

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied in Part; Dismissed in Part	<b>Appeal Number:</b>	2412187
<b>Decision Date:</b>	12/19/2024	<b>Hearing Date:</b>	09/05/2024
<b>Hearing Officer:</b>	Mariah Burns	<b>Record Open to:</b>	11/29/2024

**Appearance for Appellant:**



**Appearance for MassHealth:**

Tenzin Sungrab, Charlestown MassHealth  
Enrollment Center; Roxana Noriega, Premium  
Assistance Department



*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>	Denied in Part; Dismissed in Part	<b>Issue:</b>	Under 65; Eligibility; Income; Premium Assistance
<b>Decision Date:</b>	12/19/2024	<b>Hearing Date:</b>	09/05/2024
<b>MassHealth's Rep.:</b>	Tenzin Sungrab et. al.	<b>Appellant's Rep.:</b>	██████
<b>Hearing Location:</b>	Remote	<b>Aid Pending:</b>	Yes

### Authority

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

### Jurisdiction

On June 11, 2024, MassHealth send the appellant a letter informing her of her need to enroll her children in her employer-sponsored insurance or risk termination of her MassHealth benefits. *See* 130 CMR 503.007, 130 CMR 505.005(B), Exhibit 1. The appellant filed a request for fair hearing on August 9, 2024. *See* Exhibit 2. However, although the letter itself informs the appellant of her right to appeal, it does not appear to inform the appellant of an impending MassHealth action that would confer jurisdiction upon the Board of Hearings. *See* 130 CMR 610.012 ("The fair hearing process is an administrative, adjudicatory proceeding where dissatisfied...members...obtain an administrative determination of the appropriateness of...certain actions or inactions by MassHealth."), 130 CMR 610.032(A). Where the letter in question states that the MassHealth benefits of the appellant's children "may" end if they are not enrolled in an employer-sponsored insurance plan, MassHealth has not yet taken the appealable action – the termination of benefits. For those reasons, I find that this letter does not confer jurisdiction upon the Board of Hearings to render a decision related to its issuance.

However, at the hearing, the hearing officer agreed to keep the record open to afford the appellant the opportunity to coordinate with the Premium Assistance department, as well as to address an issue that was broached related to the appellant's reported and verified income on file with MassHealth. While the record open period was pending, MassHealth issued a notice on

October 10, 2024, terminating the benefits of the appellant's children because they no longer meet the income requirements to qualify.<sup>1</sup> See Exhibit 8. At the appellant's request, the Board of Hearings took jurisdiction of those notices within this appeal, and Aid Pending was applied. Denial of assistance is valid grounds for appeal. See 130 CMR 610.032.

## **Action Taken by MassHealth**

MassHealth terminated the benefits of the appellant's children.

## **Issue**

The appeal issue is whether MassHealth correctly calculated the income of the appellant's children in determining that they're no longer eligible for benefits.

## **Summary of Evidence**

The appellant is an adult under the age of 65 who resides in a household of three with her two minor children. MassHealth was represented by a worker from the Charlestown MassHealth Enrollment Center and a worker from the Premium Assistance Department. The following is a summary of the evidence and testimony provided at the hearing and during the record open period.

Prior to the October 10, 2024, notices at issue, the appellant's children were eligible for and received MassHealth benefits. At the hearing, the MassHealth representative reported that on September 17, 2023, MassHealth verified an income increase for the children that put them at approximately 423% of the federal poverty level. Because of that, they were deemed over-income to qualify, but were placed on Transitional Medical Assistance pursuant to 130 CMR 505.002(L)(3). The record was kept open for the appellant to submit updated income information to MassHealth as well as to coordinate with the Premium Assistance department regarding the appellant's employer-sponsored insurance.

