

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2400489
<b>Decision Date:</b>	2/21/2024	<b>Hearing Date:</b>	2/2/2024
<b>Hearing Officer:</b>	Thomas J. Goode		

**Appearances for Appellant:**  
Pro se, with daughter

**Appearance for MassHealth:**  
Leslie Garcia, Tewksbury MEC

**Interpreter:**



*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>	Eligibility; Over 65
<b>Decision Date:</b>	2/21/2024	<b>Hearing Date:</b>	2/2/2024
<b>MassHealth's Rep.:</b>	Leslie Garcia	<b>Appellant's Rep.:</b>	Pro se, with daughter
<b>Hearing Location:</b>	Remote	<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 December 4, 2023, MassHealth approved Appellant for Family Assistance (130 CMR 519.013 and Exhibit 1). Appellant filed this appeal in a timely manner on January 8, 2024 (130 CMR 610.015(B) and Exhibit 2). Notice of an eligibility determination is valid grounds for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth approved Appellant for Family Assistance.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.013, in approving Appellant for Family Assistance.

### Summary of Evidence

An interpreter was provided by the Board of Hearings. The MassHealth representative testified that a renewal application was submitted by Appellant on August 11, 2023. MassHealth issued a notice on December 4, 2023, informing Appellant that he was approved for MassHealth Family

Assistance (Exhibit 1). Appellant became a legal permanent resident (LPR) on January 7, 2021. MassHealth described Appellant's immigration status as Qualified non-Citizen Barred because he has been a LPR for fewer than 5 years. Appellant is a household size of 1 non-disabled person, over 65 years of age, living in the community. Appellant is employed with verified earned income totaling \$1,733 per month. The MassHealth representative testified that an earned income deduction of \$65 was applied, and ½ of the remaining \$1,668 income was disregarded, resulting in \$834 countable income for MassHealth purposes. MassHealth notified Appellant that he is eligible for Family Assistance. MassHealth testified that during an outreach phone call, Appellant indicated that he does not require personal care attendant (PCA) services, and a Frail Elder Waiver has not been submitted. MassHealth testified to an expansion of services under Family Assistance that may result in eligibility for Standard coverage if Appellant requires PCA services (Exhibit 4).

Appellant appeared with his daughter who verified Appellant's income and stated that he had a past stroke and is currently being treated for cancer. Appellant testified that he is not able to work as often as he did in previous years, but he continues to work because it is his only income. Appellant's daughter stated that Appellant entered the United States in May 2019, and questioned whether that should be the effective date of his residency status rather than the date he became a legal permanent resident on January 7, 2021. Appellant's daughter testified that Appellant does require assistance with activities of daily living and would benefit from PCA services.

## **Findings of Fact**

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

1. Appellant is over age 65 and lives in a one-person household in the community.
2. In August 2023, MassHealth received Appellant's renewal application.
3. On December 4, 2023, MassHealth issued a notice to Appellant informing him that he is eligible for Family Assistance effective August 1, 2023.
4. Appellant is a legal permanent resident effective January 7, 2021. Appellant entered the United States in May 2019.
5. Appellant has not been determined disabled.
6. Appellant is employed with earned income totaling \$1,733 per month.
7. 100% of the federal poverty level is \$1,215.00 per month for a household size of one.

## Analysis and Conclusions of Law

Appellant has been a legal permanent resident (LPR) for fewer than 5 years, having attained LPR status on January 7, 2021. Therefore, Appellant's immigration status is correctly described as Qualified Non-Citizen Barred (130 CMR 518.003(A)(2)).<sup>1,2</sup>

### 130 CMR 518.006: Applicable Coverage Types:

(A) Citizens, qualified noncitizens, and protected noncitizens may receive MassHealth under any coverage type for which they are eligible as described in 130 CMR 519.000: *MassHealth: Coverage Types*.

(B) **Qualified noncitizens barred** and nonqualified individuals lawfully present may receive the following coverage:

(1) MassHealth Family Assistance if they are adults 65 years of age or older and meet the categorical requirements and financial standards as described in 130 CMR 519.013: *MassHealth Family Assistance* or are receiving Emergency Aid to the Elderly, Disabled and Children (EAEDC); or

(2) MassHealth Limited if they are adults 65 years of age or older and meet the categorical requirements and financial standards as described in 130 CMR 519.009: *MassHealth Limited*; or

(3) MassHealth Standard if they are younger than 21 years old or pregnant and meet the categorical and financial requirements described in 130 CMR 519.006: *Long-term-care Residents* or 519.007: *Individuals Who Would Be Institutionalized*.

