

Massachusetts Health Connector Appeals Unit
Final Appeal Decision ACA 21-14226

Appeal Decision: Appeal denied, eligibility determination affirmed.

Hearing Issue: Eligibility for Health Connector Plans based on access to Medicare.

Hearing Date: June 3, 2021

Decision Date: July 12, 2021

AUTHORITY

This hearing was conducted pursuant to § 1411(f) of the Patient Protection and Affordable Care Act (2010), 45 C.F.R 155, M.G.L. c. 30A, M.G.L. c. 111M and M.G.L. c. 176Q, 956 C.M.R 12.00, and the rules and regulations promulgated thereunder.

JURISDICTION

Applicants and enrollees are entitled to a hearing with the Health Connector using the policies and procedures for hearings set forth in Title 45 of the Code of Federal Regulations, § 155.500 et seq. and Title 956 of the Code of Massachusetts Regulations, § 12.15, and for informal hearings set forth in Title 801 of the Code of Massachusetts Regulations, § 1.02.

ORIGINAL ACTION TAKEN BY HEALTH CONNECTOR

For 2021, the Health Connector determined Appellant ineligible for Health Connector plans, based on Appellant's access to Medicare.

ISSUE

The issue addressed on appeal is whether the Health Connector correctly determined Appellant ineligible for Health Connector plans based on Appellant's access to Medicare.

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone on June 3, 2021. The procedures to be followed during the hearing were reviewed with Appellant, who was sworn in. Exhibits were marked and admitted into evidence without objection. The hearing record consists of the Appellant's testimony, and the following documents, which were admitted into evidence:

Exhibit 1: Health Connector Application Summary dated April 16, 2021.

Exhibit 2: Health Connector 2021 Eligibility Results dated April 16, 2021.

Exhibit 3: Eligibility Denial Notice dated April 16, 2021.

Exhibit 4: Health Connector Keeper of Records Affidavit authenticating records.

Exhibit 5: Health Connector Hearing Request Form dated April 26, 2021.

Exhibit 6: Health Connector Outreach Notes dated May 7, 2021.

Exhibit 7: Health Connector Acknowledgment of Appeal dated May 7, 2021.

Exhibit 8: Health Connector Letter to Appellant dated May 7, 2021.

Exhibit 9: Health Connector Hearing Notice dated May 10, 2021.

Exhibit 10: Health Connector Open Request Form dated June 3, 2021.

FINDINGS OF FACT

Based on the testimony and documentary evidence contained in the record and reasonable inferences drawn from the evidence, I find that the following facts are established by a preponderance of the evidence:

1. Appellant submitted a Health Connector Application on April 16, 2021. (Exhibit 1).
2. The Health Connector sent Appellant notice, dated April 16, 2021, of his ineligibility for Health Connector plans, based on his access to Medicare. (Exhibit 3).
3. Appellant submitted an appeal request, received by the Connector on April 29, 2021, stating he has access to Medicare, but not dental care, and that he is seeking a Health Connector plan covering both. (Exhibit 6.)
4. The Health Connector sent Appellant a letter dated May 7, 2021, reiterating his ineligibility for Health Connector plans based on his access to Medicare, and advising him to contact the SHINE program (Serving the Health Information Needs of Everyone) to discuss his options. (Exhibit 9).
5. Appellant was enrolled in or had access to Medicare at the time of his Connector application. (Exhibit 6; Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the Connector correctly determined Appellant ineligible for Health Connector plans, based on his access to Medicare.

The Health Connector is a health insurance exchange created under state law. M.G.L. 176Q, § 2. Among its duties, it serves as a health benefit exchange pursuant to the Patient Protection and Affordable Care Act (ACA), a federal law governing access to health insurance. See M.G.L. 176Q, § 3(u). Under the ACA, a health benefit exchange like the Health Connector must determine eligibility for premium tax credits, which are federal funds provided to eligible individuals to defray the cost of health insurance. 42 U.S.C. § 18082. The Health Connector provides these premium tax credits through the Connector Care program, which is health insurance subsidized with state money, combined with these federal premium tax credits.

To be eligible for Connector Care, an individual must be eligible for the federal premium tax credits. See 956 C.M.R. 12.08. Prior to implementation of the American Rescue Plan (“ARP”), signed into law on March 11, 2021, individuals were eligible for Advanced Premium Tax Credits (“APTC”) if their household income was at or below 400% of the Federal Poverty Level (“FPL”). The ARP significantly expands coverage and affordability parameters for 2021 and 2022, including APTC eligibility for individuals who received either regular or pandemic-related unemployment benefits during any portion of calendar year 2020, regardless of their FPL, and APTC eligibility for individuals with a FPL above 400%, regardless of receipt of unemployment benefits. See H.R. 1319 – 117th Congress: American Rescue Plan Act of 2021.

Applicants qualifying for APTC, who have projected yearly Modified Adjusted Gross Income (“MAGI”) less than or equal to 300% FPL, qualify for additional state subsidies through the Connector Care program. 956 C.M.R. § 12.04. Individuals whose income is at or below 133% of the FPL are eligible for MassHealth, a wholly separate program from Connector Care. Individuals with access to Minimum Essential Coverage (“MEC”), either government sponsored or through an employer, are eligible solely for unsubsidized Health Connector coverage. *See* 45 C.F.R. §155.305 (f)(1)(ii)(B). As MassHealth qualifies as MEC, individuals with access to MassHealth are ineligible for subsidies.

