

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2414341
Decision Date:	12/10/2024	Hearing Date:	10/16/2024
Hearing Officer:	Christopher Jones		

Appearance for Appellant:  
Pro se

Appearance for MassHealth:  
Daisy Valles

Interpreter:



*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	<b>Issue:</b>	Community Eligibility; Over-65; Immigration Status
<b>Decision Date:</b>	12/10/2024	<b>Hearing Date:</b>	10/16/2024
<b>MassHealth's Rep.:</b>	Daisy Valles	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Telephonic	<b>Aid Pending:</b>	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 August 6, 2024, MassHealth upgraded the appellant's coverage to Family Assistance. (Exhibit 1.) The appellant filed this appeal in a timely manner on September 18, 2024. (Exhibit 2; 130 CMR 610.015(B).) Limitations of assistance are valid grounds for appeal. (See 130 CMR 610.032.)

### Action Taken by MassHealth

MassHealth upgraded the appellant from MassHealth Limited to Family Assistance following her annual renewal, but did not approve her for MassHealth Standard.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 518.006, in determining that the appellant is not eligible for MassHealth Standard.

### Summary of Evidence

MassHealth's representative testified that the appellant is over the age of 65, and she is financially eligible for MassHealth benefits. After the appellant completed her renewal this year, she was

upgraded from MassHealth Limited to MassHealth Family Assistance for community residents over the age of 65.

The appellant testified that she just received her legal permanent residence card (“green card”) this year, and she was hoping to have her coverage upgraded to Standard. None of the doctors she has spoken with accept Family Assistance coverage. She testified that she has a stomach issue and chronic mental health issues that require active management and medication.

MassHealth’s explained that there is a “five-year bar” for people after they receive their green card before they can be approved for a more comprehensive MassHealth benefit. MassHealth’s representative suggested finding a community health center or contacting the customer service line at 1-800-841-2900 to ask for assistance in finding a health care provider. MassHealth’s representative also asked her to submit a copy of her green card for MassHealth’s records, as that will allow MassHealth to upgrade the appellant once the five years have passed.

## Findings of Fact

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

- 1) The appellant is over the age of 65 and financially eligible for MassHealth benefits. (Testimony by MassHealth’s representative.)
- 2) The appellant received her green card in 2024. (Testimony by the appellant.)

## Analysis and Conclusions of Law

MassHealth offers a variety of coverage types based upon an individual’s circumstances and finances. To qualify for MassHealth, an individual must fit into a category of eligibility and fall below a certain financial threshold. Immigration status is a factor in determining what type of coverage an applicant may be eligible for.

### 518.003: Immigrants

(A) Lawfully Present Immigrants. Qualified noncitizens, qualified noncitizens barred, and nonqualified individuals lawfully present are considered lawfully present immigrants. The applicable coverage types for qualified noncitizens, qualified noncitizens barred, and nonqualified individuals lawfully present are listed at 130 CMR 518.006.

(1) Qualified Noncitizens. There are two types of qualified noncitizens:

(a) those who are qualified regardless of when they entered the U.S. or how long they have had a qualified status. Such individuals are

1. persons granted asylum under § 208 of the INA;
2. Refugees admitted under § 207 of the INA;
3. persons whose deportation has been withheld under § 243(h) or 241(b)(3) of the INA, as provided by § 5562 of the federal Balanced Budget Act of 1997;
4. veterans, their spouses, and their children;

...

5. Conditional Entrants under § 203(a)(7) of the INA in effect before April 1, 1980;
6. persons who entered as Cuban/Haitian entrants under § 501(e) of the Refugee Education Assistance Act of 1980;
7. Native Americans ... ;
8. Amerasians as described in § 402(a)(2)(A)(i)(V) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA);
9. Victims of severe forms of trafficking, and spouse, child, sibling, or parent of the victim in accordance with the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106-386);
10. Iraqi Special Immigrants granted special immigrant status under § 101(a)(27) of the INA, pursuant to § 1244 of Public Law 110-181 or § 525 of Public Law 110-161;
11. Afghan Special Immigrants granted special immigrant status under § 101(a)(27) of the INA, pursuant to § 525 of Public Law 110-161; or
12. Migrants from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau who legally reside in the United States pursuant to a series of treaties with the United States known as the Compacts of Free Association (COFA), under Medicaid.

