

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2411916
Decision Date:	10/22/2024	Hearing Date:	09/03/2024
Hearing Officer:	Casey Groff		

Appearance for Appellant:



Appearance for MassHealth:
Yous Khieu, Charlestown MEC



*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:	Approved	Issue:	Eligibility; Over 65; Community; Income; SMNA
Decision Date:	10/22/2024	Hearing Date:	09/03/2024
MassHealth's Rep.:	Yous Khieu	Appellant's Rep.:	[REDACTED]
Hearing Location:	Board of Hearings, 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 a notice dated 7/25/24, MassHealth informed Appellant that she no longer qualified for benefits under the home and community-based services (HCBS) frail elder waiver because her income exceeded the program limit, and, on this basis, her Standard with Buy-In benefit would downgrade to Buy-In only, effective 8/8/24. See Exh. 1. Appellant, through her representative, filed this appeal in a timely manner on 8/1/24. See 130 CMR 610.015(B) and Exhibit 2. Limiting the scope of assistance is valid grounds for appeal. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth sought to terminate Appellant's Standard benefit because it determined her income exceeded the program limit under the HCBS frail elder waiver.

Issue

The appeal issue is whether MassHealth was correct in determining that Appellant no longer qualified for the HCBS waiver because her income exceeded the program limit.

Summary of Evidence

A MassHealth eligibility representative appeared at the hearing and testified as follows: Appellant is married, over the age of 65, and lives in the community. Her spouse is currently in a nursing facility and in the process of applying for MassHealth long-term care (LTC) benefits. Appellant was deemed clinically eligible for benefits under MassHealth's home and community-based services (HCBS) frail elder waiver. Appellant was approved for, and receiving, Standard under the HCBS frail elder waiver, along with Senior Buy-In. To be financially eligible for the HCBS waiver, the applicant must have income that does not exceed 300% of the federal benefit rate (FBR). This limit is currently set at income of \$2,829 per month. Unlike traditional eligibility rules, MassHealth determines eligibility under its waiver programs based solely on the income of the individual, even if they are married. Currently, Appellant receives social security income of \$1,779 per month. Appellant remained under the income limit to qualify for the waiver until her husband filed an application for LTC benefits, which caused a portion of his income to be allocated to Appellant as a spousal maintenance needs allowance (SMNA). The MassHealth representative explained that when a married individual applies for LTC benefits, MassHealth opens an LTC case and enters all relevant marital financial information into its system so that it can render an eligibility determination and calculate the applicant's projected patient paid amount (PPA) obligation, as well as the amount of their income that can be deducted therefrom, such as a SMNA or "spousal allowance" if their spouse lives in the community. In such cases, once a potential SMNA is calculated, the amount is automatically reflected as "income" of the community spouse. There is no way to separate the spousal case from the LTC case and therefore, even if the LTC application is pending, the SMNA will be counted as income of the community spouse.

Currently, Appellant's spouse's LTC application is pending in the verifications stage. When her spouse's LTC case was opened, the system determined that, if approved, he could deduct \$2,031.50 of his income from his PPA as an SMNA for Appellant. This amount, which the system recognized as Appellant's income, was added to her social security income, effectively placing her over 300% of the FBR. This prompted MassHealth to issue a notice dated 7/25/24, informing Appellant that she was no longer eligible for HCBS waiver, and that her benefit would downgrade from Standard with Buy-in, to just Buy-in, effective 8/8/24. See Exh. 1. The MassHealth representative conceded that the SMNA amount is technically not a current source of income to Appellant because her spouse has not been approved for LTC benefits at this time; however, there is no way to manually override the system default to prevent the projected SMNA from appearing in Appellant's case. Although Appellant has an aid pending protection on her case, there is no way MassHealth can resume Appellant's benefit back to Standard once the protection is removed. However, even with the increased income, Appellant has a verified disability and could qualify for CommonHealth if she submits verification that she meets "working disabled" requirements, via a working disabled letter.

Appellant's representative confirmed that Appellant's husband is currently in a nursing home. Because he exceeded his Medicare days, he was advised to submit a LTC conversion application to MassHealth. The LTC application is still pending as he is in the process of obtaining requested verifications which are not due for another month. Appellant's representative argued that MassHealth's 7/25/24 eligibility determination was not based on any regulation, but rather, is due to a flaw the system. By pulling the community spouse's case with the spouse's LTC case, the community spouse, i.e., Appellant, appears to have an income source that she does not in fact have at this time. Because the LTC application is pending, MassHealth has made no official determination on the final SMNA amount and when or if she would receive it. By incorrectly included a potential income source, MassHealth ended her Standard benefit. Even though she qualifies for aid pending, this has disrupted Appellant's receipt of medically necessary health care services. When the 7/25/24 notice was issued, Appellant's PCM agency abruptly suspended her personal care attendant (PCA) services. Appellant argued that until her spouse is approved for LTC benefits, Appellant should remain eligible for the waiver based solely on her social security income – which is under 300% of the FBR.