As a preliminary matter, however, applicants seeking health insurance through the Health Connector, subsidized or otherwise, must meet certain requirements to be eligible for shopping on the exchange. These include, among other requirements, Massachusetts residency and being lawfully present in the United States. *See* 45 C.F.R. 155.305; 45 U.S.C. § 1395 ss (d) (3)(A)(i). Further, Individuals who have access to Medicare, whether enrolled or not, are ineligible for shopping on the Connector exchange based on the ‘anti-duplication’ rule, prohibiting an exchange from selling health insurance plans to individuals who are already covered by Medicare. 42 U.S.C. § 1395ss (d)(3)(A)(i); 45 C.F.R. §§ 147.106 (h)(2) and 148.122 (b)(2).

Appellant began receiving Social Security disability benefits (“SSDI”) in February of 2018, and was automatically enrolled in Medicare in or around August of 2019. (Exhibit 6; Appellant Testimony). While his SSDI benefits ended in October or November of 2019, unbeknownst to him Appellant’s Medicare coverage continued and he is currently enrolled in Medicare. (Exhibits 2-3, 6, 9; Appellant Testimony). Appellant testified that at some point he was told that, based on his receipt of SSDI benefits, he became eligible for Medicare benefits for a period of five years, which was the first time he realized he was still enrolled in Medicare. (Exhibit 6; Appellant Testimony). Appellant testified that he was enrolled into and paying premiums on a Health Connector plan while simultaneously having access to and/or receiving Medicare benefits. (Appellant Testimony). I find no support for this assertion in the record, and make no finding with respect to the credibility of this claim.

Appellant stated in his appeal request and in his testimony, and I have found as fact, that he was eligible for Medicare at the time of his application and at the time the Connector made its eligibility determination.

Federal law prohibits an exchange from selling health insurance plans to individuals covered by Medicare to protect Medicare recipients from paying for health insurance coverage that would be duplicative of their Medicare coverage. *See* 42 U.S.C. § 1395ss(d)(3)(A)(i). The Connector complied with this prohibition by denying Appellant coverage under its own programs because he was already covered under Medicare. Thus, the determination that Appellant was ineligible for Health Connector programs was correct.

I find that the Connector correctly found Appellant ineligible for Health Connector plans based on his access to, or enrollment in Medicare.

Accordingly, the Connector’s determination is **UPHELD**.

ORDER

The appeal is denied.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO HEALTH AND HUMAN SERVICES OR STATE COURT

If you disagree with this decision, pursuant to Title 45 of the Code of Federal Regulations, § 155.545, you may seek further review through the United States Department of Health and Human Services within thirty (30) days of receiving this letter. You also have the right to appeal to state court in accordance with Chapter 30A of the Massachusetts General Laws. To do so, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within thirty (30) days of receiving this letter.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: ACA2114102

Appeal Decision: Appeal denied. The determination of the Connector is affirmed.

Hearing Issue:

Whether the Connector correctly determined the appellants' eligibility to enroll in a Connector Care Type 3B plan.

Hearing Date: May 18, 2021

Decision Date: July 11, 2021

AUTHORITY

This hearing was conducted pursuant to the Patient Protection and Affordable Care Act, Section 1411, and the regulations promulgated in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*; Massachusetts General Laws Chapter 176Q, Chapter 30A, and the rules and regulations promulgated thereunder; and Title 956 of the Code of Massachusetts Regulations, section 12.00.

JURISDICTION

Applicants and Enrollees are entitled to a hearing with the Health Connector using the policies and procedures for hearings set forth in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*, for informal hearings set forth in Title 801 of the Code of Massachusetts Regulations, section 1.02, and for hearings set for in Title 956 of the Code of Massachusetts Regulations, section 12.15.

ORIGINAL ACTION TAKEN BY THE HEALTH CONNECTOR

On March 3, 2021, the Connector determined that the appellants were eligible to enroll in a Connector Care Type 3B plan based upon information supplied by the appellants to the Connector and verification by the Connector of that information.

ISSUE

Whether the Connector correctly determined that the appellants were eligible to enroll in a ConnectorCare Type 3B plan.

HEARING RECORD

One of the appellants appeared at the hearing which was held by telephone on May 18, 2021. The procedures to be followed during the hearing were reviewed with the appellant who was then sworn in. Exhibits were reviewed with Appellant, marked as exhibits, and admitted in evidence with no objection from the appellant. Appellant testified.

