

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed; Denied	<b>Appeal Number:</b>	2405528
<b>Decision Date:</b>	8/1/2024	<b>Hearing Date:</b>	05/09/2024
<b>Hearing Officer:</b>	Scott Bernard	<b>Record Open to:</b>	06/10/2024 (the appellant attorney); 06/12/2024 (the MassHealth representative)

**Appearance for Appellant:**



**Appearance for MassHealth:**

Anna Martinez (Tewksbury MEC) *via* telephone



*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>	Dismissed; Denied	<b>Issue:</b>	Over 65; MSP-SLMB approval
<b>Decision Date:</b>	8/1/2024	<b>Hearing Date:</b>	05/09/2024
<b>MassHealth's Rep.:</b>	Anna Martinez	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Tewksbury MassHealth Enrollment Center	<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 5, 2024, MassHealth informed the appellant that she was eligible for Medicare Savings Program - Specified Low Income Medicare Beneficiaries (MSP-SLMB) beginning on March 1, 2024. (See 130 CMR 519.011(A) and Exhibit (Ex.) 1). The appellant, through her attorneys, filed this appeal in a timely manner on April 5, 2024. (See 130 CMR 610.015(B) and Ex. 2). Determinations regarding the scope or amount of MassHealth assistance are valid grounds for appeal. (See 130 CMR 610.032).

At the appellant attorney's request, the record was left open until June 10, 2024, at which time she submitted a memorandum of law. (Ex. 5; Ex. 6). The MassHealth representative emailed a response to the appellant attorney and the hearing officer on June 12, 2024, at which point the hearing record closed. (Ex. 7).

### Action Taken by MassHealth

MassHealth approved the appellant for MSP-SLMB beginning on March 1, 2024.

## Issue

Whether the appellant was eligible for MSP-SLMB or whether the appellant is eligible for more comprehensive MassHealth coverage.

## Summary of Evidence

The hearing was attended telephonically by an eligibility worker from the Tewksbury MassHealth Enrollment Center (MEC) who represented MassHealth (the MassHealth representative), and the appellant was represented by her attorney (the appellant's representative).

The MassHealth representative testified that the appellant lives in a household of one and is over the age of [REDACTED] (Testimony; Ex. 3). MassHealth previously denied the appellant's application for Long Term Care (LTC) services in [REDACTED] (Testimony; Ex. 6). The appellant (through her attorneys) appealed that determination, BOH held a hearing, and a hearing officer issued a decision denying the appeal on February 2, 2024.<sup>1</sup> (Testimony; Ex. 6). The appellant has not submitted a new application for LTC services. (Testimony; Ex. 8).

Beginning on March 1, 2024, MassHealth no longer considers the value of members' assets in determining eligibility for MSP benefits. (Testimony). Based on this and the BOH appeal decision, MassHealth redetermined the appellant's eligibility and approved the appellant for MSP-SLMB on March 5, 2024. (Testimony; Ex. 1). The appellant's income is \$2,465.70 per month from Social Security. (Testimony; Ex. 1). This is 196.47% of the federal poverty level, and therefore within the range of income making her eligible for MSP-SLMB. (Testimony).

The appellant is not eligible for community MassHealth Standard because her income exceeds the countable income amount, and her assets exceed countable asset limit for that benefit. (Testimony; Ex. 1). In order to be eligible for MassHealth Standard, a household of one would need to have gross monthly income (GMI) no greater than \$1,255. (Testimony). Additionally, the appellant would need to have countable assets that do not exceed \$2,000. (Testimony). The appellant's assets total \$269,889.65. (Testimony; Ex. 1).

The appellant's representative testified to the following. She confirmed that MassHealth had previously denied the appellant's LTC application, there was an appeal of that determination, and, as a result of a hearing, BOH upheld the denial in a decision dated February 2, 2024. (Testimony; Ex. 6). On February 28, 2024, the appellant's representative's office appealed the denial to Superior Court *via* M.G.L. c. 30A. (Testimony).

The appellant's representative stated that her office was trying to work with MassHealth attorneys to resolve the underlying issues concerning the appellant being over the asset limit. The

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<sup>1</sup> With the assent of the parties, the hearing officer entered the BOH decision for this previous appeal, Appeal No. 2312709, into the record as Ex. 6.

appellant's representative requested time after the hearing to try to see if there was some way that they could continue attempting to make the appellant eligible for MassHealth benefits. (Testimony).

