

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2401141
Decision Date:	03/22/2024	Hearing Date:	02/22/2024
Hearing Officer:	Mariah Burns		

Appearance for Appellant:



Appearance for MassHealth:

Jonathan Gonzalez, 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

Appeal Decision:	Denied	Issue:	Eligibility; Income; Program for All-Inclusive Care for the Elderly (PACE)
Decision Date:	03/22/2024	Hearing Date:	02/22/2024
MassHealth's Rep.:	Jonathan Gonzalez	Appellant's Rep.:	Zarina Jamal, Jessie Guild
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 notified the appellant of a change to the monthly amount he must pay to his PACE provider. *See* 130 CMR 519.007(C) and Exhibit 1. The appellant filed this appeal in a timely manner on January 23, 2024. *See* 130 CMR 610.015(B) and Exhibit 2. Agency action to suspend, reduce, terminate, or restrict a member's assistance is valid grounds for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

MassHealth changed the appellant's monthly patient paid amount (PPA) to his Program of All-Inclusive Care for the Elderly (PACE) provider.

Issue

The appeal issue is whether MassHealth correctly calculated his PPA to his PACE provider.

Summary of Evidence

The appellant is an adult over the age of 65 who was represented at hearing by his daughter and the Director of PACE Membership for the facility at which he resides. MassHealth was represented by a worker from the Charlestown MassHealth Enrollment Center. The following is a summary of the evidence and testimony provided at hearing:

The appellant has resided in his current assisted-living facility and been a member of the PACE program since 2012. The MassHealth representative reported that, for 2021-2023, MassHealth incorrectly calculated the amount that the appellant must pay monthly to the facility using a Post-Eligibility Treatment of Income (PETI) calculation pursuant to Eligibility Operations Memo 21-13. The MassHealth representative reported that such a calculation did not exist prior to 2021. This error led to the appellant having a patient paid amount (PPA) of \$110 per month in 2023. MassHealth's computer system discovered the error, leading to the generation of the notice at issue on January 3, 2024. That notice established that the appellant must pay the facility \$2299 per month to qualify for benefits through the PACE Program.

The MassHealth representative explained that, to qualify for MassHealth to cover the costs of a member's PACE Program, their income must be less than or equal to 300% of the Federal Benefit Rate (FBR), a figure which is established by the Social Security Administration. The 2024 FBR is \$943 per month; 300% of the FBR for 2024 is therefore \$2829.00. MassHealth reported that the appellant receives \$3016.90 in monthly Social Security benefits, which is over 300% of the FBR. For that reason, MassHealth determined that the appellant is not income-eligible for the PACE Program and must use a deductible to establish his eligibility. MassHealth also reported that there is no evidence in the appellant's record that he ever established income-eligibility for the PACE program by having income at or under 300% of the FBR.

The appellant's representatives agreed with the calculation of his current income. His daughter reported that, prior to 2021 (when the appellant first erroneously received a PETI calculation to determine his PPA), the appellant's family was assisting with his payments and was making up the difference in his PPA so that he may qualify for benefits. They reported surprise that MassHealth did not notice the error in the appellant's PPA calculation sooner and expressed frustration, arguing that such a financial burden seems unfair to the elderly.

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 who has resided in his current assisted-living facility and been a member of the Program of All-Inclusive Care for the Elderly (PACE) program since 2012. Exhibit 4, Testimony.

2. From 2021-2023, the appellant was receiving the benefit of a Post-Eligibility Treatment of Income (PETI) calculation in determining his monthly patient paid amount (PPA) contribution to his PACE program services. In 2023, that amount was \$110 per month. Testimony. *See also* Exhibit 6.
3. On or around January 3, 2024, MassHealth determined that the appellant was receiving that PETI calculation in error, because there was no evidence that he ever established income-eligibility for the PACE program by having income at or under 300% of the Federal Benefit Rate (FBR). Testimony, Exhibit 6.
4. MassHealth issued a notice on January 3, 2024, informing the appellant that he will have to meet a monthly deductible of \$2299.00 to continue to receive services through the PACE Program. Exhibit 1.
5. The appellant filed a timely request for fair hearing on January 23, 2024. Exhibit 2.
6. The appellant receives \$3016.90 in monthly Social Security benefits. Exhibit 1, Testimony.
7. Prior to 2021, the appellant's family was paying the difference between his income and his patient paid amount to allow him to continue to receive PACE benefits.

Analysis and Conclusions of Law

The Program of All-inclusive Care for the Elderly (PACE) is administered by MassHealth and is a "comprehensive health program that is designed to keep frail, older individuals who are eligible for nursing facility services living in the community." 130 CMR 519.007(C). Such individuals deemed financially eligible will be enrolled in MassHealth Standard, which will pay for "a complete range of health care services...provided by one designated community-based program with all medical and social services coordinated by a team of health professionals." *Id.* at 519.007(C)(1)(a). A private pay option is available for those who are not eligible for MassHealth.

