

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in Part; Denied in Part	Appeal Number:	2403875
Decision Date:	06/07/2024	Hearing Date:	04/09/2024
Hearing Officer:	Mariah Burns	Record Open to:	04/23/2024

Appearance for Appellant:




Appearance for MassHealth:

Nicole Conrad, Taunton MassHealth
Enrollment Center



*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	Issue:	Over 65; Eligibility; Income; Disability; Medicare Savings Plan
Decision Date:	06/07/2024	Hearing Date:	04/09/2024
MassHealth's Rep.:	Nicole Conrad	Appellant's Rep.:	
Hearing Location:	Remote	Aid Pending:	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 March 5, 2024, MassHealth terminated the appellant's MassHealth Standard and Medicare Savings Plan benefits after determining that she was over income to qualify. See 130 CMR 520.002 and Exhibit 1. The appellant filed this appeal in a timely manner on March 13, 2024. See 130 CMR 610.015(B) and Exhibit 2. Termination of assistance is valid grounds for appeal. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth terminated the appellant's benefits.

Issue

The appeal issue is whether MassHealth correctly determined that the appellant is not eligible for MassHealth Standard benefits and the Medicare Savings Plan – Qualified Medicare Beneficiaries due to her income.

Summary of Evidence

The appellant is a single adult over the age of 65 and was assisted at hearing by her counselor. MassHealth was represented at hearing by a worker from the Taunton MassHealth Enrollment Center. The following is a summary of the evidence and testimony provided at hearing.

Prior to the issuance of the notice on appeal, the appellant was receiving MassHealth Standard benefits with the Medicare Savings Program (MSP) – Qualified Medicare Beneficiaries (QMB)¹, for which the appellant submitted a renewal application for benefits in October 2023. After reviewing the appellant's eligibility, MassHealth determined that she was over the income limit for both benefits, and on March 5, 2024, issued a termination notice with an effective date of March 19, 2024.

At hearing, the MassHealth representative stated that the agency verified two sources of unearned income for the appellant: \$2356.00 in monthly social security benefits, and \$1696.60 in monthly long-term disability benefits. This equated to a federal poverty level of over 300%, which disqualified the appellant for both MassHealth Standard and any MSP benefits.

The appellant reported that she has stage four breast cancer, is no longer receiving long-term disability benefits, and stated that her social security amounts to \$2181.00 per month. The MassHealth representative explained that removing the appellant's long-term disability income would allow her to qualify for the MSP-QMB, and she reported that the appellant is also eligible for MassHealth CommonHealth benefits if she is able to provide a working letter.² The MassHealth representative stated that MassHealth's position is that members cannot have MassHealth CommonHealth benefits and the MSP at the same time. The record was kept open for the appellant to decide which benefit she would choose and for MassHealth to provide regulatory support for its argument.

Findings of Fact

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

1. The appellant is a single adult over the age of 65. Testimony, Exhibit 4.
2. Prior to the issuance of the notice on appeal, the appellant was receiving both MassHealth Standard and the Medicare Savings Plan-Qualified Medicare Beneficiaries. Testimony.

¹ Prior to November 2023, this was known as the Senior-Buy In.

² The appellant submitted a working letter during the record open period and was deemed eligible for MassHealth CommonHealth.

3. On March 5, 2024, the appellant was terminated from those benefits due to MassHealth's determination that she exceeds the income limits to qualify. Exhibit 1.
4. The appellant filed a timely request for fair hearing on March 13, 2024. Exhibit 2.
5. The appellant earns between \$2181.00 and \$2356.00 in monthly Social Security benefits. Testimony.
6. The appellant otherwise qualifies for the Medicare Savings Plan and MassHealth CommonHealth. Exhibit

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, he is subject to the requirements of the provisions of Volume II. 130 CMR 515.002.

To determine a senior's eligibility for MassHealth Standard, the total countable-income amount and countable assets of the individual are compared to an income standard and asset limit. An individual who is eligible for Medicare Parts A and B must possess an income that is "less than or equal to 100% of the federal poverty level." 130 CMR 519.002(A)(4)(c).³ MassHealth will further pay "for Medicare Part A and Part B premiums and for deductibles and coinsurance under Medicare Parts A and B" for eligible seniors whose monthly income is "less than or equal to 190% of the federal poverty level." 130 CMR 519.010.

The current MassHealth federal poverty level standards can be found on its website, and 100% of the federal poverty level for a household of one is \$1255.00 based on 2024 Income Standards.⁴ Similarly, 190% of the federal poverty level for a household of one is \$2385.00 in monthly income.

In calculating the income of a senior applicant and, if applicable, their spouse, MassHealth applies the following relevant regulations:

³ Although 130 CMR 505.002(F) states that individuals with breast or cervical cancer may qualify for MassHealth Standard if their income is less than or equal to 250% of the federal poverty level, that regulation only applies to individuals under the age of 65. The senior regulations provide no such income modification. See *generally* 130 CMR 515.000.

