Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Approved in part; Denied in part; Remanded	**Appeal Number:**	2402688
Decision Date:	6/21/2024	**Hearing Date:**	03/20/2024
Hearing Officer:	Emily Sabo	**Record Open:**	06/17/2024

Appearance for Appellant:
[redacted]

Appearance for MassHealth:
Ryan Bond, Tewksbury MEC

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:	Approved in part; Denied in part; Remanded	**Issue:**	Eligibility—Under 65; Disability
Decision Date:	6/21/2024	**Hearing Date:**	03/20/2024
MassHealth's Rep.:	Ryan Bond	**Appellant's Rep.:**	[redacted]
Hearing Location:	Tewksbury MassHealth Enrollment Center (Telephone)	**Aid Pending:**	Yes[1]

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 29, 2024, MassHealth notified the Appellant that MassHealth was ending the MassHealth coverage from a duplicate application, as of February 12, 2024, because they had more than one application on file for the Appellant.[2] 130 CMR 502.001 and Exhibit 1. The Appellant filed this appeal in a timely manner on February 22, 2024.[3] 130 CMR 610.015(B) and

[1] Aid pending is for Health Safety Net.

[2] As part of her appeal, the Appellant also submitted three notices from MassHealth dated February 16, 2024. One states that the Appellant's duplicate application is ending on March 1, 2024. Two state that while she does not qualify for MassHealth benefits, she may be eligible for the Health Safety Net. Exhibit 1. These notices deny rather than terminate benefits. The January 29, 2024 notice spells the Appellant's last name incorrectly and one of the February 16, 2024 notices includes the Appellant's middle initial rather than her middle name, and does not include her MassHealth ID number.

[3] On the reason for the appeal, the fair hearing request form states: "Misspelled name led me to believe 2 accounts were merging therefore I expected to continue with my current coverage. I have a serious disability. I do qualify for MassHealth Standard plan and had it most likely a decade by now. It cancelled due to duplicate accounts and I can't even access either account to get insurance through the Health Connector. I would like to see the two accounts as I never created two accounts. When the accounts merged, I lost my health insurance. I was

Exhibit 2. Denial or termination of assistance are valid grounds for appeal. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth terminated the Appellant's MassHealth Standard coverage.

Issue

The appeal issue is whether MassHealth gave adequate notice that it was terminating the Appellant's MassHealth benefits, pursuant to 130 CMR 610.026. Additionally, the issue is whether the Appellant is financially eligible for MassHealth benefits.

Summary of Evidence

The hearing was held telephonically. The Appellant was represented by her mother, who verified the Appellant's identity. The Appellant is an adult between the ages of 21 and 64 and has a household size of one. The Appellant's representative testified that the Appellant has been disabled since the age of 3, and that the Appellant's condition has worsened, such that she can no longer walk independently. The Appellant's representative testified that when she called MassHealth about the notice received, she was told by a representative that the Appellant was listed as the Appellant's representative's dependent on a secondary account. The Appellant's representative explained that this did not make sense because the Appellant's representative does not have MassHealth, has had private, employer-sponsored insurance, and has not claimed the Appellant as a dependent for many years. The Appellant's representative testified that the Appellant learned she no longer had health insurance during a medical appointment. The Appellant's representative testified that she has been paying out of pocket for the Appellant's medication. The Appellant's representative also stated that she was concerned that MassHealth did not notify the Appellant about needing to complete a disability evaluation supplement before it terminated her health coverage.

The MassHealth representative testified that the Appellant's monthly income is $3,193.50 from employment at [redacted]. The MassHealth representative testified that the Appellant's income is 257% of the federal poverty level, and that MassHealth does not have a record of the Appellant having a verified disability, so she is not eligible for MassHealth benefits due to her income being greater than 133% of the federal poverty level. The Appellant's representative

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never provided an adult disability supplement to update. I desperately need my insurance reinstated if this is the issue since it's very clear there were mistakes with this case. I cannot walk independently and need medication and regular CBT and physical therapy for a severe movement disorder." Exhibit 2. Regarding the Appellant's MassHealth records, she may submit a request for her member records by following the instructions at: https://www.mass.gov/info-details/masshealth-member-records-request.

testified that the Appellant has not worked at [redacted] for a number of years but agreed that the income amount information was correct.

