

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



|                         |                |                       |            |
|-------------------------|----------------|-----------------------|------------|
| <b>Appeal Decision:</b> | Approved       | <b>Appeal Number:</b> | 2405483    |
| <b>Decision Date:</b>   | 5/31/2024      | <b>Hearing Date:</b>  | 05/21/2024 |
| <b>Hearing Officer:</b> | Sharon Dehmand |                       |            |

**Appearance for Appellant:**



**Appearance for MassHealth:**

Alyssa Smalley, 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

|                           |                |                          |                             |
|---------------------------|----------------|--------------------------|-----------------------------|
| <b>Appeal Decision:</b>   | Approved       | <b>Issue:</b>            | Waivers; Frail Elder Waiver |
| <b>Decision Date:</b>     | 5/31/2024      | <b>Hearing Date:</b>     | 05/21/2024                  |
| <b>MassHealth's Rep.:</b> | Alyssa Smalley | <b>Appellant's Rep.:</b> | ██████████                  |
| <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 March 25, 2024, MassHealth determined that the appellant is no longer eligible for MassHealth Standard but is eligible for Medicare Savings Program (a.k.a. Senior Buy-In) because her income exceeded the threshold for MassHealth Standard. See 130 CMR 520.001 and Exhibit 1. The appellant filed this appeal in a timely manner on April 4, 2024. See 130 CMR 610.015(B) and Exhibit 2. Any MassHealth decision to suspend, reduce, terminate, or restrict a member's assistance is valid grounds for appeal before the Board of Hearings. See 130 CMR 610.032(A)(3).

## Action Taken by MassHealth

MassHealth downgraded appellant's MassHealth Standard benefits to Medicare Savings Program (MSP).

## Issue

Whether MassHealth was correct in downgrading appellant's MassHealth Standard benefits to Medicare Savings Program because she was no longer eligible for Frail Elder Waiver pursuant to 130 CMR 519.005 and 130 CMR 519.007.

## Summary of Evidence

The following is a summary of the testimonies and evidence provided at the hearing:

The appellant's daughter, acting as her representative, and a MassHealth worker from the Tewksbury MassHealth Enrollment Center participated telephonically. The appellant's daughter verified the appellant's identity and represented her mother at the hearing.

MassHealth representative testified that an initial senior application for the appellant was received by MassHealth on March 30, 2023. The appellant was approved for MassHealth Standard under the home-and-community-based service waiver (i.e. Frail Elder Waiver) effective March 1, 2023. On February 23, 2024, MassHealth received a continued eligibility form for Frail Elder Waiver (FEW) from an Aging Services Access Point (ASAP).<sup>1</sup> The appellant's MassHealth Standard coverage was continued based on this re-determination of clinical eligibility for FEW. On March 21, 2024, MassHealth received a notification of non-participation from the ASAP which was dated March 18, 2024. The notice stated that the appellant is no longer receiving waiver services through the home and community care program or a senior care organization. Based on the loss of FEW, MassHealth issued a notice on March 25, 2024, downgrading the appellant's MassHealth Standard coverage under FEW to MSP due to appellant's income exceeding the threshold. The MassHealth representative stated that without the FEW, the MassHealth Standard income limit is 100% of the monthly federal poverty level which is \$1255.00 a month. The appellant is over income.

Appellant's daughter verified the appellant's income to be approximately \$2100.00 per month. She stated that since the initial senior application in 2023, the ASAP has been unable to provide any services to her mother because of a language barrier. The appellant speaks Italian and has dementia. Due to lack of services provided by the ASAP, the appellant's daughter asked them to assist with finding a PCA for her mother through MassHealth's PCA program. The ASAP declined and asked her whether the appellant will be continuing services with them. Due to unavailability of any services, the appellant's daughter answered in the negative. The appellant's daughter testified that she had no knowledge her answer would result in discontinuation of MassHealth Standard coverage. She said that had she known that answering in the negative would have ended her mother's MassHealth coverage, she would have continued working with the ASAP.

Additionally, appellant's daughter testified that she was completely surprised when she received MassHealth's notice regarding the discontinuation of her mother's MassHealth Standard coverage because the ASAP had just re-determined her mother's FEW eligibility in February 2024.

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<sup>1</sup> Aging Services Access Points (ASAPs) across the Commonwealth contract with the Executive Office of Elder Affairs and provide programs and services designed to support adults aged 60 and older. ASAPs are designated by Elder Affairs to carry out activities related to clinical screening, service authorization activities and case management for Community Based Long Term Care Services. See 651 CMR 14.03.

MassHealth representative suggested that the appellant contact her Care Manager at the ASAP as soon as possible and inform them that the loss of FEW has resulted in the discontinuation of MassHealth Standard coverage and explore options as to how to keep the appellant in the program.

## **Findings of Fact**

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

1. The appellant is over the age of 65 and lives in a household one. (Exhibit 4 and 5).
2. The appellant has dementia and has been determined to be clinically eligible for FEW. (Exhibit 5, pp.1-2).
3. The appellant was approved for MassHealth Standard based on FEW since March 30, 2023. (Testimony).
4. Since March 30, 2023, the ASAP has been unable to provide the appellant with PCA services because the appellant speaks Italian. (Testimony).
5. On February 23, 2024, the ASAP re-determined that the appellant was clinically eligible for FEW. (Testimony, Exhibit 5, pp.1-2).
6. On March 21, 2024, the ASAP informed MassHealth of the appellant's non-participation in the program and discontinued her FEW. (Testimony).
7. On March 25, 2024, MassHealth notified the appellant that her MassHealth Standard coverage was downgraded to MSP due to appellant's income exceeding the allowed threshold. (Testimony and Exhibit 1).
8. The appellant's MassHealth Standard coverage ended on April 8, 2024. (Testimony and Exhibit 1).
9. The appellant filed this appeal in a timely manner on April 4, 2024. (Exhibit 2).
10. The appellant's income is approximately \$2100.00 per month. (Testimony).
11. The MassHealth Standard income limit is 100% of the monthly federal poverty level which is \$1,255.00 a month for a household of one. (Testimony and Federal Poverty Guidelines).

