

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	APPROVED	Appeal Number:	2515880
Decision Date:	1/27/2026	Hearing Date:	12/01/2025
Hearing Officer:	Sharon Dehmand	Record Open to:	12/19/2025

Appearance for Appellant:



Appearance for MassHealth:

Yassory Pena, Tewksbury MEC



*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:	Waivers; Program of All-Inclusive Care for the Elderly (PACE)
Decision Date:	1/27/2026	Hearing Date:	12/01/2025
MassHealth's Rep.:	Yassory Pena	Appellant's Rep.:	[REDACTED]
Hearing Location:	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

Through a notice dated October 2, 2025, MassHealth approved the appellant for MassHealth Standard plus Waiver Services with a monthly deductible amount of \$2,244.00 starting on September 11, 2025.¹ See 130 CMR 519.007 and Exhibit 1. The appellant filed this appeal in a timely manner on October 29, 2025. See 130 CMR 610.015(B) and Exhibit 2. Challenging the scope of assistance is a valid ground for appeal before the Board of Hearings. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth approved the appellant for MassHealth Standard plus Waiver Services starting on September 11, 2025, with a monthly deductible of \$2,244.00.

Issue

¹ In a subsequent notice dated December 4, 2025, MassHealth again approved the appellant for MassHealth Standard plus Waiver Services with a monthly deductible amount of \$2,244.00 starting on September 11, 2025.

Whether MassHealth erred in its calculation of the appellant's monthly deductible amount. See 130 CMR 520.015, G.L. c. 118E, §25(4 ½).

Summary of Evidence

All parties participated telephonically. MassHealth was represented by a worker from the Tewksbury MassHealth Enrollment Center. The appellant was represented by his daughter and a [REDACTED] accredited claims agent who verified his identity. The appellant's representatives submitted documents that were incorporated into the hearing record as Exhibit 5. The following is a summary of the testimony and evidence provided at the hearing:

The MassHealth representative testified that on September 12, 2025, MassHealth received an application for the Program of All-Inclusive Care for the Elderly (PACE) Waiver on behalf of the appellant which was processed accordingly. At the time of application, the appellant did not have previous MassHealth coverage. On September 19, 2025, a notice was sent out requesting additional information. All requested information was provided. On October 2, 2025, MassHealth approved the appellant for MassHealth Standard plus Waiver Services with a monthly deductible² amount of \$2,244.00 because the appellant's income exceeded the PACE waiver income guidelines of \$2,901.00.

The appellant who is a [REDACTED] has been approved for a total pension benefit of \$2,358.00 per month through the U.S. Department of Veteran's Affairs. This amount includes "Base VA Pension Benefit in the amount of \$1,413.00 and Aid and Attendance (AA) Benefits in the amount of \$945.00." See Exhibit 5, p. 13. The appellant also receives \$1,558.00 per month in retirement benefits from the Social Security Administration. MassHealth calculated the appellant's total monthly income as \$2,971.00 consisting of his Social Security retirement benefits in the amount \$1,558.00 and VA benefits in the amount of \$1,413.00. MassHealth did not include the appellant's AA benefits in this amount because AA benefits are considered non-countable income.

The MassHealth representative stated that MassHealth calculated the appellant's monthly deductible amount of \$2,244.00 by subtracting \$727.00 from the appellant's total countable income of \$2,971.00. The deduction of \$727.00 consisted of a \$20.00 disregard per regulations, a \$522.00 deductible monthly-income standard for community residents, and a \$185.00 monthly Medicare premium payment.

The appellant's representatives disputed MassHealth's calculation and stated that the appellant's entire VA pension is considered non-countable under federal and state regulations. She stated that the appellant began receiving a VA pension with AA benefits on August 31, 2021. See Exhibit 5, p.

² The MassHealth representative referred to the deductible amount as the Patient Paid Amount (PPA).

