

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2412181
Decision Date:	1/14/2025	Hearing Date:	09/06/2024
Hearing Officer:	Scott Bernard	Record Open to:	11/08/2024

Appearance for Appellant:



Appearance for MassHealth:

Kelly Souza (Taunton MEC) *via* telephone



*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:	Denied	Issue:	Community Eligibility/Over 65/Income
Decision Date:	1/14/2025	Hearing Date:	09/06/2024
MassHealth's Rep.:	Kelly Souza	Appellant's Rep.:	
Hearing Location:	Taunton MassHealth Enrollment Center	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 July 19, 2024, MassHealth informed the appellant that it would terminate her MassHealth community benefit on August 31, 2024 because it determined that she had more countable income than MassHealth benefits allow. (See 130 CMR 520.002, 130 CMR 520.028 and Exhibit (Ex.) 1). The appellant filed this appeal in a timely manner on August 6, 2024. (See 130 CMR 610.015(B) and Ex. 2, p. 3). Termination of assistance is valid grounds for appeal. (See 130 CMR 610.032).

At the conclusion of the hearing and at the request of the appellant's representative at the time of the hearing, the record was left open until October 14, 2024 to allow the appellant to submit updated income information or documentation that would allow the appellant to be determined eligible for MassHealth coverage. (Ex. 7). This was later extended to November 8, 2024, at which time the record closed. (Ex. 8).

Action Taken by MassHealth

MassHealth notified the appellant that it was terminating her MassHealth community benefit because she had more countable income than MassHealth benefits allow.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.002 and 130 CMR 520.028, in determining that the appellant had more countable income than MassHealth benefits allow.

Summary of Evidence

According to information from MassHealth's Medicaid Management Information System (MMIS), the appellant is an individual over the age of 65 who is living in the community. (Ex. 3). From January 1, 2021, through May 16, 2024, the appellant received MassHealth Standard with the Medicare Premium Payment. (Ex. 3). As of May 1, 2024, the appellant was downgraded to receiving the Medicare Savings Plan (MSP) as a Qualifying Individual (QI). (Ex. 3).

At the hearing, MassHealth was represented by a benefits eligibility and referral social worker from the Taunton MassHealth Enrollment Center (MEC), and an authorized representative spoke on the appellant's behalf. Both representatives attended the hearing by telephone.

The MassHealth representative testified to the following. (Testimony). The MassHealth representative stated that the appellant lives in a household of one. (Testimony). On July 19, 2024, MassHealth sent the appellant a letter notifying her that it would terminate her MSP-QI after August 31, 2024, because her countable income exceeded the amount MassHealth permitted. (Testimony; Ex. 1; Ex. 3). According to the information available to MassHealth, the appellant's monthly income totaled \$5,069.91, which included \$1,164 from Social Security and \$3,905.91 from income paid by another unearned source identified as a development corporation. (Testimony; Ex. 1). MassHealth had applied the \$20 unearned income disregard and concluded that the appellant's countable income totaled \$5,049.91. (Testimony; Ex. 1). This amount exceeded the income limit to receive MassHealth Standard or the MSP-QI she was then receiving. (Testimony; Ex. 1).

The MassHealth representative stated that prior to the hearing, the appellant's representative had informed her that income from the development corporation might not count toward the appellant's eligibility, as it was linked to a special needs trust. (Testimony). The appellant's representative had explained to her that the income had been incorrectly reported on the federal tax returns submitted to MassHealth, and the appellant's accountant was working to amend and submit the corrected returns to the IRS. (Testimony). The MassHealth representative stated that she would need to see the amended tax forms sent to the IRS in order to verify this assertion. (Testimony). The MassHealth representative estimated that if the income from the development corporation was, in fact, non-countable, the appellant's adjusted monthly income would be between \$1,249 and \$1,255, likely making her eligible for MassHealth Standard, given her assets were under the \$2,000 limit. (Testimony). If, however, the appellant's income continued to exceed the income limit for MassHealth Standard, the appellant could potentially qualify for

CommonHealth, a program for working disabled individuals without an income cap. (Testimony). Additional documentation would be needed for a final eligibility determination in either case. (Testimony).

The appellant's representative testified to the following in response. She stated that the appellant was not currently employed but was in the process of rejoining her previous employer as a tutor. (Testimony). The appellant may be able to obtain a working disabled letter in this way. (Testimony). The appellant's representative further indicated that the necessary employment verification and/or tax forms would be submitted once they became available. (Testimony). At the request of the appellant's representative, and with the agreement of the MassHealth representative, the record was left open until October 7, 2024, to allow the appellant's representative additional time to acquire and submit either the amended tax forms or a working disabled letter. (Ex. 7). The MassHealth representative was given until October 13, 2024, to confirm in writing whether she received the requested documentation. (Id.).

On November 1, 2024, having heard nothing further after the date of the hearing, the hearing officer emailed the parties requesting an update. (Ex. 8, p. 2). On November 7, 2024, the appellant's representative responded, stating that in the last correspondence she had with the appellant, the appellant informed her that she was working with another organization and no longer needed the appellant's representative's assistance. (Ex. 8, p. 1). The appellant's representative further wrote that she forwarded everything concerning the hearing to the appellant and the appellant should be the point of contact going forward. (Ex. 8, p. 1). On November 8, 2024, the MassHealth representative informed the hearing officer that she had received no further documents or information from the appellant. (Id.).

On November 12, 2024, the appellant's sister emailed the hearing officer (unprompted), stating that the appellant submitted all requested documents on time, had revoked her representation agreement in writing, and was now representing herself. (Ex. 9, p. 1). The sister clarified that while she was assisting the appellant, the appellant was making all decisions and had informed MassHealth to direct no further correspondence to the appellant's representative. (Id.). The sister requested an update on the appeal and offered to arrange a call. (Id.).

