

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2202007
<b>Decision Date:</b>	6/7/2022	<b>Hearing Date:</b>	05/06/2022
<b>Hearing Officer:</b>	Christopher Jones	<b>Record Open to:</b>	05/20/2022

**Appearance for Appellant:**




**Appearance for MassHealth:**

Meghan Adie - Tewksbury Ongoing



*The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, Quincy, Massachusetts 02171*

# APPEAL DECISION

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Eligibility – PACE
<b>Decision Date:</b>	6/7/2022	<b>Hearing Date:</b>	05/06/2022
<b>MassHealth's Rep.:</b>	Meghan Adie	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Remote	<b>Aid Pending:</b>	No

## Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

## Jurisdiction

Through a notice dated February 23, 2022, MassHealth approved the appellant for MassHealth Standard through the PACE Waiver with a monthly payment to the PACE organization of \$2,084. (Exhibit 2.) On March 11, 2022, MassHealth adjusted the monthly payment to \$1,201. (Exhibit 3.) The appellant filed this timely appeal on March 17, 2022. (Exhibit 4; 130 CMR 610.015(B).) Limitations on assistance are valid grounds for appeal. (130 CMR 610.032.)

Following the hearing, the record was left open until May 20, 2022 for the appellant and MassHealth to discuss the applicability of the BRAVE Act.

## Action Taken by MassHealth

MassHealth counted the appellant's pension through the U.S. Department of Veteran's Affairs in determining his eligibility for the PACE Waiver and calculating whether he owes a premium to participate in the program.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 420.000 and MGL Ch. 118E § 25(4.5), in counting any of the appellant's Veteran's Affairs pension.

## Summary of Evidence

The appellant is an elderly individual who is residing in the community. He applied for MassHealth Standard coverage through the Program of All-inclusive Care for the Elderly (“PACE”) Waiver. Generally, an elderly individual’s income must be below the federal poverty level (\$1,133) to qualify for Standard. However, there are various waiver programs that allow Standard coverage for community-based individuals who would otherwise be institutionalized. These waivers allow eligibility for MassHealth Standard with income below 300% of the federal benefits rate ( $\$841 \times 3 = \$2,523$ ).

The appellant’s income consists of Social Security retirement benefits in the amount of \$1,479 per month and VA benefits in the amount of \$2,050 per month. The appellant is an U.S. Army veteran who has been approved for a “Basic Pension” with additional “Aid and Attendance” benefits through the U.S. Department of Veteran’s Affairs (“VA”). The parties’ dispute in this case arises from the manner in which the VA calculates pension payments, reports these payments to state Medicaid agencies, and how MassHealth is treating the payments made to the appellant.

A VA pension is calculated based upon a “Maximum Annual Pension Rate” (“MAPR”); an income cap set by Congress. In 2022, the Basic Pension MAPR for an individual veteran is \$14,753. If they qualify for Aid and Attendance benefits, the MAPR increases to \$24,610.<sup>1</sup> VA benefits are paid at the difference between the MAPR and a veteran’s countable income. For instance, the appellant’s gross annual Social Security income of \$17,748.00 is greater than the Basic Pension rate of \$14,753. But for his eligibility for Aid and Attendance, he would not receive a VA pension at all. Using the Aid and Attendance rate, the appellant would only receive \$6,862.00 a year (\$571 per month).

The parties agreed that, but for unreimbursed medical expenses, the appellant’s payment from the VA would be the difference between his annual income and the MAPR (\$571).<sup>2</sup> Because this amount is less than the Aid and Attendance benefit, MassHealth’s representative agreed it would be noncountable. This is pursuant to regulation 130 CMR 520.015(E), which makes “payments for aid

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<sup>1</sup> MassHealth’s representative agreed Aid and Attendance benefits are noncountable. These figures are also available at: <https://www.va.gov/pension/veterans-pension-rates/> (last visited June 2, 2022).

<sup>2</sup> The appellant calculates this amount to be \$514. There are two problems with this figure. First, the appellant’s disregards \$57 in monthly income as five percent of MAPR. However, five percent of MAPR only factors into the calculation when determining if unreimbursed medical expenses exceed the veteran’s income, not for calculating the pension payment in the absence of unreimbursed medical expenses. (“The Veteran must have medical expenses in excess of [\$737.65] ( $[\$14,753] \times .05$ ) in order for the expenses to have any effect on the rate of pension.” M21-1, Pt. IX, Subpt. i, Ch. 3, § D.1.b. (available at [https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va\\_ssnew/help/customer/locale/en-US/portal/55440000001018/content/554400000178519/M21-1-Part-IX-Subpart-i-Chapter-3-Section-D-Reduction-of-Income-Due-to-Unreimbursed-Expenses](https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/55440000001018/content/554400000178519/M21-1-Part-IX-Subpart-i-Chapter-3-Section-D-Reduction-of-Income-Due-to-Unreimbursed-Expenses) (last visited June 2, 2022).) Second, five percent of the Basic Pension is be \$61 per month, not \$57. (See <https://www.va.gov/pension/veterans-pension-rates/> (last visited June 2, 2022).) Ultimately, any VA benefit in the absence of unreimbursed medical expenses is less than the Aid and Attendance benefit.