5. She explained that as reflected in the VA letter, the appellant's total income, which included Social Security retirement benefits and payments from a now closed IRA account, totaled \$19,934.00 per year. Id. at 7. This amount exceeded the basic pension rate of \$13,931.00 (not including AA benefits) in 2021.³ However, the VA considered the appellant's yearly medical expenses of \$67,782.00 which were comprised of Medicare Part B premium and assisted living fees and found the appellant's countable income to be \$0.00. Id. Based on this, the VA granted the appellant a monthly pension with AA benefits of \$2,358.00 (\$1,413.00 + \$945.00 = \$2,358.00). As such, the appellant's representative argued that the appellant would not have been eligible for a VA pension had it not been for his unreimbursed medical expenses (UME).

The MassHealth representative responded that the appellant is eligible for a VA pension because his base VA pension benefits in the amount of \$1,413.00 per month are less than his Social Security retirement benefits in the amount of \$1,558.00 per month, thus, qualifying him for VA pension benefits regardless of his UME. As such, his VA pension is countable in accordance with MassHealth policies and Eligibility Operations Memo (EOM- 19-08).

At the conclusion of hearing, the MassHealth representative added that on November 20, 2025, MassHealth sent a request for documentation regarding the annuity income with a due date of February 18, 2026. She requested additional documentation demonstrating the cessation of annuity payments to the appellant and a current VA benefits letter. The MassHealth representative added that she would be discussing this matter with her superior for a possible resolution.

The record was held open until December 15, 2025, for the appellant's representative to submit the additional documentation and until December 19, 2025, for MassHealth to review the appellant's submission. See Exhibit 6.

On December 3, 2025, the appellant's representative submitted the requested documents. See Exhibit 7.

On December 4, 2025, the MassHealth representative responded to the appellant's submissions and stated that MassHealth's decision stands because of the following reasons:

- The member's VA income LIMIT is \$28300/yr as result of being eligible for Aid and Attendance....
- The member's current income is \$18696 (\$1558/mo[nth] SSA) --- which is below the VA income limit... as result, based on the VA calculations listed below the member is eligible for a VA pension regardless of the UME consideration...

³ <https://www.va.gov/pension/veterans-pension-rates/past-rates-2021/>

- MassHealth Operations memo 19-08 indicates that if an individual is INELIGIBLE for a VA pension due to being over income, but by deducting the UME the individual falls below the income threshold and qualifies, then we would disregard the entire pension amount, no partial exemptions.

See Exhibit 8.

On December 5, 2025, through number of emails, parties restated their positions and reiterated their arguments. See Exhibit 9.

Findings of Fact

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

1. The appellant is an elderly [REDACTED]. (Testimony and Exhibit 4).
2. On September 12, 2025, MassHealth received an application for the Program of All-Inclusive Care for the Elderly (PACE) Waiver on behalf of the appellant which was processed accordingly. (Testimony).
3. The appellant receives \$2,358.00 per month in VA pension benefits through the U.S. Department of Veteran's Affairs. (Testimony, Exhibit 4, and Exhibit 5).
4. The appellant's total pension benefits consist of Base VA pension in the amount of \$1,413.00 plus Aid and Attendance benefits in the amount of \$945.00. (Testimony, Exhibit 5, and Exhibit 7).
5. The appellant receives \$1,558.00 per month in retirement benefits from the Social Security Administration. (Testimony and Exhibit 7).
6. MassHealth calculated the appellant's total monthly income as \$2,971.00 consisting of his Social Security retirement benefits in the amount \$1,558.00 and VA benefits in the amount of \$1,413.00. (Testimony and Exhibit 1).
7. Based on the total income of \$2,971.00 per month, MassHealth calculated the appellant's monthly deductible amount of \$2,244.00 by subtracting \$727.00 from the appellant's total countable income of \$2,971.00. (Testimony).
8. The deduction of \$727.00 consisted of a \$20.00 disregard per regulations, a \$522.00 deductible monthly-income standard for community residents, and a \$185.00 monthly Medicare premium payment. (Testimony and Exhibit 1).

