

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Approved in part; Remanded	Appeal Number:	2209213
Decision Date:	3/9/2023	Hearing Date:	01/20/2023
Hearing Officer:	Scott Bernard		

Appearance for Appellant:



Appearance for MassHealth:

Scott Michael (Taunton 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; Dismissed in part; Remanded	Issue:	Long Term Care (LTC) Countable Assets and Income
Decision Date:	3/9/2023	Hearing Date:	01/20/2023
MassHealth's Rep.:	Scott Michael	Appellant's Rep.:	Patricia Servaes; Donna Pilling Morris
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 November 21, 2022, MassHealth denied a September 28, 2022 application because she had more countable assets than MassHealth benefits allow. (See Ex. 1, pp. 25-28; 130 CMR 520.003; 520.004). The appellant filed this appeal in a timely manner on December 14, 2022. (See 130 CMR 610.015(B) and Ex. 1). Denial of assistance is valid grounds for appeal. (See 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's application for having assets exceeding the asset limit.

Issue

The appeal issues are whether MassHealth was correct, pursuant to 130 CMR 520.003 and 520.004, in determining that the appellant was over the countable asset limit and whether there are other errors that can be corrected.

Summary of Evidence

The MassHealth representative testified that in 2021 he worked on the appellant's initial application upon intake. The MassHealth representative stated that as an intake worker, he generally only is

responsible for the initial approval or denial of LTC benefits. In 2021, MassHealth approved the appellant's LTC application. The MassHealth representative stated that the appellant had a fiduciary bank account which contains her income from the Veteran's Administration (VA). The MassHealth representative stated that this was not a countable asset and in 2021 he put a note in the appellant's computer file instructing that this asset was not to be counted. In November 2022, the worker must not have seen that note because that worker treated the account as a countable asset resulting in the notice under appeal. The MassHealth representative stated that it took him some time to untangle what occurred. Once he did figure this out, the MassHealth representative corrected the issue, and put another note in the appellant's computer file. MassHealth then issued a new notice on January 10, 2023, approving the appellant for LTC benefits with a monthly PPA of \$1,470.12 beginning February 1, 2023. (Ex. 3). The MassHealth representative apologized for the inconvenience caused by the denial notice but stated that there has been no interruption in the appellant's LTC since her initial approval in 2021.

The appellant's representative stated that the January 10, 2023 MassHealth notice only addresses the countable asset issue. She stated that MassHealth has also treated the appellant's pension income as countable since 2021. The appellant's representative stated that MassHealth only corrected the PPA from February 1, 2023. The appellant's representative stated that MassHealth has incorrectly calculated the PPA going back to June 2021 because they have treated the appellant's VA pension as countable income. The appellant's representative stated that the appellant's VA pension should have been excluded in its entirety under the BRAVE Act¹. Instead, the pension was used to calculate the appellant's PPA from the beginning.

In a memorandum submitted as part of the fair hearing request, the appellant's representative wrote the following. (Ex. 1, pp. 5-8). The appellant entered an intent to file was entered in the VA record on July 19, 2017 and submitted a full application on May 5, 2018. (Ex. 1, p. 11). On July 30, 2018, the VA granted the appellant a pension as a widowed spouse of a veteran, with aid and attendance benefits. (Ex. 1, pp. 11-16). Although the appellant's monthly income of \$1,390 exceeded the VA's 2017 maximum pension benefit of \$1,153, she was permitted to deduct \$4298.00 in monthly unreimbursed medical expenses from her income and her total assets were less than the VA's calculated maximum asset limit based on her life expectancy and cash flow. (Ex. 1, pp. 11-16).

Because the appellant's gross monthly and annual income figures were in excess of the VA's 2017 surviving spouse pension benefit of \$1,153 *per* month, she would not have qualified for the VA payment except for her unreimbursed medical expenses as outlined above. (Ex. 1, pp. 11-16). Specifically, the appellant's income was reduced by her regularly occurring unreimbursed medical expenses. (Ex. 1, pp. 11-16). By the time the appellant applied for MassHealth the cost of living adjustments had increased the VA benefit to \$1,244 per month and the appellant no longer had rental or interest income. (Ex. 1, p. 20).

