

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2412469
Decision Date:	11/19/2024	Hearing Date:	09/10/2024
Hearing Officer:	Radha Tilva	Record Open to:	11/13/2024

Appearances for Appellant:




Appearance for MassHealth:

Michael Richelson, Tewksbury MEC Rep.



*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:	PACE – countable assets – aid and attendance
Decision Date:	11/19/2024	Hearing Date:	09/10/2024
MassHealth’s Rep.:		Appellant’s Reps.:	Patricia Servaes and son/POA
Hearing Location:	Tewksbury 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 July 26, 2024, MassHealth terminated the appellant’s coverage for because MassHealth has more countable income and assets than MassHealth benefits allows (Exhibit 1). The appellant filed this appeal in a timely manner on August 13, 2024 (see 130 CMR 610.015(B) and Exhibit 1, p. 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

The record was left open for MassHealth to review appellant’s submission of the breakdown of VA benefits that it was considering countable. The record closed on November 13, 2024.

Action Taken by MassHealth

MassHealth terminated appellant’s MassHealth coverage because appellant has more countable income and assets than MassHealth benefits allows.

Issue

The appeal issue is whether MassHealth was correct in terminating appellant's MassHealth coverage because appellant has more countable assets than MassHealth benefits allow.¹

Summary of Evidence

The MassHealth representative who appeared at hearing testified that on April 23, 2024, a PACE (Program for All-Inclusive Care for the Elderly) renewal was processed.² MassHealth sent a request for verifications that same day. The applicant is over the age of 65 and a PACE recipient living in the community (Exhibit 3 and MassHealth testimony). On July 17, 2024, MassHealth received several verifications that were processed, and MassHealth issued a termination notice on July 26, 2024 because appellant had excess income and assets.

The appellant has approximately \$4,257 gross monthly income per month from her countable pension. MassHealth was not previously aware of a private pension or a Department of Veterans Affairs (VA) pension. The MassHealth representative stated that the member was over assets. The verified balance as of March 8, 2024 was \$17,988.00 in appellant's bank account. The MassHealth representative stated that if appellant were able to submit a breakdown of aid and attendance benefits which showed that it complied with the BRAVE Act, MassHealth could reconsider whether the assets are countable or not.

The appellant was represented by her son and a Medicaid consultant. The consultant argued the following: the appellant receives a VA pension with aid and attendance solely because of her unreimbursed medical expenses. Her gross monthly income before counting the VA pension is over \$2,000.00, and the maximum VA pension when she applied for MassHealth, as stated in the November 29, 2022 letter from the Department of Veterans Affairs, was \$1,318.00 (Exhibit 1, p. 20). Her income amount without counting her VA pension is well over the VA pension amount, and thus she is eligible for a VA pension only because of her unreimbursed medical expenses exceeding her pension amount. The total unreimbursed monthly medical expenses total \$5,180.29, per the appellant representative's letter dated April 23, 2024 (Exhibit 1, p. 14). Thus, she is left with negative income because the amount of her unreimbursed medical expenses exceeds her gross monthly

¹ Though income was originally an issue as well, it was established during the record open period that appellant's VA benefits made the income non-countable and thus put appellant under 300% of the federal benefit rate, the income threshold for PACE coverage; however, as the assets still remained at issue, according to MassHealth, appellant was still not eligible for the PACE program.

² Pursuant to 130 CMR 519.007(C)(1), the PACE program is a comprehensive health program that is designed to keep frail, older individuals who are certified eligible for nursing facility services living in the community. (a) A complete range of health care services is provided by one designated communitybased program with all medical and social services coordinated by a team of health professionals. (b) The MassHealth agency administers the program in Massachusetts as the Elder Service Plan (ESP). (c) Persons enrolled in PACE have services delivered through managed care 1. in day-health centers; 2. at home; and 3. in specialty or inpatient settings, if needed.

income (*Id.*). In that situation, the appellant's representative argued that under 130 CMR 520.008 and 520.015, none of the income is countable by MassHealth and none of the assets received are countable either.³ This is codified further in Eligibility Operations Memo (EOM) 19-08 which was published on July 15, 2019; the EOM states that these funds are to be excluded per the BRAVE Act (appellant testimony). Her VA pension is part aid and attendance and part pension, according to the consultant. Thus, the appellant wouldn't get a VA pension, but for her unreimbursed medical expenses.

Although letters from the VA were provided to the hearing officer prior to hearing, the MassHealth representative had not reviewed them. The record was left open for the appellant's representative to submit a copy of the VA letters and for MassHealth to review. The letter from the VA dated November 29, 2023 which was submitted stated that appellant was entitled to VA Survivor benefits with entitlement to aid and attendance granted effective March 30, 2022, payable April 1, 2022 (Exhibit 1, p. 21). The letter further states that Department of Veterans Affairs allowed medical expenses of \$62,523.00 as a continuing deduction beginning March 30, 2022, and that the appellant was getting paid the maximum amount allowable by law (Exhibit 1, p. 22). A second letter dated December 1, 2023 from the Department of Veterans Affairs further states that they are considering continuing medical expenses of \$62,523, which reduces the countable VA income to \$0.00 (Exhibit 1, p. 31).

