

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

[REDACTED]
[REDACTED]
[REDACTED]

Appeal Decision:	Remand	Appeal Number:	2408265
Decision Date:	08/16/2024	Hearing Date:	07/15/2024
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:

[REDACTED]

Appearance for MassHealth:

Michael Richelson



*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:	Remand	Issue:	Eligibility
Decision Date:	08/16/2024	Hearing Date:	07/15/2024
MassHealth's Rep.:	Michael Richelson	Appellant's Rep.:	
Hearing Location:	All Parties Appeared by 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 9, 2024, MassHealth determined that the appellant is not eligible for MassHealth Standard or Home and Community Based Waiver services based on income/assets, but is eligible for the Senior Buy-In¹ as of May 1, 2024. (130 CMR 519.005; 130 CMR 519.007; 130 CMR 519.010; 130 CMR 519.011; Exhibit 1A). Through a notice dated April 30, 2024, MassHealth determined that there was a change in the appellant's deductible amount. (130 CMR 519.005; 130 CMR 520.028; Exhibit 1B). The deductible amount increased from \$9,895 to \$10,769 due to a change in deductions as the appellant was no longer paying a Medicare premium. (130 CMR 519.005; 130 CMR 520.028; Exhibit 1A; Exhibit 1B).

The appellant's attorney-in-fact filed a request for hearing on May 23, 2024. (130 CMR 610.015; Exhibit 2). The Board of Hearings dismissed the appeal for failure to demonstrate that the party filing the appeal is an appellant or authorized representative. (130 CMR 610.035). The party filing the appeal provided a copy of a Durable Power of Attorney naming her as the appellant's attorney-in-fact. (Exhibit 4). The Board of Hearings vacated the dismissal and scheduled a hearing for July 15, 2024. (130 CMR 610.048; Exhibit 4). Denial of assistance and a decision regarding the scope or amount of assistance are valid grounds for appeal. (130 CMR 610.032).

¹¹ Senior Buy-In is now known as Medicare Savings Program-Qualified Medicare Beneficiaries. 130 CMR 519.010.

Action Taken by MassHealth

MassHealth notified the appellant that she is not eligible for MassHealth Standard or Home and Community Based Waiver services based on income/assets, but is eligible for the Senior Buy-In program as of May 1, 2024. (130 CMR 519.005; 130 CMR 519.007; 130 CMR 519.010; 130 CMR 519.011). MassHealth calculated a change in the appellant's deductible amount. (130 CMR 519.028).

Issue

Whether MassHealth was correct in their decisions regarding the appellant's eligibility for MassHealth Standard, Home and Community Based Waiver services, and MassHealth Senior Buy-In.

Summary of Evidence

The appellant is over 65-years old, in a family group of one and has a gross monthly income of \$3,495. The income includes benefits from the Social Security Administration in the amount of \$2,228 each month and a pension in the amount of \$1,267. After applying a standard disregard of \$20, the countable income of \$3,475 places the appellant at 276.9% of the Federal Poverty Level (FPL). At the time of the eligibility decision, MassHealth determined that the appellant had assets totaling \$5,638.22 which exceeded the asset limit of \$2,000 for MassHealth Standard and Home and Community Based services eligibility by \$3,638.22. The MassHealth representative noted that appellant received certification that she needs nursing facility services and can receive certain services at home. MassHealth utilized a deduction called a Personal Care Attendant (PCA) disregard in determining eligibility.

MassHealth determined the appellant eligible for the Senior Buy-In. As of March 1, 2024, in determining eligibility for Medicare Savings Programs (MSPs) such as the Senior Buy-In, MassHealth disregards all assets or resources. MassHealth looks at income alone in determining eligibility for the Senior Buy-In. In the decision on appeal, MassHealth determined that the appellant met those requirements as the agency calculated income utilizing a PCA disregard of \$1,148 which brought the appellant's countable income to \$2,346. This income amount is at 187.01% of the federal poverty level. One benefit of the Senior Buy-In is for MassHealth to pay an individual's Medicare Premium.

At the time of the eligibility decision issued on April 9, 2024, MassHealth calculated a deductible for the appellant to meet should the assets be spent down. (Exhibit 1A). This calculation included a deduction for a PCA disregard (\$1,148) and payment of a Medicare premium (\$174.70). On April 30, 2024, MassHealth increased the deductible amount due to a change in the appellant's expenses as MassHealth no longer deducted the appellant's Medicare premium in calculating a deductible. (Exhibit 1B).

At hearing, the MassHealth representative testified that the appellant verified that the assets were spent and are currently below the limit of \$2,000. However, it was not clear whether MassHealth issued an eligibility notice after making the determination that the appellant spent down the assets and what program(s) the appellant may qualify for following the asset spend-down.