and attendance [and] unreimbursed medical expenses” non-countable for MassHealth purposes. Following the hearing, MassHealth’s representative clarified that the “unreimbursed medical expenses” portion of this regulation is intended to be a reference to the BRAVE Act. (Exhibit 5, p. 3.)

However, the VA allows a veteran to offset their income with unreimbursed medical expenses in excess of five percent of the Basic Pension MAPR. The appellant has unreimbursed medical expenses of \$4,848.75 each month, therefore the VA considered him to have zero income and awarded him the full Aid and Attendance MAPR of \$24,610 (\$2,050 per month). The appellant submitted a January 4, 2021 letter from the VA with a “monthly award amount” as of March 1, 2019. This “monthly rate includes an aid and attendance allowance,” but goes on to explain that the decision was made using “family medical expenses you paid in the amount of \$58,185.00 which reduces your countable income to \$0.00.” (Exhibit 4, pp. 6-8). A December 1, 2021 letter is also included showing that the appellant’s monthly rate would increase to \$2,050 as of January 1, 2022. This payment was calculated using Social Security income of \$19,360<sup>3</sup> but was again reduced to zero “considering continuing medical expenses of \$58,185 ... .” (Exhibit 4, p. 5.) In a February 1, 2022 letter, the VA broke out the monthly payment as \$1,229 for Basic Pension and \$821 for Aid and Attendance. (Exhibit 8.)

MassHealth argues that the Basic Pension amount of \$1,229 per month should be counted toward the appellant’s monthly income. This makes the appellant’s MassHealth countable income \$2,708, which is more than 300% of the federal benefits rate of \$2,523. To qualify for MassHealth Standard, the appellant must meet a six-month deductible as described at 130 CMR 520.028 through 520.035. The six-month deductible amount is equivalent to the applicant’s countable income, less \$522, multiplied by six. Rather than require that this six-month deductible amount be met before qualifying for MassHealth Standard, MassHealth set a monthly payment directly to the PACE entity. The notice from MassHealth calls the deductible “the monthly amount you pay to your PACE provider ... .”<sup>4</sup> (See Exhibits 2 and 3.)

The appellant argues that the MassHealth countable income should be limited to the payment the appellant would have received but for his unreimbursed medical expenses. If this amount were included in the appellant’s MassHealth countable income, it would be below 300% of the federal benefits rate, and the appellant would qualify for MassHealth Standard through the PACE waiver. The appellant argues that this outcome is required by the BRAVE Act, MGL Ch. 118E, § 25(4.5), which excludes income when “the entire amount of a monthly payment to a veteran ..., including

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<sup>3</sup> MassHealth confirmed that the appellant’s gross Social Security income was \$1,479. For unclear reasons, the VA used \$1,613.40 in calculating the appellant’s VA award. (Exhibit 4, p. 5.)

<sup>4</sup> This practice is beneficial for people who do not carry significant medical debt. It allows applicants to pay their deductible monthly and benefit from eligibility while meeting the deductible. However, there is no published guidance explaining this practice, and it is unclear if the member is allowed to opt into or out of this arrangement. (Cf. EOM 21-13 (July 14, 2021) (“individuals who had initially established MassHealth eligibility with income at or below 300% of the FBR and are enrolled in PACE, but who later experienced an increase in countable income, causing their income to exceed 300% of the FBR, may remain in their MassHealth Standard benefit and remain enrolled in PACE by spending down their income to 300% of the FBR.”).)

pension, aid and attendance and housebound benefits, ... if the veteran ... would not have received such a payment from the United States Department of Veterans Affairs but for unreimbursed medical expense ... .”

The appellant focuses on the phrase “such a payment,” arguing that it refers to the portion of the payment that is received due to unreimbursed medical expenses. MassHealth’s representative focused on the phrase “the entire amount,” and argues that the entire payment must be due to unreimbursed medical expenses in order for it to be non-countable. The appellant’s representative argued that this results in non-sensical outcomes where a veteran with more income would be eligible to have their VA benefits excluded from MassHealth because they would receive no pension but for unreimbursed medical expenses, whereas a veteran with less income cannot because they would still receive some pension without unreimbursed medical expenses.

