

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2415484
<b>Decision Date:</b>	01/03/2025	<b>Hearing Date:</b>	11/06/2024
<b>Hearing Officer:</b>	Christopher Jones	<b>Record Open to:</b>	11/13/2024

**Appearances for Appellant:**



**Appearance for MassHealth:**

Jonathan Gonzalez – Charlestown



*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>	Waivers; Program of All-Inclusive Care for the Elderly (PACE); Post Eligibility Treatment of Income
<b>Decision Date:</b>	01/03/2025	<b>Hearing Date:</b>	11/06/2024
<b>MassHealth's Rep.:</b>	Jonathan Gonzalez	<b>Appellant's Reps.:</b>	[REDACTED]
<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 27, 2024, MassHealth downgraded the appellant's coverage, ending coverage for his Medicare premium because his income exceeds the program limits. (Exhibit 1; 130 CMR 519.002; 529.010-.011.) The appellant filed this appeal in a timely manner on October 7, 2024. (Exhibit 2; 130 CMR 610.015(B).) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

Following the hearing, the record was left open until November 11, 2024, for the appellant to review his options, and identify if he was going to withdraw from the PACE waiver.

### Action Taken by MassHealth

MassHealth stopped covering the appellant's Medicare premium and assessed him a patient paid amount in order to stay in the PACE program.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to EOM 21-13 (July 13, 2021) and 42 CFR 460.184 and 42 CFR 435.217, in determining that the appellant must spend down his income to 300% of the federal benefits rate to continue in the PACE program.

## Summary of Evidence

MassHealth's representative testified that the appellant is over the age of 65, and he was approved for the Programs of All-Inclusive Care for the Elderly ("PACE") program based upon his monthly Social Security benefits of \$1,947.70. This income is equivalent to 155% of the federal poverty level and below 300% of the federal benefits rate, or \$2,829 per month. The appellant's spouse [REDACTED] and [REDACTED] the appellant requested a spousal maintenance needs allowance ("SMNA"). This request was subject to a fair hearing (Appeal No. 2410122), which was resolved and withdrawn when the appellant submitted a signed affidavit requesting the SMNA. MassHealth approved the appellant for a SMNA of \$1,905.80, starting [REDACTED] [REDACTED]

The notice the appellant appealed was sent out because the appellant's income was now above 225% of the federal poverty level, which meant he was no longer eligible for a Medicare Savings Program benefit to cover his Medicare Parts A & B premiums. The SMNA also increased the appellant's countable income above 300% of the federal benefits rate. MassHealth's representative testified that, historically, the appellant would have been terminated from the PACE program until he met a six-month deductible to become eligible for Standard under 130 CMR 130 CMR 520.028 through 520.035. Under the Post Eligibility Treatment of Income ("PETI") rules, described in Eligibility Operation Memorandum 21-13 (July 13, 2021), the appellant could remain eligible for the PACE program by paying a monthly amount. This monthly amount is the difference between the appellant's countable income and 300% of the federal benefits rate. MassHealth's representative initially testified that the monthly amount the appellant owed was \$849 per month, but the parties also reviewed the amount owed in a MassHealth computer system and testified that the figure was \$829.

The appellant argued that the SMNA should not be included in his income because he does not get the money. He testified that this money is sent directly to his wife's conservator who pays the mortgage for his residence. The appellant testified that the mortgage is around \$1,900 per month, so it would consume almost all of the SMNA. The appellant testified that he only gets his own Social Security income and that is not enough money to live on while paying both Medicare and the patient paid amount. The appellant's Medicare premium is \$174.70 each month. The appellant asked for time to consider his options. The record was left open until November 11, 2024, for the appellant to consider whether to pay the monthly premiums to stay in the PACE program,

withdraw from the PACE program, or ask to stop or adjust the SMNA.<sup>1</sup> The appellant never responded.

