

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2417255
Decision Date:	12/19/2024	Hearing Date:	12/11/2024
Hearing Officer:	Christine Therrien		

Appearances for Appellant:




Appearance for MassHealth:

Nicole Conrad, Taunton



*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 – Under 65; Kaleigh Mulligan Program
Decision Date:	12/19/2024	Hearing Date:	12/11/2024
MassHealth's Rep.:	Nicole Conrad	Appellant's Reps.:	
Hearing Location:	Taunton MassHealth Enrollment Center Telephonic		

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 8/16/24, MassHealth terminated the appellant's son's MassHealth Standard benefits on 9/1/24 because MassHealth determined that he was over the income limit. (130 CMR 519.007 and Exhibit 1). MassHealth calculated a deductible of \$338. The deductible period is 9/1/24 to 3/1/25. (130 CMR 519.005 and 520.028 and Exhibit 1). The appellant timely filed this appeal on 11/12/24. (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 terminated the appellant's son's MassHealth benefits because his income exceeded the program limits and calculated a deductible.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.007, in determining that the appellant's son was over income for MassHealth Standard under the KMP.

Summary of Evidence

The MassHealth representative testified that the appellant's son is ■ years old. The MassHealth representative testified that the appellant's son reapplied for the Kaileigh Mulligan Program (KMP). The MassHealth representative testified that the appellant's son's MassHealth benefits through the KMP were terminated on 9/1/24 because the appellant's son did not meet the deductible. The MassHealth representative testified that MassHealth determined the appellant's son was over the income limit for MassHealth Standard under the KMP. The MassHealth representative testified that MassHealth determined a deductible of \$338 (\$56.37/month). The deductible period is 9/1/24 to 3/1/25. If the appellant's son meets the deductible, he will qualify for MassHealth Standard under the KMP.

The MassHealth representative testified that the appellant's son's Social Security survivor benefits are \$407 a month. The MassHealth representative testified that the maximum allowable income to qualify for MassHealth Standard under the KMP is \$72.80 a month. The MassHealth representative testified that the deductible was determined by taking the appellant's son's unearned income, less the allowable \$20.00 unearned income disregard, then subtracting the MA Income Standard for the KMP (\$72.80), and then subtracting the monthly private health insurance premium (\$257.83). This figure is then multiplied by six to determine the individual's MassHealth deductible ($\$407 - \$20 = \$387 - \$72.80 = \$314.20 - \$257.83 = \$56.37 \times 6 = \338).

The appellant's son's attorney submitted a brief prior to the hearing. The appellant's son's attorney argued that the appellant's son's...

...only source of income is Social Security survivor benefits in the amount of \$407 per month. He does not file taxes, nor is he required to file taxes. He is a tax dependent of his mother. MassHealth uses federal Modified Adjusted Gross Income (MAGI) rules to calculate the countable income of those receiving MassHealth Standard, which includes children in the Kaileigh Mulligan program. 130 C.M.R. 506.002(A)(1)(a); 130 C.M.R. 519.007(A).

According to the federal regulations governing MAGI, income of tax dependents is only countable towards MAGI if the dependent is required to file a federal tax return. 42 C.F.R. § 435.603(D)(2)(i) ("The MAGI-based income of an individual who is included in the household of his or her natural, adopted or step parent and is not expected to be required to file a tax return under section 6012(a)(1) of the Code for the taxable year in which eligibility for Medicaid is being determined, is not

included in household income whether or not the individual files a tax return.”).¹ In other words, if a tax dependent is not required to file a federal tax return, his income is not countable in the calculation of MAGI.

The Internal Revenue Service (IRS) has set forth specific rules to determine whether unearned income, such as Social Security survivor benefits, counts toward the threshold that would require the dependent to file a federal tax return (also called the “tax filing threshold”). According to IRS rules, Social Security benefits only count toward the tax filing threshold for a dependent’s unearned income if they are taxable. IRS Publication (2023), Dependents, Standard Deduction, and Filing Information, Table 2, attached and available at https://www.irs.gov/publications/p501#en_US_2023_publink1000220887. A single individual’s Social Security income is taxable only if half of the Social Security income, plus all additional income of that individual, exceeds \$25,000. IRS Publication 915 (2023), Social Security and Equivalent Railroad Retirement Benefits, “Are Any of Your Benefits Taxable?” attached and available at <https://www.irs.gov/publications/p915.2>

[The appellant’s son] receives \$4,884 of Social Security benefits per year. Half of this amount is \$2,442, far less than the \$25,000 that would make the income taxable. [The appellant’s son] has no other income. Thus, [the appellant’s son] is not required to file a federal tax return, and his Social Security survivor benefits are not considered countable income under MAGI rules. He thus has a countable income of \$0 and qualifies for the Kaileigh Mulligan program.

Alternatively, the appellant’s son’s attorney argued that...

