

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2203166
<b>Decision Date:</b>	7/14/2022	<b>Hearing Date:</b>	06/09/2022
<b>Hearing Officer:</b>	Christopher Jones		

**Appearance for Appellant:**



**Appearance for MassHealth:**

David Gelin – Chelsea MEC



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

# APPEAL DECISION

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Income – VA Benefits
<b>Decision Date:</b>	7/14/2022	<b>Hearing Date:</b>	06/09/2022
<b>MassHealth’s Rep.:</b>	David Gelin	<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 March 31, 2022, MassHealth approved the appellant for long-term-care services with a patient-paid amount of \$2,840.59 as of July 1, 2021. (Exhibit 2, p. 3.) The appellant filed this timely appeal on April 27, 2022. (Exhibit 2; 130 CMR 610.015(B).) Cost-sharing determinations are valid grounds for appeal. (130 CMR 610.032.)

## Action Taken by MassHealth

MassHealth set the appellant’s patient-paid amount at \$2,840.59 based, in part, upon payments from the Veteran’s Affairs.

## 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 the surviving spouse of a veteran. She applied for long-term-care benefits on October 28, 2021, seeking as of July 1, 2021. Her monthly income includes Social Security income of \$1,206, \$599.59 from a private pension, and a Survivors Pension from the U.S. Department of Veteran’s Affairs (“VA”) for \$1,244. MassHealth used the total monthly income of \$3,049.59 in calculating the

appellant's patient-paid amount ("PPA"), deducting a personal-needs allowance ("PNA") of \$72.80 and health insurance premium of \$136.20, to arrive at the PPA of \$2,840.59 per month that the appellant must pay to the nursing facility.

The appellant started receiving a VA pension as of June 1, 2020 as a surviving spouse with no dependents. (Exhibit 4.) This award included "an additional allowance for aid and attendance," and was determined using her "medical expenses of \$76,911.00 ... [which] reduces your countable income to \$0.00." Effective December 1, 2020, the VA updated the payment amount to \$1,244 per month. This letter reiterates that the appellant receives this pension because the VA is "considering continuing medical expenses of \$76,911 [to reduce] your countable income for VA's purposes to \$0." (Exhibit 4.) The appellant cites 130 CMR 520.015(E) and EOM 19-08 (July 15, 2019), implementing the BRAVE Act, and argues that VA benefits are noncountable when they are paid as a result of unreimbursed medical expenses.

MassHealth's representative testified that the agency used the entirety of the VA payment in determining the PPA because the VA letter does not separate out the portion that was paid due to unreimbursed medical expenses. Furthermore, MassHealth noted that the VA award letter says the appellant is "responsible to tell us right away if you ... have any changes in ... nursing home status," and the appellant has apparently not reported their nursing home status to the VA.

The appellant's attorney said that the family is in the process of reporting the change in living conditions to the VA but for MassHealth purposes the issue is irrelevant. The parties agreed that the VA would pay the appellant \$90 per month as a "pension to long-term-care-facility residents," and that this pension is non-countable. The appellant argued that the amount of the VA pension should not matter to MassHealth, since the VA pension is not countable whether it is the community rate or the institutionalized rate.<sup>1</sup>

MassHealth also objected that the VA award letter was outdated. They testified that they would need an updated VA letter for 2022 to verify that the appellant continues to have unreimbursed medical expenses in excess of their income. The appellant again noted that this is irrelevant. First, the VA pension will reduce to \$90 per month as of the appellant's entering the nursing facility once the VA processes this change in circumstances. Furthermore, even if the payment were not going to be reduced, the VA pension amount is due to Aid and Attendance benefits, which are also non-countable. There was a discussion regarding how the VA calculates income using a "Maximum Annual Pension Rate" ("MAPR"), which for a surviving spouse in 2021 was \$9,344 without enhanced benefits and \$14,934 with Aid and Attendance benefits. The VA only pays a pension where the beneficiary's VA-countable income is below the relevant MAPR, and then the pension is only the amount needed to increase the VA-countable income to the MAPR. Because the appellant's annual income including Social Security and private pension is greater than the Aid and Attendance MAPR, the only reason

