

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in Part; Denied in Part	Appeal Number:	2406833
Decision Date:	7/29/2024	Hearing Date:	06/04/2024
Hearing Officer:	Emily Sabo		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Shanell Santiago, 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

Appeal Decision:	Approved in Part; Denied in Part	Issue:	Community Eligibility—Under 65; Medicare Savings Program (MSP)
Decision Date:	7/29/2024	Hearing Date:	06/04/2024
MassHealth's Rep.:	Shannell Santiago	Appellant's Rep.:	Pro se
Hearing Location:	Tewksbury MassHealth Enrollment Center (Telephone)	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 April 29, 2024, MassHealth notified the Appellant that she was approved for MassHealth CommonHealth as of April 19, 2024. Exhibit 1. The Appellant filed this appeal in a timely manner on April 29, 2024, stating that she should be eligible for MassHealth Standard and that she requires services that are not included with MassHealth CommonHealth. 130 CMR 610.015(B) and Exhibit 2. Denial of assistance is valid grounds for appeal. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth approved the Appellant for MassHealth CommonHealth.

Issue

The appeal issue is whether MassHealth gave adequate notice that it was downgrading the Appellant's MassHealth benefits, pursuant to 130 CMR 610.026. Additionally, the issue is what MassHealth benefits the Appellant is financially eligible for.

Summary of Evidence

The hearing was held telephonically. The MassHealth representative testified that the Appellant is [REDACTED] and has a household size of one. When the Appellant completed her renewal, MassHealth updated her income information to reflect that she has Social Security income of \$1,829/month, which is 140.74% of the federal poverty level. The MassHealth representative explained that the Appellant is not financially eligible for MassHealth Standard because her income is greater than 133% of the federal poverty level. The MassHealth representative testified that the Appellant has a verified disability, and so MassHealth determined that the Appellant is eligible for CommonHealth without a premium.

The Appellant verified her identity. The Appellant explained that she was extremely frustrated because she was provided conflicting information when she had contacted MassHealth, specifically about whether she qualified for a Medicare Savings Plan. The Appellant testified that the cost of her Medicare Part B is now being deducted from her Social Security income. The Appellant stated that she is trying to get by and pay her additional bills, including rent and utilities. The Appellant testified that she has been especially hindered since her back surgery and has struggled to receive sufficient personal care attendant services. The Appellant testified that she was blindsided by having the cost of her Medicare Part B deducted from her social security income without notice.

The hearing officer asked the MassHealth representative if MassHealth notified the Appellant that her prior benefit was ending or had notified the Appellant that her benefit was downgraded. The MassHealth representative stated that the Appellant was not notified that her Standard benefit was ending or downgraded because she was approved for MassHealth CommonHealth.

A review of MassHealth Medicaid Management Information Systems (MMIS) shows that Appellant was open on a category 43, MassHealth Standard case for disabled persons, from February 25, 2022 to March 27, 2024. Exhibit 4. There was no evidence submitted at the hearing of a MassHealth notice informing the Appellant that her MassHealth Standard benefits would terminate on March 27, 2024. *Id.*

According to MMIS, Appellant was on a category 23, Qualified Medicare Beneficiary plan, until April 26, 2024. *Id.* Under the Qualified Medicare Beneficiary plan (now known as a Medicare Savings Program), the Appellant's Medicare premium was paid by MassHealth pursuant to 130

CMR 519.010. By notice dated April 12, 2024, MassHealth terminated the Appellant's Medicare Savings Program effective April 26, 2024, because MassHealth did not receive the Appellant's eligibility review form in time. Exhibit 6. This notice was sent to the Appellant's address on record. Exhibits 1, 2, 3, 4, 6.

