

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part; Remanded	Appeal Number:	2410172
Decision Date:	12/20/2024	Hearing Date:	10/01/2024
Hearing Officer:	Sharon Dehmand	Record Open to:	11/08/2024

Appearance for Appellant:




Appearance for MassHealth:

Sahen Duran, Quincy MEC
Carmen Fabery, Premium Billing



*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:	Dismissed in part; Denied in part; Remanded	Issue:	Community Eligibility – under 65; Income
Decision Date:	12/20/2024	Hearing Date:	10/01/2024
MassHealth’s Rep.:	Sahen Duran; Carmen Fabery	Appellant’s Rep.:	
Hearing Location:	Remote	Aid Pending:	Yes

Authority

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

Jurisdiction

Through notices dated June 7, 2024, June 20, 2024, and June 25, 2024, MassHealth downgraded the appellant's coverage and that of her household members from MassHealth Standard because MassHealth determined that the family's income exceeded the allowed threshold.¹ See 130 CMR 505.002; 130 CMR 506.002; 130 CMR 506.003; 130 CMR 506.007; and Exhibit 1A-E. The appellant filed this appeal in a timely manner on July 1, 2024.² See 130 CMR 610.015(B) and Exhibit 2A-B. Aid pending was put in place to protect the MassHealth benefits for the appellant, Child2, and Child3. Any action to suspend, reduce, terminate, or restrict a member's assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032(A)(3).

¹ The appellant, her spouse, and Child1 were approved for Health Safety Net for a limited time as well as a ConnectorCare plan through the Massachusetts Health Connector effective on May 28, 2024. See Exhibit 1A, 1B, and 1C. Child2 was downgraded to Family Assistance effective on May 28, 2024. See Exhibit 1D. Child3 was downgraded to CommonHealth effective June 15, 2024. See Exhibit 1E. Child4 did not receive a notice from MassHealth and has MassHealth Standard coverage through the Department of Transitional Assistance (DTA). (Testimony).

² Although the appellant noted that she is filing appeals for all six members of her household, only the appellant and her spouse signed the Fair Hearing Request form. See Exhibit 2A and B.

Action Taken by MassHealth

MassHealth downgraded the appellant's coverage and that of her household members from MassHealth Standard because MassHealth determined that the family's income exceeded the allowed threshold.

Issue

Whether MassHealth correctly determined that the appellant and members of her household are not eligible for MassHealth Standard benefits in pursuant to 130 CMR 505.002; 130 CMR 505.004; 130 CMR 505.005; 130 CMR 506.002; 130 CMR 506.003; 130 CMR 506.007; and 130 CMR 506.011.

Summary of Evidence

All parties participated telephonically. MassHealth was represented by a worker from the Quincy MassHealth Enrollment Center and a representative from the Premium Billing Unit (PBU). The appellant and her spouse appeared pro se and verified their identities. The following is a summary of the testimonies and evidence provided at the hearing:

The MassHealth representative testified that the appellant is under the age of 65. She is the head of household for a household size of six, including her spouse and her four children.³ The appellant and her family except for Child2 have been on MassHealth Standard since 2023. Child2 has been on MassHealth Standard since 2010. The MassHealth representative testified that the appellant submitted a renewal application to MassHealth and reported her updated household income of \$68,000.00 per year. The MassHealth representative testified that this figure equates to 162.70% of the federal poverty level (FPL) for a household of six, which exceeds the limit for MassHealth benefits. The income limit to be eligible for MassHealth benefits is 133% of the FPL, or \$55,812.00 per year for a household of six. Through different notices, the appellant and her household members were notified that their MassHealth coverage will be downgraded because their family's countable income exceeded the allowed threshold for MassHealth. The MassHealth representative stated that since the appellant listed a disability for all members of her household on her application, supplemental disability forms were sent out to her and that she was required to submit the same for all her household members except for Child3. He said that Child3 was determined disabled by the Disability Evaluation Services (DES). He added that the appellant's spouse will have to initiate enrolling his family in his employer sponsored insurance (ESI) plan, if available, and that an ESI form was mailed out to the appellant's spouse. He said that aid pending

³ Child1 is over the age of 20. Child2, Child3, and Child4 are all under the age of 19.

protection was put in place for all family members.⁴

The PBU representative testified that only Child2 and Child3 in the household had premiums associated with their MassHealth benefits. She said that there are no outstanding premiums at this time.