## **Findings of Fact**

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

1. The appellant is an elderly veteran whose gross monthly Social Security benefits are \$1,479.00 and monthly VA benefits are \$2,050. (Exhibit 7; Exhibit 4, p. 5.)
2. The appellant’s monthly VA benefits are comprised of \$1,229 for Basic Pension and \$821 for Aid and Attendance benefits. He qualified for his VA pension due to unreimbursed medical expenses that reduced his VA countable income to zero. (Exhibit 4, pp. 5-8.)
3. If the appellant did not have unreimbursed medical expenses, he would have received some VA benefits, but this amount would have been less than the amount attributable to Aid and Attendance benefits. (Exhibit 4, pp. 6-8; Exhibit 7; testimony by MassHealth’s representative and the appellant’s representatives.)
4. Three hundred percent of the federal benefits rate is \$2,523. (Testimony by MassHealth’s representative.)

## **Analysis and Conclusions of Law**

MassHealth offers a variety of benefits based upon an individual’s circumstances and finances. To qualify for MassHealth, an individual must fit into a category of eligibility and fall below a certain financial threshold. The Programs of All-Inclusive Care for the Elderly is a comprehensive health program that is designed to keep frail individuals living in the community when they are clinically eligible for nursing-facility services. (130 CMR 519.007(C)(1).) Financially, eligibility for the PACE Waiver requires “a countable-income amount less than or equal to 300% of the federal benefit rate (FBR) for an individual.” (130 CMR 519.007(C)(2).) “Individuals whose income exceeds the

[income] standards ... may establish eligibility for MassHealth Standard by meeting a deductible as described at 130 CMR 520.028 through 520.035.”<sup>5</sup> (130 CMR 519.007(C)(3).)

Certain sources of income are considered noncountable for MassHealth purposes. Included in this noncountable income are “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 ... .” (130 CMR 520.015(E) (emphasis added).)<sup>6</sup>

The parties also strongly debate the meaning of MGL Ch. 118E § 25(4.5):

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:

...

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

This statute became effective November 7, 2018. MassHealth implemented this statute through EOM 19-08, on July 15, 2019. This Eligibility Operations Memorandum highlights that the “purpose of the BRAVE Act is to improve and expand the benefits available to the Commonwealth’s veterans, active military members, and their families.” The guidance provided in the memorandum is:

The Department of Veterans Affairs (VA) subtracts unreimbursed medical expenses (or UME) when determining eligibility for some needs-based pensions and compensation payments. Under the BRAVE Act, MassHealth will disregard the entire VA pension payment, for the non-MAGI population, only if the individual is receiving such payment because of UME. For example, if an

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<sup>5</sup> While state Medicaid agencies often administer the PACE programs, enrollment “in a PACE program is not restricted to an individual who is either a Medicare beneficiary or Medicaid recipient.” PACE Manual, Ch. 4, § 30.3; see also PACE, A Guide to the Program of All-inclusive Care for Elderly MassHealth Members, [“PACE Guide”] p. 4 (Mar. 2015) (available at <https://www.mass.gov/files/documents/2016/07/wc/ltc-guide-to-program-of-all-inclusive-care.pdf> (last visited January 20, 2022)).

<sup>6</sup> MassHealth’s representative believed that the reference in 130 CMR 520.015(E) to “unreimbursed medical expenses” was added to the regulation to reference the BRAVE Act and is necessarily subject to the guidance in EOM 19-08. The Brave Act was passed in 2018. The regulation in effect in 2015 includes identical language to the current regulation. (See 130 CMR 520.015(E) (March 11, 2014).)

individual was otherwise ineligible to receive a VA pension because they were over the income threshold, but by deducting their UME from their total income, they fall below their applicable threshold, MassHealth will disregard the entire veterans' payment in the financial eligibility calculation as well as post-eligibility.

(EOM 19-08 (July 15, 2019).)

This legal framework requires MassHealth to look to the VA's rules regarding when income is attributable to "aid and attendance benefits [or] unreimbursed medical expenses." MassHealth's representatives are understandably hesitant to engage with the VA's highly technical method for calculating countable income, given it differs from MassHealth's own highly technical method. For similar reasons, however, the VA is seldom able to report its income calculations in a way conforms to MassHealth's regulations. (See Appeal Nos. 1408595 (Sept. 30, 2014); 1808491 & 1817391 (Jan. 16, 2019); 2003177 (June 17, 2020).)

I find that MassHealth interpretation of the BRAVE Act through EOM 19-08 differs from the interpretation presented at the hearing. Furthermore, if MassHealth and the VA reviewed income in the same way, the BRAVE Act and EOM 19-08 are irrelevant. Therefore, for reasons detailed below, this appeal is APPROVED.

