

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved

Appeal Number: 2300412

Decision Date: 3/6/2023

Hearing Date: 03/02/2023

Hearing Officer: Alexis Demirjian

Appearance for Appellant:




Appearance for MassHealth:
Yous Khieu, Charlestown 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:	Countable Assets-LTC Application
Decision Date:	3/6/2023	Hearing Date:	03/02/2023
MassHealth's Rep.:	Yous Khieu	Appellant's Rep.:	
Hearing Location:	Chelsea MassHealth Enrollment Center Room 1	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 January 11, 2023, MassHealth denied the Appellant's application for MassHealth benefits because MassHealth determined that Appellant had more countable assets than MassHealth benefits allow. (see 130 CMR 520.003 and Exhibit 3). The Appellant filed this appeal in a timely manner on January 27, 2023 (see 130 CMR 610.015(B) and Exhibit 2).^{1 2} Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

¹ On January 18, 2023, the Board of Hearings received a Request for Fair Hearing filed on behalf of the Appellant without supporting documentation. On January 20, 2023, the Board of Hearings dismissed the matter because the request did not include the required documentation. On January 27, 2023, a new request for a Fair Hearing was filed with appropriate documentation and the matter was scheduled for hearing on March 2, 2023.

² In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, and restated in MassHealth Operations Memo (EOM) 20-10 dated August 1, 2022, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends;
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

Action Taken by MassHealth

MassHealth denied the appellant's application for long-term care because MassHealth determined that the Appellant was over assets by \$24,566.20.

Issue

The appeal issue is whether MassHealth was correct in determining that the Appellant's VA pension and aid and attendance benefits were countable, thus rendering the Appellant ineligible for MassHealth benefits.

Summary of Evidence

The Appellant is over 65 years of age and was admitted to a long-term care facility on [REDACTED] 2022. (Exhibit 5) The Appellant applied for MassHealth long-term care benefits on November 15, 2022. (Id.) The Appellant submitted corroborative information with his application for MassHealth benefits including bank statements, copies of checks, a letter from the Department of Veterans affairs ("VA") summarizing his VA benefits, and a packet from Servaes Consulting Group describing the Appellant's application process for VA benefits. (Id.)

The letter from the VA, dated June 23, 2022, states that the Appellant receives a monthly pension in the amount of \$2,050.00. (Id.) The pension is broken down as follows: \$1,228.58 is the monthly base pension and \$821.42 is awarded monthly for aid and attendance. (Id.) Based on that amount the Appellant would receive \$24,600 per year.³

In addition to the documents described above, the Appellant submitted a packet prepared by Servaes Consulting Group, LLC,⁴ dated October 26, 2022, that describes in detail and specificity the rationale explaining why the Appellant was granted a VA pension with aid and attendance benefit. (Id.) Servaes's consulting services were utilized by the Appellant to help him obtain a VA pension with aid and attendance benefit. (Id. and Testimony) Servaes prepared the analysis and application for the Appellant to receive the VA pension with aid and attendance benefit in September of 2021. (Id.)

According to the Servaes submission, the Appellant was awarded the VA pension with aid and attendance benefit because he was determined to have a regularly occurring, Unreimbursed Medical Expense "UME." (Id.) Had the Appellant not had an UME; he would not have qualified for the VA

³ The Hearing Officer recognizes that the monthly amount of the pension is subject to change based on cost-of-living increases, thus the amount of assets resulting from the Appellant's VA pension is subject to change.

⁴ Servaes Consulting is a VA accredited Agent, 20796. The Department of Veterans Affairs accredits three types of representatives, attorneys and gents – to help ensure that claimants have access to responsible and qualified representative on their VA benefits claims. VA accredited representatives must have good moral character and be competent representation, and VA's Office of General Counsel is responsible for making those determinations through its accreditation process. www.benefits.va.gov/vso (last viewed on March 3, 2023).

pension with aid and attendance benefit. (Id.) Therefore, the Appellant maintains that the VA pension payments received since October 16, 2021, should be excluded from his countable assets and the patient pay amount (PPA) calculation, as the Appellant would not have received the pension payments but for the UME.

In support of the Appellant's argument, the Appellant submitted a letter from the VA which explained how the VA determined the Appellant's benefits. (See Exhibit 4, pp. 6 -13). The letter states that the Appellant was awarded a VA pension with aid and attendance benefits on October 16, 2021. (Id.) The official VA claims letter shows the income and expenses used by the VA to determine the Appellant's eligibility for VA benefits as of October 16, 2021. (Id.) The income considered by the VA was the following:

	Annual Liberty Mutual Income	Annual Social Security	Annual OPM Retirement	Annual Interest Income
Appellant	\$28, 119.00	\$19,086.00	\$16,080.00	\$1.00

However, the VA went on to state that the "we used your medical expenses of \$65,670.00, which represents the amount you pay for Medicare Part B Premiums and Assisted Living fees as continuing deductions from October 16, 2021." Thus, reducing the Appellant's VA countable income to \$0.00 and entitling him to a VA pension and aid and attendance benefits. Therefore, the Appellant was only deemed eligible for a VA pension and aid and attendance benefits due to his UME which totaled \$65,670.00.

The same VA letter includes a chart of total income shown to award the Appellant's VA pension benefit from December 1, 2021.

