

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2176383

**Decision Date:** 11/19/2021

**Hearing Date:** 10/05/2021

**Hearing Officer:** Marc Tonaszuck

**Appearances for Appellant:**




**Appearances for MassHealth:**

Linda Phillips, RN, Leann Govoni, RN and  
Kristen Stahl, RN



*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>	Denied	<b>Issue:</b>	ABI Waiver; MFP Waiver
<b>Decision Date:</b>	11/19/2021	<b>Hearing Date:</b>	10/05/2021
<b>MassHealth's Reps.:</b>	Linda Phillips, RN, Leann Govoni, RN and Kristen Stahl, RN	<b>Appellant's Reps.:</b>	
<b>Hearing Location:</b>	Quincy Harbor South Tower		

## 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 07/19/2021, MassHealth informed the appellant that it determined he was not clinically eligible for the Acquired Brain Injury Residential Habilitation Waiver (also known as the ABI-RH Waiver) because he cannot be safely served in the community within the terms of the ABI-RH Waiver. (130 CMR 519.007(G)(1); Exhibit 1A).

Through a notice dated 07/19/2021, MassHealth informed the appellant that it determined he was not clinically eligible for the Acquired Brain Injury Non-Residential Habilitation Waiver (also known as the ABI-N Waiver) because he cannot be safely served in the community within the terms of the ABI-RH Waiver. (130 CMR 519.007(G)(2); Exhibit 1B).

Through a notice dated 07/19/2021, MassHealth informed the appellant that it determined he was not clinically eligible for the Moving Forward Plan Residential Supports Home and Community Based Services Waiver (also known as the MFP-RS Waiver) because he cannot be safely served in the community within the terms of the MFP-CL Waiver (130 CMR 519.007(H)(1); Exhibit 1C).

The appellant filed this appeal to all three of the above notices in a timely manner on 08/19/2021 (130 CMR 610.015(B); Exhibit 2).<sup>1</sup> Denial of assistance is valid grounds for appeal (130 CMR 610.032).

## **Action Taken by MassHealth**

MassHealth determined the appellant was not clinically eligible for the ABI-RH, ABI-N, and MFP-CL Waivers.

## **Issue**

The appeal issue is whether MassHealth was correct in determining that the appellant is not eligible for the ABI-RH, ABI-N, and MFP-CL Waivers because he cannot be safely served in the community within the terms of the above waivers.

## **Summary of Evidence**

Linda Phillips testified on behalf of MassHealth. She stated that she is a Registered Nurse (RN) and Associate Director of Appeals and Regulatory Compliance. Ms. Phillips testified that MassHealth has two home and community-based services (HCBS) waivers that assist Medicaid-eligible persons, who have experienced an acquired brain injury (“ABI”), move into the community, and obtain community-based services. The ABI-N Waiver is for individuals who can move to their own home or apartment or to the home of someone else. The ABI-RH waiver is for individuals who need placement in a residence that has supervision and staffing 24 hours/day, 7 days/week. On 12/09/2020, the appellant applied for the ABI-RH Waiver and on 04/05/2021, he applied for the ABI-N.

The eligible criteria for the ABI Waiver are as follows:

- The applicant must be living in a nursing facility or a chronic or rehabilitative hospital and must have lived there for at least 90 days;
- The applicant must have a documented acquired brain injury, acquired at age 22 or older;

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<sup>1</sup> In MassHealth Eligibility Operations Memo (EOM) 20-09 dated 04/07/2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends;
  - All appeal hearings will be telephonic; and
  - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

- The applicant must meet clinical requirements and be in need of the Waiver services that are available through the ABI-RH Waiver;
- The applicant must meet the financial requirements to qualify for MassHealth. Special financial rules exist for waiver participants;
- The applicant must be able to be safely served in the community with the services available under the ABI-RH Waiver; and
- In addition to the above, to qualify for the ABI-RH Waiver, an applicant must need residential support services with staff supervision 24 hours/day, 7 days/week.