The full text of one of the February 16, 2024, notices regarding the Appellant's eligibility for Health Safety Net states that the Appellant "does not qualify for MassHealth benefits because of one or more of the following reasons: The income for this person is too high. 130 CMR 506.007(B) and 130 CMR 502.003." Exhibit 5 at 2. Reviewing the Appellant's Medicaid Management Information System (MMIS) record indicates that the Appellant had MassHealth coverage "R1" from April 8, 2016, until February 12, 2024, indicating that the Appellant elected to receive MassHealth Standard benefits as someone who was eligible for MassHealth CarePlus and was medically frail, under 130 CMR 505.008(F). Exhibit 4.

On May 17, 2024, the hearing officer reopened the record pursuant to 130 CMR 610.081 for the Appellant to provide evidence of either a determination from MassHealth or the Social Security Administration that the Appellant is currently disabled (showing that they consider her to be disabled as an adult, rather than as a child), or proof that the Appellant has submitted a disability supplement to MassHealth's Disability Evaluation Services. Exhibit 7; *see also* 130 CMR 610.081. No evidence was received by the Board of Hearings during the record open period.

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 and 64 and has a household size of one. Testimony and Exhibit 4.

2. The Appellant has several serious health conditions. Testimony and Exhibit 2.

3. MassHealth does not have a record of the Appellant having a verified disability. Testimony.

4. The Appellant's monthly income is $3,193.50, which is 257% of the federal poverty level. Testimony.

5. Through notice dated January 29, 2024, MassHealth stated that the Appellant "does not qualify for MassHealth for the following reason.
    - We have more than one application on file for this person or these persons. Their eligibility is based on the most recent information that they sent us. Please see 130 CMR 502.001 for the regulation that we used in this case." Exhibit 1 at 1.

6. Through notice dated February 16, 2024, MassHealth stated that the Appellant was eligible for a Connector Care plan and may be eligible for MassHealth benefits based on the

Appellant's completion and submission of the MassHealth Disability Supplement. MassHealth stated that the Appellant was eligible for Health Safety Net for a limited time. The notice stated that the Appellant "does not qualify for MassHealth benefits because of one or more of the following reasons:

- The income for this person is too high. 130 CMR 506.007(B) and 130 CMR 502.003." Exhibit 5 at 2.

7. The Appellant had MassHealth coverage "R1" from April 8, 2016, until February 12, 2024, indicating that the Appellant elected to receive MassHealth Standard benefits as someone who was eligible for MassHealth CarePlus and was medically frail, under 130 CMR 505.008(F). Exhibit 4.

8. The January 29, 2024, notice indicated that the Appellant's "MassHealth coverage from a duplicate application" was ending February 12, 2024. Exhibit 1 at 1.

Analysis and Conclusions of Law

Both the state and federal constitutions offer procedural and substantive due process protections. Specific to the present case, as an agency, MassHealth is required to comply with the relevant Fair Hearing Rules governing notice found in 130 CMR 610.000. By law, MassHealth must always send timely and adequate notice prior to an adverse action, and the Fair Hearing Rule concerning the adequacy of such notice reads as follows:

610.026: Adequate Notice Requirements

(A) A notice concerning an intended appealable action must be timely as stated in 130 CMR 610.015 and adequate in that it must be in writing and contain

(1) a statement of the intended action;
(2) the reasons for the intended action;
(3) a citation to the regulations supporting such action;
(4) an explanation of the right to request a fair hearing; and
(5) the circumstances under which assistance is continued if a hearing is requested.

(B) Regardless of the provisions of 130 CMR 610.026(A), when a change in either federal or state law requires a change in assistance for a class or classes of members, a notice will be considered adequate if it includes a statement of the specific change in law requiring the action to reduce, suspend, or terminate assistance.

