

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved; Remanded	Appeal Number:	2409858
Decision Date:	1/13/2025	Hearing Date:	11/19/2024
Hearing Officer:	Cynthia Kopka		

Appearances for Appellant:



Appearance for MassHealth:

Janine Monico, 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; Remanded	Issue:	Long-term care, Patient-Paid Amount
Decision Date:	1/13/2025	Hearing Date:	11/19/2024
MassHealth's Rep.:	Janine Monico	Appellant's Reps.:	[REDACTED]
Hearing Location:	Springfield (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

By notice dated April 30, 2024, MassHealth approved Appellant for MassHealth long-term care services effective April 1, 2023 with a patient paid amount (PPA) of \$3,214.21 beginning May 1, 2024. Exhibit 1. Appellant's representative filed this appeal in a timely manner on June 24, 2024. Exhibit 2. 130 CMR 610.015(B). Challenging the scope of assistance is a valid basis for appeal. 130 CMR 610.032.

On July 12, 2024, the Board of Hearings (BOH) notified the parties that the hearing would be held on August 2, 2024. On [REDACTED] 2024, Appellant passed away. BOH postponed the hearing for the appointment of a personal representative of Appellant's estate. On October 3, 2024, the personal representative was appointed. BOH then rescheduled the hearing for November 19, 2024. Exhibit 3.

Action Taken by MassHealth

MassHealth approved Appellant for MassHealth long-term care services effective April 1, 2023, with a PPA of \$3,214.21 beginning May 1, 2024

Issue

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

Summary of Evidence

MassHealth was represented by phone by an eligibility representative. Appellant was represented at hearing by the personal representative of Appellant's estate and a consultant who submitted documents in support, Exhibit 4. A summary of testimony and documentation follows.

On April 30, 2024, MassHealth approved Appellant for MassHealth long-term care services effective April 1, 2023 with a patient paid amount (PPA) of \$3,214.21 beginning May 1, 2024. Exhibit 1. This amount was calculated based on Appellant's countable income and having subtracted \$72.80 for Appellant's personal needs allowance (PNA):

Social Security:	\$1,871.00 ¹
Pension	\$37.51
Veteran's Pension	0.00
Other	\$1,378.50
Total Countable Income:	\$3,287.01

The MassHealth representative testified that the "other" category reflects Appellant's gross pension from the US Department of Veterans Affairs (VA) pension (\$2,300) less aid and attendance benefits (\$921.50). The MassHealth representative testified that the VA pension is countable because Appellant's income without the VA pension was below the Maximum Annual Pension Rate (MAPR). Therefore, Appellant was eligible to receive the VA pension regardless of unreimbursed medical expenses (UME), and his income was not subject to the BRAVE Act.²

A VA pension is calculated based on the difference between the applicable MAPR under federal law and a veteran's countable income. In 2023, the Basic Pension MAPR for a single veteran with no dependents was \$16,037. If a veteran qualified for Aid and Attendance benefits, the MAPR was \$26,752.³ In 2024, the Basic Pension MAPR for a single veteran with no dependents was \$16,551, and the Aid and Attendance MAPR was \$27,609.⁴ Additionally, the VA allows a veteran to offset their countable income with unreimbursed medical expenses (UME) in excess of five percent of

¹ The MassHealth representative testified that Appellant's gross Social Security is \$2,045.70 and that the amount listed on the notice does not include Appellant's Medicare premium.

² An Act Relative to Veteran' Benefits, Rights, Appreciation, Validation and Enforcement (BRAVE), parts relevant to this appeal codified at Mass. Gen. Laws ch. 118E, § 25(4 ½) and 130 CMR 520.015(E).

³ <https://www.va.gov/pension/veterans-pension-rates/past-rates-2023/>

⁴ <https://www.va.gov/pension/veterans-pension-rates/past-rates-2024/>

the Basic Pension MAPR.