The MassHealth representative, copied on the email, responded solely to the hearing officer¹ that she had only received the documents submitted before the hearing. (Id.). She stated the appellant exceeded the income limit, had declined CommonHealth, and had a falling out with the appellant's representative. (Id.). The MassHealth representative confirmed the appellant was ineligible for MassHealth, had a \$13,581 deductible, and exceeded the Health Safety Net income limit. (Id.). The MassHealth representative also wrote that she checked again for new faxed documents but found nothing. (Id.). Since the hearing record had closed, the hearing officer did not respond to these emails.

¹ The MassHealth representative explained that she did so because the appellant's sister was not listed as an ARD, PSI, or contact for the appellant. (Id.).

Findings of Fact

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

1. The appellant is an individual over the age of 65 who is living in the community. (Ex. 3).
2. From January 1, 2021, through May 16, 2024, the appellant received MassHealth Standard with the Medicare Premium Payment. (Ex. 3).
3. As of May 1, 2024, the appellant was downgraded to receiving MSP-QI. (Ex. 3).
4. The appellant lives in a household of one. (Testimony).
5. The appellant has been determined to be disabled. (Testimony).
6. The appellant is under the \$2,000 countable asset limit. (Testimony).
7. According to the information MassHealth received, the appellant's monthly income totaled \$5,069.91 consisting of \$1,164 monthly from Social Security, and \$3,905.91 per month of income paid from a development corporation. (Testimony).
8. MassHealth applied the \$20 unearned income disregard and concluded that the appellant's countable income totaled \$5,049.91. (Testimony; Ex. 1).
9. This amount exceeded the income limit to receive MassHealth Standard or the MSP-QI the appellant was then receiving. (Testimony; Ex. 1).
10. On July 19, 2024, MassHealth sent the appellant a letter notifying her that it would terminate her MSP-QI after August 31, 2024, because her countable income exceeded the amount MassHealth permitted. (Testimony; Ex. 1; Ex. 3).
11. The appellant's representative alleged that the income from the development corporation may have been non-countable but MassHealth cannot verify that fact without the submission of amended tax forms. (Testimony).
12. At the request of the appellant's representative the record was left open until October 7, 2024, in order to give the appellant's representative an opportunity to either acquire and submit the amended tax forms or a working disabled letter and the MassHealth representative was given until October 13, 2024 to respond. (Testimony; Ex. 7).
13. On November 7 2024, the appellant's representative emailed the hearing officer stating that the appellant had informed her that she no longer needed the appellant's representative's assistance, and the appellant should be the point of contact going forward. (Ex. 8, p. 1).

14. On November 8, 2024, the MassHealth representative informed the hearing officer that she had received no further documents or information from the appellant. (Ex. 8, p. 1).

Analysis and Conclusions of Law

An individual's countable income is the individual's gross earned and unearned income, less certain deductions. (130 CMR 520.009(A)(1)). The record shows that the appellant's income is \$5,069.91 per month from Social Security and income from what was identified as a development corporation. Both of these are considered types of unearned income in that they do not directly result from the appellant's own labor or services. (See 130 CMR 520.009(D)). MassHealth permits a deduction of \$20 to an individual's gross unearned income. (See 130 CMR 520.013(A)). The record shows that MassHealth did subtract \$20 from the appellant's unearned income of \$5,069.91 thereby concluding that the appellant's countable income was \$5,049.91.

To be eligible for MassHealth Standard, an individual aged 65 or older who is living in the community must have countable income that does not exceed 100% of the federal poverty level (FPL), which is currently \$1,255 per month for a household of one. (130 CMR 519.005(A)). The appellant is over the age of 65 and lives in a household of one. The appellant's adjusted unearned income is \$5,049.91 per month. This amount exceeds the income limit for MassHealth Standard eligibility.

MSP-QI is available to Medicare beneficiaries who are entitled to hospital benefits under Medicare Part A, and have a countable income amount that is greater than 210% of the federal poverty level and less than or equal to 225% of the federal poverty level. (130 CMR 519.011(B)). There was no dispute that the appellant is a Medicare beneficiary entitled to hospital benefits under Medicare Part A. The income limit for MSP-QI (i.e. greater than 210% of the federal poverty level and less than or equal to 225% of the federal poverty level) is between \$2,635.50 and \$2,824 per month for a household of one. The appellant's income is well above that threshold. MassHealth correctly determined that the appellant is not eligible for MSP-QI.

The hearing officer may not exclude evidence at the hearing because it had not been previously submitted to the acting entity, provided that the hearing officer may permit the acting entity representative reasonable time to respond to newly submitted evidence. (130 CMR 610.071(A)(2)). The effective date of any adjustments to the appellant's eligibility status is the date on which all eligibility conditions were met, regardless of when the supporting evidence was submitted. (*Id.*).

The appellant's representative, with the MassHealth representative's approval, requested that the hearing record be left open to give her an opportunity to submit corrected tax documents showing that the appellant's income was below the income limit or documentation that would show she was eligible for another type of MassHealth coverage that does not have an income limit. The record remained open for almost two months and no further information was submitted to either the Board of Hearings or MassHealth. Based on this, there is no reason to

disturb MassHealth's determination that the appellant is not eligible for any MassHealth benefits.

For the reasons stated above, the appeal is DENIED.

Order for MassHealth

Discontinue aid pending.

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.

Scott Bernard
Hearing Officer
Board of Hearings

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