

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2400112
<b>Decision Date:</b>	2/15/2024	<b>Hearing Date:</b>	01/25/2024
<b>Hearing Officer:</b>	Mariah Burns		

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Iria Saracevic, Charlestown MassHealth  
Enrollment Center



*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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Over 65; Eligibility; Income; PCA Disregard; Deductible
<b>Decision Date:</b>	2/15/2024	<b>Hearing Date:</b>	01/25/2024
<b>MassHealth's Rep.:</b>	Iria Saracevic	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Quincy Harbor South	<b>Aid Pending:</b>	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 January 2, 2024, MassHealth determined that the appellant's is eligible for the Medicare Savings Plan (a.k.a. the Senior Buy-In), terminating the appellant's MassHealth Standard benefits due to his income. *See* 130 CMR 519.002 and Exhibit 1. The appellant filed this appeal in a timely manner on January 2, 2024. *See* 130 CMR 610.015(B) and Exhibit 2. Termination of assistance is valid grounds for appeal. *See* 130 CMR 610.032.

### Action Taken by MassHealth

MassHealth terminated the appellant's MassHealth Standard benefits.

### Issue

The appeal issue is whether MassHealth correctly calculated the appellant's income in determining that he is no longer eligible for MassHealth Standard benefits.

## Summary of Evidence

The appellant is an adult over the age of 65. He presented at the hearing in-person. MassHealth was represented by a worker from the Charlestown MassHealth Enrollment Center who participated by telephone. The following is a summary of the testimony and evidence provided at hearing:

After the end of the federal public health emergency due to the ongoing COVID-19 pandemic, during which the appellant turned 65, the appellant applied for senior benefits. On January 2, 2024, MassHealth determined that the appellant's monthly income is \$2226.00 in Social Security benefits. His assets are under \$2000.00. The appellant's income puts him over the threshold to qualify for MassHealth Standard, and MassHealth placed him on the Medicare Savings Plan (a.k.a. the Senior Buy-In). He is entitled to an income disregard of \$1094.00 due to his receiving PCA services, and MassHealth calculated that the appellant would need to meet a monthly deductible of \$541.00 to be eligible for MassHealth Standard from January to June of 2024. The MassHealth representative testified that the PCA disregard is not considered toward the appellant's countable income in determining eligibility for benefits; it is only used to calculate the deductible to qualify for MassHealth Standard.

The appellant reported that, although he agreed with the gross calculation of his monthly Social Security benefits, he explained that \$319.80 is removed every month to pay back a small business (SBA) loan he took out during the pandemic. He explained that he has many health problems and is hoping to have surgery this month for which he needs insurance. The MassHealth representative suggested that the appellant consult with an elder services organization to assist him in an application for the Frail Elder Waiver.

## Findings of Fact

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

1. The appellant is an adult over the age of 65. Exhibit 4, Testimony.
2. MassHealth verified the appellant's current monthly income is \$1860.00 per month in income and possesses less than \$2000 in countable assets. Exhibit 1, Testimony.
3. On January 2, 2024, MassHealth downgraded the appellant's coverage from MassHealth Standard and the Medicare Savings Plan to just the Medicare Savings Plan<sup>1</sup>. Exhibit 1.
4. In that notice, MassHealth determined that the appellant is entitled to a \$1094.00 PCA

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<sup>1</sup> This benefit is also known as the Senior Buy-In.

disregard, which was used to calculate his monthly deductible of \$541.00 from January-June of 2024. Exhibit 1.

5. The appellant filed a timely appeal of the deductible notice on January 2, 2024. Exhibit 2.

6. The appellant does not challenge the calculation of his gross income, but reports that \$319.80 is removed from that monthly amount to pay off a small business loan he took out during the pandemic. Testimony.

## **Analysis and Conclusions of Law**

MassHealth administers and is responsible for delivery of healthcare benefits to MassHealth members. See 130 CMR 515.002. Eligibility for MassHealth benefits differs depending on an applicant's age. 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for non-institutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as, and certain Medicare beneficiaries. 130 CMR 515.002(B). As the appellant is over 65 years old, he is subject to the requirements of the provisions of Volume II. 130 CMR 515.002.

