

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2405671
<b>Decision Date:</b>	05/24/2024	<b>Hearing Date:</b>	05/17/2024
<b>Hearing Officer:</b>	Thomas J. Goode		

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Nancy Derisma, Charlestown 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>	Denied	<b>Issue:</b>	Eligibility; Immigration Status
<b>Decision Date:</b>	05/24/2024	<b>Hearing Date:</b>	05/17/2024
<b>MassHealth's Rep.:</b>	Nancy Derisma	<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 March 28, 2024, MassHealth notified Appellant that he is not eligible for a MassHealth coverage type other than MassHealth Limited due to his immigration status (130 CMR 504.003, 518.003 and Exhibit 1). Appellant filed this appeal in a timely manner on April 8, 2024 (130 CMR 610.015(B) and Exhibit 2). A determination of the scope of assistance is valid grounds for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth notified Appellant that due to immigration status, he is not eligible for a MassHealth coverage type other than MassHealth Limited.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 504.003, 518.003 in determining that Appellant is not eligible for a coverage type other than MassHealth Limited.

## Summary of Evidence

The MassHealth representative testified that Appellant is a household size of 4 including his spouse and two children, one of whom is a minor. Appellant files taxes and claims his spouse and 2 children as dependents. Appellant's household has no reported income. MassHealth testified that Appellant had been receiving MassHealth Standard coverage since 2015 which terminated on February 13, 2024. The MassHealth representative stated that Appellant's immigration status was incorrectly entered as a U.S. citizen. Appellant was asked to provide proof of immigration status and nothing was provided to MassHealth. Appellant is not a U.S. citizen, and his immigration status is currently undocumented. Because Appellant is not a citizen, his coverage type changed to MassHealth Limited. The MassHealth representative testified that Appellant is over 65 years of age, has not filed a disability supplement with MassHealth, and has not been determined disabled. She added that under 65 rules apply because Appellant is a caretaker of a minor child. Appellant is also eligible for the Health Safety Net.

Appellant testified that he is undergoing treatment for lung cancer and needs more comprehensive coverage for treatment. Appellant stated that he entered the United States in 1999 with a visitor visa which has expired. Appellant testified that he is not a U.S. citizen, or legal permanent resident, and he does not know his current immigration status. He added that he is working with an attorney to update his immigration status. Appellant testified that he would update his immigration status to MassHealth when he receives an update from his attorney.

## Findings of Fact

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

1. Appellant is over 65 years of age and lives in a household size of 4 including his spouse and two children, one of whom is a minor.
2. Appellant files taxes and claims his spouse and 2 children as dependents.
3. Appellant's household has no reported income.
4. Appellant had been receiving MassHealth Standard coverage which terminated on April 13, 2024.
5. Appellant has not been determined disabled by MassHealth or Social Security.
6. Appellant's immigration status was incorrectly recorded by MassHealth as a U.S. citizen;

however, Appellant is not a U.S. citizen, and his immigration status is pending documentation.

## Analysis and Conclusions of Law

130 CMR 518.003 Immigrants:

(A) Lawfully Present Immigrants. Qualified noncitizens, qualified noncitizens barred, and nonqualified individuals lawfully present are considered lawfully present immigrants. The applicable coverage types for qualified noncitizens, qualified noncitizens barred, and nonqualified individuals lawfully present are listed at 130 CMR 518.006.

(1) Qualified Noncitizens. There are two types of qualified noncitizens:

(a) those who are qualified regardless of when they entered the U.S. or how long they have had a qualified status. Such individuals are

1. persons granted asylum under section 208 of the INA;
2. Refugees admitted under section 207 of the INA;
3. persons whose deportation has been withheld under section 243(h) or 241(b)(3) of the INA, as provided by section 5562 of the federal Balanced Budget Act of 1997;
4. veterans, their spouses, and their children;
  - a. veterans of the United States Armed Forces with an honorable discharge not related to their noncitizen status;
  - b. Filipino war veterans who fought under U.S. command during WWII;
  - c. Hmong and Highland Lao veterans who are admitted for legal permanent residence (LPR) and who fought under U.S. command during the Vietnam War;
  - d. persons with noncitizen status on active duty in the U.S. Armed Forces, other than active duty for training; or
  - e. the spouse, unremarried surviving spouse, or unmarried dependent children of the noncitizen described in 130 CMR 518.003(A)(1)(a)4.a. through d.;
5. Conditional Entrants under section 203(a)(7) of the INA in effect before April 1, 1980;
6. persons who entered as Cuban/Haitian entrants under section 501(e) of the Refugee Education Assistance Act of 1980;
7. Native Americans with at least 50% American Indian blood who were born in Canada pursuant to section 289 of the INA or other tribal members born in territories outside of the U.S. pursuant to 25 U.S.C. § 450b(e), under Medicaid;
8. Amerasians as described in section 402(a)(2)(A)(i)(V) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA);
9. Victims of severe forms of trafficking, and spouse, child, sibling, or parent

