

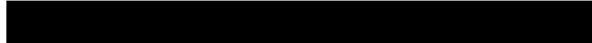
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2407939
Decision Date:	06/25/2024	Hearing Date:	06/12/2024
Deputy Director/BOH Hearing Officer:	Paul C. Moore	Record Closed:	06/24/2024

Appellant Representatives:



MassHealth Representative:

Steven Aguiar, Quincy MassHealth Enrollment
Center (MEC) (by telephone)



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th Floor
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Eligibility; Immigration Status
Decision Date:	06/25/2024	Hearing Date:	06/12/2024
MassHealth Rep.:	Steven Aguiar	Appellant Reps.:	Pro se, with spouse
Hearing Location:	Quincy Harbor South Tower (remote)	Aid Pending:	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated March 13, 2024, MassHealth notified the appellant that she is eligible for MassHealth Limited (Exh. 1). The appellant filed a timely appeal of this notice with the Board of Hearings (BOH) on May 13, 2024 (130 CMR 610.015; Exh. 2). Decisions regarding the scope or amount of assistance is valid grounds for appeal to the BOH (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant is eligible for MassHealth Limited.

Issue

Did MassHealth correctly determine that the appellant is eligible for MassHealth Limited?

Summary of Evidence

A MassHealth representative from the Quincy MassHealth Enrollment Center testified by telephone that the appellant is under age 65 and lives with her spouse and two minor children. The MassHealth representative testified that the appellant is self-employed, and earns \$2,000.00 a

month.¹ Her spouse earns \$1,500.00 a month from self-employment, according to the MassHealth representative. The two minor children earn no income and are enrolled in MassHealth Standard. Previously, the appellant and her spouse were eligible for full Health Safety Net, but their income was higher at that time. As of March 3, 2024, the appellant and her spouse are eligible for MassHealth Limited, due to a decrease in their household income, and for a household of four, are at 129.62% of the 2024 federal poverty level (FPL) (Exh. 1).

The MassHealth representative testified that the appellant and her spouse are undocumented, do not have “green cards,” and have not produced copies of any work permits or visas to MassHealth. Therefore, the best coverage for which the appellant and her spouse are currently eligible is MassHealth Limited (Testimony).

The appellant testified, through her spouse, that she earns \$2,000.00 a month and is no longer self-employed. The appellant’s spouse testified that he is no longer employed at all. The MassHealth representative stated that he will need one recent pay stub from the appellant to verify her earned income.

The appellant’s spouse testified that he mailed copies of work permits issued to the appellant and himself to the Taunton MassHealth Enrollment Center, and that he would fax them to EDMC as well, together with a copy of a recent pay stub of the appellant (Testimony).

The hearing officer agreed to keep the record of this appeal open until June 26, 2024 for the appellant and her spouse to send a copy of the appellant’s recent pay stub, and for MassHealth to receive and review the couple’s work permits, to determine whether they may be eligible for an upgrade in benefits (Exh. 4).

On June 16, 2024, the hearing officer received an e-mail communication from the MassHealth representative, stating as follows:

The employment authorization cards and paystub were received. Documents have been processed. [The appellant and her spouse] now have Connector Care Plan Type 1 with advance premium tax credit along with MA Health Limited. The children maintain MA Health Standard.

(Exh. 5)

On the same date, the MassHealth representative stated in a second email communication to the hearing officer:

They cannot get MA Health Standard due to their immigration status. The connector care 1 comes at no premium cost and then they have the limited as

¹ The MassHealth representative did not indicate if the appellant was eligible any for any self-employment deductions.

secondary. This is the highest level of coverage they are eligible for. I spoke with member and informed them of this. They were okay with this.

(Exh. 6)

On June 24, 2024, the MassHealth representative stated in an email to the hearing officer that the appellant and her spouse have resided in the United States for less than five years (Exh. 7).

