

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2313832
Decision Date:	03/01/2024	Hearing Date:	02/26/2024
Hearing Officer:	Christine Therrien		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Mal Oeur, Taunton



*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 – over 65; Lump-Sum Payment
Decision Date:	03/01/2024	Hearing Date:	02/26/2024
MassHealth's Rep.:	Mal Oeur	Appellant's Rep.:	Pro se
Hearing Location:	Taunton MassHealth Enrollment Center - Telephonic		

Authority

This hearing was conducted according to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated 11/14/23, MassHealth notified the appellant that he is not eligible for MassHealth Standard because his income and assets exceeded the program limits. (130 CMR 519.005 and 520.028 and Exhibit 1). MassHealth calculated a deductible of \$24,600. The deductible period is 7/1/23 to 1/1/24. (130 CMR 519.005 and 520.028 and Exhibit 1). The appellant filed this appeal timely on 12/28/23. (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 terminated the appellant's MassHealth benefits because his income and assets exceeded the program limits for MassHealth Standard and calculated a deductible.

Issue

The appeal issue is whether MassHealth was correct, according to 130 CMR 519.005, in determining that the appellant's income and assets exceeded the program limits.

Summary of Evidence

The MassHealth representative testified that MassHealth received an over-65 application from the appellant on 7/28/23. MassHealth issued an eligibility determination on 11/14/23 indicating that the appellant was over the income and asset limit for MassHealth Standard. The MassHealth representative testified that at the time of the notice, MassHealth showed income totaling \$4,642.95 monthly. The MassHealth representative testified that the appellant submitted documents with the appeal request showing that the appellant's income consisted of Social Security benefits and VA benefits. The MassHealth representative testified that MassHealth excludes most VA benefits from the income calculation, and the appellant's only countable income is Social Security income of \$1,053.00 a month, which is within the program limits. The MassHealth representative testified the documents the appellant submitted showed a lump-sum payment from the VA on 6/4/20 for \$83,725.98, representing back payments he received for a 100% disability. The MassHealth representative testified that the appellant is currently over the \$2,000 asset limit for MassHealth Standard and has excess assets of \$76,174.44.¹ The MassHealth representative testified that the appellant can submit a disability supplement to DES to determine eligibility for MassHealth CommonHealth.

The appellant testified that the BRAVE Act says his VA benefits cannot be counted. The appellant testified that he is 100% disabled, and has already done enough work to show he is disabled.

Findings of Fact

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

1. MassHealth received an over-65 application on 7/28/23.
2. MassHealth issued a determination on 11/14/23 indicating that the appellant was over the income and asset limit for MassHealth Standard.
3. At the time of the 11/14/23 determination notice, MassHealth showed income totaling \$4,642.95 monthly.
4. The appellant submitted documents with the appeal request showing that the appellant's income consisted of Social Security and VA benefits.
5. MassHealth excludes most VA benefits from the income calculation.

¹ The 11/14/23 notice shows an excess asset amount of \$78,817.39.

6. The appellant's only countable income is Social Security income of \$1,053 a month, which is within the program limits.
7. On 6/4/20, the appellant received a lump-sum payment from the VA for \$83,725.98, representing back payments he received for a 100% disability.
8. The appellant has excess assets of \$76,174.44.
9. The appellant may submit a disability supplement to DES to determine eligibility for MassHealth CommonHealth.

Analysis and Conclusions of Law

The total value of countable assets owned by or available to community residents aged 65 or older who are applying for or receiving MassHealth Standard may not exceed \$2,000 for an individual and the total income may not exceed 100% of the Federal Poverty Level. (130 CMR 519.005(A) and 130 CMR 520.003(A)). Countable assets are all assets that must be included in the determination of eligibility. (130 CMR 520.007).

Countable assets include bank or stock accounts to the extent that the applicant or member has both ownership and access to the funds. MassHealth requires verification of the current balance of each account at application, during eligibility review, and at times of reported changes. (130 CMR 520.007(B)(2) and (3)).

