

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Remand	<b>Appeal Number:</b>	2402697
<b>Decision Date:</b>	4/10/2024	<b>Hearing Date:</b>	03/27/2024
<b>Hearing Officer:</b>	Susan Burgess-Cox		

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Luisa Cabral (Quincy MEC) & Carmen Fabery  
(Premium Billing)



*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>	Remand	<b>Issue:</b>	Eligibility
<b>Decision Date:</b>	4/10/2024	<b>Hearing Date:</b>	03/27/2024
<b>MassHealth's Reps.:</b>	Luisa Cabral (Quincy MEC) & Carmen Fabrey (Premium Billing)	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	All Parties Appeared by Telephone	<b>Aid Pending:</b>	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 21, 2024, MassHealth notified the appellant that his child is eligible for MassHealth CommonHealth with a monthly premium of \$218.40 starting February 2024. (130 CMR 505.004; 130 CMR 506.011; Exhibit 1). The appellant filed a timely appeal on February 20, 2024. (130 CMR 610.015). An agency determination regarding the scope and amount of assistance is valid grounds for appeal. (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth determined that the appellant's child became eligible for MassHealth CommonHealth with a monthly premium of \$218.40 starting February 2024. (130 CMR 505.004; 130 CMR 506.011).

### Issue

Whether MassHealth was correct in determining eligibility for the appellant's child.

## Summary of Evidence

All parties appeared by telephone. A representative from the MassHealth Enrollment Center (MEC) and one from the Premium Billing Unit (PBU) appeared to represent the agency. Documents submitted by the PBU were incorporated into the hearing record as Exhibit 4.

The appellant's child was approved for MassHealth CommonHealth beginning January 17, 2024 with a premium of \$218.40 each month starting in February 2024. In January 2024, the appellant contacted the agency to report a change in the household as the appellant separated from his wife. This reported change resulted in a new eligibility decision for the appellant's child as financial eligibility is based upon several factors including income and household composition.

The MassHealth representative testified that the last eligibility decision for the appellant's child was in 2020 as the federal government issued continuous coverage requirements to maintain care for both new MassHealth applicants and existing members during the COVID-19 Public Health Emergency (PHE). (MassHealth Eligibility Operations Memo 20-09; MassHealth EOM 23-13). These continuous coverage requirements ended on April 1, 2023 as the PHE was lifted. (MassHealth EOM 23-13). As of April 1, 2023, MassHealth began redetermining eligibility for all members to ensure that they still qualify for their current benefits. (MassHealth EOM 23-13). The agency also began to act on reported changes after the PHE was lifted.

The MassHealth representative testified that prior to the eligibility decision on appeal, the agency determined that the appellant's child had a household size of 5 with income at 365% of the federal poverty level. This calculation would come from gross monthly income in the amount of \$9,460.90 each month or \$113,531 each year. After applying a 5% disregard of \$127.85 to a gross monthly income of \$9,460.90, a household size of 5 would have monthly countable income of \$9,333.05 [ $\$2,557 \times 3.65 = \$9,333.05$ ].<sup>1</sup>

The MassHealth representative testified that the agency currently has a record of the appellant being employed and receiving annual income of \$155,733 or monthly income of \$12,978. The MassHealth representative testified that the agency considered the appellant's child as a member of a household of 4 due to the reporting of the parental separation. The agency determined that the household of the appellant's child had income at 514% of the federal poverty level. This calculation was based upon a formula where the agency applied a 5% disregard of \$125 to a gross monthly income of \$12,978 resulting in countable income of \$12,853 which falls at 514% of the federal poverty level [ $\$12,853 \div \$2,500 = 514\%$ ].

The MassHealth representative testified that the agency has a premium formula to use in calculating a premium for children with income over 300% of the federal poverty level. Members

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<sup>1</sup> These figures are based upon the agency income standards and federal poverty guidelines in effect in 2020.

who have other insurance pay 70% of the full premium. The MassHealth representative testified that members eligible for CommonHealth may also be eligible for premium assistance. The MassHealth representative testified that the agency always does an initial eligibility determination and calculates a premium as there is a separate process to determine if the member is eligible for premium assistance. The MEC representative testified that she was not sure if eligibility for premium assistance was under review. The PBU representative testified that if the agency receives information that an individual is eligible for premium assistance, the premiums the individual paid to the agency will be refunded.

The appellant did not challenge the income information presented by MassHealth. The appellant testified that almost half of this income goes to his wife under the terms of a separation agreement. The appellant testified that paying court mandated support results in having between \$500-\$1,000 each week for his own expenses. The appellant asked the agency to look at “real-world” expenses in determining eligibility. The appellant testified that he received premium assistance in the past. The appellant did not agree that his income was at 514% of the federal poverty level.

The appellant testified that when his spouse filed for divorce, he contacted MassHealth and was advised by a representative that his child was now a member of a household of 4. The appellant testified that his children are with their mother during the week and with him on the weekend. The request for hearing form and notice from the Board of Hearings have an address in Connecticut for the appellant.

## **Findings of Fact**

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

1. In January 2024, the appellant contacted MassHealth to report a change in the household size as the appellant separated from his wife.
2. This reported change resulted in a new eligibility decision for the appellant’s child.
3. The appellant’s child was approved for MassHealth CommonHealth beginning January 17, 2024 with a premium of \$218.40 each month starting in February 2024.
4. The last eligibility decision for the appellant’s child was in 2020 due to continuous coverage requirements for applicants and existing members during the COVID-19 Public Health Emergency (PHE).
5. Prior to the eligibility decision on appeal, the agency determined that the household of the appellant’s child had income at 365% of the federal poverty level.