Findings of Fact

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

1. The appellant is under age 65, not disabled, and lives in a household of four, including her spouse and two minor children (Testimony).
2. The appellant was previously enrolled in Health Safety Net (Testimony, Exh. 1).
3. Through a notice dated March 13, 2024, MassHealth notified the appellant that she is eligible for MassHealth Limited (Exh. 1).
4. The appellant filed a timely appeal of this MassHealth notice with the BOH on May 13, 2024 (Exh. 2).
5. The appellant's two minor children are enrolled in MassHealth Standard (Testimony).
6. As of June, 2024, the appellant's household income consists of \$2,000.00 per month in earned income (Testimony).
7. The 2024 FPL for a household of four is \$2,600.00 per month.
8. The appellant and her spouse do not have lawful permanent resident cards, or "green cards," but do have employment authorization cards (Testimony, Exh. 5).

Analysis and Conclusions of Law

MassHealth regulation 130 CMR 505.000 explains the categorical requirements and financial standards that must be met to qualify for a MassHealth coverage type.

130 CMR 505.001(A) notes in relevant part:

(A) The MassHealth coverage types are the following:

(1) Standard – for pregnant women, 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 members, and medically frail as such term is defined in 130 CMR 505.008(F);

(2) CommonHealth – for disabled adults, disabled young adults, and disabled children who are not eligible for MassHealth Standard;

(3) CarePlus – for adults 21 through 64 years of age who are not eligible for MassHealth Standard;

(4) Family Assistance – for children, young adults, certain noncitizens, and persons who are HIV positive who are not eligible for MassHealth Standard, CommonHealth, or CarePlus;

(5) Small Business Employee Premium Assistance – for adults or young adults who (a) work for small employers;

(b) are not eligible for MassHealth Standard, CommonHealth, Family Assistance, or CarePlus;

(c) do not have anyone in their premium billing family group who is otherwise receiving a premium assistance benefit; and

(d) have been determined ineligible for a Qualified Health Plan with a Premium Tax Credit due to access to affordable employer-sponsored insurance coverage;

(6) Limited – for certain lawfully present immigrants as described in 130 CMR 504.003(A), nonqualified PRUCOLs, and other noncitizens as described in 130 CMR 504.003: *Immigrants*; and

(7) Senior Buy-In and Buy-In – for certain Medicare beneficiaries.

(Emphasis added)

Pursuant to 130 CMR 505.003, “Immigrants:”

(A) Lawfully Present Immigrants. Qualified noncitizens, qualified noncitizens barred, and nonqualified individuals lawfully present are considered lawfully present immigrants. The applicable coverage for qualified noncitizens, qualified noncitizens barred, and nonqualified individuals lawfully present is listed in 130 CMR 504.006.

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

(a) those who are qualified regardless of when they entered the U.S. or how long they 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 504.003(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 percent 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 Immigration and Nationality Act, 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 Immigration and Nationality Act, 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 504.003(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 in 130 CMR 504.003(A)(1)(b)1. and who have satisfied one of the conditions listed in 130 CMR 504.003(A)(1)(b)2. Such individuals

1. have one or more of the following statuses:

a. admitted for legal permanent residence (LPR) under the Immigration and Nationality Act (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. they have had a status in 130 CMR 504.003(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. they 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 504.003(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 504.003(A)(1)(b)1.; or

c. they also have or had a status listed in 130 CMR 504.003(A)(1)(a).

(2) Qualified Noncitizens Barred. Individuals who have a status listed at 130 CMR 504.003(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 504.003(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) are 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) are 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 Department of Homeland Security (DHS) Deferred Action for Childhood Arrivals Process (DACA);

