

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2401994
<b>Decision Date:</b>	05/30/2024	<b>Hearing Date:</b>	03/19/2024
<b>Hearing Officer:</b>	Emily Sabo	<b>Record Open to:</b>	04/17/2024

**Appearance for Appellant:**



**Appearance for MassHealth:**

Damion English, Quincy 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>	Community Eligibility—Under 65; Immigration Status
<b>Decision Date:</b>	05/30/2024	<b>Hearing Date:</b>	03/19/2024
<b>MassHealth's Rep.:</b>	Damion English	<b>Appellant's Rep.:</b>	██████
<b>Hearing Location:</b>	Quincy Harbor South (Telephone)	<b>Aid Pending:</b>	Yes

### 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 February 1, 2024, MassHealth notified the Appellant that her benefits were being downgraded from MassHealth Standard to MassHealth Limited. 130 CMR 502.000, 130 CMR 610.000, and Exhibit 1. The Appellant filed this appeal in a timely manner on February 7, 2024. 130 CMR 610.015(B) and Exhibit 2. Reduction of benefits is valid grounds for appeal. 130 CMR 610.032.

### Action Taken by MassHealth

MassHealth downgraded the Appellant's benefits from MassHealth Standard to MassHealth Limited.

### Issue

The appeal issue is whether MassHealth was correct in downgrading the Appellant's benefits from MassHealth Standard to MassHealth Limited.

### Summary of Evidence

The hearing was held telephonically. The Appellant testified through an interpreter and verified her identity.

The MassHealth representative testified as follows: the Appellant is an adult between the ages of 21 to 64, who has a household size of one and zero income. Due to a pregnancy, the Appellant was eligible for MassHealth Standard in 2020, and due to the public health emergency, the Appellant's MassHealth Standard coverage continued for the length of the declared emergency. The Appellant did not qualify for other MassHealth benefits because of her immigration and citizenship status.

The Appellant testified that she had been diagnosed with cervical cancer in October 2019, and that she is still in the midst of cancer treatment. The Appellant testified that she is worried about losing her MassHealth Standard benefits because she still has to undergo another year of cancer treatment. The Appellant testified that she was told that her MassHealth benefits would continue while she received treatment.

The record was held open until April 3, 2024, for the Appellant to provide evidence of her citizenship and immigration status, and until April 17, 2024, for MassHealth to review and respond. The hearing officer did not receive any additional information from the parties during the record open period, and did not receive a response from the parties upon the hearing officer's further inquiry.

## **Findings of Fact**

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

1. The Appellant is an adult, between the ages of 21-64, who resides in a household of one. Testimony, Exhibit 4.
2. The Appellant has no income. Testimony, Exhibit 1.
3. The Appellant was eligible for MassHealth Standard in 2020, due to a pregnancy. The Appellant's coverage continued after the end of the pregnancy due to the declared public health emergency. Testimony, Exhibit 4.
4. The Appellant is eligible for MassHealth Limited. Exhibit 1.
5. The hearing officer left the record of this appeal open until April 3, 2024 for the appellant to provide evidence of her citizenship and immigration status, but nothing was received.

## **Analysis and Conclusions of Law**

Certain noncitizens may qualify for MassHealth benefits, depending on their legal status. The MassHealth regulations at 130 CMR 504.003 detail the circumstances in which these applicants may receive benefits:

504.003: Immigrants

(A) Lawfully Present Immigrants. Qualified noncitizens, qualified noncitizens barred, and nonqualified individuals lawfully present are considered lawfully present immigrants. The applicable coverage for qualified noncitizens, qualified noncitizens barred, and nonqualified individuals lawfully present is listed in 130 CMR 504.006.

(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 section 208 of the INA;
2. Refugees admitted under section 207 of the INA;
3. persons whose deportation has been withheld under section 243(h) or 241(b)(3) of the INA, as provided by section 5562 of the federal Balanced Budget Act of 1997;
4. veterans, their spouses, and their children
  - a. veterans of the United States Armed Forces with an honorable discharge not related to their noncitizen status;
  - b. Filipino war veterans who fought under U.S. command during WWII;
  - c. Hmong and Highland Lao veterans who are admitted for legal permanent residence (LPR) and who fought under U.S. command during the Vietnam War;
  - d. persons with noncitizen status on active duty in the U.S. Armed Forces, other than active duty for training; or
  - e. the spouse, unremarried surviving spouse, or unmarried dependent children of the noncitizen described in 130 CMR 504.003(A)(1)(a)4. a. through d.;
5. Conditional Entrants under section 203(a)(7) of the INA in effect before April 1, 1980;
6. persons who entered as Cuban/Haitian entrants under section 501(e) of the Refugee Education Assistance Act of 1980;
7. Native Americans with at least 50 percent American Indian blood who were born in Canada, pursuant to section 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 section 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 section

