

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2406906
Decision Date:	7/12/2024	Hearing Date:	6/12/2024
Hearing Officer:	Cynthia Kopka		

Appearances for Appellant:



Appearance for MassHealth:

Nicole Veras, 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:	Denied	Issue:	Eligibility, under 65, downgrade
Decision Date:	7/12/2024	Hearing Date:	6/12/2024
MassHealth's Rep.:	Nicole Veras	Appellant's Rep.:	Pro se
Hearing Location:	Tewksbury (virtual)	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

By notice dated March 21, 2024, MassHealth notified Appellant her coverage would downgrade from MassHealth Standard to CommonHealth. Exhibit 1. Appellant filed this appeal in a timely manner on April 29, 2024. Exhibit 2. 130 CMR 610.015(B). Termination or modification of assistance is a valid basis for appeal. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth notified Appellant her coverage would downgrade from MassHealth Standard to CommonHealth.

Issue

The appeal issue is whether MassHealth was correct in determining that Appellant no longer qualified for MassHealth Standard and coverage of her Medicare premium.

Summary of Evidence

The MassHealth representative appeared virtually and testified as follows. Appellant is in a household of one and is under the age of 65. Appellant is disabled and receives monthly Social Security income. On March 21, 2024, MassHealth's hub data match verified that Appellant's gross monthly income is \$1,851, which is 142.49% of the federal poverty level (FPL). To qualify for MassHealth Standard, an applicant's income must be less than or equal to \$1,670 monthly. Appellant is disabled and therefore eligible for MassHealth CommonHealth with no premium. However, because her income was above 133% of the FPL, Appellant no longer qualified for MassHealth Standard with coverage of her Medicare premium. Should Appellant wish to apply for a Medicare Savings Program (MSP), she would have to submit a short application to MassHealth's over 65 department. The MassHealth representative testified that the MSP and CommonHealth could be granted together, **but the MassHealth representative and hearing officer confirmed incorrect information (see analysis below).**

Appellant and her representative appeared by phone (due to technical difficulties) and testified as follows. Appellant's recent increase in her Social Security has resulted in her losing multiple benefits, including MassHealth Standard, coverage of her Medicare premium, and SNAP benefits. In 2020, Appellant underwent an [REDACTED], a procedure so rare that no provider in Massachusetts performs it. Appellant had the procedure done at [REDACTED] in New York and is required to return yearly for follow-up visits. [REDACTED] refuses to enter into an agreement with MassHealth for coverage, and therefore Appellant is required to carry private insurance at a monthly cost of \$239. Appellant had applied for Premium Assistance to cover this cost, but it was denied.

Additionally, Appellant has been diagnosed with vulvar cancer due to the immunosuppressants she takes. Appellant had surgery in February and April 2024 in Boston and is required to take monthly trips to Boston. This is an expensive trip, as parking and travel costs add up. Additionally, after Appellant was downgraded to CommonHealth, she has had to pay copays. Appellant also pays \$11 monthly for prescription coverage. Appellant also must pay for cable/internet so she can communicate with her team via email. A conservative estimate of all these monthly costs is \$421 per month. Subtracting this from her monthly income puts Appellant well below the FPL to qualify. Appellant cannot drop her private insurance without ruining her credit, which would increase other expenses such as car insurance. Appellant cannot rely on public transportation or PT-1 because of how frequently she has appointments; it is too difficult to arrange. Appellant and her representative argued that her monthly costs are extreme and out of the ordinary.

Findings of Fact

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

1. Appellant is in a household of one and is under 65.

2. Appellant is disabled and receives Medicare.
3. Appellant's monthly income is \$1,851 from Social Security.
4. In 2024, the monthly FPL for a household of one was \$1,255; 133% of the FPL was \$1,670.

Analysis and Conclusions of Law

At issue here is MassHealth's determination that Appellant no longer qualifies for MassHealth Standard and coverage of her Medicare Part B premium. Appellant seeks restoration of MassHealth Standard and coverage of her Medicare premium due to the extraordinary expenses she has incurred due to her rare medical condition. According to 130 CMR 506.012(C)(5)(a), MassHealth members who have Medicare coverage are not eligible for premium assistance payments.

MassHealth regulations at 130 CMR 505.000 *et seq.* explain the categorical requirements and financial standards that must be met to qualify for a MassHealth coverage type. The rules of financial responsibility and calculation of financial eligibility are detailed in 130 CMR 506.000: *Health Care Reform: MassHealth: Financial Requirements*. The MassHealth coverage types are:

- (1) MassHealth Standard – for people who are pregnant, children, parents and caretaker relatives, young adults, disabled individuals, certain persons who are HIV positive, individuals with breast or cervical cancer, independent foster care adolescents, Department of Mental Health (DMH) members, and medically frail as such term is defined in 130 CMR 505.008(F);
- (2) MassHealth CommonHealth – for disabled adults, disabled young adults, and disabled children who are not eligible for MassHealth Standard;
- (3) MassHealth CarePlus – for adults 21 through 64 years of age who are not eligible for MassHealth Standard;
- (4) MassHealth Family Assistance – for children, young adults, certain noncitizens, and persons who are HIV positive who are not eligible for MassHealth Standard, MassHealth CommonHealth, or MassHealth CarePlus;
- (5) MassHealth Limited – for certain lawfully present immigrants as described in 130 CMR 504.003(A): *Lawfully Present Immigrants*, nonqualified PRUCOLs, and other noncitizens as described in 130 CMR 504.003: *Immigrants*; and
- (6) MassHealth Medicare Savings Programs – for certain Medicare beneficiaries.

