

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2413790
Decision Date:	11/21/2024	Hearing Date:	10/7/2024
Hearing Officer:	Patrick Grogan	Record Open to:	N/A

Appearance for Appellant:



Appearances for MassHealth:

Pamela Thomas, Springfield MEC
Jellece Ortega (Observation only)

Interpreter:

N/A



*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 for MassHealth Standard, Child under 18, Income
Decision Date:	11/21/2024	Hearing Date:	10/07/2024
MassHealth's Reps:	Pamela Thomas, Jellece Ortega (Observation only)	Appellant's Rep.:	
Hearing Location:	Remote (Tel)	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 16, 2024, MassHealth determined that that Appellant qualifies for MassHealth Family Assistance based upon the income attributed to the Appellant. (Exhibit 1, 130 CMR 505.005(B)). The Appellant filed this appeal in a timely manner on September 9, 2024. (130 CMR 610.015(B); Exhibit 2). A decision regarding approved coverage due to income is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the Appellant for MassHealth Family Assistance based upon the income attributed to the Appellant. (Exhibit 1).

Issue

The appeal issue is whether MassHealth was correct in determining that the Appellant was eligible for MassHealth Family Assistance based upon the income attributed to the Appellant.

(Exhibit 1).

Summary of Evidence

MassHealth testified that the Appellant is a child under the age 18, who lives in a household of two. (Testimony) MassHealth testified there was no disability attributed to the Appellant¹. (Testimony) MassHealth testified that the Appellant's Representative receives income in the amount of \$1,000/week. MassHealth testified that the Appellant's countable income is 249.38% of the Federal Poverty Level (FPL), exceeding the limit for MassHealth Standard. (Testimony, Exhibit 1) The income limit for MassHealth Standard for a child under age 18 is 150% of the FPL, or \$2,555.00 a month for a family of two. MassHealth stated that based on income and the Federal Poverty Level (FPL), the Appellant was eligible for MassHealth's Family Assistance with a \$20/month premium (Exhibit 1)

The Appeal Representative/Mother testified that she never received Notice #49750107, dated July 16, 2024 (Exhibit 1) which is the subject of the Appeal, and MassHealth agreed to resend the Notice to the Appeal Representative/Mother. (Testimony) The Appeal Representative/Mother testified that the Appellant requires MassHealth Standard to receive therapy services. (Testimony) The Appeal Representative/Mother testified that the Appellant's provider for therapy does not accept MassHealth Family Assistance but has and will accept MassHealth Standard. (Testimony) The Appeal Representative/Mother testified that the Appellant has been acting out at school since she has not been able to attend the therapy she had been attending prior to the change to MassHealth Family Assistance coverage. (Testimony) The Appeal Representative/Mother testified that she is concerned about suicidal ideations with the Appellant. (Testimony) The Appeal Representative/Mother testified that she is seeking a return to MassHealth Standard coverage so that the Appellant may resume therapy with her provider. (Testimony)

Findings of Fact

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

1. The Appellant is a child, under the age of 18, has no disability attributed at the time of Hearing, and lives in a household of two. (Testimony).
2. The Appellant has a gross monthly income of \$4,333.00 which equates to 254% of the Federal Poverty Level (FPL).

¹ MassHealth had sent the Appellant a DES supplement. MassHealth stated that there was no notation in the system that the DES supplement had been received. MassHealth offered to contact DES to follow up with the status of the supplement. The issue of the DES supplement, as well as any future determination from DES is separate from the instant appeal. The Appellant retains the right to appeal future MassHealth determinations.

3. In 2024, 150% of the FPL is \$2,555.00 a month for a household of two. (2024 MassHealth Income Standards and Federal Poverty Guidelines)².
4. In 2024, 250% of the FPL is \$4,259.00 a month for a household of two. (2024 MassHealth Income Standards and Federal Poverty Guidelines)³.