Findings of Fact

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

1. The Appellant is [REDACTED] and has a household size of one. Testimony and Exhibit 4.
2. The Appellant has Social Security income of \$1,829/month, which is 140.74% of the federal poverty level. Testimony.
3. The Appellant has a verified disability. Testimony.
4. On April 29, 2024, MassHealth notified the Appellant that she was approved for CommonHealth without a premium. Exhibit 1.
5. The Appellant filed an appeal on April 29, 2024. Exhibit 2.
6. The Appellant was open on a category 43, MassHealth Standard case for disabled persons, from February 25, 2022, to March 27, 2024. Exhibit 4.
7. There is no evidence that MassHealth issued a notice of termination of MassHealth Standard benefits to the Appellant.
8. Appellant was on a category 23, Qualified Medicare Beneficiary plan, until April 26, 2024. Exhibit 4.
9. Under the Qualified Medicare Beneficiary plan (now known as a Medicare Savings Program), the Appellant's Medicare premium was paid by MassHealth pursuant to 130 CMR 519.010.
10. By notice dated April 12, 2024, MassHealth terminated Appellant's Medicare Savings Program effective April 26, 2024, because MassHealth did not receive the Appellant's eligibility review form in time. Exhibit 6.
11. These notices were sent to the Appellant's address on record. Exhibits 1, 2, 3, 4, 6.

Analysis and Conclusions of Law

Both the state and federal constitutions offer procedural and substantive due process protections. Specific to the present case, as an agency, MassHealth is required to comply with the relevant Fair Hearing Rules governing notice found in 130 CMR 610.000. By law, MassHealth must always send timely and adequate notice prior to an adverse action, and the Fair Hearing Rules regulation concerning the adequacy of such notice reads as follows:

610.026: Adequate Notice Requirements

(A) A notice concerning an intended appealable action must be timely as stated in 130 CMR 610.015 and adequate in that it must be in writing and contain

- (1) a statement of the intended action;
- (2) the reasons for the intended action;
- (3) a citation to the regulations supporting such action;
- (4) an explanation of the right to request a fair hearing; and
- (5) the circumstances under which assistance is continued if a hearing is requested.

(B) Regardless of the provisions of 130 CMR 610.026(A), when a change in either federal or state law requires a change in assistance for a class or classes of members, a notice will be considered adequate if it includes a statement of the specific change in law requiring the action to reduce, suspend, or terminate assistance.

130 CMR 610.026.

I find that the MassHealth notice dated April 29, 2024, that the Appellant was approved for MassHealth CommonHealth benefits effective April 19, 2024, was not adequate notice under 130 CMR 610.026(A)(1), (A)(2), and (A)(3) that her benefits were being downgraded because her income was too high to qualify for MassHealth Standard. The notice does not state that the Appellant's benefits are being downgraded, or explain that it is due to her income, or cite to a regulation supporting such an action. Exhibit 1 and 130 CMR 610.026(A)(1), (2), (3). Further, there is no MassHealth notice terminating the Appellant's MassHealth Standard benefit effective March 27, 2024. Therefore, I conclude that MassHealth did not meet its obligation under 130 CMR 610.026.

Because MassHealth did not issue a notice of termination of Appellant's MassHealth Standard benefits, Appellant had 120 days after MassHealth's action to file an appeal. (130 CMR 610.015(B)(2)(c)). The Appellant filed this appeal on April 29, 2024, which was within 120 days of the March 27, 2024 termination date, and thus I take jurisdiction over MassHealth's termination of the Appellant's MassHealth Standard.

Turning to the Appellant's eligibility based on income, the MassHealth regulations provide the following:

505.002: MassHealth Standard

(E) Disabled Individuals.