MassHealth has two additional HCBS Waivers that assist Medicaid-eligible persons, move into the community, and obtain community-based services, the MFP-RS Waiver, and the MFP Community Living (CL) Waiver. Both waivers help individuals move from a nursing home or long-stay hospital to an MFP-qualified residence in the community and obtain community-based services. The MFP-CL Waiver is for individuals who can move into their own home or apartment, or to the home of someone else, and receive services in the community that are less than 24 hours/day, 7 days per week. The MFP-RS Waiver is for individuals who need supervision and staffing 24 hours/day, 7 days per week. The appellant applied for the MFP-RS Waiver on 12/09/2020.

The eligibility criteria for the MFP Waivers are as follows:

- The applicant must be living in a nursing facility or long-stay hospital, and lived there for at least 90 consecutive days;
- The applicant must be 18 years old or older, and have a disability, or be age 65 and older;
- The applicant must meet clinical requirements for, and be in need of the Waiver services that are available through the MFP Waivers;
- The applicant must be able to be safely served in the community within the terms of the MFP Waivers;
- The applicant must meet the financial requirements to qualify for MassHealth special financial rules existing for Waivers' participants;
- The applicant will transition to an MFP-qualified residence in the community; and
- In addition to the above, to qualify for the MFP-RS Waiver, an applicant must need residential support services with staff supervision 24 hours/day, 7 days/week.

Previously, the appellant has applied for the waiver and appealed several times since 2013. In 2013 he applied for the ABI-RH waiver and was found clinically eligible on

06/07/2013, while he was residing at Tewksbury Hospital; however, due to an open court case and the risk to himself and others, on 12/10/2014 it was determined that he could no longer be safely served in the community. In 2015, he applied for the ABI-RH waiver and on 09/29/2015, he was denied for safety. He appealed and the denial was upheld on 04/07/2016. He applied for the ABI-RH waiver in 2016 and he was denied for failure to provide documents on 03/08/2016. In 2017, he applied for the ABI-RH waiver, and he was denied for safety on 07/14/2017. He appealed and did not appear at the appeal on 12/07/2017. In 2020, he applied for the ABI-RH waiver and was denied on 08/03/2020, for failure to provide documentation.

Ms. Phillips testified that the appellant is 61 years-old, currently residing at Lemuel Shattuck Hospital in Boston, MA. He was originally admitted there in February 2015 from Bridgewater State Hospital on a 16C commitment, not competent to stand trial. The criminal justice charges alleged an assault with a dangerous weapon, a pair of scissors, on a fellow patient at Tewksbury State Hospital. His original admission to Tewksbury hospital was in 2013. The appellant was originally made clinically eligible for the ABI-RH waiver on 06/07/2013, while he was residing at Tewksbury Hospital; however, due to the open court case and the risk to himself and others, on 12/10/2014, it was re-determined that he could no longer be safely served in the ABI-RH waiver. He was reassessed in September 2015, and he was again denied for his pending court case and for presenting as a safety risk to himself and others. Per previous documentation with the Boston Clerks office and Lowell Clerks office on 07/14/2017, all cases have been closed and the appellant currently has no open cases, active warrants, or probation.

The appellant has a past medical history that includes subarachnoid hemorrhage (age 23), organic brain syndrome, hepatitis C, aspiration pneumonia, hx of multiple CVA's, seizure disorder, migraines, expressive and receptive aphasia, polysubstance abuse; s/p fracture of L6 through L10 ribs in 2007, ascites with pancreatitis, and COVID 19. The appellant has a court appointed guardian who is his brother, and he resides in Dorchester MA. On his current Mini Mental Status Exam (MMSE), dated 10/01/2020, he scored 6/30. The appellant does have a history of polysubstance abuse, but he has been sober for many years, as he has been in a secure facility since 2013.

On 06/07/2021, an assessment for waiver eligibility was conducted via zoom due to Covid 19 restrictions. In attendance were the appellant; Mark Kearns, Social Worker (SW) from LSH; and Kristen Stahl, RN, MassHealth Nurse Reviewer, representing the ABI/MFP Waiver program. In addition, Ms. Stahl spoke with Brittany Olsen, SW from LSH via telephone after the initial assessment. The waiver assessment consists of completion of ABI documents including Minimum Data Set-Home Care (MDS-HC); ABI/MFP Clinical Determination Assessment; ABI/MFP Waivers Community Risks Assessment; and a review of the applicant's medical record.

