

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed in part; Approved in part	<b>Appeal Number:</b>	2514725
<b>Decision Date:</b>	11/24/2025	<b>Hearing Date:</b>	11/10/2025
<b>Hearing Officer:</b>	Scott Bernard	<b>Record Open to:</b>	11/19/2025

**Appearances for Appellant:**




**Appearance for MassHealth:**

Yenlinh Vu (Charlestown MEC) *via* telephone



*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>	Dismissed in part; Approved in part	<b>Issue:</b>	Frail Elder Waiver/Income and Assets
<b>Decision Date:</b>	11/24/2025	<b>Hearing Date:</b>	11/10/2025
<b>MassHealth's Rep.:</b>	Yenlinh Vu	<b>Appellant's Reps.:</b>	
<b>Hearing Location:</b>	Quincy Harbor South	<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 October 1, 2025, MassHealth denied the appellant's application for MassHealth Home- and Community-based Services Waiver-Frail Elder (Frail Elder Waiver) because MassHealth determined that he had more countable income and assets than MassHealth benefits allow. (See 130 CMR 519.007(B); 520.003; 520.004; 520.009; 520.028; and Exhibit (Ex.) 1, pp. 3-8, 9-14; Ex. 4, pp. 10-15, 16-21; Ex. 6, pp. 12-17, 18-23; Ex. 7, pp. 44-49, 50-55; Ex. 9, pp. 44-49, 50-55). According to the October 1, 2025 notice, MassHealth determined that the appellant had countable income of \$4,040.00, resulting in a deductible of \$15,698.00 for the June 1 to December 1, 2025 period, and that he possessed assets totaling \$29,184.15, exceeding the \$2,000.00 asset limit for individuals.<sup>1</sup> (See Ex. 1, pp. 3-8, 9-14; Ex. 4, pp. 10-15, 16-21; Ex. 6, pp. 12-17, 18-23; Ex. 9, pp. 44-49, 50-55). The appellant filed this appeal in a timely manner on October 8, 2025. (See 130 CMR 610.015(B) and Ex. 1, p. 2). On October 15, 2025, MassHealth issued another notice informing the appellant that his deductible was changing to \$15,788.00 for the deductible period

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<sup>1</sup> This is incorrect under the Frail Elder Waiver regulations. The \$2,000.00 asset limit is only applicable to an individual applicant or member. (130 CMR 519.007(B)(2)(c)). For a married couple, such as the appellant, if the initial Waiver eligibility determination was on or after January 1, 2014, the applicant or member must have assets that are less than or equal to the standards at [130 CMR 520.016\(B\)](#): *Treatment of a Married Couple's Assets When One Spouse Is Institutionalized.* (Id.).

from June 1, 2025 through December 1, 2025, because of an increase of his countable income to \$4,085.00. (See Ex. 8, pp. 4-6). The appellant filed an appeal of this notice in a timely manner on October 23, 2025. (See 130 CMR 610.015(B) and Ex. 8, p. 3). The appeals were consolidated for hearing.

Any MassHealth action to suspend, reduce, terminate, or restrict a member's assistance is valid grounds for appeal. (See 130 CMR 610.032).

## Action Taken by MassHealth

MassHealth denied the appellant's application for the Frail Elder Waiver because he had more countable income and assets than MassHealth benefits allow.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.007(B); 520.003; 520.004; 520.009; and 520.028, in determining that the appellant had more countable income and assets than MassHealth benefits allow to qualify for the Frail Elder Waiver.

## Summary of Evidence

Prior to the hearing, the appellant's attorney submitted a memorandum and supporting documents. (Ex. 7, pp. 2-7; Ex. 9, pp. 2-7). In the memorandum, the appellant's attorney asserted that MassHealth misapplied the income and asset rules governing eligibility for the Frail Elder Waiver. (*Id.*)<sup>2</sup> The appellant's attorney stated that two issues were in dispute: whether the appellant was required to meet a deductible to receive waiver services, and whether he met the applicable asset limit. (*Id.*). The appellant's attorney wrote that the appellant applied for the Frail Elder Waiver on March 1, 2024<sup>3</sup>, and MassHealth issued an approval on May 16, 2025. (Ex. 7, pp. 2-7, 9-13; Ex. 9, pp. 2-7, 9-13). On August 18, 2025, MassHealth issued a new notice downgrading the appellant's coverage to the Medicare Savings Plan starting September 1, 2025, asserting the appellant's income and assets were too high to continue receiving his previous benefits. (Ex. 7, pp. 2-7, 14-19; Ex. 9, pp. 2-7, 14-19).<sup>4</sup> Documentation submitted on September 16, 2025, showed that the appellant's life insurance policy and remaining bank assets had been transferred to his

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<sup>2</sup> The appellant's clinical eligibility for the frail elder waiver was not addressed at hearing.

