

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2207902
<b>Decision Date:</b>	4/25/2023	<b>Hearing Date:</b>	11/23/2022
<b>Hearing Officer:</b>	Radha Tilva	<b>Record Open to:</b>	04/20/2023

**Appearance for Appellant:**



**Appearance for MassHealth:**

Dianne Braley, Taunton MEC Rep.



*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>	Denied	<b>Issue:</b>	LTC – PPA
<b>Decision Date:</b>	4/25/2023	<b>Hearing Date:</b>	11/23/2022
<b>MassHealth’s Rep.:</b>	Dianne Braley	<b>Appellant’s Rep.:</b>	Wife and sister-in-law
<b>Hearing Location:</b>	Taunton MassHealth Enrollment Center	<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 August 5, 2022, MassHealth determined that appellant is eligible for MassHealth Standard benefits with an eligibility start date of June 23, 2022 and patient-paid amount (PPA) of \$5,184.92 per month starting September 1, 2022 (Exhibit 1). The appellant filed this appeal in a timely manner on October 21, 2022 stating the PPA calculation as a reason for the dispute (see 130 CMR 610.015(B) and Exhibit 2). Challenging a patient-paid amount is valid grounds for appeal (see 130 CMR 610.032).

A hearing took place on November 23, 2022. The Hearing Officer left the record open for appellant to submit proof of appellant’s Veteran’s Aid compensation and a breakdown of the payment. During the record open period an extension to the record open was provided to appellant and granted until March 6, 2023. During the record open period the Hearing Officer was on leave and did not return to work until March 24, 2023, at which point, upon review, the Hearing Officer asked for clarification from MassHealth as to the new notices which MassHealth issued on January 6, 2023 which reduced the PPA. Upon receipt of a response from MassHealth the Hearing Officer decided to reconvene the hearing (130 CMR 610.065(B)). A rehearing occurred on April 19, 2023. The record was reopened for a clarifying question from the Hearing Officer which appellant responded to on April 20, 2023.

## Action Taken by MassHealth

MassHealth determined that appellant was eligible for MassHealth Standard benefits effective June 23, 2022 with a patient-paid amount of \$5,184.92.

## Issue

The appeal issue is whether MassHealth was correct in determining the patient-paid amount?

## Summary of Evidence

The MassHealth representative that appeared at hearing testified that MassHealth issued a renewal on July 28, 2022 for appellant, a nursing facility resident, to complete. At that time, the Veteran's Administration (VA) check was put into the system and the patient-paid amount increased from \$1,586.61 to \$5,012.92 per month as reflected in the August 5, 2022 MassHealth eligibility notice. The MassHealth representative stated that MassHealth was provided with a letter from 2020 from the VA, but that MassHealth could not exempt the payment under 130 CMR 520.015(E) unless appellant could show that the VA payment was for aid and attendance benefits or one of the other exempted categories.

The appellant, who is in a long-term care nursing facility, was represented by his wife and sister-in-law who both appeared by telephone. The appellant's wife stated that appellant was getting nothing from the VA initially and then started to get compensation. The appellant's wife immediately called MassHealth and reported the compensation. She was told last year by a MassHealth representative that she did not need to report it as it was not taxable income (appellant testimony). This year, however, she was told to report it by the MassHealth caseworker she spoke to. The appellant's wife testified that the payment is nontaxable compensation that appellant does not pay taxes on. The appellant further stated that part of the income is for dependents and both IRS and the Department of Revenue both state that it not taxable income.

At hearing the record was left open for appellant to provide proof that a portion of those payments fell under aid and attendance. The appellant's wife submitted a copy of a letter from the VA dated March 31, 2020 which states, in relevant part, the following:

“Basic eligibility to Dependents' Educational Assistance is established from December 13, 2019.

Evaluation of coronary artery disease status post CABG, which is currently 10 percent disabling, is increased to 100 percent effective December 13, 2019.