7. granted an administrative stay of removal under 8 CFR part 241; or

8. beneficiaries of approved visa petitions who have pending applications 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 504.003(A)(1) but who are qualified noncitizens barred as described in 130 CMR 504.003(A)(2); nonqualified individuals lawfully present as described in 130 CMR 504.003(A)(3); nonqualified persons residing under color of law (PRUCOLs) as described in 130 CMR 504.003(C); or other noncitizens as described in 130 CMR 504.003(D) and who were receiving medical assistance or Commonwealth on June 30, 1997, are considered protected noncitizens and may continue to receive MassHealth regardless of immigration status, if they are otherwise eligible. This status continues until a determination of ineligibility due to failure to meet categorical or financial eligibility requirements has been made.
- (C) Nonqualified Persons Residing under Color of Law (Nonqualified PRUCOLs). Certain noncitizens who are not described in 130 CMR 504.003(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 504.006. If not otherwise described in 504.003(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 U.S. Department of Homeland Security (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 under the age of 14 and have not had an application pending for at least 180 days;
 - (9) noncitizens granted Deferred Action for Childhood Arrivals status or who 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 DHS does not contemplate enforcing; or

(11) any noncitizen 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 504.003(A) through (C), are considered other noncitizens. The applicable coverage types for other noncitizens are listed in 130 CMR 504.006.

Regulation 130 CMR 504.006(B) states as follows:

(B) Qualified noncitizens barred and nonqualified individuals lawfully present may receive the following coverage.

(1) MassHealth Standard, if they are younger than 19 years old, young adults 19 and 20 years of age, or people who are pregnant and meet the categorical requirements and financial standards described in 130 CMR 505.002: MassHealth Standard; independent foster care children 18 through 20 years of age, and children younger than 19 years old and young adults 19 and 20 years of age who are receiving EAEDC.

(2) MassHealth CommonHealth, if they are younger than 19 years old and meet the categorical requirements and financial standards as described in 130 CMR 505.004: MassHealth CommonHealth;

(3) MassHealth Family Assistance, if they are children younger than 19 years old, disabled adults 21 through 64 years of age and meet the categorical requirements and financial standards as described in 130 CMR 505.005: MassHealth Family Assistance or adults 21 through 64 years of age who are receiving EAEDC;

(4) MassHealth Limited, if they are adults 21 through 64 years of age and meet the categorical requirements and financial standards as described in 130 CMR 505.006: MassHealth Limited; and

(5) Children's Medical Security Plan, if they are children younger than 19 years old and meet the categorical requirements and financial standards as described in 130 CMR 522.004: Children's Medical Security Plan (CMSP);

The appellant is not a legal permanent resident, but she is a nonqualified individual lawfully present in the U.S. As such, she is categorically eligible for MassHealth Limited.

The financial eligibility requirements for MassHealth Limited for nonqualified individuals lawfully present are set forth at 130 CMR 505.006(B)(1)(c):

MassHealth Limited is available to the following: qualified noncitizens barred, as described in 130 CMR 504.003(A)(2): Qualified Noncitizens Barred, and nonqualified

individuals lawfully present, as described in 130 CMR 504.003(A)(3): Nonqualified Individuals Lawfully Present who are

1. adults, including parents and caretaker relatives, 21 through 64 years old with modified adjusted gross income of the MassHealth MAGI household that is less than or equal to 133% of the FPL;

2. disabled adults 21 through 64 years old with modified adjusted gross income of the MassHealth Disabled Adult household that is less than or equal to 133% of the FPL;

3. parents and caretakers who are 21 through 64 years old who are receiving EAEDC; and

4. adults 21 through 64 years old who are receiving EAEDC.

(Emphasis added)

The appellant does not qualify for MassHealth Standard as a pregnant person, nor does she qualify for MassHealth Family Assistance as a disabled adult, pursuant to 130 CMR 504.006(B), above.

The appellant is an adult age 21 through 64, and her household income is at 76.9% of the 2024 FPL for a household of four, which is less than 133% of the FPL. Thus, she qualifies financially for MassHealth Limited.

The appellant may also qualify for a plan through the Massachusetts Health Connector. She can direct any questions about Health Connector plans to 1-877-MA-ENROLL ([1-877-623-6765](tel:1-877-623-6765)) or Health Safety Net to 877-910-2100.

Based on the above, 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.

Paul C. Moore
Deputy Director/ Hearing Officer
Board of Hearings

cc: Tosin Adebisi, Appeals Coordinator, Quincy MassHealth Enrollment Center