The appellant submitted paystubs that reflect that she earns \$1938.63 in bi-weekly gross income. This equates to approximately \$50,404.25 per year, or \$4200.35 per month. During the record open period, the MassHealth representative reported that MassHealth verified that each of the appellant's children receives social security benefits. The appellant confirmed that each of her children receive social security death benefits since the passing of their father. She provided documents from the Social Security Administration (SSA) that indicate that, beginning in 2024,

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<sup>1</sup> A notice was also generated denying the appellant for MassHealth benefits. She is not appealing that notice and agrees that she is over the income limit to qualify.

each child receives \$1997.00 per month in gross social security benefits. Their combined total benefit is \$3994.00, which when combined with the appellant's total gross earned income is \$8194.35 per month.

The MassHealth representative argued that all benefits received from the Social Security Administration except for Supplemental Security Income are considered countable for purposes of MassHealth eligibility. He further argued that any child who earns more than \$1300.00 per year of unearned income in a given tax year is considered required to file taxes, making that unearned income also countable. The appellant reported and argued that her children have never filed taxes on their SSA benefits and she is not aware that they are required to do so. She testified that the money goes into an account for the children and is generally not touched.

As a note, a second hearing was not held upon the issuance of the October 10, 2024, notices. The hearing officer offered, on multiple occasions, to reconvene the hearing to allow the appellant to be heard on the issue before closing the record and issuing a decision. On November 26, 2024, the appellant reported that she was comfortable with the opportunities she was afforded during the record open and requested that a decision issue without reconvening the hearing. See Exhibit 6 at 2-4.

## Findings of Fact

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

1. The appellant is an adult under the age of 65 who resides in a household of three with her two minor children. Exhibit 4, Testimony.
2. On September 5, 2024, a hearing commenced regarding an issue over which the Board of Hearings has no jurisdiction. See, *supra* at Jurisdiction. After that hearing, the record was kept open to allow the appellant to facilitate with MassHealth to resolve the issue. Exhibit 6 at 34.
3. On October 10, 2024, during the record open period, MassHealth issued notices determining that the appellant and her children do not qualify for MassHealth benefits due to their income being too high. Exhibit 8
4. At the request of the appellant, the Board of Hearings took jurisdiction of the October 10 notices. Exhibit 6 at 23-24. The appellant declined multiple offers to reconvene the hearing, and instead rested on the information she provided at the first hearing and during the record open period. Exhibit 6 at 2-4.
5. The appellant earns approximately \$4200.35 in gross monthly wages. Exhibit 7 at 3-6. The appellant's children each receive \$1997.00 in monthly social security benefits that are not

Supplemental Security Income. Exhibit 7 at 7-8.

## Analysis and Conclusions of Law

MassHealth regulations at 130 CMR 505.000 *et seq.* explain the categorical requirements and financial standards that must be met to qualify for a particular MassHealth coverage type for individuals who are under age 65. The rules of financial responsibility and calculation of financial eligibility are detailed in 130 CMR 506.000: *Health Care Reform: MassHealth: Financial Requirements*. The MassHealth coverage types are:

- (1) *Standard* - for pregnant women, children, parents and caretaker relatives, young adults, 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) *CommonHealth* - for disabled adults, disabled young adults, and disabled children who are not eligible for MassHealth Standard;
- (3) *CarePlus* - for adults 21 through 64 years of age who are not eligible for MassHealth Standard;
- (4) *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) *Small Business Employee Premium Assistance* - for adults or young adults who
  - (a) work for small employers;
  - (b) are not eligible for MassHealth Standard, CommonHealth, Family Assistance, or CarePlus;
  - (c) do not have anyone in their premium billing family group who is otherwise receiving a premium assistance benefit; and
  - (d) have been determined ineligible for a Qualified Health Plan with a Premium Tax Credit due to access to affordable employer-sponsored insurance coverage;
- (6) *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
- (7) *Senior Buy-In and Buy-In* - for certain Medicare beneficiaries.

130 CMR 505.001(A).

To establish eligibility for MassHealth benefits, applicants must meet both the categorical and financial requirements. In this case, as minors under the age of 19, the appellant's children meet the categorical requirements for both MassHealth Standard and MassHealth Family Assistance. The question then remains as to whether they meet the income requirements to qualify.