Findings of Fact

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

1. The appellant is over 65-years old.
2. The appellant is a family group of one with a gross monthly income of \$3,495.16.
3. The income includes a pension in the amount of \$1,267.16 each month and benefits from the Social Security Administration in the amount of \$2,228 each month.
4. After applying a \$20 disregard, the appellant's income is at 276.9% of the federal poverty level.
5. The appellant can become eligible for MassHealth Standard by spending down assets and meeting a deductible.
6. The deductible period is from March 1, 2024 to September 1, 2024.
7. The appellant received certification that she needs nursing facility services and can receive certain services at home.
8. In the eligibility decision on appeal, MassHealth calculated income utilizing a PCA disregard of \$1,148 which brought the appellant's countable income to \$2,346.
9. Income of \$2,346 is at 187.01% of the federal poverty level.

Analysis and Conclusions of Law

Financial eligibility for MassHealth is based on financial responsibility, countable income, and countable assets. (130 CMR 520.001). In determining eligibility for MassHealth, the total countable-income amount and countable assets of the individual is compared to an income standard and asset limit. (130 CMR 520.002(A)). An individual and the spouse's gross earned and unearned income less certain business expenses and standard income deductions is referred to as the countable income amount. (130 CMR 520.009(A)(1)). In determining gross monthly income, MassHealth multiplies the average weekly income by 4.333 unless the income is monthly. (130 CMR 520.009(A)(1)). For community residents, the countable-income amount

is compared to the applicable income standard to determine the individual's financial eligibility. (130 CMR 520.009(A)(2)).

The types of income that are considered in the determination of eligibility are described in 130 CMR 520.009, 520.018, 520.019, and 520.021 through 520.024. (130 CMR 520.009(A)(4)). These include income to which the applicant, member, or spouse would be entitled whether or not actually received when failure to receive such income results from the action or inaction of the applicant, member, spouse, or person acting on his or her behalf. (130 CMR 520.009(A)(4)). MassHealth considers both earned and unearned income as countable in determining eligibility. (130 CMR 520.009). The appellant only receives unearned income.

Unearned income includes, but is not limited to, social security benefits, railroad retirement benefits, pensions, annuities, federal veterans' benefits, rental income, interest, and dividend income. (130 CMR 520.009(D)). The applicant or member must verify gross unearned income when applying for MassHealth Standard and other programs. (130 CMR 520.009(D)).

The appellant did not dispute that her family group of one has a gross monthly unearned income of \$3,495.16. In determining eligibility, MassHealth allows the following deductions from the total gross unearned income:

- (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) MassHealth 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. (130 CMR 520.013).

At the time of the eligibility decision on appeal and at hearing, the income reported by both parties was greater than 133% of the federal poverty level. Therefore, the appellant would be eligible for the \$20 deduction bringing the gross income to \$3,475.16. This places the appellant at 276.9% of the Federal Poverty Level. This amount exceeds the income limit for both MassHealth Standard (100% FPL or \$1,255 a month) and for Senior Buy-In (190% FPL or \$2,385 a month). (130 CMR 519.005; 519.010). The eligibility notice on appeal includes a deduction of a PCA disregard (\$1,148) in making an eligibility decision regarding the Senior Buy-In as well as determining eligibility for MassHealth Standard. The application of this PCA disregard places the appellant's income at 187.01% of the federal poverty level.

The notice provides the formula for the appellant to utilize in meeting a deductible to become eligible for MassHealth Standard. (130 CMR 520.030). The regulations at 130 CMR 515.001 define a deductible as the total dollar amount of incurred medical expenses that an applicant whose income exceeds MassHealth income standards must be responsible for before the applicant is eligible for MassHealth, as described at 130 CMR 520.028. The deductible period is a six-month period that starts on the first day of the month of application or may begin up to three months before the first day of the month of application. (130 CMR 520.029). The applicant is eligible for this period of retroactivity only if the applicant incurred medical expenses covered by MassHealth and was otherwise eligible. (130 CMR 520.029).

The following individuals may establish eligibility by meeting a deductible:

- (A) former SSI recipients who are not eligible under the Pickle Amendment;
- (B) community-based individuals whose countable-income amount exceeds the 100 percent federal poverty level income standards;
- (C) long-term-care-facility residents whose income, after general deductions described in 130 CMR 520.026, exceeds the public rate in a long-term-care facility;
- (D) disabled adult children whose incomes exceed the standards set forth in 130 CMR 519.004(A): Eligibility Requirements; and
- (E) persons who are eligible for an increased disregard as described at 130 CMR 520.013(B). (130 CMR 520.028).

The deductible is determined by multiplying the excess monthly income by six. (130 CMR 520.030). Excess monthly income is the amount by which the applicant's countable-income amount as described in 130 CMR 520.009 exceeds the MassHealth deductible-income standard. (130 CMR 520.030).

