

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2408844
<b>Decision Date:</b>	8/30/2024	<b>Hearing Date:</b>	07/09/2024
<b>Hearing Officer:</b>	Scott Bernard		

**Appearances for Appellant:**



**Appearances for MassHealth:**

Jada Newson (Quincy MEC); Carmen Fabery  
(Premium Billing Unit) *via* video conference



*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

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Under 65; Household Composition
<b>Decision Date:</b>	8/30/2024	<b>Hearing Date:</b>	07/09/2024
<b>MassHealth's Reps.:</b>	Jada Newsome; Carmen Fabery	<b>Appellant's Reps.:</b>	[REDACTED]
<b>Hearing Location:</b>	Quincy Harbor South	<b>Aid Pending:</b>	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 2, 2024, MassHealth informed the appellant that he was eligible for MassHealth CommonHealth with a monthly premium of \$12.00 beginning May 2024 based on his having a household of one with monthly household income that is 164.80% of the federal poverty level (FPL). (See 130 CMR 505.004; 506.006; 506.007; and Exhibit (Ex.) 1). The appellant filed this appeal in a timely manner on June 3, 2024. (See 130 CMR 610.015(B) and Ex. 2). Any MassHealth action to suspend, reduce, terminate, or restrict a member's assistance is valid grounds for appeal. (See 130 CMR 610.032).

### Action Taken by MassHealth

MassHealth notified the appellant that he was eligible for MassHealth CommonHealth based on having a household of one and monthly household income that is 164.80% of the FPL.

### Issue

The appeal issue is whether MassHealth correctly determined the coverage for which the appellant was eligible based on his household composition and income.

## Summary of Evidence

Prior to the hearing, the appellant submitted several packets of documents to BOH, which the hearing officer forwarded to the MassHealth representative. (See Exs. 5-8). The appellant's submissions included an Amendment to the Amended Divorce Decree from 2017 which stated that the appellant "shall have sole physical custody [and] [j]oint legal custody of [his] minor child." (Ex. 7, p. 2). There was also a Stipulation for Judgement on Complaint for Modification from 2021 which stated:

1. The parties shall continue to share legal custody of the minor child...
2. [The child] shall attend [Town A]<sup>1</sup> High School. The Mother's residence shall be considered the primary residence for [the child's] schooling purposes. If the Mother relocates outside of [Town A], Massachusetts, the parties shall discuss and agree upon which school system [the child] is to attend with guidance from [the child] as to his preferred school. However, if [the child] is able to continue his attendance at [Town A] High School from the Father's residence through school choice, the Father's residence shall be considered primary residence for [the child's] schooling purposes.
3. The Father shall continue to be responsible for maintaining health insurance for [the child] under his care and home for so long as he is eligible; [a]nd the Father's residence shall be considered the primary residence for [the child's] medical purposes. In the event that the Father cannot provide insurance for the child, the Mother shall provide health insurance, provided it is available at a reasonable cost, in which case the Mother's residence shall be considered the primary residence for [the child's] medical purposes. The Father shall provide copies of [the child's] health insurance card to the Mother; and shall provide any authorizations that the Mother may need in order to provide medical services on behalf of [the child].
4. The Mother shall be responsible for scheduling primary care doctor yearly visits, dental by yearly appointments and any other necessary appointments for [the child] and shall bring him for as long as reasonably necessary. Any and all vaccines will be discussed and agreed upon by the Parties prior to administering. Any specialist appointments that [the child] needs to have schedule [sic] will be done jointly by the Parties. In the event that the Father does not attend medical and dental appointments, the Mother shall contact the Father regarding any "pressing" decision, and if the Father does not timely respond, the Mother shall be authorized to make any "pressing" decision. If the Mother is not inclined to schedule or take [the child] to these appointments, the Father shall assume this responsibility under the same conditions and terms.

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<sup>1</sup> The hearing officer redacted/genericized all names in order to protect any privacy right that may be impacted.

5. Both Parties shall both be listed[,] and their contact information shall be included as contacts on all of [the child's] educational and medical records.
6. Each Party shall have equal access to any and all educational and medical records. Each Party shall be solely responsible to obtain any and all records related to [the child], and neither Party is responsible to provide the other with information/documentation.
7. The Parties shall actively assist the child with preparing/submitting any homework during their parenting time with [the child].
17. The Parties agree that the Complaints for Contempt filed April 22, 2019, May 28, 2019 and September 27, 2019 shall be dismissed with prejudice. The Father is waiving any and all child support arrears which the Mother may owe the father. The Parties understand that said complaints were consolidated into the Complaint for Modification; and the Parties forever waive any interest in the issues and liabilities therein. The Parties acknowledge that the Father resolved the Parties' joint outstanding income tax liability for 2013 and 2014, and that the Father claimed [the child] on his 2018 income taxes, and the Mother did not.
18. In all other respects not contrary to this stipulation all prior Judgments and/or Orders shall remain in full force and effect. (Ex. 7, pp. 6-8).

