

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed	<b>Appeal Number:</b>	2207846
<b>Decision Date:</b>	1/31/2023	<b>Hearing Date:</b>	None
<b>Hearing Officer:</b>	Paul C. Moore		

**Appellant's Representatives:**




**Department of Developmental Services  
(DDS) Representatives:**

Jennifer Bevilacqua, Esq., Assistant General  
Counsel



*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>	Dismissed	<b>Issue:</b>	ABI-RH waiver services, Individual Support Plan
<b>Decision Date:</b>	1/31/2023	<b>Hearing Date:</b>	None
<b>DDS Rep.:</b>	Legal counsel	<b>Appellant's Reps.:</b>	
<b>Hearing Location:</b>	None		

### Authority

This proceeding is governed pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction/Procedural Timeline

On September 7, 2022, the Department of Developmental Services (DDS) (“respondent”) sent the appellant, a DDS client receiving services under the MassHealth Acquired Brain Injury – Residential Habilitation (ABI-RH) waiver, a copy of an updated Plan of Care/Individual Support Plan (ISP) (Exh. 1). On October 6, 2022, the appellant, through his appeal representative, filed a timely request for a fair hearing on the scope of services under this ISP (Exh. 2).

An ISP modification or reduction of services for members enrolled in a ABI-RH waiver program is a valid ground for appeal to BOH (130 CMR 610.032(G)(3)(b)).

By letter to the parties dated November 3, 2022, BOH scheduled a hearing on the merits of the appeal, by telephone, for November 28, 2022, to be heard by the undersigned hearing officer (Exh. 3).

The DDS submitted an appeal packet prior to hearing, which the hearing officer marked as Exhibit 4.

On November 23, 2022, the hearing officer received, by electronic mail, a copy of a Motion to Continue Hearing (“motion”) from the DDS legal counsel (Exh. 5). As grounds for continuance, the motion stated:

DDS states that on November 22, 2022, a meeting was held with the [appellant], [the

appellant's sister], and [the appellant's son]. During said meeting, the parties agreed to hold an ISP modification meeting to make changes to the services, goals, and support plan. It is the parties' hope that the matters identified in the appeal will be addressed and settled at that time.

(Exh. 5)

The motion requested a two-month postponement of the appeal hearing (*Id.*).

After reviewing the motion, on November 25, 2022, by e-mail correspondence to the parties, the hearing officer allowed the respondent's motion to continue; specifically, the hearing officer indicated:

The appeal will not be rescheduled until such time as a joint status report from the parties is received. The report should include an update on the status of the appellant's Plan of Care, and any agreed-to changes that have been implemented.

(Exh. 6)

The hearing officer set a deadline of January 23, 2023 for the parties to file a joint status report with him (*Id.*).

On January 23, 2023, the hearing officer received by e-mail from the parties a joint status report, signed and dated by both parties (Exh. 7). The status report stated in relevant part:

On January 24, 2023, an ISP Modification meeting was held in person at the appellant's home. . .

Several modifications were made to the ISP to reflect [the appellant's] goals and supports. . . The following changes were made:

1. The Vision Statement. . . was changed after consultation with the appellant and his family prior to the January 4, 2023 ISP modification meeting.
2. The Accommodations Section (Part II) had several changes:
  - a. Amended effective and preferred methods of communication;
  - b. Amended skills to include independent toileting;
  - c. Amended challenges to include preferred side of positioning;
  - d. Amended self-direction to include sister. . . and son as supportive individuals whom he wishes to involve in his support planning decisions.
  - e. Added that the appellant does not like the nickname J. and prefers to be called by Ja.<sup>1</sup>

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<sup>1</sup> Abbreviations are used to protect confidentiality.

3. The Anticipated/Current Supports. . . section primarily remained the same because the appellant receives the maximum supports. Several comments were added to each section:
  - a. Home Supports: appellant wishes to order out more;
  - b. Community Supports: no changes
  - c. Health and Dental: no changes, expect an updated statement on current and future medical appointments and referrals.
  - d. Adaptive Equipment and Assisted Technology: The desire to order a new wheelchair through private funding and referral by DDS for new adaptive equipment (iPad).
  - e. Clinical/Behavioral: Added therapy with preference on therapist;
  - f. Rehabilitative Therapies: Added focus therapies on transferring. DDS is working on referral for available therapist.
4. The Safety/Risk. . . section was not changed.
5. The Legal/Benefits/Financial. . . section was not changed. Appellant's sister . . . and son. . . mentioned that the appellant executed a new Health Care Proxy at a doctor's appointment and asked to have the appellant's record updated. DDS received a copy post-meeting and has updated it's (*sic*) records.
6. The Other Planning Factors section . . . was primarily unchanged. Added language to reflect appellant's desire to see a nutritionist. DDS has agreed to send out referrals.
7. The Goals and Objectives. . . section was amended as follows:
  - a. Goal one, Church: measurable objective was changed to, 'By August 2023 [the appellant] will attend Church once per week for at least 49 out of 52 weeks.' The support strategies primarily remained the same.
  - b. Goal two, Community: measurable objective was changed to, 'By August 2023, [the appellant] will attend the local senior center at least 10 days per month for 11 out of 12 months.' The support strategies remained primarily the same.

At the conclusion of the ISP modification hearing, all parties agreed with ISP, as amended. . . .

There are no contested issues remaining and the appeal may be dismissed.

(Exh. 7)

## **Findings of Fact**

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

1. The appellant is a DDS client receiving services under the MassHealth Acquired Brain Injury – Residential Habilitation (ABI-RH) waiver (Exh. 4).
2. DDS issued a written copy of an updated Plan of Care/Individual Support Plan (ISP) to the appellant on September 7, 2022 (Exh. 1).

3. The appellant filed a timely appeal of modifications of his ISP with the BOH on October 6, 2022 (Exh. 2).
4. The BOH set a hearing date of November 28, 2022 (Exh. 3).
5. DDS filed a motion to continue the November 28, 2022 hearing with BOH on November 23, 2022, on the grounds that a ISP modification meeting was planned imminently with the appellant and his family (Exh. 5).
6. The hearing officer allowed the DDS motion to continue (Exh. 6).
7. In a signed, dated joint status report filed on January 23, 2023, the parties informed the hearing officer that requested modifications to the appellant's ISP had been agreed to by both parties, and that there were no contested issues remaining (Exh. 7).

### **Analysis and Conclusions of Law**

The appellant, a MassHealth waiver participant, appealed his ISP created by the DDS pursuant to 130 CMR 610.032(G)(3)(b).

Although no fair hearing was held, the hearing officer took jurisdiction of this appeal.

On January 23, 2023, the hearing officer received a joint status report signed by both parties reflecting that an ISP modification hearing had taken place, and that there were no issues remaining in dispute.

Pursuant to the Fair Hearing Rules at 130 CMR 610.035(A)(8) (effective 1/20/23), "Dismissal of a Request for a Fair Hearing:"

BOH will dismiss a request for a hearing when. . . BOH learns of an adjustment or action that resolves all of the issues in dispute between the parties.

In view of the resolution of all contested issues in this matter, the appeal is DISMISSED.

### **Order for DDS**

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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Paul C. Moore  
Hearing Officer  
Board of Hearings

cc: Jennifer Bevilacqua, Esq., Assistant General Counsel, Department of Developmental Services, Hogan Regional Center, P.O. Box A, Hathorne, MA 01937

[REDACTED]