On 05/29/2020, the appellant was started on Zyprexa 10mg, as needed, taking one

dose each morning; but since 06/19/2020, he is only taking his prescribed does of Zyprexa 10 mg twice a day. Since starting Zyprexa his behaviors have improved significantly. Major behaviors were not noted in his medical record, and Mr. Kearns, SW from LSH confirmed this. Mr. Kearns stated that except for sometimes the appellant returning late from leave of absence (LOA) passes or verbally upset at times, there is no physical or assaultive behaviors. After the appellant was started on Zyprexa in 2020, LSH has seen a significant improvement in his mood stability and him able to tolerate a tremendous amount and much easier to work with and him showing appreciation towards his care. He has multiple interactions with peers and has started a unit job to give him purpose. Per psychiatric progress note dated 05/24/2021, "[the appellant] is doing well with his unit job, clerical in nature... He is prone to presenting with confusion and disorientation about once a month. He then recovers fully each time. The presentation is consistent with previous episodes of seizure activity. The appellant presents in a polite and calm manner, often expressing gratitude to his providers for their care. He also inquires about their well-being when being interviewed." The appellant has shown significant improvements on Zyprexa, but he also resides in a structured 24/7 environment surrounded by available clinicians and a program that provides every 15-minute safety checks and a daily routine that offers him participation in regular group sessions

On 07/19/2021, denial notices for the ABI-N, ABI-RH and MFP-RS Waivers were mailed to the appellant's guardian. MassHealth, MRC, and DDS determined that the appellant continues to require the highly structured 24/7 program with staff who are trained behavioral specialists. This level of clinical support and staff interventions is not able to be duplicated in the ABI-N, ABI-RH and MFP-RS Waiver programs. In addition, as requested by MassHealth, on 09/28/2021, the appellant was reassessed for ABI-RH waiver eligibility and the results of this recent reassessment are currently pending.

The appellant appeared at the fair hearing by telephone and testified with the assistance of a social worker from the facility and a psychiatrist. Ms. Olson, the Social Worker, testified that prior to the Covid precautions that are currently in place at the facility, the appellant was allowed to freely go on hospital grounds and into the community. She testified that he "did well, but had one issue," when he suffered a seizure and tested positive for marijuana. This was in October 2018. Dr. Lee, the psychiatrist, testified that the facility does not have a less restrictive setting to transfer the appellant to, to show that he is able to function outside a locked-down unit. Dr. Lee stated that the appellant is "basically a star patient," and they would like to see him move from the unit. She stated there are no compliance issues with the appellant taking his medications, and "his judgment is very good." Dr. Lee stated that the appellant has had "months and months with a 7-hour pass" away from the facility to visit friends and family. But due to the pandemic he is not able to leave the hospital grounds. The appellant had an aggressive temper, but medication has mitigated it and he has made "a lot of gains."

The appellant testified that he is "a good man," and he "does not disrespect people." He

stated he is trying to move into a different situation.

## Findings of Fact

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

1. MassHealth offers three home, and community-based service (HCBS) waivers: Acquired Brain Injury Residential Habilitation Waiver (also known as the ABI-RH Waiver); the Acquired Brain Injury Non-Residential Habilitation Waiver (also known as the ABI-N Waiver); and the Moving Forward Plan Residential Supports Home and Community Based Services Waiver (also known as the MFP-RS Waiver). All Waivers help individuals move from a nursing home or long-stay hospital to an MFP qualified residence in the community and obtain community-based services. The ABI-RH Waiver is for individuals who can move into their own home or apartment, or to the home of someone else, and receive services in the community that are less than 24 hours/day, 7 days per week.
2. The appellant is 61 years of age and resides at Lemuel Shattuck Hospital in Boston, MA since February 2015.
3. The appellant has a past medical history that includes subarachnoid hemorrhage (age 23), organic brain syndrome, hepatitis C, aspiration pneumonia, hx of multiple CVA's, seizure disorder, migraines, expressive and receptive aphasia, polysubstance abuse; s/p fracture of L6 through L10 ribs in 2007, ascites with pancreatitis, and COVID 19. The appellant has a court appointed guardian who is his brother, and he resides in Dorchester MA. On his current Mini Mental Status Exam (MMSE), dated 10/01/2020, he scored 6/30. The appellant does have a history of polysubstance abuse, but he has been sober for many years, as he has been in a secure facility since 2013.
4. On 12/09/2020, the appellant applied for the ABI-RH Waiver and on 04/05/2021, he applied for the ABI-N. The appellant applied for the MFP-RS Waiver on 12/09/2020.
5. On 06/07/2021, an assessment for waiver eligibility was conducted via zoom due to Covid 19 restrictions. In attendance were the appellant; Mark Kearns, Social Worker (SW) from LSH; and Kristen Stahl, RN, MassHealth Nurse Reviewer, representing the ABI/MFP Waiver program. In addition, Ms. Stahl spoke with Brittany Olsen, SW from LSH via telephone after the initial assessment. The waiver assessment consists of completion of ABI documents including Minimum Data Set-Home Care (MDS-HC); ABI/MFP Clinical Determination Assessment; ABI/MFP Waivers Community Risks Assessment; and a review of the applicant's medical record.