A worker from the Quincy MassHealth Enrollment Center (MEC) (the MassHealth representative), a MassHealth Premium Billing Research Specialist (the Premium Billing representative), the appellant, and the appellant's mother attended the hearing by telephone. Although the Premium Billing representative remained in attendance at the hearing, it was quickly determined that the issues raised on appeal did not involve premium billing and the Premium Billing representative therefore did not otherwise participate.

The MassHealth representative testified first and stated the following. The appellant has a household size of one. (Testimony). The appellant is disabled. (Testimony; Ex. 3). The appellant has gross monthly income (GMI) of \$2,131, which he receives from Social Security. (Testimony). The appellant's income is equal to 164.8% of the federal poverty level (FPL) for a household of one. (Testimony). For that reason, on April 2, 2024, MassHealth notified the appellant in writing that it was downgrading his coverage from MassHealth Standard to MassHealth CommonHealth. (Testimony). The MassHealth representative stated that it appeared that the appellant and his ex-spouse and mother of his child have each appealed the redetermination of their benefits after the child was removed from one household and placed in the other. (Testimony). This has occurred on three previous occasions since 2023. (Testimony). MassHealth issued the notice under appeal as a result of the removal of the appellant's son from his household after the ex-spouse's last appeal. (Testimony).

Prior to the hearing, the MassHealth representative reviewed the family court decision from 2021. (Ex. 7, pp. 6-8). That decision indicates that the appellant is responsible for providing health insurance and that the child's primary residence is the appellant's address. (Testimony; Ex. 7, p. 6).

The MassHealth representative consulted her supervisors and managers and they agreed that based on that evidence, the appellant's son should be added back into the appellant's household. (Testimony). The MassHealth representative stated that she could not ensure that the child's mother would not appeal further notices that may result from the change in her household composition, however. (Testimony).

The appellant's mother, speaking on his behalf, testified to the following. The appellant was awarded full physical custody of his son in 2017 and the son has resided with the appellant every single day since then. (Testimony; Ex. 7, p. 2). The appellant's ex-wife has not had physical custody of the son since 2017. (Testimony). The appellant did experience a stroke in 2019 that resulted in his being hospitalized for a time. (Testimony). Two and a half years after the appellant had his stroke, the appellant's ex-wife took him to court in order to get custody away from him, but was not successful. (Testimony). This resulted in the 2021 Probate and Family Court determination. (Testimony; Ex. 7, pp. 6-11). The appellant and his mother also brought the hearing officer's attention to other documentation they submitted that showed that his son is listed as residing at his address. (Testimony). These include a Social Security Administration (SSA) benefit verification letter dated September 1, 2023; and Form SSA-1099 Social Security Benefit Statement for 2022. (Testimony; Ex. 5, pp. 6, 7). On December 28, 2023, the appellant submitted a Non-Custodial Parent form to MassHealth signed under the penalty perjury stating that he was the custodial parent and that his ex-wife is the non-custodial parent. (Testimony; Ex. 8, pp. 5-9).

## **Findings of Fact**

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

1. On April 2, 2024, MassHealth notified the appellant in writing that it was downgrading his coverage from MassHealth Standard to MassHealth CommonHealth. (Testimony; Ex. 1).
2. The notice resulted from MassHealth's removal of the appellant's son from his household. (Testimony).
3. At the time of the notice, MassHealth determined that the appellant had a household of one. (Testimony; Ex. 1).
4. The appellant is disabled. (Testimony; Ex. 3).
5. The appellant has GMI of \$2,131, which he receives from Social Security. (Testimony).
6. The appellant's income is equal to 164.8% of the FPL for a household of one. (Testimony).
7. By court order, the appellant has had sole physical custody of his son since 2017. (Testimony; Ex. 7, p. 2).

