

107 CMR: MASSACHUSETTS REHABILITATION COMMISSION

107 CMR 12.00: STATEWIDE HEAD INJURY PROGRAM

Section

- 12.01: Purpose and Scope
- 12.02: Meaning of Terms in 107 CMR 12.00
- 12.03: Referral, Application and Eligibility Determination Process
- 12.04: Criteria for Eligibility
- 12.05: Financial Assessment
- 12.06: SHIP Services
- 12.07: Case Closure and Ineligibility Determination
- 12.08: Limitations Regarding SHIP Funded Services
- 12.09: Right to Appeal

12.01: Purpose and Scope

107 CMR 12.00 establishes the policy, conditions, criteria and procedures for the operation of the Statewide Head Injury Program (SHIP) and the services provided by SHIP.

12.02: Meaning of Terms in 107 CMR 12.00

The terms used in 107 CMR 12.00 have the meaning ascribed in 107 CMR 12.02 unless the context otherwise requires.

Appeal. A process that enables an individual to contest a decision by the Commission about eligibility for or denial, reduction, suspension or termination of SHIP services; the appeal process consists of a first step informal review followed by a fair hearing if the issue remains unresolved pursuant to the Informal Rules of the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.02.

Guardian. A person appointed by a Court of competent jurisdiction to be responsible for the person (ward) who has been determined incompetent by the appropriate court.

Letter of Understanding. A document which outlines the scope and duration of SHIP ancillary services provided to eligible individuals, which is signed by the SHIP program coordinator and individual/guardian.

MRC. The Massachusetts Rehabilitation Commission.

Neuropsychology Consultants. MRC qualified, licensed psychologists, specializing in clinical neuropsychology, who meet professional training guidelines established by the American Psychological Association (Division 40) and International Neuropsychological Society. A neuropsychology consultant designated by the Director of SHIP, is responsible for clinical oversight and development of clinical standards and mandatory training for all SHIP supported programs; supervision of other clinical consultants; and consultation to other state agencies, per the request of the Director of SHIP.

Residency in the Commonwealth. An individual must demonstrate that he/she is a resident of Massachusetts with the intent to remain domiciled in Massachusetts. SHIP may request proof of residency such as an individual's residential address, residence of the immediate family, and/or state providing Medicaid coverage.

Program Coordinator. The SHIP staff person who identifies and coordinates the appropriate and available services necessary to assist the individual and their family to achieve independence and community integration.

SHIP Ancillary Services. Those services which are unique to the eligible applicant, short-term in nature or intermittent and which help to maintain or increase an individual's independence in their home, work or community environment. Such services may include but are not limited to private case management, respite care, home modifications, adaptive devices, recreation, community support services, and family assistance.

12.02: continued

SHIP Contracted Services. A broad range of community-based services and supports for eligible applicants provided by private providers under a contract with SHIP. Availability may be limited by the capacity of the program defined in the contract.

Significant Impairment. Post-traumatic impairments that are documented in the results of neuropsychological testing; neuropsychiatric/neurobehavioral assessments; psychiatry evaluations; evaluations of rehabilitation clinicians; or neurodiagnostic testing. The findings must be specific and directly related to the traumatic brain injury, and impairments must compromise the individual's mental, behavioral, physical, and/or cognitive capacities.

Traumatic Brain Injury (TBI). TBI, for the purposes of SHIP eligibility, is defined as brain damage resulting from:

- (a) a blunt blow to the head, usually resulting in a closed head injury (*e.g.* motor vehicle-related incident);
- (b) a penetrating head injury (*e.g.* gunshot or knife wound to the brain);
- (c) crush injury resulting in compression to the brain (*e.g.* industrial accident involving the head);
- (d) severe whiplash injury causing internal damage to the brain (*e.g.* shaken baby syndrome);
- (e) head injury secondary to an explosion (caused by an improvised explosive device, grenade, mortar/artillery or landmine).

For the purposes of SHIP eligibility, brain damage secondary to other neurological insults (*e.g.* infection of the brain, stroke, anoxia, brain tumor) is not considered to be a traumatic brain injury as defined within 107 CMR 12.00.

12.03: Referral, Application and Eligibility Determination Process

(1) Any person, agency or organization may refer an individual by contacting SHIP. SHIP shall send a letter to the referred individual, which shall include an application and release of information forms.

