

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2208026
Decision Date:	2/3/2023	Hearing Date:	11/28/2022
Hearing Officer:	Alexandra Shube	Record Open to:	12/05/2022

Appearance for Appellant:

Via telephone:



Appearance for MassHealth:

Via telephone:

Mary Kate Frangules, Tewksbury 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

Appeal Decision:	Approved	Issue:	Patient Paid Amount
Decision Date:	2/3/2023	Hearing Date:	11/28/2022
MassHealth's Rep.:	Mary Kate Frangules	Appellant's Rep.:	
Hearing Location:	Tewksbury MassHealth Enrollment Center Remote	Aid Pending:	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 July 7, 2022, MassHealth notified the appellant that her monthly patient paid amount (PPA) would change from \$2,576.97 to \$1,348.97, effective May 1, 2022 (Exhibit 1). The appellant filed this appeal in a timely manner on October 27, 2022 (see 130 CMR 610.015(B) and Exhibit 2). A determination regarding scope of assistance is a valid basis for appeal. (see 130 CMR 610.032).

The record was held open until December 5, 2022.

Action Taken by MassHealth

MassHealth notified the appellant that her monthly patient paid amount (PPA) would change from \$2,576.97 to \$1,348.97, effective May 1, 2022.

Issue

The appeal issue is whether MassHealth was correct in determining the appellant's PPA.

Summary of Evidence

The MassHealth representative and appellant's representative (a Veterans Administration accredited agent) both appeared at hearing via telephone.

The appellant's representative testified that the appellant, who is the widow of a veteran, had been receiving a Veteran's Administration (VA) pension which was reduced to \$90 in May 2022; however, based on the BRAVE Act, the VA pension never should have been counted as income, going back to November 1, 2020, the beginning of her MassHealth eligibility. She explained at hearing and also outlined in detail in a memorandum provided prior to hearing that the appellant, whose income was in excess of the maximum pension benefit allowed, only qualified for the VA Pension with Aid and Attendance because of her high unreimbursed medical expenses. Specifically, the appellant's income was reduced by regularly occurring, unreimbursed medical expenses, and therefore, pursuant to MassHealth regulations and the BRAVE Act, the VA pension should have been excluded from the PPA.¹

The MassHealth representative responded that she did not receive the appellant's pre-hearing submission and it did not appear that MassHealth had documentation showing that the appellant's income would fall under the BRAVE Act. She requested additional time to review the appellant's submission and available documentation before determining the next steps MassHealth could take.

The record was initially held open until December 13, 2022 for MassHealth to review the appellant's submission and until December 20, 2022 for the appellant to respond if needed. On November 30, 2022, the MassHealth representative responded to parties via email and stated the following, after a review of the appellant's submission and other documents already provided to MassHealth:

The only verification that was submitted to MassHealth that showed this was an income that would fall under the BRAVE Act was the letter dated 12/01/2021 which was received by MassHealth on February 24, 2022.

While I see the original letter provided in the [appellant's hearing submission] shows on the second page that this income would fall under the BRAVE Act, only the first page of that letter was provided with the initial application so MassHealth would have had no way of knowing that the VA benefits would have fallen under this category. On the eligibility side MassHealth would only be able to adjust the PPA

¹ MassHealth Eligibility Operations Memorandum 19-08 dated July 15, 2019, which the appellant provided as part of her memorandum prior to hearing, states that the Act Relative to Veterans Benefits, Rights, Appreciation, Validation, and Enforcement (the BRAVE Act) amended Section 25 of Massachusetts General Laws, chapter 118. "Under this amendment, 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 expenses.'"

from February 2022 forward per receipt of the letter dated 12/01/2021.

The appellant's representative responded via email on November 30, 2022. She stated that there are only two types of VA payments to surviving spouses, Death and Indemnity Compensation (DIC) and Survivors Pension. She explained that it is easy to tell if a payment is a DIC or Survivors Pension because DIC payments always end in pennies and Survivors Pensions always end in an even number, no pennies. The Survivors Pension is always less than the DIC rate. She also questioned why, if MassHealth could not determine how much of the income was countable, it did not simply request additional information from the appellant or VA. The record ultimately closed on December 5, 2022.

Findings of Fact

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

1. On July 7, 2022, MassHealth notified the appellant that her monthly patient PPA would change from \$2,576.97 to \$1,348.97, effective May 1, 2022 (Exhibit 1).
2. On October 27, 2022, the appellant timely appealed the notice (Exhibit 2).
3. The appellant became eligible for MassHealth long-term care benefits beginning November 1, 2020 (Testimony and Exhibit 2 at 3).
4. The appellant, the widow of a veteran, receives a VA pension which was most recently updated in May 2022 to \$90 per month (Testimony and Exhibit 1).
5. But for regularly occurring, unreimbursed medical expenses, the appellant would not have qualified for the VA payment (Testimony and Exhibit 2 at 2-3).
6. The appellant's income qualifies under the BRAVE Act (Testimony and Exhibit 2).
7. MassHealth did not receive complete information indicating that the income would fall under the BRAVE Act until February 24, 2022 (Exhibit 5).
8. The record was initially held open until December 13, 2022 for MassHealth to review the appellant's submission and until December 20, 2022 for the appellant to respond, if needed. Ultimately, the record closed on December 5, 2022 after parties had supplied and responded the necessary information (Exhibits 4 and 5).

Analysis and Conclusions of Law

Pursuant to 130 CMR 515.008(A), an “applicant or member must cooperate with the MassHealth agency in providing information necessary to establish and maintain eligibility...” Additionally, 130 CMR 610.071 states the following regarding evidence:

(A) General.

(1) The rules of evidence observed by courts do not apply to fair hearings, but the hearing officer observes the rules of privilege recognized by law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Unduly repetitious or clearly irrelevant evidence may be excluded.

(2) The hearing officer may not exclude evidence at the hearing for the reason that it had not been previously submitted to the acting entity, provided that the hearing officer may permit the acting entity representative reasonable time to respond to newly submitted evidence. **The effective date of any adjustments to the appellant's eligibility status is the date on which all eligibility conditions were met, regardless of when the supporting evidence was submitted.** (Emphasis added).

Furthermore, MassHealth Eligibility Operations Memorandum 19-08 dated July 15, 2019, states that the BRAVE Act amended Section 25 of Massachusetts General Laws, chapter 118. “Under this amendment, **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 expenses.’**” (Emphasis added).

Based on the testimony and documentation provided, the appellant has established that her VA pension falls under the BRAVE Act and should not have been included as countable income. While MassHealth did not have the necessary documentation to establish that until February 2022 and could not backdate the requested update to the PPA any further, under the fair hearing regulations found at 130 CMR 610.071(A)(2), the effective date of any adjustment is the date on which all eligibility conditions were met, regardless of when the supporting evidence was submitted. For this reason, the appeal is approved and the appellant’s VA pension should not be included in her countable income and her PPA should be adjusted accordingly, going back to November 1, 2020.

Order for MassHealth

Disregard the appellant's VA pension and recalculate the appellant's PPA retroactive to November 1, 2020.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957

[REDACTED]