A child between the age of 1 and 18 is financially eligible for MassHealth Standard if “the modified adjusted gross income of the MassHealth MAGI household is less than or equal to 150% of the federal poverty level.” 130 CMR 505.002(C)(1)(a). The requirements for MassHealth Family Assistance can be found at 130 CMR 505.005(B)(1), which states that children younger than 19 years old are eligible if “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.”

To determine financial eligibility pursuant to 130 CMR 506.007, MassHealth must construct a household as described, in relevant part, in 130 CMR 506.002(B)(2) for each individual person applying for or renewing coverage:

(2) Individuals Claimed as a Tax Dependent on Federal Income Taxes.

- (a) For an individual who expects to be claimed as a tax dependent by another taxpayer for the taxable year in which the initial determination or renewal of eligibility is being made and who does not otherwise meet the Medicaid exception rules as described in 130 CMR 506.002(B)(2)(b)1., 2., or 3., the household consists of
1. the individual;
  2. the individual’s spouse, if living with them;
  3. the taxpayer claiming the individual as a tax dependent;
  4. any of the taxpayer’s tax dependents; and
  5. if any individual described in 130 CMR 506.002(B)(2)(a)1. through 4. is pregnant, the number of expected children.

Here, the appellant does not dispute that her children reside in a household of three. Based on 2024 MassHealth Income Standards and Federal Poverty Guidelines, 150% of the federal poverty level equates to a monthly income of \$3228.00 for a household of three, while 300% is \$6455.00. See chart at <https://www.mass.gov/doc/2024-masshealth-income-standards-and-federal-poverty-guidelines-0/download>.

MassHealth determines an applicant’s modified adjusted gross income (MAGI) by taking the countable income, which includes earned income as described in 130 CMR 506.003(A) and unearned income described in 130 CMR 506.003(B), less deductions described in 130 CMR 506.003(D). Specifically, 130 CMR 506.007 provides how the MAGI is calculated:

...Countable income includes earned income described in 130 CMR 506.003(A) and unearned income described in 130 CMR 506.003(B) less deductions described in 130 CMR 506.003(C). Income of all the household members forms the basis for establishing an individual’s eligibility. 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).

(A) Financial eligibility for coverage types that are determined using the MassHealth MAGI household rules and the MassHealth Disabled Adult household rules is determined by comparing the sum of all countable income less deductions for the individual's household as described at 130 CMR 506.002 with the applicable income standard for the specific coverage type. In determining monthly income, the MassHealth agency multiplies average weekly income by 4.333. 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.

(B) The financial eligibility standards for each coverage type may be found in 130 CMR 505.000: *Health Care Reform: MassHealth: Coverage Types*.

(C) The monthly federal-poverty-level income standards are determined according to annual standards published in the *Federal Register* using the following formula. The MassHealth agency adjusts these standards annually.

(1) Divide the annual federal poverty-level income standard as it appears in the *Federal Register* by 12.

(2) Multiply the unrounded monthly income standard by the applicable federal-poverty-level standard.

(3) Round up to the next whole dollar to arrive at the monthly income standards.

(D) Safe Harbor Rule. The MassHealth agency will provide a safe harbor for individuals whose household income determined through MassHealth MAGI income rules results in financial ineligibility for MassHealth but whose household income determined through Health Connector income rules as described at 26 CFR 1.36B-1(e) is below 100 percent FPL. In such case, the individual's financial eligibility will be determined in accordance with Health Connector income rules.

(1) MassHealth uses current monthly income and the Health Connector uses projected annual income amounts.

(2) MassHealth MAGI household uses exceptions to tax household rules and the Health Connector uses the pure tax filing household.

