

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved/ Dismissed	Appeal Number:	2400298
Decision Date:	02/01/2024	Hearing Date:	1/30/2024
Hearing Officer:	Thomas J. Goode		

Appearances for Appellant:



Appearance for MassHealth:

Alain Michel, Tewksbury MEC
Meghan Adie, 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:	Approved/ Dismissed	Issue:	Eligibility; Over 65
Decision Date:	02/01/2024	Hearing Date:	1/30/2024
MassHealth's Reps.:	Alain Michel, Meghan Adie	Appellant's Reps.:	
Hearing Location:	Remote	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 December 12, 2023, MassHealth downgraded Appellant's MassHealth coverage from Standard to Senior Buy In because MassHealth determined that Appellant's income and/or assets exceed program limits for MassHealth Standard (130 CMR 520.004, 519.005 and Exhibit 1). Appellant filed this appeal in a timely manner on January 5, 2024 (130 CMR 610.015(B) and Exhibit 2). A change in assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth downgraded Appellant's MassHealth coverage from Standard to Senior Buy In because MassHealth determined that Appellant's income and/or assets exceeded program limits for MassHealth Standard.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.003, 520.004, 519.005 in determining that Appellant's assets exceed the limit for MassHealth Standard for persons aged 65 years and older.

Summary of Evidence

The MassHealth representative testified that a renewal application was mailed to Appellant in August 2023, and it was returned by Appellant on August 31, 2023. MassHealth issued a notice on December 12, 2023, informing Appellant that income and/or assets exceed the limit for MassHealth Standard benefits, and that coverage was downgraded to MassHealth Senior Buy In (Exhibit 1). Appellant receives \$1,671 Social Security Income.¹ The MassHealth representative confirmed that Appellant is disabled with an onset date of October 15, 1996. Appellant is over the age of 65 and lives in a one-person household in the community. MassHealth noted that the income limit for MassHealth Standard for persons 65 years of age and older living in the community is 100% of the federal poverty level, or \$1,215 a month for a household size of one. MassHealth added that assets must be below \$2,000 to establish eligibility for MassHealth Standard coverage. MassHealth determined that Appellant's assets totaled \$2,141²; however, after reviewing bank account information submitted by Appellant, the MassHealth representatives determined that Appellant sufficiently documented that her assets are below \$2,000 and issued new notice on January 30, 2024 informing Appellant that her income exceeds program limits (Exhibit 4). MassHealth initially testified that Appellant did not indicate that she required personal care attendant (PCA) services. On further review, the MassHealth representative stated that Appellant completed the supplemental form regarding her need for PCA services and MassHealth applied a PCA disregard of \$1,094 from her \$1,671 income to arrive at countable income of \$577, which exceeds the \$522 MassHealth Income Standard by \$55, resulting in a six-month deductible of \$330 from August 2023 through January 2024 (Exhibit 4). The MassHealth representatives testified that Standard coverage ended on December 26, 2023. The MassHealth representatives reviewed eligibility criteria under the Frail Elder Waiver and provided a phone number to initiate services through Aging Services of North Central Massachusetts: 978-537-7411.

Appellant appeared by telephone with her PCA and testified that her assets are below \$2,000, which she explained in correspondence to MassHealth showing that accounts attributed to her belonged to her granddaughter and had been closed. Appellant testified that she has had PCA services for many years and was recently evaluated for PCA services and approved for 57.25 PCA hours. Appellant confirmed Social Security income and household size, and questioned how she would pay her mortgage and other expenses.

¹ The MassHealth representative testified that Appellant's Social Security income increased to \$1,724 in January 2024; however, \$1,671 is used for all relevant calculations until MassHealth Income Standards and Federal Poverty Guidelines increase in March 2024.

² The initial determination of assets was \$5,478.19 (Exhibit 1).

Findings of Fact

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

1. Appellant is over age 65, disabled, and lives in a one-person household in the community.
2. A renewal application was mailed to Appellant in August 2023, and was returned by Appellant on August 31, 2023.
3. MassHealth issued a notice on December 12, 2023, informing Appellant that income and/or assets exceed the limit for MassHealth Standard benefits, and that she was approved for MassHealth Senior Buy In. The December 12, 2023 notice did not inform Appellant of excess income, a deductible period or deductible amount.
4. As a result of the December 12, 2023 notice, Standard coverage ended December 26, 2023.
5. Appellant's assets are below \$2,000.
6. Appellant completed the supplemental form regarding her need for PCA services and by notice dated January 30, 2024, MassHealth applied a PCA disregard of \$1,094 from her \$1,671 income to arrive at countable income of \$577, which exceeds the \$522 MassHealth Income Standard by \$55, resulting in a six-month deductible of \$330 from August 2023 through January 2024.
7. 100% of the federal poverty level is \$1,215 a month for a household size of one.
8. Appellant receives \$1,671 Social Security Income per month.³

Analysis and Conclusions of Law

130 CMR 519.005: Community Residents 65 Years of Age and Older

(A) Eligibility Requirements. Except as provided in 130 CMR 519.005(C)⁴, noninstitutionalized individuals 65 years of age and older may establish eligibility for MassHealth Standard coverage provided they meet the following requirements:

(1) the countable-income amount, as defined in 130 CMR 520.009: *Countable-Income Amount*, of the individual or couple is less than or equal to 100% of the

³ See fn. 1.

