

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2514363
<b>Decision Date:</b>	12/22/2025	<b>Hearing Date:</b>	10/28/2025
<b>Hearing Officer:</b>	Scott Bernard		

**Appearances for Appellant:**



**Appearance for MassHealth:**

Lori VanZile (Quincy 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

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Long-Term Care; Patient-Paid Amount
<b>Decision Date:</b>	12/22/2025	<b>Hearing Date:</b>	10/28/2025
<b>MassHealth's Rep. :</b>	██████████	<b>Appellant's Rep. :</b>	Patricia Servaes
<b>Hearing Location:</b>	Quincy Harbor South	<b>Aid Pending:</b>	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 August 26, 2025, MassHealth approved the appellant's application for MassHealth Long-Term Care (LTC) benefits beginning June 15, 2025, with a patient-paid amount (PPA) of \$2,163.03 per month. (See 130 CMR 520.009; 520.015 and Exhibit (Ex.) 1). The appellant's spouse, who holds his durable power of attorney, timely filed this appeal on his behalf on October 2, 2025, stating that the appellant's Department of Veterans Administration Pension is noncountable for Medicaid purposes as a matter of law. (See 130 CMR 610.015(B) and Ex. 2, pp. 1, 5-9). An individual MassHealth agency determination regarding the scope and amount of assistance is a valid ground for appeal. (See 130 CMR 610.032).

## Action Taken by MassHealth

MassHealth approved the appellant's application for MassHealth LTC benefits beginning June 15, 2025 with a PPA of \$2,163.03 per month.

## Issue

The issue on appeal is whether MassHealth correctly calculated the PPA.

## Summary of Evidence

MassHealth was represented by a benefits eligibility representative from the Quincy MassHealth Enrollment Center (MEC) (the MassHealth representative). The appellant was represented by an accredited VA agent and by his daughter, both designated as his authorized representatives by the appellant's spouse in the documents submitted with the appeal. (See Ex. 2, pp. 1, 2–4). All participants appeared by telephone.

The MassHealth representative testified first and described the appellant's circumstances and MassHealth's actions. The appellant is over 65 years old and has a spouse living in the community. (Testimony; Ex. 6, pp. 1, 7). The appellant entered a nursing facility in [REDACTED] (Testimony, Ex. 6, p. 1). He applied for MassHealth LTC benefits on July 13, 2025, and MassHealth approved the application by notice dated August 26, 2025, with coverage effective June 15, 2025 and a monthly PPA of \$2,163.03. (Testimony, Ex. 6, pp. 1-7). The MassHealth representative stated that the appeal concerns MassHealth's treatment of the appellant's Department of Veterans Affairs (VA) pension in the calculation of the PPA. (Testimony, Ex. 6, pp. 1, 7).

The MassHealth representative explained how MassHealth calculated the PPA. The approval notice states that the appellant's total countable income is \$4,727.22 per month, consisting of \$1,877.00 in Social Security income, \$55.22 from a private pension, and a VA pension of \$2,795.00 per month. (Testimony, Ex. 6, p. 7). MassHealth applied allowable deductions totaling \$2,564.19, consisting of the personal needs allowance (\$72.80), the community spouse allowance (\$2,048.71), Medicare premium (\$185.00), and other health insurance premiums (\$257.68). (*Id.*). After applying these deductions, MassHealth determined a monthly PPA of \$2,163.03. (*Id.*).

The MassHealth representative stated that MassHealth considers only the aid and attendance portion of a VA pension to be noncountable income and treats the remaining portion of the pension as countable income when calculating the PPA. (Testimony, Ex. 6, p. 15). The MassHealth representative acknowledged, however, that MassHealth mistakenly used the entire value of the appellant's VA pension, including the aid and attendance component, in calculating the PPA. (Testimony, Ex. 6, pp. 7, 15). The MassHealth representative stated that MassHealth would address any correction after the hearing. (Testimony).

In response to questioning from the hearing officer, the MassHealth representative provided additional explanation regarding MassHealth's treatment of the VA pension once MassHealth approves LTC benefits and begins paying for an individual's nursing facility care. She stated that once this occurs, the unreimbursed medical expenses of the individual receiving LTC benefits decrease. (Testimony, Ex. 6, p. 15). Based on that premise, MassHealth thereafter treats only the aid and attendance portion of the VA pension as noncountable income and treats the remainder of the pension as countable income for purposes of calculating the PPA. (Testimony, Ex. 6, pp. 7, 15).

The appellant's representative testified next, and started by explaining the basis for the VA's

determinations concerning the appellant's eligibility for the VA pension. In August 2022, she submitted an application on the appellant's behalf for the VA pension with aid and attendance and one dependent, which the VA subsequently approved. (Testimony; Ex. 5, p. 2). The appellant's representative wanted to make clear that the combined income of the appellant and his spouse would have exceeded the VA income limit for pension eligibility had unreimbursed medical expenses not reduced his countable income to zero. (Testimony, Ex. 5, pp. 2, 8-9). In subsequent reviews following the initial award, the VA continued to find the appellant was eligible for the pension after subtracting ongoing unreimbursed medical expenses from his countable income, thus reducing that income to zero. (Testimony, Ex. 5, pp. 2-3, 8-9).

