Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2408245
Decision Date:	8/8/2024	**Hearing Date:**	06/28/2024
Hearing Officer:	Christopher Jones	**Record Open to:**	07/02/2024

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Briana Burgos – Tewksbury Ongoing

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:**	Community; Over-65; Application
Decision Date:	8/8/2024	**Hearing Date:**	06/28/2024
MassHealth's Rep.:	Briana Burgos	**Appellant's Rep.:**	Pro se
Hearing Location:	Telephonic	**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 May 17, 2024, MassHealth approved the appellant for the Senior Buy In benefit (now called Medicare Savings Program – Qualified Medicare Beneficiaries), effective June 1, 2024. (Exhibit 1.) The appellant filed this appeal in a timely manner on May 21, 2024. (Exhibit 2; 130 CMR 610.015(B).) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

The appellant was having telephonic difficulties, and initially missed the telephone calls for his hearing. He called back 30 minutes after his hearing was set to start. Because the MassHealth representative was able to proceed, the hearing went forward. Following the hearing, the record was left open until July 2, 2024, for MassHealth's representative to confirm what benefits are covered by the Medicare Savings Program – Qualified Medicare Beneficiaries benefit.

Action Taken by MassHealth

MassHealth approved the appellant for the Medicare Savings Program – Qualified Medicare Beneficiaries.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 516.000 and 519.000, in determining that the appellant is only eligible for the Medicare Savings Program benefits at this time, and needs to completes an over-[redacted] application.

Summary of Evidence

The appellant turned [redacted] during the federal public health emergency ("FPHE") regarding Covid-19. MassHealth's representative testified that the appellant last completed a full application for benefits in [redacted] and he has been auto-renewed ever since. Throughout the FPHE, the appellant was covered by CommonHealth. The appellant did not need to file a new application when he turned [redacted] because of federal protections in place during the FPHE. At the conclusion of the FPHE, MassHealth sent the appellant a renewal application to be completed. This application was returned as undeliverable, so MassHealth attempted to automatically renew the appellant's coverage. MassHealth was able to automatically verify the appellant's income at $1,625 from Social Security.[1] Because the appellant's CommonHealth benefit could not be renewed automatically, his coverage was changed to Senior Buy-in (also known as Medicare Savings Program ("MSP") – Qualified Medicare Beneficiaries ("QMB")). This occurred on or around March 13, 2024.

This coverage was ultimately terminated on May 10, 2024, because MassHealth was unable to verify the appellant's address. His MSP-QMB benefit was reinstated on May 17, 2024, when he called in to verify his mailing address.[2] The appellant testified that he had updated his address previously. When he called back on or around May 17, he was told that MassHealth had only updated as his residential address, not his mailing address.

At the hearing, the appellant testified that his only dispute was that he had unpaid medical expenses arising before May 10 resulting from his downgrade from CommonHealth to MSP-QMB. The appellant was unclear on whether he had given his provider his MassHealth card to bill MassHealth at that time, and MassHealth's representative was unclear as to whether the MSP-QMB benefit would cover the appellant's portion of a medical bill after Medicare made payment. During the hearing, the appellant testified that if MSP-QMB covered those costs, he had no dispute with his MassHealth coverage, and the appeal would be resolved.

MassHealth's representative also testified that the appellant was deemed clinically eligible for the Frail Elder Waiver, but because he has not completed an over-[redacted] application, MassHealth could not

[1] The federal poverty level for an individual in 2024 is $1,255 per month.

[2] MassHealth appears to be treating this interaction as the appellant's filing an MSP-only application for benefits.

approve that benefit. MassHealth's representative offered to call him and transfer him to a telephonic application line. The appellant testified that he had spoken with someone at MassHealth the previous week, and they had already mailed him out a paper application. However, he did not believe he was eligible, based upon his reading MassHealth's eligibility criteria. Because he did not believe he was eligible, he did not believe it was appropriate to fill out the application. MassHealth's representative explained that, since he was clinically eligible for the Frail Elder Waiver, his financial circumstances would be reviewed differently.

The record was left open to verify what MSP-QMB covered. The appellant was also informed that he was welcome to complete an over-[redacted] application and request Frail Elder Waiver coverage if he wanted direct MassHealth coverage again.

MassHealth's representative confirmed that the MSP-QMB benefit covered the 20% gap in Medicare coverage, along with any co-pays and deductibles related to Medicare Parts A and B benefits. The appellant was informed he could have his medical providers rebill MassHealth under the MSP-QMB benefit, instead of CommonHealth. Because this information resolved the appellant's issues during the appeal, he was asked whether any dispute remained. The appellant raised a concern regarding ongoing vision or dental coverage. It was confirmed that the MSP-QMB benefit did not cover anything other than the payment shortfall left by Medicare Parts A and B. The appellant then asked that the record be left open for him to find a job, presumably to qualify for CommonHealth coverage again. The record open period was extended only for the purpose of getting additional information from MassHealth's representative regarding the coverage timeline, as the timeline was not fully developed during the hearing.[3]

Findings of Fact

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

1) The appellant last completed an application for MassHealth coverage in [redacted] and he has been auto-renewed every year since then. (Testimony by MassHealth's representative; Exhibit 4; Exhibit 6.)