MassHealth regulation 130 CMR 520.008(G) lists veterans' payments for aid and attendance, unreimbursed medical expenses, housebound benefits, and enhanced benefits as noncountable assets that are exempt from consideration when determining the value of assets. The appellant referenced the BRAVE Act which states that MassHealth will not count the "entire amount of a monthly payment to a veteran...including pension, aid and attendance and housebound benefits, from the United States Department of Veterans Affairs..." (M.G.L. 118E, §25.4½). MassHealth also issued an Eligibility Operations Memo dated 7/15/19 clarifying the implementation of the BRAVE Act which states, "[t]he Department of Veterans Affairs (VA) subtracts unreimbursed medical expenses (or UME) when determining eligibility for some needs-based pensions and compensation payments. Under the BRAVE Act, MassHealth will disregard the entire VA pension payment, for the non-MAGI population, only if the individual is receiving such payment because of UME." The BRAVE Act only applies to the countability of a monthly VA payment when the payment is issued because of UME; here, there is no evidence that the appellant's monthly benefit is paid for UME.

130 CMR 520.009(E) describes how a lump-sum payment is counted in an eligibility determination. A lump sum payment is a one-time-only payment that represents either windfall

payments or the accumulation of recurring countable income such as retroactive unemployment compensation or federal veterans' retirement benefits. Generally, lump-sum payments are counted as unearned income in the calendar month received, and as an asset in subsequent months.²

After reviewing the information the appellant submitted with the appeal, MassHealth properly disregarded the appellant's monthly VA benefits from his countable income. 100% of the Federal Poverty Level for a household of one is \$1,215. The appellant's countable income of \$1,053 is within the program guidelines and therefore no deductible is calculated. The appellant is income-eligible for MassHealth.

However, the appellant has countable assets that are greater than \$2,000. As a result, MassHealth properly determined the appellant is over the asset limit for MassHealth Standard benefits at this time. The appellant may qualify for MassHealth by reducing assets in accordance with 130 CMR 519.005(B).³

For these reasons, the appeal must be denied.

Order for MassHealth

² Exceptions listed in 130 CMR 520.009(E)(1) The following lump-sum payments are noncountable: (a) a retroactive RSDI and/or SSI benefit payment, subject to the provisions of 130 CMR 520.007(H)(1); (b) proceeds reserved for the replacement or repair of an asset that is lost, damaged, or stolen and any interest earned on such proceeds are exempt from consideration as assets for nine calendar months after the month of receipt and may be exempt for an additional nine calendar months where good cause exists; (c) proceeds from the sale of a home used as the principal place of residence provided the proceeds are used to purchase another home to be used as the principal place of residence. Such proceeds are exempt from considerations as assets for three calendar months after the month of receipt; (d) proceeds from the sale of real estate other than a home subject to the provisions of 130 CMR 520.007(G); and (e) proceeds from the sale of nonexempt vehicles subject to the provisions of 130 CMR 520.007(F).

³ 130 CMR 519.005(B) Financial Standards Not Met. Except as provided in 130 CMR 519.005(C), **individuals whose income, assets, or both exceed the standards set forth in 130 CMR 519.005(A) may establish eligibility for MassHealth Standard by reducing their assets and or paying a deductible in accordance with 130 CMR 520.004. 130 CMR 520.004: Asset Reduction (A) Criteria. (1) An applicant whose countable assets exceed the asset limit of MassHealth Standard, Family Assistance, or Limited may be eligible for MassHealth (a) as of the date the applicant reduces his or her excess assets to the allowable asset limit without violating the transfer of resource provisions for nursing-facility residents at 130 CMR 520.019(F); or (b) as of the date, described in 130 CMR 520.004(C), the applicant incurs medical bills that equal the amount of the excess assets and reduces the assets to the allowable asset limit within 30 days after the date of the notification of excess assets. And 130 CMR 520.028: Eligibility for a Deductible. (B) community-based individuals whose countable-income amount exceeds the 100% federal poverty level income standards; 130 CMR 520.035: Conclusion of the Deductible Process.** When the total of submitted bills is equal to or greater than the deductible and all other eligibility requirements continue to be met, the MassHealth agency notifies the applicant that he or she is eligible. The member is eligible for payment of all covered medical expenses incurred during that deductible period, other than those submitted to meet the deductible, as long as the member continues to meet all other eligibility requirements during the balance of the deductible period (emphasis added).

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.

Christine Therrien
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center