	Annual Liberty Mutual Income	Annual Social Security	Annual OPM Retirement	Annual Interest Income
Appellant	\$28, 119.00	\$20,221.00	\$16,080.00	\$1.00

Again, the VA used the Appellant's UME of \$65,670.00, which represented his payments for Medicare Part B Premiums and Assisted Living fees as continuing deductions from December 1, 2021. Thus, reducing the Appellant's VA countable income to \$0.00. Therefore, the Appellant was only entitled to his VA pension and aid and attendance benefit due to UME.

The MassHealth MEC Worker reviewed the documentation submitted and included the VA pension benefits and aid and attendance benefits as a countable asset when determining the Appellant's eligibility. (Testimony and Exhibit 3).

On January 11, 2023, MassHealth issued a denial notice, which states that upon review by MassHealth, \$26,566.20 were held in the Appellant's bank accounts. Less the \$2,000 allowed by MassHealth, the total amount determined over asset was \$24, 566.20. (See Exhibit 3)

MassHealth was represented at this hearing by the MEC worker assigned to review this Appellant's

application.⁵ The MEC worker testified that he determined that the Appellant's pension was a countable asset pursuant to 130 CMR 520.008 (G). This regulation specifically deals with Veterans' Payments and holds that Veterans' payments for aid and attendance, unreimbursed medical expenses, housebound benefits, and enhanced benefits retained after the month of receipt, provided that these payments are separately identifiable, are considered noncountable assets. See 130 CMR 520.008 (G). According to the MEC worker, his understanding of that regulation is that monies received in each of those specified areas must be held separately in **different accounts** to be deemed non-countable.

The MEC worker was asked about the applicability of Eligibility Operations Memo 19-08 ("EOM 19-08"), which concerns The Act Relative to Veterans Benefits, Rights, Appreciation, Validation, and Enforcement (BRAVE Act) and how MassHealth Eligibility Operations Staff must treat veteran's monthly benefits if the benefits were received from the VA due to UME. The MEC worker claimed that the eligibility memorandum and the regulation conflicted with one another and that the Board of Hearings should determine the Appellant's eligibility. The MEC worker was asked if he reviewed this matter with a supervisor and he testified that he did not.

In response to the MEC worker's testimony, the Appellant's representative strongly disagreed with his interpretation of 130 CMR 520.008 (G) and further argued the BRAVE Act was applicable in this matter and that MassHealth incorrectly determined that the Appellant's VA pension and aid and attendance benefits were countable assets.

Findings of Fact

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

1. The Appellant is over age 65.
2. The Appellant applied for long term care benefits on November 15, 2023.
3. The Appellant receives a VA pension with aid and attendance benefits that he would not been entitled to receive except for unreimbursed medical expenses (UME).
4. MassHealth erred in counting the Appellant's VA pension and aid and attendance benefits as countable assets.

Analysis and Conclusions of Law

Certain sources of assets are considered noncountable for MassHealth purposes. Included as noncountable assets are Veterans' payments for aid and attendance, unreimbursed medical

⁵ Documents for hearing submitted on behalf of MassHealth were not submitted to the Hearing Officer in advance of the hearing.

expenses, housebound benefits, and enhanced benefits retained after the month of receipt, provided that these payments are separately identifiable. (130 CMR 520.008 (G)).

Further, pursuant to 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 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).)

Despite the MEC Worker’s belief that 130 CMR 520.008 (G) and EOM 19-08 conflict with each other, and rather than seek guidance from a supervisor to get clarification on the issue, he chose to disregard EOM 19-08’s directive which specifically addressed a change to the law concerning non-countable assets for VA benefits. Pursuant to M.G.L. Ch. 118E § 12, MassHealth may formulate policies, procedures, standards, and criteria to for the proper and efficient operation of MassHealth in a manner consistent with the simplicity of administration and the best interests of recipients.

Here, MassHealth issued EOM 19-08 to do just that, it provided clear guidance for proper and efficient operation of the changes related to M.G.L. Ch. 118E § 25 (4.25) as required by the

BRAVE Act. It is unclear why this MEC Worker believes that he can disregard the clear instructive guidance of EOM 19-08.

In defense of the denial, the MEC Worker testified that he has erroneously inserted a condition into the regulations, specifically, Veterans' payments for aid and attendance, unreimbursed medical expenses, housebound benefits, and enhanced benefits retained after the month of receipt, must be **kept in separate accounts** to be considered non-countable assets. The regulation merely states that the benefits are non-countable if they "are separately identifiable" and does not require they be kept in separate accounts or paid by separate disbursements.

There was significant documentation included with the Appellant's application that allows for separate identification of the VA benefits consistent with the regulation. Most importantly, the Appellant submitted sufficient evidence to MassHealth in his application and at hearing, that the Appellant would not have received the VA pension and aid and attendance benefits but for the fact that he had significant unreimbursed medical expenses. The evidence clearly establishes that this application should have been treated consistent with the provisions of the BRAVE Act and M.G.L. Ch. 118E § 25 (4.5) and the Appellant's VA pension and aid and attendance benefit were non-countable for determining MassHealth eligibility.

Despite the MEC Worker's apparent confusion of about the applicability of EOM 19-08, it would have been wise to seek guidance from a superior on how to review the Appellant's VA benefits. The evidence in this case is clear, MassHealth erred in determining that the Appellant's assets related to receiving a VA pension and aid and attendance were countable.

Therefore, for reasons detailed above, this appeal is APPROVED.

Order for MassHealth

Rescind the January 11, 2023rd denial. Recalculate the Appellant's countable income and assets excluding his VA benefits in accordance with EOM 19-08. Approve the Appellant for MassHealth Standard.

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.

Alexis Demirjian
Hearing Officer
Board of Hearings

cc:

[REDACTED]

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