9. On October 2, 2025, MassHealth approved the appellant for MassHealth Standard plus Waiver Services with a monthly deductible amount of \$2,244.00 starting on September 11, 2025. (Testimony and Exhibit 1).
10. The appellant filed this appeal in a timely manner on October 29, 2025. (Exhibit 2).
11. The appellant was initially awarded his VA pension benefits on August 31, 2021. (Testimony and Exhibit 5).
12. At that time, the VA calculated the appellant's total income as \$19,934.00 per year, which included Social Security retirement benefits and payments from a now closed IRA account. (Testimony and Exhibit 5).
13. The basic pension rate (not including AA benefits) set by Congress in 2021 was \$13,931.00. The appellant's total income exceeded this amount. (Testimony and VA Benefits and Health Care).
14. The appellant's yearly unreimbursed medical expenses were in the amount of \$67,782.00 per year consisting of Medicare Part B premium and assisted living fees. (Exhibit 5).
15. Based on the appellant's UME, the VA found the appellant's countable income to be \$0.00. (Testimony and Exhibit 5).
16. The MAPR rate set by Congress in 2025 without AA benefits was \$16,965.00. (<https://www.va.gov/pension/veterans-pension-rates/>)
17. The MAPR rate set by Congress in 2025 including AA benefits was \$28,300.00. Id.
18. The appellant's current countable income from the Social Security Administration equals \$18,696.00 per year. (Testimony).
19. The appellant's countable income exceeds his MAPR rate without AA benefits.
20. The appellant would not have been eligible for a VA pension had it not been for his UME.

Analysis and Conclusions of Law

MassHealth administers and is responsible for delivery of healthcare benefits to MassHealth members. See 130 CMR 515.002. Eligibility for MassHealth benefits differs depending on an applicant's age. Regulations 130 CMR 515.000 through 522.000 (referred to as Volume II)

provide the requirements for non-institutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, and certain Medicare beneficiaries. See 130 CMR 515.002(B).

The eligibility requirements for MassHealth Standard coverage for individuals who would be institutionalized if they were not receiving home-and community-based services is described in 130 CMR 519.007.

Program of All-inclusive Care for the Elderly (PACE) 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. See 130 CMR 519.007(C)(1). In determining PACE eligibility, the MassHealth agency counts the income and assets of only the applicant or member regardless of their marital status. The applicant or member must meet all of the following criteria: (a) be 55 years of age or older; (b) meet Title XVI disability standards if 55 through 64 years of age; (c) be certified by the MassHealth agency or its agent to be in need of nursing facility services; (d) live in a designated service area; (e) have medical services provided in a specified community-based PACE program; (f) have countable assets whose total value does not exceed \$2,000 or, if assets exceed these standards, reduce assets in accordance with 130 CMR 520.004: Asset Reduction; and (g) have a countable-income amount less than or equal to 300% of the federal benefit rate (FBR) for an individual. See 130 CMR 519.007(C)(2). Individuals whose income exceeds the standards set forth in 130 CMR 519.007(C)(2) may establish eligibility for MassHealth Standard by meeting a deductible as described at 130 CMR 520.028: Eligibility for a Deductible through 520.035: Conclusion of the Deductible Process. See 130 CMR 519.007(C)(3).

In this case, the appellant is over the age of 65 and resides in an assisted living facility. He has been approved for the PACE program by MassHealth. Thus, there is no dispute that he meets the eligibility requirements for PACE. There only issue in dispute is the determination of the monthly deductible amount.

The deductible amount is determined by multiplying the excess monthly income by six. Excess monthly income is the amount by which the applicant's countable-income amount as described in 130 CMR 520.009 exceeds the MassHealth deductible-income standard. See 130 CMR 520.030.

Per 130 CMR 520.009, countable income is an individual's and the spouse's gross earned and unearned income less certain business expenses and standard income deductions. See 130 CMR 520.009(A)(1). Income that does not directly result from an individual's own labor or services is unearned. Unearned income includes, but is not limited to, social security benefits, railroad retirement benefits, pensions, annuities, federal veterans' benefits, rental income, interest, and dividend income. See 130 CMR 520.009(D).

Here, there is no dispute that the appellant's income consists of Social Security retirement benefits and VA pension benefits as his annuity payments have ceased. As such, the appellant's total

income is considered unearned.

The MassHealth agency allows the deduction of \$20 per individual from the total gross unearned income. See 130 CMR 520.013(A). Additionally, MassHealth allows the deduction of \$522.00 per month for a single individual, as the monthly-income standard deduction for community residents and \$185.00 monthly Medicare premium payment. See 130 CMR 520.030.