To determine a senior's eligibility for MassHealth, the total countable-income amount and countable assets of the individual are compared to an income standard and asset limit. An individual who is eligible for Medicare Parts A and B must possess an income that is "less than or equal to 100% of the federal poverty level." 130 CMR 519.002(A)(4)(c). The current MassHealth federal poverty level standards can be found on its website, and 100% of the federal poverty level for a single person is \$1215.00 in monthly income.<sup>2</sup> In relevant part, MassHealth considers countable unearned income to be in the form of "social security benefits, railroad retirement benefits, pensions, annuities, federal veterans' benefits, rental income, interest, and dividend income." 130 CMR 520.009(D). Income that is considered noncountable is enumerated at 130 CMR 520.015 and includes EAEDC or SSI, income that is disregarded pursuant to 130 CMR 519.003 and 004, income-in-kind, money received from a reverse mortgage, and veteran's benefits.

Further, MassHealth allows certain deductions to be made from the total gross unearned income. One such deduction is found at 130 CMR 520.013(B):

in determining eligibility for MassHealth Standard, a deduction that is equivalent to the difference between the applicable MassHealth deductible-income standard at 130 CMR 520.030 and 133% of the federal poverty level. This deduction

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<sup>2</sup> <https://www.mass.gov/doc/2023-masshealth-income-standards-and-federal-poverty-guidelines-0/download>.

includes, and is not in addition to, the \$20 disregard.

- (1) This deduction from gross unearned income is allowed only for persons who
  - (a) are 65 years of age and older;
  - (b) are receiving personal-care attendant services paid for by the MassHealth agency, or have been determined by the MassHealth agency, through initial screening or by prior authorization, to be in need of personal-care attendant services; and
  - (c) prior to applying the deduction at 130 CMR 520.013(B), have countable income that is over 100% of the federal poverty level.
- (2) The MassHealth agency will redetermine eligibility without this deduction if
  - (a) after 90 days from the date of the MassHealth agency eligibility approval notice, the person is not receiving personal-care attendant services paid for by the MassHealth agency or has not submitted, upon request from the MassHealth agency, proof of efforts to obtain personal-care attendant services paid for by the MassHealth agency; or
  - (b) the MassHealth agency denies the prior-authorization request for personal-care attendant services.
- (3) If countable income, prior to applying the deduction at 130 CMR 520.013(B), is greater than 133 percent of the federal poverty level, eligibility is determined under 130 CMR 519.005(B): Financial Standards Not Met.

130 CMR 519.005(B) provides an avenue for individuals who do not meet the income standards to qualify for coverage by meeting a deductible. The deductible process is described at 130 CMR 520.028-035, and essentially states, in relevant part, that individuals whose income exceeds 100% of the federal poverty level but who receive PCA services may qualify for benefits if they meet a deductible calculated “by multiplying the excess monthly income by six.” 130 CMR 520.030. Such an individual is only qualified once they have met the deductible, and only remains qualified until the end of the deductible period. *See Id.* at 520.031(B).

An appellant bears the burden of proof at fair hearings “to demonstrate the invalidity of the administrative determination.” *Andrews v. Division of Medical Assistance*, 68 Mass. App. Ct. 228, 231 (2006). The fair hearing decision, established by a preponderance of evidence, is based upon “evidence, testimony, materials, and legal rules, presented at hearing, including the MassHealth agency’s interpretation of its rules, policies and regulations.”

Here, the appellant does not challenge that his monthly gross income is at \$1850.00, which exceeds 100% of the federal poverty level. He asserts that a) of that gross income, roughly \$300 is deducted due to a small business loan he took out in an attempt to save his business, which closed during the COVID-19 pandemic; and b) that his calculated PCA disregard should qualify him for Standard coverage. The appellant’s argument fails on several counts.

First, the regulations provide no avenue to discount the appellant’s SBA loan deductions from his

countable monthly income. However, even if there were, his income would still be approximately \$1500, which exceeds 100% of the federal poverty level by nearly \$300. Further, the regulations make clear that, for individuals whose income exceeds 133% of the federal poverty level, the PCA disregard only affords them more flexible financial eligibility by way of a deductible. See 130 CMR 520.013(B) and 130 CMR 519.005(B). Thus, MassHealth correctly applied the appellant's disregard toward his eligibility for a deductible and did not use it to discount his monthly income to get under the 100% FPL threshold. As there is no challenge to the calculation of the appellant's deductible, I find no error with the January 2, 2024, notice. The appellant remains eligible for the Medicare Savings Plan and a \$541.00 monthly deductible for MassHealth Standard.<sup>3</sup>

For the foregoing reasons, 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.

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Mariah Burns  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Nga Tran, Charlestown MassHealth Enrollment Center

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<sup>3</sup> The MassHealth representative reported that the appellant is financially eligible for the Frail Elder Waiver and encouraged the appellant to apply to determine his clinical eligibility. I make no finding of such eligibility with this decision, and the appellant's rights to undergo an application for the Frail Elder Waiver are preserved.