130 CMR 610.026.

For several reasons, I find that the MassHealth notice dated January 29, 2024, terminating the

Appellant's MassHealth benefits effective February 12, 2024, was not adequate notice under 130 CMR 610.026(A)(1), (A)(2), and (A)(3). The notice states that "MassHealth coverage from a duplicate application" is ending, but a reader might reasonably think that only duplicated coverage was ending, not that their MassHealth benefits were ending altogether. Exhibit 1 at 1. The notice also states that the reason the Appellant does not qualify for benefits is that the Appellant has more than one application on file with MassHealth. *Id.* As discussed at hearing, and as cited in the February 16, 2024 notice, this was not the actual reason for the intended action. Instead, the Appellant's MassHealth was terminated because her income was too high to qualify for the benefit. Furthermore, the notice does not include a correct citation to the regulations supporting such an action—the notice cites 130 CMR 502.001, which are the regulations pertaining to an application for benefits. Therefore, I conclude that MassHealth did not meet its obligation under 130 CMR 610.026, and the appeal is approved in part. MassHealth is directed to rescind the January 29, 2024, notice and reinstate the Appellant's benefits dating back to February 12, 2024.

Turning to the Appellant's eligibility based on income, the MassHealth regulations provide the following with regards to MassHealth CarePlus:

505.008: MassHealth CarePlus

(A) Overview.

(1) 130 CMR 505.008 contains the categorical requirements and financial standards for MassHealth CarePlus. This coverage type provides coverage to adults 21 through 64 years old.
(2) Persons eligible for MassHealth CarePlus Direct Coverage are eligible for medical benefits, as described in 130 CMR 450.105(B): *MassHealth CarePlus* and 130 CMR 508.000: *MassHealth: Managed Care Requirements* and must meet the following conditions.
(a) The individual is an adult 21 through 64 years old.
(b) 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*.
(c) The individual's modified adjusted gross income of the MassHealth MAGI household is less than or equal to 133% of the federal poverty level.
(d) The individual is ineligible for MassHealth Standard.
(e) The adult complies with 130 CMR 505.008(C).
(f) The individual is not enrolled in or eligible for Medicare Parts A or B.

. . . .

(F) Medically Frail. If an individual is determined medically frail or is an individual with special medical needs and has been determined to meet the eligibility criteria for MassHealth CarePlus as described in 130 CMR 505.008, the individual may elect at any time to receive MassHealth Standard benefits, as described in 130 CMR 505.002(J). If at any time after enrolling in MassHealth CarePlus an individual becomes medically frail or is determined to be medically frail, the individual

may elect to receive MassHealth Standard benefits. The effective date of MassHealth Standard is the date of the reported change. To be considered medically frail or a person with special medical needs, an individual must be

(1) an individual with a disabling mental disorder (including children with serious emotional disturbances and adults with serious mental illness);
(2) an individual with a chronic substance use disorder;
(3) an individual with a serious and complex medical condition;
(4) an individual with a physical, intellectual, or developmental disability that significantly impairs their ability to perform one or more activities of daily living; or
(5) an individual with a disability determination based on Social Security criteria.

130 CMR 505.008(A), (F).

The Appellant's MMIS record indicates that she elected to receive MassHealth Standard as a medically frail individual who met the eligibility criteria for MassHealth CarePlus, beginning in 2016. Exhibit 4 and 130 CMR 505.008(F). One requirement to be eligible for MassHealth CarePlus is that an individual's modified adjusted gross income of the MassHealth MAGI household be less than or equal to 133% of the federal poverty level. 130 CMR 505.008(A)(2)(c). Based on the testimony at hearing, there is no dispute that the Appellant's income exceeds 133% of the federal poverty level. Accordingly, she is not eligible for MassHealth CarePlus under 130 CMR 505.008(A)(2)(c).

In her fair hearing request and at the hearing, the Appellant raised the issue of being eligible for MassHealth based on her disability. As relevant here, the MassHealth regulations provide:

505.004: MassHealth CommonHealth

(A) Overview.
(1) 130 CMR 505.004 contains the categorical requirements and financial standards for CommonHealth coverage available to both disabled children and disabled adults, and to disabled working adults.
(2) Persons eligible for MassHealth CommonHealth coverage are eligible for medical benefits as described in 130 CMR 450.105(E): *MassHealth CommonHealth*.