Analysis and Conclusions of Law

The Appellant challenges MassHealth's determination that the Appellant's attributable income qualifies her for MassHealth Family Assistance but is too high for MassHealth Standard benefits. (Exhibit 1, Exhibit 2) MassHealth Regulations at 505.001 describe MassHealth coverage types:

505.001: Introduction

130 CMR 505.000 explains the categorical requirements and financial standards that must be met to qualify for a MassHealth coverage type. The rules of financial responsibility and calculation of financial eligibility are detailed in 130 CMR 506.000: Health Care Reform: MassHealth: Financial Requirements.

(A) The MassHealth coverage types are the following:

- (1) MassHealth Standard – for people who are pregnant, 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 (DMH) 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 old who are not eligible for MassHealth Standard;
- (4) MassHealth Family Assistance S for children, young adults, certain noncitizens and persons who are HIV positive who are not eligible for MassHealth Standard, MassHealth CommonHealth, or MassHealth CarePlus;
- (5) MassHealth Limited – for certain lawfully present immigrants as described in 130 CMR 504.003(A): Lawfully Present Immigrants, nonqualified PRUCOLs, and other

² 150% of the FPL for a household of 2 is \$2,555/month or \$30,660/year.

³ 250% of the FPL for a household of 2 is \$4,259/month or \$51,108/year.

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.

MassHealth utilizes countable household income, subtracting specific enumerated deductions in calculating income attributed to an applicant as codified within 130 CMR 506.003:

506.003: Countable Household Income

Countable household 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(D).

(A) Earned Income.

(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.

(B) Unearned Income.

(1) Unearned income is the total amount of taxable income that does not directly result from the individual's own labor after allowable deductions on the U.S Individual Tax Return.

(2) Unearned income 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.

(C) Rental Income.

Rental income is the total amount of taxable income less any deductions listed or allowable on an applicant's or member's U.S. Individual Tax Return.

(D) Deductions.

Under federal law, the following deductions are allowed when calculating MAGI countable income. Changes to federal law may impact the availability of these deductions:

- (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;
- (6) self-employment retirement account;
- (7) penalty on early withdrawal of savings;
- (8) 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;
- (9) individual retirement account (IRA);
- (10) student loan interest;
- (11) scholarships, awards, or fellowships used solely for educational purposes; and
- (12) 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.

MassHealth's calculus for determining financial eligibility is codified within the Regulations at 130 CMR 506.007:

506.007: Calculation of Financial Eligibility

The rules in 130 CMR 506.003 and 506.004 describing countable income and noncountable income apply to both MassHealth MAGI households and MassHealth Disabled Adult households.

(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 in 130 CMR 506.002 with the applicable income standard for the specific coverage type.

(1) The MassHealth agency will construct a household as described in 130 CMR 506.002 for each individual who is applying for or renewing coverage. Different households may exist within a single family, depending on the family members' familial and tax relationships to each other.

(2) Once the individual's household is established, financial eligibility is determined by using the total of all countable monthly income for each person in that individual's MassHealth MAGI or Disabled Adult household. Income of all the household members forms the basis for establishing an individual's eligibility.

(a) 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(M).

(b) 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(D).

(c) In determining monthly income, the MassHealth agency multiplies average weekly income by 4.333.

(3) 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.

The Appellant is a child under the age of 18, who has no disability attributed at the time of Hearing and resides in a household of two.

The Appellant seeks approval for MassHealth Standard. The threshold requirements for

MassHealth Standard, for a child between the ages of 1 and 18, are codified within 130 CMR 505.002(B)(2):

(B) Eligibility Requirements for Children and Young Adults.

Children and young adults may establish eligibility for MassHealth Standard coverage subject to the requirements described in 130 CMR 505.002(B).

(2) Children One through 18 Years Old.

(a) A child one through 18 years old is eligible if

1. the modified adjusted gross income of the MassHealth MAGI household is less than or equal to 150% of the federal poverty level; and
2. the child is a citizen as described in 130 CMR 504.002: U.S. Citizens or a lawfully present immigrant as described in 130 CMR 504.003(A): Lawfully Present Immigrants.

