

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2412554
Decision Date:	9/23/2024	Hearing Date:	09/09/2024
Hearing Officer:	Casey Groff		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Leslie Garcia, Tewksbury 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:	Denied	Issue:	Eligibility; Over-65; Community; Income; Frail Elder Waiver
Decision Date:	9/23/2024	Hearing Date:	09/09/2024
MassHealth's Rep.:	Leslie Garcia	Appellant's Rep.:	Pro se
Hearing Location:	Board of Hearings, Remote	Aid Pending:	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 8/8/24, MassHealth informed Appellant that she was not eligible for MassHealth coverage because she had more countable income than allowed under program rules. See Exh. 1; 130 CMR §§ 520.002, 520.028. Appellant filed this appeal in a timely manner on 8/8/24. See Exh. 2; 130 CMR 610.015(B). Denial or termination of coverage is valid grounds for appeal. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied Appellant's request for benefits based on its determination that her countable income exceeded the program limit.

Issue

The appeal issue is whether MassHealth correctly determined that Appellant's income exceeded the program limit, and on this basis, denied her request for continued MassHealth benefits.

Summary of Evidence

A MassHealth eligibility representative appeared at hearing and testified as follows: Appellant is over the age of [REDACTED] and lives in the community in a household size of one (1). Appellant was previously deemed both clinically and financially eligible for MassHealth Standard through the home and community-based services (HCBS), Frail Elder waiver (“HCBS-FE Waiver”). On 4/26/24, MassHealth received a renewal application from Appellant, prompting MassHealth to issue a request for information (RFI). On 5/17/24, MassHealth notified Appellant that, based on information received, she did not qualify for MassHealth benefits because she had more countable income and/or assets than allowed under program regulations. Following this notice, MassHealth issued a second RFI. After MassHealth received information from Appellant pursuant to the new RFI, it issued another notice, dated 8/8/24, again informing Appellant that she was not eligible for MassHealth because she had more countable income than MassHealth benefits allow under 130 CMR §§ 520.002, 520.028. See Exh. 1. Appellant timely appealed the 8/8/24 notice. See Exh. 2.

The MassHealth eligibility representative testified that the updated renewal information showed that Appellant receives social security income of \$2,966 per month and a private survivor’s pension of \$2,003 per month, for a total gross monthly income of \$4,969. According to the 8/8/24 notice, MassHealth applied a standard unearned income (UIN) disregard of \$20, which adjusted Appellant’s total countable income to \$4,949. See Exh. 1. To qualify for MassHealth Standard, individuals over the age of [REDACTED] typically must have income that does not exceed 100% of the federal poverty level (FPL), which, for a household of one in 2024, is \$1,255. Individuals clinically eligible for MassHealth’s HCBS Waiver programs, however, are subject to an income standard that cannot exceed 300% of the federal benefit rate (FBR). For 2024, this amount is \$2,829 per-month. Appellant was previously eligible for the HCBS-FE Waiver because, at the time, she only received her social security income. Her income had increased significantly when she began receiving the survivor benefit, rendering her ineligible for any MassHealth benefits. The representative explained that the pension being received was not through [REDACTED] which would have otherwise rendered the income non-countable. MassHealth explained that despite multiple denial notices being issued, Appellant’s Standard benefit still appeared to be active. Neither of the denial notices were “termination notices” as neither included reference to a coverage end-date. MassHealth assured Appellant that if her benefit ends, she will get written notice, 14-days in advance from MassHealth.¹

Appellant testified that she is paralyzed and requires MassHealth benefits to cover the cost of her health care needs. Appellant did not dispute the income figures cited by the MassHealth

¹ The MassHealth representative testified that although Appellant did not have a verified disability reflected in her account, she could seek eligibility for a different MassHealth benefit, i.e., CommonHealth, by submitting a disability evaluation supplement. Approval for this benefit, however, would also be contingent on Appellant’s ability to submit a “working disabled letter,” verifying she works at least 40 hours per-month receiving payment at \$1.00 or more per-hour. In response, Appellant testified that she would not be able to satisfy the working disabled requirement because she cannot perform any type of work.

representative, although, she did explain that her net social security is now \$174 less than it previously was due to the deduction for her Medicare Part B premium. Previously, this expense was covered through MassHealth.

Appellant testified that her primary reason for appealing the 8/8/24 notice was to object to MassHealth's inclusion of her pension in determining her financial eligibility. Appellant stated that she received this additional income following the passing of her husband. Appellant confirmed it was not a veteran's benefit, but from his years working. She uses the income to pay for her home, including the two mortgages on the property and condominium fees. After these expenses, she has little remaining to pay for utilities or food. Appellant testified that she believed it was cruel that she would be taken off MassHealth given her limited income and need for health care services.

