

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

SUFFOLK, ss

SUPERIOR COURT  
DOCKET NO: 2384CV2089E

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N.A., )  
Plaintiff )  
)  
vs. )  
)  
EXECUTIVE OFFICE OF HEALTH )  
AND HUMAN SERVICES and )  
MICHAEL LEVINE, Assistant Secretary )  
for MassHealth and Director, )  
Office of Medicaid, )  
Defendants. )

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**INTRODUCTION**

On January 1, 2023, state law increased the income standards for a MassHealth program that pays certain Medicare out-of-pocket costs for qualified Medicare beneficiaries. Plaintiff N.A. is a Medicare beneficiary who qualified for this MassHealth program under the new standards. She is seeking judicial review pursuant to G.L. c. 30A of a final decision by the MassHealth Board of Hearings that upheld the agency’s denial of benefits for which she qualified based solely on the agency’s unreasonable and unlawful procedural barriers to eligibility.

**JURISDICTION**

1. Jurisdiction of the Plaintiff’s cause of action is conferred upon the Superior Court by G.L. c. 30A § 14, G.L. c. 231A § 1 and 42 U.S.C. § 1983.

**PARTIES**

2. The plaintiff, N. A., resides in \*, Berkshire County, Massachusetts. She is a retired Medicare beneficiary of modest means over the age of 65.
3. Defendant, Massachusetts Executive Office of Health and Human Services (EOHHS) is the agency charged under federal and state law with the overall responsibility for administering the Massachusetts Medicaid Program (“MassHealth”). G.L. c. 118E, § 1 EOHHS is located at One Ashburton Place, Third Floor, Boston, Suffolk County, Massachusetts.
4. Defendant, Michael Levine, is the Assistant Secretary for MassHealth and the Director of the Office of Medicaid, appointed by the Secretary of EOHHS to be responsible for the day-to-day administration of the MassHealth program. He is sued in his official capacity. His offices are located at One Ashburton Place, Third Floor, Boston, Suffolk County, Massachusetts.

## **FACTS**

### **Medicaid, Medicare and the Medicare Savings Program**

5. This appeal concerns eligibility for a Medicaid program that pays for certain out-of-pocket costs that would otherwise be the liability of the Medicare beneficiary. This program is a federally mandated Medicaid benefit called the Medicare Savings Program (MSP) that uses several different income levels. 42 U.S.C. § 1396a (10) (E) and 42 C.F.R. §§ 435.123-125.
6. Massachusetts participates in the Medicaid program, and as a condition of its participation is required to comply with federal Medicaid law. G.L. c. 118E §12.
7. In MassHealth, the MSP program for the lowest of its several income levels is called the Senior Buy-In or Qualified Medicare Beneficiary (QMB) program. 130 CMR § 519.010.

The MSP programs at higher income levels are called the Buy-In programs. 130 CMR § 519.011. All MSP programs pay monthly Part B premiums (currently \$164.90 per month for most people) and enable individuals to automatically qualify for lower drug costs from the Medicare program. The Senior Buy-In covers additional Medicare out-of-pocket costs including deductibles, co-insurance and copayments in Medicare Part A and Part B.

8. In 2022, state legislation required EOHHS to raise the federal minimum income level for the Senior Buy-in from the then current 130 percent of the federal poverty level (FPL) to 190 percent FPL and, for the Buy-In, from 165 percent FPL to 225 percent FPL subject to federal approval. Ch. 126, § 55, Acts of 2022.
9. MassHealth submitted a state plan amendment and obtained federal approval for the higher financial limits effective January 1, 2023.
10. Medicare beneficiaries who are 65 or older can apply for MSP using one of two forms. One form called the “Application for Health Coverage for Seniors and People Needing Long-Term Care Services (SACA-2)” enables applicants to use a single form to apply for all Medicaid programs for which they are eligible and for other programs administered by MassHealth (referred to herein as “the long form”). 130 CMR § 519.001(C). Because it is a comprehensive application for multiple health benefits, it is lengthy and requires verification of the value of income and assets. The second form cannot be used to apply for any other program except MSP (referred to herein as “the short form”). *Ibid.* Because of this limitation, it is short, and it does not require verification of assets. 130 CMR § 520.007.