101(a)(27) of the Immigration and Nationality Act, pursuant to section 1244 of Public Law 110-181 or section 525 of Public Law 110-161;

11. Afghan Special Immigrants granted special immigrant status under section 101(a)(27) of the Immigration and Nationality Act, pursuant to section 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.

a. COFA migrants who adjust to legal permanent residence (LPR) status will have a special five-year bar rule applied. The individual will be subject to the special five-year bar rule unless they also have or had a status listed at 130 CMR 504.003(A)(1)(a). The special five-year bar rule that applies will depend upon the date the individual adjusted to LPR status.

b. COFA migrants who adjust to LPR status after the change of law on December 27, 2020, will be able to use the date they began residing in the United States as a COFA migrant or December 27, 2020, whichever is later, as the first day for purposes of meeting the five-year bar.

c. COFA migrants who adjusted to LPR status before the change of law on December 27, 2020, will have the five-year bar period begin on the date that they adjusted to LPR.

(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, 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).

(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.

(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).

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

(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.)

(D) Other 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.

130 CMR 504.003.

130 CMR 504.006 states:

(A) Citizens, qualified noncitizens, and protected noncitizens may receive MassHealth under any coverage type if they meet the eligibility requirements described in 130 CMR 505.000: *Health Care Reform: MassHealth: Coverage Types*.

....

(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)*.

130 CMR 504.006(A), (D).

130 CMR 505.002 states:

(D) Eligibility Requirements for People who are Pregnant.

- (1) A person who is pregnant is eligible 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*.
- (2) In determining the MassHealth MAGI household size, the unborn child or children are counted as if born and living with the mother.
- (3) Eligibility, once established, continues for the duration of the pregnancy.
- (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.

....



(F) Individuals with Breast or Cervical Cancer.

(1) Eligibility Requirements. An individual with breast or cervical cancer is eligible for MassHealth Standard coverage if they meet all of the following requirements:

- (a) the individual is younger than 65 years old;
- (b) the individual has been certified by a physician to be in need of treatment for breast or cervical cancer, including precancerous conditions;
- (c) the modified adjusted gross income of the MassHealth MAGI household is less than or equal to 250% of the federal poverty level (FPL);
- (d) for individuals with breast or cervical cancer whose MassHealth MAGI household modified adjusted gross income is greater than 133% of the FPL, but does not exceed 250% of the FPL, the individual must
  - 1. be uninsured; or
  - 2. have insurance that does not provide creditable coverage. An individual is not considered to have creditable coverage when the individual is in a period of exclusion for treatment of breast or cervical cancer, has exhausted the lifetime limit on all benefits under the plan, including treatment of breast or cervical cancer, or has limited scope coverage or coverage only for specified illness; or
  - 3. be an American Indian or Alaska Native who is provided care through a medical care program of the Indian Health Service or of a tribal organization;
- (e) the individual is 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*; and
- (f) the individual does not otherwise meet the requirements for MassHealth Standard described at 130 CMR 505.002(B) through (E).

(2) Premiums. Individuals who meet the requirements of 130 CMR 505.002(F) are assessed a monthly premium in accordance with 130 CMR 506.011: *MassHealth and the Children's Medical Security Plan (CMSP) Premiums*.

(3) Duration of Eligibility. Individuals meeting the requirements of 130 CMR 505.002(F) are eligible for MassHealth Standard for the duration of their cancer treatment.

(130 CMR 505.002(D) and (F)).

I credit the Appellant's testimony that she was told by a MassHealth representative that her coverage would continue for the duration of the cancer treatment. Under 130 CMR 505.002(F)(3):

Individuals meeting the requirements of 130 CMR 505.002(F) are eligible for MassHealth Standard for the duration of their cancer treatment.

Here, the appellant meets the requirements of 130 CMR 505.002(F), **except** there is no evidence of her immigration status. The record was left open for the appellant to provide such evidence, and she failed to do so, and did not seek more time to do so.

Pursuant to 130 CMR 505.002(F), an individual with cervical cancer is eligible for MassHealth Standard coverage for the duration of cervical cancer treatment if she meets **all** of the requirements listed at 130 CMR 505.002(F)(1); one of those requirements is set forth at 130 CMR 505.002(F)(1)(e):

the individual is 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*. . .

Despite an opportunity to show her status as either a U.S. citizen or a qualified noncitizen, the appellant failed to do so. Thus, she does not meet the requirements for continued MassHealth Standard coverage for the duration of her cancer treatment as set forth at 130 CMR 505.002(F)(1), above.

For these reasons, the appeal must be denied.

## **Order for MassHealth**

None. If the appellant provides satisfactory documentary evidence of her citizenship status, redetermine her eligibility for MassHealth, and send notice of eligibility, with further appeal rights.

## **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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Emily Sabo  
Hearing Officer  
Board of Hearings

cc: MassHealth Representative: Tosin Adebisi, Appeals Coordinator, Quincy MEC