

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2303651
<b>Decision Date:</b>	07/26/2023	<b>Hearing Date:</b>	06/01/2023
<b>Hearing Officer:</b>	Scott Bernard		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Dianne Braley (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

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Long Term Care (LTC) Countable Income
<b>Decision Date:</b>	07/26/2023	<b>Hearing Date:</b>	06/01/2023
<b>MassHealth's Rep.:</b>	Dianne Braley	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	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 April 27, 2023, MassHealth notified the appellant that his patient paid amount (PPA) would change from \$2,615.80 to \$567.10 on April 1, 2023 because of a change to his circumstances. (See 130 CMR 520.025; 520.026 and Exhibit (Ex.) 1). The appellant filed this appeal in a timely manner on May 3, 2023. (See 130 CMR 610.015(B) and Ex. 2). Denial of assistance is valid grounds for appeal. (See 130 CMR 610.032).

### Action Taken by MassHealth

MassHealth notified the appellant that his PPA would decrease due to a change in his circumstances.

### Issue

The appeal issue is whether MassHealth correctly calculated the appellant's PPA.

## Summary of Evidence

The MassHealth representative stated that this was an appeal of the notice dated April 27, 2023. (Ex. 1). The appellant is disputing the fact that MassHealth counted his Department of Veterans Affairs (VA) Pension with Aid and Attendance in order to determine his PPA. The MassHealth representative conceded that under the BRAVE Act<sup>1</sup>, MassHealth should not have considered the VA Pension with Aid and Attendance in calculating the appellant's PPA. The MassHealth representative stated that she has corrected this mistake retroactively back to January 1, 2022. From that date until March 31, 2023, the revised monthly PPA was \$320.80 per month. Effective April 1, 2023, this changed to \$567.10 per month. The nursing facility had asked for the appellant's LTC benefit to begin as of December 2, 2021. (Ex. 5, p. 3).

Prior to the hearing, the appellant's representative presented the following written evidence. (See Ex. 2). On December 30, 2021, MassHealth approved the appellant for LTC benefits with a start date of December 1, 2021<sup>2</sup> and a PPA of \$3,035.35 per month. (Ex. 2, pp. 21-22). In calculating the PPA, MassHealth used the appellant's VA Pension with Aid and Attendance. (Ex. 2, p. 22). On July 12, 2022, MassHealth notified the appellant that it was changing his PPA from \$3,083.80 to \$2,616.80 as of July 1, 2022. (Ex. 2, pp. 19-20). Again, MassHealth used the VA Pension with Aid and Attendance to calculate the PPA. (Ex. 2, p. 20).

The appellant's representative provided a notice from the VA indicating that the appellant has been receiving the VA Pension with Aid and Attendance since at least December 1, 2019. (Ex. 2, p. 18). The appellant's representative wrote that the appellant and his spouse's combined income of \$4,242.20 was in excess of the VA maximum monthly pension of \$2,431. (Ex. 2, pp. 10, 13-16). A notice from the VA dated June 3, 2022, shows that without his medical expenses of \$4,286, the appellant's benefit would be \$0. (Ex. 2, p. 10). This was what demonstrates that the appellant was eligible for the VA Pension with Aid and Attendance. MassHealth should therefore have not counted his Aid and Attendance going back to December 2, 2021.

At the hearing, the appellant's representative stated that she was pleased with MassHealth's decision to recalculate the appellant's PPA from January 2022 by disregarding the non-countable Aid and Attendance. The appellant's representative argued that since the appellant has had Veterans Aid and Attendance since at least 2019, the correction should also have included the PPA for December 2021. (Ex. 2, p. 18). The MassHealth representative stated that she would revise the PPA to reflect this, but the appellant's representative did not wish to withdraw the appeal until she received assurance that MassHealth had revised the PPA going back to the appellant's coverage start date.

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<sup>1</sup> Officially known as An Act Relative to Veteran' Benefits, Rights, Appreciation, Validation and Enforcement. 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).

<sup>2</sup> It appears that the facility requested a start date of December 2, 2021, so it appears the use of this date may be a mistake on MassHealth's part.

## Findings of Fact

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

1. The appellant has received VA Pension with Aid and Attendance since at least December 1, 2019. (Ex. 2, p. 18).
2. Since the appellant and his spouse's combine incomes exceed the maximum Veterans benefit rate. (Ex. 2, pp. 10, 13-16).
3. The appellant would not receive a pension but for his unreimbursed medical expenses. (Ex. 2, pp. 13-16).
4. The appellant therefore receives the VA Pension with Aid and Attendance. (Ex. 2, pp. 13-16).
5. Under MassHealth regulations, the VA Pension with Aid and Attendance is not countable income. (Testimony of the MassHealth representative; Testimony of the appellant's representative).
6. The appellant applied for MassHealth LTC benefits seeking a start date of December 2, 2021. (Testimony of the MassHealth representative; Ex. 5, p. 3).
7. On December 30, 2021, MassHealth approved the appellant for LTC benefits with a start date of December 1, 2021 and a PPA of \$3,035.35 per month. (Ex. 2, pp. 21-22).
8. In calculating the PPA, MassHealth used the appellant's VA Pension with Aid and Attendance. (Ex. 2, p. 22).
9. On July 12, 2022, MassHealth notified the appellant that it was changing his PPA from \$3,083.80 to \$2,616.80 as of July 1, 2022. (Ex. 2, pp. 19-20).
10. Again, MassHealth used VA Pension with Aid and Attendance to calculate the PPA. (Ex. 2, p. 20).
11. During the pendency of the appellant's appeal, MassHealth revised the calculation of the appellant's PPA by removing the VA Pension with Aid and Attendance from the calculation. (Testimony of the MassHealth representative).
12. The revised monthly PPA was \$320.80 per month from January 1, 2022 through March 31, 2023. (Testimony of the MassHealth representative).
13. The revised monthly PPA is \$567.10 per month from April 1, 2023 to the present. (Testimony of the MassHealth representative; Ex. 1).

14. The monthly PPA for December 2021 would also be corrected and revised. (Testimony of the MassHealth representative).

## Analysis and Conclusions of Law

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 ½ ) 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 at least 2019, the appellant has been the recipient of a monthly VA Pension with Aid and Attendance as a veteran. The record further shows that but for his

unreimbursed medical expenses, the appellant would not have received this pension. Therefore, this type of income was never countable under the regulations and should have been treated as non-countable at the time. The record further shows that the appellant applied for MassHealth in December 2021. On December 30, 2021, MassHealth approved the appellant's application but used the VA Pension with Aid and Attendance to calculate his PPA. This continued until MassHealth corrected the mistake and retroactively recalculated the PPA going back to January 1, 2022. Considering that the appellant had the VA Pension with Aid and Attendance prior to the requested start date, MassHealth should revise the PPA for December 2021 as well.<sup>3</sup>

For the above stated reasons, the appeal is APPROVED.

## **Order for MassHealth**

If MassHealth has not done so already, it must recalculate the appellant's PPA from the requested start date in December 2021 to the present by excluding the appellant's VA Pension with Aid and Attendance.

## **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.

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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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<sup>3</sup> Because MassHealth was never permitted to use the VA Pension with Aid and Attendance in the calculation of the PPA under the BRAVE Act, this appeal can potentially affect all PPA calculations that used that benefit despite the fact that the appellant did not appeal any MassHealth notice concerning PPA calculations prior to the April 27, 2023 notice.