6. The facility in which the appellant resides is a locked-down facility with 24/7 care.
7. The appellant was allowed passes to leave hospital grounds for up to seven hours at a time and go into the community.
8. In October 2018, the appellant suffered a seizure when he was on a leave of absence (LOA) pass. He returned to the facility testing positive for marijuana.
9. Since Covid restrictions were put into place, the appellant has not been allowed LOA passes.
10. On 07/19/2021, MassHealth denied the appellant's applications for the ABI-N, ABI-RH and MFP-RS Waivers.
11. MassHealth, MRC, and DDS determined that the appellant continues to require the highly structured 24/7 program with staff who are trained behavioral specialists. This level of clinical support and staff interventions is not able to be duplicated in the ABI-N, ABI-RH and MFP-RS Waiver programs.

## **Analysis and Conclusions of Law**

MassHealth regulations at 130 CMR 519.007 describe the eligibility requirements for MassHealth Standard coverage for individuals who would be institutionalized if they were not receiving home- and community-based services.

130 CMR 519.007(G) addresses Home- and Community-based Services Waivers for Persons with Acquired Brain Injury as follows:

### **(1) Residential Habilitation Waiver for Persons with Acquired Brain Injury.**

(a) Clinical and Age Requirements. The Residential Habilitation Waiver for Persons with Acquired Brain Injury, as authorized under § 1915(c) of the Social Security Act, allows an applicant or member who is certified by the MassHealth agency or its agent to be in need of nursing facility services or chronic disease or rehabilitation hospital services to receive residential habilitation and other specified waiver services in a provider-operated 24-hour supervised residential setting if he or she meets all of the following criteria:

1. is 22 years of age or older and, if younger than 65 years old, is totally and permanently disabled in accordance with Title XVI standards;
2. acquired, after reaching 22 years of age, a brain injury including, without limitation, brain injuries caused by external force, but not including Alzheimer's disease and similar neuro-degenerative diseases, the primary manifestation of which is dementia;
3. is an inpatient in a nursing facility or chronic disease or rehabilitation hospital with a continuous length of stay of 90 or more days at the time of application for



the waiver;

4. needs a residential support service available under the Residential Habilitation Waiver;

5. is able to be safely served in the community within the terms of the Residential Habilitation Waiver.

(b) Eligibility Requirements. In determining eligibility for MassHealth Standard and for these waiver services, the MassHealth agency determines income eligibility based solely on the applicant's or member's income regardless of his or her marital status. The applicant or member must

1. meet the requirements of 130 CMR 519.007(G)(1)(a);

2. have countable income that is less than or equal to 300% of the federal benefit rate (FBR) for an individual; 130 CMR: DIVISION OF MEDICAL ASSISTANCE 519.007: continued

3. have countable assets of \$2,000 or less for an individual and, for a married couple if the initial Waiver eligibility determination was on or after January 1, 2014, have assets that are less than or equal to the standards at 130 CMR 520.016(B): Treatment of a Married Couple's Assets When One Spouse Is Institutionalized; and

4. not have transferred resources for less than fair market value, as described in 130 CMR 520.018: Transfer of Resources Regardless of Date of Transfer and 520.019: Transfer of Resources Occurring on or after August 11, 1993.

(c) Enrollment Limits. Enrollment in the Residential Habilitation Waiver is subject to a limit on the total number of waiver participants. The number of participants who can be enrolled in this waiver may be limited in a manner determined by the MassHealth agency.