## Findings of Fact

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

- 1) The appellant is over the age of 65, and he receives gross monthly Social Security benefits in the amount of \$1,947.70. (Testimony by MassHealth's; Exhibit 4.)
- 2) The appellant is enrolled in the PACE program. (Testimony by MassHealth's and the appellant's representative.)
- 3) [REDACTED] a [REDACTED]
- 4) The appellant requested a spousal maintenance allowance out of his institutionalized spouse's income. The appellant was approved for a SMNA of \$1,905.80, starting August 2024. (Testimony by MassHealth's representative.)
- 5) The appellant's Medicare premium is \$174.70. (Testimony by MassHealth's representative.)
- 6) Through a notice dated August 27, 2024, MassHealth informed the appellant that the agency would no longer pay his Medicare premium. (Exhibit 1.)
- 7) MassHealth later informed the appellant that he would need to pay a monthly amount to stay in the PACE program. (Testimony by the appellant's and MassHealth's representatives.)

## Analysis and Conclusions of Law

MassHealth offers a variety of benefits 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. The Programs of All-Inclusive Care for the Elderly ("PACE") is a comprehensive health program that is designed to keep frail individuals living in the community when they are clinically eligible for nursing-facility services. (130 CMR 519.007(C)(1).) Financially, MassHealth only counts the income and assets of the applicant regardless of their marital status, and an applicant must have "countable-income amount less than or equal to 300% of the federal benefit rate (FBR) for an individual." (130 CMR 519.007(C)(2).) "Individuals whose income exceeds the [income]

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<sup>1</sup> The parties discussed the appellant requesting an adjustment to the SMNA. This issue was not part of this appeal, and it was pointed out that increasing the SMNA would just increase the amount the appellant needed pay for his PACE participation.

standards ... may establish eligibility for MassHealth Standard by meeting a deductible as described at 130 CMR 520.028 through 520.035.” (130 CMR 519.007(C)(3).)

Countable income typically includes all of “[a]n individual’s and the spouse’s gross earned and unearned income, less certain business expenses and standard income deductions ... .” (130 CMR 520.009(A)(1).) Income is counted “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.” (130 CMR 520.009(A)(4).) The standard income deduction is “\$20 per individual or married couple.”<sup>2</sup> (130 CMR 520.013(A).)

The appellant argues that the SMNA should not be included in his income because he never receives it, as it goes directly to pay his mortgage. It was unclear from the appellant’s testimony whether he had discussed this arrangement with the conservator involved, and the appellant acknowledged that he would still need to pay his mortgage if he received it directly. In either circumstance, the appellant has not proved that he has acted to “actually receive” the income. The SMNA diverts the institutionalized spouse’s income to the community spouse in order for him to meet his living expenses in the community. If the SMNA were not actually income going to the appellant, it should be cancelled as it is not meant for anyone else’s benefit. If the appellant truly disputes that he is not receiving the SMNA, he should request that MassHealth cancel the SMNA or otherwise challenge the conservator’s receipt of it.

The appellant’s countable income, therefore, is \$3,833.50, based upon his Social Security of \$1,947.70, the SMNA of \$1,905.80, and the \$20 standard deduction. The federal poverty level for an individual is \$1,255 in 2024, and the 300% of the federal benefits rate was \$2,829 per month. The appellant’s countable income is 305.4% of the federal poverty level and \$1,004.50 over 300% of the federal benefits rate.

If this were his income prior to being approved for MassHealth Standard through the PACE waiver, the appellant would have been denied participation in PACE. To qualify for MassHealth Standard, the appellant would need to satisfy “a six-month deductible in accordance with 130 CMR 520.028 through 520.035 ... .” (130 CMR 520.027.) Once a member has satisfied a deductible, they only remain eligible “until the end of the deductible period. At the end of the deductible period, the MassHealth agency notifies the member in writing of a new deductible period and amount, if the countable-income amount continues to exceed applicable income standards.” (130 CMR 520.031(B).)