The hearing record consists of the testimony of Appellant and the following documents which were admitted in evidence:

Exhibit 1: Connector affidavit regarding the creation and maintenance of Appellant's file, undated

Exhibit 2: Connector Appeals Unit Notice of Hearing dated April 26, 2021 for May 18, 2021 hearing addressed to Appellant

Exhibit 3: Connector Appeals Unit letter dated April 16, 2021 addressed to Appellant acknowledging receipt of Appellant's Request for Hearing

Exhibit 3a: Appeals Unit staff outreach notes dated April 16th and 20th, 2021

Exhibit 3b: Customer Service notes, March 30th and April 1st, 2021

Exhibit 4: Hearing Request Form from Appellant received by the Connector on April 1, 2021, signed by

Appellant on March 29, 2021

Exhibit 5: Connector letter dated March 3, 2021 to Appellant regarding eligibility for ConnectorCare plan Type 3B for Appellants and dependents

Exhibit 6: Summary and results of Appellants' application for Connector health plan dated March 3, 2021

Exhibit 6a: Summary and results of Appellants' application for Connector health plan dated March 30, 2021

Exhibit 7: Connector letter to Appellants dated March 29, 2021, past due warning

Exhibit 8: MassHealth letter dated March 30, 2021 to Appellant regarding denial of eligibility for minor children, residency issue

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, a couple and their minor children, were enrolled in a ConnectorCare Type 3B coverage starting in November, 2020. Before, Appellants had health insurance through employment. Appellants lost the coverage through employment when one of the appellants left her job (Exhibit 3a, Testimony of Appellant).
2. Appellants provided the Connector with information about their income for 2021 coverage. Only one of the appellant was employed and this appellant attested to having an annual income of \$64,000. When the Connector verified the appellant's income, it determined from other sources that the appellant had an income of \$65,720. The appellant later agreed that his projected income was \$65,720 rather than \$64,000 (Testimony of Appellant and Exhibits 6 and 6a).
3. The appellants' projected income for 2021 of \$65,720 equaled 250.84% of the Federal Poverty Level. Based upon this, the Connector determined on March 3, 2021 that the appellants were eligible for ConnectorCare coverage, Type 3B. The appellants were notified of this determination in writing (Testimony of Appellant, Exhibits 5 and 6).
4. On April 1, 2021, Appellants submitted a request for an appeal of the Connector's March 3, 2021 determination (Exhibit 4).
5. When the appellants lost their coverage through employment and obtained coverage through the Connector, they were no longer able to see the same pediatrician. Appellants wanted to be able to go back to their previous doctor (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the Connector correctly determined on March 3, 2021 that the appellants were eligible to enroll in a ConnectorCare plan, Type 3B. See Exhibit 5.

Eligibility to purchase health insurance through the Connector and for an advance premium tax credit is defined in the Patient Protection and Affordable Care Act and the regulations issued pursuant to the act. See 26 Code of Federal Regulations Section 1.36B (1) and (2) for the rules which govern eligibility for an advance premium tax credit. The regulations also define affordability. See also 45 Code of Federal Regulations 155.305(a)(1 through 3) and 305 (f)(2), and 956 Code of Massachusetts Regulations 12.00 et. seq.

If an applicant's projected income is between 100% and 400% of the Federal Poverty Level, the applicant is eligible for an advance premium tax credit to help cover the cost of premiums. The amount of the credit is based upon how much the Federal government determines the applicant can afford to spend on

health insurance and the cost of the second least expensive Silver tier plan available to the applicant. If the individual's income is projected to be between 100% and 300% of the Federal Poverty Level, and if the individual is otherwise eligible, the individual is eligible to enroll in a ConnectorCare plan, the type dependent upon the individual's projected income level. See 956 CMR 12.00 et. seq. If an individual has a projected income equal to more than 300% of the Federal Poverty level, the individual may be eligible for a Connector Health Insurance plan.

Applicants, Eligible Individuals, Enrollees, and Employers are entitled to appeal the following Appealable Actions under 956 CMR 12.13:

- (1) Any eligibility determination based on any eligibility factor in accordance with 956 CMR 12.04;
- (2) Any determination of APTC amount, or of ConnectorCare Plan Type;
- (3) Any determination regarding a Special Enrollment Period related to a Non-group Health Plan based on the reasons listed at 956 CMR 12.10(4)(1) through (f); or
- (4) The Connector's denial of a financial hardship waiver or reduction of premium, the renewal of a financial hardship waiver or reduction of premium, or the period of time to which a financial hardship waiver or reduction of premium applies, under 956 CMR 12.12.

In this matter, the Connector determined that the appellants were eligible for a ConnectorCare plan, Type 3B after their projected income for 2021 was verified by the Connector to be \$65,720. The determination was based upon this projected income which equaled 250.84% of the Federal Poverty Level and the size of the tax household. The appellant confirmed that their projected income was \$65,720. See Exhibits 5, 6, and 6a, and the testimony of the appellant which I find to be credible.

Based upon the self-attestation by the appellants of their projected annual income, the Connector correctly determined the appellants' eligibility for a ConnectorCare plan, Type 3B. If the projected income is between 100% and 300% of the Federal Poverty Level, the individuals may be eligible for a ConnectorCare plan if they meet other eligibility requirements. The plan type is dependent upon the individuals' projected income level and size of the tax household. See 956 CMR 12.00 et. seq.

On appeal, Appellant testified that they were concerned with their ability to choose their children's pediatrician. Wanting to change plans because of preference for a particular clinician is not an appealable issue. See 956 CMR 12.13 above which specifies grounds for appeal. I note that the children had been denied MassHealth coverage because of a residency determination. Appellants, if they have not already done so, may wish to contact MassHealth to resolve the residency issue. See Exhibit 8.

The determination of the Connector is affirmed.