12. The MassHealth Standard income limit under FEW is 300% of the monthly federal benefit rate which is \$2,829.00 a month for a household of one. (Testimony).

## Analysis and Conclusions of Law

The MassHealth regulations at 130 CMR 515.000 through 522.000 provide the requirements for MassHealth eligibility for persons over age 65. The type of coverage for which a person is eligible is based on the person's and the spouse's income, and assets as described in 130 CMR 519.000. See 130 CMR 515.003(B). The categorical requirements and financial standards that must be met for a MassHealth coverage type are set forth in MassHealth Regulations 130 CMR 519.000 through 519.007.

Per 130 CMR 519.005(A), an individual would meet the requirements of MassHealth Standard coverage if:

- (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.

An individual's countable income amount refers to the individual's gross earned and unearned income<sup>2</sup> less certain business expenses and standard income deductions. See 130 CMR 520.009. MassHealth allows a \$20 deduction per individual or couple from the member's total gross unearned income. See 130 CMR 520.013(A). If an individual exceeds these standards, he or she may establish eligibility by meeting a deductible. See 130 CMR 519.005(B).

Here, there is no dispute that the appellant's income is about \$2,100.00 per month. Less the \$20 deduction, appellant's income equals \$2080.00. Based on current MassHealth Income Standards and Federal Poverty Guidelines, the income limit for MassHealth Standard is 100% of the FPL, or \$1,255.00 a month for an individual over the age of 65 in household of one. Thus, the appellant is over income. However, the appellant has been on MassHealth Standard since March 1, 2023, because she has been qualified for FEW.

In order to receive MassHealth Standard benefits, appellant would have to qualify for a special circumstance such as the FEW, which has an income limit of 300% of the federal benefit rate (FBR). See 130 CMR 519.007(B)(2)(b). To qualify for the FEW, an individual must meet **both** clinical and financial eligibility requirements.

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<sup>2</sup> 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. See 130 CMR 520.009(D).

Per 130 CMR 519.007, the eligibility requirements for MassHealth Standard coverage for individuals who would be institutionalized if they were not receiving home- and community-based services is as follows:

...(B) Home- and Community-based Services Waiver–Frail Elder.

(1) Clinical and Age Requirements. The Home- and Community-based Services Waiver Allows an applicant or member who is certified by the MassHealth agency or its agent to be in need of nursing-facility services to receive certain waiver services at home if they

(a) are 60 years of age or older and, if younger than 65 years old, is permanently and totally disabled in accordance with Title XVI standards; and

(b) would be institutionalized in a nursing facility, unless he or she receives one or more of the services administered by the Executive Office of Elder Affairs under the Home and Community-Based Services Waiver-Frail Elder authorized under section 1915(c) of the Social Security Act.

(2) Eligibility Requirements. In determining eligibility for MassHealth Standard and for waiver services, the MassHealth agency determines income eligibility based solely on the applicant's or member's income regardless of their marital status. The applicant or member must

(a) meet the requirements of 130 CMR 519.007(B)(1)(a) and (b);

(b) have a countable-income amount less than or equal to 300% of the federal benefit rate (FBR) for an individual; and

(c) have countable assets of \$2,000 for an individual and, for a married couple if the initial Waiver eligibility determination was on or after January 1, 2014, have assets that are less than or equal to the standards at 130 CMR 520.016(B): Treatment of a Married Couple's Assets When One Spouse Is Institutionalized; and

(d) have not transferred resources for less than fair market value, as described at 130 CMR 520.018: Transfer of Resources Regardless of the Transfer Date and 520.019: Transfer of Resources Occurring on or After August 11, 1993.

(3) Financial Standards Not Met. Individuals whose income, assets, or both exceed the standards set forth in 130 CMR 519.007(B)(2) may establish eligibility for MassHealth Standard by reducing their assets in accordance with 130 CMR 520.004: Asset Reduction, by meeting a deductible as described at 130 CMR 520.028: Eligibility for a Deductible through 520.035: Conclusion of the Deductible Process, or by both. 130 CMR 519.007(B).

Here, the appellant meets the financial requirement to qualify for MassHealth Standard under

FEW because her income is less than 300% of FBR which is \$2829.00 per month. The only question is whether she meets the clinical eligibility for FEW.

The appellant has been clinically qualified for FEW by the ASAP since March 2023. Her clinical eligibility was re-determined by the ASAP on February 19, 2024. The ASAP provided MassHealth with a continued clinical eligibility form for FEW on February 23, 2024. MassHealth has not provided any evidence regarding the appellant's lack of clinical eligibility for FEW. Moreover, there is nothing in the regulations that terminates a member's clinical eligibility for FEW based on her or his non-use of services.

Therefore, based on credible testimony and documentary evidence submitted by the appellant's daughter, the appellant has proven by the preponderance of the evidence that she remains clinically eligible for FEW. Because the appellant has been determined to be clinically eligible for FEW, and her income is \$2100.00 per month which is less than 300% of the FBR, or \$2829.00 per month, she remains qualified to receive MassHealth Standard coverage.

For the foregoing reasons, this appeal is APPROVED.

## **Order for MassHealth**

Rescind notice dated March 25, 2024, and reinstate MassHealth Standard with no gap in coverage.

## **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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Sharon Dehmand  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957, 978-863-9290