(B) Disabled Working Adults. Disabled working adults must meet the following requirements:
(1) be 21 through 64 years of age (for those 65 years of age or older, see 130 CMR 519.012: *MassHealth CommonHealth*);
(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*;
(4) be 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*;
(5) be ineligible for MassHealth Standard; and
(6) comply with 130 CMR 505.004(J).

(C) Disabled Adults. Disabled adults must meet the following requirements:
(1) be 21 through 64 years old;
(2) be permanently and totally disabled, as defined in 130 CMR 501.001: *Definition of Terms*;
(3) be ineligible for MassHealth Standard;
(4) be 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*;
(5) (a) meet a one-time-only deductible in accordance with 130 CMR 506.009: *The One-time Deductible*; or
(b) have modified adjusted gross income of the MassHealth Disabled Adult household that is less than or equal to 200% of the federal poverty level (FPL) and provide verification that they are HIV positive; and
(6) comply with 130 CMR 505.004(J).

. . . .

(H) Determination of Disability. Disability is established by
(1) certification of legal blindness by the Massachusetts Commission for the Blind (MCB);
(2) a determination of disability by the SSA; or
(3) a determination of disability by the Disability Evaluation Services (DES).

(I) MassHealth CommonHealth Premium. Disabled adults, disabled working adults, disabled young adults, and disabled children who meet the requirements of 130 CMR 505.004 may be assessed a premium in accordance with the premium schedule provided in 130 CMR 506.011(B)(2). No premium is assessed during a deductible period.

(J) Use of Potential Health Insurance Benefits. Applicants and members must use potential health insurance benefits, in accordance with 130 CMR 503.007: *Potential Sources of Health Care*, and must enroll in health insurance, including Medicare, if available at no greater cost to the applicant or member than they would pay without access to health insurance, or if purchased by the MassHealth agency in accordance with 130 CMR 505.002(O) and 130 CMR 506.012: *Premium Assistance Payments*. Members must access those other health insurance benefits and must show their private health insurance card and their MassHealth card to providers at the time services are provided.
(K) Access to Employer-sponsored Health Insurance and Premium-assistance Investigations for Individuals Who Are Eligible for MassHealth CommonHealth.
(1) MassHealth may perform an investigation to determine if individuals receiving MassHealth CommonHealth

(a) have health insurance that MassHealth may help pay for; or

(b) have access to employer-sponsored health insurance in which MassHealth wants the individual to enroll and for which MassHealth will help pay.

(2) The individual receives MassHealth CommonHealth while MassHealth investigates the insurance.

(a) Investigations for Individuals Who Are Enrolled in Health Insurance.

1. If MassHealth determines that the health insurance that the individual is enrolled in meets the criteria at 130 CMR 506.012: *Premium Assistance Payments*, the individual is notified in writing that MassHealth will provide MassHealth CommonHealth

Premium Assistance as described at 130 CMR 506.012: *Premium Assistance Payments*.

2. If MassHealth determines that the health insurance that the individual is enrolled in does not meet the criteria at 130 CMR 506.012: *Premium Assistance Payments*, the individual continues to be eligible for MassHealth CommonHealth.

(b) Investigations for Individuals Who Have Potential Access to Employer-sponsored Health Insurance.

1. If MassHealth determines that the individual has access to employer-sponsored health insurance, the employer is contributing at least 50% of the premium cost, and the insurance meets all other criteria described in 130 CMR 506.012: *Premium Assistance Payments*, the individual is notified in writing that they must enroll in this employer-sponsored coverage. MassHealth allows the individual up to 60 days to enroll in this coverage. Once enrolled in this health insurance plan, MassHealth provides premium assistance payments as described in 130 CMR 506.012: *Premium Assistance Payments*. Failure to enroll in the employer-sponsored health insurance plan at the request of MassHealth will result in the loss or denial of eligibility for all individuals unless the individual is younger than 19 years old, the individual is 19 or 20 years old, and has household income less than or equal to 150% of the federal poverty level, or is pregnant.

2. If MassHealth determines the individual does not have access to employer-sponsored health insurance, the individual continues to be eligible for MassHealth CommonHealth.

(L) Medicare Premium Payment.