8. The appellant shares legal custody of his son with his ex-wife. (Testimony; Ex. 7, pp. 2, 6-8).
9. In 2021, the Probate and Family Court issued a modification order which stated the following:
  1. The parties shall continue to share legal custody of the minor child...
  2. [The child] shall attend [Town A]<sup>2</sup> High School. The Mother's residence shall be considered the primary residence for [the child's] schooling purposes. If the Mother relocates outside of [Town A], Massachusetts, the parties shall discuss and agree upon which school system [the child] is to attend with guidance from [the child] as to his preferred school. However, if [the child] is able to continue his attendance at [Town A] High School from the Father's residence through school choice, the Father's residence shall be considered primary residence for [the child's] schooling purposes.
  3. The Father shall continue to be responsible for maintaining health insurance for [the child] under his care and home for so long as he is eligible; [a]nd the Father's residence shall be considered the primary residence for [the child's] medical purposes. In the event that the Father cannot provide insurance for the child, the Mother shall provide health insurance, provided it is available at a reasonable cost, in which case the Mother's residence shall be considered the primary residence for [the child's] medical purposes. The Father shall provide copies of [the child's] health insurance card to the Mother; and shall provide any authorizations that the Mother may need in order to provide medical services on behalf of [the child].
  4. The Mother shall be responsible for scheduling primary care doctor yearly visits, dental by yearly appointments and any other necessary appointments for [the child] and shall bring him for as long as reasonably necessary. Any and all vaccines will be discussed and agreed upon by the Parties prior to administering. Any specialist appointments that [the child] needs to have schedule [sic] will be done jointly by the Parties. In the event that the Father does not attend medical and dental appointments, the Mother shall contact the Father regarding any "pressing" decision, and if the Father does not timely respond, the Mother shall be authorized to make any "pressing" decision. If the Mother is not inclined to schedule or take [the child] to these appointments, the Father shall assume this responsibility under the same conditions and terms.
  5. Both Parties shall both be listed[,] and their contact information shall be included as contacts on all of [the child's] educational and medical records.
  6. Each Party shall have equal access to any and all educational and medical records. Each Party shall be solely responsible to obtain any and all records related to [the child], and neither Party is responsible to provide the other with

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<sup>2</sup> The hearing officer redacted/genericized all names in order to protect any privacy right that may be impacted.

information/documentation.

7. The Parties shall actively assist the child with preparing/submitting any homework during their parenting time with [the child].

8. The Parties agree to install AppClose in order to communicate and maintain [the child's] schedule, and other matters relating to [the child].

9. When school is not remote, the Father shall be responsible for [the child's] transportation to/from school, unless otherwise agreed.

10. All uninsured medical expenses of [the child] shall be discussed and agreed upon by the Parties. Those uninsured medical expenses that have been agreed upon in writing shall be split equally between the Parties.

11. The Mother shall be solely responsible for [the child's] orthodontia expense.

12. The Mother shall claim [the child] on her state and federal income tax returns each and every year beginning with tax year 2020 and every year thereafter, so long as she is able to do so.

13. The Father shall continue to collect and manage [the child's] social security benefits, which are received due to the Father being eligible for social security benefits. In light of this, the Mother's obligation to pay child support shall be terminated upon the entry of this Judgment of Modification. In addition, the Mother shall be responsible for [the child's] school lunch expense, and for any expenses she may incur during her parenting time with [the child].

14. Due to [the child's] age, [the child's] parenting time shall be flexible and as arranged between [the child] and the Mother, with notice to the Father. Neither the Father nor any third party will interfere with parenting time as arranged between the Mother and [the child].

15. The Parties agree that the Mother will pick-up and drop-off [the child] for all of her parenting time, whether it be from school or the Father's home.

16. Each parent shall notify the other if they are hospitalized for longer than twenty-four (24) hours.

17. The Parties agree that the Complaints for Contempt filed April 22, 2019, May 28, 2019 and September 27, 2019 shall be dismissed with prejudice. The Father is waiving any and all child support arrears which the Mother may owe the father. The Parties understand that said complaints were consolidated into the Complaint for Modification; and the Parties forever waive any interest in the issues and liabilities therein. The Parties acknowledge that the Father resolved the Parties' joint outstanding income tax liability for 2013 and 2014, and that the Father claimed [the child] on his 2018 income taxes, and the Mother did not.

18. In all other respects not contrary to this stipulation all prior Judgments and/or Orders shall remain in full force and effect. (Ex. 7, pp. 6-8).

10. The appellant also submitted the following documents to demonstrate that his son lives with him:

- a. A Social Security Administration (SSA) benefit verification letter dated September 1, 2023. (Testimony; Ex. 5, p. 6).
- b. Form SSA-1099 Social Security Benefit Statement for 2022. (Testimony; Ex. 5, p. 7).
- c. A MassHealth Non-Custodial Parent form signed under the penalty perjury on December 28, 2023 stating that the appellant is the custodial parent and that his ex-wife is the non-custodial parent. (Testimony; Ex. 8, pp. 5-9).

