

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	DENIED	Appeal Number:	2404886
Decision Date:	6/20/2024	Hearing Date:	05/02/2024
Hearing Officer:	Kenneth Brodzinski		

Appearance for Appellant:

Pro se

Appearance for MassHealth:

Alyssa Smalley



*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:	Frail Elder Waiver - Countable Income
Decision Date:	6/20/2024	Hearing Date:	05/02/2024
MassHealth's Rep.:	Alyssa Smalley	Appellant's Rep.:	Pro se
Hearing Location:	Tewksbury MEC		

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 March 5, 2024, MassHealth determined that Appellant is not eligible for MassHealth benefits due to her income exceeding eligibility limits (Exhibit A). Appellant filed for this appeal in a timely manner on March 27, 2024 (see 130 CMR 610.015(B) and Exhibit A). Denial of assistance constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that Appellant is not eligible for MassHealth benefits due to her income exceeding eligibility limits.

Issue

The appeal issue is whether MassHealth properly applied the controlling regulation(s) to accurate facts when it determined that Appellant is not eligible for MassHealth benefits due to her income exceeding eligibility limits.

Summary of Evidence

The Masshealth representative testified that Appellant is an adult female, over the age of 65 who resides in the community in a household of one. Masshealth has Appellant's verified gross countable monthly income at \$3,166.00 comprised of gross Social Security of \$1,748.70 and gross VA benefit of \$1,437.66. The combined total is reduced by a standard \$20 unearned income deduction to yield the countable gross monthly income for Masshealth eligibility purposes.

The MassHealth representative testified that Appellant's gross countable monthly income exceeds 300% of the Federal Benefit Rate (FBR) of \$2,829.00 making her ineligible for the Frail Elder Waiver. Her countable income also exceeds 100% of the Federal Poverty Level of \$1,255.00, the eligibility limit for MassHealth Standard for a person over the age of 65 residing in the community in a household of one. Appellant is eligible for a deductible of \$13,767.00 every 6 months meaning that if Appellant acquires medical bills totaling the deductible amount in a 6-month period, she would qualify for MassHealth Standard for the remainder of that 6-month period. Thereafter, she would need to meet the next 6-month deductible of the same amount.

Lastly, the MassHealth representative explained that earlier during the Covid pandemic, Appellant had been approved for benefits through the Frail Elder Waiver. These benefits were kept in place during the Covid-protection period while Appellant's income was changing. When the Covid protections were removed for everyone, eligibility was re-determined with the results set forth above.

Appellant appeared on her own behalf. She did not dispute the income amounts and household size reported by the MassHealth representative. Appellant did dispute the calculation of her total countable monthly income. Appellant asserted that her VA benefit should not be counted as it is non-taxable. Appellant testified that she receives monthly Dependency and Indemnity Compensation (DIC) from the Veterans Administration due to her being the surviving spouse of a member of the military who was killed in action (Exhibit C). Appellant asserted that along with being a non-taxable VA benefit, her DIC payment should not be countable under the BRAVE ACT of 2018. Appellant submitted copies of a supporting letter from the office of her Massachusetts State Representative (Exhibit B) and MassHealth Operations Memo 19-08. Appellant also stated that her DIC benefit is not a VA pension, but a benefit akin to life insurance.

Findings of Fact

Based on a preponderance of the evidence, this record supports the following findings:

1. Appellant is an adult female, over the age of 65 who resides in the community in a household of one.
2. Appellant verified her gross monthly income to be comprised of Social Security of \$1,748.70 and a VA benefit of \$1,437.66.
3. Appellant's monthly VA benefit is a Dependency and Indemnity Compensation (DIC) payment due to her for being the surviving spouse of a member of the military who was killed in action (Exhibit C).
4. MassHealth reduced the combined total gross income by a standard \$20 unearned income deduction to yield \$3,166.00 which is Appellant's countable gross monthly income for Masshealth eligibility purposes.
5. Appellant's gross countable monthly income exceeds 300% of the Federal Benefit Rate (FBR) of \$2,829.00.
6. Appellant's income exceeds 100% of the Federal Poverty Level for a person residing in a household of one, \$1,255.00.
7. MassHealth determined that Appellant is not eligible for either the Frail Elder Waiver or Masshealth Standard.
8. MassHealth determined that Appellant is eligible for a deductible of \$13,767.00 every 6 months.

Analysis and Conclusions of Law

The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity (*Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989)).

On this record, Appellant has not met her burden.

Appellant cited the BRAVE Act of 2018 to support her position that her monthly Veterans DIC benefit is not countable for Masshealth eligibility purposes. The BRAVE Act does direct MassHealth not to count VA benefits, but only in certain circumstances. This is described in the

relevant MassHealth Operations Memo.

MassHealth Eligibility Operations Memo 19-08 July 15, 2019, which offers guidance based on the agency's understanding of the law, states:

Massachusetts General Law Amendment

*The BRAVE Act amended Section 25 of Massachusetts General Laws (M.G.L.) chapter 118E in how we count federal veterans' benefits. 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 expense.**"*

Summary

*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.*

(emphasis added)

Massachusetts General Laws Chapter 118E, Section 25, in relevant part, currently states:

Section 25. 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:

*Subsection 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 expenses** (emphasis added).*

Operations Memo 19-08 is consistent with MGL Ch. 188E, sec. 25, although the Summary of the Operations Memo should not lead one to incorrectly conclude that it pertains only to VA

pensions. The BRAVE Act pertains to any “monthly payment to a veteran or a widowed spouse of a veteran”. This would include a monthly VA DIC payment of the kind Appellant receives.

However, Appellant has not shown to either MassHealth or to this Board that she receives her VA benefit due to unreimbursed medical expenses (UME). Until such a showing is made, the Brave Act does not apply to Appellant’s VA DIC benefit for MassHealth eligibility purposes (see also, 130 CMR 520.015(E)).

MassHealth correctly calculated Appellant’s gross countable monthly income for MassHealth eligibility purposes to be \$3,166.00 (130 CMR 520.009).

Pursuant to MassHealth regulation 130 CMR 519.007(B)(2), in order for an individual over the age of 65 residing in the community to be income eligible for the Frail Elder Waiver, countable income cannot exceed 300% of the Federal Benefit Rate (FBR). 300% FBR for a single individual is \$2,829.00 (\$943 x 3). Accordingly, Masshealth correctly determined that Appellant is not income eligible for the Frail Elder Waiver at this time.

Pursuant to MassHealth regulation 130 CMR 519.005(A)(1), in order for an individual over the age of 65 residing in the community to be income eligible for MassHealth Standard, countable income cannot exceed 100% of the FPL for the individual’s household size. The limit for a person residing in a household of one is \$1,255.00. Accordingly, Masshealth correctly determined that Appellant is not income eligible for MassHealth Standard at this time.

MassHealth also properly assessed a 6-month deductible (130 CMR 520.028(B) and 130 CMR 520.029). While Appellant did not dispute the amount of the deductible, the calculation was reviewed and found to be correct (130 CMR 520.030).

For the foregoing reasons, the 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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957, 978-863-9290