The record was therefore left open until June 10, 2024 to allow the appellant's representative to submit "[v]erification that she and MassHealth legal have negotiated a solution that would permit her client to receive more comprehensive MassHealth coverage than she is currently receiving. Alternatively, a memorandum of law explaining how, based on the MassHealth regulations, the appellant should be found eligible for more comprehensive MassHealth coverage." (Ex. 5). The MassHealth representative initially agreed to respond on the same date. (Ex. 5).

On June 10, 2024, the appellant's representative submitted an email and other documents explaining a spend-down strategy but not showing that the appellant's assets had been spent down. (Ex. 7). On June 12, 2024, the MassHealth representative responded by email stating that the information the appellant's representative submitted would not change the appellant's coverage and that if the appellant required LTC coverage she needed to reapply for LTC services. (Ex. 8).

## Findings of Fact

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

1. The appellant lives in a household of one and is over the age of [REDACTED] (Testimony; Ex. 3).
2. The appellant applied for LTC services in [REDACTED] (Testimony; Ex. 6).
3. MassHealth denied the LTC application due to the appellant having excess income and assets. (Testimony; Ex. 6).
4. The appellant (through her attorneys) appealed that determination, BOH held a hearing, and a hearing officer issued a decision upholding MassHealth's denial on February 2, 2024. (Testimony; Ex. 6).
5. The appellant has not submitted a new application for LTC services. (Testimony).
6. Beginning on March 1, 2024, MassHealth no longer considers the value of members' assets in determining eligibility for MSP benefits. (Testimony).
7. Based on this and the BOH decision, MassHealth redetermined the appellant's eligibility and approved the appellant for MSP-SLMB on March 5, 2024. (Testimony; Ex. 1).
  - a. The appellant's income is \$2,465.70 per month or 196.47% of the federal poverty level and is therefore within the range of income making her eligible for MSP-SLMB.

(Testimony; Ex. 1).

b. The appellant is not eligible for MassHealth Standard

- i. The appellant's monthly income exceeds the income standard of \$1,255 per month for a household of one. (Testimony; Ex. 1).
- ii. The appellant's countable assets total \$269,889, which exceeds the asset limit of \$2,000. (Testimony; Ex. 1).

## Analysis and Conclusions of Law

BOH will dismiss a request for a hearing when it has conducted a hearing and issued a decision on the same appealable action arising out of the same facts that constitute the basis of the request. (130 CMR 610.035(A)(6)). The record shows that the appellant applied for LTC services in [REDACTED] MassHealth denied that application, and the appellant (through her attorneys) appealed that denial to BOH. BOH held a hearing concerning the denial and, on February 2, 2024, issued a decision upholding the denial. On March 5, 2024, MassHealth issued the determination under appeal, approving the appellant for MSP-SLMB. This was a redetermination of the appellant's eligibility for community based benefits, not a redetermination of the appellant's eligibility for LTC benefits. MassHealth confirmed that the appellant has not submitted a new application for LTC benefits. The issue of the appellant's [REDACTED] application for LTC benefits is final as a matter of administrative law, and is one which this appeal cannot reach via the notice under appeal. The appeal is dismissed with regard to any request for long term care benefits, because MassHealth's denial of the [REDACTED] application has already been adjudicated at BOH.

The question of whether MassHealth correctly determined the appellant's eligibility for a community based MassHealth benefit is one that can be considered here. In order to establish eligibility for MassHealth Standard, noninstitutionalized individuals [REDACTED] years of age and older must have countable income that is less than or equal to 100% of the federal poverty level; and countable assets that are \$2,000 or less. (130 CMR 519.005(A); 520.003; 520.009). The record shows that the appellant's income exceeds 100% of the federal poverty level for a one person household and she has countable assets above \$2,000. The appellant is not eligible for MassHealth Standard.

MSP is available for Specified Low Income Beneficiaries who, amongst other things, have countable income that is greater than 190% and less than or equal to 210% of the federal poverty level. (130 CMR 519.011(A)(1)(b)). In making eligibility determinations for MSP only benefits, MassHealth disregards all assets or resources. (*Id.*). The record shows that the appellant's income is above 190% of the federal poverty level, but below 210% of the federal poverty level. The record shows that the appellant is eligible for MSP-SLMB but is not eligible for MassHealth Standard.

Based on this, the appeal is DISMISSED in part, and DENIED in part.

## **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.

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Scott Bernard  
Hearing Officer  
Board of Hearings

cc:

[REDACTED]

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