Your combined rating evaluation is 100%.

We granted your claim for additional dependency benefits because the following dependent(s) meet the criteria for establishing a relationship and you have at least 30%

disability compensation evaluation.”

(Exhibit 7). The letter further stated that appellant’s wife was added to appellant’s award effective December 13, 2019 as a dependent and that appellant would get a monthly entitlement award in the amount of \$3,279.22 effective January 1, 2020 (Exhibit 7). The letter specifically stated “[w]e are currently paying you as a Veteran with one dependent” (Exhibit 7, p. 4). The MassHealth representative and her manager reviewed the VA letter and determined that the letter does not specifically show the breakdown required under the regulations at 130 CMR 520.015 (see Exhibit 8). On November 27, 2022 appellant’s representative provided two documents which included an article from VA website describing the difference between a pension and disability compensation and another document pertaining to pension reductions for Medicaid-covered nursing facilities (Exhibit 8). On November 28, 2022, the appellant submitted additional information, the Medicaid Eligibility Manual, Volume III, Section E, which pertains to Mississippi and not Massachusetts.<sup>1</sup> On December 2, 2022, the MassHealth representative provided information regarding “The Brave Act” and stated that the VA compensation is countable (see Exhibit 9).<sup>2</sup>

On January 10, 2023 the Hearing Officer requested that the appellant request a breakdown from the VA demonstrating that the monthly award is either aid and attendance, unreimbursed medical expense, a housebound benefit, an enhanced benefit, or a veteran’s benefit that is based on need (Exhibit 10). The appellant responded on January 11, 2023 and stated that she tried the VA several times, but was unsuccessful (Exhibit 10). The record was then extended for an additional 30 days for appellant to submit the information by February 20, 2023 and for MassHealth to review and respond by March 6, 2023 (Exhibit 10).

On January 19, 2023 appellant’s representative attached two notices from MassHealth, dated January 6, 2023, which reduced the PPA and eliminated the pension under income (see Exhibit 11). The appellant asked the MassHealth case worker and the Hearing Officer to review the notices. The appellant wrote, on February 20, 2022, and stated that The Brave Act does apply and is the basis for compensation since the diagnosis is directly related to her husband’s service while deployed in Vietnam (Exhibit 12). Appellant’s response further stated that the IRS considers disability benefits received from the VA to not be included in one’s gross income (*Id.*). The letter also referenced the regulations at 130 CMR 506.003 and 506.004 as support. The Hearing Officer was out on leave and upon returning, on March 24, 2023, asked the MassHealth case worker what the basis of MassHealth decreasing the PPA, in the most recent notices, was based on (Exhibit 12). The case

---

<sup>1</sup> <https://www.medicaid.ms.gov/wp-content/uploads/2014/03/Pages-5410-5416-Deemed-Income.pdf> (last visited April 19, 2023).

<sup>2</sup> The Brave Act is an act that was signed into law on November 7, 2018. Its purpose was to improve and expand the benefits available to the Commonwealth’s veterans, active military members, and their families. Under the Act, MassHealth will disregard “the entire amount of a monthly payment to a veteran or a widowed spouse of a veteran, including pension, aid and attendance and housebound benefits, from the United States Department of Veterans Affairs if the veteran or widowed spouse would not have received such a payment from the United States Department of Veterans Affairs but for unreimbursed medical expense.” The Brave Act also imposes that the person seeking to have the VA pension disregarded show MassHealth a grant letter with the breakdown of their pension calculation from the DVA in order for MassHealth to determine that the pension is a direct result of a UME deduction (see Exhibit 9, p. 2).

worker responded the same day and stated that MassHealth does consider VA compensation as countable and she was not sure why it was ended in the January 6, 2023 notices (*Id.*).

