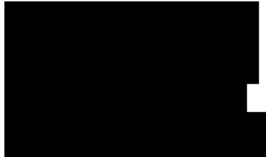


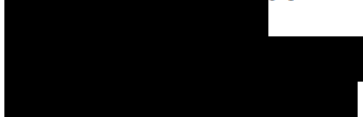
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2209119
Decision Date:	3/06/2023	Hearing Date:	01/26/2023
Hearing Officer:	Patrick M. Grogan	Record Open to:	N/A

Appearance for Appellant:



Appearance for MassHealth:

Linda Phillips, RN
Leanne Govoni, Associate Director
Brad Goodier, RN (Observing)

Interpreter:

N/A



*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:	Denied	Issue:	MFP(CL) Waiver ABI-RH Waiver
Decision Date:	3/06/2023	Hearing Date:	01/26/2023
MassHealth's Rep.:	Linda Phillips, RN	Appellant's Rep.:	[REDACTED]
Hearing Location:	Remote (Tel)	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 4 notices dated November 8, 2022, MassHealth denied the Appellant's applications for various waivers. Specifically, through a notice dated November 8, 2022, MassHealth denied the Appellant's application for the Acquired Brain Injury Residential Habilitation Waiver (ABI-RH Waiver) because MassHealth determined that the Appellant did not meet the eligibility criteria for the ABI-RH Waiver. (see 130 CMR 519.007(G)(1) and Exhibit 1, p.1). Additionally, through a notice dated November 8, 2022, MassHealth denied the Appellant's application for the Acquired Brain Injury Non-Residential Habilitation Waiver (ABI-N Waiver) because MassHealth determined that the Appellant did not meet the eligibility criteria for the ABI-N Waiver. (see 130 CMR 519.007(G)(2) and Exhibit 1, p.2) Additionally, through a notice dated November 8, 2022, MassHealth denied the Appellant's application for the Moving Forward Plan Residential Supports Home-and-Community-Based Services Waiver (MFP-RS Waiver) because MassHealth determined that the Appellant did not meet the eligibility criteria for the MFP-RS Waiver. (see 130 CMR 519.007(H)(1) and Exhibit 1, p.3) Lastly, through a notice dated November 8, 2022, MassHealth denied the Appellant's application for the Moving Forward Plan Community Living Home-and-Community-Based Services Waiver (MFP-CL Waiver) because MassHealth determined that the Appellant did not meet the eligibility criteria for the MFP-CL Waiver. (see 130 CMR 519.007(H)(2) and Exhibit 1, p.4) The Appellant filed this appeal in a timely manner on December 20, 2022 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the Appellant's applications for 4 home and community-based service waivers due to the determination that the Appellant did not meet the eligibility requirement for any of the HCBS waivers. Specifically, MassHealth denied the Appellant's application for Acquired Brain Injury Residential Habilitation Waiver (ABI-RH Waiver) because the Appellant was not 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. Additionally, MassHealth denied the Appellant's application for the Acquired Brain Injury Residential Habilitation Waiver (ABI-RH Waiver) because MassHealth determined that the Appellant was not 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. Also, MassHealth denied the Appellant's application for the Moving Forward Plan Residential Supports Home-and-Community-Based Services Waiver (MFP-RS Waiver) because MassHealth determined that the Appellant was not inpatient in a nursing facility, chronic disease or rehabilitation hospital, or, for participants 18 through 21 years of age or 65 years of age or older, psychiatric hospital with a continuous length of stay of 90 or more days, excluding rehabilitation days. Lastly, MassHealth denied the Appellant's application for the Moving Forward Plan Community Living Home-and-Community-Based Services Waiver (MFP-CL Waiver) because MassHealth determined that the Appellant was not inpatient in a nursing facility, chronic disease or rehabilitation hospital, or, for participants 18 through 21 years of age or 65 years of age or older, psychiatric hospital with a continuous length of stay of 90 or more days, excluding rehabilitation days.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.007(G)(1), 130 CMR 519.007(G)(2), 130 CMR 519.007(H)(1), and 130 CMR 519.007(H)(2) in determining that the Appellant was not an inpatient in a nursing facility or chronic disease or rehabilitation hospital with a continuous length of stay of 90 days or more at the time of application for the waivers.

