

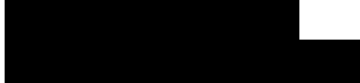
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2300951
Decision Date:	6/5/2023	Hearing Date:	03/09/2023
Hearing Officer:	Christopher Jones	Record Open to:	04/28/2023

Appearance for Appellant:




Appearance for MassHealth:

Jonathan Gonzalez



*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:	Denied	Issue:	LTC – PPA
Decision Date:	6/5/2023	Hearing Date:	03/09/2023
MassHealth's Rep.:	Jonathan Gonzalez	Appellant's Rep.:	
Hearing Location:	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 December 15, 2022, MassHealth increased the appellant's patient-paid amount to \$6,295.62. (Exhibit2; 130 CMR 520.025-520.026.) The appellant filed this appeal in a timely manner on February 6, 2023. (Exhibit 2; 130 CMR 610.015(B); EOM). MassHealth determinations regarding the scope of assistance are valid grounds for appeal. (130 CMR 610.032.)

Following the hearing, the appellant's representatives requested that the record remain open until April 28, 2023 to submit additional evidence.

Action Taken by MassHealth

MassHealth updated the appellant's patient-paid amount to reflect an adjustment in the appellant's income.

Issue

The appeal issue is whether a portion of the appellant's income should be excluded under either 130 CMR 520.015(E) or MGL Ch. 118E § 25(4.5).

Summary of Evidence

The appellant was approved for MassHealth long-term-care benefits on October 14, 2022, and her patient-paid amount (“PPA”) was set at \$6,259.62. This PPA was calculated in part upon private pensions, in part upon Social Security benefits, and in part upon a Veteran’s Affairs (“VA”) benefit. MassHealth’s representative explained that the appealed notice was an adjustment from the initially approved PPA based upon a cost of living adjustment to the Social Security benefits. MassHealth had not otherwise changed how it was treating the appellant’s income.

The appellant’s representatives submitted a pre-hearing memorandum that argues the appellant’s VA Survivors Pension “should have been excluded from the Appellant’s PPA pursuant to the Massachusetts ‘Brave Act.’ The Appellant submits evidence that the benefits being paid are documented as ‘aid & attendance’ benefits by the Veterans Administration.” (Exhibit 3, p. 2.) Also attached to this brief memorandum was a VA award letter dated June 6, 2019 that awarded \$1,176.00 per month as of December 1, 2017 for “Grant of Survivors Pension with Aid and Attendance,” and increased the payment to \$1,209.00 as of December 1, 2018 for “Cost of Living Adjustment.” (Exhibit 3, p. 8.) A separate letter from the VA dated September 26, 2022 states the appellant “receives \$1,318.00 per month,” but it does not identify the basis of that award; nor does it break out the portion attributable to Aid and Attendance benefits. (Exhibit 3, p. 6.)

MassHealth’s representative explained VA pensions can be comprised of both countable pension and non-countable Aid and Attendance benefits. MassHealth’s practice is to require a member get a letter from the VA that breaks out how much of any pension is non-countable Aid and Attendance. The appellant’s representatives believed that these benefits should be excluded under the Brave Act, and that the money should be the appellant’s son’s now. The appellant’s representatives had very little information regarding how or why the appellant was receiving a Survivors Pension, other than the fact that they were associated with the appellant’s deceased spouse’s service. The appellant’s daughter had worked for a VA hospital and got the appellant to apply for benefits, but other than that the appellant’s representatives had no specific information regarding the nature of the pension.

The parties discussed how VA pensions are calculated and that it is possible to recreate the calculation based upon published guidance.¹ The VA typically awards a pension using a Maximum Annual Pension Rate (“MAPR”), which is reduced based upon the applicant’s other income. At the hearing, it was impossible to establish how the appellant could have been awarded a pension that included Aid and Attendance benefits. The appellant asked that the record be left open to allow them to get the VA to provide a letter “breaking out what portion of the pension is ... due to Aid and

¹ It was also pointed out that an institutionalized beneficiary’s VA pension is usually reduced to \$90 per month, and the appellant’s representatives were asked if they had reported the appellant’s institutionalization.

Attendance or Housebound benefits or another “added amount”; or [s]ufficient evidence that allows for the appellant’s VA benefit to be clearly re-calculated.” (Exhibit 4, p. 3.)

The appellant responded with an updated letter and clarified that all of payment is pension, and that none of the pension amount is for Aid and Attendance. The appellant went on to ask that MassHealth recalculate the appellant’s benefits “in light of the Massachusetts Brave Act” (Exhibit 3, p. 2; Exhibit 5.) The appellant’s attorney was asked to provide some legal analysis to explain how the Brave Act was applicable in the absence of Aid and Attendance or Unreimbursed Medical Expenses. He did not respond.

Findings of Fact

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

1. The appellant was approved for long-term-care benefits on October 14, 2022 with a PPA of \$6,259.62 per month. (Testimony by MassHealth’s representative.)
2. Through a notice dated December 15, 2022, MassHealth increased the appellant’s PPA to \$6,295.62 based upon an increase in the appellant’s income. (Exhibit 2; testimony by MassHealth’s representative.)
3. The appellant asked that her VA pension be excluded from the calculation of her PPA pursuant to the Brave Act. The appellant’s VA pension is not based in any part upon Aid and Attendance or Unreimbursed Medical Expenses. (Exhibits 2; 3; 4, p. 2; 5.)

Analysis and Conclusions of Law

A MassHealth long-term-care beneficiary must contribute most of their income toward the cost of their nursing facility care. Only specifically allowed deductions may be kept from an institutionalized member’s income. (See 130 CMR 520.026.) Certain sources of income are not included in countable income, 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).)

The Massachusetts Legislature has also passed the “Brave Act,” which states in the relevant 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:

...

(4.5) 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;**

(MGL Ch. 118E § 25(4.5) (emphasis added).)

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).)

In their post-hearing submission, the appellant conceded that their award is not premised upon Aid and Attendance. The evidence does not support that the benefits are premised on Unreimbursed Medical Expenses. Nor has the appellant submitted any legal analysis to explain why the VA benefits should be non-countable otherwise. Therefore, neither 130 CMR 520.015(E) nor the Brave Act are applicable, and 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.

Christopher Jones
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Nga Tran, Charlestown MassHealth Enrollment Center, 529
Main Street, Suite 1M, Charlestown, MA 02129

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