Additionally, certain sources of income are considered noncountable for MassHealth purposes. Included in this noncountable income are “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,” as noncountable income. See 130 CMR 520.015(E).

Whether or not the appellant’s full VA pension should be considered as noncountable income is the central issue in this appeal. The MassHealth representative argued that the appellant is eligible to receive a VA pension regardless of his UME because his “Maximum Annual Pension Rate” (MAPR) which included his AA benefits exceeded his income from the Social Security Administration. As such, the appellant was eligible for a VA pension which is the difference between the two⁴ (\$28,300.00 - \$18,696.00). The appellant’s representative argued that the appellant’s MAPR without his AA benefits is less than his income from the Social Security Administration (\$16,965.00 < \$18,696.00). As such, the appellant was not eligible to receive a VA pension but for his UME. The parties dispute whether the appellant would have received a VA pension regardless of UME.

In this case, the appellant is a [REDACTED] with no dependents and qualifies for AA benefits. As such, his base MAPR was set at \$16,965.00 and his AA benefit was set as \$11,335.00, totaling \$28,300.00 as of December 1, 2024. See Exhibit 7, p. 1; www.va.gov/pension/veterans-pension-rates-2025. The VA will base the VA benefits payment amount on the difference between a veteran’s “income for VA purposes and a limit that Congress sets (called the Maximum Annual Pension Rate, or MAPR.” *Id.* A Veteran’s income is how much they earn, including their Social Security benefits, investment and retirement payments. Some expenses, like non-reimbursable medical expenses (medical expenses not covered by your insurance provider), may reduce their income for VA purposes. See <https://www.va.gov/pension/veterans-pension-rates/>. The MAPR is the limit set by Congress. The question is which MAPR, inclusive or exclusive of AA benefits, must be considered in determining whether a veteran is eligible for a VA pension.

⁴ A VA pension is calculated based upon MAPR which is an income cap set by Congress. If the Veteran qualifies for AA benefits, the MAPR will increase by the amount of AA. See <https://www.va.gov/pension/veterans-pension-rates/>.

Through an email dated December 4, 2025, MassHealth argued that because the appellant's VA pension inclusive of his AA benefits (\$28,300.00) exceeds his Social Security retirement income (\$18,696.00), the appellant was eligible to receive a VA pension regardless of his UME. MassHealth suggests that because the appellant would have received "a" VA pension which according to MassHealth's interpretation of VA benefits would have been the difference between the appellant's MAPR inclusive of AA benefits and his Social Security income, his VA pension would not fall under the BRAVE Act as set forth in Eligibility Operations Memo (EOM 19-08) and is therefore countable.

The appellant's representative argues that the appellant's MAPR exclusive of AA benefits is the income threshold considered by VA when determining whether a veteran would qualify for a pension. As such, the appellant's MAPR exclusive of AA benefits (\$16,956.00) is less than the appellant's Social Security income (\$18,696.00). As such, but for his UME, the appellant would not have qualified for a VA pension.

The appellant's argument is persuasive for many reasons. In its initial award letter, the VA is clearly considering MAPR exclusive of AA benefits when determining the appellant's eligibility. The appellant's initial award letter calculated his total income as \$19,934.00 per year. See Exhibit 5, p. 7. This amount exceeded the MAPR of \$13,931.00 (not including AA benefits) in 2021. Accordingly, the VA used the MAPR exclusive of AA benefits as the income threshold and not MAPR inclusive of AA benefits as MassHealth suggests in order to determine VA pension eligibility. It was after the VA considered the appellant's yearly medical expenses of \$67,782.00, which were comprised of his Medicare Part B premium and assisted living fees, that it found the appellant's countable income to be \$0.00. *Id.* Similarly in 2025, the appellant's total income of \$18,696.00 exceeded his MAPR of \$16,956.00 (not including AA benefits). As such, he would not have been eligible for a VA pension but for his UME.

To give credence to MassHealth's calculation of VA pension eligibility would not only be contrary to the VA's calculation of eligibility but also inapposite to the legislative intent and plain language of the statute by penalizing a veteran who is eligible for noncountable AA benefits and has UME. See Cohen v. Comm'r of Div. of Med. Assistance, 423 Mass. 399, 403–404 (1996) ("Medicaid is, and always has been, a program to provide basic health coverage to people who do not have sufficient income or resources to provide for themselves").

