

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in Part	Appeal Number:	2412044
Decision Date:	10/11/2024	Hearing Date:	09/04/2024
Hearing Officer:	Susan Burgess-Cox	Record Open to:	10/04/2024

Appearance for Appellant:  
Pro se

Appearance for MassHealth:  
Pamela Thomas



*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 in Part	<b>Issue:</b>	Eligibility
<b>Decision Date:</b>	10/11/2024	<b>Hearing Date:</b>	09/04/2024
<b>MassHealth's Rep.:</b>	Pamela Thomas	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	All Parties Appeared by Telephone	<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 July 18, 2024, MassHealth determined that the appellant is not eligible for MassHealth because their income is too high. (130 CMR 506.003; 130 CMR 506.007(B); Exhibit 1). The appellant filed a timely appeal on July 29, 2024. (130 CMR 610.015(B) Exhibit 2). The Board of Hearings scheduled a hearing for September 4, 2024. (Exhibit 3). The record was held open until October 4, 2024. (Exhibit 4). Denial of assistance is valid grounds for appeal. (130 CMR 610.032(A)(1)).

### Action Taken by MassHealth

MassHealth notified the appellant that they do not qualify for MassHealth because their income is too high.

### Issue

Whether MassHealth was correct in determining that the appellant is not eligible for MassHealth because their income is too high. (130 CMR 506.007(B); 130 CMR 502.003).

### Summary of Evidence

The appellant is an adult under the age of 65 and in a household of six. The appellant has not been deemed disabled by MassHealth or the Social Security Administration. On July 18, 2024, the appellant submitted an income update to MassHealth. The appellant was eligible for MassHealth Standard in the past and remained eligible from 2020 to 2024 as the federal government issued continuous coverage requirements to maintain care for both new MassHealth applicants and existing members during the COVID-19 Public Health Emergency (PHE). (MassHealth Eligibility Operations Memo 20-09; MassHealth EOM 23-13). These continuous coverage requirements ended on April 1, 2023 as the PHE was lifted. (MassHealth EOM 23-13). As of April 1, 2023, MassHealth began redetermining eligibility for all members to ensure that they still qualify for their current benefits. (MassHealth EOM 23-13). The agency also began to act on reported changes after the PHE was lifted.

At hearing, the MassHealth representative testified that their records indicate that the appellant's family group receives bi-weekly earned income of \$1,402.17, \$1,368 and \$2,080. MassHealth determined that the appellant's family group of 6 has a Modified Adjusted Gross Income (MAGI) of \$13,707.81.<sup>1</sup> The MassHealth representative testified that the appellant's MAGI placed them at 387% of the federal poverty level.<sup>2</sup> The MassHealth representative testified that to be eligible for MassHealth Standard, the appellant must have MAGI below 133% of the federal poverty level which is \$4,651 for a family group of 6. The MassHealth representative testified that the appellant's children may be eligible for a MassHealth coverage type if the MAGI of the household is below 300% of the federal poverty level. The only eligibility decision being addressed at hearing is that of the appellant.

The appellant testified that they are paying college tuition for their children and asked MassHealth to consider those tuition payments as an expense in determining eligibility. The appellant testified that one child is enrolled in graduate school which costs approximately \$80,000 each year, another is enrolled in a school that costs approximately \$60,000 each year and a third pays at least \$10,000 each year. The appellant noted that the children also receive scholarships so that lowers the tuition but asked MassHealth to consider the portion they pay as a deduction in determining eligibility. The appellant testified that MassHealth's on-line application system asks if a member has education expenses. The appellant argued that such expenses include tuition payments. The appellant stated that education is an important expense that the agency should consider in determining eligibility. The appellant testified that they also have to pay a mortgage, utilities and other expenses that they felt MassHealth should consider in determining eligibility.