The appellant's representative then explained that the VA pays the appellant's pension as a single, integrated monthly benefit consisting of a base pension amount, an aid and attendance allowance, and a dependent increment. (Testimony, Ex. 5, p. 15). She stated that when the VA awards pensions solely because unreimbursed medical expenses reduce an individual's countable income to zero and no other basis for eligibility exists, the BRAVE Act<sup>1</sup> and MassHealth regulations require MassHealth to exclude the entire VA pension from income for both eligibility and post-eligibility calculations. (Testimony, Ex. 5, pp. 3-4, 6-7).

Responding to the MassHealth representative's testimony regarding the treatment of the VA pension after MassHealth began paying for nursing facility care, the appellant's representative explained that the appellant's continued eligibility for the VA pension depends on unreimbursed medical expenses incurred by his spouse, including substantial ongoing medical and assisted-living expenses. (Testimony, Ex. 5, pp. 2-3, 5). She stated that even if the appellant's own unreimbursed medical expenses decrease following institutionalization, the VA continues to consider the spouse's unreimbursed medical expenses when determining his eligibility for the pension. (Testimony, Ex. 5, pp. 2-3, 5). She further stated that when the VA pension continues to be paid solely because unreimbursed medical expenses reduce countable income to zero, the BRAVE Act, MassHealth regulations, and EOM 19-08<sup>2</sup> require MassHealth to exclude the VA pension in full, resulting in the appellant's allowable deductions exceeding his remaining countable income and yielding a PPA of zero, and that calculating a PPA by including the VA pension is inconsistent with those authorities. (Testimony, Ex. 5, pp. 3-4, 6-7; Ex. 6, p. 7).

## Findings of Fact

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

1. The appellant is over 65 years old and has a spouse who lives in the community. (Testimony; Ex. 3; Ex. 6, pp. 1, 7).

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<sup>1</sup> The Act Relative to Veterans' Benefits, Rights, Appreciation, Validation, and Enforcement (the BRAVE Act), St. 2018, c. 118, codified in relevant part at G.L. c. 118E, § 25 (4 ½).

<sup>2</sup> Eligibility Operations Memo (EOM) 19-08 (July 15, 2019).

2. In 2022, the appellant applied for and was determined eligible for a VA pension. (Testimony; Ex. 5, p. 2).
3. The combined income of the appellant and his spouse exceeded the VA income limit for pension eligibility, but their unreimbursed medical expenses reduced that income to zero. (Testimony, Ex. 5, pp. 2, 8-9).
4. The VA therefore determined the appellant was eligible for the VA pension. (Testimony, Ex. 5, pp. 2–3, 5, 8–9).
5. The VA pays the appellant’s pension as a single, integrated monthly benefit that includes a base pension amount, an aid and attendance allowance, and a dependent increment. (Testimony, Ex. 5, p. 15).
6. The appellant was admitted to the nursing facility in [REDACTED]. (Testimony, Ex. 6, p. 1).
7. The appellant applied for MassHealth LTC benefits on July 13, 2025. (Testimony, Ex. 6, pp. 1-7).
8. MassHealth approved the appellant’s application for LTC benefits by notice dated August 26, 2025, with coverage effective June 15, 2025 and a monthly PPA of \$2,163.03. (Testimony, Ex. 6, pp. 1-7).
9. In calculating the PPA, MassHealth determined that the appellant’s total countable income was \$4,727.22 per month. (Testimony, Ex. 6, p. 7).
10. The appellant’s countable income consisted of \$1,877.00 in Social Security income, \$55.22 from a private pension, and a VA pension of \$2,795.00 per month. (Testimony, Ex. 6, p. 7).
11. MassHealth applied allowable deductions totaling \$2,564.19. (Testimony, Ex. 6, p. 7).
12. The allowable deductions applied by MassHealth included a personal needs allowance of \$72.80, a community spouse allowance of \$2,048.71, Medicare premiums of \$185.00, and other health insurance premiums of \$257.68. (Testimony, Ex. 6, p. 7).
13. MassHealth calculated the appellant’s PPA by treating the entirety of his VA pension as countable income. (Testimony, Ex. 6, p. 7).

## **Analysis and Conclusions of Law**

An individual’s gross earned and unearned income, less certain allowable deductions, is referred to as the countable-income amount. (130 CMR 520.009(A)(1)). For individuals who are institutionalized, MassHealth applies additional post-eligibility deductions to the countable-income amount in order to determine the PPA. (130 CMR 520.009(A)(3)). Unearned income

generally includes Social Security benefits, pensions, and federal veterans' benefits. (130 CMR 520.009(D)). (130 CMR 520.009(D)). Not all unearned income, however, is countable for purposes of either MassHealth eligibility or post-eligibility determinations. (130 CMR 520.015; 130 CMR 520.009(D); 130 CMR 520.009(A)(3)).