The MassHealth representative reviewed the letter and stated that due to the breakdown noted in the documentation, the VA pension is considered non-countable due to the BRAVE act and has been updated in MassHealth's system. This brings the member's income below 300% of the federal benefit rate limit allowed to qualify for PACE. The member is thus now approved for Qualified Individual Medicare Savings Plan (MSP), and a notice is being generated regarding that approval. The MassHealth representative further stated that in order to fully determine if assets should be countable, MassHealth would need separately identifiable bank statements showing that the current bank balance is a result of past VA pension benefits paid to the appellant, as required under 130 CMR 520.008. The bank statement received by MassHealth on March 18, 2024 did not clearly show a balance based on separately identifiable VA pension benefits deposited to the account.

The appellant's representative responded and stated that the VA assets are separately identifiable via spreadsheet tracking (Exhibit 4). A copy of the spreadsheet tracking VA payments was provided along with bank statements, which corroborated the VA pension deposits and totals (see Exhibits 5 and 6). The appellant's representative further explained that per 130 CMR 520.008, a separate account is not required for the VA funds, as they just need to be separately identifiable (Exhibit 4). Since the appellant spends her VA funds last and has received \$38,074.00 in VA funds since November 25, 2022, all assets in the account below \$38,074.00 are identifiable as VA pension-sourced funds. Moreover, the appellant's representative explained that all of her non-VA funds are

³ Assets may include income (including pension income) retained after the month of receipt.

used to pay for her care, and that she uses as much of the VA funds as necessary to pay for any shortfall in her care or daily needs, resulting in all of her assets being identified as VA funds. The appellant's representative submitted a hearing decision which supported her argument, whereby the hearing officer did not require a separate account identifying VA pension funds paid and retained after the month of receipt. The MassHealth representative stated that, because the VA funds are co-deposited along with other sources of income into one bank account, the funds are not considered separately identifiable and therefore are countable assets to the appellant (Exhibit 4).

Findings of Fact

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

1. The appellant is over the age of 65, living in the community and is enrolled in PACE.
2. On April 23, 2024, a PACE renewal was processed.
3. On July 17, 2024, MassHealth received several verifications that were processed, and MassHealth issued a termination on July 26, 2024 because appellant had excess income and assets.
4. The appellant filed a timely appeal of this notice with the Board of Hearings.
5. Appellant's representative submitted a letter with the hearing request which states she is entitled to VA Survivor benefits, with entitlement to aid and attendance, granted effective March 30, 2022, payable April 1, 2022 (Exhibit 1).
 - a. In addition, the letter states \$62,523.00 of medical expenses was being allowed as a continuing deduction beginning March 30, 2022, and that she was getting paid the maximum amount allowable by VA law (Exhibit 1)
6. A letter dated December 1, 2023 from the Department of Veterans Affairs further states that they are considering the appellant to have continuing medical expenses of \$62,523, which reduces the countable income for VA purposes to \$0.00 (Exhibit 1).
7. MassHealth adjusted the appellant's income in the system upon receipt of the breakdown letter and found that the income was no longer at issue, but that appellant was still over the asset limit for PACE benefits.
8. MassHealth asserts that because the VA funds are co-deposited along with other sources of income into one account, the funds are not separately identifiable and therefore are countable.

Analysis and Conclusions of Law

A PACE recipient must have countable assets that do not exceed \$2,000 and have a countable-income amount less than or equal to 300% of the federal benefit rate (FBR) (130 CMR 519.007(C)(2)(f) and 130 CMR 519.007(C)(2)(g). During a record open period following the hearing, the MassHealth representative redetermined that appellant's income is under 300% of the FBR, and thus the sole issue that remained on appeal is whether appellant has more countable assets than MassHealth benefits allows.

MassHealth considers certain sources of assets as noncountable. Included as noncountable assets are Veterans' payments for aid and attendance, unreimbursed medical expenses, household benefits, and enhanced benefits retained after the month of receipt, provided that these payments are separately identifiable (130 CMR 520.008(G)).

Further, pursuant to G.L. c. 118E, § 25(4.5):

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 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... .

This statute became effective November 7, 2018. MassHealth implemented this statute through EOM 19-08, on July 15, 2019. 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 in the memorandum states:

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 (July 15, 2019))

MassHealth EOM 19-08 provides clear guidance for proper and efficient operation of changes related to G.L. c. 118E, § 25 (4.25) as required by the BRAVE Act. The MassHealth representative stated that the assets (VA funds) are co-deposited with other sources of income into one account, so the funds are not considered separately identifiable and therefore are countable. The regulation states that the benefits are non-countable if they “are separately identifiable” and does not require that they be kept in separate accounts or deposited via separate disbursements.

The appellant submitted documentation which supports separate identification of the VA benefits consistent with the regulation (Exhibits 5 and 6). In addition, the appellant submitted evidence to MassHealth, and again at hearing, that the appellant would not have received the VA pension and aid and attendance benefits but for the fact that she had significant unreimbursed medical expenses. The evidence establishes that these assets should have been treated consistently with the provisions of the BRAVE Act and G.L. c. 118E, § 25 (4.5) and that these assets, which included the VA pension and aid and attendance benefits, should not have been deemed countable.

For the reasons set forth above, this appeal is APPROVED.

Order for MassHealth

Rescind notice dated July 26, 2024, and redetermine the appellant’s eligibility excluding her VA benefits as countable assets.

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.

Radha Tilva
Hearing Officer
Board of Hearings

cc:

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