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<sup>1</sup> In determining monthly income, MassHealth multiplies average weekly income by 4.333 or bi-weekly income by 2.167. The individual income amounts reported by MassHealth at hearing would result in the appellant having a MAGI of \$10,509 [ $\$3,038 + \$2,964 + \$4,507 = \$10,509$ ]. MassHealth then applies a regulatory 5% disregard (\$174.85 for a household of 6) which results in total countable income of \$10,334.97. It is unclear what additional income MassHealth considered in calculating a MAGI of \$13,708.81.

<sup>2</sup> After applying a 5% disregard of \$174.85, the appellant's countable income of \$13,534 equals 387% of the Federal Poverty Level.

The MassHealth representative responded that the agency considers certain expenses in determining eligibility. These expenses include: educator expenses; reservist/performance artist/fee-based government official expenses; health savings account; moving expenses, for the amount and populations allowed under federal law; one-half self-employment tax; self-employment retirement account; penalty on early withdrawal of savings; 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; individual retirement account (IRA); student loan interest; scholarships, awards, or fellowships used solely for educational purposes; and 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 MassHealth representative noted that the agency requested that the appellant send in a copy of their tax return or other tax forms to verify payments on student loan interest. The agency had not received that information as of the date of the hearing. The MassHealth representative testified that educator expenses are for those employed in the field of education who incur costs associated with their employment, it does not apply to tuition payments. The MassHealth representative noted that their decision did not include payments of scholarships, awards or fellowships in determining eligibility.

The appellant testified that they can provide information about deductions they make for educational expenses and payments on student loan interest. The appellant repeatedly argued that the on-line application for MassHealth coverage asks if a member has educational expenses and they replied yes so those expenses should be considered in making an eligibility decision. The record was held open to provide the appellant with the opportunity to present additional information regarding any income updates and expenses. (Exhibit 4).

Documents presented by the appellant were incorporated into the hearing record as Exhibit 5. An initial response from MassHealth was incorporated into the hearing record as Exhibit 6. MassHealth provided just a new overall income amount that the agency took into consideration in making a new eligibility calculation stating that the appellant's family group has a monthly income of \$11,953.42 (which includes rental loss on taxes) and this placed the appellant at 336.85% of the federal poverty level. The record was re-opened asking MassHealth to provide detailed information about the individual income amounts and sources, as they did at the hearing, as the records presented by the appellant and simple response from MassHealth did not appear to directly correlate. (Exhibit 7). Detailed information about what MassHealth considered in their new eligibility decision was incorporated into the hearing record as Exhibit 7.

The records presented by MassHealth show the following for income:

- Appellant:
  - Employment (Venture Comm Serv): \$1,402.18/bi-weekly or \$3,038/mo
  - Rental or Royalty (loss): -\$1,412.00/year

- Total Monthly Income: \$2,921 ( $\$3,038 - \$117 = \$2,921$ )
- Appellant's Spouse:
  - Employment (Venture Comm Serv): \$1,368/bi-weekly or \$2,964/mo
  - Employment (Open Sky Comm Serv): \$1,475/bi-weekly or \$3,196/mo
  - Total Monthly Income: \$6,160 ( $\$2,964 + \$3,196 = \$6,160$ )
- Appellant's Daughter #1:
  - Employment: \$662.50/week or \$2,870/month
  - Total Monthly Income: \$2,870
- Other 3 Children - \$0 income
- Total Income of Family Group of 6: \$11,951 ( $\$2,921 + \$6,160 + \$2,870 = \$11,951$ )
- Countable Income for Family Group of 6:  $\$11,953 - \$174.85 = \$11,776$
- Calculation of Federal Poverty Level: ( $\$11,776 \div \$3,497$ ) x 100 = 337%. (Exhibit 7).

Initially, the appellant presented a letter from an employer of their daughter regarding a reduction in hours. The appellant then submitted a letter from the same employer stating that the appellant's daughter is no longer employed. (Exhibit 8). Although the MassHealth representative received and reviewed the initial documents submitted by the appellant and the record was reopened, the MassHealth representative would not consider this new submission stating that it is "not pertaining to this appeal". (Exhibit 8). Removing the income of his daughter provides the appellant with countable income of \$8,906 which is at 255% of the federal poverty level.