(b) Eligibility for a child who is pregnant is determined under 130 CMR 505.002(D).

The appellant's gross monthly income is \$4,333.00 which is 254% of the FPL. After deducting the regulatory five percentage points, the appellant's countable monthly income is 249% of the FPL for a household of two. MassHealth determined that the Appellant's attributable income exceeds 150% of the Federal Poverty Level, (FPL), and therefore the appellant is not eligible for MassHealth Standard at this time. (Testimony, Exhibit 1). The Appellant has been approved for MassHealth Family Assistance with a \$20/month premium. MassHealth Family Assistance requirement for eligibility is codified within the Regulations at 130 CMR 505.005:

505.005: MassHealth Family Assistance

(A) Overview. 130 CMR 505.005 contains the categorical requirements and financial standards for MassHealth Family Assistance.

(1) Children who are citizens, as defined in 130 CMR 504.002: U.S. Citizens, lawfully present immigrants, as defined in 130 CMR 504.003(A): Lawfully Present Immigrants, or nonqualified PRUCOLs, as defined in 130 CMR 504.003(C): Nonqualified Persons Residing under Color of Law (Nonqualified PRUCOLs), whose 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 (FPL) are eligible for MassHealth Family Assistance.

MassHealth determined that that Appellant's attributable income exceeds 150% of the FPL, but is below 250% of the FPL. (Testimony, Exhibit 1) Accordingly, MassHealth determined

that the Appellant is eligible for Family Assistance with a premium attributed. 130 CMR 505.005(H) states:

(H) MassHealth Family Assistance Premiums.

Individuals who meet the requirements of 130 CMR 505.005 may be assessed a premium in accordance with the premium schedule provided in 130 CMR 506.011(B)(3) through (5).

As indicated in 130 CMR 505.005(H), the premiums calculated for Family Assistance are codified at 130 CMR 506.011(B)(3):

(3) The premium formula for MassHealth Family Assistance children whose eligibility is described in 130 CMR 505.005(B): *Eligibility Requirements for Children with Modified Adjusted Gross Income of the MassHealth MAGI Household Greater than 150% and Less than or Equal to 300% of the Federal Poverty Level* and (E): *Eligibility Requirement for HIV-positive Individuals Who Are Citizens or Qualified Noncitizens with Modified Adjusted Gross Income of the MassHealth MAGI Household Greater than 133 and Less than or Equal to 200 % of the Federal Poverty Level* is as follows.

Family Assistance for Children Premium Formula	
% of Federal Poverty Level (FPL)	Monthly Premium Cost
Above 150% to 200%	\$12 per child (\$36 PBFG maximum)
Above 200% to 250%	\$20 per child (\$60 PBFG maximum)
Above 250% to 300%	\$28 per child (\$84 PBFG maximum)

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228. See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998).

In order for the Appellant, a child between the ages of 1 and 18, to be deemed eligible for Standard, the Appellant's modified adjusted gross income of the MassHealth MAGI household must be less than or equal to 150% of the federal poverty level (FPL). The Appellant lives in a household of two and has a gross monthly income exceeding 150% of the FPL. (Testimony, Exhibit 1). MassHealth determined that the Appellant's countable income equates to 249.38% of the FPL and calculated a \$20/month premium for Family Assistance pursuant to 130 CMR 506.012(B)(3). (Testimony, Exhibit 1) The Appellant has not met the burden, by a preponderance of evidence, to show that MassHealth's determination that the Appellant's income exceeds the limit for MassHealth Standard is invalid. The Appellant has not met the

burden, by a preponderance of evidence, to show that MassHealth's calculation of a monthly \$20 premium is invalid. Accordingly, this appeal is DENIED.

Order for MassHealth

None.

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.

Patrick Grogan
Hearing Officer
Board of Hearings

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