...

(b) noncitizens who are qualified based on having a qualified status identified at 130 CMR 518.003(A)(1)(b)1. and who have satisfied one of the conditions listed at 130 CMR 518.003(A)(1)(b)2. Such individuals are

1. persons who have one or more of the following statuses:

- a. admitted for LPR under the INA; or
- b. granted parole for at least one year under section 212(d)(5) of the INA; or
- c. are the battered spouse, battered child, or child of battered parent, or parent of battered child who meets the criteria of section 431(c) of PRWORA; **and also**

**2. satisfy at least one of the three following conditions:**

- a. have had a status in 130 CMR 518.003(A)(1)(b)1. **for five or more years** (a battered noncitizen attains this status when the petition is accepted as establishing a *prima facie* case);
- b. entered the U.S. prior to August 22, 1996, regardless of status at the time of entry, and have been continuously present in the U.S., until attaining a status listed in 130 CMR 518.003(A)(1)(b)1.; for this purpose an individual is deemed continuously present who has been absent from the U.S. for no more than 30 consecutive days or 90 nonconsecutive days prior to attaining a status listed in 130 CMR 518.003(A)(1)(b)1.; or
- c. also have or had a status listed in 130 CMR 518.003(A)(1)(a).

(2) Qualified Noncitizens Barred. **Individuals who have a status listed in 130 CMR 518.003(A)(1)(b)1.** (Legal Permanent Resident, parolee for at least one year, or battered noncitizen) **and do not meet one of the conditions in 130 CMR 518.003(A)(1)(b)2.** Qualified noncitizens barred, like qualified noncitizens, are lawfully present nonqualified individuals.

(130 CMR 518.003(A)(1)-(2) (emphasis added).)

None of the statuses listed in 130 CMR 518.003(A)(1)(a) apply, therefore her immigration status is derived solely from her legal permanent residency. To be a Qualified Noncitizen, she would need to have her green card for five years or have entered prior to August 22, 1996. Therefore, the appellant's immigration status places her into the category of Qualified Noncitizens Barred.

An applicant's immigration status determines the coverage type for which they may be eligible:

518.006: Applicable Coverage Types

...

**(B) Qualified noncitizens barred and nonqualified individuals lawfully present may receive the following coverage:**

(1) MassHealth Family Assistance if they are adults 65 years of age or older and meet the categorical requirements and financial standards as described in 130 CMR 519.013: *MassHealth Family Assistance* or are receiving Emergency Aid to the Elderly, Disabled and Children (EAEDC); or

(2) MassHealth Limited if they are adults 65 years of age or older and meet the categorical requirements and financial standards as described in 130 CMR 519.009: *MassHealth Limited*; or

(3) MassHealth Standard if they **are younger than 21 years old or pregnant and meet the categorical and financial requirements described in 130 CMR 519.006: *Long-term-care Residents* or 519.007: *Individuals Who Would Be Institutionalized*.**

...

(130 CMR 518.006(B) (emphasis added).)

Financial eligibility is not an issue for the appellant. The only issue is for what benefit type she is eligible. MassHealth Family Assistance is a more comprehensive benefit than MassHealth Limited, though not as comprehensive as MassHealth Standard. (See 130 CMR 450.105.) If the appellant requires long-term-care assistance, or would be clinically eligible for them, she may qualify for MassHealth Standard through one of the community-based waiver programs. These programs require a clinical determination regarding the medical necessity of additional services. If the appellant feels these additional clinical services are needed, she is welcome to submit a long-term-care or waiver application. Otherwise, this appeal must be 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.

Christopher Jones  
Hearing Officer  
Board of Hearings

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