ORDER: The action taken by the Connector regarding Appellants' eligibility to enroll in a ConnectorCare plan, Type 3B is upheld.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO HEALTH AND HUMAN SERVICES OR STATE COURT

If you disagree with this decision, pursuant to Title 45 of the Code of Federal Regulations, section 155.545, you may seek further review through the United States Department of Health and Human Services within thirty (30) days of receiving this letter. To appeal visit the United States Department of Health and Human Services website, [HealthCare.gov/marketplace-appeals](https://www.healthcare.gov/marketplace-appeals) or write a letter requesting an appeal. Include your name, address and the reason you are requesting the appeal. Fax your appeal to a secure fax line 1-877-369-0130. The mailing address is, Health Insurance Marketplace, Attention Appeals,

465 Industrial Blvd, London, KY 40750-0061. You also have the right to appeal to state court in accordance with Chapter 30A of the Massachusetts General Laws. To do so, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of receiving this letter.

Cc: Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: ACA 21-14302

Appeal Decision: Appeal Denied

Hearing Issue: Eligibility for subsidized insurance based on access to Veterans Administration health program.

Hearing Date: July 12, 2021

Decision Date: July 23, 2021

AUTHORITY

This hearing was conducted pursuant to the Patient Protection and Affordable Care Act, Section 1411, and the regulations promulgated in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*; Massachusetts General Laws Chapter 176Q, Chapter 30A, and the rules and regulations promulgated thereunder; and Title 956 of the Code of Massachusetts Regulations, section 12.00.

JURISDICTION

Applicants and Enrollees are entitled to a hearing with the Health Connector using the policies and procedures for hearings set forth in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*, for informal hearings set forth in Title 801 of the Code of Massachusetts Regulations, section 1.02, and for hearings set for in Title 956 of the Code of Massachusetts Regulations, section 12.15.

ORIGINAL ACTION TAKEN BY THE HEALTH CONNECTOR

On April 6, 2021, Appellant was determined ineligible for ConnectorCare Plans. The reason the Appellant was denied subsidies is because the Appellant has access to Medicare or is or is enrolled in Medicare health plans.

ISSUE

The issue addressed on this appeal is whether the Health Connector correctly determined that the Appellant was not eligible for ConnectorCare Plans based on the Appellant's access to Medicare Administration health plans.

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on July 12, 2021. The procedures to be followed during the hearing were reviewed with all who were present. The Appellant was sworn in and testified. The following documents were admitted into evidence with no objection from the Appellant:

- Exhibit 1: Health Connector's Hearing Affidavit (1 page)
- Exhibit 2: Health Connector's Hearing Notice (6 pages, dated June 9, 2021)
- Exhibit 3: Health Connector's Acknowledgement of Appeal (1 Page)
- Exhibit 4: Appeal Unit Staff Case Notes (1 Page)
- Exhibit 5: Appellant's appeal request form (10 pages dated May 10, 2021)
- Exhibit 6: Notice of Eligibility Determination (6 pages, Dated April 6, 2021)
- Exhibit 7: Health Connector's Determination Results and Review Computer Printout (5 pages, dated April 6, 2021)
- Exhibit 7: Historical Notices & Printouts (6 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant was determined ineligible for ConnectorCare Plans on April 6, 2021, based on being eligible for Medicare health plans. (Exhibit 6 & 7 & Appellant's testimony)
2. Appellant is enrolled in Medicare health plans. (Exhibit 6, 7, & Appellant's testimony)
3. Appellant testified that he currently has a Medicare health plan. Appellant testified that he has the Medicare but he needs more assistance in paying his bills because of his living expenses.

ANALYSIS AND CONCLUSIONS OF LAW

Under 26 IRC § 36B and 45 CFR § 155.305(f), applicants are eligible for an Advance Premium Tax Credit (APTC) if they meet qualifying income levels and other eligibility requirements. Tax households eligible for APTC who are at or below 300% of the Federal Poverty Level are also eligible to enroll in ConnectorCare, a Massachusetts-based program that provides additional subsidies to help make the cost of insurance more affordable. 956 CMR § 12.04. One requirement to be eligible for APTC is that the applicant must not have access to other qualifying health insurance, including government sponsored health insurance such as Medicare health plans. 42 USC s. 1395ss(d)(3)(A)(i); 45 CFR § 155.305(f)(1)(ii)(B); 26 IRC § 5000A(f)(1)(A)(i).

When the Appellant's eligibility for 2021 coverage was determined on April 6, 2021, the federal government provided information to the Health Connector that the Appellant was eligible for Medicare health plans. The Appellant confirmed at hearing that he was eligible for Medicare health plans. Because the Appellant was eligible for Medicare health plans, the Health Connector found that the Appellant was

not eligible to receive ConnectorCare Plans. This was the correct determination and the Appellant's appeal is therefore denied.

ORDER

The appeal is denied.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO HEALTH AND HUMAN SERVICES OR STATE COURT

If you disagree with this decision, pursuant to Title 45 of the Code of Federal Regulations, section 155.545, you may seek further review through the United States Department of Health and Human Services within thirty (30) days of receiving this letter. To appeal visit the United States Department of Health and Human Services website, [HealthCare.gov/marketplace-appeals](https://www.healthcare.gov/marketplace-appeals) or write a letter requesting an appeal. Include your name, address and the reason you are requesting the appeal. Fax your appeal to a secure fax line 1-877-369-0130. The mailing address is, Health Insurance Marketplace, Attention Appeals, 465 Industrial Blvd, London, KY 40750-0061. You also have the right to appeal to state court in accordance with Chapter 30A of the Massachusetts General Laws. To do so, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of receiving this letter.