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<sup>1</sup> 130 CMR 503.018(A)(2): Qualified Noncitizens Barred. Individuals who have a status listed in 130 CMR 518.003(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 518.003(A)(1)(b)2. Qualified noncitizens barred, like qualified noncitizens, are lawfully present nonqualified individuals.

<sup>2</sup> See 130 CMR 518.003(A)(1)(b)(1), (2) below with relevant emphasis added: noncitizens who are qualified based on having a qualified status identified at 130 CMR 518.003(A)(1)(b)(1). and who have satisfied one of the conditions listed at 130 CMR 518.003(A)(1)(b)(2). Such individuals are:

1. persons who have one or more of the following statuses:

a. **admitted for LPR under the 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. **have had a status in 130 CMR 518.003(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. entered the U.S. prior to August 22, 1996, regardless of status at the time of entry, and have been continuously present in the U.S., until attaining a status listed in 130 CMR 518.003(A)(1)(b)1.; for this purpose an individual is deemed continuously present who has been absent from the U.S. for no more than 30 consecutive days or 90 nonconsecutive days prior to attaining a status listed in 130 CMR 518.003(A)(1)(b)1.**

Pursuant to 130 CMR 519.013(A), MassHealth Family Assistance is available to community residents 65 years of age and older who meet the following requirements:

- (1) are qualified noncitizens barred, as described in 130 CMR 518.003(A)(2): Qualified Noncitizens Barred, nonqualified individual lawfully present, as described in 130 CMR 518.003(A)(3): Nonqualified Individuals Lawfully Present, or a nonqualified PRUCOL, as described in 130 CMR 518.003(C): Nonqualified Persons Residing under Color of Law (Nonqualified PRUCOLs),
  - (a) with the countable-income amount, as defined in 130 CMR 520.009: *Countable-income Amount*, of the individual or married couple living together is less than or equal to 100% of the federal poverty level (FPL);
  - (b) with the countable assets of an individual are \$2,000 or less, and those of a married couple living together are \$3,000 or less; and
  - (c) without health insurance, or access to health insurance; or
- (2) are nonqualified PRUCOLs, as described in 130 CMR 518.003(C): *Nonqualified Persons Residing under Color of Law (Nonqualified PRUCOLs)*,
  - (a) with modified adjusted gross income of the MassHealth MAGI household as described in 130 CMR 506.000: *Health Care Reform: MassHealth: Financial Requirements* between 100 and 300% of the federal poverty level (FPL); and
  - (b) without health insurance, or access to health insurance.

Appellant's immigration status is Qualified non-Citizen Barred. Appellant is over 65, non-disabled, and lives in a one-person household in the community. Appellant is employed with earned income totaling \$1,733 per month. MassHealth correctly applied Community Earned-income Deductions at 130 CMR 520.012(B), (C) to arrive at \$824 countable income per month, which is less than 100% of the federal poverty level, \$1,215.00 a month for a household size of one. Therefore, the determination that Appellant is eligible for Family Assistance is correct, and the appeal is DENIED.<sup>3</sup>

Appellant can contact the local Aging Services Access Point (ASAP) for his area: Springwell, Inc., 307 Waverly Oaks Rd. Suite 205, Waltham, MA 02452. 617-926-4100.

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<sup>3</sup> MassHealth referenced a Family Assistance Expansion effective November 1, 2021, which allows eligibility for MassHealth Standard and coverage for PCA services not covered under Family Assistance. MassHealth indicated that a finding of disability was a prerequisite; however, for members eligible for Family Assistance due to immigration status, a determination of disability does not appear to be required for members over 65 years of age (as opposed to members under 65 years of age) pursuant to Eligibility Operations Memo 21-16, November 2021, p. 2. If the member is found clinically eligible to receive their LTSS (long-term services and supports) services in the community, they may also qualify for a state-funded Standard or CommonHealth benefit to receive these services. The Aging Services Access Points (ASAPs) will complete clinical assessments and submit level of care determinations to the MEC (MassHealth Enrollment Center). The MEC will verify clinical eligibility based on the ASAP level of care determination and determine financial eligibility. Members will be able to use the covered LTSS services as referenced in 130 CMR 450.105(A) and (E), which include personal care services. (Exhibits 4, 5)

## **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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Thomas J. Goode  
Hearing Officer  
Board of Hearings

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