The tax return documents presented by the appellant do not include any deduction for student loan interest. (Exhibit 5). The appellant presented tuition statements that reflect tuition payments as well as scholarship or grant payments. (Exhibit 5). MassHealth did not consider information on the tuition statements in determining eligibility. (Exhibit 6; Exhibit 7).

The MassHealth representative stated that the appellant may obtain health insurance through the Health Insurance Connector Authority.

## **Findings of Fact**

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

1. The appellant is under age 65, in a family group of six.
2. The appellant's family group of six has MAGI of \$8,906.
3. The appellant has not been deemed disabled by MassHealth or the Social Security Administration.

## Analysis and Conclusions of Law

MassHealth regulations at 130 CMR 505.000 explain the categorical requirements and financial standards that must be met to qualify for MassHealth. To establish eligibility for MassHealth, 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 adults<sup>3</sup>, 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.

In this case, the appellant is over the age of 21 but under 65. The appellant has not presented any evidence that they have any of the listed health conditions listed in the eligibility requirements for MassHealth Standard. The appellant has not been deemed disabled by MassHealth or the Social Security Administration. The appellant is a parent.

To become eligible for MassHealth Standard, a parent or caretaker relative must have a MAGI less than or equal to 133% of the federal poverty level (FPL). (130 CMR 505.002(C)(1)(a)). The appellant's income exceeds this standard.

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. MAGI household composition rules used to determine member eligibility are the following:

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<sup>3</sup> "[Y]oung adults" are defined as those aged 19 and 20. See 130 CMR 501.001.

(1) Taxpayers Not Claimed as a Tax Dependent on His or Her Federal Income Taxes. For an individual who expects to file a tax return for the taxable year in which the initial determination or renewal of eligibility is being made and who is not claimed as a tax dependent by another taxpayer, the household consists of

- (a) the taxpayer; including his or her spouse, if the taxpayers are married and filing jointly regardless of whether they are living together;
- (b) the taxpayer's spouse, if living with him or her regardless of filing status;
- (c) all persons the taxpayer expects to claim as tax dependents; and
- (d) if any individual described in 130 CMR 506.002(B)(1)(a) through (c) is pregnant, the number of expected children.

The appellant is in a household of six, consisting of themselves, their spouse and four children.

Once the individual's household size is established, the MassHealth MAGI household income is determined using the total of all countable monthly income for each person in that individual's MassHealth MAGI or Disabled Adult household. (130 CMR 506.007(A)(2)). 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 MAGI-based 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 as described in 42 CFR 435.603 and 130 CMR 506.004(K). (130 CMR 506.007(A)(2)(a)). Countable income includes earned income described in 130 CMR 506.003(A)<sup>4</sup> and unearned income described in 130 CMR 506.003(B)<sup>5</sup> less deductions described in 130 CMR 506.003(D). (130 CMR 506.007(A)(2)(b)). In

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<sup>4</sup> Pursuant to 130 CMR 506.003(A),

- (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.

<sup>5</sup> Pursuant to 130 CMR 506.003(B), countable income includes, in relevant part, unearned income, which "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."

determining monthly income, the MassHealth agency multiplies average weekly income by 4.333. (130 CMR 506.007(A)(2)(c)). Five percentage points of the current federal poverty level (FPL) is subtracted from the applicable household total countable income to determine eligibility of the individual under the coverage type with the highest income standard. (130 CMR 506.007(A)). (130 CMR 506.007(A)(3)).

The deductions described at 130 CMR 506.003(D) include:

- (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;
- (5) self-employment retirement account;
- (6) penalty on early withdrawal of savings;
- (7) 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;
- (8) individual retirement account (IRA);
- (9) student loan interest;
- (10) scholarships, awards, or fellowships used solely for educational purposes; and
- (11) 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. (130 CMR 506.003(D)).

