

Office of Medicaid BOARD OF HEARINGS

Appeal Decision:	Denied	Appeal Number:	1806752
Decision Date:	5/23/18	Hearing Date:	04/20/2018
Hearing Officer:	Alexandra Shube	Record Open to:	May 4, 2018

Appearance for Appellant:

Appearance for MassHealth:
Pierre Cherubin, Chelsea MEC



*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
Decision Date:	5/23/18	Hearing Date:	04/20/2018
MassHealth's Rep.:	Pierre Cherubin	Appellant's Rep.:	
Hearing Location:	Chelsea MassHealth Enrollment Center	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 January 25, 2018, MassHealth informed the appellant that he is not eligible for MassHealth benefits because he has more countable income than MassHealth benefits allow (Exhibit 1). The appellant filed this appeal in a timely manner on February 8, 2018 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's MassHealth application because it determined that he does not meet MassHealth eligibility requirements.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.005 and 130 CMR 519.007, in determining that the appellant is not eligible for MassHealth benefits.

Summary of Evidence

The MassHealth representative testified that the appellant, who is 85 years old, has a household of one. The appellant's monthly gross income is \$2,318 (\$815 from a private pension and \$1,503 from social security). The MassHealth representative further testified that the income limit for MassHealth Standard benefits for a member over the age of 65 in the community with a household size of one is 100% of the federal poverty level (FPL), or \$1,012. The appellant qualifies for a PCA disregard of \$815, which would bring his gross monthly income to \$1,503. As such, even with the PCA disregard, the appellant is over the income allowed for MassHealth Standard coverage.

The MassHealth representative further explained that the appellant is clinically eligible for the community based Frail Elder Waiver. The income limit for the Frail Elder Waiver, however, is \$2,270 and does not allow for the PCA disregard. With the appellant's monthly gross income of \$2,318, the appellant is still over the allowable income limit, even if he qualifies clinically.

The appellant's representative testified that she believes the pension is \$815, but would like to double check it given that her father is only \$48 over the allowable income limit for the Frail Elder Waiver. She would like to be able to get a PCA for the appellant as he needs the assistance. She also inquired as to any allowable deductions.

In response, the MassHealth representative testified that MassHealth only considers gross income and there are no applicable deductions. He also explained that her father would be eligible after meeting a \$5,046 deductible. The deductible period is the six-month period from January 1, 2018 through July 1, 2018 and the appellant could submit any medical and dental bills for that period.

At the end of the hearing, the record was left open until May 4, 2018 for the appellant's representative to provide more information on the appellant's pension and to submit any medical and dental bills since January 1, 2018. On April 27, 2018, the appellant's representative provided the MassHealth representative and this hearing officer with four monthly statements from East Boston Savings Bank from the period of November 30, 2017 through March 31, 2018. These statements reflect a monthly deposit of \$677 from NETT pension fund. On May 8, 2018, the MassHealth representative explained to the appellant's representative that, because MassHealth only considers gross income, he required information directly from the pension fund, not a bank account. No further information was provided from the appellant and the record closed on May 11, 2018.

Findings of Fact

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

1. The appellant is 85 years old, living in the community, and has a household size of one (Testimony).
2. The appellant's monthly gross income is \$2,318 (\$815 from a private pension and \$1,503 from

social security) (Testimony).

3. The income limit for MassHealth Standard benefits for a member over the age of 65 in the community with a household size of one is 100% of the federal poverty level (FPL), or \$1,012 (Testimony).
4. With a PCA disregard of \$815, the appellant's gross monthly income is \$1,503 and still over the allowable income limit (Testimony).
5. The appellant is clinically eligible for the community based Frail Elder Waiver (Testimony and Exhibit 2a).
6. The income limit for the Frail Elder Waiver is \$2,270 and does not allow for the PCA disregard (Testimony).
7. With a gross monthly income of \$2,318, the appellant is \$48 over the allowable income limit for the Frail Elder Waiver (Testimony).
8. The appellant is eligible for MassHealth if he meets a \$5,046 deductible for the six-month period from January 1, 2018 through July 1, 2018 (Testimony).

Analysis and Conclusions of Law

The relevant regulation is 130 CMR 519.005, which states the following for community residents 65 years of age and older:

(A) Eligibility Requirements. Except as provided in 130 CMR 519.005(C), noninstitutionalized individuals 65 years of age and older may establish eligibility for MassHealth Standard coverage provided they meet the following requirements:

- (1) *the countable-income amount, as defined in 130 CMR 520.009: Countable-Income Amount, of the individual or couple is less than or equal to 100 percent of the federal poverty level;* and
- (2) the countable assets of an individual are \$2,000 or less, and those of a married couple living together are \$3,000 or less.

(Emphasis added).

As explained above, the countable income of an individual who is over the age of 65 years old must be equal to or less than 100 percent of the federal poverty level which is \$1,012.

Furthermore, in addition to being clinically and age eligible for the Frail Elder Waiver, 130 CMR 519.007(B) states the following:

- (2) Eligibility Requirements. In determining eligibility for MassHealth Standard and for waiver services, the MassHealth agency determines income eligibility based solely on the applicant's or member's income regardless of his or her marital status. The applicant or member must
- (a) meet the requirements of 130 CMR 519.007(B)(1)(a) and (b);
 - (b) have a countable-income amount less than or equal to 300% of the federal benefit rate (FBR) for an individual; and
 - (c) have countable assets of \$2,000 for an individual and, for a married couple if the initial Waiver eligibility determination was on or after January 1, 2014, 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; and
 - (d) have not transferred resources for less than fair market value, as described at 130 CMR 520.018: Transfer of Resources Regardless of the Transfer Date and 520.019: Transfer of Resources Occurring on or After August 11, 1993.

Additionally, 130 CMR 520.028(B) states that community-based individuals whose countable-income amount exceeds the 100 percent federal poverty level income standards are eligible for MassHealth if they meet the deductible. Pursuant to 130 CMR 520.029, the deductible period is a six-month period that starts on the first day of the month of application or may begin up to three months before the first day of the month of application.¹

The appellant's gross income is \$2,318, which includes \$815 monthly from a private pension and \$1,503 from social security. A PCA disregard brings the appellant's income to \$1,503, which is over the income limit for MassHealth benefits. Alternatively, the appellant is clinically eligible for the Frail Elder Waiver, which would raise the allowable income limit to \$2,270. Unfortunately, the appellant's monthly gross income places him only \$48 over the income limit for the Frail Elder Waiver. Because the appellant was close to the income limit, the appellant's representative asked for extra time after the hearing to verify the pension amount. During the open record period, she provided bank statements showing a monthly deposit of \$677 from NETT Pension Fund. The bank statements, however, are not sufficient to establish the appellant's gross income from the pension. Therefore, the MassHealth decision is correct and the appeal is denied.

¹ The applicant is eligible for this period of retroactivity only if the applicant incurred medical expenses covered by MassHealth and was otherwise eligible, which is not the case here.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Nancy Hazlett