

Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in Part	Appeal Number:	2177947
Decision Date:	02/03/2022	Hearing Date:	11/23/2021
Hearing Officer:	Scott Bernard		

Appearance for Appellant:



Appearance for MassHealth:

Meghan Adie (Tewksbury 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

Appeal Decision:	Approved in Part	Issue:	Program of All-Inclusive Care for the Elderly (PACE)/Deductible
Decision Date:	02/03/2022	Hearing Date:	11/23/2021
MassHealth's Rep.:	Meghan Adie	Appellant's Rep.:	
Hearing Location:	Taunton MassHealth Enrollment Center		

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 September 29, 2021, MassHealth notified the appellant that it had changed the amount the appellant pays to her PACE provider to \$0 beginning in October 2021. (See 130 CMR 520.015; 520.027 *et seq* and Exhibit 1). The appellant filed this appeal in a timely manner on October 12, 2021. (See 130 CMR 610.015(B) and Ex. 2). Determination of the deductible is a valid ground for appeal. (See 130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant's deductible was \$0 beginning in October 2021.

Issue

The appeal issue is whether the appellant's VA income should have been excluded from calculation from the date she applied for MassHealth in 2019 as a matter of law.

Summary of Evidence

The MassHealth representative stated that the appellant applied for PACE on June 7, 2019. MassHealth processed the appellant's application on June 9, 2019 and sent the appellant a Request

for Information (RFI) on June 25, 2019.¹ As part of the verifications the appellant submitted to MassHealth, the appellant included a letter dated May 20, 2019 from the director of the Department of Veterans' Services for Leominster, Lancaster and Sterling. (Ex. 4, p. 19). This letter stated that according to the records of the Department of Veterans Affairs (VA), appellant receives a "Widow's Pension" of \$756.50 and an "Aid & Attendance Allowance" of \$452.50, for a "Total VA monthly benefit" of \$1,209.00. (Id.).²

On July 2, 2019, MassHealth sent the appellant notice that it had approved her for MassHealth Standard as a PACE member. (Ex. 4, pp. 20-22). In the notice, MassHealth determined that the appellant's monthly income totaled \$2,460.00. (Ex. 4, p. 22). The MassHealth representative explained that the appellant's income consisted of \$1,703.50 in Social Security and the \$756.50 VA pension. The MassHealth representative testified that the income limit for PACE is up to 300% of the Federal Benefit Rate (FBR).³ If an applicant's monthly income exceeds 300% of the FBR, the applicant will be required to pay a deductible every month. At the time of the appellant's application, 300% of the FBR was \$2,313.00. The appellant's income exceeded this amount. MassHealth therefore calculated that the appellant would have a deductible of \$1,782.00 per month. (Ex. 4, p. 20). The appellant was approved for PACE on July 2, 2019 with that deductible. (Ex. 4, pp. 20-22).

The MassHealth representative stated that due to the COVID-19 national emergency, MassHealth did not request new information for renewals in 2020. The MassHealth representative stated that in 2021 MassHealth did send the appellant a renewal application and requested new information in August 2021. It was during this August 2021 renewal process that MassHealth was notified and verified that the appellant's VA pension was non-countable because of the BRAVE Act. For that reason, MassHealth sent the appellant the September 29, 2021 notice informing her that she had no deductible. (Ex. 1). The MassHealth representative stated that MassHealth exempted the VA pension on the basis of the BRAVE Act. The MassHealth representative stated that because the income from the VA pension is now excluded, the appellant's income is below 300% FBR and she does not have a deductible.

On November 10, 2021, MassHealth received a letter (submitted by the appellant's representatives) from the VA. The letter stated that the appellant was eligible for VA benefits as of October 1, 2018. The MassHealth representative stated that part of what made the appellant eligible for VA benefits was that her medical expenses exceeded her income. The MassHealth representative stated that MassHealth had not received this information at any point prior to November 2021 and that the regulations place the responsibility for reporting changes in the hands of the appellant. MassHealth therefore could only go back three months and cannot go back one year as requested by the

¹ At the hearing the MassHealth representative testified that MassHealth processed the appellant's application on July 9, 2019 and sent the appellant an RFI on July 25, 2019. Considering that the appellant applied on June 7, 2019 and MassHealth sent the approval notice on July 2, 2019, it is logical to surmise that the MassHealth representative misspoke and that these two events actually occurred in June 2019.