Hearing Officer

Cc: Connector Appeals Unit

ADDENDUM

FINAL APPEAL DECISION

Appeal Decision: Appeal Allowed.

Hearing Issue: Appellant's eligibility for subsidized insurance based on resident status.

Hearing Date: August 4, 2021

Decision Date: August 6, 2021

AUTHORITY

This hearing was conducted pursuant to the Patient Protection and Affordable Care Act, Section 1411, and the regulations promulgated in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*; Massachusetts General Laws Chapter 176Q, Chapter 30A, and the rules and regulations promulgated thereunder; and Title 956 of the Code of Massachusetts Regulations, section 12.00.

JURISDICTION

Applicants and Enrollees are entitled to a hearing with the Health Connector using the policies and procedures for hearings set forth in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*, for informal hearings set forth in Title 801 of the Code of Massachusetts Regulations, section 1.02, and for hearings set for in Title 956 of the Code of Massachusetts Regulations, section 12.15.

ORIGINAL ACTION TAKEN BY THE HEALTH CONNECTOR

Appellant was notified by the Health Connector on May 15, 2021 that he was not eligible for subsidies to purchase health insurance because he did not reside in Massachusetts.

ISSUE

The issue addressed on this appeal is whether the Health Connector correctly determined that Appellant was not eligible for subsidies because he did not reside in Massachusetts.

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on August 4, 2021.

The hearing record consists of the Appellant's testimony and the following documents, which were admitted into evidence:

- Exhibit 1: Appeals Request Form (1 page)
- Exhibit 2: Health Connector Record Affidavit (1 page)

- Exhibit 3: Eligibility notice (5/15/21) (6 pages)
- Exhibit 4: Screen Shot of Application Summary (5/15/21) (3 pages)
- Exhibit 5: Screen Shot of Eligibility Summary (5/15/21) (2 pages)
- Exhibit 6: Medicaid eligibility summary (4 pages)
- Exhibit 7: Appeals Unit notes (1 page)
- Exhibit 8: Email from Appeals Unit to Appellant (6/29/21) (1 page)
- Exhibit 9: Hearing Notice (7/13/21) (3 pages)
- Exhibit 10: Acknowledgement of Appeal (1 page)

FINDINGS OF FACT

The findings of fact are based on the testimony of Appellant or, if noted, from the exhibits taken into evidence, and the reasonable inferences drawn therefrom.

The record shows, and I so find:

1. Appellant is a 36-year-old man living in Middlesex County.
2. Appellant had lived in Virginia until March 2021 when he moved to Massachusetts. He had originally been from Massachusetts but was living in Virginia for several years.
3. Appellant is disabled and receives Social Security Disability Insurance (SSDI) benefits. As a result, he is enrolled in Medicare.
4. When he moved to Massachusetts, Appellant applied through the on-line portal for state-funded health insurance benefits.
5. Appellant was notified by the Health Connector by letter dated May 15, 2021, that he was not eligible for benefits because he was not a Massachusetts resident. The letter did not request Appellant to provide any proof of residency, but simply notified him that he could not qualify for benefits. Exhibit 3.
6. Appellant filed a timely appeal of this notice. Exhibit 1.

CONCLUSIONS OF LAW

The issue in this appeal is whether the Health Connector correctly determined that Appellant was ineligible for subsidies to purchase insurance because he was not a resident of Massachusetts.

The Health Connector determines eligibility of individuals to receive federal and state subsidies to purchase health insurance. Federal subsidies to purchase health insurance are provided under the Affordable Care Act (ACA). 26 U.S.C. §36B. These subsidies are called Advance Premium Tax Credits (APTCs). In order to receive APTCs through the Health Connector, an individual must be eligible to enroll in a health plan obtained from the Health Connector. 26 U.S.C. § 36B(c)(2)(A)(ii). In order to purchase a health plan from the Health Connector, an individual must be a resident of Massachusetts. See 42 U.S.C. § 18032(f)(1)(a)(ii). See also 45 C.F.R. § 155.305(a)(3).

In addition to the APTCs, which are federal subsidies, the Health Connector also determines eligibility for state subsidies. These subsidies are provided through the Connector Care program. To be eligible for Connector Care,

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an individual must be a resident of Massachusetts. 956 CMR 12.04(3)(a)(2) (incorporating 956 CMR 12.04(1)(c)). A resident is defined as an individual over 21 years of age who is living in Massachusetts.

At the time he applied for health insurance benefits through the Health Connector, Appellant was residing in the Commonwealth. Thus, the reason for the denial sent to the Appellant on May 15, 2021 was erroneous and should be reversed.