Summary of Evidence

Between March 29, 2022, and July 14, 2022, the Appellant was being treated at Saint Elizabeth's Hospital. (Testimony, Exhibit 9, p.1, Exhibit 8, p.53) He was then admitted to Spaulding Rehabilitation Hospital from [REDACTED] 2022 through [REDACTED] 2022 for a total of 20 days. (Testimony, Exhibit 8, p.53). The Appellant was then admitted to Pate Rehabilitation Hospital in [REDACTED] Texas from [REDACTED] 2022, where he was residing there through [REDACTED] 2022. (Testimony, Exhibit 8, p.53, Exhibit 9, p.1). On October 16, 2022, the Appellant applied for the MFP waivers. (Testimony). On November 3, 2022, the Appellant applied for the ABI waivers. (Testimony). On November 7, 2022, the Appellant's Stepmother contacted the MassHealth Associate Director of Operations to discuss the facility setting of Pate Rehabilitation Hospital. (Testimony). MassHealth determined Pate Rehabilitation Hospital was not paid by MassHealth and this was confirmed by representatives of Pate Rehabilitation Hospital. (Testimony). On November 8, 2022, MassHealth denied the Appellant's requests for waivers due to fact that he was not

inpatient in a nursing facility or chronic disease or rehabilitation hospital with a continuous length of stay of 90 days or more at the time of application for the waivers. (Testimony, Exhibit 1).

The Appellant, through his witnesses, testified that Spaulding Rehabilitation Hospital informed them that there was no facility within Massachusetts to meet the needs of the Appellant and suggested a hospital in Florida as well as Pate Rehabilitation Hospital in [REDACTED] Texas. (Testimony, Exhibit 9, p.1). The Appellant, through his witnesses, testified that despite calling multiple facilities in Massachusetts, they were unable to find a place to meet the needs of the Appellant and chose to arrange his stay in Pate Rehabilitation Hospital in [REDACTED] Texas. (Testimony). The Appellant, through his witnesses, testified that Spaulding Rehabilitation Hospital did not inform them of the waiver process, nor the requirement of inpatient in a nursing facility or chronic disease or rehabilitation hospital with a continuous length of stay of 90 days or more at the time of application for the waivers. (Testimony).

The MassHealth representatives testified that they had received applications for waivers in the past from Spaulding Rehabilitation Hospital. (Testimony). The MassHealth representatives testified that the time that the Appellant was treated at Saint Elizabeth's hospital did not count towards the inpatient in a nursing facility or chronic disease or rehabilitation hospital with a continuous length of stay of 90 days or more at the time of application requirement. (Testimony). The MassHealth representatives further testified that multiple residential facilities are located in Massachusetts that support Acquired Brain Injury patients. (Testimony). The MassHealth representatives testified that clinical analysis of the Appellant's case did not occur, due to the Appellant's inability to meet the eligibility criteria inpatient in a nursing facility or chronic disease or rehabilitation hospital with a continuous length of stay of 90 days or more at the time of application for the waivers. (Testimony). Based upon the inability to meet the eligibility criteria outlined in the Regulations, the Appellant's request for waivers was denied. (Testimony, Exhibit 1) MassHealth testified that although the Appellant does not currently meet the eligibility criteria inpatient in a nursing facility or chronic disease or rehabilitation hospital with a continuous length of stay of 90 days or more at the time of application for the waivers, the Appellant could return to a facility within Massachusetts and reapply for home-and-community-based services and a clinical evaluation could be completed once the Appellant meets the eligibility requirements as outlined in the Regulations. (Testimony)

Findings of Fact

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

1. The Appellant had resided at the Pate Rehabilitation Hospital from [REDACTED] 2022 through [REDACTED] 2022. (Testimony, Exhibit 8, p.53, Exhibit 9, p.1)
2. Prior to this, the Appellant was a resident at Spaulding Rehabilitation Hospital from [REDACTED] 2022 through [REDACTED] 2022. (Testimony, Exhibit 8, p. 53)

3. Prior to this, the Appellant was admitted to Saint Elizabeth's Hospital from [REDACTED] 2022 through [REDACTED] 2022. (Testimony, Exhibit 8, p.53, Exhibit 9, p.1)
4. MassHealth testified that the admission duration from [REDACTED] 2022 through [REDACTED] 2022 does not factor into the calculus of the eligibility criteria inpatient in a nursing facility or chronic disease or rehabilitation hospital with a continuous length of stay of 90 days or more at the time of application for the waivers as outlined in the Regulations. (Testimony, 130 CMR 519.007(G)(1), 130 CMR 519.007(G)(2), 130 CMR 519.007(H)(1), and 130 CMR 519.007(H)(2))
5. The Appellant, and his family, were unaware of the eligibility criteria inpatient in a nursing facility or chronic disease or rehabilitation hospital with a continuous length of stay of 90 days or more at the time of application for the waivers as outlined in the Regulations. (Testimony)
6. MassHealth testified that although the Appellant does not currently meet the eligibility criteria inpatient in a nursing facility or chronic disease or rehabilitation hospital with a continuous length of stay of 90 days or more at the time of application for the waivers, the Appellant could return to a facility within Massachusetts and reapply for home-and-community-based services and a clinical evaluation could be completed once the Appellant meets the eligibility requirements as outlined in the Regulations. (Testimony)

Analysis and Conclusions of Law

130 CMR 519.007 governs individuals who would be institutionalized and the waiver process.

519.007: Individuals Who Would Be Institutionalized

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

Regarding the particular circumstances of the Appellant, there were 4 applications for waivers and 4 denials by MassHealth. All 4 governing regulations are analyzed in turn below.