The appellant verified her household size, and her spouse verified his annual income. Appellant stated that her spouse has had insurance coverage through his employer as well as MassHealth Standard. Appellant testified that she had submitted two of the disability supplement forms and plans on sending the remaining three additional forms within a week. Appellant stated that her spouse has had a kidney transplant, but he is currently exhibiting signs of kidney rejection. She added that she is on a feeding tube and that she is 100% dependent on a formula for her nutritional intake. She said that without her MassHealth coverage, she will not be able to purchase her formula. She testified that all members of her household are disabled and that her spouse's income is not enough to support her family. She added that they often depend on food pantries for food.

The record was held open until November 1, 2024, for the appellant to submit the remaining three disability supplement forms and until November 8, 2024, for MassHealth to respond to the appellant's submissions. Through an email on November 1, 2024, the appellant stated that the "remaining disability documents were register mailed on October 15, 2024, and confirmed received through my tracking number." See Exhibit 8.

Though an email on November 13, 2024, MassHealth responded that the appellant's disability supplement form was deemed incomplete and that "nothing has been received for [spouse and Child2]." See Exhibit 8. Through an updated email on December 17, 2024, the MassHealth representative confirmed that all members of the household with the exception of Child2 have been determined disabled by DES. The disability supplement form is still outstanding for Child2. See id.

Findings of Fact

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

1. The appellant is under the age of 65 and has a household of six including her spouse and four children. (Testimony and Exhibit 4A-F).
2. Child1 is an adult over the age of 20. (Testimony and Exhibit 4).
3. Child2, Child3, and Child4 are all children under the age of 19. (Testimony and Exhibit 4).

⁴ This information was incorrect. Upon examination of the MMIS, it appeared that the only family members with aid pending protection were the appellant, Child2, and Child3.

4. The appellant and her family except Child2 have been on MassHealth Standard since 2023. (Testimony).
5. Child2 has been on MassHealth Standard since 2010. (Testimony).
6. The appellant's most recently verified household income is \$68,000.00 per year. (Testimony).
7. The income limit to be eligible for MassHealth benefits is \$55,812.00 per year for a household of six. (Testimony).
8. Through notices dated June 7, 2024, June 20, 2024, and June 25, 2024, MassHealth downgraded the appellant's and members of her household's MassHealth coverage because their household income exceeded the allowed threshold. (Testimony and Exhibit 1A-E).
9. The appellant filed this appeal in a timely manner on July 1, 2024. (Exhibit 2).
10. Aid pending was put in place to protect the MassHealth benefits for the appellant, Child2, and Child3. (Testimony and Exhibit 4).
11. The appellant declared a disability for all members of her household but had not submitted disability supplement forms for all members. (Testimony and Exhibit 8).
12. Only Child3 had been deemed disabled by the DES. (Testimony).
13. The record was held open until November 1, 2024, for the appellant to submit the remaining disability supplement forms. (Exhibit 7).
14. MassHealth received disability supplement forms for all members of the household with the exception of Child2. (Exhibit 8).
15. All members of the household with the exception of Child2 have been determined disabled by DES. (Exhibit 8).

Analysis and Conclusions of Law

At the outset it should be noted that a person who is not considered a child⁵ must provide the Board of Hearings with written authorization naming a person as his or her appeal representative

⁵ Child is a person younger than 19 years old. See 130 CMR 501.001.

to act responsibly on his or her behalf during the appeal process. See 130 CMR 610.004(1)(a). An authorized representative is defined in 130 CMR 501.001.

Here, Child1 is over the age of 19 and is not considered a child. See 130 CMR 501.00. As such, he must designate a person in writing to act responsibly on his behalf in connection with the eligibility process and other ongoing communications with the MassHealth agency. See 130 CMR 501.001(1)(a). Child1 did not provide the Board of Hearings with a written authorization naming a person as his appeal representative. See Exhibit 2A. In the absence of the proper authorization to proceed on behalf of Child1, the appeal regarding Child1 must be DISMISSED.

MassHealth provides access to healthcare by determining eligibility for the coverage type that provides the most comprehensive benefits. See 130 CMR 501.003(A). MassHealth offers several coverage types. See 130 CMR 501.003(B). The coverage type for which an individual is eligible is based on their income and circumstances. Id.