11. The Defendants are required to operate the Medicaid program “in a manner consistent with simplicity of administration and the best interests of the recipients.” 42 U.S.C. § 1396a(a)(19) and G.L. c. 118E §12.
12. Federal law also requires the Defendants to furnish Medicaid with reasonable promptness to eligible individuals and without delay related to the agencies’ administrative procedures. 42 U.S.C. § 1396a(a)(8) and 42 CMR § 435.930.
13. A maintenance of effort provision of federal law in effect throughout 2023 prohibits state Medicaid agencies from imposing eligibility standards, methodologies, or procedures that are more restrictive than those in effect on January 1, 2020. Section 6008 of the Families First Coronavirus Response Act (Public Law No. 116-127).
14. After an applicant has initially obtained benefits administered by MassHealth, continuing eligibility must be reviewed after 12 months, as well as any time there is a change in the member’s circumstances *or in the applicable eligibility rules*. 130 CMR § 516.007(A). The agency must not put the burden on the individual to supply information to prove continuing eligibility for the same or better benefits if the agency is able to obtain reliable information from other sources available to it. 130 CMR § 516.007(C) (1) and (4). After such a review, changes that will increase an individual’s benefits will take place on the date of the redetermination. 130 CMR § 516.007 (C) (1) (b) and (4) (b).
15. These MassHealth policies on reviewing changes and making favorable decisions promptly based on information available to the agency are required under federal Medicaid law. 42 CFR § 435. 916(b) and (d). They also apply to continuing eligibility for the Health Safety net program administered by MassHealth under state law. 101 CMR § 613.04(2).

### **The Wrongful Denial of MSP Benefits to the Plaintiff**

16. The Plaintiff retired and assumed that Medicare would provide her with affordable health coverage. However, she soon found that her out-of-pocket costs for a monthly Medicare Part B premium, the Medicare Part B deductible, the premium for a Medicare drug plan that covered a costly medication she required for her painful arthritis, Medicare drug copays for the two types of insulin she requires and her other medications, and the premium for a private Supplemental Medicare insurance plan were more than she could afford.
17. In 2022 she sought assistance with her medical costs and applied for MassHealth using the long form. At that time her retirement income was over 165 percent of the poverty level and she did not qualify for either comprehensive MassHealth or MSP to pay her Medicare Part B premium. She did qualify for the Health Safety Net program which relieved her of the Medicare cost-sharing she might incur if she were hospitalized in a Massachusetts hospital. She could not have obtained this benefit had she used the short application.
18. In 2023 MassHealth notified her that she was required to renew her benefits by completing another SACA-2 (long form) application. The notice stated that if she failed to return the long form by the deadline, her benefits including payment of Medicare premiums would end. The long form included a section asking about Medicare benefits. In answer to the question whether the applicant wanted help paying Medicare premiums, she answered yes. She returned the form on April 5, 2023. Neither the notice nor the form stated that there was a different short form that she should use to qualify for help paying Medicare costs.

19. On January 1, 2023, the upper income limit for the Senior Buy-In program was 190 percent FPL. The Plaintiff's income has been at or below 190 percent FPL from January 1, 2023, to the present.
20. Based on the Plaintiff's long form applications in 2022 and 2023, MassHealth had information in its possession that she satisfied all eligibility criteria for the program since January 1, 2023.
21. In a notice dated April 20, 2023, MassHealth notified her that she did not qualify for any MassHealth program but did still qualify for the Health Safety Net. The notice correctly set out the amount of her income which was an amount below 190 percent FPL and her assets which were below the MSP asset limit. The notice contained no information about why she did not qualify for the Senior Buy-In or about any different form that she should use to qualify for help paying Medicare costs.
22. The Plaintiff had applied with the help of a certified application counselor who worked for a program called \* affiliated with \*. Certified Application Counselors are trained by MassHealth in its program rules and certified by them as proficient.
23. Her counselor knew about the January 1, 2023, increase in the MSP income standard, and called MassHealth to ask why she had not been approved for MSP. The MassHealth representative told him that MassHealth was only applying the 2023 income standards to people who used the short form, and she would have to reapply using that form to benefit from the higher standard.
24. The Plaintiff reapplied for MSP using the short form on April 28, 2023. Her income had not changed since she submitted the long form renewal earlier in the month. On May 1, 2023, the agency found her eligible for the MassHealth Senior Buy-In based on the same

income that on April 20, 2023, the agency determined exceeded the standards for any MassHealth program. The effective date of her benefit was June 1, 2023, the same effective date as if she had been an initial applicant.

