

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied in part; Dismissed in part	Appeal Number:	2402366
Decision Date:	4/8/2024	Hearing Date:	03/13/2024
Hearing Officer:	Christopher Jones		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Dianne Braley – Taunton Ongoing



*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 in part; Dismissed in part	Issue:	Over 65; Ongoing; Eligibility; Over Income and Assets
Decision Date:	4/8/2024	Hearing Date:	03/13/2024
MassHealth's Rep.:	Dianne Braley	Appellant's Rep.:	Pro se
Hearing Location:	Telephonic	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 February 12, 2024, MassHealth approved the appellant for the Senior Buy-in benefit, effective March 1, 2024, based upon her countable income and assets, implicitly denying MassHealth Standard coverage. (Exhibit 1; 130 CMR 520.002; 520.003.) The appellant filed this timely appeal on February 15, 2024. (Exhibit 2; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth terminated the appellant's MassHealth Standard coverage through a notice on September 29, 2023, for failing to return required verifications. Those verifications were received on February 7, 2023, and MassHealth approved her for the Senior Buy-in coverage.

Issue

The appeal issue is whether the appellant's February 15, 2024, appeal may reach the September 29, 2023 termination notice, pursuant to 130 CMR 610.015, and whether MassHealth was correct, pursuant to 130 CMR 519.000 and 520.000, in determining that the appellant is ineligible for MassHealth Standard.

Summary of Evidence

The appellant turned ■ years old during the Federal Public Health Emergency for the Covid-19 Pandemic (“FPHE”). During the FPHE, she was covered by MassHealth Standard by an under-65 benefit. Following the end of the FPHE protections, the appellant submitted an over-65 application, and on or around May 18, 2023, MassHealth sent out a notice requesting verifications, which were due back on August 16, 2023. On September 29, 2023, MassHealth ended her Standard coverage effective October 13, 2023, because the agency had not received the requested verifications.

All requested verifications were received on or around February 7, and MassHealth sent out the February 12 notice approving the appellant for Senior Buy-in coverage, also known as the Medicare Savings Program for Qualified Medicare Beneficiaries. The appellant has a household of one, and she receives gross Social Security income in the amount of \$2,038.90. She also verified assets of around \$14,000. MassHealth’s representative explained that the appellant is both over-income and over-assets for MassHealth Standard coverage for people over 65. The financial thresholds are income at or below the federal poverty level and assets below \$2,000. At the time MassHealth made its determination, the federal poverty level for an individual was \$1,215 per month.¹

The appellant was very frustrated with MassHealth because she never got the notice from the agency requesting verifications or cancelling her MassHealth Standard. She testified that she had submitted all of the verifications on November 22, 2023, that were ultimately received on February 7. She spent a lot of time calling MassHealth to figure out what was going on, and finally learned that someone at MassHealth had changed the last two letters of her street name in her mailing address, so none of MassHealth’s notices were going to her. She was also frustrated by the fact that she had worked her entire life for her Social Security before stopping work due to disability, and that most of the assets came from a lump-sum payment from Social Security for retroactive benefits. She testified that she is on high-level maintenance medications, a ventilator, and supplemental oxygen.

MassHealth’s representative confirmed that the appellant’s address was changed to the incorrect street name sometime in the spring or summer of 2023, and she could not find out why. She also explained that the appellant may be eligible for a different type of coverage, MassHealth CommonHealth. This program offers coverage similar to MassHealth Standard to disabled adults, but it would require the appellant to submit a letter verifying that she is “working” for 40 hours a month. The type of work required by CommonHealth is not a traditional form of employment. Any task is acceptable, as long as someone outside the appellant’s home signs and dates a letter stating the appellant is providing some service for 10 hours a week for at least one dollar per hour. MassHealth CommonHealth also comes with a monthly premium based upon the member’s

¹ It is now \$1,255 per month.

income. The appellant was not interested in hearing more about CommonHealth because she could not work. She wanted her MassHealth Standard coverage back.

The appellant confirmed that the first time she attempted to file an appeal to the Board of Hearings was on February 15, 2024. It was noted on the record that 120 days after September 29, 2023, was January 27, 2024.

Findings of Fact

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

- 1) The appellant turned [REDACTED] during the FPHE. She completed an over-65 renewal in May 2023. (Testimony by the appellant and MassHealth's representative.)
- 2) In the first half of 2023, the appellant's address was changed to the wrong street name in MassHealth's computer system. MassHealth then mailed out a notice requesting verifications from the appellant on May 18, 2023, which were due back August 18, 2023. (Testimony by MassHealth's representative.)
- 3) MassHealth sent a notice on September 29, 2023, terminating the appellant's coverage as of October 13, 2023, for not verifying her financial information. This notice was also sent to the incorrect address. (Testimony by MassHealth's representative.)
- 4) The appellant submitted some, but not all of the requested verifications in November 2023. (Testimony by MassHealth's representative.)
- 5) The final missing verification was received on February 7, 2024, and the appellant was approved for the Senior Buy-in benefit, starting March 1, 2024. (Testimony by MassHealth's representative; Exhibit 1.)
- 6) The appellant has a household size of one, and she receives gross Social Security in the amount of \$2,038.90 per month. She also has approximately \$14,000 in a bank account, most of which came from retroactive Social Security benefits. (Testimony by the appellant; Exhibit 1.)
- 7) The appellant filed her first appeal to the Board of Hearings on February 15, 2024. (Exhibit 2.)