² There is no indication in the letter indicating that there was an enclosure, such as the VA decision dated May 1, 2019, or the VA rating decision dated April 15, 2019, which contain a detailed explanation of the nature of the appellant's "Widow's Pension" and the reason she was awarded this pension. (See Ex. 4, pp. 5-12, 13-15). It is unclear whether MassHealth had copies of these two documents.

³ The FBR is the maximum Federal Supplemental Security Income (SSI) payment and changes on a yearly basis. (See <https://www.ssa.gov/ssi/text-benefits-ussi.htm>).

appellant's representatives.

The appellant's representatives submitted information to the Board of Hearings prior to the hearing that indicated the following. On September 28, 2018, the appellant filed for Veterans Administration benefits. (Ex. 4, pp. 1-4). On May 1, 2019, the VA awarded the appellant the maximum pension with aid and attendance effective October 1, 2018. (Ex. 4, pp. 5-15). The appellant was eligible for the VA pension because her unreimbursed medical expenses exceeded her gross monthly income. (Ex. 4, pp. 1-4). The appellant's representatives stated that the appellant's VA pension should have been excluded from the calculation of her income because it was subject to the BRAVE Act, which was enacted on August 9, 2018. (Ex. 4, p. 2). The appellant's representatives argued that the appellant should have had no deductible and that MassHealth should reimburse the appellant for the cost of the deductible from June 1, 2019 through July 1, 2021. (*Id.*). The appellant's representatives determined that the total of all deductible payments totaled \$40,370.00 during this time. (Ex. 4, pp. 2-3).

The appellant's representative stated that at the time the appellant applied for MassHealth in 2019, MassHealth did have the letter from the Department of Veterans Service dated May 20, 2019 that clearly showed that the appellant received a VA pension with aid and attendance.⁴ The appellant's representative pointed out that the VA income letter breaks out the aid and attendance benefit. The appellant's representative stated that if not for the appellant's ability to deduct her medical expenses she would not have been approved for aid and attendance or a pension. The fact that the appellant became eligible for the pension because of her medical expenses should have allowed her to deduct the entirety of her income under the BRAVE Act. The appellant's representative stated that MassHealth was aware of this information at the time it made its initial determination. The appellant's representative argued that just because the appellant's family was not aware of her rights under the BRAVE Act does not mean that those rights did not exist at the time of the original MassHealth determination. The appellant's representative stated also that there was no legal basis for the stated requirement that the benefits have to be kept separate from the other funds in appellant's bank account.

The MassHealth representative stated that as for the verification dated May 20, 2019, it did not indicate that the appellant received the pension because her unreimbursed medical expenses exceeded her income. MassHealth would have required some verification from the VA indicating this in order to exclude the pension income from the income calculation. The MassHealth representative stated that not every recipient of aid and attendance who receives a pension is eligible for the BRAVE Act income exemption. The MassHealth representative stated that the VA could have provided the required information at the time, which then should have been forwarded to MassHealth. The appellant's representative responded that the BRAVE Act was not set up in this way, and that MassHealth should not count the pension income in this case. The MassHealth representative stated that MassHealth had not counted the aid and attendance as part of the appellant's income. She stated that it is the applicant's responsibility to report that the pension income is the type that is non countable. The MassHealth representative stated that MassHealth therefore counted the pension but also confirmed that it did not count the aid and attendance. The appellant's representative stated that the entire pension is not countable because the appellant only

⁴ But see Note 2, above.

received the pension because her unreimbursed medical expenses exceeded her income. The MassHealth representative stated that for MassHealth purposes it would have needed the appellant to verify that she was eligible for BRAVE in 2019. MassHealth did not receive this information in 2019. The appellant's representative countered that this was not correct.