2) The appellant was covered by the CommonHealth benefit since [redacted] (Exhibit 4; testimony by MassHealth's representative.)

[3] In addition to timeline details recounted above, MassHealth noted that the appellant needed to "contact Elder Services to be rescreened for a Frail Elder Waiver program," and his renewal application was due on or around October 25, 2024. It is presumed that this renewal refers to the appellant's QMB eligibility, as no one reported that the appellant completed an application.

3) The appellant turned [redacted] during the FPHE. Because of federal protections in place, he did not need to complete an over-[redacted] application at that time. (Testimony by MassHealth's representative.)

4) Once the FPHE protections ended, MassHealth mailed the appellant a renewal application. It was not returned, and MassHealth auto-renewed the appellant based upon gross Social Security income of $1,625 per month. (Testimony by MassHealth's representative; Exhibit 4; Exhibit 6.)

5) On or around March 13, 2024, the appellant's coverage converted from CommonHealth to the MSP-QMB benefit. (Testimony by MassHealth's representative; Exhibit 4; Exhibit 6.)

6) When MassHealth received returned mail regarding the appellant's auto-renewal, the agency terminated his MSP-QMB coverage as of May 10, 2024. (Testimony by MassHealth's representative; Exhibit 4.)

7) The appellant called and verified his address again, and MassHealth reinstated his MSP-QMB benefit as of May 17. (Testimony by MassHealth's representative.)

8) The appellant had medical appointments prior to May 10 that were not covered due to his losing CommonHealth coverage. (Testimony by the appellant.)

9) The appellant has not completed an over-[redacted] application because he does not believe that he would be eligible. (Testimony by the appellant.)

10) The appellant was clinically eligible for the Frail Elder Waiver, but could not be approved for Standard coverage without first completing an over-[redacted] application. (Testimony by MassHealth representative.)

Analysis and Conclusions of Law

MassHealth offers a variety of benefits based upon an individual's circumstances and finances. To qualify for MassHealth, an individual must fit into a category of eligibility and fall below a certain financial threshold. One of the major dividing lines for eligibility is the age of [redacted] Individuals aged [redacted] and older are generally governed by the regulations at 130 CMR 515.000-520.000, and those under [redacted] are typically determined by the regulations at 130 CMR 501.000-508.000.

The financial rules set out at 130 CMR 520.000 explain that all of an individual's "gross earned and unearned income less certain business expenses and standard income deductions" is countable, and "the countable-income amount is compared to the applicable income standard to determine the individual's financial eligibility." (130 CMR 520.009(A)(1)-(2).) There are only two income deductions from a community resident's unearned income: (1) "a deduction of $20 per individual or married couple" or (2) a larger deduction if the individual "requires assistance from a personal

care attendant." (130 CMR 520.013(A)-(B).) However, if the applicant's income is over 133% of the federal poverty level prior to the PCA deduction, the applicant must still meet a six-month deductible for Standard coverage. (130 CMR 520.013(C).) Earned income receives a deduction of $65, and then only half of the remaining income is countable. (130 CMR 520.012.) MassHealth also excludes certain assets from countability, such as the home and one vehicle per household. (130 CMR 520.007(F), 520.008(A).)

The requirements for receiving MassHealth Standard for individuals over [redacted] who are living in the community are:

> 519.005: Community Residents [redacted] Years of Age and Older
>
> (A) Eligibility Requirements. Except as provided in 130 CMR 519.005(C), noninstitutionalized individuals [redacted] years of age and older may establish eligibility for MassHealth Standard coverage provided they meet the following requirements:
>
> > (1) the countable-income amount, as defined in 130 CMR 520.009: *Countable-Income Amount*, of the individual or couple is less than or **equal to 100 percent of the federal poverty level**; and
> >
> > (2) the countable assets of an individual are $2,000 or less, and those of a married couple living together are $3,000 or less.
>
> (B) Financial Standards Not Met. Except as provided in 130 CMR 519.005(C), individuals whose income, assets, or both exceed the standards set forth in 130 CMR 519.005(A) may establish eligibility for MassHealth Standard by reducing their assets in accordance with 130 CMR 520.004: *Asset Reduction*, meeting a deductible as described at 130 CMR 520.028: *Eligibility for a Deductible* through 520.035: *Conclusion of the Deductible Process*, or both.

(130 CMR 519.005(A)-(B) (emphasis in **bold**).)

Alternately, "Individuals Who Would Be Institutionalized" without the assistance provided by MassHealth may be eligible with income up to 300% of the federal benefits rate and having countable assets less than $2,000. (See 130 CMR 520.007.) These programs, like the Frail Elder Waiver, require that the member be deemed clinically eligible in addition to meeting financial criteria. (130 CMR 520.007(B).)