Analysis and Conclusions of Law

MassHealth offers a variety of benefits based upon an individual's circumstances and finances. To qualify for MassHealth, an individual must fit into a category of eligibility and fall below a certain financial threshold. One of the major dividing lines for eligibility is the age of 65. Individuals aged

65 and older are generally governed by the regulations at 130 CMR 515.000-520.000, and those under 65 are typically determined by the regulations at 130 CMR 501.000-508.000.

The financial rules set out at 130 CMR 520.000 explain that all of an individual's "gross earned and unearned income less certain business expenses and standard income deductions" is countable, and "the countable-income amount is compared to the applicable income standard to determine the individual's financial eligibility." (130 CMR 520.009(A)(1)-(2).) There are only two income deductions for community residents with unearned income: (1) "a deduction of \$20 per individual or married couple" or (2) a larger deduction if the individual "requires assistance from a personal care attendant." (130 CMR 520.013(A)-(B).) However, if the applicant's income is over 133% of the federal poverty level prior to the PCA deduction, the applicant still receives a deductible. (130 CMR 520.013(C).) Earned income receives a deduction of \$65, and then only half of the remaining income is countable. (130 CMR 520.012.)

Regarding assets, bank accounts are countable "to the extent that the applicant or member has both ownership of and access to such funds." (130 CMR 520.008(B)(2).) "Retroactive SSI and RSDI benefit payments are noncountable **in the month of receipt and for six months after the month of receipt.** ... Any amount of the benefit payment still retained on the first day following the excluded periods described in 130 CMR 520.007(H)(1) is a countable asset." (130 CMR 520.007(H) (emphasis added).)

The requirements for receiving MassHealth Standard for individuals over 65 who are living in the community are:

519.005: Community Residents 65 Years of Age and Older

(A) Eligibility Requirements. Except as provided in 130 CMR 519.005(C), noninstitutionalized individuals 65 years of age and older may establish eligibility for MassHealth Standard coverage provided they meet the following requirements:

- (1) the countable-income amount, as defined in 130 CMR 520.009: *Countable-Income Amount*, of the individual or couple is less than or **equal to 100 percent of the federal poverty level**; and
- (2) the **countable assets of an individual are \$2,000 or less**, and those of a married couple living together are \$3,000 or less.

(B) Financial Standards Not Met. Except as provided in 130 CMR 519.005(C), individuals whose income, assets, or both exceed the standards set forth in 130 CMR 519.005(A) may establish eligibility for MassHealth Standard by reducing their assets in accordance with 130 CMR 520.004: *Asset Reduction*, meeting a deductible as described at 130 CMR 520.028: *Eligibility for a Deductible* through 520.035: *Conclusion of the Deductible Process*, or both.

(130 CMR 519.005(A)-(B) (emphasis in **bold**).)

Medicare recipients may qualify for a Medicare Savings Program with income at or below 225% of the federal poverty level. (See 130 CMR 519.010-519.011.) MassHealth refers to these benefits as “Buy-in” benefits, and the amount of assistance provided depends on the member’s income. Individuals with income below 190% of the federal poverty level are eligible for the Medicare Savings Program (“MSP”) Qualified Medicare Beneficiaries (“QMB”). Until February 29, 2024, the applicant must “have countable assets less than or equal to two times the amount of allowable assets for Medicare Savings Programs as identified by the Centers for Medicare and Medicaid Services. Effective March 1, 2024, MassHealth will disregard all assets or resources when determining eligibility for MSP-only benefits.” This benefit pays for “Medicare Part A and Part B premiums and for deductibles and coinsurance under Medicare Parts A and B” (130 CMR 519.010.) This benefit may only start “the first day of the calendar month following the date of the MassHealth eligibility determination.” (130 CMR 519.010(C).)

A disabled adult aged 65 or older may qualify for CommonHealth coverage with income in excess of the federal poverty level. However, CommonHealth coverage for individuals over 65 is only for “working disabled adults . . . [which] means that eligible applicants must meet the requirements of 130 CMR 505.004(B)(2), (3) and (5) to be eligible for CommonHealth.” (130 CMR 519.012(A)(1).) Those additional criteria are:

(2) be employed at least 40 hours per month, or if employed less than 40 hours per month, have been employed at least 240 hours in the six-month period immediately preceding the month of receipt of the application or MassHealth's eligibility review;

(3) be permanently and totally disabled (except for engagement in substantial gainful activity) as defined in 130 CMR 501.001: Definition of Terms;

. . . [and]

(5) be ineligible for MassHealth Standard

(130 CMR 519.012(B).)

After the \$20 standard deduction, the appellant’s unearned monthly income is \$2,018.90. This is equivalent to 166% of the federal poverty level of \$1,215.² Even if the appellant’s bank account only held retroactive Social Security payments received within the last six months, the appellant’s income would make her ineligible for MassHealth Standard. Because the appellant’s income is below 190% of the federal poverty level, MassHealth is correct that the appellant is eligible for the MSP QMB benefit. MassHealth made no error in calculating the appellant’s eligibility, therefore this appeal is DENIED.

² Her income is 160.9% of the 2024 federal poverty level of \$1,255.

The substance of this appeal would have been the same had the appellant received and appealed the September termination notice. However, this decision cannot reach back to that notice. Even where MassHealth “fails to send written notice of the action” an appeal must be filed within “120 days” (See 130 CMR 610.015(B)(2).) Any appeal from that action must be DISMISSED as untimely.

The appellant may become eligible for CommonHealth coverage upon providing MassHealth a letter from an employer, as described above. The appellant was not interested in this coverage at this time, however.

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.

Christopher Jones
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780