Findings of Fact

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

1. Appellant is over the age of [REDACTED] and lives in the community in a household size of one (1).
2. Appellant was deemed both clinically and financially eligible for MassHealth Standard through the HCBS-FE waiver.
3. Following a renewal application received in April 2024, Appellant submitted verification showing she receives gross social security income of \$2,966 per-month and a private survivor's pension of \$2,003 per month, for a total monthly income of \$4,969.
4. On 8/8/24, MassHealth informed Appellant that she was not eligible for MassHealth because she had more countable income than MassHealth benefits allow under 130 CMR §§ 520.002, 520.028.
5. After applying a standard UIN disregard of \$20, Appellant has a total countable income of \$4,949.
6. As of the hearing date, Appellant's MassHealth Standard benefit had not been terminated.

Analysis and Conclusions of Law

To qualify for MassHealth Standard, community residents [REDACTED] years of age or older, generally, must

have countable income at or below 100% of the federal poverty level (FPL) and have countable assets under \$2,000 for an individual and under \$3,000 for a married couple. See 130 CMR 519.005. For 2024, the monthly income for an individual at 100% of the FPL is \$ \$1,255. See 2024 MassHealth Income Standards and Federal Poverty Guidelines. Individuals who meet the clinical requirements for MassHealth’s HCBS-FE Waiver, however, are subject to different financial eligibility criteria, which MassHealth describes 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 requirements of 130 CMR 519.007(B)(1)(a) and (b);

(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

For 2024, 300% of the federal benefit rate is \$2,829.00. See MassHealth, Program Financial Guidelines for Certain MassHealth Applicants and Members, Mass.gov, 1/4/2024.

MassHealth regulations define “countable income amount” as an individual’s and the spouse’s gross earned and unearned income, less certain business expenses and “standard income deductions.” See 130 CMR 520.009(A)(1). Countable income includes “income to which the applicant, member, or spouse would be entitled whether or not actually received when failure to receive such income results from the action or inaction of the applicant, member, spouse, or person acting on his or her behalf.” Id. Examples of countable unearned income are identified in the following provision:

(D) Unearned Income. Income that does not directly result from an individual's own labor or services is unearned. Unearned income includes, but is not limited to, social security benefits, railroad retirement benefits, pensions, annuities, federal veterans' benefits, rental income, interest, and dividend income....

See 130 CMR 520.009(D).

Standard unearned income deductions include a \$20 “unearned-income disregard” (UID), and for

certain qualifying individuals, a personal care attendant (PCA) deduction.² See 130 CMR 520.013(B).

In consideration of the evidence submitted at hearing, MassHealth did not err in determining that Appellant's income exceeded program income standards to qualify for MassHealth. Appellant is in a household size of one and receives gross monthly social security income of \$2,966 and a monthly private survivor's pension of \$2,003, for a total monthly income of \$4,969. Both sources of income are countable under MassHealth financial eligibility regulations. See 130 CMR 520.009(D). After applying the standard \$20 UIN deduction, Appellant's countable income still exceeds the limit to qualify for MassHealth Standard under both the traditional limit (\$1,255) and the increased limit under the HCBS-FE waiver (\$2,829.00). Appellant has not sufficiently demonstrated that MassHealth erred in denying coverage pursuant to its 8/8/24 notice.

Based on the foregoing, this appeal is DENIED.

Order for MassHealth

If MassHealth seeks to terminate Appellant's benefit on the basis that she no longer qualifies, MassHealth must give Appellant 14-days advance written notice of such an action.³

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

² The PCA deduction, which is fully set forth in 130 CMR 520.013(B) is a "deduction from gross unearned income is allowed only for persons who (a) are ■ years of age and older; (b) are receiving personal-care attendant services paid for by the MassHealth agency, or have been determined by the MassHealth agency, through initial screening or by prior authorization, to be in need of personal-care attendant services; and (c) prior to applying the deduction at 130 CMR 520.013(B), have countable income that is over 100% of the federal poverty level. There was no evidence at hearing that applying this deduction would sufficiently reduce Appellant's countable income to render her eligible for benefits.

³ Failure to give Appellant 14-days advance written notice of a benefit closure is a valid ground to appeal the termination to the Board of Hearings.

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.

Casey Groff
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957, 978-863-9290