The VA calculates a monthly award by comparing the relevant MAPR to the annual income for the veteran and dividing the difference by 12. (See VA Manual M21-1, Pt. IX, Subpt. iii, Ch. 1, § E.1.c.)<sup>7</sup> MassHealth wants the VA to calculate how much the appellant would receive if he did not have unreimbursed medical expenses. However, the VA starts by calculating a veteran's income by deducting unreimbursed medical expenses. The appellant's entire VA award is premised upon his have zero income due to unreimbursed medical expenses; the VA never determines how much he would receive if he did not have unreimbursed medical expenses.

If the VA were to perform the calculation MassHealth wants, the appellant's MassHealth income would still be zero. As noted above, the appellant's annual Social Security income (\$17,748.00) is greater than the MAPR for Basic Pension alone (\$14,753.00). Therefore, the appellant is only eligible for a VA pension because he is eligible for Aid and Attendance benefits. (See VA Manual MA21-1, Pt. IX, Subpt. iii, Ch. 1, § E.1.c.) The VA is supposed to "report the entire amount of the payment as [Aid and Attendance]" to Medicaid agencies when the "pension would not be payable but for entitlement to the [Aid and Attendance] allowance ... ." (VA Manual MA21-1, Pt. XIII, Subpt. ii, Ch. 3, § B.1.d. (emphasis added).) Thus, if the VA calculated income in the way MassHealth wants, it would have reported the appellant's monthly award as being entirely attributable to Aid and Attendance; all of this income would be excluded pursuant to 130 CMR 520.015(E). The VA has no

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<sup>7</sup> The VA Manual is available at [https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va\\_ssnew/help/customer/locale/en-US/portal/554400000001018/topic/554400000004210/M21-1-Adjudication-Procedures-Manual](https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/554400000001018/topic/554400000004210/M21-1-Adjudication-Procedures-Manual) (last visited June 2, 2022).

reason to report a veteran's income this way, however, because it starts by calculating the veteran's income to be zero due to unreimbursed medical expenses.

The appellant's interpretation of the BRAVE Act and EOM 19-08 is persuasive, in part because it aligns with this understanding of how the VA calculates benefits. As presented during the hearing, MassHealth interprets 130 CMR 520.015(E) and the BRAVE Act as excluding unreimbursed medical expenses only where the entirety of a veteran's VA benefits is due to their having unreimbursed medical expenses.

The BRAVE Act excludes "**the entire amount of a monthly payment to a veteran**, ... if the veteran ... would not have received **such a payment** from the United States Department of Veterans Affairs but for unreimbursed medical expense." (MGL Ch. 118E § 25(4.5).) The statute clearly seeks to exclude "the entire amount of a monthly payment." MassHealth's interpretation of the statute at hearing requires the word "such" be ignored. MassHealth would exclude "the entire amount" only when the veteran would not have received **a payment** but for unreimbursed medical expenses. As the appellant argues, to what does "such" refer if it is not the part of the payment attributed to unreimbursed medical expenses.

The EOM does not conflict with this interpretation. It explains that "if an individual was otherwise **ineligible to receive a VA pension** because they were over the income **threshold**, but by deducting their UME from their total income, they fall **below their applicable threshold**, MassHealth will disregard **the entire veterans' payment** ... ." For VA benefits, the word "threshold" is equivalent the MAPR. Since Aid and Attendance benefits are already non-countable, it is inappropriate to use an enhanced MAPR as the "applicable threshold" when applying this EOM. The "applicable threshold" should only be a MAPR comprised of otherwise countable income, or the Basic Pension MAPR.

Unfortunately, this decision cannot allow retroactive benefits for the PACE Waiver. Federal law limits a "participant's enrollment in the program [to] the first day of the calendar month following the date the PACE organization receives the signed enrollment agreement." (42 CFR § 460.158; see also PACE, A Guide to the Program of All-inclusive Care for Elderly MassHealth Members, p. 5 (Mar. 2015) (available at <https://www.mass.gov/files/documents/2016/07/wc/ltc-guide-to-program-of-all-inclusive-care.pdf> (last visited June 3, 2022)).) The appellant's representatives noted that he had not enrolled pending this appeal. The appellant's representatives explained that he did enroll in the PACE organization because he already spent all of his money on unreimbursed medical expenses and could not afford the additional monthly payment. Had he done so, this decision could have ordered reimbursement for any payments made.

## Order for MassHealth

Recalculate the appellant's countable income excluding his VA benefits in accordance with 130 CMR 520.015(E) and VA Manual M21-1, Pt. XIII, Subpt. ii, Ch. 3, § B.1.d. Approve the appellant's for MassHealth Standard through the PACE Waiver without a deductible.



## Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

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Christopher Jones  
Hearing Officer  
Board of Hearings

cc: MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88  
Industry Avenue, Springfield, MA 01104  
MassHealth Representative: Tewksbury MEC  
Appellant's Rep: [REDACTED]