Medicare recipients may qualify for a Medicare Savings Program with income at or below 225% of the federal poverty level. (See 130 CMR 519.010-519.011.) MassHealth has referred to these benefits as "Buy-in" benefits, and the amount of assistance provided depends on the member's income. Individuals with income below 190% of the federal poverty level are eligible for the Medicare Savings Program ("MSP") – Qualified Medicare Beneficiaries ("QMB"). This benefit pays for "Medicare Part A and Part B premiums and for deductibles and coinsurance under Medicare

Parts A and B … .” (130 CMR 519.010.) This benefit may only start “the first day of the calendar month following the date of the MassHealth eligibility determination.” (130 CMR 519.010(C).) However, CommonHealth members are only eligible for the MSP – Qualifying Individuals (“QI”),[4] and only with income at or below 135% of the federal poverty level. (130 CMR 519.012(D)(1).)

A disabled adult aged [redacted] or older may qualify for CommonHealth coverage with income in excess of the federal poverty level. However, CommonHealth coverage for individuals over [redacted] is only for “working disabled adults … [which] means that eligible applicants must meet the requirements of 130 CMR 505.004(B)(2), (3) and (5) to be eligible for CommonHealth.”[5] (130 CMR 519.012(A)(1).) Those additional criteria are:

> (2) be employed at least 40 hours per month, or if employed less than 40 hours per month, have been employed at least 240 hours in the six-month period immediately preceding the month of receipt of the application or MassHealth's eligibility review;
>
> (3) be permanently and totally disabled (except for engagement in substantial gainful activity) as defined in 130 CMR 501.001: Definition of Terms;
>
> … [and]
>
> (5) be ineligible for MassHealth Standard … .

(130 CMR 519.012(B).)

Further, pursuant to MassHealth Eligibility Operations Memo 23-19, August 2023:

> Members who were enrolled in MassHealth CommonHealth for at least ten years are now eligible to remain on MassHealth CommonHealth after turning [redacted] whether they work or not. These members must submit a renewal form for seniors over age [redacted] (SACA-2-ERV). If the member does not meet the criteria for MassHealth Standard per 130 CMR 519.005(A): Eligibility Requirements they will remain in CommonHealth

In order to be eligible for any coverage from MassHealth, an individual “must file a complete paper Senior Application and all required Supplements or apply in person at a MassHealth Enrollment Center (MEC).” (130 CMR 516.001(A)(1)(a).) MassHealth “agency reviews eligibility once every 12 months,” and if a member’s eligibility “can be determined based on electronic data matches with

[4] The MSP—QI benefit only pays for the Medicare Part B premium. There is no additional assistance with copays, coinsurance, and deductibles. (130 CMR 519.011(B)(2).)

[5] Disabled adults aged [redacted] no longer need “to meet a one-time deductible or be employed at least 40 hours per month.” (EOM 23-28, Dec. 2023.) The working requirement now only applies to disabled adults over the age of [redacted] seeking CommonHealth coverage.

federal and state agencies, will have their eligibility automatically renewed." (130 CMR 516.007(A), (C)(1).)

In the absence of a complete over-[redacted] application, the only benefit for which the appellant can be automatically renewed is the MSP-QMB benefit.[6] After the $20 standard deduction, the appellant's unearned monthly income is $1,605. This is equivalent to 127.89% of the federal poverty level of $1,255. As the appellant's income is under 190% of the federal poverty level, and he was not enrolled in the benefit until after the asset verification requirement was lifted, the appellant is clearly eligible for this benefit.

The appellant is very likely eligible for comprehensive coverage from MassHealth, but every other benefit for individuals over the age of [redacted] would require an application and some additional documentation. Further, it is quite probable that the appellant's countable assets would be below $2,000, as MassHealth excludes primary residences and vehicles from countable assets. The appellant would then be eligible for MassHealth Standard if he completed a Personal Care Supplement, or if he is still clinically eligible for the Frail Elder Waiver. Alternatively, if the appellant submitted a working-disabled letter, he could become eligible again for the CommonHealth coverage again, which would include Buy-in coverage as his income is below 135% of the federal poverty level. (130 CMR 519.012(B).)

Iin the absence of an application for comprehensive benefits, MassHealth is correct that the appellant cannot be approved for additional benefits. 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

[6] It was difficult to get detailed information regarding the changes in the appellant's coverage at the end of the FPHE from MassHealth's representative. Technically, pursuant to EOM 23-13, if the appellant was actually protected in his CommonHealth coverage, he could not have been automatically downgraded to MSP-QMB without first completing some kind of application. (See EOM 23-13, p. 2.) However, as the alternative to this would be to terminate the appellant's coverage completely for not returning a renewal application, the downgrade to MSP-QMB is a more advantageous outcome for the appellant, and MassHealth will not be ordered to terminate all benefits until a renewal application is completed.

Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Christopher Jones
Hearing Officer
Board of Hearings

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