6. The agency currently has a record of annual income in the amount of \$155,733 or monthly income \$12,978 for a household of 4.
7. This updated income information was utilized in making the most recent eligibility decision for the appellant's child.
8. Utilizing a regulatory 5% disregard, the agency determined that the child's household of 4 had countable income at 514% of the federal poverty level.
9. The appellant's child is with his mother during the week and the appellant on the weekends.
10. The appellant provided the Board of Hearings with an address in Connecticut.

## **Analysis and Conclusions of Law**

MassHealth provides access to healthcare by determining eligibility for the coverage type that provides the most comprehensive benefits. (130 CMR 501.003(A)). MassHealth offers several coverage types. (130 CMR 501.003(B)). The coverage type for which an individual is eligible is based on their income and circumstances. (130 CMR 515.003(B)).

130 CMR 505.000 explains the categorical requirements and financial standards that must be met to qualify for a MassHealth coverage type (130 CMR 505.001). As described in 130 CMR 505.001, the MassHealth coverage types are as follows:

- (1) MassHealth Standard – for people who are pregnant, children, parents and caretaker relatives, young adults, disabled individuals, certain persons who are HIV positive, individuals with breast or cervical cancer, independent foster care adolescents, Department of Mental Health (DMH) members, and medically frail as such term is defined in 130 CMR 505.008(F);
- (2) MassHealth CommonHealth – for disabled adults, disabled young adults, and disabled children who are not eligible for MassHealth Standard;
- (3) MassHealth CarePlus – for adults 21 through 64 years of age who are not eligible for MassHealth Standard;
- (4) MassHealth Family Assistance – for children, young adults, certain noncitizens, and persons who are HIV positive who are not eligible for MassHealth Standard, MassHealth CommonHealth, or MassHealth CarePlus;
- (5) MassHealth Limited – for certain lawfully present immigrants as described in 130 CMR 504.003(A): Lawfully Present Immigrants, nonqualified PRUCOLs, and other noncitizens as described in 130 CMR 504.003: Immigrants; and
- (6) MassHealth Medicare Savings Programs (MSP, also called Senior Buy-in and Buy-in) – for certain Medicare beneficiaries

As a disabled individual, the appellant's child meets the categorical requirements for both MassHealth Standard and MassHealth CommonHealth. (130 CMR 505.001). These programs also have financial standards. (130 CMR 505.001).

The rules of financial responsibility and calculation of financial eligibility are detailed in 130 CMR 506.000: Health Care Reform: MassHealth: Financial Requirements. (130 CMR 505.001). MassHealth determines household size at the individual member level. (130 CMR 506.002(A)). MassHealth uses the MassHealth Modified Adjusted Gross Income (MAGI) household composition rules to determine member eligibility for MassHealth CommonHealth for disabled children younger than 18-years old. (130 CMR 506.002(A)(1); 130 CMR 505.004(G)). Under these household composition rules, household size must be determined in accordance with nontax filer rules for any of the following individuals:

1. individuals other than the spouse or natural, adopted, or stepchild who expect to be claimed as a tax dependent by the taxpayer;
2. individuals younger than 19 years old who expect to be claimed by one parent as a tax dependent and are living with both natural, adopted or stepparents, but whose natural, adopted, or stepparents do not expect to file a joint tax return;
3. individuals younger than 19 years old who expect to be claimed as a tax dependent by a noncustodial parent. For the purpose of determining custody, MassHealth uses a court order or binding separation, divorce, or custody agreement establishing physical custody controls or, if there is no such order or agreement or in the event of a shared custody agreement, the custodial parent is the parent with whom the child spends most nights. (130 CMR 506.002(B)(2)(b)).

As the appellant's child is younger than 19 years old and likely expects to be claimed as a tax dependent by one described as a noncustodial parent, the appellant, the household size must be determined in accordance with nontax filter rules. (130 CMR 506.002(B)(2)(b)). As noted above, for purposes of determining custody, MassHealth uses things such as a binding separation or custody agreement establishing custody controls or, if there is no such order or agreement or in the event of a shared custody agreement, the custodial parent is the parent with whom the child spends most nights. The mailing address in Connecticut and testimony of the appellant that the child spends the week with his mother and weekends with the appellant demonstrate that the appellant likely falls under the category of a noncustodial parent. Therefore, the household size should be determined in accordance with nontax filter rules. (130 CMR 506.002(B)(2)(b)).

Under the nontax filer rules, the household consists of:

- (a) the individual;
- (b) the individual's spouse if living with them;

- (c) the individual's natural, adopted, and stepchildren younger than 19 years old if living with them;
- (d) for individuals younger than 19 years old, the individual's natural, adoptive, or stepparents and natural, adoptive, or stepsiblings younger than 19 years old if living with them; and
- (e) if any individual described in 130 CMR 506.002(B)(3)(a) through (d) is pregnant, the number of expected children. (130 CMR 506.002(B)(3)).

Based on testimony and evidence presented at hearing, the household of the appellant's child consists of the child, the child's siblings and the mother as she is living with the child. (130 CMR 506.002(B)(3)). As the appellant would not be considered part of the child's household in determining eligibility, the agency cannot consider his income in determining eligibility for the child.

As neither party presented information regarding the income of the mother who appears to be the custodial parent, this appeal is remanded for the agency to obtain information about the income of the custodial parent and make a new eligibility decision based upon the current household composition and countable income. The appellant should also provide the agency with documentation regarding any separation agreement and parental status.

## **Order for MassHealth**

Determine the eligibility of the appellant's child as a member of a household of 4, considering the income of the custodial parent alone.

## **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.

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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Quincy MEC, Attn: Appeals Coordinator, 100 Hancock Street, 6th Floor, Quincy, MA 02171