Generally, MassHealth regulations at 130 CMR 505.000 explains the categorical requirements **and** financial standards that must be met to qualify for a particular MassHealth coverage type. To establish eligibility for MassHealth benefits, applicants must meet both the categorical requirements **and** financial standards.

These coverage types set forth at 130 CMR 505.001(A) are as follows:

- (1) MassHealth Standard - for people who are pregnant, children, parents and caretaker relatives, young adults⁶, 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) 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, CommonHealth, or CarePlus;
- (5) MassHealth 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
- (6) MassHealth Medicare Savings Programs (MSP, also called Senior Buy-In and Buy-In) for certain Medicare beneficiaries.

⁶ “[Y]oung adults” are defined as those aged 19 and 20. See 130 CMR 501.001.

Here, the appellant, her spouse, Child2, and Child3 meet the categorical requirements for both MassHealth Standard and MassHealth CommonHealth. Id. However, both programs also have financial standards. The rules of financial responsibility and calculation of financial eligibility are detailed in 130 CMR 506.000. MassHealth determines financial eligibility based on an applicant's modified adjusted gross income based on household size.

Pursuant to 130 CMR 506.002, MassHealth determines household size at the individual member level. Based on testimony and evidence presented at the hearing, there is no dispute that the appellant is in a household size of six including her spouse and four children. See 130 CMR 506.002(B)(to determine financial eligibility pursuant to 130 CMR 506.007(A), MassHealth must construct a household as described in 130 CMR 506.002(B) for each individual who is applying for or renewing coverage).

To calculate financial eligibility for an individual, MassHealth takes the countable income, which includes earned income as described in 130 CMR 506.003(A) and unearned income as described in 130 CMR 506.003(B) and subtracts deductions described in 130 CMR 506.003(D). See 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.

The eligibility requirements for parents, as here, are set forth in 130 CMR 505.002(C). The financial standards for parents are set forth in 130 CMR 505.002(C)(1)(a). In this case, the appellant and her spouse are the parents of children younger than 19 years of age, so they are categorically qualified for MassHealth Standard. See 130 CMR 505.001(A); 130 CMR 505.002(C)(1). However, a parent who is categorically eligible for MassHealth Standard can only be financially eligible if "the modified adjusted gross income of the MassHealth MAGI household is less than or equal to 133% of the federal poverty level (FPL)." See 130 CMR 505.002(C)(1)(a).

The MassHealth representative testified, and the appellant agreed that her household income is \$68,000.00 per year. To determine eligibility of the individual under the coverage type with the highest income standard, five percentage points of the current FPL is subtracted from the applicable household's total countable income. See 130 CMR 506.007(A). After deducting five percentage points of the FPL (\$2,098.20) from the appellant's total income of \$68,000.00, the appellant countable income equals \$65,901.80 (\$68,000.00-\$2,098.20) per year. Based on the

current MassHealth Income Standards and Federal Poverty Guidelines, the income limit for MassHealth benefits is 133% of the FPL, or \$55,812.00 a year for a household of six. See chart at <https://www.mass.gov/doc/2024-masshealth-income-standards-and-federal-poverty-guidelines>. Thus, the appellant's MAGI household income is over the threshold limit for MassHealth benefits.

The appellant credibly testified that her family is struggling to pay for their expenses and that they must depend on food pantries for food. However, since customary life expenses do not fall within the allowable deductions enumerated in 130 CMR 506.003 (D), they cannot be considered as deductions. Consequently, MassHealth correctly decided that the appellant, her spouse, Child2, and Child3 do not qualify for MassHealth Standard. See Exhibit 1A, B, and D.

It should be noted that the appellant declared a disability for herself and all members of her household on her MassHealth application. Consequently, MassHealth requested that the appellant submit a disability supplement form for herself and all members of her family. During the hearing, the MassHealth representative testified that the disability supplement form for Child3 has been received and he has been deemed disabled by DES. As such, he is eligible for MassHealth CommonHealth.

The eligibility requirements for MassHealth CommonHealth for disabled children younger than 18 years of age, such as Child3, are set forth in pertinent part:

- (G) Disabled Children Younger than 18 Years Old. Disabled children younger than 18 years old must meet the following requirements:
- (1) be permanently and totally disabled, as defined in 130 CMR 501.001: Definition of Terms;
 - (2) be ineligible for MassHealth Standard; and
 - (3) be a citizen as described at 130 CMR 504.002: U.S. Citizens, lawfully present immigrant, or a nonqualified PRUCOL, as described in 130 CMR 504.003: Immigrants.