(1) The MassHealth agency, in accordance with the Medicare Savings Program as described in 130 CMR 519: *Medicare Savings Program (MSP) – Qualified Medicare Beneficiaries (QMB)* and 519.011: *Medicare Saving Program (MSP) – Specified Low Income Medicare Beneficiaries and Qualifying Individuals* also pays the cost of the monthly Medicare Part B premium on behalf of members who meet the requirements of 130 CMR 505.004 and who have modified adjusted gross income of the MassHealth Disabled Adult household that is less than or equal to 135% of the FPL.

(2) The coverage described in 130 CMR 505.004(L)(1) begins on the first day of the month

following the date of the MassHealth eligibility determination and may be retroactive up to three months prior to the date the application was received by MassHealth.

(M) Medical Coverage Date.

(1) The medical coverage date for MassHealth CommonHealth is described at 130 CMR 502.006: *Coverage Dates*, except as described at 130 CMR 505.004(M)(2) and (3).

(2) Persons described in 130 CMR 505.004(C) who have been notified by the MassHealth agency that they must meet a one-time deductible have their medical coverage date established in accordance with 130 CMR 506.009(E): *Notification of the Deductible*.

(3) Provisional eligibility is described in 130 CMR 502.003(E): Provisional Eligibility.

(N) Extended CommonHealth Coverage. MassHealth CommonHealth members (described in 130 CMR 505.004(B)) who terminate their employment, continue to be eligible for MassHealth CommonHealth for up to three calendar months after termination of employment provided they continue to make timely payments of monthly premiums.

(O) Postpartum Coverage. For people who are pregnant, MassHealth will provide postpartum care for 12 months following the termination of a pregnancy plus an additional period extending to the end of the month in which the 12-month period ends.

130 CMR 505.004(A), (B), (C), (H), (I), (J), (K), (L), (M), (N), (O).

The Appellant's MMIS record does not indicate she had ever previously been enrolled in CommonHealth. Exhibit 4. MassHealth CommonHealth allows working adults who are determined disabled under 130 CMR 505.004(H) to enroll in the program, provided they meet certain deductible and premium payments, based on income.[4] I credit the Appellant's representative's testimony that the Appellant has a number of debilitating health conditions. However, I do not have sufficient evidence in the record before me to find that the Appellant is totally and permanently disabled as defined in 130 CMR 501.001. If the Appellant submits evidence of a disability to MassHealth, in accordance with 130 CMR 505.004(H), MassHealth will determine whether the Appellant is eligible for MassHealth CommonHealth, and the Appellant will have the right to appeal that determination.[5]

In conclusion, the appeal is approved regarding the January 29, 2024, notice, and denied regarding the Appellant's eligibility for MassHealth CarePlus and MassHealth CommonHealth. In accordance with this decision, MassHealth is directed to rescind the January 29, 2024 notice and reinstate the

[4] MassHealth no longer requires disabled members under the age of 65 to meet a one-time deductible or work 40 hours per month in order to qualify for CommonHealth (EOM 23-28 (Dec. 2023)).

[5] I also note that under 130 CMR 610.071(A)(2), "The hearing officer may not exclude evidence at the hearing for the reason that it had not been previously submitted to the acting entity, provided that the hearing officer may permit the acting entity representative reasonable time to respond to newly submitted evidence. The effective date of any adjustments to the appellant's eligibility status is the date on which all eligibility conditions were met, regardless of when the supporting evidence was submitted."

Appellant's benefits from February 12, 2024. MassHealth is directed to redetermine the Appellant's eligibility and issue a new notice within thirty days. Any future notice must comply with 130 CMR 610.026: *Adequate Notice Requirements*. If the Appellant incurred eligible medical expenses during that period, she could submit them to MassHealth for payment.

Order for MassHealth

Rescind the January 29, 2024, notice (Notice ID: 66254062). Reinstate the Appellant's MassHealth Standard coverage (R1), CarePlus and medically frail under 130 CMR 130 CMR 505.008(F)) from February 12, 2024. Redetermine the Appellant's eligibility and issue a new notice that complies with 130 CMR 610.026, within thirty days.

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.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Emily Sabo
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957

Appellant Representative: [redacted]