The appellant did not present evidence of meeting any of these deductions. The appellant presented information about tuition payments, scholarships and other household expenses. While the appellant was seeking a deduction for expenses associated with payments for education, the appellant is not an educator and the deduction for “educator expenses” is for expenses of an educator (teacher, professor etc.), not for education-related expenses such as tuition. The appellant did not report a student loan interest deduction on their tax return. MassHealth was correct in not considering deductions for educator expenses or student loan interest in their decision.

The appellant presented information about scholarships his children receive and tuition payments that they wanted MassHealth to consider in determining eligibility. The appellant does not include these scholarships as income on their tax return or have funds associated with them as a deduction. Additionally, MassHealth did not consider any funds from a scholarship in determining eligibility. The regulations at 130 CMR 506.003 and 130 CMR 506.004 speak to countable and noncountable income. Neither section speaks specifically to scholarships, awards or fellowships but the section on non-countable income lists “any other income that is excluded by federal laws



other than the Social Security Act.” The federal regulations governing Medicaid eligibility specifically state that MAGI-based income means income calculated using the same financial methodologies used to determine modified adjusted gross income as defined in section 36B(d)(2)(B) of the Code<sup>6</sup>, with the following exceptions—

- (1) An amount received as a lump sum is counted as income only in the month received.
- (2) Scholarships, awards, or fellowship grants used for education purposes and not for living expenses are excluded from income. (42 CFR 435.603(e)).

If scholarships, awards or fellowship grants used for education purposes are excluded from income, they cannot be utilized as a deduction as they are a benefit received by the individual, not an expense incurred. Additionally, neither the federal nor state regulations speak to allowing tuition payments as a deduction.

Part 1 of Title 26 of the Code of Federal Regulations speaks to the income taxes imposed under subtitle A of the Internal Revenue Code of 1954. Pursuant to 26 CFR § 1.117-1(a) any amount received by an individual as a scholarship at an educational institution or as a fellowship grant, including the value of contributed services and accommodations, shall be excluded from the gross income of the recipient, subject to certain limitations that include utilizing the funds for purposes other than education purposes. If a scholarship or a fellowship grant exceeds certain limitations, it is includable in the gross income of the recipient. (26 CFR § 1.117.1(a)). The IRS does not consider amounts paid as compensation for services primarily for the benefit of the grantor as a scholarship or fellowship. (26 CFR 1.117-4). In this case, it does not appear that MassHealth or the IRS considered payments received by the appellant’s children as income. If they had, the appellant would likely be able to deduct the portion utilized for education purposes in determining eligibility for MassHealth and in filing a tax return. As neither action has been taken, the appellant cannot seek a deduction for such expenses in determining eligibility for MassHealth.

While the MassHealth representative did not feel that it was appropriate for the agency to consider a second reported change in income that occurred during the record open period, the fair hearing rules at 130 CMR 610.071 (A)(2) allow the effective date of any adjustments to the appellant's eligibility status to be the date on which all eligibility conditions were met, regardless of when the supporting evidence was submitted. Therefore, the information submitted during the course of the appeal regarding the appellant’s daughter no longer working is relevant and accepted as part of the hearing record. An adjustment to the MAGI of the appellant’s family group based on this loss of income does not impact the appellant’s eligibility for MassHealth as the income for the family group is still over 133% of the federal poverty level. However, MassHealth should enter this new information into their system as it may impact eligibility for programs offered through the Health Insurance Connector Authority and other agencies.

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<sup>6</sup> “Section 36B(d)(2)(B) of the Code” refers to a section of the Internal Revenue Code regarding a refundable credit for coverage under a qualified health plan.

The overall eligibility decision made by MassHealth is correct.

This appeal is approved in part to ensure that MassHealth adjusts the MAGI of the appellant's household based upon the reported change of the daughter's leaving her employer.

## **Order for MassHealth**

Accept information presented by the appellant regarding a change in the income for the family group regarding the appellant's daughter no longer receiving income.

## **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.

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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104, 413-785-4186