly income of \$1,268.00 from Social Security and \$1,067.61 a month from a pension. (Testimony).
3. 100% of the federal poverty level is \$1,215.00 a month for a family of one. (2023 MassHealth Income Standards and Federal Poverty Guidelines).
4. MassHealth determined that the appellant's income is too high for her to be eligible for MassHealth Standard, and apprised her by notice dated November 6, 2023 that she is eligible for Buy-In effective November 20, 2023 (Ex. 1).
5. The appellant filed a timely appeal with the Board of Hearings on November 29, 2023 (Ex. 2).

¹ The worker did not offer any testimony regarding the \$20.00 deduction.

² The worker did not testify to any specific range or period encompassing the six months. He merely stated every six months.

Analysis and Conclusions of Law

The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). Moreover, "[p]roof by a preponderance of the evidence is the standard generally applicable to administrative proceedings." Craven v. State Ethics Comm'n, 390 Mass. 191, 200 (1983).

The regulations at 130 CMR 515.000 through 520.000 provide the requirements for MassHealth eligibility for persons aged 65 and older. (130 CMR 515.002). A non-institutionalized person aged 65 and older may establish eligibility for MassHealth Standard coverage if the countable income is less than or equal to 100% of the federal poverty level. (130 CMR 519.005). 100% of the federal poverty level for a family of one is \$1,215.00 per month. The appellant's gross unearned income totals \$2,335.00 (rounded) per month. After allowing the \$20.00 deduction for unearned income, (130 CMR 520.013 (A)), the appellant's countable unearned income is \$2,315.00. This amount exceeds 100% of the federal poverty level for a family of one. The appellant is not financially eligible for MassHealth Standard at this time.

The appellant would need to meet a six-month deductible before MassHealth eligibility can be established. (130 CMR 520.028). However, there is no deductible calculation set forth in the notice under appeal.

The appellant's countable income of \$2,335.61 is at 192% of the federal poverty level of \$1,215.00.

130 CMR 505.007, "Medicare Savings Program (MSP, Also Called Buy-In)," states as follows:

Medicare Savings Program coverage is available to Medicare beneficiaries in accordance with 130 CMR 519.010: *Medicare Savings Program (MSP) – for Qualified Medicare Beneficiaries (QMB)* and 130 CMR 519.011: *Medicare Savings Program (MSP) – Specified Low Income Medicare Beneficiaries and Qualifying Individuals*. MassHealth Standard members receive this benefit under 130 CMR 505.002(O). MassHealth CommonHealth members receive this benefit in accordance with 130 CMR 505.004(L).

Pursuant to MassHealth Eligibility Operations Memo 23-04, "Medicare Savings Program:"

Effective January 1, 2023, Medicare Savings Program (MSP) income and asset limits for each coverage type are as follows.

- The countable income limit for the QMB program is **at or below 190%** of the federal poverty level (FPL).

- **The countable income limit for the SLMB program is greater than 190% and less than or equal to 210% of the FPL.**
- The countable income limit for the QI program is **greater than 210% and less than or equal to 225%** of the FPL.

These amounts are specific to MSP and do not apply to individuals looking for full MassHealth coverage or full MassHealth coverage with MSP. MassHealth regulations at 130 CMR 505.002: *MassHealth Standard*, 130 CMR 505.004: *MassHealth Commonwealth*, 130 CMR 519.010: *Medicare Savings Program (MSP) – Qualified Medicare Beneficiaries (QMB)*, and 130 CMR 519.011: *Medicare Savings Program – Specified Low Income Medicare Beneficiaries and Qualifying Individuals* have been revised to clarify this distinction.

(emphasis added)

Thus, the appellant is eligible for MSP for Specified Low-Income Beneficiaries, as set forth above.

MassHealth regulation 130 CMR 519.011 states in relevant part:

- (A) MSP (Buy-in) for Specified Low Income Medicare Beneficiaries (SLMB).
- (1) Eligibility Requirements. MSP is available for Specified Low Income Beneficiaries who
- (a) are entitled to hospital benefits under Medicare Part A;
 - (b) have a countable income amount (including the income of the spouse with whom they live) greater than 190% and less than or equal to 210% of the federal poverty level. MassHealth will disregard all assets or resources when determining eligibility for MSP only benefits; and
 - (c) meet the universal requirements of MassHealth benefits in accordance with 130 CMR 503.000: *Health Care Reform: MassHealth: Universal Eligibility Requirements* or 130 CMR 517.000: *MassHealth: Universal Eligibility Requirements*, as applicable.
- (2) Benefits. The MassHealth agency pays the entire Medicare Part B premium, in accordance with section 1933 of the Social Security Act (42 U.S.C. § 1396u-3), for members who establish eligibility for MSP for QI coverage in accordance with 130 CMR 519.011(B).
- (3) Begin Date. MSP for SLMB coverage, in accordance with 130 CMR 519.011(A), begins with the month of application and may be retroactive up to three calendar months before the month of application.

Therefore, MassHealth's decision that appellant is ineligible for MassHealth Standard, but is instead eligible for MSP Buy-In (SLMB), was correct.

Therefore, the appeal is DENIED in part, and REMANDED to MassHealth for a calculation of appellant's six-month deductible.

Order for MassHealth

Pay appellant's Medicare Part B premium beginning August, 1, 2023.

Calculate a six-month deductible for the appellant to qualify for MassHealth Standard, showing how deductible was calculated and specifying the deductible period. Send notice of this deductible to the appellant, with appeal rights.

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 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.

Thomas Doyle
Hearing Officer
Board of Hearings

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