Findings of Fact

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

1. On September 28, 2018, the appellant filed for VA benefits. (Ex. 4, pp. 1-4).
2. On May 1, 2019, the VA awarded the appellant the maximum pension with aid and attendance effective October 1, 2018. (Ex. 4, pp. 5-15).
3. The appellant was eligible for the VA benefits because her unreimbursed medical expenses exceeded her gross monthly income. (Ex. 4, pp. 1-4).
4. The appellant applied for PACE on June 7, 2019. (Testimony of the MassHealth representative).
5. The income limit for PACE is up to 300% of the FBR. (Testimony of the MassHealth representative).
6. If an applicant's income is over 300% of the FBR, the applicant will be required to pay a deductible or PPA every month. (Testimony of the MassHealth representative).
7. MassHealth processed the appellant's application on June 9, 2019. (Testimony of the MassHealth representative).
8. MassHealth sent the appellant a RFI on June 25, 2019. (Testimony of the MassHealth representative).
9. As part of the verifications the appellant submitted to MassHealth was a letter dated May 20, 2019 from the director of the Department of Veterans' Services for Leominster, Lancaster and Sterling, which only stated that according to the records of the VA, appellant receives a "Widow's Pension" of \$756.50 and an "Aid & Attendance Allowance" of \$452.50, for a "Total VA monthly benefit" of \$1,209.00. (Ex. 4, p. 19).
10. The May 20, 2019 letter contained no further information concerning the nature of the appellant's pension. (Ex. 4, p. 19).
11. On July 2, 2019, MassHealth approved the appellant for PACE on July 2, 2019 but with a deductible or PPA because her income exceeded 300% of the FBR. (Ex. 4, pp. 20-22).
12. In determining the appellant's income for the purposes of eligibility, MassHealth counted the appellant's VA pension. (Ex. 4, pp. 20-22).

13. In August 2021 MassHealth sent the appellant a renewal application and requested new information. (Testimony of the MassHealth representative).
14. During the August 2021 renewal process the appellant's representatives notified MassHealth that the appellant's VA pension was non-countable because of the BRAVE Act. (Testimony of the MassHealth representative).
15. For that reason, MassHealth sent the appellant the September 29, 2021 notice informing her that she had no deductible. (Ex. 1).
16. MassHealth exempted the VA pension on the basis of the BRAVE Act. (Testimony of the MassHealth representative; Ex. 1).
17. Because the income from the VA pension is now excluded, the appellant's income is below 300% FBR and she does not have a deductible. (Ex. 1; Testimony of the MassHealth representative).

Analysis and Conclusions of Law

The PACE program is a comprehensive health program that is designed to keep frail, older individuals who are certified eligible for nursing-facility services living in the community. (130 CMR 519.007(C)(1)). Under PACE a complete range of health-care services is provided by one designated community-based program with all medical and social services coordinated by a team of health professionals. (130 CMR 519.007(C)(1)(a)). MassHealth administers the program in Massachusetts as the Elder Service Plan (ESP). ((130 CMR 519.007(C)(1)(b)). Persons enrolled in PACE have services delivered through managed care in day-health centers; at home; and in specialty or inpatient settings, if needed. (130 CMR 519.007(C)(1)(c)).

In determining PACE eligibility, MassHealth counts the income and assets of only the applicant or member regardless of his or her marital status. (130 CMR 519.007(C)(2)). An individual and spouse's gross earned, and unearned income less certain business expenses and standard income deductions is the countable-income amount and (for community based individuals) is compared to the applicable income standard to determine the individual's financial eligibility. (130 CMR 520.009(A)). For the purposes of determining eligibility for PACE (and in addition to other criteria that are not at issue here), the applicant or member must have a countable-income amount that is less than or equal to 300% of the federal benefit rate (FBR) for an individual. Individuals whose income exceeds the standards set forth in 130 CMR 519.007(C)(2) may establish eligibility for MassHealth Standard by meeting a deductible. (130 CMR 519.007(C)(3); 130 CMR 520.028 - 520.035).

Certain types of income are not considered in determining the financial eligibility of the applicant or member, however. (130 CMR 520.015). The MassHealth regulation concerning non-countable income states the following in pertinent part:

The following types of income are not considered in determining the financial eligibility of the applicant or member:

...

(E) veterans' aid and attendance benefits, unreimbursed medical expenses, housebound benefits, enhanced benefits (\$90 Veterans' Administration pension to long-term-care-facility residents, including veterans and their childless surviving spouses who live in a state veterans' home), or veterans' benefits that are based on need and are provided by municipalities to resident veterans...