However, this will not result in Appellant being eligible for Connector Care, because he is a Medicare recipient and persons who are enrolled in Medicare are not eligible for APTCs or Connector Care. The eligibility criteria for APTCs are established by federal law. I.R.C. § 36B. That federal statute provides that an individual is not eligible for premium tax credits if that individual is eligible for “minimum essential coverage.” *Id.* § 36B(c)(2)(b). In turn, “minimum essential coverage” means coverage through certain designated programs, specifically including Medicare. I.R.C. § 5000A(f)(1)(A). Thus, an individual who is eligible for Medicare is *not* eligible under federal law for premium tax credits and accordingly is not eligible under state regulation for Connector Care. Indeed, it is unlawful for any entity to provide a health insurance plan to anyone who is entitled to benefits under Medicare Part A. 42 U.S.C. § 1395ss(d)(3)(a)(i).

In this case, Appellant is eligible for and is in fact receiving Medicare. Consequently, he is not eligible for APTCs under federal law; further, because he is not eligible for APTCs, he is not eligible for Connector Care. Thus, the notice of May 15, 2021 denying Appellant Connector Care benefits was correct in its result, even though the reason given in the notice was incorrect.

However, it is possible that Appellant is eligible for a MassHealth (Medicaid) program called CommonHealth that is designed to supplement Medicare for income-eligible persons. Appellant was advised to contact the MassHealth Enrollment Center at 1-800-841-2900 to inquire about eligibility for CommonHealth. Alternately, Appellant was advised to contact SHINE, which is a federally-funded organization that can provide counseling to persons with regard to Medicare and related MassHealth eligibility. The contact information for SHINE is 800-243-4636.

ORDER

The appeal is allowed. Appellant should be determined to be a resident of Massachusetts.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO HEALTH AND HUMAN SERVICES OR STATE COURT

If you disagree with this decision, pursuant to Title 45 of the Code of Federal Regulations, section 155.545, you may seek further review through the United States Department of Health and Human Services within thirty (30) days of receiving this decision. You also have the right to appeal to state court in accordance with Chapter 30A of the Massachusetts General Laws. To do so, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of receiving this decision.

Hearing Officer

Massachusetts Health Connector Appeals Unit



Cc: Health Connector Appeals Unit

FINAL APPEAL DECISION

Appeal Decision: Appeal Allowed.

Hearing Issue: Income amount used to determine eligibility for subsidized Health Connector plans

Hearing Date: August 4, 2021

Decision Date: August 6, 2021

AUTHORITY

This hearing was conducted pursuant to the Patient Protection and Affordable Care Act, Section 1411, and the regulations promulgated in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*; Massachusetts General Laws Chapter 176Q, Chapter 30A, and the rules and regulations promulgated thereunder; and Title 956 of the Code of Massachusetts Regulations, section 12.00.

JURISDICTION

Applicants and Enrollees are entitled to a hearing with the Health Connector using the policies and procedures for hearings set forth in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*, for informal hearings set forth in Title 801 of the Code of Massachusetts Regulations, section 1.02, and for hearings set for in Title 956 of the Code of Massachusetts Regulations, section 12.15.

ORIGINAL ACTION TAKEN BY THE HEALTH CONNECTOR

Appellants, who are a husband and wife, were notified by the Health Connector on June 9, 2021 that they were determined to have a household income equal to 485.46 percent of the federal poverty level, and thus were eligible for a limited amount of Advanced Premium Tax Credits.

ISSUE

The issue addressed on this appeal is whether the Health Connector correctly determined the Appellants' household income.

HEARING RECORD

The husband (who will be referred to herein as Husband) appeared at the hearing on behalf of both Appellants. The hearing was held by telephone on August 4, 2021.

The hearing record consists of the Husband's testimony and the following documents, which were admitted into evidence:

Exhibit 1: Appeals Request Form (received 6/20/21) (4 pages)

- Exhibit 2: Health Connector Record Affidavit (1 page)
- Exhibit 3: Eligibility Notice (dated 6/9/2021) (7 pages)
- Exhibit 4: Screen Shot of Application Summary (6/9/2021) (4 pages)
- Exhibit 5: Screen Shot of Eligibility Determination (6/9/21) (3 pages)
- Exhibit 6: Record of income verification (3 pages)
- Exhibit 7: Pay stub from Elite Envelope (1 page)
- Exhibit 8: Record of receipt of verification (1 page)
- Exhibit 9: Notes from Appeals Database (1 page)
- Exhibit 10: Request for information (5/22/2021) (4 pages)
- Exhibit 11: Screen Shot of Eligibility Summary (8/2/2021) (3 pages)
- Exhibit 12: Screen Shot of Application Summary (8/2/2021) (4 pages)
- Exhibit 13: Summary of enrollment history (8/2/2021) (2 pages)
- Exhibit 14: Hearing Notice (7/13/2021) (3 pages)
- Exhibit 15: Acknowledgement of Appeal (1 page)

FINDINGS OF FACT

The findings of fact are based on the testimony of Husband, or, if noted, from the exhibits taken into evidence, and the reasonable inferences drawn therefrom.