## **Analysis and Conclusions of Law**

In determining financial eligibility for MassHealth members and applicants under the age of 65, MassHealth reviews the person's "household composition, countable income, deductibles, calculation premiums, and copayments for all coverage types." (130 CMR 506.001(A)). Household size is determined at the individual member level in one of two ways: Modified Adjusted Gross Income (MAGI) Household, and Disabled Adult Household. (130 CMR 506.002(A)). MassHealth uses the MassHealth Disabled Adult composition rules to determine eligibility for MassHealth Standard for the relevant members and applicants. (130 CMR 506.002(A)(2)(a)). A Disabled Adult's household consists of "the individual...the individual's spouse if living with them...the individual's natural, adopted, and stepchildren younger than 19 years old if living with them...and...if any [such] individual...is pregnant, the number expected children." (130 CMR 506.002(C)).

The appellant, by court order, has had physical custody of his son since 2017. The appellant shares legal custody of the child with his ex-wife. The Probate and Family Court's 2021 modification may seem to muddy the waters somewhat. For instance, the appellant's ex-wife is permitted to claim the son on her income taxes, her address is considered the primary residence for the son's schooling purposes, and the son does go to school in the town in which the ex-wife wife lives. A careful reading of the remainder of the modification however, indicates that the son lives with the appellant. The court states that it was the ex-wife's responsibility to "pick-up and drop-off [the child] for all of her parenting time, whether it be from school or the Father's home." When school was not remote, the appellant was responsible "for [the child's] transportation to/from school, unless otherwise agreed." The appellant's "residence shall be considered the primary residence for [the child's] medical purposes." The appellant will "collect and manage [the child's] social security benefits, which are received due to the Father being eligible for social security benefits." More importantly, nothing in the modification order seems to be contraindicated by the 2017 order placing physical custody with the appellant. Therefore, a preponderance of the evidence supports placing the appellant's son in his household for the purposes of determining the appellant's coverage.

Parents and caretaker relatives of children under 19 years old can qualify for MassHealth Standard coverage if they meet specific requirements. (130 CMR 505.002(C)(1)). First the household income must not exceed 133% of the federal poverty level. (130 CMR 505.002(C)(1)(a)). Additionally, they must be either a U.S. citizen or a qualified noncitizen. (130 CMR 505.002(C)(1)(b)). If they are a



parent, they need to live with their children and assume primary responsibility for their care, even in cases of separation, divorce, or custody arrangements. (130 CMR 505.002(C)(1)(c)(1)). Finally, they must use potential health insurance benefits in accordance with 130 CMR 503.007, and must enroll in health insurance, including Medicare, if available at no greater cost to the applicant or member than they would pay without access to health insurance, or if purchased by MassHealth in accordance with 130 CMR 505.002(O) or 130 CMR 506.012. (130 CMR 505.002(C)).

Financial eligibility for coverage types that are determined using the MassHealth MAGI household rules is determined by comparing the sum of all countable income less deductions for the individual's household with the applicable income standard for the specific coverage type. (130 CMR 506.006(A)). MassHealth will construct a household 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. (130 CMR 506.007(A)(1)).

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 household. Income of all the household members forms the basis for establishing an individual's eligibility. (130 CMR 506.007(A)(2)). A household's countable income is the sum of the gross 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. (130 CMR 506.007(A)(2)(a)). Countable income includes earned income (described below) and unearned income (not applicable in this appeal) less deductions. (130 CMR 506.007(A)(2)(b)). Earned income is the total amount of taxable compensation received for work or services performed less pretax deductions. (130 CMR 506.003(A)(1)). Earned income may include wages, salaries, tips, commissions, and bonuses. (Id.).

In determining monthly income, the MassHealth agency multiplies average weekly income by 4.333. ((130 CMR 506.007(A)(2)(c)). Once MassHealth determines a household's countable income, it then determines what percentage of the federal poverty level that income is and subtracts five percentage points from that number. (130 CMR 506.007(A)(3)). This adjusted income is then compared to the federal poverty level to determine the individual's eligibility. (Id.). The appellant meets the categorical criteria for MassHealth Standard for parents of children under age 19. The income limit for MassHealth Standard is \$2,266 per month, which is equal to 133% of the federal poverty level for a household of two. The gross monthly household income for the appellant's household is \$2,131 which is 125.06% of the federal poverty level for a household of two. After deducting five percentage points from this raw figure, the appellant's countable income is equal to 120.06% of the FPL. Since the appellant's countable income is below 133% of the FPL, the appellant is financially eligible MassHealth Standard.

For the above stated reasons, the appeal is APPROVED.

## Order for MassHealth

If it has not done so already, MassHealth should reinstate the appellant's MassHealth Standard and Medicare Buy-In benefits retroactive to the termination date to ensure that there is not a gap in coverage.

## 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.

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Scott Bernard  
Hearing Officer  
Board of Hearings

cc:

[REDACTED]

Quincy MEC, Attn: Appeals Coordinator, 100 Hancock Street, 6th Floor, Quincy, MA 02171

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