(d) Waiver Services. Eligible members who are enrolled as waiver participants in the Residential Habilitation Waiver are eligible for the waiver services described in 130 CMR 630.405(A): Acquired Brain Injury with Residential Rehabilitation (ABI-RH) Waiver.

## (2) Non-residential Habilitation Waiver for Persons with Acquired Brain Injury.

(a) Clinical and Age Requirements. The Non-residential Habilitation Waiver for Persons with Acquired Brain Injury, as authorized under § 1915(c) of the Social Security Act, allows an applicant or member who is certified by the MassHealth agency or its agent to be in need of nursing facility services or chronic disease or rehabilitation hospital services to receive specified waiver services, other than residential support services, in the home or community if he or she meets all of the following criteria:

1. is 22 years of age or older and, if younger than 65 years old, is totally and permanently disabled in accordance with Title XVI standards;

2. acquired, after reaching 22 years of age, a brain injury including, without limitation, brain injuries caused by external force, but not including Alzheimer's disease and similar neuro-degenerative diseases, the primary manifestation of which is dementia;

3. is an inpatient in a nursing facility or chronic disease or rehabilitation hospital with a continuous length of stay of 90 or more days at the time of application for the waiver;

4. needs one or more of the services under the Non-residential Habilitation Waiver; and

5. is able to be safely served in the community within the terms of the Nonresidential Habilitation Waiver.

(b) Eligibility Requirements. In determining eligibility for MassHealth Standard and for these waiver services, the MassHealth agency determines income eligibility based solely on the applicant's or member's income regardless of his or her marital status. The applicant or member must

1. meet the requirements of 130 CMR 519.007(G)(2)(a);

2. have countable income that is less than or equal to 300% of the federal benefit rate (FBR) for an individual;

3. have countable assets of \$2,000 or less for an individual and, for a married couple if the initial Waiver eligibility determination was on or after January 1, 2014, have assets that are less than or equal to the standards at 130 CMR 520.016(B): Treatment of a Married Couple's Assets When One Spouse Is Institutionalized; and

4. not have transferred resources for less than fair market value, as described in 130 CMR 520.018: Transfer of Resources Regardless of Date of Transfer and 520.019: Transfer of Resources Occurring on or after August 11, 1993.

(c) Enrollment Limits. Enrollment in the Non-residential Habilitation Waiver is subject to a limit on the total number of waiver participants. The number of participants who can be enrolled in this waiver may be limited in a manner determined by the MassHealth agency.

(d) Waiver Services. Eligible members who are enrolled as waiver participants in the Non-residential Habilitation Waiver are eligible for the waiver service described in 130 CMR 630.405(B): Acquired Brain Injury Non-residential Habilitation (ABI-N) Waiver.

Money follows the person community living waivers are described in subpart (H)(2) as follows:

(2) Money Follows the Person (MFP) Community Living Waiver.

(a) Clinical and Age Requirements. The MFP Community Living Waiver, as authorized under section 1915(c) of the Social Security Act, allows an applicant or member who is certified by the MassHealth agency or its agent to be in need of nursing facility services, chronic disease or rehabilitation hospital services, or, for participants 18 through 21 years of age or 65 years of age and older, psychiatric hospital services to receive specified waiver services, other than residential support services in the home or community, if he or she meets all of the following criteria:

1. is 18 years of age or older and, if younger than 65 years old, is totally and permanently disabled in accordance with Title XVI standards;

2. is an inpatient in a nursing facility, chronic disease or rehabilitation hospital, or, for participants 18 through 21 years of age or 65 years of age and older, psychiatric hospital with a continuous length of stay of 90 or more days, excluding rehabilitation days;
3. must have received MassHealth benefits for inpatient services, and be MassHealth eligible at least the day before discharge;
4. needs one or more of the services under the MFP Community Living Waiver;
5. is able to be safely served in the community within the terms of the MFP Community Living Waiver; and
6. is transitioning to the community setting from a facility, moving to a qualified residence, such as a home owned or leased by the applicant or a family member, an apartment with an individual lease, or a community-based residential setting in which no more than four unrelated individuals reside.