(1) Disabled Adults. A disabled adult [REDACTED] years old or a disabled young adult [REDACTED] years old who does not meet the requirements described at 130 CMR 505.002(B)(3)(a)1. is eligible for MassHealth Standard coverage if they meet the following requirements:

(a) the individual is permanently and totally disabled as defined in 130 CMR 501.001: *Definition of Terms*;

(b) the modified adjusted gross income of the MassHealth Disabled Adult household as described in 130 CMR 506.002(C): *MassHealth Disabled Adult Household* is less than or equal to 133% of the federal poverty level (FPL), or the individual is eligible under section 1634 of the Social Security Act (42 U.S.C. § 1383c) as a disabled adult child or as a disabled widow or widower, or is eligible under the provisions of the Pickle Amendment as described at 130 CMR 519.003: *Pickle Amendment Cases*;

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

(d) the individual complies with 130 CMR 505.002(M).

(2) Determination of Disability. Disability is established by

(a) certification of legal blindness by the Massachusetts Commission for the Blind (MCB);

(b) a determination of disability by the SSA; or

(c) a determination of disability by the Disability Evaluation Services (DES).

(3) Extended MassHealth Eligibility. Disabled persons whose SSI disability assistance has been terminated and who are determined to be potentially eligible for MassHealth continue to receive MassHealth Standard until the MassHealth agency makes a determination of ineligibility.

130 CMR 505.002(E).

505.004: MassHealth CommonHealth

(A) Overview.

(1) 130 CMR 505.004 contains the categorical requirements and financial standards for CommonHealth coverage available to both disabled children and disabled adults, and to disabled working adults.

(2) Persons eligible for MassHealth CommonHealth coverage are eligible for medical benefits as described in 130 CMR 450.105(E): *MassHealth CommonHealth*.

....

(C) Disabled Adults. Disabled adults must meet the following requirements:

(1) be [REDACTED]

(2) be permanently and totally disabled, as defined in 130 CMR 501.001: *Definition of*

Terms;

- (3) be ineligible for MassHealth Standard;
- (4) be a citizen as described in 130 CMR 504.002: *U.S. Citizens* or a qualified noncitizen as described in 130 CMR 504.003(A)(1): *Qualified Noncitizens*;
- (5) (a) meet a one-time-only deductible in accordance with 130 CMR 506.009: *The One-time Deductible*; or
 - (b) have modified adjusted gross income of the MassHealth Disabled Adult household that is less than or equal to 200% of the federal poverty level (FPL) and provide verification that they are HIV positive; and
- (6) comply with 130 CMR 505.004(J).

....

(L) Medicare Premium Payment.

- (1) The MassHealth agency, in accordance with the Medicare Savings Program as described in 130 CMR 519: *Medicare Savings Program (MSP) – Qualified Medicare Beneficiaries (QMB)* and 519.011: *Medicare Saving Program (MSP) – Specified Low Income Medicare Beneficiaries and Qualifying Individuals* also pays the cost of the monthly Medicare Part B premium on behalf of members who meet the requirements of 130 CMR 505.004 and who have modified adjusted gross income of the MassHealth Disabled Adult household that is less than or equal to 135% of the FPL.
- (2) The coverage described in 130 CMR 505.004(L)(1) begins on the first day of the month following the date of the MassHealth eligibility determination and may be retroactive up to three months prior to the date the application was received by MassHealth.

130 CMR 505.004(A), (C), (L).

506.002: Household Composition

(C) MassHealth Disabled Adult Household. The household consists of

- (1) the individual;
- (2) the individual's spouse if living with them;
- (3) the individual's natural, adopted, and stepchildren younger than [REDACTED] if living with them; and
- (4) if any individual described in 130 CMR 506.002(C)(1), (2), or (3) is pregnant, the number of expected children.

130 CMR 506.002(C).

506.007: Calculation of Financial Eligibility

The rules at 130 CMR 506.003 and 506.004 describing countable income and noncountable

income apply to both MassHealth MAGI households and MassHealth Disabled Adult households.

(A) Financial eligibility for coverage types that are determined using the MassHealth MAGI household rules and the MassHealth Disabled Adult household rules is determined by comparing the sum of all countable income less deductions for the individual's household as described at 130 CMR 506.002 with the applicable income standard for the specific coverage type.