To qualify for MassHealth benefits through the PACE program, applicants must meet all the following criteria:

- (a) be 55 years of age or older;
- (b) meet Title XVI disability standards if 55 through 64 years of age;
- (c) be certified by the MassHealth agency or its agent to be in need of nursing facility services;
- (d) live in a designated service area;
- (e) have medical services provided in a specified community-based PACE program;

- (f) have countable assets whose total value does not exceed \$2,000 or, if assets exceed these standards, reduce assets in accordance with 130 CMR 520.004: Asset Reduction; and
- (g) have a countable-income amount less than or equal to 300% of the federal benefit rate (FBR) for an individual.

130 CMR 519.007(C)(2). The federal benefit rate is established by the Social Security Administration and is \$943 per month for an eligible individual, making 300% of that amount \$2829.00. See <https://www.ssa.gov/oact/cola/SSI.html>.

Individuals who do not meet the income standards to qualify for the PACE program “may establish eligibility for MassHealth Standard by meeting a deductible described at 130 CMR 520.028: Eligibility for a Deductible through 520.035: Conclusion of the Deductible Process.” 130 CMR 519.007(C)(3). The deductible process provides, in relevant part, that income-ineligible individuals 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).

To determine an applicant’s income, MassHealth reviews the individual’s gross earned and unearned income, minus certain regulatory disregards. See *generally* 130 CMR 520.009. 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).

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 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.

As stated, *supra*, MassHealth calculates the deductible by “multiplying the excess income by six.” 130 CMR 520.030. Excess income is “the amount by which the applicant’s countable-income amount...exceeds the MassHealth deductible income standard,” which for a single individual living in the community is \$522.00. *Id.* Medicare premiums are “credited prospectively for the cost of six months’ coverage” and is applied to meet the deductible. *Id.* at 520.032(B)(1).

MassHealth has also established policies that provide relief to members who were once financially eligible for and enrolled in the PACE program, who later experience an increase in their countable income. See Exhibit 6, Eligibility Operations Memo (EOM) 21-13 (Implementation of Post-Eligibility Treatment of Income (PETI) for members enrolled in the Program of All-Inclusive Care for the Elderly (PACE)) (published July 14, 2021). In such circumstances, these members “may remain in their MassHealth Standard benefit and remain enrolled in PACE by spending down their income to 300% of the FBR. These members will remain financially eligible for continued MassHealth enrollment in PACE, subject to a monthly patient paid amount that is equal to their excess income over 300% of the FBR, less any allowable deductions.” *Id.*

In this case, MassHealth determined that the appellant earns \$3016.90 in monthly Social Security benefits, which are considered unearned income. When applying the \$20.00 disregard for unearned income, MassHealth determined that the appellant’s total monthly unearned income is \$2996.00, which is over 300% of the FBR, deeming him ineligible for the PACE program. To establish a deductible amount to qualify for benefit, MassHealth then applied the \$522.00 regulatory income standard, leaving an amount of \$2474.00, from which the appellant’s Medicare Self-Pay amount of \$174.70 was deducted. This leaves a monthly deductible of \$2299.30, which is the amount by which the appellant must spenddown his monthly income to maintain eligibility for the PACE program through MassHealth Standard. I therefore find that MassHealth correctly calculated that amount and did not issue the January 3, 2024, notice in error.

MassHealth reported that the appellant was incorrectly subjected to a PETI calculation pursuant to EOM 21-13, because there is no indication in the appellant’s record that the appellant ever established MassHealth eligibility with income at or below 300% of the FBR when he was enrolled in PACE. The appellant’s representative reported that, prior to 2021, the appellant’s monthly contribution was significantly higher, and the family was making up the difference in those

previous years. As such, I find that there is not sufficient evidence in the record that the appellant is entitled to a PETI calculation.

To the extent that the appellant argues that these requirements unfairly burden him and other elderly individuals, this fair hearing offers him no mechanism for a remedy, and the appellant should seek relief in the courts. See 130 CMR 610.082(C) (“If the legality of such law or regulations is raised by the appellant, the hearing officer must render a decision based on the applicable law or regulation as interpreted by the MassHealth agency...[and] cannot rule on the legality of such law or regulation and [such a challenge] must be subject to judicial review in accordance with 130 CMR 610.092”).

For the foregoing reasons, the appeal is hereby 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.

Mariah Burns
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Nga Tran, Charlestown MassHealth Enrollment Center

[REDACTED]