(2) The eligibility determination process begins with the submission of an application form signed by the individual applying for services or their court-appointed guardian. A copy of any applicable Massachusetts guardianship order must be included as well as copies of any authorizations allowing persons other than the individual to act on their behalf such as conservatorship, power of attorney, and representative payee.

(3) From the information obtained from the completed application, SHIP shall collect the medical and related records necessary for an eligibility determination.

(4) The documentation that is required by SHIP shall be hospital or medical records that specifically document the occurrence of a traumatic brain injury and/or treatment of a head injury at the time the traumatic brain injury reportedly occurred. In the event that these records have been destroyed or the hospital has no record of the applicant being seen or the applicant does not remember when and where they were treated

(a) the following requirements shall be substituted:

1. A report completed at the time of the injury which specifically documents damage related to traumatic brain injury; or
2. An EMT report, a police report, a report recording domestic violence or military service records which document the injury when it occurred; or
3. Documentation of pathophysiological sequelae which are diagnosis specific, *e.g.* Shaken Baby Syndrome and Dementia Pugilistica.

(b) The applicant shall be notified that SHIP cannot access hospital or medical records and requires any of the requirements set forth in 107 CMR 12.03(4)(a)1. through 3. to substantiate their traumatic brain injury. The applicant shall be given 90 days to submit these materials.

(c) If the applicant is unable to provide any of these documents, their application shall be considered incomplete and they can reapply for SHIP services at any time in the future if they are able to acquire the necessary records.

12.03: continued

(5) The SHIP neuropsychology consultant shall conduct a comprehensive diagnostic review of all documents received by SHIP which includes: a review of the nature and cause of the brain injury; a review of the nature and extent of any other disabling conditions or complications, *e.g.* physical injuries, psychiatric illness or substance abuse.

In the event that eligibility cannot be determined solely on the information set forth in 107 CMR 12.03(5), SHIP may require:

- (a) completion of a functional status assessment form; and/or
- (b) a neuropsychological assessment; and/or
- (c) an in person interview with the applicant.

(6) Applicants/guardians shall be notified in writing of the eligibility or ineligibility decision. An ineligibility determination may be appealed through the appeal procedure set forth 107 CMR 12.09.

12.04: Criteria for Eligibility

(1) Eligibility for SHIP services is based on:

- (a) an individual's documented externally caused traumatic brain injury; and
- (b) significant impairment of behavioral, cognitive, and/or physical functioning resulting primarily from an externally caused traumatic brain injury; and
- (c) a demonstration of an ability and intent to participate in community based services.

(2) Eligibility for this program does not preclude referral to and acceptance by any other public human service agency of the Commonwealth of Massachusetts, including federally funded programs and services.

(3) Eligibility shall be determined without regard to sex, race, age, creed, color, national origin, disability, or sexual preference, except that the individual applying for services must meet the eligibility criteria set forth in 107 CMR 12.04(1) and reside in the Commonwealth.

12.05: Financial Assessment

A Financial assessment form shall be completed for all SHIP consumers who are not Medicaid recipients. All recipients of 24 hour/seven day residential services shall contribute to the cost of their room and board.

12.06: SHIP Services

(1) SHIP supported services are subject to appropriations by the legislature and availability of appropriated funds.

(2) Services for eligible individuals are identified following an assessment of the individual's needs. Services shall focus on the development of functional living skills and must be provided in community-based settings. Services may be provided by SHIP or through the identification and referral to non-SHIP-funded local resources.

(3) The provision of the SHIP-supported services is dependent upon availability of the service, geographic accessibility and availability of fiscal resources.

(4) An individual's clinical status and ability to participate according to the criteria 107 CMR 12.04(1) is subject to re-evaluation as services become available or are requested.

(5) SHIP may provide information and referral services to any individual or organization upon request.

(6) General training and education may be provided upon request to the public at large and, for example, other state agencies, private providers and professionals, and school systems.