The record shows, and I so find:

1. Appellants are a married couple living in Norfolk County. They have an adult child whom they do not take as a dependent. Thus, for purposes of eligibility determination, they are in a household of two persons.
2. Appellants had been receiving Connector Care for some period of time prior to May 2021.
3. On May 22, 2021, the Health Connector sent Appellants a Request for Information, which requested them to send in proof of current income to be used in an annual re-determination of Appellants' eligibility for subsidized health insurance. Exhibit 10.
4. In response to that notice, Appellants sent in documentation including a pay stub from Husband's employment at Elite Envelope. Exhibit 7. That pay stub was received and reviewed by a Health Connector representative. Exhibit 6, 8.
5. That pay stub indicated that Husband worked 36 hours a week at an hourly wage of \$16 an hour. That amounted to \$576 a week, which if annualized amounts to \$29,952 a year.
6. The Health Connector's records also indicated that Wife worked at a job in which she earned \$1032.76 biweekly or \$516.38 a week. Annualized, this amounts to \$26,851.76.
7. Thus, Husband and Wife's combined annual income amounts to \$56,803.
8. In 2021, the federal poverty limit for a household of two persons is \$17,240. See Federal Poverty Level Chart (available at <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines/prior-hhs-poverty-guidelines-federal-register-references/2020-poverty-guidelines>).
9. Thus, Appellants' household income was approximately 329 % of the federal poverty level.
10. On June 9, 2021, the Health Connector sent a notice to Appellants stating that their eligibility for health insurance subsidies had been determined based on a calculation that their household income was 485.46 percent of the federal poverty level. Exhibit 3.

11. This determination was incorrect. It appears that the cause of the error was the fact that the representative responsible for reviewing proof of Appellants' income had interpreted the Wife's biweekly income as weekly income. As a result, Wife's earnings were overstated.
12. The Health Connector determines the amount of a subsidy based on the recipient's household income. In this case, the Health Connector determined that Appellants were eligible for a monthly subsidy of only \$332. Exhibit 3. This represented a significant decrease in the subsidy amount received by Appellants and, as a result, the monthly premium that they had to pay for insurance almost doubled.
13. Appellants filed a timely notice of appeal of the June 9, 2021 notice. See Exhibit 1.
14. After receipt of the appeal notice, the Health Connector re-examined the income verification documents and corrected the error. This resulted in a new eligibility determination, which occurred on August 2, 2021. See Exhibits 11, 12. As a result of this redeterminations, the Health Connector calculated that Appellants' household income was at 321 percent of the federal poverty level. Id. As a result, the amount of subsidy Appellants were entitled to receive was increased to \$606 a month, which will result in a reduction of the amount that Appellants must pay as premium for health insurance.
15. At the hearing, Husband claimed that starting in June, the number of hours he worked in a week had been reduced from 36 to 32. This resulted in a decrease in income of \$64 a week. He had not reported this decrease in income to the Health Connector at the time of the hearing.

CONCLUSION OF LAW

The issue in this appeal is whether the Health Connector correctly determined the Appellants' household income in setting the amount of subsidy that Appellants were entitled to receive.

The Health Connector determines eligibility of individuals to receive federal subsidies to purchase health insurance under the Affordable Care Act (ACA). 26 U.S.C. §36B. These subsidies are called Advance Premium Tax Credits (APTCs). The amount of APTCs that an individual is entitled to receive is based on that person's household income expressed as a percentage of the federal poverty level (FPL). 26 U.S.C. § 36B(b). The FPL is a threshold determined annually by the federal government based on household size and income; it is used to determine eligibility for a range of federal assistance programs. See 42 U.S.C. § 9902(2).

In June 2021, the Health Connector erroneously determined that Appellants' household income was 485.46% of the FPL. The FPL for a household of two persons is \$17,240. <https://www.healthcare.gov/glossary/federal-poverty-level-fpl/>. Thus, the Health Connector determined that Appellants' household income was \$83,693. Although this calculation qualified Appellants to receive some APTCs, the amount was not great and was a significant amount less than what Appellants had been receiving and were entitled to.

Fortunately, the error was corrected in August 2021. At that time, the Health Connector correctly determined that Appellants' household income is approximately 321% of household income. This calculation is consistent with the information provided by Appellants to verify their income and with the testimony of Husband at the hearing. As a result of this recalculation, the amount of APTCs received by the Appellants will increase significantly.

As stated above, Husband stated at the hearing that his income had been reduced starting in June due to a reduction in his hours worked. However, he had not reported that reduction in income to the Health Connector.

Massachusetts Health Connector Appeals Unit



If he does report this reduction in income, and can verify it, this could result in a further re-calculation of the amount of subsidy to which he and his wife are entitled. If Husband's income has changed, he can report the change to the Health Connector by updating his on-line application at www.mahealthconnector.org or by calling the Health Connector's customer service center at 877-623-6765.

For the sake of completeness, I note that Appellants were determined not to be eligible for Connector Care. That is a program under which state-funded subsidies are added to the APTCs for eligible individuals. To be eligible for Connector Care, an individual must have yearly projected household income of less than or equal to 300% FPL. 956 CMR § 12.04. As discussed in this decision, even after Appellants' income was correctly re-calculated, their income is above 300 % of the FPL and thus they are not eligible for Connector Care.

Because Appellants' income was incorrectly determined as reflected in the June 9, 2021 notice, I am allowing this appeal. However, as noted above, the income has subsequently been correctly determined based on the information provided to the Health Connector.

ORDER

The appeal is allowed.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO HEALTH AND HUMAN SERVICES OR STATE COURT

If you disagree with this decision, pursuant to Title 45 of the Code of Federal Regulations, section 155.545, you may seek further review through the United States Department of Health and Human Services within thirty (30) days of receiving this decision. You also have the right to appeal to state court in accordance with Chapter 30A of the Massachusetts General Laws. To do so, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of receiving this decision.