First, MassHealth denied the Appellant's application for the Acquired Brain Injury Residential Habilitation Waiver (ABI-RH Waiver) because MassHealth determined that the Appellant did not meet the eligibility criteria for the ABI-RH Waiver. (see 130 CMR 519.007(G)(1) and Exhibit 1, p.1). 130 CMR 519.007(G)(1)(a)(3) requires that an applicant for waiver:

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;

Here, based upon the testimony and evidence in this case, the Appellant never resided 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. Thus, the Appellant never met the threshold eligibility requirement outlined in 130 CMR 519.007(G)(1)(a)(3). There

is no mechanism in the Regulations to circumvent this eligibility requirement, therefore the appeal of first denial pursuant to 130 CMR 519.007 (G)(1) is DENIED.

Second, MassHealth denied the Appellant's application for the Acquired Brain Injury Non-Residential Habilitation Waiver (ABI-N Waiver) because MassHealth determined that the Appellant did not meet the eligibility criteria for the ABI-N Waiver. (see 130 CMR 519.007(G)(2) and Exhibit 1, p.2). 130 CMR 519.007(G)(2)(a)(3) requires that an applicant for waiver:

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;

Here, based upon the testimony and evidence in this case, the Appellant never resided 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. Thus, the Appellant never met the threshold eligibility requirement outlined in 130 CMR 519.007(G)(2)(a)(3). There is no mechanism in the Regulations to circumvent this eligibility requirement, therefore the appeal of second denial pursuant to 130 CMR 519.007 (G)(2) is DENIED.

Third, MassHealth denied the Appellant's application for the Moving Forward Plan Residential Supports Home-and-Community-Based Services Waiver (MFP-RS Waiver) because MassHealth determined that the Appellant did not meet the eligibility criteria for the MFP-RS Waiver. (see 130 CMR 519.007(H)(1) and Exhibit 1, p.3). 130 CMR 519.007(H)(1)(a)(2) requires that an applicant for waiver:

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 or older, psychiatric hospital with a continuous length of stay of 90 or more days, excluding rehabilitation days;

Here, based upon the testimony and evidence in this case, the Appellant never resided inpatient in a nursing facility, chronic disease or rehabilitation hospital, or, for participants 18 through 21 years of age or 65 years of age or older, psychiatric hospital with a continuous length of stay of 90 or more days, excluding rehabilitation days. Thus, the Appellant never met the threshold eligibility requirement outlined in 130 CMR 519.007(H)(1)(a)(2). There is no mechanism in the Regulations to circumvent this eligibility requirement, therefore the appeal of third denial pursuant to 130 CMR 519.007 (H)(1) is DENIED.

Fourth, MassHealth denied the Appellant's application for the Moving Forward Plan Community Living Home-and-Community-Based Services Waiver (MFP-CL Waiver) because MassHealth determined that the Appellant did not meet the eligibility criteria for the MFP-CL Waiver. (see 130 CMR 519.007(H)(2) and Exhibit 1, p.4). 130 CMR 519.007(H)(2)(a)(2) requires that an applicant for waiver:

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 or older, psychiatric hospital with a continuous length of stay of 90 or more days, excluding rehabilitation days;

Here, based upon the testimony and evidence in this case, the Appellant never resided inpatient in a nursing facility, chronic disease or rehabilitation hospital, or, for participants 18 through 21 years of age or 65 years of age or older, psychiatric hospital with a continuous length of stay of 90 or more days, excluding rehabilitation days. Thus, the Appellant never met the threshold eligibility requirement outlined in 130 CMR 519.007(H)(2)(a)(2). There is no mechanism in the Regulations to circumvent this eligibility requirement, therefore the appeal of third denial pursuant to 130 CMR 519.007 (H)(1) is DENIED.

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228. See also 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). Based upon the evidence and testimony, the Appellant cannot meet the threshold eligibility requirement of residing inpatient in a nursing facility, chronic disease or rehabilitation hospital with a continuous length of stay of 90 or more days. The threshold inpatient eligibility requirement codified within 519.007 (G) and (H) leaves no alternative grounds for approval of the Appellant's appeal. Therefore, 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.

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.

Patrick M. Grogan
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Linda Phillips, UMass Medical School - Commonwealth
Medicine, Disability and Community-Based Services, 333 South Street, Shrewsbury, MA 01545-
7807