of the victim in accordance with the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106-386);

10. Iraqi Special Immigrants granted special immigrant status under section 101(a)(27) of the INA, pursuant to Section 1244 of Public Law 110-181 or section 525 of Public Law 110-161;

11. Afghan Special Immigrants granted special immigrant status under section 101(a)(27) of the INA, pursuant to section 525 of Public Law 110-161; or

12. Migrants from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau who legally reside in the United States pursuant to a series of treaties with the United States known as the Compacts of Free Association (COFA), under Medicaid.

a. COFA migrants who adjust to legal permanent residence (LPR) status will have a special five-year bar rule applied. The individual will be subject to the special five-year bar rule unless they also have or had a status listed at 130 CMR 518.003(A)(1)(a). The special five-year bar rule that applies will depend upon the date the individual adjusted to LPR status.

b. COFA migrants who adjust to LPR status after the change of law on December 27, 2020, will be able to use the date they began residing in the United States as a COFA migrant or December 27, 2020, whichever is later, as the first day for purposes of meeting the five-year bar.

c. COFA migrants who adjusted to LPR status before the change of law on December 27, 2020, will have the five-year bar period begin on the date that they adjusted to LPR.

(b) noncitizens who are qualified based on having a qualified status identified at 130 CMR 518.003(A)(1)(b)1. and who have satisfied one of the conditions listed at 130 CMR 518.003(A)(1)(b)2. Such individuals are

1. persons who have one or more of the following statuses:

a. admitted for LPR under the INA; or

b. granted parole for at least one year under section 212(d)(5) of the INA; or

c. are the battered spouse, battered child, or child of battered parent, or parent of battered child who meets the criteria of section 431(c) of PRWORA; and also

2. satisfy at least one of the three following conditions:

a. have had a status in 130 CMR 518.003(A)(1)(b)1. for five or more years (a battered noncitizen attains this status when the petition is accepted as establishing a *prima facie* case);

b. entered the U.S. prior to August 22, 1996, regardless of status at the time of entry, and have been continuously present in the U.S., until attaining a status listed in 130 CMR 518.003(A)(1)(b)1.; for this purpose an individual is deemed continuously present who has been absent from

the U.S. for no more than 30 consecutive days or 90 nonconsecutive days prior to attaining a status listed in 130 CMR 518.003(A)(1)(b)1.; or  
c. also have or had a status listed in 130 CMR 518.003(A)(1)(a).

(2) Qualified Noncitizens Barred. Individuals who have a status listed in 130 CMR 518.003(A)(1)(b)1. (Legal Permanent Resident, parolee for at least one year, or battered noncitizen) and do not meet one of the conditions in 130 CMR 518.003(A)(1)(b)2. Qualified noncitizens barred, like qualified noncitizens, are lawfully present nonqualified individuals.

(3) Nonqualified Individuals Lawfully Present. Nonqualified individuals lawfully present are not defined as qualified under PRWORA, 8 U.S.C. § 1641, but are lawfully present. Nonqualified individuals lawfully present are as follows:

- (a) in a valid nonimmigrant status as otherwise defined in 8 U.S.C. § 1101(a)(15) or otherwise under immigration laws (as defined in 8 U.S.C. § 1101(a)(17));
- (b) paroled into the United States in accordance with 8 U.S.C. § 1182(d)(5) for less than one year, except for an individual paroled for prosecution, for deferred inspection or pending removal proceedings;
- (c) belong to one of the following classes:
  - 1. granted Temporary Resident Status in accordance with 8 U.S.C. § 1160 or 1255a, respectively;
  - 2. granted Temporary Protected Status (TPS) in accordance with 8 U.S.C. § 1254a, and individuals with pending applications for TPS who have been granted employment authorization;
  - 3. granted employment authorization under 8 CFR 274a.12(c);
  - 4. Family Unity beneficiaries in accordance with section 301 of Public Law 101-649;
  - 5. under Deferred Enforced Departure (DED) in accordance with a decision made by the President;
  - 6. granted Deferred Action status, except for applicants or individuals granted status under the United States Department of Homeland Security (DHS) Deferred Action for Childhood Arrivals Process (DACA);
  - 7. granted an administrative stay of removal under 8 CFR part 241;
  - 8. beneficiary of approved visa petition who has a pending application for adjustment of status;
- (d) have a pending application for asylum under 8 U.S.C. § 1158, or for withholding of removal under 8 U.S.C. § 1231, or under the Convention Against Torture Treaty who
  - 1. have been granted employment authorization; or
  - 2. are younger than 14 years old and have had an application pending for at least 180 days;
- (e) have been granted withholding of removal under the Convention Against Torture Treaty; or

(f) is a child who has a pending application for Special Immigrant Juvenile status as described in 8 U.S.C. § 1101(a)(27)(J).

(B) Protected Noncitizens. Noncitizens who are not qualified noncitizens as described in 130 CMR 518.003(A)(1) but who are qualified noncitizens barred as described at 130 CMR 518.003(A)(2), nonqualified individuals lawfully present as described in 130 CMR 518.003(A)(3), nonqualified persons residing under color of law (PRUCOLs) as described in 130 CMR 518.003(C), or other noncitizens as described in 130 CMR 518.003(D), are considered protected noncitizens and may continue to receive MassHealth regardless of immigration status, if they meet one of the following conditions and are otherwise eligible. This status continues until a determination of ineligibility due to failure to meet categorical or financial eligibility requirements has been made.

(1) They were receiving medical assistance on June 30, 1997.

(2) They had a long-term-care application pending on July 1, 1997.

(3) They lived in a long-term-care facility on June 30, 1997, but had not yet applied for MassHealth.

(C) Nonqualified Persons Residing under Color of Law (Nonqualified PRUCOLs). Certain noncitizens who are not described at 130 CMR 518.003(A) or (B) may be permanently living in the United States under color of law. The applicable coverage types for nonqualified PRUCOLs are listed at 130 CMR 518.006. If not otherwise described in 130 CMR 518.003(A) or (B), the following are considered nonqualified PRUCOLs:

(1) noncitizens living in the United States in accordance with an Indefinite Stay of Deportation;

(2) noncitizens living in the United States in accordance with an Indefinite Voluntary Departure;

(3) noncitizens and their families who are covered by an approved immediate relative petition, who are entitled to Voluntary Departure, and whose departure the DHS does not contemplate enforcing;

(4) noncitizens granted Voluntary Departure by the DHS or an Immigration Judge, and whose deportation the DHS does not contemplate enforcing;

(5) noncitizens living under Orders of Supervision who do not have employment authorization under 8 CFR 274a 12(c);

(6) noncitizens who have entered and continuously lived in the United States since before January 1, 1972;

(7) noncitizens granted Suspension of Deportation, and whose departure the DHS does not contemplate enforcing;

(8) noncitizens with pending applications for asylum under 8 U.S.C. § 1158 or for Withholding of Removal under 8 U.S.C. § 1231 or under the Convention Against

Torture Treaty who have not been granted employment authorization, or are younger than 14 years old and have not had an application pending for at least 180 days;

(9) noncitizens granted DACA status or have a pending application for this status;

(10) noncitizens who have filed an application, petition, or request to obtain a lawfully present status that has been accepted as properly filed but who have not yet obtained employment authorization and whose departure the DHS does not contemplate enforcing; or

(11) any other noncitizens living in the United States with the knowledge and consent of the DHS, and whose departure the DHS does not contemplate enforcing. (These include persons granted Extended Voluntary Departure due to conditions in the noncitizen's home country based on a determination by the U.S. Secretary of State.)

(D) Other Noncitizens. Noncitizens whose status is not described in 130 CMR 518.003(A) through (C) are considered other noncitizens.

#### 518.006: Applicable Coverage Types

(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: *MassHealth: Coverage Types*.