Appellant, a single veteran with no dependents, began receiving a VA pension with aid and attendance benefits effective January 18, 2021. Exhibit 4 at 1, 9. At the time, Appellant's monthly income, including Social Security, private pension, and interest was \$1,760.08 monthly and \$21,121 yearly. *Id.* at 1, 11. The VA considered Appellant's yearly medical expenses of \$28,442, comprised of Medicare Part B premium and assisted living, and found Appellant's countable income to be \$0. *Id.* at 11. Based on this, the VA granted Appellant a monthly pension with aid and attendance of \$1,936.00. *Id.* at 8.

In 2024, the VA notified Appellant that he was entitled to a VA pension of \$2,300 effective December 1, 2023, with an aid and attendance portion of \$921.50 and a base pension rate of \$1,378.50. *Id.* at 18. Appellant's representative argued that Appellant remained eligible for a VA pension due to his regularly occurring UME.

Appellant's representatives argued that pursuant to 130 CMR 520.015 and Eligibility Operations Memo (EOM) 19-08, Appellant's VA pension in its entirety is noncountable. Appellant would not have received the VA pension but for his UME. Appellant's representative conceded that at most, Appellant would have been able eligible for a VA pension of \$148.79 monthly if he qualified for aid and attendance and did not have UME.

Appellant seeks recalculation of the PPA from the approval date of April 1, 2023. Appellant's VA consultant acknowledged that MassHealth issued eligibility notices that had not been appealed. However, Appellant's family was not alerted to the fact that the PPA had been incorrectly calculated until receiving notice from the VA that it was seeking recoupment of the pension due to Appellant's Medicaid approval effective April 1, 2023. Appellant's representative argued that the VA pension would be reduced to \$90 per month pursuant to 38 CFR 3.551(i). Appellant's representative provided evidence that Appellant notified the VA of his change in circumstance due to his Medicaid eligibility on May 9, 2024. *Id.* at 19. Appellant's representative cited prior hearing decisions that have reached back and adjusted the original PPA calculation pursuant to 130 CMR 610.071 (*see, e.g., Appeals No. 2208026, 2303651*).

Findings of Fact

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

1. On April 30, 2024, MassHealth approved Appellant for MassHealth long-term care services effective April 1, 2023, with a PPA of \$3,214.21 beginning May 1, 2024. Exhibit 1.
2. Appellant filed this timely appeal on June 24, 2024. Exhibit 2.

3. MassHealth determined that \$1,378.50 of Appellant's VA pension was countable and considered it in calculating the PPA.
4. Appellant was a single veteran with no dependents.
5. On May 28, 2021, the VA determined that Appellant was entitled to a VA pension with aid and attendance benefits effective January 18, 2021. Exhibit 4 at 1, 9.
6. At the time, Appellant's monthly income, including Social Security, private pension, and interest was \$1,760.08 monthly and \$21,121 yearly. The VA considered Appellant's yearly medical expenses of \$28,442, comprised of Medicare Part B premium and assisted living, and found Appellant's countable income to be \$0. *Id.* at 11.
7. Based on this, the VA granted Appellant a monthly pension with aid and attendance of \$1,936.00. *Id.* at 8.
8. In 2024, the VA notified Appellant that he was entitled to a VA pension of \$2,300 effective December 1, 2023. with an aid and attendance portion of \$921.50 and a base pension rate of \$1,378.50. *Id.* at 18.
9. In 2023, for a single veteran with no dependents, the Basic Pension MAPR was \$16,037 and the Aid and Attendance MAPR was \$26,752.
10. In 2024, for a single veteran with no dependents, the Basic Pension MAPR was \$16,551 and the Aid and Attendance MAPR was \$27,609.
11. On May 9, 2024, Appellant notified the VA of his Medicaid eligibility. *Id.* at 19.

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 (PPA). 130 CMR 520.009(A)(3). However, pursuant to 130 CMR 520.015, certain types of income are not considered when determining the financial eligibility of the applicant or member, including but not limited to:

(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...