MassHealth Deductible Income Standards		
Number of Persons	Monthly Income Standard for Community Resident	Monthly Income Standard for Long-Term Care Facility Resident
1	\$522	\$72
2	\$650	

In this case, MassHealth determined a monthly countable income of \$2,346 exceeds the MassHealth deductible standard of \$522 for a household of 1 by \$1,824 [$\$2,346 - \$522 = \$1,824$]. In the initial calculation of a deductible, MassHealth also considered a deduction of \$174.70 as the appellant paid a Medicare Premium. This resulted in a monthly deductible of \$1,649.30. Once the agency determined the appellant eligible for the Senior Buy-In, which covers payment of a Medicare premium, the agency removed the \$174.70 Medicare premium deduction in calculating a deductible. In both decisions, MassHealth determined an excess monthly income amount and multiplied that amount by six in order to calculate a deductible. This process was correct.

By the notice dated April 9, 2024, MassHealth approved the appellant for Senior Buy-In. Pursuant to 30 CMR 519.010(A), MassHealth Buy-In for Qualified Medicare Beneficiaries (QMB) coverage is available to Medicare beneficiaries who:

- (1) are entitled to hospital benefits under Medicare Part A;
- (2) have a countable income amount (including the income of the spouse with whom he or she lives) that is less than or equal to 190% of the federal poverty level;
- (3) Effective until February 29, 2024, have countable assets less than or equal to two times the amount of allowable assets for Medicare Savings Programs as identified by the Centers for Medicare and Medicaid Services. Each calendar year, the allowable asset limits shall be made available on MassHealth's website. Effective March 1, 2024, MassHealth will disregard all assets or resources when determining eligibility for MSP-only benefits; and
- (4) meet the universal requirements of MassHealth benefits in accordance with 130 CMR 503.000 : Health Care Reform: MassHealth: Universal Eligibility Requirements or 130 CMR 517.000 : MassHealth: Universal Eligibility Requirements, as applicable.

Under the MassHealth Buy-In for QMB, MassHealth pays for Medicare Part A and Part B premiums and for deductibles and coinsurance under Medicare Parts A and B. (130 CMR 519.010(B)). MassHealth determined the appellant eligible for the MassHealth Buy-In for Qualified Medicare Beneficiaries (QMB) coverage using the income calculated after the PCA disregard.

MassHealth's April 9, 2024 notice states that the appellant is not eligible for the Home- and Community-Based Waiver services for the following reasons, and then discusses income and assets in excess of the MassHealth Standard program. (Exhibit 1A). The regulations at 130 CMR

519.007 describe the eligibility requirements for MassHealth Standard coverage for individuals who would be institutionalized if they were not receiving home- and community-based services. The Home- and Community-based Services Waiver (otherwise known as “The Frail Elder Waiver”) allows an applicant or member who is certified by MassHealth or its agent to be in need of nursing-facility services to receive certain waiver services at home if they:

- (a) are 60 years of age or older and, if younger than 65 years old, 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. (130 CMR 519.007(B)(1)).

In determining eligibility for MassHealth Standard and for waiver services, MassHealth determines income eligibility based solely on the applicant’s or member’s income regardless of their marital status. (130 CMR 519.007(B)(2)). 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
- (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. (130 CMR 519.007(B)(2)).

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, meeting a deductible as described at 130 CMR 520.028 or both. (130 CMR 519.007(B)(3)). 300% of the FBR for 2024 is \$2,829.00.

Whether the appellant is eligible for MassHealth’s Home-and Community-based Services Waiver is beyond the scope of this appeal as other factors are involved in such a decision.

As noted above, at the time of the eligibility decision on appeal and at hearing, the income reported by both the appellant and MassHealth was greater than 133% of the federal poverty level before the application of the PCA disregard. The regulations specifically state that 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. (130 CMR 520.013(B)(3)). In this case, it appears that MassHealth did not determine eligibility for the Senior Buy-In in that manner. Instead, MassHealth utilized

the PCA disregard of \$1,148 to determine countable income for eligibility for the Senior Buy-In as the appellant would not have been financially eligible for such program without that deduction.

It is not clear how MassHealth was able to apply an income disregard of \$1,148 in determining eligibility for the Senior Buy-In, as the appellant's income was greater than 133% of the Federal Poverty Level. However, if MassHealth was correct in applying a disregard of \$1,148, the appellant would likely be eligible for programs other than the Senior Buy-In as the agency appeared to acknowledge that the appellant was clinically eligible for Home- and Community - based Services Waiver.

As noted by the MassHealth representative at hearing and in the notice on appeal, at the time of the eligibility decisions in April 2024, the appellant did not meet the asset requirements for MassHealth Standard nor for Home- and Community-based Services Waiver. (130 CMR 520.000; 130 CMR 519.005(A); 519.007(B)). Therefore, the decision made by MassHealth regarding eligibility for MassHealth Standard and waiver services at that time was correct. Because the appellant has since reduced assets to below the MassHealth limit, this appeal is remanded to the agency to review and redetermine eligibility for MassHealth for the appellant.

Order for MassHealth

Redetermine eligibility for the appellant as an individual with assets below \$2,000.

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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

cc:

[REDACTED]

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