25. Her counselor knew that for people who had been enrolled in the Buy-In program prior to January 1, 2023, but had enrolled using the short form, MassHealth had automatically upgraded their coverage to the Senior Buy-In without requiring them to take any action.
26. When MassHealth implemented an increase in MSP financial eligibility standards in 2020, it applied the new standards to both individuals who applied using the long form and the short form, and automatically reviewed and upgraded coverage for people who were in their 12-month eligibility period based on an earlier application using either form.
27. On information and belief, the Defendants failed to implement the 2023 income standards for people using the long form due to system limitations in its legacy computer eligibility system that affect the processing of the long form but not the short form.
28. From January 1 to May 31, 2023, the Plaintiff had paid out-of-pocket for monthly Medicare Part B premiums of \$164.90 per month and was making payments toward a \$250 Part B deductible she had incurred for physician services.
29. On May 4, 2023, the Plaintiff appealed. Her appeal included a fair hearing request form in which she appealed the benefit start date of her Senior Buy-In coverage, and authorized her counselor to act as her Appeal Representative, a cover letter from the Appeal Representative stating that the appellant was appealing both the notices dated April 20, 2023 denying her MassHealth benefits based on her renewal application, and the notice dated May 1, 2023 only granting her Senior Buy-In benefits on June 1, 2023, and attached those two notices.

30. The appeal hearing took place on June 1, 2023. The facts were not in dispute. The record was held open for the Plaintiff's Appeal representative and the MassHealth representative to submit written memoranda. The Appeal representative submitted a memorandum including a MassHealth Eligibility Operations Memorandum 23-04 (EOM 23-04) issued in February 2023 raising the income limits for MSP effective January 1, 2023, but not for individuals "looking for full MassHealth coverage." The MassHealth representative did not submit a memo.

31. On August 15, 2023, the Hearing Officer made his decision denying the appellant relief. The Hearing Officer quoted the regulation for the Senior Buy-In program which still had the income limit for the program at 130 percent FPL and he concluded that the Plaintiff was properly denied Senior Buy-In on April 20, 2023. He found that the Plaintiff's entitlement to MSP pursuant to the higher income limits in EOM 23-04 did not begin until May 1, 2023, when she submitted a new application using the short form that cannot be used to apply for any MassHealth administered benefit except MSP.

32. The Plaintiff's Appeal Representative received the August 15, 2023, decision on August 17, 2023.

### **CAUSES OF ACTION**

33. The Defendants denied the Plaintiff the Medicaid program benefits for which she was eligible in violation of state and federal Medicaid statutes and regulations.

34. By denying the Plaintiff Medicaid benefits for which she is eligible the Defendants, acting under the color of state law, have deprived her of rights secured by 42 U. S. C. §1396a et seq. and its implementing regulations, in violation of 42 U. S. C. § 1983.

35. The hearing officer's decision upholding the Defendants' unlawful actions was based



upon an error of law, unsupported by substantial evidence and was arbitrary, capricious, or otherwise not in accordance with the law, in violation of G.L. c. 30A § 14.

**PRAYERS FOR RELIEF**

WHEREFORE, plaintiff respectfully prays that this Court:

1. Assume jurisdiction over this action.
2. Reverse the decision of the Board of Hearings and find the Plaintiff eligible for the Senior Buy-In effective January 1, 2023.
3. Declare that the Defendants acted unlawfully when they failed to promptly redetermine eligibility based on the January 1, 2023 increase in the financial standards for the Medicare Savings Programs with respect to qualified Medicare beneficiaries who were in their 12-month eligibility period on January 1, 2023, or later or who initially applied on January 1, 2023 or later, and who used the SACA-2 application form.
4. Grant the Plaintiff her costs and reasonable attorney's fees, and such further relief as this Court may deem just and equitable.

Date: September 18, 2023

Respectfully submitted,

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