⁴ <https://www.mass.gov/doc/2024-masshealth-income-standards-and-federal-poverty-guidelines-0/download>.

(A) Overview.

(1) An individual's and the spouse's gross earned and unearned income less certain business expenses and standard income deductions is referred to as the countable-income amount. In determining gross monthly income, the MassHealth agency multiplies the average weekly income by 4.333 unless the income is monthly.

(2) For community residents, the countable-income amount is compared to the applicable income standard to determine the individual's financial eligibility.

(3) For institutionalized individuals, specific deductions described in 130 CMR 520.026 are applied against the individual's countable-income amount to determine the patient-paid amount.

(4) The types of income that are considered in the determination of eligibility are described in 130 CMR 520.009, 520.018, 520.019, and 520.021 through 520.024. These include income to which the applicant, member, or spouse would be entitled whether or not actually received when failure to receive such income results from the action or inaction of the applicant, member, spouse, or person acting on his or her behalf. In determining whether or not failure to receive such income is reasonably considered to result from such action or inaction, the MassHealth agency will consider the specific circumstances involved.

(B) MassHealth Income Standards. Generally, financial eligibility is based on a percentage of the federal poverty level. The monthly federal poverty level standards are determined according to annual standards published in the Federal Register. The MassHealth agency adjusts these standards annually using the following formula.

(1) Divide the annual federal poverty level income standard as it appears in the Federal Register by 12.

(2) Multiply the unrounded monthly income standard by the applicable federal poverty level percentage.

(3) Round up to the next whole dollar to arrive at the monthly income standards.

....

(D) Unearned Income. Income that does not directly result from an individual's own labor or services is unearned. Unearned income includes, but is not limited to, social security benefits, railroad retirement benefits, pensions, annuities, federal veterans' benefits, rental income, interest, and dividend income. Gross rental income is the countable rental-income amount received less business expenses as described at 130 CMR 520.010(C). The applicant or member must verify gross unearned income. However, if he or she is applying solely for MassHealth Senior Buy-In for Qualified Medicare Beneficiaries (QMB) as described in 130 CMR 519.010: MassHealth Senior Buy-in (for Qualified Medicare Beneficiaries (QMB)) or MassHealth Buy-In for

Specified Low Income Medicare Beneficiaries (SLMB) or MassHealth Buy-In for Qualifying Individuals (QI) or both as described in 130 CMR 519.011: MassHealth Buy-In, verification is required only upon MassHealth agency request. Verifications include

- (1) a recent check stub showing gross income;
- (2) a statement from the income source when matching is not available;
- (3) for rental income: a written statement from the tenant or a copy of the lease; or
- (4) other reliable evidence.

130 CMR 520.009. The current standard unearned-income deduction for an individual or married couple is \$20 per month. *See Id.* at 520.513(A).

In this case, the appellant's income is somewhere between \$2181.00 and \$2356.00 per month. As these amounts each exceed 100% of the federal poverty level, MassHealth correctly determined that the appellant is no longer eligible for MassHealth Standard benefits. However, as both amounts are less than 190% of the federal poverty level, and the appellant is otherwise eligible, MassHealth wrongly terminated the appellant's Medicare Savings Plan – Qualified Medicare Beneficiary benefits.

There remains the question of whether the appellant may enroll in both MassHealth CommonHealth benefits and the MSP-QMB. In asserting that she may not, MassHealth relies on 130 CMR 519.012(D)(1), which states the following:

MassHealth also pays the cost of the monthly Medicare Part B premium through the Qualifying Individual program under 130 CMR 519.011(B) on behalf of members who meet the requirements of 130 CMR 505.004: MassHealth CommonHealth and who have modified adjusted gross income of the MassHealth Disabled Adult household that is less than or equal to 135% of the FPL.

MassHealth argues that this regulation contemplates the only scenario in which MassHealth will pay for the Medicare premium of a CommonHealth member, and because the appellant's income is over 135% of the federal poverty level, she does not meet the necessary requirements to have both benefits. As a hearing officer's decision is based on, among other factors, "the MassHealth agency's interpretation of its rules, policies, and regulations," I must give deference to MassHealth's interpretation of 130 CMR 519.012(D)(1). 130 CMR 610.082(A). As it may certainly be considered a reasonable interpretation of the regulation, I see no basis by which I can order MassHealth to allow the appellant to enroll in both MassHealth CommonHealth and the MSP-QMB.

For the foregoing reasons, I find that issued the March 5, 2024, notice in partial error. Thus, as the

appellant is eligible for both the MSP-QMB and MassHealth CommonHealth, she should be given the opportunity to choose in which benefit she wishes to enroll. Because I find the appellant is no longer eligible for MassHealth Standard, forever, the appeal is hereby APPROVED in part and DENIED in part.

Order for MassHealth

Allow the appellant to enroll in either MassHealth CommonHealth or the Medicare Savings Plan-Qualified Medicare Beneficiaries. Remove Aid Pending.

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.

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