

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2407628
Decision Date:	08/01/2024	Hearing Date:	06/12/2024
Hearing Officer:	Christine Therrien		

Appearance for Appellant:



Appearances for MassHealth:

Rhiannon Wojick, Tewksbury
Karen Ryan, Tewksbury



*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:	LTC - PPA
Decision Date:	08/01/2024	Hearing Date:	06/12/2024
MassHealth's Reps.:	Rhiannon Wojick, and Karen Ryan	Appellant's Rep.:	
Hearing Location:	Tewksbury MassHealth Enrollment Center Telephonic		

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 3/29/24, MassHealth approved the appellant for long-term care services with a patient-paid amount (PPA) of \$1,283.44 as of 12/1/23. (Exhibit 1). The appellant filed this timely appeal on 5/13/24. (Exhibit 2 and 130 CMR 610.015(B)). PPA determinations are valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth set the appellant's PPA at \$1,283.44 based, in part, upon payments received from the Department of Veteran's Affairs.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.001 *et seq.* and M.G.L. Ch. 118E, §25(4.5), in counting any of the appellant's Veteran's Affairs pension as income in her PPA.

Summary of Evidence

The appellant is the surviving spouse of a veteran. She applied for long-term care benefits on 12/14/23, seeking a start date of 12/12/23. The appellant's monthly income includes Social Security income of \$1,797, a private pension of \$148, and a Survivors Pension from the U.S. Department of Veteran's Affairs (VA) for \$895.75. MassHealth used the total monthly income of \$2,840.75 in calculating the appellant's patient-paid amount (PPA), deducting a personal-needs allowance (PNA) of \$72.80, amount to maintain a home of \$1,255, and health insurance premium of \$229.51, to arrive at the PPA of \$1,283.44 per month that the appellant must pay to the nursing facility.

The appellant started receiving a VA pension as of 12/1/22 as a surviving spouse with no dependents. (Exhibit 2). This award included "an additional allowance for aid and attendance," and was determined using her "medical expenses of \$64,318 ... [which] reduces your countable income for VA's purposes to \$0.00." Effective 12/1/23, the VA updated the payment amount to \$1,478 per month. This VA award letter reiterates that the appellant receives this pension because the VA is "considering continuing medical expenses of \$64,318 [to reduce] your countable income for VA's purposes to \$0." (Exhibit 2). The appellant cites 130 CMR 520.015(E) and Eligibility Operations Memo (EOM) 19-08 (July 15, 2019), implementing the BRAVE Act, and argues that VA benefits are noncountable when they are paid as a result of unreimbursed medical expenses.

The MassHealth representative testified that the agency used the entirety of the VA payment in determining the PPA because the VA letter does not separate out the portion that was paid due to unreimbursed medical expenses. Furthermore, MassHealth noted that the BRAVE Act is not applicable to nursing facility residents because nothing is reimbursable. The MassHealth representative testified that it is not up to her to determine what qualifies as a non-reimbursable medical expense and that is up to the Board of Hearings.

The appellant's representative testified that there is nothing in the regulation reflecting that long-term care does not count as an unreimbursed medical expense. The appellant's representative testified that the VA views the PPA as an unreimbursed medical expense.

Findings of Fact

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

1. The appellant is the surviving spouse of a veteran. She applied for MassHealth long-term-care benefits on 12/14/23, seeking a start date of 12/12/23.
2. The appellant's monthly income includes Social Security income of \$1,797, a private pension of \$148, and a Survivors Pension from the U.S. Department of Veteran's Affairs

(VA) for \$895.75.

3. MassHealth used the total monthly income of \$2,840.75 in calculating the appellant's patient-paid amount (PPA), deducting a personal-needs allowance (PNA) of \$72.80, amount to maintain a home of \$1,255, and health insurance premium of \$229.51, to arrive at the PPA of \$1,283.44 per month.
4. The appellant started receiving a VA pension as of 12/1/22 as a surviving spouse with no dependents.
5. This award included "an additional allowance for aid and attendance," and was determined using her "medical expenses of \$64,318 ... [which] reduces your countable income for VA's purposes to \$0.00."
6. Effective 12/1/23, the VA updated the payment amount to \$1,478 per month.
7. The updated VA payment letter states that the appellant receives this pension because the VA is "considering continuing medical expenses of \$64,318 [to reduce] your countable income for VA's purposes to \$0."
8. The appellant cites 130 CMR 520.015(E) and EOM 19-08 (July 15, 2019), implementing the BRAVE Act, and argues that VA benefits are noncountable when they are paid as a result of unreimbursed medical expenses.
9. MassHealth used the entirety of the VA payment in determining the PPA because the VA letter does not separate out the portion that was paid due to unreimbursed medical expenses.

Analysis and Conclusions of Law

Institutionalized MassHealth members "must contribute to the cost of care." The amount they are required to contribute is the patient-paid amount. (130 CMR 515.001.) To determine a member's PPA, MassHealth starts by determining a member's countable income and then takes certain deductions set out at 130 CMR 520.026. In addition, certain sources of income are considered noncountable for MassHealth purposes, 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) (emphasis added)).

The parties also debated the meaning of MGL Ch. 118E, § 25(4.5), which states:

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 11/7/18. MassHealth implemented this statute through EOM 19-08, on 7/15/19. 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 (7/15/19)).

This legal framework requires MassHealth to look to the VA's rules regarding when income is attributable to "aid and attendance benefits [or] unreimbursed medical expenses."

The VA calculates a monthly award by comparing the relevant Maximum Annual Pension Rate (MAPR) to the annual income for the veteran (or survivor) and dividing the difference by 12. (VA Manual M21-1, Pt. IX, Subpt. iii, Ch. 1, § E.1.c.).¹ MassHealth wants the VA to calculate how much

¹ The VA Manual is available at

https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/55440000001018/content/554400000177520/M21-1-Part-IX-Subpart-iii-Chapter-1-Section-E-Pension-Basic-Rate-Determinations%3FarticleViewContext=article_view_related_article#2 (last visited 7/31/24).

the appellant would receive if she did not have unreimbursed medical expenses. However, the VA starts by calculating income by deducting unreimbursed medical expenses. The appellant's entire VA award is premised upon her having zero income due to unreimbursed medical expenses; the VA never determines how much she would receive if she did not have unreimbursed medical expenses.

The appellant's annual income is \$34,089 (\$2,840.75*12). This is greater than the Basic Survivors Pension MAPR (\$16,551) and the MAPR for a Survivors Pension with Aid and Attendance (\$27,609).² If the appellant had no unreimbursed medical expenses, her VA pension would be zero. Therefore, the appellant only receives a VA pension due to unreimbursed medical expenses. When the appellant's VA pension changes to the \$90.00 a month institutionalized rate, it will be non-countable.

The BRAVE Act excludes "the entire amount of a monthly payment to a veteran, ... if the veteran ... 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)). The statute clearly seeks to exclude "the entire amount of a monthly payment." The EOM does not conflict with this interpretation. It explains that "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" For VA benefits, the word "threshold" is equivalent the MAPR. Since Aid and Attendance benefits are already non-countable, it is inappropriate to use an enhanced MAPR as the "applicable threshold" when applying this EOM. The "applicable threshold" should only be a MAPR comprised of otherwise countable income, or the Basic Pension MAPR.

For these reasons, this appeal is APPROVED. MassHealth will recalculate the appellant's PPA without counting her VA benefits.

Order for MassHealth

Recalculate the appellant's PPA without including her VA pension, as of 12/1/23.

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.

² 2024 pension rates. <https://www.va.gov/pension/veterans-pension-rates/>

Christine Therrien
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876