

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2400580
Decision Date:	02/20/2024	Hearing Date:	02/05/2024
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Ernetta Finch-Reeves



*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
Decision Date:	02/20/2024	Hearing Date:	02/05/2024
MassHealth's Rep.:	Ernetta Finch-Reeves	Appellant's Rep.:	Pro se
Hearing Location:	All Parties Appeared by Telephone	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 20, 2023, MassHealth notified the appellant that they are ending coverage due to a duplicate application. (130 CMR 502.001; Exhibit 1). The appellant filed an appeal in a timely manner on January 10, 2024. (130 CMR 610.015; Exhibit 2). Denial of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified the appellant that they are ending coverage due to a duplicate application. (130 CMR 502.001).

Issue

Whether MassHealth was correct in their decision ending the appellant's coverage.

Summary of Evidence

The notice on appeal states that the appellant does not qualify for MassHealth due to having more than one application on file. (Exhibit 1). At hearing, the MassHealth representative testified that

their system does not have two applications on file. The MassHealth representative testified that the appellant reported the birth of a child in [REDACTED] 2023. The MassHealth representative testified that the agency did not have a report of the pregnancy or information about the appellant possibly having MassHealth coverage during the pregnancy. Therefore, the appellant was deemed ineligible for MassHealth postpartum coverage. The appellant agreed that this was the issue on appeal. Therefore, the appeal addressed eligibility for postpartum coverage rather than the appellant being deemed ineligible due to having more than one application on file.

The MassHealth representative testified that the appellant is eligible for MassHealth Limited and the Health Safety Net. The appellant also has access to Connector Care. The MassHealth representative testified that this eligibility decision is based upon the appellant's immigration status. The MassHealth representative testified that the appellant is lawfully present in the United States but cannot receive coverage beyond MassHealth Limited. The MassHealth representative testified their system indicates that the first eligibility decision for the appellant for MassHealth Limited and the Health Safety Net was in 2016. The MassHealth representative testified that records show that the appellant was eligible for MassHealth Limited and the Health Safety Net throughout the pandemic.

The MassHealth representative testified that records show the appellant has a family group of four and receives \$573 each week in unemployment assistance. After deducting a 5% disregard of \$125 (as required under the regulations) the monthly income of \$2,358 [$\$573 \times 4.333 = \$2,483 - \$125 = \$2,358$] places the appellant at 106% of the Federal Poverty Level (FPL) [$\$2,500 \div \$2,358 = 106\%$]. The MassHealth representative acknowledged that the appellant could be eligible for MassHealth Standard for a period following the birth of the child if she was deemed eligible during the pregnancy. The MassHealth representative testified that because their system does not indicate that the appellant was eligible for MassHealth Standard during the pregnancy, she cannot be deemed eligible for postpartum coverage.

The appellant testified that she spoke to a MassHealth representative in February 2023 about the pregnancy and received MassHealth coverage during the pregnancy. The appellant testified that someone at the hospital assisted her with reporting the birth of the child to MassHealth so the child would receive coverage. The appellant testified that she was informed by MassHealth that she had to do a renewal application in December 2023. The appellant testified that she received tax forms indicating that she had health insurance coverage in 2023 through WellSense. The appellant testified that she first learned that her coverage ended when she went to a doctor's appointment in January 2024.

The MassHealth representative responded that the appellant may have been eligible for MassHealth Standard through a receipt of benefits through the Department of Transitional Assistance (DTA). The MassHealth representative testified that such eligibility would not be indicated in their system and MassHealth cannot access information regarding eligibility decisions made by DTA. The appellant testified that she has not received benefits through DTA and has not

been in contact with DTA, only MassHealth. The appellant testified that she does not receive benefits through DTA. The appellant did not present any evidence or testimony regarding her immigration status. The appellant argued that she was told that her MassHealth coverage should continue to 12 months following the pregnancy.