...[t]he regulations at 130 C.M.R. 519.007(1)(C) (*sic*) state that, in order to qualify for Kaileigh Mulligan, a child must either (i) have countable income of \$72.80 or less or (ii) meet a deductible. If MassHealth considers [the appellant’s son’s] \$407/month of Social Security survivor benefits countable income, [the appellant’s son] is still eligible, as a severely disabled child, through part (ii) of the rule, which entails meeting a deductible.

According to 130 C.M.R. 520.030, the deductible is calculated by multiplying an individual’s monthly excess income by 6. The monthly excess income is the difference between the individual’s countable income and the MassHealth deductible-income standard. *Id.* The MassHealth deductible-income standard for community residents is \$522/month for one person. *Id.*

Because [the appellant’s son’s] income is \$407/month, he has \$0 in excess monthly income. 0 multiplied by 6 is 0; thus, the deductible amount would be \$0. [The

appellant's son] would therefore qualify for Kaileigh Mulligan with a \$0 deductible, even if his income is countable.

(Exhibit 5)

The appellant's mother testified that she was previously able to meet the deductible by purchasing little things here and there for her son, but now the deductible has become a financial burden. The appellant's mother testified that her son has been enrolled in MassHealth through the KMP since 2019, and her son's Social Security survivor benefits did not start getting counted until she was told to reapply in 2023.

Findings of Fact

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

1. The appellant's son is ■ years old and was previously enrolled in the KMP.
2. The appellant's son reapplied for the KMP.
3. The appellant's son's MassHealth benefits through the KMP were terminated on 9/1/24 because the appellant had excess monthly income and did not meet the deductible.
4. MassHealth determined a deductible of \$338 (\$56.37/month). The deductible period is 9/1/24 to 3/1/25. If the appellant meets the deductible, he will qualify for MassHealth Standard under the KMP.
5. The MassHealth representative testified that the deductible was determined by taking the appellant's son's unearned income (\$407.00), less the allowable \$20.00 unearned income disregard, then subtracting the MA Income Standard for the KMP (\$72.80), then subtracting the monthly private health insurance premium (\$257.83). This figure is then multiplied by six to determine the individual's MassHealth deductible ($\$407 - \$20 = \$387 - \$72.80 = \$314.20 - 257.83 = 56.37 \times 6 = \338).
6. The appellant's son's Social Security survivor benefits are \$407 a month. The MassHealth representative testified that the maximum allowable income to qualify for MassHealth Standard under the KMP is \$72.80 a month.
7. The appellant's son's only source of income is Social Security survivor benefits in the amount of \$407.

Analysis and Conclusions of Law

Individuals who would be institutionalized if they were not receiving home- and community-based services can qualify for MassHealth Standard benefits through the Kaileigh Mulligan Program. The regulations regarding eligibility for MassHealth Standard benefits for the Kaileigh Mulligan Program are found at 130 CMR 519.007, which state:

(A) The Kaileigh Mulligan Program. The Kaileigh Mulligan Program enables severely disabled children younger than ■ years old to remain at home. The income and assets of their parents are not considered in the determination of eligibility.

(1) Eligibility Requirements. Children younger than ■ years old may establish eligibility for the Kaileigh Mulligan Program by meeting the following requirements. They must

- (a) 1. meet Title XVI disability standards in accordance with the definition of permanent and total disability for children younger than ■ years old in 130 CMR 515.001: Definition of Terms or have been receiving SSI on August 22, 1996; and
- 2. continue to meet Title XVI disability standards that were in effect before August 22, 1996;

(b) have \$2,000 or less in countable assets;

(c) 1. have a countable income amount of \$72.80 or less; or

2. if greater than \$72.80, meet a deductible in accordance with 130 CMR 520.028: Eligibility for a Deductible through 520.035: Conclusion of the Deductible Process; and

(d) require a level of care equivalent to that provided in a hospital or nursing facility in accordance with 130 CMR 519.007(A)(3) and (4).

(2) Additional Requirements. The MassHealth agency must have determined

(a) that care provided outside an institution is appropriate; and

(b) that the estimated cost paid by the MassHealth agency would not be more than the estimated cost paid if the child were institutionalized.