(1) The MassHealth agency will construct a household as described in 130 CMR 506.002 for each individual who is applying for or renewing coverage. Different households may exist within a single family, depending on the family members' familial and tax relationships to each other.

(2) Once the individual's household is established, financial eligibility is determined by using the total of all countable monthly income for each person in that individual's MassHealth MAGI or Disabled Adult household. Income of all the household members forms the basis for establishing an individual's eligibility.

(a) A household's countable income is the sum of the MAGI-based income of every individual included in the individual's household with the exception of children and tax dependents who are not expected to be required to file a return as described in 42 CFR 435.603 and 130 CMR 506.004(M).

(b) Countable income includes earned income described in 130 CMR 506.003(A) and unearned income described in 130 CMR 506.003(B) less deductions described in 130 CMR 506.003(D).

(c) In determining monthly income, the MassHealth agency multiplies average weekly income by 4.333.

(3) Five percentage points of the current federal poverty level (FPL) is subtracted from the applicable household total countable income to determine eligibility of the individual under the coverage type with the highest income standard.

(B) The financial eligibility standards for each coverage type may be found in 130 CMR 505.000: *Health Care Reform: MassHealth: Coverage Types*.

(C) The monthly federal-poverty-level income standards are determined according to annual standards published in the *Federal Register* using the following formula. The MassHealth agency adjusts these standards annually.

(1) Multiply the annual 100% figure posted in the *Federal Register* by the applicable federal poverty level income standard.

(2) Round these annual figures up to the nearest hundredth.

(3) Divide by 12 to arrive at the monthly income standards.

130 CMR 506.007(A), (B), (C).

The Appellant has a monthly income of \$1,829. For 2024, 100% of the federal poverty level of a

household size of one, is a monthly income of \$1,255. Five percentage points of \$1,255 is \$62.75. $\$1,829 - \$62.75 = \$1,766.25$. $\$1,766.25 / \$1,255 = 140.7\%$. Based on 130 CMR 506.007(A), the Appellant's income is 140.7% of the federal poverty level. Therefore, she is not financially eligible for MassHealth Standard because her income is not less than or equal to 133% of the federal poverty level. 130 CMR 505.002(E)(1)(b). The Appellant is also not eligible to have her Medicare Part B premium paid as a MassHealth CommonHealth member because her income is not less than or equal to 135% of the federal poverty level. 130 CMR 505.004(L). Because the Appellant's income is less than 150% of the federal poverty level, she does not owe a CommonHealth premium. See 130 CMR 506.011.

I credit the Appellant's distress and I am sorry for her difficulties. Unfortunately, she is not financially eligible for MassHealth Standard or to have her Medicare Part B premium paid as a MassHealth CommonHealth member. 130 CMR 505.002(E)(1)(b); 130 CMR 505.004(L). Accordingly, that part of her appeal is denied. It should be noted for Appellant's benefit that MassHealth Standard and MassHealth CommonHealth cover almost identical services, including personal care services. (130 CMR 450.105(A), (E)).

The Appellant may be interested in applying for the waiver for home- and community-based services:

(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 [REDACTED] or older and, if younger than [REDACTED] 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).

In conclusion, the appeal is approved in part regarding the lack of adequate notice regarding the Appellant's termination from MassHealth Standard but is denied in that the appellant is not financially eligible for MassHealth Standard or the Medicare Savings Program. By notice dated April 29, 2024, MassHealth correctly determined that the appellant is financially eligible only for MassHealth CommonHealth. In accordance with this decision, MassHealth is directed to reinstate the Appellant's Standard benefits effective March 27, 2024, until 10 days after the April 29, 2024, notice, or May 9, 2024.

Order for MassHealth

Reinstate the Appellant's MassHealth Standard from March 27, 2024, through May 9, 2024; approve the appellant for MassHealth CommonHealth beginning May 10, 2024.

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.

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.

Emily Sabo
Hearing Officer

Board of Hearings

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