This is stated a bit more clearly in the statute from which this regulation derives, which is located at G.L. c. 118E, § 25 and states the following, in pertinent part:

For purposes of determining an individual's eligibility for Medicaid, the following income and resources shall be exempt and shall neither be taken into consideration nor, except as permitted under Title XIX, required to be applied toward the payment or part payment of Medicaid benefits:

...

(4 ½) the entire amount of a monthly payment to...a widowed spouse of a veteran, including pension, aid and attendance and housebound benefits, from the United States Department of Veterans Affairs if the...widowed spouse would not have received such a payment from the United States Department of Veterans Affairs but for unreimbursed medical expense...

The record shows that the appellant filed for VA benefits On September 28, 2018. The record further shows that in a notice date May 1, 2019, the VA awarded the appellant the maximum pension with aid and attendance effective October 1, 2018. The VA decision determined that the appellant was eligible for the VA pension because her unreimbursed medical expenses exceeded her income. The appellant then applied for PACE. The record shows that the appellant counted the VA pension in making its income determination. This placed the appellant above 300% of FBR and for that reason the appellant was required to pay a deductible. The record indicates, furthermore, that the appellant would not have had to pay a deductible had MassHealth not counted the pension. The record shows that MassHealth may not have been aware that the reason the appellant received a VA pension with aid and attendance was because her medical expenses exceeded her income. Nonetheless, the intent of this statute, which codifies a part of the BRAVE Act, is that the income should have been excluded from the beginning.⁵

That said, the appellant's representatives' request for reimbursement is not permitted under the regulations. The pertinent regulation here is 130 CMR 515.015, which states:

(A) Eligibility Requirements. The following Standard coverage members are entitled to reimbursement for certain medical expenses for which they paid, subject to the provisions of 130 CMR 515.015:

⁵ See Report of the Conference Committee (Aug. 10, 2018), 2017 Massachusetts Senate Bill No. 2632, 190th General Court of the Commonwealth of Massachusetts, which states, amongst many other things, "[the BRAVE Act] exempts monthly payments to veterans or surviving spouses from classification as income under Medicaid eligibility provisions if it includes aid and attendance or household benefits..."

- (1) an individual who
 - (a) applied for Supplemental Security Income (SSI);
 - (b) was denied SSI benefits by the Social Security Administration; and
 - (c) had his or her initial Social Security Administration denial overturned through a reconsideration process, administrative hearing, appeals counsel review, federal court review, or reopening under the Social Security Administration rules on administrative finality; or
- (2) an individual who
 - (a) applied for MassHealth;
 - (b) was denied MassHealth; and
 - (c) had his or her initial denial overturned by a subsequent decision, MassHealth, the fair hearing process, or the judicial review process.

(B) Limitations.

- (1) Reimbursement is limited to bills incurred on or after the coverage start date for the applicable coverage type as described in 130 CMR 519.000: MassHealth: Coverage Types, and paid between the date of the erroneous eligibility decision and the date on which the member is notified of MassHealth eligibility. The bill must have been paid by the member, the member's spouse, the parent of a member, or a legal guardian.
- (2) Reimbursement is also limited to amounts actually paid for care or services that would have been covered under MassHealth had eligibility been determined correctly, even if these amounts exceed the MassHealth rate. Before reimbursing a member for care or services that would have required prior authorization, MassHealth may require submission of medical evidence for consideration under the prior-authorization standards. Reimbursement is available even though the medical care or services were furnished by a provider who does not participate in MassHealth...

The record shows that the appellant was not an individual who applied for SSI; was denied SSI benefits by the Social Security Administration; and had her initial Social Security Administration denial overturned through a reconsideration process, administrative hearing, appeals counsel review, federal court review, or reopening under the Social Security Administration rules on administrative finality. The appellant also was not an individual who applied for MassHealth; was denied MassHealth; and had her initial denial overturned by a subsequent decision, MassHealth, the fair hearing process, or the judicial review process. The appellant is not eligible for reimbursement of medical expenses in this manner. The appellant, however, may ask the medical providers to rebill MassHealth for medical expenses going back to the original start date of coverage and have the providers reimburse her directly. (See 130 CMR 450.309 – 450.324).

For the above stated reasons, the appeal is APPROVED IN PART.

Order for MassHealth

Redetermine the appellant's deductible beginning from the original coverage start date and issue a new notice without appeal rights.

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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780

[REDACTED]