On November 7, 2018, Governor Charlie Baker signed into law the "BRAVE Act," which stands for "An Act Relative to Veterans Benefits, Rights, Appreciation, Validation and Enforcement." The statutory application of the BRAVE Act to the determination of the veteran's eligibility for Medicaid is as follows: "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." See G.L. c. 118E, § 25 (4 ½). This statutory language requires

MassHealth to look to the VA's rules when determining how the veteran became eligible to receive a pension. See Dermody v. Exec. Off. of Health & Hum. Servs., 491 Mass. 223, 230, 201 (2023)(when interpreting statutory provisions, the Court will always begin with the plain language, keeping in mind that the fundamental goal is to discern the intent of the law-making body). See also Griffin v. Oceanic Contrs., Inc., 458 U.S. 564, 570 (1982) (ultimate task "is to give effect to the will of Congress").

Evaluated with the reading of the statutory provision, the legislative intent, and the VA award letter, it is clear that the MAPR exclusive of AA benefits should be utilized when determining a veteran's eligibility for a VA pension. This conclusion is further supported by the VA's reporting of its pension payment when a veteran is entitled to AA benefits. According to the VA, "if pension would not be payable but for entitlement to the A&A allowance or housebound rate, because income is in excess of the limit, [VA will] report the entire amount of the payment as A&A." See M21-1, Part XIII, Subpart ii, Chapter 3, Section B - Requests from Public Assistance Agencies. Here, since the appellant's Social Security income of \$18,696.00 is greater than the appellant's MAPR of \$16,956.00 exclusive of AA benefits, the appellant is only eligible for a VA pension because he is eligible for AA benefits. As such, the entire amount of the appellant's pension would be reported as AA benefits by the VA. In accordance with 130 CMR 520.015(E), "veterans' aid and attendance benefits" are noncountable income. As such, the same conclusion is reached in consideration of above cited regulations.

Lastly, MassHealth argued that EOM 19-08 indicates that if an individual is ineligible for a VA pension due to being over income, but by deducting the UME the individual falls below the income threshold and qualifies, then we would disregard the entire pension amount, no partial exemptions. In making this argument, MassHealth is suggesting that the "income threshold" referenced in that EOM is MAPR inclusive of AA benefits. This argument is unpersuasive. MassHealth's EOM 19-08, issued on July 15, 2019, stated 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: "[t]he 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." See EOM 19-08 (July 15, 2019). Nothing in this EOM defines the meaning of "threshold." Accordingly, the meaning of "threshold" is open to interpretation. Whereas, when interpreting statutory provisions, the plain language, keeping in mind that the fundamental goal is to discern the intent of the law-making body, is considered. See Dermody v. Exec. Off. of Health & Hum. Servs., supra.

As such, I find that the “threshold” to be considered in determining whether the appellant would have received a VA pension without UME, is his MAPR exclusive of AA benefits. To find otherwise, would penalize a veteran whose income is lower, not higher. It would also be contrary to the plain reading of the statute and MassHealth regulations for reasons stated supra and fly in the face of the legislative intent underlying the BRAVE ACT, which was expressly designed to ensure that veterans receive their due recognition and benefits.

As such, the appellant has successfully demonstrated by a preponderance of the evidence that the entirety of his VA pension is noncountable pursuant to G.L. c. 118E, § 25(4½), 130 CMR 520.015(E), and EOM 19-08 because the appellant would not have received the \$2,358.00 monthly payment but for his UME.⁵ See Craven v. State Ethics Comm'n, 390 Mass. 191, 200 (1983)(“[p]roof by a preponderance of the evidence is the standard generally applicable to administrative proceedings”).

Accordingly, I find that MassHealth incorrectly included the appellant’s VA pension benefits when calculating his monthly deductible amount. As such, for the foregoing reasons, this appeal is APPROVED.

Order for MassHealth



Recalculate the appellant’s monthly deductible amount excluding his VA pension benefits consistent 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.

Sharon Dehmand, Esq.
Hearing Officer
Board of Hearings

⁵ 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, and BOH hearing decision for Appeal No. 2409858 (issued January 13, 2025).

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957, 978-863-9290