Findings of Fact

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

1. In [REDACTED] 2023, MassHealth received a report regarding the birth of a child by the appellant.
2. MassHealth's system did not have records of the appellant reporting the pregnancy or receiving MassHealth coverage during the pregnancy.
3. The appellant received MassHealth coverage during her pregnancy.
4. In December 2023, MassHealth performed an eligibility review.
5. MassHealth deemed the appellant eligible for MassHealth Limited and the Health Safety Net.
6. MassHealth deemed the appellant ineligible for MassHealth Standard postpartum coverage as the agency did not have a report of the pregnancy or records of the appellant having MassHealth coverage during the pregnancy.
7. The appellant has access to Connector Care.
8. The appellant was initially determined eligible for MassHealth Limited and the Health Safety Net in 2016.
9. MassHealth determined that the appellant does not meet the immigration requirements for coverage beyond MassHealth Limited.
10. MassHealth records indicate that the first eligibility decision for the appellant for MassHealth Limited and the Health Safety Net was in 2016.
11. Records show that the appellant was eligible for MassHealth Limited and the Health Safety Net throughout the pandemic.
12. The appellant has a family group of 4.

13. The appellant receives unemployment income in the amount of \$2,483 each month.
14. The appellant has countable income in the amount of \$2,308.
15. The appellant's income is at 106% of the Federal Poverty Level (FPL).

Analysis and Conclusions of Law

The MassHealth regulations at 130 CMR 505.002 contain categorical requirements and financial standards for MassHealth Standard serving children, young adults, parents, caretaker relatives, people who are pregnant, disabled individuals, certain individuals with breast or cervical cancer, certain individuals who are HIV positive, independent foster-care adolescents, Department of Mental Health members, and medically frail as such term is defined in 130 CMR 505.008(F).

Pursuant to 130 CMR 505.002 (D)(1), a person who is pregnant is eligible for MassHealth Standard if:

- (a) the modified adjusted gross income of the MassHealth MAGI household is less than or equal to 200% of the federal poverty level (FPL); and
- (b) the individual is a citizen as described in 130 CMR 504.002: U.S. Citizens, lawfully present immigrant, nonqualified PRUCOL, or other noncitizen as described in 130 CMR 504.003: Immigrants.

In determining the MassHealth MAGI household size, the unborn child or children are counted as if born and living with the mother. (130 CMR 505.002(D)(2)). Eligibility, once established, continues for the duration of the pregnancy. (130 CMR 505.002(D)(3)).

Based on the information provided at hearing, the appellant met the income guidelines for a person who is pregnant as the household income was less than 200% of the FPL. (130 CMR 505.002(D)(1)(a)). The appellant met the definition for "other noncitizen" described at 130 CMR 504.003(D) as no evidence was presented to demonstrate that the appellant met the regulatory definition of a lawfully present immigrant, protected noncitizen or nonqualified PRUCOL. (130 CMR 504.003). Therefore, it is likely that the appellant was eligible for MassHealth Standard during the pregnancy.

Pursuant to 130 CMR 505.002(D)(4), eligibility for postpartum care for pregnant individuals who meet the requirements of 130 CMR 505.002(B)(2) and (3), (C) through (H), and (L) continues for 12 months following the termination of the pregnancy plus an additional period extending to the end of the month in which the 12-month period ends.

The eligibility requirements at 130 CMR 505.002(B)(2) and (3) apply to children 1 through 18 years old and young adults 19 through 20 years old. The appellant does not fall into one of those categories. The category in which the appellant falls under the regulations (C) through (H) and (L) is that of a parent or caretaker relative at 130 CMR 505.002(C).

Pursuant to 130 CMR 505.002(C),

- (1) A parent or caretaker relative of a child younger than 19 years old is eligible for MassHealth Standard coverage if:
 - (a) the modified adjusted gross income of the MassHealth MAGI household is less than or equal to 133% of the federal poverty level (FPL);
 - (b) the individual is a citizen as described at 130 CMR 504.002: U.S. Citizens or a qualified noncitizen as described in 130 CMR 504.003(A)(1): Qualified Noncitizens; and
 - (c)
 1. the parent lives with their children, and assumes primary responsibility for the child's care, in the case of a parent who is separated or divorced, has custody of their children, or has children who are absent from home to attend school; or
 2. the caretaker relative lives with children to whom they are related by blood, adoption, or marriage (including stepsiblings), or is a spouse or former spouse of one of those relatives, and assumes primary responsibility for the child's care if neither parent lives in the home.

(2) The parent or caretaker relative complies with 130 CMR 505.002(M).