The appellant applied for MassHealth LTC benefits in 2021, In a notice dated September 1, 2021, MassHealth approved the appellant's application for LTC benefits. (Ex. 1, 21-24). This included a PPA that would be owed to the nursing facility beginning on June 1, 2021. In calculating the PPA,

¹ The Act Relative to Veterans Benefits, Rights, Appreciation, Validation, and Enforcement (BRAVE). (See Ex. 1, pp. 9-10). The parts of the act relevant to this appeal are codified at G.L. c. 118E, § 25(4 ½) and implemented *via* 130 CMR 520.015(E) (see below).

MassHealth counted the appellant's VA pension as part of her income (Ex. 1, pp. 21-24). The appellant's representative stated that the VA pension should have been excluded from the PA calculation as the appellant would not have received the pension payments from the VA without consideration of her unreimbursed medical expenses. (Ex. 1, pp. 11-16). The appellant's representative argued that MassHealth compounded that error by subsequently denying the appellant's eligibility in the November 21, 2022 notice for being over assets. (Ex. 1, pp. 25-28). The appellant's representative asked that MassHealth cease counting the appellant's VA pension as income or an asset, and correct the error to the appellant's PPA calculation.

Findings of Fact

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

1. The appellant entered an intent to file in the VA record on July 19, 2017 and submitted a full application on May 5, 2018. (Ex. 1, pp. 5-8, 11).
2. On July 30, 2018, the VA granted the appellant a pension as a widowed spouse of a veteran, with aid and attendance benefits. (Ex. 1, pp. 5-8, 11-16).
3. Although the appellant's monthly income of \$1,390 exceeded the VA's 2017 maximum pension benefit of \$1,153, she was permitted to deduct \$4298.00 in monthly unreimbursed medical expenses from her income and her total assets were less than the VA's calculated maximum asset limit based on her life expectancy and cash flow. (Ex. 1, pp. 5-8, 11-16).
4. The appellant applied for MassHealth LTC benefits in 2021. (Testimony of the appellant's representative; Testimony of the MassHealth representative; Ex. 1, pp. 5-8, 21-24).
5. In a notice dated September 1, 2021, MassHealth approved the appellant's application for LTC benefits with a PPA owed to the nursing facility starting on June 1, 2021. (Ex. 1, pp. 21-24).
6. MassHealth counted the appellant's VA pension as part of her income and calculated her PPA based on that income. (Ex. 1, pp. 21-24).
7. Through a notice dated November 21, 2022, MassHealth denied the appellant's September 28, 2022 application because she had more countable assets than MassHealth benefits allow. (Ex. 1, pp. 25-28).
8. In making this determination, MassHealth counted a fiduciary bank account that contains her VA pension. (Ex. 1, pp. 25-28; Testimony of the MassHealth representative; Testimony of the appellant's representative).

Analysis and Conclusions of Law

The total value of countable assets owned by or available to individuals applying MassHealth LTC benefits may not exceed \$2,000 for that individual. (130 CMR 520.003(A)(1); 520.016(A)). Certain assets are exempt from consideration when determining the value of assets. (130 CMR 520.008).

The non-countable assets include veterans' payments for aid and attendance, unreimbursed medical expenses, housebound benefits, and enhanced benefits retained after the month of receipt, provided these payments are separately identifiable, are considered noncountable assets. (130 CMR 520.008(G)). In the notice under appeal, MassHealth counted a fiduciary bank account where the VA deposits the appellant's pension. The MassHealth representative conceded that this was an error. In a notice dated January 10, 2023, the MassHealth representative corrected this error. For that reason, in accordance with 130 CMR 610.051(B), the part of this appeal concerning countable assets is DISMISSED.

An individual's gross income less certain expenses and deductions is referred to as the countable-income amount. (130 CMR 520.009(A)(1)). For institutionalized individuals, specific deductions are applied against the individual's countable-income amount to determine the patient-paid amount. (130 CMR 520.009(A)(3)).

Certain types of income, however, are not considered in determining the financial eligibility of the applicant or member. (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 1/2) 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 since 2018, the appellant has been the recipient of a monthly VA pension as a widowed spouse of a veteran. The appellant also receives aid and attendance. The record further shows

that but for her unreimbursed medical expenses, the appellant would not have received this pension. The record further shows that the appellant applied for MassHealth in 2021. MassHealth approved the appellant's application but did count the pension in determining her eligibility and calculating her PPA. MassHealth should never have counted this pension.

For that reason, the appeal is APPROVED IN PART and REMANDED.

Order for MassHealth

The appeal is remanded to MassHealth so that it can recalculate the appellant's income and the PPA without considering any part of the VA Pension from the date of her approval onward.

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

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