

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2406723
<b>Decision Date:</b>	07/30/2024	<b>Hearing Date:</b>	5/28/2024
<b>Hearing Officer:</b>	Cynthia Kopka	<b>Record Open to:</b>	6/11/2024

**Appearances for Appellant:**



**Appearance for MassHealth:**

Mary Kate Frangules, Charlestown



*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>	Over 65, eligibility, income, PACE
<b>Decision Date:</b>	07/30/2024	<b>Hearing Date:</b>	5/28/2024
<b>MassHealth's Rep.:</b>	Mary Kate Frangules	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Charlestown	<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

By notice dated March 3, 2024, MassHealth notified Appellant that the monthly amount paid to her PACE provider would change beginning April 2024. Exhibit 1. Appellant filed this appeal in a timely manner on April 26, 2024. Exhibit 2. 130 CMR 610.015(B). Modification of assistance is a valid basis for appeal. 130 CMR 610.032. The hearing record was held open through June 11, 2024 for the submission of additional evidence. Exhibit 5.

### Action Taken by MassHealth

MassHealth notified Appellant that her monthly PACE deductible would change beginning April 2024.

### Issue

The appeal issue is whether MassHealth was correct in determining that she owes a monthly amount to her PACE provider and in calculating the amount.

### Summary of Evidence

The MassHealth representative appeared virtually at hearing. Appellant and her son/attorney appeared in person. Documents were submitted by both sides prior to hearing and during a record open period. Exhibit 4, 6, 7. A summary of testimony, argument, and documentary evidence follows.

Appellant is in a household of one and is over the age of 65. Appellant is enrolled in a Program of All-inclusive Care for the Elderly (PACE) in the community. Appellant applied for PACE on April 8, 2022. On April 20, 2024, Appellant was approved for PACE with a monthly deductible of \$1,878. At the time, Appellant's gross monthly income was \$2,591.10, which was above 300% of the Federal Benefit Rate (FBR) at the time (\$2,523).

On March 5, 2024, MassHealth's system adjusted Appellant's income based on the cost of living increase she received for her Social Security income. MassHealth determined that Appellant's gross Social Security income was \$2,905.70. Less the \$20 unearned income disregard, Appellant's countable monthly income was \$2,885. This is above 300% of the FBR (\$2,829) and therefore Appellant owed a monthly deductible to her PACE program.

MassHealth calculated the monthly deductible by subtracting from her income \$522, the income standard for a household of one, and \$174.70 for her monthly Medicare premium. MassHealth determined that Appellant's monthly net deductible amount would be \$2,188.30. Exhibit 1. The MassHealth representative testified that in January, MassHealth's system sent erroneous notices due to an error. Appellant had received a notice with a post-eligibility treatment of income (PETI) calculation of zero. The MassHealth representative explained that someone who was under 300% of the FBR at the time of application would be eligible for a PETI calculation if their income rose above 300% after the initial point of contact. However, Appellant does not qualify for a PETI calculation because she was over 300% when she first applied in April 2022.

Appellant submitted documents showing the private dental and vision insurance she pays monthly, at \$74.87 and \$16.74 per month respectively. Exhibit 6. Appellant's attorney argued that when these two monthly payments are deducted from her monthly gross income of \$2,905, her countable income is reduced to \$2,814.39 per month. This is below the 300% maximum of \$2,829 and therefore Appellant is responsible to pay \$0 to her PACE provider. *Id.*

Appellant's attorney also provided a copy of Appellant's lease, showing her monthly rent of \$1,800, a below-market rate. *Id.* Appellant's attorney argued that that the PACE program is designed to provide services that will allow the elderly to remain in the community. If Appellant were required to pay PACE the amount of \$2,188.00 per month, the entire purpose of the PACE program would be frustrated. Accordingly, Appellant requested a finding that her countable income is below the limit and the correct amount that she must pay to the PACE provider is \$0. *Id.* The MassHealth representative testified at hearing that payments made for monthly health insurance expenses do not reduce the countable income amount, but are deducted for purposes

of calculating the deductible. MassHealth provided an updated approval notice calculating a new amount owed to PACE based on the evidence Appellant provided. Exhibit 7. The new notice dated July 3, 2024 provides that Appellant will owe her PACE provider \$2,096 monthly. *Id.*