On March 27, 2023, the Hearing Officer determined that she would reconvene the hearing. A rehearing occurred on April 19, 2023. The parties appeared telephonically. At the rehearing appeal the MassHealth representative testified that she was unsure of why the January 6, 2023 notices, deducting the pension amount, were issued. MassHealth further reiterated that the in order to deem the income noncountable it would need a breakdown from the VA. The appellant and her representative both testified that when they received the January 6, 2023 notices, they thought that they won the appeal. The appellant explained that she called MassHealth upon receiving the notices and spoke to a long-term care manager who said that they were not counting it as income. The appellant also testified that she was unable to obtain a breakdown letter from the VA, but spoke to them and was told that the income was not aid and attendance, but rather compensation because of an injury her husband had at war. The appellant testified that she was not interested in trying to get a breakdown letter any longer and wanted the Hearing Officer to proceed with a written decision.

On April 19, 2023, the Hearing Officer reopened the record and asked appellant's wife whether the monthly VA compensation comes in her name, or husband's. The appellant's wife responded the next day and stated that the funds are sent via an automatic deposit to her checking account, each month. The description reads as follows:

Federal Benefit Payment/XXXXVA Benef REF\*48\*VA COMPENSATION\*10  
(amount of dep is recorded \$3XXXX)

(Exhibit 14). Appellant stated that the deposit does not state any person's name (Exhibit 14).

## Findings of Fact

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

1. The appellant's PPA increased from \$1,586.61 to \$5,012.92 per month, effective September 1, 2022, because of a monthly VA entitlement award in the amount of \$3,279.22 that commenced on January 1, 2020.
2. On July 28, 2022 MassHealth issued a renewal request.
3. Appellant did not initially report the VA compensation as appellant was told by a MassHealth representative that it was not taxable income, but did report it this time around.
4. The VA award letter stated that the VA was "paying you as a Veteran with one dependent."
5. The Brave Act allows MassHealth to disregard the entire amount of a monthly payment to a veteran or a widowed spouse of a veteran, including pension, aid and attendance and housebound benefits...if the veteran or widowed spouse would not have received such a payment from the VA, but for unreimbursed medical expense.

6. The record was left open for appellant to obtain a breakdown from the VA.
7. Appellant was unable to provide a breakdown from the VA.
8. No portion of the monthly award is aid and attendance.

## **Analysis and Conclusions of Law**

At issue on this appeal is whether appellant's monthly VA compensation is considered countable income. Appellant argues that it is not countable and, therefore, should be excluded in MassHealth's PPA calculation. 130 CMR 520.015 lists the types of income that MassHealth considers noncountable when making an eligibility determination for the over 65 population in a long-term care setting. 130 CMR 520.015(E) specifically states 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 are considered noncountable.

The issue here is whether the payments appellant's wife receives falls under this exemption. The award letter provided does not differentiate what portion of the monthly compensation, if any, is aid an attendance, for unreimbursed medical expenses, housebound benefits or for enhanced benefits. Though the record was left open for appellant to receive further clarification from the VA as to whether the payments fall under one of these exemptions, the appellant failed to produce such evidence.

Similarly, the appellant also does not fall under the exemption under the BRAVE Act as it also requires proof of a similar breakdown. In order to qualify to have the entire VA pension disregarded by MassHealth, under the BRAVE Act, applicants and members must show MassHealth a grant letter with the breakdown of their pension calculation from the Department of Veterans' Affairs (see Exhibit 9). Specifically, the grant letter must show the following:

- a) If the individual is the veteran or the widowed spouse of a veteran, and amount of children, if any;
- b) Aid and attendance or housebound benefits (when applicable);
- c) Household annual income counted by the VA; or
- d) UME amount that is considered by the VA.

The fact that the VA benefits are taxable or not is not differentiated in MassHealth regulations and irrelevant to the PPA calculation. As appellant has failed to produce documentation of such evidence this appeal is DENIED.

## **Order for MassHealth**

None.

## 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.

---

Radha Tilva  
Hearing Officer  
Board of Hearings

cc:

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

Appellant Representative: [REDACTED]