The appellant's income is less than 133% of the FPL. The appellant did not dispute the fact that MassHealth determined her eligibility as a noncitizen. Therefore, in looking to whether the appellant meets the requirements for MassHealth Standard eligibility under 130 CMR 505.002(C), one must look to whether the appellant meets the definition of a qualified noncitizen as described at 130 CMR 504.003(A)(1).

Pursuant to 130 CMR 504.003(A)(1), there are two groups of qualified noncitizens. The first group includes those who are qualified regardless of when they entered the U.S. or how long they had a qualified status and fall into very specific categories of qualified statuses. (130 CMR 504.003(A)(1)(a)). Neither the appellant nor the MassHealth representative presented testimony or evidence of the appellant falling into one of these specific regulatory categories.

The second group of qualified noncitizens include those who have one or more qualifying statuses and satisfy one of three conditions. (130 CMR 504.003(A)(1)(b)).

The qualifying statuses for which a member must meet one or more include:

- 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. (130 CMR 504.003(A)(1)(b)1.).

The qualifying conditions for which a member must satisfy at least one include:

- 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, 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 504.003(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 504.003(A)(1)(b)1.; or
- c. they also have or had a status listed in 130 CMR 504.003(A)(1)(a). (130 CMR 504.003(A)(1)(b)2.).

While the MassHealth representative testified that the appellant is admitted for legal permanent residence which would meet the definition of a qualifying status, neither party provided direct evidence of such admission or demonstrated whether the appellant met any of the qualifying conditions at 130 CMR 504.003(A)(1)(b)2. Including having had a status for five or more years. Therefore, under the current regulations, the appellant does not qualify for post-partum coverage. The decision made by MassHealth determining the appellant ineligible for post-partum coverage was correct.

As testified to by the MassHealth representative at hearing, other noncitizens may receive MassHealth Limited if they meet the categorical requirements and financial standards described in 130 CMR 505.006. The MassHealth representative testified that the appellant was deemed eligible for MassHealth Limited so met these categorical requirements and financial standards. The decision made by MassHealth deeming the appellant eligible for MassHealth Limited was also correct.

In September 2022, MassHealth issued Eligibility Operations Memo 22-12. Under this memorandum, effective April 1, 2022, MassHealth extended its postpartum coverage period to

provide 12 months of coverage to individuals, regardless of immigration status. (MassHealth Eligibility Operations Memo (EOM) 22-12). The purpose of the extension was to significantly improve access to health care services and provide continuity of care in the period after childbirth. (MassHealth EOM 22-12). Under the language in this EOM, the appellant would be eligible for MassHealth post-partum coverage regardless of her immigration status.

In July 2023, MassHealth revised the regulations at 130 CMR 505.000 to update the postpartum period to 12 months, plus an additional period extending to the end of the month in which the 12-month period ends. (MassHealth Eligibility Letter 245, July 2023). The regulations that were put into effect in July 2023 do not include language that would allow postpartum coverage regardless of immigration status. Instead, as noted above, the enacted regulations authorize postpartum coverage for individuals who meet the definition of a qualified noncitizen as described at 130 CMR 504.003(A)(1). As noted above, based on the evidence presented at hearing, the appellant does not meet that definition. Therefore, despite the agency enacting a policy to extend postpartum coverage, the actual regulations that were put into effect after issuing that policy include a requirement that individuals meet the requirements for a certain immigration status. It is not clear why the agency would have made such a final decision as it seems to counteract the original purpose of extending postpartum coverage regardless of immigration status but it appears that is the action taken by the agency in implementing the final regulatory language.

As noted above, the decision regarding the appellant's eligibility for MassHealth Limited and denial for postpartum coverage was correct.

This appeal is denied.

Should the appellant be able to demonstrate that she meets one of the qualifying conditions such as having status as being admitted for legal permanent residence (LPR) under the Immigration and Nationality Act (INA) for five or more years, she may be eligible for postpartum coverage. It was not clear at hearing if the appellant met this requirement. Should the appellant be able to demonstrate that she met this requirement, she may be eligible for retroactive coverage. (MassHealth Eligibility Operations Memo 23-18). It was not clear from either party whether the appellant would meet such a requirement but it is something for the appellant to consider moving forward.

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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Nga Tran, Charlestown MassHealth Enrollment Center, 529 Main Street, Suite 1M, Charlestown, MA 02129