

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2405789
Decision Date:	09/03/2024	Hearing Dates:	06/05/2024 07/16/2024
Hearing Officer:	Thomas J. Goode	Record Open to:	07/19/2024

Appearances for Appellant:



Appearance for MassHealth:

Diane Braley, Taunton 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

Appeal Decision:	Denied	Issue:	Eligibility
Decision Date:	09/03/2024	Hearing Date:	06/05/2024 07/16/2024
MassHealth's Rep.:	Diane Braley	Appellant's Reps.:	
Hearing Location:	Remote	Aid Pending:	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 informed Appellant of an upgrade to Standard coverage effective March 1, 2024 under the Home and Community Based Services Waiver (For Frail Elders) (130 CMR 519.007(B) and Exhibit 1). Appellant filed this appeal in a timely manner on April 10, 2024 (130 CMR 610.015(B) and Exhibit 2). A determination of MassHealth eligibility and the scope of coverage is valid grounds for appeal (130 CMR 610.032). A hearing was scheduled for May 16, 2024, and was rescheduled because MassHealth did not appear at the appointed time (Exhibit 3). A hearing was held on June 5, 2024, and was continued on July 16, 2024, after which the record remained open until July 19, 2024.

Action Taken by MassHealth

Through a notice dated March 25, 2024, MassHealth informed Appellant of an upgrade to Standard coverage effective March 1, 2024 under a Home and Community Based Services Waiver (For Frail Elders).

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.007(B), in changing

Appellant's MassHealth coverage to Standard effective March 1, 2024 under the Home and Community Based Services Waiver (For Frail Elders).

Summary of Evidence

The MassHealth representative testified that Appellant is a disabled adult over 65 years of age who resides in the community. MassHealth issued an approval notice on March 25, 2024, informing Appellant of an upgrade to Standard coverage effective March 1, 2024, under the Home and Community Based Services Waiver (For Frail Elders). The March 25, 2024 notice also informed Appellant that he was eligible for Waiver Services as of May 10, 2023; however, MassHealth cannot pay for waiver services delivered before a Waiver Plan of Care is developed and approved for your specific services. Appellant applied for the Frail Elder Waiver on February 22, 2024. The determination was made based on a Notice of Clinical Eligibility Determination dated March 13, 2024 which informed Appellant that he was clinically eligible for participation in the Frail Elder Waiver effective March 7, 2024 (Exhibit 1A). MassHealth reviewed Appellant's MassHealth history and testified that prior to approval for services through the Frail Elder Waiver, Appellant was approved for MassHealth Senior Buy In by notice dated January 5, 2024 which also informed him that his income exceeded program limits for MassHealth Standard coverage (Exhibit 8, p. 14). On February 29, 2024, MassHealth issued a notice informing Appellant that his income exceeded program limits for Standard coverage and resulted in a \$1,465 deductible for the period 1/5/2024 to 8/1/2024 (Id., p. 16). A notice dated March 6, 2024 informed Appellant that due to an income change, his income exceeded program limits for Standard coverage and resulted in a \$1,520 deductible for the period 1/5/2024 to 8/1/2024 (Id., p. 17). An additional notice dated March 8, 2024 informed Appellant that due to an income change, his income exceeded program limits for Standard coverage and resulted in a \$2,399 deductible for the period 1/5/2024 to 8/1/2024 (Id., p. 18). None of the notices were appealed.

Appellant and his representatives appeared by telephone and testified that in January 2024, Appellant's PCA services ended, and Appellant's PCA was not paid for the 6 hours of care per day she provided to Appellant. Appellant is disabled and had been admitted to a nursing facility from [REDACTED] through [REDACTED]. Appellant was also admitted to a rehabilitation facility on [REDACTED] and was discharged to the community on [REDACTED]. Appellant's representatives testified that ARC of the South Shore was paying for 48 hours of PCA services approved by MassHealth by notice dated May 8, 2023 (Exhibit 4, pp. 19-21). Appellant testified that the purpose of the appeal was to establish coverage to pay Appellant's PCA for January through March 2024.

Findings of Fact

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

1. Appellant is a disabled adult over 65 years of age and resides in the community.
2. MassHealth issued an approval notice on March 25, 2024, informing Appellant of an upgrade to Standard coverage effective March 1, 2024 under the Home and Community Based Services Waiver (For Frail Elders). The March 25, 2024 notice also informed Appellant that he was eligible for Waiver Services as of May 10, 2023; however, MassHealth cannot pay for waiver services delivered before a Waiver Plan of Care is developed and approved for your specific services.
3. Appellant applied for the Frail Elder Waiver on February 22, 2024.
4. A Notice of Clinical Eligibility Determination issued on March 13, 2024 and informed Appellant that he was clinically eligible for participation in the Frail Elder Waiver effective March 7, 2024.
5. Appellant was approved for MassHealth Senior Buy In by notice dated January 5, 2024, which also informed him that his income exceeded program limits for MassHealth Standard coverage.
6. On February 29, 2024, MassHealth issued notice informing Appellant that income exceeded program limits for Standard coverage and resulted in a \$1,465 deductible for the period 1/5/2024 to 8/1/2024.
7. A notice dated March 6, 2024 informed Appellant that due to an income change his income exceeded program limits for Standard coverage and resulted in a \$1,520 deductible for the period 1/5/2024 to 8/1/2024.
8. A notice dated March 8, 2024, informed Appellant that due to an income change his income exceeded program limits for Standard coverage and resulted in a \$2,399 deductible for the period 1/5/2024 to 8/1/2024.
9. None of the notices preceding the March 25, 2024 approval notice were appealed.
10. Appellant was admitted to a nursing facility from [REDACTED] through [REDACTED].
11. Appellant was admitted to a rehabilitation facility on [REDACTED] and was discharged to the community on [REDACTED].