See 130 CMR 505.004(G).

Here, Child3 is categorically eligible for CommonHealth as a disabled young child under the age of 18. Id. In accordance with 130 CMR 505.004(I), disabled children who are eligible for CommonHealth may be assessed a premium pursuant to the premium schedule provided in 130 CMR 506.011(B)(2)(a). In this case, the appellant is not contesting the calculation of Child3's CommonHealth premium. Nevertheless, based on the aforementioned, I find that MassHealth correctly calculated a \$12.00 monthly premium for Child3's CommonHealth coverage. As such, the appeal regarding Child3 must be DENIED subject to the order below.

The appellant contended that she has submitted supplemental disability forms on behalf of herself, her spouse, and Child2. The MassHealth representative stated that MassHealth has only received a disability form for the appellant, and none has been received for her spouse and Child2.

During the record open period and prior to this decision, the appellant's supplemental disability forms for herself and her spouse were received by MassHealth. In an email on December 17, 2024, the MassHealth representative stated that all members of the appellant's household have been deemed disabled by DES with the exception of Child2. See 130 CMR 501.001(DES is a unit that consists of physicians and disability evaluators who determine permanent and total disability of an applicant or member seeking coverage under a MassHealth program for which disability is a criterion using criteria established by the Social Security Administration under Title XVI, and criteria established under state law. This unit may be a part of a state agency or under contract with a state agency). As such, the case will be remanded for MassHealth to make a new determination regarding the appellant's and her spouse's eligibility for MassHealth CommonHealth.⁷ However, based on reasons stated supra, MassHealth correctly decided that the appellant and her spouse do not qualify for MassHealth Standard. Accordingly, the appeal regarding the appellant and her spouse must be DENIED in part subject to the order below.

Since Child2's supplemental disability form is still outstanding, and he is not eligible for MassHealth Standard for reasons stated previously, his only categorical eligibility is MassHealth Family Assistance. Regulations regarding Child2, who is a child under the age of 19, are set forth at 130 CMR 505.005(B) and state in pertinent part that the child is eligible if:

- (a) the child is younger than 19 years old;
- (b) the child's modified adjusted gross income of the MassHealth MAGI household is greater than 150 and less than or equal to 300% of the federal poverty level (FPL);
- (c) the child is ineligible for MassHealth Standard or CommonHealth;
- (d) the child is a citizen as defined in 130 CMR 504.002: U.S. Citizens or a lawfully present immigrant as defined in 130 CMR 504.003(A), or a nonqualified PRUCOL, as defined in 130 CMR 504.003(C): Nonqualified Persons Residing under Color of Law (Nonqualified PRUCOLs);
- (e) the child complies with 130 CMR 505.005(B)(2) and meets one of the following criteria:
 - 1. the child is uninsured; or
 - 2. the child has health insurance that meets the criteria at 130 CMR 506.012: Premium Assistance Payments.

See 130 CMR 505.005(B)(1).

As stated supra, the MassHealth representative testified, and the appellant agreed that her household income is \$68,000.00 per year. The MassHealth representative testified that this figure equates to 162.70% of the federal poverty level (FPL) for a household of six. Since Child2's MAGI household income is greater than 150% and less than 300% of the FPL, he qualifies for MassHealth

⁷ A new notice issued by MassHealth will carry its own appeals rights.

Family Assistance. Id. In accordance with 130 CMR 505.005(H), individuals who are eligible for Family Assistance may be assessed a premium pursuant to the premium schedule provided in 130 CMR 506.011(B)(3). In this case, the appellant is not contesting the calculation of Child2's Family Assistance premium. Nevertheless, based on the aforementioned, I find that MassHealth correctly calculated a \$12.00 monthly premium for Child2's Family Assistance coverage. As such, the appeal regarding Child2 must be DENIED subject to the order below. See Exhibit 1D.

Lastly, since Child4 did not receive a notice from MassHealth and currently has MassHealth Standard coverage through the Department of Transitional Assistance (DTA), she is not the subject of this appeal. Thus, no order will be issued regarding Child4.

Order for MassHealth

Remove aid pending protection for [REDACTED] and the appellant. Redetermine the appellant and spouse's eligibility for MassHealth Commonwealth benefits based on their disability approvals.

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.

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.

Sharon Dehmand, Esq.
Hearing Officer
Board of Hearings

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