

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2405982
Decision Date:	7/8/2024	Hearing Date:	05/23/2024
Hearing Officer:	Scott Bernard	Record Open to:	05/30/2024

Appearance for Appellant:



Appearance for MassHealth:

Pamela Filipe (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	Issue:	Long Term Care (LTC) Patient Paid Amount
Decision Date:	7/8/2024	Hearing Date:	05/23/2024
MassHealth's Rep.:	Pamela Filipe	Appellant's Rep.:	
Hearing Location:	Taunton MassHealth Enrollment Center	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 February 28, 2024, MassHealth notified the appellant that her patient paid amount (PPA) would change from \$2,704.42 to \$2,693.32 on February 1, 2024 because of a change to her circumstances. (See 130 CMR 520.025; 520.026 and Exhibit (Ex.) 5, pp. 1-2). The appellant filed this appeal in a timely manner on April 15, 2024. (See 130 CMR 610.015(B) and Ex. 1; Ex. 2). Challenging the calculation of the PPA is valid grounds for appeal. (See 130 CMR 610.032).

At the hearing, the MassHealth representative requested and was granted seven days to review the documents the appellant's representative submitted to the Board of Hearings and provide a response. The record was therefore left open until May 30, 2024. No response was received by that date and therefore the record closed as of that date.¹

Action Taken by MassHealth

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

¹ The MassHealth representative did email a response on June 20, 2021, but this was well after the close of the hearing record. (Ex. 6).

Issue

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

Summary of Evidence

MassHealth was represented by an eligibility worker from the Taunton MassHealth Enrollment Center (MEC) (the MassHealth representative) and the appellant was represented by a veterans' advocate (the appellant's representative). Both parties attended the hearing by telephone.

The MassHealth representative testified that the appellant is over 65 years old. (Testimony). The appellant was admitted to the nursing facility in the middle of 2023. (Ex. 5, p. 3; Testimony). The appellant was approved for Long Term Care (LTC) benefits beginning on July 7, 2023. (Ex. 5, p. 3; Testimony). On February 28, 2024, MassHealth notified the appellant that as of February 1, 2024, her patient paid amount (PPA) would change from \$2,704.42 to \$2,693.32. (Testimony; Ex. 5, pp. 1-2). The appellant's total unearned income amount is \$3,486, consisting of Social Security (\$2,054.90), her VA pension (\$895.75), and her veterans aid and attendance (\$536.25). (Testimony; Ex. 5, p. 2). In accordance with her reading of the regulations (130 CMR 520.015(E)), the MassHealth representative excluded the aid and attendance as non-countable. (Testimony; Ex. 5, p. 2). MassHealth then based the calculation of the PPA on an income totaling \$2,950.65, consisting of the Social Security and the VA pension. (Testimony; Ex. 5, p. 2). The MassHealth representative stated that the pension is countable while the aid and attendance was not countable. (Testimony).

The appellant's representative testified to the following. In 2019, the appellant's representative prepared the initial analysis and subsequent application for the appellant to receive the Department of Veteran's Affairs ("VA") pension with aid and attendance. (Testimony; Ex. 2, pp. 10-12). The appellant entered an intent to file a VA claim on March 8, 2019, and submitted a full application on February 12, 2020. (Testimony; Ex. 2, pp. 10-12).

The VA granted the appellant's claim for the VA pension with aid and attendance benefit despite her then monthly income of \$1,832.50 being in excess of the 2019 maximum pension benefit of \$1,209 because she had unreimbursed medical expenses that exceeded her monthly income. (Testimony; Ex. 2, pp. 10-12). The appellant would not have qualified for the VA payment except for unreimbursed medical expenses of \$6,294.45 per month. (Testimony; Ex. 2, pp. 10-12).

At the time the appellant applied for MassHealth in 2023, her monthly Social Security income had increased to \$2,006 because of cost of living adjustments. (Testimony; Ex. 2, pp. 10-12). The appellant's monthly Social Security income remains in excess of the current VA maximum pension benefit of \$1,432.00, however her unreimbursed medical expenses continue to exceed her monthly income, and therefore she continues to be eligible for the VA pension with aid and attendance. (Testimony; Ex. 2, pp. 10-12).

The appellant's representative argued that MassHealth incorrectly counted the appellant's VA pension with aid and attendance in its calculation of the appellant's PPA. (Testimony; Ex. 2, pp. 10-12). The appellant's representative asked that the appellant's PPA be recalculated in accordance with MassHealth regulations and the BRAVE Act. (Testimony; Ex. 2, pp. 10-12).

Findings of Fact

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

1. The appellant is over 65 years old. (Testimony).
2. The appellant was admitted to the nursing facility in the middle of 2023. (Ex. 5, p. 3; Testimony).
3. The appellant was approved for LTC benefits beginning on July 7, 2023. (Ex. 5, p. 3; Testimony).
4. On February 28, 2024, MassHealth notified the appellant that as of February 1, 2024, her PPA would change from \$2,704.42 to \$2,693.32. (Testimony; Ex. 5, pp. 1-2).
 - a. The appellant's total unearned income amount is \$3,486, consisting of Social Security (\$2,054.90), her VA pension (\$895.75), and her veterans aid and attendance (\$536.25). (Testimony; Ex. 5, p. 2).
 - b. The MassHealth representative excluded the aid and attendance as non-countable. (Testimony; Ex. 5, p. 2).
 - c. MassHealth then based the calculation of the PPA on an income totaling \$2,950.65, consisting of the Social Security and the VA pension. (Testimony; Ex. 5, p. 2).
5. The appellant entered an intent to file a VA claim on March 8, 2019, and submitted a full application on February 12, 2020. (Testimony; Ex. 2, pp. 10-12).
6. The VA granted the appellant's claim for the VA pension with aid and attendance benefit despite her then monthly income of \$1,832.50 being in excess of the 2019 maximum pension benefit of \$1,209 because she had unreimbursed medical expenses of \$6,294.45 per month that exceeded her monthly income. (Testimony; Ex. 2, pp. 10-12).
7. The appellant continued to be eligible for the VA pension with aid and attendance because her monthly unreimbursed medical expenses exceed her monthly income. (Testimony; Ex. 2, pp. 10-12).

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...

Eligibility Operations Memo 19-08, issued on July 15, 2019, clarifies the above regulation. It outlines the implementation of the BRAVE² Act and states that under this legislation MassHealth is directed to 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 but for unreimbursed medical expense."

The appellant has received a VA pension with aid and attendance since 2020. The appellant's income exceeds the VA's maximum monthly pension benefit, which would normally make her ineligible for the VA pension. The appellant, however, has unreimbursed medical expenses that are greater than her income. It is for this reason only that the appellant is eligible for the VA pension with aid and attendance. Because the appellant would not have received the VA pension with aid and attendance but for her unreimbursed medical expenses, the entirety of her VA pension with aid and attendance is non-countable under the regulations and should have been excluded from the calculation of her income (and therefore the PPA) from the start of her eligibility.

² Officially known as An Act Relative to Veteran' Benefits, Rights, Appreciation, Validation and Enforcement. (St. 2018, c. 218, § 28, eff. Nov. 7, 2018), 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).

For the above stated reasons, the appeal is APPROVED.

Order for MassHealth

MassHealth must recalculate the appellant's PPA from July 7, 2023 by excluding the entirety of 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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

[REDACTED]

[REDACTED]

Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA
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