Hearing Officer

Cc: Health Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: ACA21-14195

Appeal Decision: Appeal Denied, Eligibility determination upheld

Hearing Issue: Eligibility for subsidized health insurance, based on income

Hearing Date: June 28, 2021

Decision Date: July 23, 2021

AUTHORITY

This hearing was conducted pursuant to the Patient Protection and Affordable Care Act, Section 1411, and the regulations promulgated in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*; Massachusetts General Laws Chapter 176Q, Chapter 30A, and the rules and regulations promulgated thereunder; and Title 956 of the Code of Massachusetts Regulations, section 12.00.

JURISDICTION

Applicants and Enrollees are entitled to a hearing with the Health Connector using the policies and procedures for hearings set forth in Title 45 of the Code of Federal Regulations, section 155.500 *et seq.*, for informal hearings set forth in Title 801 of the Code of Massachusetts Regulations, section 1.02, and for hearings set for in Title 956 of the Code of Massachusetts Regulations, section 12.15.

ORIGINAL ACTION TAKEN BY THE HEALTH CONNECTOR

On April 10, 2021, Appellant was determined eligible a ConnectorCare Plan Type 3B with Advance Premium Tax Credit.

ISSUE

The issue addressed on this appeal is whether the Health Connector correctly determined that Appellant was eligible for a ConnectorCare Plan Type 3B with Advance Premium Tax Credit, based on Appellant's income.

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on June 28, 2021. The hearing record consists of the Testimony of Appellant and the following documents which were admitted into evidence:

- Exhibit 1: Affidavit of Health Connector
- Exhibit 1A: Hearing Request Form dated April 27, 2021
- Exhibit 2: Eligibility results and Summary dated April 10, 2021
- Exhibit 3: Appeals Unit outreach notes
- Exhibit 4: None
- Exhibit 5: Recent Eligibility Results and Summary dated June 7, 2021
- Exhibit 6: Correspondence from Health Connector dated May 21, 2021

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant enrolled in government subsidized health insurance and began coverage in January 2021 (Exhibit 2 and Testimony of Appellant).
2. At the time of Appellant's application for coverage in 2021, Appellant was found to have a Federal Poverty Level of 277.45% and was found eligible for a ConnectorCare Plan Type 3B with Advance Premium Tax Credit (Exhibit 2).
3. On April 10, 2021, Appellant contacted the Health Connector about a more affordable plan (Testimony of Appellant).
4. On April 10, 2021, Appellant was found to have a Federal Poverty Level of 277.45% and was found eligible for a ConnectorCare Plan Type 3B with Advance Premium Tax Credit (Exhibit 2).
5. Appellant had been unemployed in 2020 and 2021 and was still unemployed at the time of the hearing (Exhibit 1A and Testimony of Appellant).
6. Appellant had difficulty paying for the premium of the ConnectorCare Plan Type 3B due to being unemployed (Testimony of Appellant).
7. On June 7, 2021, Appellant was found eligible for extra financial help under the American Rescue Plan Act of 2021 (Exhibit 5).

ANALYSIS AND CONCLUSIONS OF LAW

Under 26 CFR § 1.36B-2 and 45 CFR § 155.305(f), individuals who are otherwise eligible to purchase Health Connector Plans may receive an Advance Premium Tax Credit if their household income is at or below 400% of the Federal Poverty Level. Applicants who qualify for APTC and who have projected yearly MAGI less than or equal to 300% FPL qualify for additional state subsidies through the Health Connector's ConnectorCare program. 956 CMR § 12.04.

Appellant was enrolled in a ConnectorCare plan beginning in January 2021. Based on the information submitted, Appellant was found to have a Federal Poverty Level of 277.45% and was found eligible for a ConnectorCare Plan Type 3B with Advance Premium Tax Credit. On April 10, 2021, Appellant contacted the Health Connector and the Health Connector once again found that Appellant had a Federal Poverty Level of 277.45% and was found eligible for a ConnectorCare Plan Type 3B with Advance Premium Tax Credit. This was the correct determination for a person with Appellant's income.

ORDER

The Appeal is denied.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO HEALTH AND HUMAN SERVICES OR STATE COURT

If you disagree with this decision, pursuant to Title 45 of the Code of Federal Regulations, section 155.545, you may seek further review through the United States Department of Health and Human Services within thirty (30) days of receiving this letter. To appeal visit the United States Department of Health and Human Services website, [HealthCare.gov/marketplace-appeals](https://www.healthcare.gov/marketplace-appeals) or write a letter requesting an appeal. Include your name, address and the reason you are requesting the appeal. Fax your appeal to a secure fax line 1-877-369-0130. The mailing address is, Health Insurance Marketplace, Attention Appeals, 465 Industrial Blvd, London, KY 40750-0061. You also have the right to appeal to state court in accordance with Chapter 30A of the Massachusetts General Laws. To do so, you must file a complaint

with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of receiving this letter.

ADDENDUM

On June 7, 2021, Appellant was found eligible for extra financial help under the American Rescue Plan Act and Appellant was aware of the change to the premium.