<sup>3</sup> It is uncertain whether the appellant's attorney intended to say the application date was March 1, 2025 rather than 2024, given that a 14-month determination period would be unusual. This issue, however, was not addressed at hearing.

<sup>4</sup> The appellant's attorney wrote that he timely appealed the notice on August 27, 2025, and that the Board of Hearings scheduled the matter for October 1, 2025 (Appeal No. 2512535). He further stated, however, that he withdrew the appeal on October 1 following a discussion with MassHealth. (See Ex. 7, pp. 2, 20-22; Ex. 9, pp. 2, 20-22).

community spouse. (Ex. 7, pp. 2-7, 23-43; Ex. 9, pp. 2-7, 22-43). The attorney reported that a MassHealth representative verbally indicated on September 19, 2025 that the appellant appeared eligible, yet MassHealth subsequently issued a denial notice on October 1, 2025, prompting the present appeal. (Ex. 1, pp. 3-8, 9-14; Ex. 4, pp. 10-15, 16-21; Ex. 6, pp. 12-17, 18-23; Ex. 7, pp. 2-7, 44-49, 50-55). The attorney argued that 130 CMR 519.007(B)(2) contains waiver-specific income and asset provisions and that MassHealth erred by applying general rules from 130 CMR 520.002, 520.009, and 520.028, which do not govern waiver eligibility. (Ex. 7, pp. 2-7, 60; Ex. 9, pp. 2-7, 60).

The appellant's attorney continued by explaining that under the waiver standard, income eligibility is based solely on the applicant's income and is capped at 300% of the federal benefit rate (FBR), which is \$2,901.00 in 2025. (Ex. 7, pp. 2-7, 60; Ex. 9, pp. 2-7, 60). The appellant's only income consists of \$3,152.00 per month in Social Security benefits. (Id.)<sup>5</sup> In the October 1, 2025 notice, MassHealth should have deducted the appellant's \$513.20 health-insurance premium, and a \$185.00 Medicare self-pay amount from this gross figure, which would have placed the appellant below the limit by \$447.20, according to the attorney (Id.). The appellant's attorney therefore asserted that no deductible should have been applied. (Id.). Regarding assets, the attorney cited 130 CMR 519.007(B)(2)(c) and 520.016(B), which allow a community spouse to retain a spousal resource allowance of \$157,920.00 in 2025; because the appellant's remaining assets of approximately \$27,184.00 had been fully transferred to his spouse, he contended that the asset requirement was met. (Id.). The attorney's memorandum concluded that the appellant satisfied both the income and asset criteria and that MassHealth's denial should be reversed. (Id.).

At the hearing, MassHealth was represented by a benefits eligibility representative from the Quincy MassHealth Enrollment Center (MEC). The appellant was represented by his attorney and by his spouse.

The MassHealth representative testified to the following. The appellant lives in the community with his spouse and is over the age of [REDACTED] years old. (Testimony; Ex. 2). In notices dated October 1 and October 15, 2025, MassHealth denied the appellant's waiver eligibility on grounds of excess income and assets. (Testimony; Ex. 1, pp. 3-8, 9-14; Ex. 4, pp. 10-15, 16-21; Ex. 6, pp. 12-17, 18-23; Ex. 9, pp. 44-49, 50-55; Ex. 8, pp. 4-6). According to MassHealth's calculations in the October 1, 2025 notice, the appellant's countable income was \$4,040.00 per month after the PCA disregard of \$1,213, resulting in a deductible calculation of \$15,698.00 running from June 1 through December 1, 2025. If the appellant meets this deductible, he can again qualify for the frail elder waiver (Testimony; Ex. 1, pp. 3-8, 9-14; Ex. 4, pp. 10-15, 16-21; Ex. 6, pp. 12-17, 18-23; Ex. 9, pp. 44-49, 50-55). In the October 15, 2025 notice, the appellant's countable income increased to \$4,085.00 per month after the PCA disregard of \$1,213.00, resulting in a deductible calculation of \$15,788.00 running from June 1 through December 1, 2025. (Testimony; Ex. 8, pp. 4-6). The PCA disregard was determined by subtracting \$522.00 from \$1,735.00, which presently is equal to 133% of the Federal Poverty Level (FPL) for a household of one. (Testimony). In both cases, the appellant's

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<sup>5</sup> The appellant did not offer corroborative evidence of the appellant's Social Security earnings, such as a copy of a Social Security award letter.

household income exceeded the Frail Elder Waiver limit of \$2,901.00 by more than \$1,100.00. (Testimony). The MassHealth representative stated that the October 15, 2025 notice income determination resulted in a deductible of \$15,788.00 for June 1 through December 1, 2025. (Id.).