⁴ This section applies to parents and caretaker relatives of children younger than 19 years old.

federal poverty level; and

(2) the countable assets of an individual are \$2,000 or less, and those of a married couple living together are \$3,000 or less.⁵

MassHealth issued a notice on December 12, 2023 informing Appellant that income and/or assets exceed the limit for MassHealth Standard benefits. As a result, MassHealth Standard coverage ended on December 26, 2023. The eligibility factors relied upon by MassHealth in issuing the December 12, 2023 notice and ending Standard coverage were limited to assets in excess of program limits. The notice did not inform Appellant of excess income, a deductible calculation or deductible period (Exhibit 1).^{6, 7} During the appeal, MassHealth reviewed bank account information submitted by Appellant, and determined that Appellant had sufficiently documented that her assets are below \$2,000, resolving all issues relating to the December 12, 2023 notice. Pursuant to 130 CMR 610.051(B), the MassHealth agency or the acting entity may make an adjustment in the matters at issue before or during an appeal period. If the adjustment resolves one or more of the issues in dispute in favor of the appellant, the hearing officer, by written order, may dismiss the appeal in accordance with 130 CMR 610.035 as to all resolved issues, noting as the reason for such dismissal that the parties have reached agreement in favor of the appellant. The asset issue resolved to Appellant's favor during the appeal process. However, at hearing MassHealth determined that income exceeds program limits, issued a notice dated

⁵ See also 130 CMR 520.003: Asset Limit (A) The total value of countable assets owned by or available to individuals applying for or receiving MassHealth Standard, Family Assistance, or Limited may not exceed the following limits: (1) for an individual — \$2,000; and (2) for a couple living together in the community where there is financial responsibility according to 130 CMR 520.002(A)(1) — \$3,000.

⁶ Pursuant to 130 CMR 502.008: Notice (A) The MassHealth agency provides all applicants and members a written notice of the eligibility determination for MassHealth. The notice contains an eligibility decision for each member who has requested MassHealth, and either provides information so the applicant or member can determine the reason for any adverse decision or directs the applicant or member to such information. (B) The MassHealth agency also provides members a notice, in accordance with 130 CMR 610.015: *Time Limits*, of any loss of coverage, or any changes in coverage type, premium, or premium assistance payments. (C) The notices described in 130 CMR 502.008(A) and (B) provide information about the applicant's and member's right to a fair hearing, with the exception of notices about hospital-determined presumptive eligibility, as described in 130 CMR 502.003(H), and notices about federal or state law requiring an automatic change adversely affecting some or all members, as described in 42 CFR 431.220(b). Information about the appeal process is found at 130 CMR 610.000: *MassHealth: Fair Hearing Rules*. Adequate Notice Requirements are found at 130 CMR 610.026: (A) A notice concerning an intended appealable action must be timely as stated in 130 CMR 610.015 and adequate in that it must be in writing and contain (1) a statement of the intended action; (2) the reasons for the intended action; (3) a citation to the regulations supporting such action; (4) an explanation of the right to request a fair hearing; and (5) the circumstances under which assistance is continued if a hearing is requested.

⁷ The MassHealth agency informs the applicant who has excess monthly income that he or she is currently ineligible for MassHealth Standard, Family Assistance, or Limited but may establish eligibility for a six-month period by meeting the deductible. The MassHealth agency informs the applicant in writing of the following: (1) the deductible amount and the method of calculation; (2) the start and end dates of the deductible period; (3) the procedures for submitting medical bills; (4) his or her responsibility to report all changes in circumstances that may affect eligibility or the deductible amount; and (5) that the bills submitted to meet the deductible are the responsibility of the individual and cannot be submitted for MassHealth agency payment (130 CMR 520.031).

January 30, 2024, and left in effect the December 26, 2023 termination date for MassHealth Standard implemented solely due to the over asset determination. Before an intended appealable action such as the reduction of benefits⁸ due to excess income, the MassHealth agency must send a written timely notice to the member at least ten days before the action and must include a statement of the right of appeal and the time limit for appealing except as described at 130 CMR 610.027 (130 CMR 610.015).^{9,10} As all matters relating to the December 12, 2023 notice of excess assets have resolved to Appellant's favor in so far as her assets are within program limits, the appeal is APPROVED and DISMISSED in accordance with the order below.

Order for MassHealth

Rescind the notice dated December 12, 2023. Determine that Appellant's assets are within program limits for MassHealth Standard coverage. Open MassHealth Standard coverage effective December 26, 2023. Rescind the notice dated January 30, 2024. Redetermine eligibility based on Appellant's income and completed PCA supplement. Issue written notice of eligibility that includes a statement of the right of appeal and the time limit for appealing, at least 10 days prior to any reduction in coverage.

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.

⁸ See 130 CMR 610.032(A)(3): Applicants and members have a right to request a fair hearing for any MassHealth agency action to suspend, reduce, terminate, or restrict a member's assistance.

⁹ Timely notice exceptions described at 130 CMR 610.027 do not apply to the facts at hand; and even if circumstances described in 130 CMR 610.027 did apply, MassHealth would be required to send adequate notice as described at 130 CMR 610.026.

¹⁰ See fn. 7 for notice requirements for excess income determinations at 130 CMR 520.031.

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.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc: Appeals Coordinator: Sylvia Tiar, Tewksbury MassHealth Enrollment Center