(E) MAGI Protection for Individuals Receiving MassHealth Coverage on December 31, 2013. Notwithstanding the above, in the case of determining ongoing eligibility for individuals determined eligible for MassHealth coverage to begin on or before December 31, 2013, application of the MassHealth MAGI Household Income Calculation

methodologies as set forth in 130 CMR 506.007 will not be applied until March 31, 2014, or the next regularly scheduled annual renewal of eligibility for such individual under 130 CMR 502.007, whichever is later, if the application of such methodologies would result in a downgrade of benefits.

Per 130 CMR 506.003(A), countable income includes, in relevant part, “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.” *Id.* Unearned income may include, but is not limited to, “social security benefits, railroad retirement benefits, pensions, annuities, certain trusts, interest and dividend income...” etc. 130 CMR 506.003(B)(2). Noncountable income includes, in relevant part, “TAFDC, EAEDC, or SSI income...[and] income from children and tax dependents who are not expected to be required to file a tax return under...U.S.C. Title 26 § 6012(a)(1) for the taxable year in which eligibility for MassHealth is being determined, *whether or not the children or the tax dependents files a tax return.*” 130 CMR 506.005(A) and (L) (emphasis added).

An appellant bears the burden of proof at fair hearings “to demonstrate the invalidity of the administrative determination.” *Andrews v. Division of Medical Assistance*, 68 Mass. App. Ct. 228, 231 (2006). The fair hearing decision, established by a preponderance of evidence, is based upon “evidence, testimony, materials, and legal rules, presented at hearing, including the MassHealth agency’s interpretation of its rules, policies and regulations.” 130 CMR 610.085(A). In reaching a decision, the “hearing officer must give due consideration to Policy Memoranda and any other MassHealth agency representations and materials containing legal rules, standards, policies, procedures, or interpretations as a source of guidance in applying a law or regulation.” *Id.* at 610.085(C)(3). Further, the MassHealth Fair Hearing Rules that a hearing officer must render a decision in accordance with the law, including specifically:

...[T]he hearing officer must not render a decision regarding the legality of federal or state law including, but not limited to, the MassHealth regulations. If the legality of such law or regulations is raised by the appellant, the hearing officer must render a decision based on the applicable law or regulation as interpreted by the MassHealth agency. Such decision must include a statement that the hearing officer cannot rule on the legality of such law or regulation and must be subject to judicial review in accordance with 130 CMR 610.092.

*Id.* at 610.085(C)(2).

In this case, the question is whether the appellant’s children’s social security benefits are countable income for purposes of MassHealth eligibility. The MassHealth representative credibly testified that, because the children each receive over \$1300.00 per year, that 26 U.S.C. §



6012(a)(1) requires them to make a return of that income. Because 130 CMR 506.005(L) only considers income from children who are not expected to file a tax return to be noncountable, the evidence shows that the social security benefits are countable income.<sup>2</sup> Although the appellant reports that her children do not file taxes for their benefits, she did not provide any other evidence or legal reasoning to suggest that the benefits are noncountable, nor was I able to find any legal support for that conclusion. Therefore, I find that the social security benefits are countable income for purposes of MassHealth eligibility.

The evidence shows that the total gross MAGI household income for the appellant and her children is approximately \$8194.35 per month. As that amount exceeds 300% of the federal poverty level for a household of three, the appellant's children are eligible for neither MassHealth Standard nor Family Assistance benefits. Therefore, I find no error with MassHealth's issuance of the October 10, 2024, notices denying and terminating their benefits.

For the foregoing reasons, the appeal as it relates to the June 11, 2024, letter is dismissed, and is denied as to the October 10, 2024, notices.

## **Order for MassHealth**

None, other than to remove 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.

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Mariah Burns  
Hearing Officer  
Board of Hearings

MassHealth Representative: Nga Tran, Charlestown MassHealth Enrollment Center

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<sup>2</sup> To be clear, this decision does not suggest to or advise the appellant that she should or must file a tax return on her children's behalf for their social security benefits. There could be any number of reasons why she does not file one; this decision only pertains to MassHealth's interpretation of its regulations for benefits eligibility.