The appellant's attorney responded that the regulatory standard for the Frail Elder Waiver required MassHealth to consider only the appellant's individual income and to deduct verified insurance and Medicare expenses. (Testimony). He explained that when those deductions were applied, the appellant fell below the threshold of 300% of the FBR and therefore should not have been subject to any deductible. (Testimony). The appellant's attorney further stated that asset transfers to the community spouse had been completed months earlier, which he corroborated with bank statements and insurance records, placing the appellant within the allowable limits. (Testimony).

The MassHealth representative conceded that the appellant was no longer over the asset limit to qualify for the frail elder waiver but maintained the position that the appellant remained over the income limit based on its records and calculations, and the matter was left for decision on the written submissions and testimony presented. (Testimony).

On November 14, 2025, the appellant's attorney submitted a follow-up memorandum, reiterating that eligibility for the Frail Elder Waiver required countable income at or below 300% of the FBR, which as of January 1, 2025, was \$2,901.00 per month. (Ex. 10). The appellant's attorney emphasized that waiver income eligibility is determined solely on the applicant's income, without considering the spouse's income. (Id.). Although the MassHealth notices listed the applicant's income as \$5,253.00 and later \$5,298.00, the appellant's attorney stated that these figures were unexplained and appeared to improperly include the spouse's earnings. (Id.). The appellant's attorney asserted that the applicant received \$3,152.00 per month in Social Security benefits and qualified for a \$1,213.00 PCA disregard, resulting in countable income of \$1,939.00, an amount below the 300% FBR threshold. (Id.).

On November 18, 2025, the Hearing Officer briefly reopened the record under 130 CMR 610.081 to request by email that the MassHealth representative provide further detail regarding the appellant's income.<sup>6</sup> (Ex. 11, p. 1). The hearing officer wrote that the appellant's attorney had represented that the appellant's only income was \$3,152.00 per month in Social Security benefits, while the MassHealth representative had testified at the hearing that the appellant's countable income was \$4,085.00 per month. (Id.). The Hearing Officer asked MassHealth to explain the basis for the \$4,085.00 figure and to identify the income components used in the calculation. (Id.). On November 19, 2025, the MassHealth representative responded that MassHealth had recorded Social Security Disability Income (SSDI) income of \$3,337.00 for the appellant and \$1,961.00 for the appellant's spouse. (Ex. 11, p. 2). She explained that because the appellant received both a PCA

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<sup>6</sup> The appellant's attorney was copied on this email but did not offer a response prior to the issuance of this decision. (Ex. 11).

disregard and Frail Elder Waiver services, MA21<sup>7</sup> assessed eligibility using PCA disregard rules. (Id.). Under those rules, if income exceeded 133% of the federal poverty level, eligibility was assessed up to 300% of the Federal Benefit Rate; if income exceeded 300% of the FBR, MassHealth applied a spenddown based on the deductible income standard of \$522.00. (Id.).

## Findings of Fact

1. The appellant is living in the community with his spouse and is over the age of [REDACTED] (Testimony; Ex. 2).
2. The appellant applied for the Frail Elder Waiver on March 1, 2024, and MassHealth issued an approval on May 16, 2025. (Ex. 7, pp. 9-13; Ex. 9, pp. 9-13).
3. On August 18, 2025, MassHealth issued a notice downgrading the appellant's coverage to the Medicare Savings Plan on the basis of excess income and assets. (Ex. 7, pp. 14-19; Ex. 9, pp. 14-19).
4. By notices dated October 1 and October 15, 2025, respectively, MassHealth denied the appellant's waiver eligibility on grounds of excess income and assets. (Testimony; Ex. 1, pp. 3-8, 9-14; Ex. 4, pp. 10-15, 16-21; Ex. 6, pp. 12-17, 18-23; Ex. 9, pp. 44-49, 50-55; Ex. 8, pp. 4-6).
5. According to MassHealth's calculations in the October 1, 2025 notice, the appellant's countable income was \$4,040.00 per month after the PCA disregard of \$1,213.00, resulting in a deductible calculation of \$15,698.00 running from June 1 through December 1, 2025. (Testimony; Ex. 1, pp. 3-8, 9-14; Ex. 4, pp. 10-15, 16-21; Ex. 6, pp. 12-17, 18-23; Ex. 9, pp. 44-49, 50-55).
6. The PCA disregard was determined by subtracting \$522.00 from \$1,735.00, which presently is equal to 133% of the FPL for a household of one. (Testimony).
7. According to the October 1, 2025 notice, MassHealth determined that the appellant had excess assets totaling \$27,184.15. (Ex. 1, pp. 3-8, 9-14; Ex. 4, pp. 10-15, 16-21; Ex. 6, pp. 12-17, 18-23; Ex. 9, pp. 44-49, 50-55).
8. The MassHealth representative testified that as of the date of the hearing the appellant and his spouse were no longer over the 2025 spousal asset limit of \$157,920.00 (Testimony).
9. On November 14, 2025, following the appeal hearing, the appellant's attorney submitted a

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<sup>7</sup> The MA21 system is a mainframe-based computer system used by MassHealth to determine the eligibility of specific populations for benefits.

follow-up memorandum stating that the notices dated October 1 and October 15, 2025 listed the appellant's countable income as \$5,253.00 and \$5,298.00, respectively, which exceeded the appellant's individual income at the time. (Ex. 10).