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<sup>2</sup> There is an alternate deduction for “for persons who ... are receiving personal-care attendant services,” but this deduction is only applicable to “determining eligibility,” and if the applicant’s countable income is over 133% of the federal poverty level before it is applied, the applicant must establish financial eligibility through the six-month deductible. (130 CMR 520.013(B).) Therefore, this deduction is inapplicable to eligibility through a waiver benefit, such as PACE.

Because the appellant was approved for the PACE waiver prior to his income increasing above 300% of the federal benefits rate, he is entitled to “be treated as part of the special income eligibility group under 42 CFR 435.217.” (EOM 21-13 (July 14, 2021).) This “post-eligibility treatment of income (PETI) process” allows MassHealth members whose income increases after they are eligible for the PACE waiver to “remain in their MassHealth Standard benefit and remain enrolled in PACE by spending down their income to 300% of the FBR.” (EOM 21-13.) This “spend down” is referred to as the “PETI patient paid amount,” and it “is calculated by taking the member’s countable monthly income and subtracting the monthly equivalent of 300% of the FBR and any allowable deductions in accordance with 42 CFR 435.726(c).” (EOM 21-13.)

Pursuant to 42 CFR 435.726, MassHealth must “reduce its payment for [waiver] services provided to an individual ... by the amount that remains after deducting the amounts specified in paragraph (c) of this section from the individual's income.”

(c) In reducing its payment for home and community-based services, the agency must deduct the following amounts, in the following order, from the individual's total income (including amounts disregarded in determining eligibility):

(1) An amount for the maintenance needs of the individual that the State may set at any level, as long as the following conditions are met:

(i) The deduction amount is based on a reasonable assessment of need.

(ii) The State establishes a maximum deduction amount that will not be exceeded for any individual under the waiver.

(2) For an individual with only a spouse at home, an additional amount for the maintenance needs of the spouse. This amount must be based on a reasonable assessment of need but must not exceed the highest of -

...

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family. This amount must -

...

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including -

(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(ii) Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses.

(42 CFR 435.726(c).)

Based upon the language of EOM 21-13, the “amount for the maintenance needs of the individual that the State” sets must be 300% of the federal benefits rate. Because the appellant resides alone in the community, the only other relevant deductions listed would be “amounts for incurred medical expenses not subject to payment by a third party including .... Medicare ... premiums ... ” (42 CFR 435.726(c)(4).) Therefore, the appellant’s PETI patient paid amount is his countable income (\$3,833.50), less 300% of the federal benefits rate (\$2,829), less his uncovered medical expenses (\$174.70), or \$829.80. Therefore, this appeal is DENIED as to whether the appellant must pay a PETI patient paid amount.<sup>3</sup>

This appeal is DENIED as well with regards to the appellant’s request to reinstate his MSP coverage. The maximum income for these programs is a federal poverty level equivalence of 225% of the federal poverty level. (130 CMR 519.011(B).) While the appellant is not eligible for a Medicare Savings Program (“MSP”) benefit, under 130 CMR 519.010-.011, MassHealth is effectively paying his Medicare premium. The appellant’s Medicare premium is deducted from his countable income in calculating his PETI patient paid amount. If the appellant were eligible for an MSP benefit, he would not be eligible for the deduction from countable income, and his PETI patient paid amount would be increased by \$174.70.

## **Order for MassHealth**

If not already done, recalculate the appellant’s PETI patient paid amount to be \$829.80, or \$829 if MassHealth’s practice is to round down the patient paid amount. This PETI patient paid amount should be effective as of the beginning of the appellant’s requirement to pay a PETI patient paid amount.

## **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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<sup>3</sup> There was some confusion on behalf of MassHealth’s representatives as to whether the appellant was being asked to pay \$849 or \$829 per month to continue in the PACE. The \$829 per month is correct if MassHealth’s practice is to round PETI patient paid amounts.

## Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

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Christopher Jones  
Hearing Officer  
Board of Hearings

  
MassHealth Representative: Thelma Lizano, Charlestown MassHealth Enrollment Center, 529  
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