G. L. c.118E, § 25 (4 ½), was enacted as part of the BRAVE Act<sup>3</sup>. (G.L. c. 118E, § 25 (4 ½)). Pursuant to this statute, when determining Medicaid eligibility, MassHealth must exclude from income the entire amount of a monthly payment from the United States Department of Veterans Affairs to a veteran or the widowed spouse of a veteran, including pension, aid and attendance, and housebound benefits, if the individual would not have received the payment but for unreimbursed medical expenses. (G.L. c. 118E, § 25 (4 ½)). In such circumstances, the VA payment is treated as wholly noncountable income for MassHealth purposes. (Id.).

MassHealth regulations implement this statutory requirement by excluding certain categories of income from consideration when determining financial eligibility. (130 CMR 520.015). These exclusions include veterans' aid and attendance benefits, housebound benefits, enhanced veterans' benefits, unreimbursed medical expenses, and veterans' benefits that are based on need and provided by municipalities to resident veterans. (130 CMR 520.015(E)).

MassHealth has issued sub-regulatory guidance explaining the application of G.L. c. 118E, § 25 (4 ½), and 130 CMR 520.015 to needs-based VA pensions. (EOM 19-08<sup>4</sup>). EOM 19-08 explains that when a veteran or widowed spouse receives a needs-based VA pension solely because unreimbursed medical expenses reduce countable income below the VA income threshold, MassHealth must exclude the entire VA pension payment, not merely the aid and attendance component, from income for both eligibility and post-eligibility calculations, including the PPA. (Id.).

Accordingly, where a VA pension exists solely because unreimbursed medical expenses were used by the VA to establish eligibility, the pension is noncountable income in its entirety for MassHealth purposes. (G. L. c.118E, § 25 (4 ½); 130 CMR 520.015(E); EOM 19-08). MassHealth regulations do not permit partial inclusion, recharacterization, or proration of such a VA pension so long as the payment continues to be issued on that needs-based basis. (Id.).

The record establishes that the VA awarded the appellant's pension only after deducting significant, regularly recurring unreimbursed medical expenses from countable income, thereby reducing that income to zero. The record further establishes that the VA continues to pay the pension as a single, integrated monthly benefit and that, in determining eligibility, the VA considered unreimbursed medical and assisted-living expenses incurred by the appellant's spouse. The record contains no evidence that the VA has modified or terminated the pension or changed the basis of its eligibility determination.

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<sup>3</sup> See note 1, above.

<sup>4</sup> See note 2, above.

MassHealth argues that once the appellant became institutionalized and MassHealth began paying for his nursing facility care, the appellant's unreimbursed medical expenses decreased, thereby justifying inclusion of the non-aid and attendance portion of the VA pension in the PPA calculation. However, neither the statute nor the regulations condition exclusion of a needs-based VA pension on a recalculation of medical expenses by MassHealth after eligibility has been established. Instead, the governing authorities focus on whether the VA pension exists because unreimbursed medical expenses were used by the VA to establish eligibility. So long as the VA continues to pay the pension on that basis, MassHealth lacks authority to treat portions of the pension differently for Medicaid purposes.

Moreover, the record reflects that the VA continues to consider unreimbursed medical expenses incurred by the appellant's spouse in determining eligibility for the pension. The appellant's representative testified that, both at the time of the initial award and during subsequent eligibility reviews, the VA assessed eligibility by subtracting significant, regularly recurring unreimbursed medical expenses incurred by the appellant and his spouse from family income, thereby reducing countable income to zero. Further evidence shows that, if unreimbursed family medical expenses were no longer sufficient to support eligibility, the VA itself would reduce or terminate the pension. Until such action occurs, the pension remains a single, needs-based payment for purposes of MassHealth calculations.

Accordingly, where a VA pension exists solely because unreimbursed medical expenses were used by the VA to establish eligibility, MassHealth regulations, the BRAVE Act, and agency guidance require exclusion of the entire VA pension from income when calculating the PPA. Inclusion of any portion of such a pension as countable income while it continues to be paid on that basis is inconsistent with the governing statute, regulations, and Eligibility Operations Memo 19-08.

For the above-stated reasons, the appeal is APPROVED.

## **Order for MassHealth**

For the above-stated reasons, MassHealth shall exclude the appellant's Department of Veterans Affairs pension in its entirety from countable income and shall recalculate the appellant's PPA effective June 15, 2025, in accordance with this decision.

## 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.

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Scott Bernard  
Hearing Officer  
Board of Hearings

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cc: Quincy MEC, Attn: Cassandra Moura, Appeals Coordinator, 100 Hancock Street, 6th Floor,  
Quincy, MA 02171