12. By notice dated May 8, 2023, MassHealth approved 48 hours per week for the prior authorization period 5/8/2023 through 5/7/2024 through ARC of the South Shore.

Analysis and Conclusions of Law

Eligibility criteria for the Frail Elder Waiver is described at 130 CMR 519.007:

(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.

Appellant is a disabled adult over 65 years of age who resides in the community. Appellant applied for the Frail Elder Waiver on February 22, 2024. MassHealth issued an approval notice on March 25, 2024, informing Appellant of an upgrade to Standard coverage effective March 1, 2024 under the Home and Community Based Services Waiver (For Frail Elders). The March 25, 2024 notice also informed Appellant that he was eligible for Waiver Services as of May 10, 2023; however, MassHealth cannot pay for waiver services delivered before a waiver plan of care is developed and approved for your specific services. The eligibility through the Frail Elder Waiver was based on a Notice of Clinical Eligibility Determination dated March 13, 2024, which informed Appellant that he was clinically eligible for participation in the Frail Elder Waiver effective March 7, 2024 (Exhibit 1A). There is no dispute that Appellant is categorically and financially eligible for services through the Frail Elder Waiver.

Appellant opines that payment for PCA services was terminated for the period January 2024 through March 2024 and resulted in Appellant's PCA not being paid for services rendered during the period. Appellant was approved for PCA services on May 8, 2023 for the prior authorization period May 8, 2023 through May 7, 2024 (Exhibit 4, pp. 19-21); however, the approval predates the application and approval for the Frail Elder Waiver, and is not part of the waiver plan of care approved in March 2024.¹ Prior to applying for the Frail Elder Waiver, Appellant was approved for MassHealth Senior Buy In by notice dated January 5, 2024 which also informed him that his income exceeded program limits for MassHealth Standard coverage (Exhibit 8, p. 14). On February 29, 2024, MassHealth issued notice informing Appellant that income exceeded program limits for Standard coverage and resulted in a \$1,465 deductible for the period 1/5/2024 to 8/1/2024 (Id., p. 16). A notice dated March 6, 2024, informed Appellant that due to an income change his income exceeded program limits for Standard coverage and resulted in a \$1,520 deductible for the period 1/5/2024 to 8/1/2024 (Id., p. 17). An additional notice dated March 8, 2024 informed Appellant that due to an income change his income exceeded program limits for Standard coverage and resulted in a \$2,399 deductible for the period 1/5/2024 to 8/1/2024 (Id., p. 18). A MassHealth member over 65 years of age living in the community must be financially eligible for MassHealth coverage.² However, this hearing decision cannot address the several notices issued between January 2024 and March 2024 because none of the notices were appealed by Appellant.³ It appears that prior to approval for MassHealth Standard coverage through the Frail Elder Waiver, Appellant's income exceeded program limits for a MassHealth coverage type that would authorize payment for PCA services between January 2024 and March 2024.⁴

¹ See 42 CFR § 441.301(b) states: If the agency furnishes home and community-based services, as defined in § 440.180 of this subchapter, under a waiver granted under this subpart, the waiver request must - (1) Provide that the services are furnished - (i) Under a written person-centered service plan (also called plan of care) that is based on a person-centered approach and is subject to approval by the [Medicaid](#) agency.

² See 130 CMR 519.005 for financial standards for community residents over 65 years of age.

³ An appealable notice generally must be appealed within 60 days (130 CMR 610.015 (B)). Notices dated January 5, 2024, February 29, 2024, March 6, 2024, March 8, 2024, and March 25, 2024 were sent to Appellant's current address. Notices were also presumably sent to Appellant's representative as notices dated March 25, 2024, March 8, 2024, March 6, 2024, February 29, 2024 include her address (Exhibit 4, pp. 12-16).

⁴ Appellant's representative submitted documentation showing that she discussed with a Shine Counselor

However, because the March 25, 2024 notice of approval is correct, the appeal is 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.

Thomas J. Goode
Hearing Officer
Board of Hearings

[REDACTED]

Appeals Coordinator: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780

Appellant's ineligibility due to income and the change to Senior Buy resulting in the loss of PCA services (Exhibit 4 p. 5).