(emphasis added). Additionally, MassHealth's EOM 19-08, issued on July 15, 2019, clarifies the above regulation. EOM 19-08 states 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." It outlines the implementation of the BRAVE Act and states that under this legislation MassHealth is directed to disregard 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** but for unreimbursed medical expenses." EOM 19-08, quoting Mass. Gen. Laws ch. 118E, § 25(4½) (emphasis added). The EOM offers the following illustrative example (emphasis added):

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.

Here, it is undisputed that Appellant was a veteran who received a VA pension and aid and attendance benefits. It is also undisputed that the aid and attendance portion of Appellant's benefit is not countable. The issue here is whether the remainder of Appellant's VA pension is countable. The parties dispute whether Appellant would have received the VA pension regardless of UME.

MassHealth argued that because Appellant's countable income was below the Aid and Attendance MAPR, Appellant was eligible to receive a VA pension regardless of UME. Therefore, Appellant's VA pension does not fall under the BRAVE Act and is countable. MassHealth did not dispute that the VA calculated Appellant's pension based on Appellant's UME. Appellant's representative argued that MassHealth counted income that Appellant would not have received but for his UME and that the entirety of the VA pension is not countable. Appellant's representative conceded that Appellant may have been eligible for some VA pension without UME when calculating it based on the Aid and Attendance MAPR instead of the Basic MAPR.

The BRAVE Act and MassHealth's EOM 19-08 does not address the circumstance presented here, where Appellant's income was above the Basic MAPR but below the Aid and Attendance MAPR. MassHealth uses phrases such as "the income threshold" and "their applicable threshold." This vague "threshold" could refer to the Basic MAPR for an individual based on their individual circumstances (such as single, married, married to a veteran, or with dependents), or the highest MAPR level for which they qualify based on their need for household benefits or aid and

attendance.⁵ Therefore, EOM 19-08 does not make clear what threshold should be used to determine whether or not Appellant would have received a pension but for UME: the Basic MAPR or the Aid and Attendance MAPR.

MassHealth's interpretation of EOM 19-08 as presented at hearing was that the Aid and Attendance MAPR, not the Basic MAPR, should be the "threshold" considered in determining whether Appellant would have received a pension without UME. This interpretation is not specified in EOM 19-08 and would not comport with the purpose of the BRAVE Act, in that it creates a circumstance in which a veteran who is both 1) eligible for noncountable aid and attendance benefits, and 2) has UME would only be eligible to have their VA benefits excluded as non-countable if their income was above, and not below, the Aid and Attendance MAPR. This penalizes veterans whose income is lower, not higher. It also penalizes veterans who require noncountable aid and attendance benefits. This is inapposite to legislation designed "to improve and expand the benefits available to the Commonwealth's veterans." Interpreting EOM 19-08 as Appellant does, using only the Basic MAPR as the threshold for determining whether a veteran would have received a pension without UME, creates no such anomaly.⁶

Therefore, Appellant has successfully demonstrated that the entirety of his VA pension is noncountable pursuant to Mass. Gen. Laws ch. 118E, § 25(4½) because Appellant would not have received the \$2,300 monthly payment but for UME. Further, Appellant has demonstrated that he was eligible for this adjustment as of April 1, 2023, as he was determined eligible for the VA pension based on his UME in 2021. 130 CMR 610.071(A)(2).

Accordingly, this appeal is approved and remanded back to MassHealth for a calculation of the PPA without the VA pension.

Order for MassHealth

Recalculate Appellant's PPA without the VA pension as of April 1, 2023.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should

⁵ The resources cited in footnotes 3 and 4 set forth the formulas for determining MAPR based on a veteran's circumstances.

⁶ This conclusion is consistent with the BOH hearing decision for Appeal No. 2202007 (issued June 7, 2022), which provides a detailed analysis of how the VA determines eligibility for pension.

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

[REDACTED]

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104