(3) Level of Care That Must Be Required in a Hospital. To require the level of care provided in a hospital, the child must have a medical need for the following:

(a) direct administration of at least two discrete skilled-nursing services (as defined in 130 CMR 515.001: Definition of Terms) on a daily basis, each of which requires complex nursing procedures, such as administration of intravenous hyperalimentation, changing tracheotomy tubes, assessment or monitoring related to an uncontrolled seizure disorder, assessment or monitoring related to an unstable cardiopulmonary status, or other unstable medical condition;

(b) direct management of the child's medical care by a physician or provided directly by someone who is under the supervision of a physician on at least a weekly basis;

(c) ongoing use of invasive medical technologies or techniques to sustain life (such as ventilation, hyperalimentation, gastrostomy tube feeding), or dialysis, or both; and

(d) at least one of the following:

- 1. assistance in one or more activities of daily living (ADLs), as defined in 130 CMR 515.001: Definition of Terms, beyond what is required at an age-appropriate activity level; or

2. one or more skilled therapeutic services (occupational therapy, physical therapy, or speech and language therapy), provided directly by or under the supervision of a licensed therapist at least five times a week.
- (4) Level of Care That must Be Required in a Skilled-nursing Facility. To require the level of care provided in a skilled nursing facility, the child must be non-ambulatory and meet the following requirements.
- (a) A child [REDACTED] of age or older must have global developmental skills (as defined in 130 CMR 515.001: Definition of Terms) not exceeding those of a [REDACTED] child as indicated by a developmental assessment performed by the child's physician or by another certified professional. In addition, the child's developmental skills level must not be expected to improve.
 - (b) A child younger than [REDACTED] must have global developmental skills significantly below an age-appropriate level and such skills must not be expected to progress at an age-appropriate rate as indicated by a developmental assessment performed by the child's physician or by another certified professional.
 - (c) Regardless of age, the child must also require all of the following:
 1. direct administration of at least two discrete skilled nursing services on a daily basis, each of which requires complex nursing procedures as described at 130 CMR 519.007(A)(3);
 2. direct management of the child's medical care by a physician or provided directly by someone who is under the supervision of a physician on a monthly basis;
 3. assistance in one or more ADLs beyond what is required at an age-appropriate activity level; and
 4. any combination of skilled therapeutic services (physical therapy, occupational therapy, speech and language therapy) provided directly by or under the supervision of a licensed therapist at least five times a week.
- (5) Premium Assistance for Standard Kaileigh Mulligan. Individuals eligible for MassHealth Standard in 130 CMR 519.007(A) may be eligible for Premium Assistance if they meet the requirements described in 130 CMR 505.002(N): Access to Employer Sponsored Insurance and Premium Assistance Investigations for Individuals Who Are Eligible for MassHealth Standard and 506.012: Premium Assistance Payments.

(emphasis added)

The income limit to qualify for the KMP is \$72.80 per month. (130 CMR 519.007(A)(1)(C)). The appellant's son receives \$407 a month for Social Security survivor benefits, which exceeds this amount. The appellant's son's attorney argued that the appellant's son's income should not be counted because MassHealth uses Modified Adjusted Gross Income (MAGI) to calculate income for a tax household, and under federal law, the income of a tax dependent who is not required to file taxes is not calculated into the MAGI. "The MAGI-based income of an individual who is included in the household of his or her natural, adopted or step-parent and is not expected to be required to file a tax return under section 6012(a)(1) of the Code for the taxable year in which

eligibility for Medicaid is being determined, is not included in household income whether or not the individual files a tax return.” (42 C.F.R. § 435.603(D)(2)(i)). While this assessment of how MAGI is calculated is accurate, the eligibility requirements for the KMP only look at the income of the appellant child applying for the program, and not the income of the tax household. Therefore, the MAGI of the tax household is not relevant, and the appellant child’s income is not tied to whether taxes must be filed on said income or whether said income is taxable. Per 130 CMR 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).

Pursuant to 130 CMR 506.003(B)(2):

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.

(emphasis added)

The appellant’s son’s attorney’s assertion that the appellant’s son’s Social Security survivor benefits should not be counted as income is incorrect.

The appellant’s son’s attorney next argues that if the appellant’s son’s Social Security survivor benefits are counted as income then the deductible should be \$0. The deductible is determined by multiplying the excess monthly income by six. Excess monthly income is the amount by which the applicant's countable income amount as described in 130 CMR 520.009 exceeds the MassHealth deductible-income standard. MassHealth uses the monthly income standard for long-term-care facility residents of \$72.80 as the deductible-income standard for the KMP. (130 CMR 520.030, 130 CMR 519.007(A)(1)(C)). The deductible was calculated using the appellant’s unearned income, less the allowable \$20.00 unearned income disregard, then subtracting the MA Income Standard for the KMP (\$72.80), then subtracting the monthly private health insurance premium (\$257.83). This figure was then multiplied by six to determine the individual’s MassHealth deductible ($\$407 - \$20 = \$387 - \$72.80 = \$314.20 - 257.83 = 56.37 \times 6 = \338). The appellant’s son’s attorney used the incorrect income standard to calculate a deductible; the monthly income standard for community residents over age 65 is \$522. (130 CMR 520.030). That figure is not relevant here.

MassHealth correctly determined the appellant’s son’s income of \$407 is over the program limits for MassHealth Standard under the KMP, and the deductible of \$338 for the deductible period of

9/1/24 to 3/1/25 was correctly calculated.

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.

Christine Therrien
Hearing Officer
Board of Hearings

cc:

cc: MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center