Appellant's representative explained that in the event MassHealth could not restore her Standard benefit, she was submitting a "working disabled letter," which would at least make Appellant eligible for CommonHealth. The representative also acknowledged that when MassHealth does render a LTC approval, Appellant's income may, at that point, exceed the limit for the waiver with the additional SMNA income. The representative requested that MassHealth keep the working disabled letter so that, if she no longer qualifies for the waiver, she can be downgraded to CommonHealth (instead of Buy-In only) so she can continue receiving PCA services.

The MassHealth representative acknowledged receipt of Appellant's working disabled letter and testified that it satisfied the remaining requirements to deem Appellant eligible for CommonHealth.

Findings of Fact

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

1. Appellant is over the age of 65, married, and lives in the community.
2. Appellant has a verified disability and was deemed clinically eligible for benefits under MassHealth's HCBS frail elder waiver.
3. Appellant was previously approved for MassHealth Standard under the HCBS frail elder waiver based on her income.

4. Appellant receives social security income of \$1,779 per month.
5. Through a notice dated 7/25/24, MassHealth informed Appellant that she was no longer eligible for benefits under the HCBS waiver, and that her Standard benefit with Buy-In would downgrade to Buy-In only, effective 8/8/24.
6. MassHealth issued the 7/25/24 notice after Appellant's husband applied for LTC benefits, which caused MassHealth's system to allocate \$2,031.50 of his income to Appellant as a spousal allowance or SMNA.
7. By counting both the projected SMNA and Appellant's social security income, MassHealth determined Appellant exceeded the income limit to qualify for the waiver at 300% of the FBR.
8. As of the hearing date, MassHealth had not rendered a determination on Appellant's spouse's LTC application, and it remained open and pending verifications.
9. Appellant does not receive any income in addition to her social security income.

Analysis and Conclusions of Law

To qualify for MassHealth Standard, individuals over the age of 65 that live in the community, typically, must have a modified adjusted gross income that does not exceed 100% of the federal poverty level. See 130 CMR 519.005. Alternatively, individuals whose income exceeds this amount, may still qualify for Standard under one of MassHealth's home and community-based services (HCBS) waiver programs, which are further described in 130 CMR 519.007. With respect to the HCBS frail elder waiver, the eligibility criteria are described as follows:

(B) Home- and Community-based Services Waiver–frail Elder.

.....

(2) Eligibility Requirements. In determining eligibility for MassHealth Standard and for waiver services, the ***MassHealth agency determines income eligibility based solely on the applicant's or member's income regardless of their marital status.*** The applicant or member must

(a) meet the [clinical and age¹] requirements of 130 CMR 519.007(B)(1)(a) and (b);

¹ The clinical and age requirements described in 130 CMR 519.007(B)(1), are met when the applicant/member is certified by MassHealth, or its agent, 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 § 1915(c) of the Social Security Act.

- (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, for a married couple if the initial Waiver eligibility determination was on or after January 1, 2014, have assets that are less than or equal to the standards at 130 CMR 520.016(B): *Treatment of a Married Couple's Assets When One Spouse Is Institutionalized*; 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) (emphasis added).

The sole issue in this appeal is whether MassHealth correctly determined that Appellant no longer qualified for the HCBS frail elder waiver on the basis that her countable income exceeded the regulatory limit of 300% of the federal benefit rate (FBR). *Id.* For 2024, that limit amounts to a monthly income of \$2,829.00.² The evidence shows that Appellant was initially approved for the HCBS waiver based solely on her social security income, which, as of the hearing date, was \$1,779 per month and her only source of direct income. Unlike traditional financial eligibility rules, Appellant's spouse's income is not considered in determining Appellant's financial eligibility for waiver services. *See* 130 CMR 519.007(B)(2). With Appellant's social security being her only source of income, she remains within the income limit to qualify for the HCBS frail elder waiver.

The 7/25/24 notice under appeal was issued after MassHealth preemptively counted Appellant's income to include a spousal maintenance needs allowance (SMNA) of \$2,031.50, effectively placing her over 300% FBR limit. According to MassHealth, when Appellant's husband applied for LTC benefits, the system automatically calculated his potential PPA obligation, including the portion of his income that could be deducted as a spousal allowance, or SMNA. The spouse's LTC application, however, remained pending up and through the date of hearing with no final SMNA determination or order. Therefore, the additional \$2,031.50 that MassHealth included in its 7/25/24 eligibility determination, was merely an anticipated source of income to Appellant, conditioned on if and when her spouse is approved for LTC benefits. Until MassHealth issues a formal LTC determination and provides notice of its final SMNA calculation, any projected SMNA amount must be deemed non-countable spousal income for determining Appellant's eligibility for the HCBS waiver. Based solely on her social security income of \$1,779, Appellant is within the regulatory limit to remain eligible for benefits through the frail elder waiver.

On this basis the appeal is APPROVED.

Order for MassHealth

² *See* [Program financial guidelines for certain MassHealth applicants and members](#) | Mass.gov (9/27/24).

Rescind MassHealth notice dated 7/25/24. Continue Appellant's eligibility for Standard under the HCBS frail elder waiver with no gaps in coverage.³

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.

Casey Groff
Hearing Officer
Board of Hearings

CC: [REDACTED]

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780

³ Any subsequent changes to Appellant's eligibility based on a potential approval for LTC benefits, will be addressed in a written notice to Appellant and will include a new right to appeal.