130 CMR 505.001(A).

In order to establish eligibility for MassHealth benefits, applicants must meet both the categorical and financial requirements. MassHealth determines financial eligibility based on an applicant's modified adjusted gross income. MassHealth takes the countable income, which includes earned income as described in 130 CMR 506.003(A) and unearned income described in 130 CMR 506.003(B) and subtracts deductions described in 130 CMR 506.003(D). 130 CMR 506.007. Per 130 CMR 506.003, the regulatory definitions of earned income, unearned income and deductions are as follows:

(A) Earned Income.

- (1) Earned income is the total amount of taxable compensation received for work or services performed less pretax deductions. Earned income may include wages, salaries, tips, commissions, and bonuses.
- (2) Earned taxable income for the self-employed is the total amount of taxable annual income from self-employment after deducting annual business expenses listed or allowable on a U.S. Individual Tax Return. Self-employment income may be a profit or a loss.
- (3) Earned income from S-Corporations or Partnerships is the total amount of taxable annual profit (or loss) after deducting business expenses listed or allowable on a U.S. Individual Tax Return.
- (4) Seasonal income or other reasonably predictable future income is taxable income derived from an income source that may fluctuate during the year. Annual gross taxable income is divided by 12 to obtain a monthly taxable gross income with the following exception: if the applicant or member has a disabling illness or accident during or after the seasonal employment or other reasonably predictable future income period that prevents the person's continued or future employment, only current taxable income will be considered in the eligibility determination.

(B) Unearned Income.

- (1) Unearned income is the total amount of taxable income that does not directly result from the individual's own labor after allowable deductions on the U.S Individual Tax Return.
- (2) Unearned income may include, but is not limited to, social security benefits, railroad retirement benefits, pensions, annuities, certain trusts, interest and dividend income, state or local tax refund for a tax you deducted in the previous year, and gross gambling income.

(C) Rental Income. Rental income is the total amount of taxable income less any deductions listed or allowable on an applicant's or member's U.S. Individual Tax Return.

(D) Deductions. Under federal law, the following deductions are allowed when

calculating MAGI countable income. Changes to federal law may impact the availability of these deductions:

- (1) educator expenses;
- (2) reservist/performance artist/fee-based government official expenses;
- (3) health savings account;
- (4) moving expenses, for the amount and populations allowed under federal law;
- (5) one-half self-employment tax;
- (6) self-employment retirement account;
- (7) penalty on early withdrawal of savings;
- (8) alimony paid to a former spouse for individuals with alimony agreements finalized on or before December 31, 2018. Alimony payments under separation or divorce agreements finalized after December 31, 2018, or pre-existing agreements modified after December 31, 2018, are not deductible;
- (9) individual retirement account (IRA);
- (10) student loan interest;
- (11) scholarships, awards, or fellowships used solely for educational purposes; and
- (12) other deductions described in the Tax Cut and Jobs Act of 2017, Public Law 115-97 for as long as those deductions are in effect under federal law.

To be eligible for MassHealth Standard as a disabled adult, Appellant's monthly income would have to be less than or equal to 133% of the FPL. 130 CMR 505.002(E)(1)(b). Appellant's monthly income is \$1,851, which is 142.49% of the FPL. Accordingly, Appellant's income is too high to be eligible for MassHealth Standard. While Appellant inquired about deducting necessary medical expenses from her monthly income, the expenses identified at hearing such as transportation and cable/internet fees are not included in allowable deductions.

Appellant inquired about medical frailty at hearing. Individuals who qualify for MassHealth CarePlus can opt for MassHealth Standard if they are medically frail. 130 CMR 508.00(F). To qualify for CarePlus, an individual's income must be at or below 133% of the FPL. 130 CMR 505.008(A)(2)(c). Additionally, a Frail Elder Waiver is available for qualifying members at 60 years old or older. 130 CMR 519.007(B)(2)(b). Appellant does not qualify for either of those programs.

As a disabled adult, Appellant is eligible for MassHealth CommonHealth. 130 CMR 505.004(C). According to 130 CMR 505.004(I), individuals eligible for CommonHealth may be assessed a premium in accordance with the premium schedule provided in 130 CMR 506.011(B)(2). However, individuals whose income is less than 150% of the FPL do not have to pay a premium. 130 CMR 506.011(B)(2).

Additionally, MassHealth will cover a CommonHealth member's Medicare premium if their

income is at or below 135% of the FPL. 130 CMR 505.004(L)(1), 130 CMR 519.012(D)(1). Though an individual whose income is below 190% of the FPL qualifies for an MSP (see 130 CMR 519.010 and 519.011), **MassHealth does not cover both CommonHealth and an MSP. Information relayed to Appellant at hearing by the MassHealth representative and the hearing officer was incorrect and is superseded by this written decision.** As Appellant's income is above 135% of the FPL, should Appellant apply for an MSP, she will have to choose between that program and CommonHealth.

MassHealth's decision was not made in error. Accordingly, 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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957, 978-863-9290

cc: [REDACTED]