12.07: Case Closure and Ineligibility Determination

- (1) Case Closure. An individual's case shall be closed for the following reasons:
 - (a) refusal, inability or unavailability to participate in SHIP services; or
 - (b) change of residency status; or
 - (c) refusal by residents of a 24 hour/seven residential program to contribute available financial resources to their room and board; or
 - (d) death; or
 - (e) at the request of the individual.
- (2) Notice of case closure and the termination of SHIP-supported services shall be provided in writing to the individual/guardian 30 days prior to the termination date of SHIP services. Case closure may be appealed through the appeals procedure set out in 107 CMR 12.09.
- (3) Once terminated, an individual/guardian must submit a new application in order to be considered for future SHIP-funded services.
- (4) Ineligibility Determination. An individual who does not meet the criteria as defined 107 CMR 12.04(1) or who no longer meets those criteria shall be determined ineligible for SHIP-funded services. Notice of ineligibility shall be made in writing to the individual/guardian at the time of the determination. Individuals already receiving services shall be notified 30 days prior to the termination date of SHIP services. Ineligibility determination may be appealed through the appeals procedure set out 107 CMR 12.09.

12.08: Limitations Regarding SHIP Funded Services

- (1) SHIP shall support programs and service providers located in the Commonwealth except when services determined necessary by a SHIP program coordinator are not available within the Commonwealth.
- (2) Services that SHIP purchases including diagnostic services, shall be provided only after a full exploration of other resources available to the applicant. An applicant must take all necessary steps to obtain benefits to which he/she is legally entitled or for which he/she may be eligible. The program coordinator shall assist the applicant and, as appropriate, the applicant's parent(s), guardian(s) or representative(s) to access all other appropriate resources and public benefits to which the applicant may be entitled.
- (3) SHIP shall not be responsible for any evaluations, treatment or services which are not previously authorized in writing by a SHIP program coordinator.
- (4) The Commonwealth's existing public human service system shall be fully utilized, where available and appropriate, for evaluation and provision of services. SHIP does not operate inpatient facilities nor provide direct crisis intervention services. SHIP responds to individuals in crisis by referring them for intervention and stabilization to the appropriate resources which are available in the Commonwealth, (e.g. the Department of Mental Health screening clinics, hospital emergency rooms, and local police or inpatient psychiatric facilities).
- (5) A waiting list for certain contracted services may exist. The waiting lists are for specific services and administered by the date of the individual's application to SHIP.

SHIP services are subject to state appropriations and availability of limited fiscal resources.

12.09: Right to Appeal

- (1) An individual, guardian or a designated representative may file an appeal concerning ineligibility or a denial, suspension, reduction or termination of service.
- (2) An appeal is initiated by notifying the Director in writing and must be filed within 30 days after receipt of the decision which is the subject of the appeal.

107 CMR: MASSACHUSETTS REHABILITATION COMMISSION

- (3) The Director or designee shall conduct an informal review within 30 days of notification of the appeal.

12.09: continued

- (4) If the issues being appealed are not resolved by the informal review, the appealing party may petition the Director for a fair hearing, within 30 days of the conclusion of the informal review.
- (5) Within 60 days of the filing of the appeal, the Commission shall hold a fair hearing;
 - (a) the procedural rules governing all hearings shall be the Informal Rules of the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.02.
 - (b) the fair hearing shall be conducted by an impartial hearing officer designated by the Commission;
 - (c) the individual shall have the right to be represented at the hearing by a person of the individual's choosing at the individual's own expense;
 - (d) the appealing party and the Commission shall have the right to present any evidence relevant to the issues on appeal and have the right to call and examine witnesses.
 - (e) The appealing party with appropriate authorization can examine all records held by the Commission pertaining to the individual including all records on which the decisions at issue were made.
 - (f) following the hearing, the hearing officer shall prepare and submit a decision which will include the reasons for the decision including a summary of the evidence presented, findings of fact and conclusions of law.
 - (g) the decision shall be mailed to the individual and to the individual's guardian or representative, as appropriate, and the Director within 30 days.
- (6) Judicial Review; any person aggrieved by a final decision can request a review in accordance with M.G.L. c. 30A.
- (7) Continuation of Services Pending Appeal; unless the parties agree otherwise, those services which are the subject of an appeal shall not be suspended, reduced or terminated until the resolution of the appeal.

REGULATORY AUTHORITY

107 CMR 12.00: M.G.L. c. 6, §§ 74, 75, and 78(2).

NON-TEXT PAGE