## Findings of Fact

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

1. Appellant is in a household of one and over the age of 65.
2. Appellant enrolled in PACE as a community member in April 2022.
3. In 2022, Appellant's gross monthly unearned income was \$2,591.
4. In 2024, Appellant's gross monthly unearned income was \$2,905.
5. In 2024, 100% of the monthly FPL for a household of one was \$1,255.
6. In 2022, 300% of the federal benefit rate (FBR) was \$2,523. In 2024, 300% of the FBR was \$2,829.
7. On March 3, 2024, MassHealth notified Appellant that her monthly PACE deductible would change to \$2,188.30 beginning April 2024. Exhibit 1.
8. Appellant filed this appeal in a timely manner on April 26, 2024. Exhibit 2.
9. Appellant pays \$74.87 per month for private dental insurance and \$16.74 per month for vision insurance. Exhibit 6.
10. On July 3, 2024, MassHealth recalculated Appellant's monthly PACE deductible to \$2,096 per month. Exhibit 7.

## Analysis and Conclusions of Law

At issue in this appeal is whether Appellant owes a monthly amount to her PACE provider. MassHealth's regulations regarding the PACE program are set forth in 130 CMR 519.007(C):

Program of All-inclusive Care for the Elderly (PACE).

(1) Overview. The PACE program is a comprehensive health program that is designed to keep frail, older individuals who are certified eligible for nursing facility services living in the community.

(a) A complete range of health care services is provided by one designated community-based program with all medical and social services coordinated by a team of health professionals.

(b) The MassHealth agency administers the program in Massachusetts as the Elder Service Plan (ESP).

(c) Persons enrolled in PACE have services delivered through managed care

1. in day-health centers;

2. at home; and

3. in specialty or inpatient settings, if needed.

(2) Eligibility Requirements. In determining PACE eligibility, the MassHealth agency counts the income and assets of only the applicant or member regardless of their marital status. The applicant or member must meet all of the following criteria:

(a) be 55 years of age or older;

(b) meet Title XVI disability standards if 55 through 64 years of age;

(c) be certified by the MassHealth agency or its agent to be in need of nursing facility services;

(d) live in a designated service area;

(e) have medical services provided in a specified community-based PACE program;

(f) have countable assets whose total value does not exceed \$2,000 or, if assets exceed these standards, reduce assets in accordance with 130 CMR 520.004: *Asset Reduction*; and

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

(3) Income Standards Not Met. Individuals whose income exceeds the standards set forth in 130 CMR 519.007(C)(2) may establish eligibility for MassHealth Standard by meeting a deductible as described at 130 CMR 520.028: *Eligibility for a Deductible* through 520.035: *Conclusion of the Deductible Process*.

MassHealth defines a countable income amount in 130 CMR 520.009(A)(1) as an individual's "gross earned and unearned income less certain business expenses and standard income deductions." Financial eligibility is based on a percentage of the federal poverty level, determined according to annual standards published in the Federal Register. 130 CMR 520.009(B).

The standard income deductions are described in 130 CMR 520.012 through 520.014. 130 CMR 520.011. Relevant here are the deductions listed in 130 CMR 520.013:

#### 520.013: Community Unearned-income Deductions

In addition to business expenses described at 130 CMR 520.010, the MassHealth agency allows the deductions listed below from the total gross unearned income. These deductions do not apply to the income of a community spouse described at 130 CMR 520.026(B). The deductions allowed from the total gross unearned income are

the following:

(A) a deduction of \$20 per individual or married couple; or  
(B) in determining eligibility for MassHealth Standard, a deduction that is equivalent to the difference between the applicable MassHealth deductible-income standard at 130 CMR 520.030 and 133% of the federal poverty level. This deduction includes, and is not in addition to, the \$20 disregard.