10. On November 18, 2025, the Hearing Officer reopened the record to request that the MassHealth representative clarify certain information concerning the appellant's income. (Ex. 11, p. 1).
11. On November 19, 2025, the MassHealth representative responded by stating that the appellant currently receives \$3,337.00 per month in SSDI, that eligibility had been assessed using PCA-disregard rules because he received both PCA and Frail Elder Waiver services, and that under PCA-disregard rules, income above 133% of the federal poverty level is assessed up to 300% of the FBR, and income above 300% of the FBR results in application of a spenddown using a \$522.00 deductible income standard. (Ex. 11, p. 2).

## **Analysis and Conclusions of Law**

Under the controlling Frail Elder Waiver regulation, an applicant for the waiver must satisfy clinical, income, and asset requirements specific to waiver eligibility. For income, MassHealth must determine eligibility based solely on the applicant's own income, without regard to the spouse's income. (130 CMR 519.007(B)(2)). To qualify, the applicant's countable income must be less than or equal to 300% of the Federal Benefit Rate (FBR) for an individual. (130 CMR 519.007(B)(2)(b)). This constitutes a distinct income standard applicable only to waiver eligibility. (See 130 CMR 519.007(B); 520.009; 520.013(B); 520.030). It is not in addition to the general PCA-disregard framework, which, despite appearing in a regulation entitled Community Unearned-Income Deductions, is applied only when calculating a deductible for MassHealth Standard applicants not applying for waiver eligibility.

Federal Medicaid regulations further clarify how income is treated after waiver eligibility has already been established, as is the case here (42 CFR 435.726). These regulations set out the PETI (Post-Eligibility Treatment of Income) rules. (Id.). Under PETI, waiver participants who were initially eligible for waiver services with income at or below 300% of the FBR may remain eligible when their income later rises above that limit by contributing the excess toward the cost of care. (Id.). PETI applies only in these post-eligibility circumstances, when a member first qualified for 1915(c) waiver services under the ≤300% FBR standard, and was subsequently found to have increased income. (See MassHealth Eligibility Operations Memo (EOM) 23-24 (October, 2023); and MassHealth Eligibility Operations Memo 19-13 (October 1, 2019)).

MassHealth's October 1, 2025 and October 15, 2025, determinations applied PCA-disregard rules and Standard deductible methodology, and they counted the spouse's income. These approaches do not apply to waiver eligibility determinations for an individual who has already qualified under 130 CMR 519.007(B). Once the appellant was approved for waiver services, his

continued eligibility must be evaluated under the PETI framework, not under the standard deductible rules used by MassHealth.

The evidence establishes that the appellant's own income consists solely of Social Security benefits, \$3,152.00 per month per the October 1, 2025 notice and then \$3,337.00 per month per the October 15, 2025 notice. Even if this amount exceeds 300% of the FBR, the appellant may remain financially eligible for the waiver under PETI because he initially qualified when below the income limit. MassHealth may require a PETI contribution but may not terminate waiver eligibility solely on the basis of increased income.

For these reasons, MassHealth's termination of the appellant's Frail Elder Waiver eligibility was contrary to 42 CFR 435.217, 42 CFR 435.726, EOM 19-13, EOM 23-24, and 130 CMR 519.007(B)(2). The appellant remains financially eligible for the waiver, subject to any PETI calculation MassHealth may properly apply.

For the above reasons, the appeal is DISMISSED IN PART with respect to assets, and APPROVED IN PART with respect to income.

## **Order for MassHealth**

Rescind notices of October 1, 2025 and October 15, 2025. Notify the appellant in writing of the PETI amount. Subject to the appellant showing he spent excess monthly income on his care, reinstate the appellant's frail elder waiver benefits effective September 1, 2025 (the date of waiver services termination).

## **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.

## 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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Scott Bernard  
Hearing Officer  
Board of Hearings

[REDACTED]

cc: Quincy MEC, Attn: Cassandra Moura, Appeals Coordinator, 100 Hancock Street, 6th Floor, Quincy, MA 02171

cc: MassHealth waiver unit