

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2412818
Decision Date:	11/4/2024	Hearing Date:	09/11/2024
Hearing Officer:	Thomas J. Goode	Record Open to:	09/18/2024

Appearance for Appellant:



Appearance for MassHealth:

Katrina Edwards, Taunton 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
Decision Date:	11/4/2024	Hearing Date:	09/11/2024
MassHealth's Rep.:	Katrina Edwards	Appellant's Rep.:	
Hearing Location:	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 July 22, 2024, MassHealth denied Appellant's MassHealth application because income exceeded program limits (130 CMR 520.028 and Exhibit 1). Appellant filed this appeal in a timely manner on August 19, 2024 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied Appellant's MassHealth application because income exceeded program limits.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.005, 520.028, in determining that Appellant's income exceeded program limits.

Summary of Evidence

The MassHealth representative testified that on July 9, 2024, Appellant submitted an application for MassHealth benefits. Appellant has no previous MassHealth history. Appellant is over 65 years of age and is a household size of one non-disabled person living in the community. Appellant's total countable monthly income is \$6,346, consisting of \$5,874.21 pension income, and \$472.70 Social Security income. Because income exceeds 100% of the federal poverty level for a household size of 1 person, \$1,255, MassHealth calculated a \$33,104 six-month deductible to establish MassHealth eligibility.

Appellant's attorney testified that MassHealth correctly recorded Appellant's income. However, Appellant's circumstances include an unadjudicated bankruptcy following the sale of Appellant's home under fraudulent circumstances. Appellant is currently required to pay the bankruptcy trustee \$850 per month. Appellant is experiencing severe dental issues that will likely cost \$47,000 to extract teeth and insert implants. In a post-hearing brief, counsel argued that Appellant's financial circumstances rise to the level of exceptional circumstances to reduce income as described at 130 CMR 520.017, and also render her assets inaccessible under 130 CMR 520.006. Counsel noted that at the filing of Appellant's bankruptcy, her liabilities totaled \$284,065.43. Other than her home, Appellant owned less than \$5,000 in personal assets; her secured debts totaled \$268,597.96, and her unsecured debts totaled \$15,467.47. Appellant's monthly expenses total \$5,698.19 leaving only monthly net income of \$551.78. Appellant's attorney asserted that because Appellant's income and assets are tied up in a bankruptcy proceeding, an adjustment to the minimum-monthly-maintenance-needs-allowance (MMMNA) is warranted so that Appellant may obtain the dental services she requires.

MassHealth reviewed Appellant's post-hearing brief and submitted a response stating that Appellant's assets are not at issue because Appellant's primary residence is not counted in determining her MassHealth eligibility. MassHealth also asserted that even disregarding \$850 of income paid to the bankruptcy trustee, Appellant's income exceeds program limits by \$4,241. Further, references to exceptional circumstances in calculating a minimum-monthly-maintenance-needs-allowance do not apply because Appellant is not a nursing facility resident, nor the spouse of a nursing facility resident.

Findings of Fact

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

1. Appellant is over 65 years of age and is a household size of one non-disabled person living in the community.
2. Appellant has no previous MassHealth history.

3. Appellant's total countable monthly income is \$6,346, consisting of \$5,874.21 pension income, and \$472.70 Social Security income.
4. Appellant pays \$111.88 in health insurance premiums, and a \$174.70 Medicare premium.
5. 100% of the federal poverty level for a household size of 1 person is \$1,255.
6. MassHealth calculated a \$33,104 six-month deductible to establish MassHealth eligibility.

Analysis and Conclusions of Law

MassHealth regulations at 130 CMR 515.000 through 520.000 provide the requirements for MassHealth eligibility for persons who are 65 years of age or older (130 CMR 515.002). A non-institutionalized person in a household of one person aged 65 or older may establish eligibility for MassHealth Standard coverage if countable income is less than or equal to 100% of the federal poverty level of \$1,255 per month (130 CMR 519.005). The circumstances at hand are not the result of failure to receive income. Appellant receives gross unearned income totaling \$6,346 per month. The definitions of countable income, business expenses, and deductions from unearned income do not exclude income paid to a bankruptcy trustee; therefore, all of Appellant's income is countable in determining eligibility.^{1,2} There is no evidence that Appellant requires PCA services to allow a PCA deduction from her income.³ Further, there is no

¹ As MassHealth notes, even if \$850 paid to the bankruptcy trustee was deducted, income exceeds \$1,255.

² 520.009: Countable-income Amount: (A) Overview. (1) An individual's and the spouse's gross earned and unearned income less certain business expenses and standard income deductions is referred to as the countable-income amount. In determining gross monthly income, the MassHealth agency multiplies the average weekly income by 4.333 unless the income is monthly. (2) For community residents, the countable-income amount is compared to the applicable income standard to determine the individual's financial eligibility. (3) For institutionalized individuals, specific deductions described in 130 CMR 520.026 are applied against the individual's countable-income amount to determine the patient-paid amount. (4) The types of income that are considered in the determination of eligibility are described in 130 CMR 520.009, 520.018, 520.019, and 520.021 through 520.024. These include 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. In determining whether or not failure to receive such income is reasonably considered to result from such action or inaction, the MassHealth agency will consider the specific circumstances involved. See also 130 CMR 520.010 Business Expenses, 130 CMR 520.013 Community Unearned-income Deductions.

³ MassHealth allows a PCA deduction pursuant to 130 CMR 520.013(B) in determining countable income where an over 65 applicant is either "receiving personal-care attendant services paid for by the MassHealth agency, or [has] been determined by the MassHealth agency, through initial screening or by prior authorization, to be in need of personal-care attendant services."³ However, if the applicant's countable income exceeds 133% of the federal poverty level, \$1,670, prior to applying the PCA disregard, then eligibility for MassHealth benefits must be established by meeting a six-month deductible as outlined below (130 CMR 520.013(B)(3); 130 CMR 520.028).

evidence that Appellant is eligible through the Frail Elder Waiver.⁴ Therefore, MassHealth correctly determined that Appellant must meet a six-month deductible before MassHealth eligibility can be established (130 CMR 519.005(B); 130 CMR 520.028).⁵ The MassHealth Income Standard applicable to an individual aged 65 or older residing in the community is \$522 per month for a household of one (130 CMR 520.030). The deductible is the total dollar amount of incurred medical expenses that an individual is responsible for before MassHealth eligibility is established (130 CMR 520.031). The deductible period is six months, and the deductible is determined by multiplying the excess monthly income by six (130 CMR 520.029, 520.030). The excess monthly income is the amount by which Appellant's countable income exceeds the MassHealth Income Standard (130 CMR 520.030). In the present case, Appellant's countable income of \$6,346 is reduced by \$20, and further reduced by the MassHealth income standard of \$522 to arrive at a \$5,804 gross deductible amount, and further reduced by \$111.88 health insurance premiums, and \$174.70 Medicare premium (130 CMR 520.032(B)). The remaining \$5,517.42 is multiplied by 6 to determine the six-month deductible of \$33,104 (Exhibit 1, p. 2). Accordingly, the MassHealth determination is correct, and the appeal is DENIED.

Order for MassHealth

None.

⁴ See 130 CMR 519.007(B).

⁵ Regulation 130 CMR 520.006 applies to assets not income. Appellant's assets are not at issue in the eligibility determination. Further, exceptional circumstances defined at 130 CMR 520.017 and MMMNA calculations apply only to expenses of a spouse of a long-term care applicant living in the community. Neither regulation applies here.

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.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc:

[REDACTED]

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