- (1) This deduction from gross unearned income is allowed only for persons who
  - (a) are 65 years of age and older;
  - (b) are receiving personal-care attendant services paid for by the MassHealth agency, or have been determined by the MassHealth agency, through initial screening or by prior authorization, to be in need of personal-care attendant services; and
  - (c) prior to applying the deduction at 130 CMR 520.013(B), have countable income that is over 100% of the federal poverty level.
- (2) The MassHealth agency will redetermine eligibility without this deduction if
  - (a) after 90 days from the date of the MassHealth agency eligibility approval notice, the person is not receiving personal-care attendant services paid for by the MassHealth agency or has not submitted, upon request from the MassHealth agency, proof of efforts to obtain personal-care attendant services paid for by the MassHealth agency; or
  - (b) the MassHealth agency denies the prior-authorization request for personal-care attendant services.
- (3) If countable income, prior to applying the deduction at 130 CMR 520.013(B), is greater than 133 percent of the federal poverty level, eligibility is determined under 130 CMR 519.005(B): *Financial Standards Not Met*.

Here, Appellant receives gross monthly unearned income of \$2,905.70. From this unearned income, Appellant would be allowed a \$20 disregard pursuant to 130 CMR 520.013(A).<sup>1</sup> MassHealth does not permit deductions for health insurance premiums from the countable income amount for community members, unlike for individuals applying for long-term care benefits. See 130 CMR 520.014(A)(2)(d). Therefore, MassHealth's determination that Appellant's countable income was \$2,885 was correct. As this exceeds 300% of the FBR, she is not financially eligible for MassHealth Standard through the PACE program and would have to meet a deductible before eligibility can be established. 130 CMR 519.007(C), 130 CMR 520.028. The deductible is the total dollar amount of incurred medical expenses that an individual is responsible for before MassHealth eligibility is established. 130 CMR 520.031. The deductible is calculated based on the amount that the individual's monthly income exceeds the MassHealth

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<sup>1</sup> Appellant's eligibility for a deduction under 130 CMR 520.013(B) (known as the "PCA disregard") was not established at hearing. However, given that Appellant's countable income amount is greater than 133% of the FPL, even if Appellant qualified for the PCA disregard, she would still be obligated to pay a deductible. See 130 CMR 520.013(B)(3), 130 CMR 519.005(B)

income standard (\$522). 130 CMR 520.030.

Appellant's countable income for the deductible calculation is \$2,885. MassHealth subtracted \$522 for the income standard, \$174.70 for Appellant's Medicare premium, \$74.87 for dental insurance, and \$16.74 for vision insurance. See 130 CMR 520.032(B)(1). MassHealth's calculation of \$2,096.69 is correct based on the evidence in the record.

Appellant's attorney inquired as to whether Appellant qualified for a PETI calculation. With Eligibility Operations Memo (EOM) 21-13, MassHealth implemented the federal PETI policy for members enrolled in PACE pursuant to 42 CFR § 460.184, as follows:

individuals who had initially established MassHealth eligibility with income at or below 300% of the FBR and are enrolled in PACE, but who later experienced an increase in countable income, causing their income to exceed 300% of the FBR, may remain in their MassHealth Standard benefit and remain enrolled in PACE by spending down their income to 300% of the FBR. These members will remain financially eligible for continued MassHealth enrollment in PACE, subject to a monthly patient paid amount that is equal to their excess income over 300% of the FBR, less any allowable deductions.

Note: Individuals enrolled in PACE who had income over 300% of the FBR at the time of their initial MassHealth eligibility determination are not in the special income eligibility group and therefore PETI rules cannot be applied. However, such PACE enrollees may continue to establish eligibility for MassHealth Standard by spending down their income according to the rules at 130 CMR 520.028 through 520.035.

Here, Appellant would not qualify for a PETI calculation because her income was over 300% of the FBR in 2022 when she first enrolled in PACE. As such, she must establish eligibility for MassHealth Standard by meeting the deductible as outlined above.

The regulations and policies do not allow for the relief sought by Appellant. Accordingly, this 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.

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Cynthia Kopka  
Hearing Officer  
Board of Hearings

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MassHealth Representative: Nga Tran, Charlestown MassHealth Enrollment Center, 529 Main Street, Suite 1M, Charlestown, MA 02129