(b) Eligibility Requirements. In determining eligibility for MassHealth Standard and for these waiver services, the MassHealth agency determines income eligibility based solely on the applicant's or member's income regardless of his or her marital status. The applicant or member must

1. meet the requirements of 130 CMR 519.007 (H)(2)(a);
2. have countable income that is less than or equal to 300% of the federal benefit rate (FBR) for an individual;
3. have countable assets of \$2,000 or less for an individual and, for a married couple, if the initial Waiver eligibility determination was on or after January 1, 2014, have assets that are less than or equal to the standards at 130 CMR 520.016(B): *Treatment of a Married Couple's Assets When One Spouse Is Institutionalized*; and
4. not have transferred resources for less than fair market value, as described in 130 CMR 520.018: *Transfer of Resources Regardless of Date of Transfer* and 520.019: *Transfer of Resources Occurring on or after August 11, 1993*.

(c) Enrollment Limits. Enrollment in the MFP Community Living Waiver is subject to a limit on the total number of waiver participants. The number of participants who can be enrolled in this waiver may be limited in a manner determined by the MassHealth agency.

(d) Waiver Services. Eligible members who are enrolled as waiver participants in the MFP Community Living Waiver are eligible for the waiver services described in 130 CMR 630.405(D): *Money Follows the Person Community Living (MFP-CL) Waiver*.

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See Andrews vs. Division of Medical Assistance, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the

administrative determination. See Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333 , 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998).

MassHealth determined that the appellant does not meet the clinical eligibility requirements for the above Waivers, all on the basis that he cannot be safely served in the community within the terms of the respective waivers. As a basis for its decision, MassHealth principally has cited the lack of evidence of the appellant functioning in a less restrictive environment as the locked-down unit in which he currently resides. Appellant and his witnesses testified that prior to Covid measures that currently prohibit him from leaving hospital grounds, he was granted passes to leave the hospital grounds and go into the community for up to 7 hours. A social worker and a psychiatrist testified that the appellant was able to leave the hospital grounds to visit friends and family in the community mostly without incident. However, in October 2018, the appellant did have an incident. Specifically, it was not disputed that at that time, he suffered a seizure while on a LOA pass and returned to the facility and tested positive for marijuana. Covid restrictions were put into place in early 2020 and the appellant was no longer allowed LOA passes. At the time of the fair hearing, the Covid restrictions had not been lifted.

The appellant has not shown by a preponderance of the evidence that he has met his burden of showing that MassHealth's determination to deny his Waivers is incorrect or unsupported by the facts and the law. First, the testimony of the appellant and his witnesses that he can be safely served in the community is not supported by the evidence in the clinical record. Aside from the testimony, there was no corroborating documentary evidence submitted to support this testimony. MassHealth's requirement that the appellant demonstrate he is able to function in a less-intensive setting is not unreasonable. Perhaps by no fault of his own, the appellant is not able to show he has functioned in a less-intensive setting.

Second, the appellant and his witnesses seem to reference the fact that he is able to leave the hospital grounds for an extended time on a pass without incident as evidence that the appellant is able to be served in the community within the terms of the Waivers. Unfortunately, due to Covid restrictions, there is no recent evidence to show this remains true. Also, the incident when he suffered a seizure and returned with a positive marijuana test were not so remote in time from the beginning of the Covid restrictions, which ended the appellant's ability to obtain a LOA pass. Again, perhaps for no fault of the appellant's, the Covid restrictions have made it impossible for him to show that he is able to leave the hospital grounds without incident. MassHealth did not dispute that the appellant's health has improved recently; however, MassHealth convincingly argued that the appellant's care needs require a greater intensity of services than those available to him in the community with the resources available under the Waivers.

Finally, I find that MassHealth's denial is supported by the regulations and the facts in the hearing record. The appellant has not met his burden of showing that that

MassHealth's decision is incorrect. On the contrary, I find that MassHealth's decision supports MassHealth's decision that the appellant cannot be safely served in the community within the terms of the Waivers at this time. Therefore, MassHealth's decision to deny the Waivers is affirmed. This appeal is denied.

## **Order for MassHealth**

None.

## **Notification of Your Right to Appeal to Court**

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

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Marc Tonaszuck  
Hearing Officer  
Board of Hearings

cc: MassHealth Representative: Prior Authorization