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<sup>1</sup> Presumably, any excess paid by the VA after institutionalization would also be subject to recoupment and would be unavailable to pay a PPA.

she would receive a pension is if she had unreimbursed medical expenses that reduced her other income below \$14,934.<sup>2</sup>

## Findings of Fact

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

1. The appellant is the surviving spouse of a veteran, and she applied for long-term-care benefits on October 28, 2021, seeking benefits as of July 1, 2021. (Exhibit 3.)
2. The appellant receives total monthly income of \$3,049.59; \$1,206 from Social Security of, \$599.59 from a private pension, and \$1,244 as a Survivors Pension from the VA. (Exhibit 2, p. 4.)
3. The appellant was awarded the VA pension as of June 1, 2020 as a surviving spouse with no dependents. This award included “an additional allowance for aid and attendance,” and was determined using her “medical expenses of \$76,911.00 ... [which] reduces your countable income to \$0.00.” Effective December 1, 2020, the VA updated the payment amount to \$1,244 per month, but this award was still premised upon her VA-countable income being \$0 due to “continuing medical expenses of \$76,911 [reducing] your countable income for VA’s purposes to \$0.” (Exhibit 4.)
4. MassHealth calculated the appellant’s PPA to be \$2,840.59 based upon all of the appellant’s monthly income, a PNA of \$72.80, and health insurance premiums of \$136.20. (Exhibit 2, p. 4.)

## Analysis and Conclusions of Law

Institutionalized MassHealth members “must contribute to the cost of care.” The amount they are required to contribute is the patient-paid amount. (130 CMR 515.001.) To determine a member’s PPA, MassHealth starts by determining a member’s countable income and then takes certain deductions set out at 130 CMR 520.026. Certain sources of income are considered noncountable for MassHealth purposes, including “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).)

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

For purposes of determining an individual’s eligibility for Medicaid, the

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<sup>2</sup> For 2022, the Aid and Attendance MAPR increased to \$15,816. (See <https://www.va.gov/pension/survivors-pension-rates/> (last visited July 12, 2022).)

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 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); 2202007 (June 7, 2022).)

The VA calculates a monthly award by comparing the relevant MAPR to the annual income for the veteran (or survivor) and dividing the difference by 12. (See VA Manual M21-1, Pt. IX, Subpt. iii, Ch. 1, § E.1.c.)<sup>3</sup> MassHealth wants the VA to calculate how much the appellant would receive if she did not have unreimbursed medical expenses. However, the VA starts by calculating income by

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<sup>3</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 July 12, 2022).

deducting unreimbursed medical expenses. The appellant's entire VA award is premised upon her having zero income due to unreimbursed medical expenses; the VA never determines how much she would receive if she did not have unreimbursed medical expenses.

If the VA were to perform the calculation MassHealth wants, the appellant's VA income would still be zero. The appellant's annual income is \$21,667.08 ( $\$1,206 \times 12 + 599.59 \times 12$ ). This is greater than the Basic Survivors Pension MAPR (\$9,344) and the MAPR for a Survivors Pension with Aid and Attendance (\$14,934). If the appellant had no unreimbursed medical expenses, her VA pension would be zero. Therefore, appellant only receives a VA pension due to unreimbursed medical expenses. When the appellant's VA pension changes to the institutionalized rate, it will be non-countable. For these reasons, this appeal is APPROVED. MassHealth will recalculate the appellant's PPA without her VA benefits.

Because the appellant's attorney raised the BRAVE Act at hearing, I will note that it 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." 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. Ultimately, this decision need not reach this legal question.

## Order for MassHealth

Recalculate the appellant's PPA without her VA pension, as of July 1, 2021.

## 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.

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Christopher Jones  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876

MassHealth Rep: Chelsea MEC – David Gelin

Appellant's Attorney: [REDACTED]  
[REDACTED]