(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: *MassHealth Family Assistance* 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: *MassHealth Limited*; or

(3) MassHealth Standard if they are younger than 21 years old or pregnant and meet the categorical and financial requirements described in 130 CMR 519.006: *Long-term-care Residents* or 519.007: *Individuals Who Would Be Institutionalized*.

(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: *MassHealth Family Assistance* 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: *MassHealth Limited*.

(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: *MassHealth Limited*.

Appellant is over 65 years of age and is not a U.S. citizen or legal permanent resident. Appellant lives in a household of 4 with one minor child, reported no income, and has purportedly resided in the United States with a visitor Visa since 1999 which is now expired. Appellant has not been determined disabled. MassHealth testified that Appellant was receiving Standard coverage due to an error that incorrectly recorded Appellant's immigration status as a U.S. citizen. Appellant acknowledged that he is not a U.S. citizen; however, Appellant has not provided verification of his correct and current immigration status to MassHealth. Pursuant to 130 CMR 519.005(C)(1), Adults who are 65 years of age and older and are the parents or caretaker relatives of a child younger than 19 years old receive MassHealth Standard if they meet the requirements of 130 CMR 505.002(C): *Eligibility Requirements for Parents and Caretaker Relatives* or (L): *Extended Eligibility*.<sup>1</sup> Because Appellant is not a U.S. citizen or a qualified noncitizen as described in 130 CMR 504.003(A)(1), he is not eligible to receive MassHealth Standard coverage under 130 CMR 505.002(C). However, as a community resident over 65 years of age, MassHealth determined that Appellant meets criteria for MassHealth Limited described at 130 CMR 519.009:

(A) Eligibility Requirements.

(1) MassHealth Limited is available to community residents 65 years of age and older meeting the financial and categorical requirements of MassHealth Standard coverage as described at 130 CMR 519.005(A) and (B)<sup>2</sup> and who are

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<sup>1</sup> See 130 CMR 505.002(C) Eligibility Requirements for Parents and Caretaker Relatives.

(1) A parent or caretaker relative of a child younger than 19 years old is eligible for MassHealth Standard coverage if

(a) the modified adjusted gross income of the MassHealth MAGI household is less than or equal to 133% of the federal poverty level (FPL);

**(b) the individual is a citizen as described at 130 CMR 504.002: U.S. Citizens or a qualified noncitizen as described in 130 CMR 504.003(A)(1): Qualified Noncitizens; and**

(c) 1. the parent lives with their children, and assumes primary responsibility for the child's care, in the case of a parent who is separated or divorced, has custody of their children, or has children who are absent from home to attend school; or  
2. the caretaker relative lives with children to whom they are related by blood, adoption, or marriage (including stepsiblings), or is a spouse or former spouse of one of those relatives, and assumes primary responsibility for the child's care if neither parent lives in the home.

(2) The parent or caretaker relative complies with 130 CMR 505.002(M).

<sup>2</sup> 519.005: Community Residents 65 Years of Age and Older

(A) Eligibility Requirements. Except as provided in 130 CMR 519.005(C), noninstitutionalized individuals 65 years of age and older may establish eligibility for MassHealth Standard coverage provided they meet the following requirements:

(1) the countable-income amount, as defined in 130 CMR 520.009: *Countable-income Amount*, of

- (a) other noncitizens described in 130 CMR 518.003(D): *Other Noncitizens*;
- (b) qualified noncitizens barred as described in 130 CMR 518.003(A)(2): *Qualified Noncitizens Barred*;
- (c) nonqualified individuals lawfully present as described in 130 CMR 518.003(A)(3): *Nonqualified Individuals Lawfully Present*; or
- (d) nonqualified PRUCOLs as described in 130 CMR 518.003(C): *Nonqualified Persons Residing under Color of Law (Nonqualified PRUCOLs)*.

Based on the current undocumented immigration status testified to by MassHealth, the MassHealth determination is correct, and the appeal is DENIED.

Appellant can direct any questions about the Health Safety Net to 877-910-2100, and inquire about coverage through the Health Connector by calling 1-877-623-6765. Appellant can also update his immigration status by Fax: 1-857-323-8300 or mail to: Commonwealth of Massachusetts, Health Processing Center, P.O. Box 4405, Taunton, MA 02780.

## 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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Thomas J. Goode  
Hearing Officer  
Board of Hearings

cc:

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

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the individual or couple is less than or equal to 100% 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.