

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2400404
Decision Date:	4/8/2024	Hearing Date:	03/12/2024
Hearing Officer:	Thomas J. Goode		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Sarah Sardella, Quincy MEC

Interpreter:
ITI Language Line



*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; Under 65
Decision Date:	4/8/2024	Hearing Date:	03/12/2024
MassHealth's Rep.:	Sarah Sardella	Appellant's Rep.:	Pro se
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 January 3, 2024, MassHealth informed Appellant that her coverage changed to MassHealth Limited on December 24, 2023 (130 CMR 130 CMR 505.001, 505.002, 505.005 and Exhibit 1). Appellant filed this appeal in a timely manner on January 8, 2024 (130 CMR 610.015(B) and Exhibit 2). A hearing was scheduled for February 2, 2024 at which Appellant did not appear. The hearing was rescheduled at Appellant's request and was held on March 12, 2024 (Exhibit 3).¹ Notice of a change in the scope of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth informed Appellant that her coverage changed to MassHealth Limited on December 24, 2023.

¹ Appellant contacted the Board of Hearings to request a rescheduled hearing date and added an appeal representative by telephone. The rescheduled hearing was allowed. The representative was notified of the hearing date and time (Exhibit 3, p. 4). When contacted at the appointed time, the representative stated that she was not aware of the hearing and provided Appellant's contact information. Appellant was contacted and proceeded with the hearing with an interpreter provided by the Board of Hearings. An attempt was made to rejoin the representative who did not answer.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 504.003, 505.001, 505.002, 505.006 in changing Appellant's coverage type to MassHealth Limited.

Summary of Evidence

The MassHealth representative testified that Appellant was receiving temporary MassHealth Standard coverage during the Public Health Emergency (PHE) which was protected during the PHE. Appellant completed a renewal on January 3, 2024, and MassHealth notified Appellant that her coverage change to Limited with Health Safety Net effective December 24, 2023 due to Appellant's immigration status. The MassHealth representative described Appellant's status as undocumented because Appellant is residing in the United States on a foreign passport with no other evidence of residency. MassHealth testified that Appellant resides with her minor child and reported no income or pregnancy.² MassHealth noted that Appellant indicated a disability but has not been determined disabled; however, a disability supplement was sent to her to complete and return to MassHealth.

Appellant testified that she entered the United States on a passport ■ years ago and has not established any other residency. She added that she works with a friend. Appellant also described medical conditions including an ocular stroke that requires ongoing treatment.

Findings of Fact

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

1. Appellant was receiving temporary MassHealth Standard coverage during the Public Health Emergency (PHE) which was protected during the PHE.
2. Appellant completed a renewal on January 3, 2024, and MassHealth notified Appellant that she is eligible for MassHealth Limited with Health Safety Net effective December 24, 2023.
3. Appellant began residing in the United States ■ years ago with a foreign passport.
4. Appellant resides in a household of 2 with her minor child and reported no income and did not report a pregnancy.
5. Appellant is between ■ and ■ years of age.

² The January 3, 2024 notice addresses only Appellant's eligibility.

6. Appellant indicated a disability but has not been determined disabled.

Analysis and Conclusions of Law

MassHealth coverage types are based on an individual's circumstances and finances. To be eligible for MassHealth, an applicant must meet categorical eligibility criteria and have income below a certain financial threshold. As a preliminary matter, to be eligible for either MassHealth Standard, CarePlus, or CommonHealth, an 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))

Appellant is not a U.S. citizen or legal permanent resident, reported no income, did not report a pregnancy, has not been determined disabled, and has resided in the United States with a foreign

passport for ■ years. Appellant has not established an immigration status that equals a Qualified Noncitizen under 130 CMR 504.003(A), nor did she enter the country prior to 1996. Appellant's immigration status is not otherwise described under 130 CMR 504.003(A)(2), (A)(3) or 130 CMR 504.003(B) or (C).³ Appellant's immigration status is described at 130 CMR 504.003(D) Other

³ 130 CMR 504.003(A)(2): Qualified Noncitizens Barred. Individuals who have a status listed at 130 CMR 504.003(A)(1)(b)1. (Legal Permanent Resident, parolee for at least one year, or battered noncitizen) and do not meet one of the conditions in 130 CMR 504.003(A)(1)(b)2. Qualified noncitizens barred, like qualified noncitizens, are lawfully present nonqualified individuals.

130 CMR 504.003(A)(3) Nonqualified Individuals Lawfully Present. Nonqualified individuals lawfully present are not defined as qualified under PRWORA, 8 U.S.C. 1641, but are lawfully present. Nonqualified individuals lawfully present are as follows:

- (a) are in a valid nonimmigrant status as otherwise defined in 8 U.S.C. 1101(a)(15) or otherwise under immigration laws (as defined in 8 U.S.C. 1101(a)(17));
- (b) are paroled into the United States in accordance with 8 U.S.C. 1182(d)(5) for less than one year, except for an individual paroled for prosecution, for deferred inspection or pending removal proceedings;
- (c) belong to one of the following classes:
 - 1. granted Temporary Resident Status in accordance with 8 U.S.C. 1160 or 1255a, respectively;
 - 2. granted Temporary Protected Status (TPS) in accordance with 8 U.S.C. 1254a, and individuals with pending applications for TPS who have been granted employment authorization;
 - 3. granted employment authorization under 8 CFR 274a.12(c);
 - 4. Family Unity beneficiaries in accordance with section 301 of Public Law 101-649;
 - 5. under Deferred Enforced Departure (DED) in accordance with a decision made by the President;
 - 6. granted Deferred Action status, except for applicants or individuals granted status under Department of Homeland Security (DHS) Deferred Action for Childhood Arrivals Process (DACA);
 - 7. granted an administrative stay of removal under 8 CFR part 241; or
 - 8. beneficiaries of approved visa petitions who have pending applications for adjustment of status;
- (d) have a pending application for asylum under 8 U.S.C. 1158, or for withholding of removal under 8 U.S.C. 1231, or under the Convention Against Torture Treaty who:
 - 1. have been granted employment authorization; or
 - 2. are younger than 14 years old and have had an application pending for at least 180 days;
- (e) have been granted withholding of removal under the Convention Against Torture Treaty; or
- (f) is a child who has a pending application for Special Immigrant Juvenile status as described in 8 U.S.C. 1101(a)(27)(J).

130 CMR 504.003(B): Protected Noncitizens. Noncitizens who are not qualified noncitizens as described in 130 CMR 504.003(A)(1) but who are qualified noncitizens barred as described in 130 CMR 504.003(A)(2); nonqualified individuals lawfully present as described in 130 CMR 504.003(A)(3); nonqualified persons residing under color of law (PRUCOLs) as described in 130 CMR 504.003(C); or other noncitizens as described in 130 CMR 504.003(D) and who were receiving medical assistance or CommonHealth on June 30, 1997, are considered protected noncitizens and may continue to receive MassHealth regardless of immigration status, if they are otherwise eligible. This status

Noncitizens. Noncitizens whose status is not described in 130 CMR 504.003(A) through (C), are considered other noncitizens. The applicable coverage types for other noncitizens are listed in 130 CMR 504.006.

Pursuant to 130 CMR 504.006(D), other noncitizens may receive the following coverage:

- (1) MassHealth Standard, if they are pregnant and meet the categorical requirements and financial standards as described in 130 CMR 505.002: *MassHealth Standard*;
- (2) MassHealth Limited, if they meet the categorical requirements and financial standards as described in 130 CMR 505.006: *MassHealth Limited*; and
- (3) Children's Medical Security Plan, if they are children younger than 19 years old and meet the categorical requirements and financial standards as described in 130 CMR 522.004: *Children's Medical Security Plan (CMSP)*.

continues until a determination of ineligibility due to failure to meet categorical or financial eligibility requirements has been made.

130 CMR 504.003(C): (C) Nonqualified Persons Residing under Color of Law (Nonqualified PRUCOLs). Certain noncitizens who are not described in 130 CMR 504.003(A) or (B) may be permanently living in the United States under color of law. The applicable coverage types for nonqualified PRUCOLs are listed at 130 CMR 504.006. If not otherwise described in 504.003(A) or (B) the following are considered nonqualified PRUCOLs:

- (1) noncitizens living in the United States in accordance with an Indefinite Stay of Deportation;
- (2) noncitizens living in the United States in accordance with an Indefinite Voluntary Departure;
- (3) noncitizens and their families who are covered by an approved immediate relative petition, who are entitled to Voluntary Departure, and whose departure the U.S. Department of Homeland Security (DHS) does not contemplate enforcing;
- (4) noncitizens granted Voluntary Departure by the DHS or an Immigration Judge, and whose deportation the DHS does not contemplate enforcing;
- (5) noncitizens living under Orders of Supervision who do not have employment authorization under 8 CFR 274a.12(c);
- (6) noncitizens who have entered and continuously lived in the United States since before January 1, 1972;
- (7) noncitizens granted Suspension of Deportation, and whose departure the DHS does not contemplate enforcing;
- (8) noncitizens with pending applications for asylum under 8 U.S.C. 1158, or for Withholding of Removal under 8 U.S.C. 1231, or under the Convention Against Torture Treaty who have not been granted employment authorization, or are under the age of 14 and have not had an application pending for at least 180 days;
- (9) noncitizens granted Deferred Action for Childhood Arrivals status or who have a pending application for this status;
- (10) noncitizens who have filed an application, petition, or request to obtain a lawfully present status that has been accepted as properly filed, but who have not yet obtained employment authorization and whose departure DHS does not contemplate enforcing; or
- (11) any noncitizen living in the United States with the knowledge and consent of the DHS, and whose departure the DHS does not contemplate enforcing. (These include persons granted Extended Voluntary Departure due to conditions in the noncitizen's home country based on a determination by the U.S. Secretary of State.)

Appellant meets criteria for MassHealth Limited described at 130 CMR 505.006(B)(4) as an adult ■ through ■ years old who are parents, caretakers, or adults with modified adjusted gross income of the MassHealth MAGI household that is less than or equal to 133% of the FPL. Therefore, the MassHealth determination is correct, and the appeal is DENIED.

Appellant can direct any questions about the Health Safety Net to 877-910-2100.

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.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Quincy MEC, Attn: Appeals Coordinator, 100 Hancock Street, 6th Floor, Quincy, MA 02171