

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2403758
<b>Decision Date:</b>	04/19/2024	<b>Hearing Date:</b>	04/08/2024
<b>Hearing Officer:</b>	Mariah Burns		

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Pamela Filipe, Taunton MassHealth Enrollment  
Center

**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>	Over 65; Immigration
<b>Decision Date:</b>	04/19/2024	<b>Hearing Date:</b>	04/08/2024
<b>MassHealth's Rep.:</b>	Pamela Filipe	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Remote	<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 31, 2024, MassHealth approved the appellant's senior application for MassHealth benefits and deemed her eligible for MassHealth Family Assistance. *See* 130 CMR and Exhibit 1. The appellant filed this appeal in a timely manner on March 12, 2024. *See* 130 CMR 610.015(B) and Exhibit 2. Challenging agency action regarding scope and amount of assistance is valid grounds for appeal. *See* 130 CMR 610.032(5).<sup>1</sup>

### Action Taken by MassHealth

MassHealth found that the appellant was eligible only for MassHealth Family Assistance benefits.

### Issue

The appeal issue is whether MassHealth was correct in determining that the appellant is ineligible for benefits beyond MassHealth Family Assistance.

---

<sup>1</sup> On the appellant's Fair Hearing Request Form, the appellant referenced a claim that she filed and included paperwork from [REDACTED] regarding the claim. As MassHealth actions regarding individual claims are not appealable, this decision will discuss only the determination that the appellant is eligible only for MassHealth Family Assistance benefits.

## Summary of Evidence

The appellant is an adult over the age of 65 who was assisted at hearing by a Haitian Creole-speaking interpreter. MassHealth was represented by a worker from the Taunton MassHealth Enrollment Center. All parties appeared by phone. The following is a summary of the testimony and evidence provided at hearing.

MassHealth received an application for senior benefits submitted on the appellant's behalf on January 29, 2024. MassHealth verified that the appellant has no income and is under the asset limit to qualify for benefits. The MassHealth representative also reported that the appellant's verified immigration status is that she has been granted employment authorization pursuant to 8 CFR 274a.12(c). As such, she was deemed to be a Nonqualified Individual Lawfully Present and thus, given her age, is eligible for MassHealth Family Assistance, but not MassHealth Standard.

The appellant reported that she is a green card holder, but that she has only had it for four months. She testified that she is having trouble having her prescriptions paid for. The MassHealth representative provided the appellant with several numbers to call that can assist with her specific questions.

## 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. Testimony, Exhibit 4.
2. On January 29, 2024, the appellant submitted a senior application for MassHealth benefits. Testimony.
3. On January 31, 2024, MassHealth approved the appellant's application and deemed her eligible for MassHealth Family Assistance. Exhibit 1.
4. The appellant submitted a timely request for fair hearing on March 12, 2024. Exhibit 2.
5. The appellant has no income and is under the asset limit to qualify for MassHealth benefits. Testimony.
6. MassHealth's most recent verification of the appellant's immigration status reflects that she has been granted employment authorization pursuant to 8 CFR 274a.12(c). Testimony.

## Analysis and Conclusions of Law

MassHealth administers and is responsible for delivery of healthcare benefits to MassHealth members. See 130 CMR 515.002. Eligibility for MassHealth benefits differs depending on an applicant's age. 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for non-institutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as, and certain Medicare beneficiaries. 130 CMR 515.002(B). As the appellant is over 65 years old, she is subject to the requirements of the provisions of Volume II. 130 CMR 515.002.

Individuals seeking benefits through MassHealth must meet certain citizenship and/or immigration requirements to be deemed eligible. MassHealth provides the following benefits, in relevant part, to applicants depending on their immigration status:

(A) Citizens, qualified noncitizens, and protected noncitizens may receive MassHealth under any coverage type for which they are eligible as described in 130 CMR 519.000...

(B) Qualified noncitizens barred and nonqualified individuals lawfully present may receive the following coverage:

(1) MassHealth Family Assistance if they are adults 65 years of age or older and meet the categorical requirements and financial standards as described in 130 CMR 519.013...or are receiving Emergency Aid to the Elderly, Disabled and Children (EAEDC); or

(2) MassHealth Limited if they are adults 65 years of age or older and meet the categorical requirements and financial standards as described in 130 CMR 519.009

.....

(C) Nonqualified PRUCOLs may receive the following:

(1) MassHealth Family Assistance if they are adults 65 years of age or older and meet the categorical requirements and financial standards as described in 130 CMR 519.013...or are receiving EAEDC; or

(2) MassHealth Limited if they are adults 65 years of age or older and meet the categorical requirements and financial standards as described in 130 CMR 519.009...

(D) Other noncitizens 65 years of age or older may receive only MassHealth Limited if they meet the eligibility requirements in 130 CMR 519.009...

130 CMR 518.006. As the appellant is a community resident who has no income and meets the asset requirements, there is no question that she financially qualifies for benefits pursuant to 130 CMR 519.005(A), 519.009(A), and 519.013(A). At issue is her immigration status and whether she

was correctly deemed a nonqualified individual lawfully present.

MassHealth's regulations regarding citizenship and immigration can be found at 130 CMR 518.000, and specific requirements for immigrants are codified at 518.003. Regarding sections relevant to this appeal, Lawfully Present Persons such as the appellant are subdivided into three categories: Qualified Noncitizens, Qualified Noncitizens Barred, and Nonqualified Individuals Lawfully Present. See 130 CMR 518.003(A)(1), (2), and (3). Qualified noncitizens fall into two categories; the first category is considered "qualified regardless of when they entered the U.S. or how long they had a qualified status." 130 CMR 518.003(A)(1)(a). An entire list of such persons can be found at 518.003(A)(1)(a)(1)-(12) and include asylees, refugees, and victims of human trafficking. The second category includes individuals who have been admitted for legal permanent residence but requires that such people have either possessed such status of five or more years, have been in the U.S. since 1996, or also fall into the first category of Qualified Noncitizen. See 130 CMR 518.003(A)(1)(b).

Here, there is no evidence in the record that the appellant is an asylee, refugee, or otherwise qualifies in the first category of Qualified Noncitizen. Further, there is no evidence that she meets the pre-1996 entry exception of 130 CMR 518.003(A)(1)(b). Although her testimony that she has her green card is credible, she has yet to provide documentation of its existence to MassHealth, and she reported only having received it four months ago. Thus, the evidence does not support that the appellant can be deemed a Qualified Noncitizen for purposes of MassHealth eligibility. Furthermore, the requirements to be considered a Protected Noncitizen can be found at 130 CMR 518.003(B), and there is no evidence that the appellant belongs to this category of individual.

However, 130 CMR 518.003(A)(3)(c)(3) specifically authorizes individuals who have been "granted employment authorization under 8 CFR 274a. 12(c) to be considered a Nonqualified Individual Lawfully Present. As stated *infra*, such individuals may qualify for MassHealth Family Assistance if they are over 65 and meet the financial requirements for coverage. See 130 CMR 518.006(B)(1).

In this case, the appellant has not demonstrated that she has had her green card for at least five years, nor is there any evidence that she can otherwise be considered a Qualified Noncitizens or Protected Noncitizen. The evidence does prove, however, that she can be considered a Nonqualified Individual Lawfully Present. I therefore find no error in MassHealth's issuance of the January 31, 2024 notice approving the appellant for MassHealth Family Assistance benefits.

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: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616