

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2300770
Decision Date:	5/3/2023	Hearing Date:	03/17/2023
Hearing Officer:	Thomas Doyle	Record Open to:	4/14/23

Appearance for Appellant:



Appearance for MassHealth:

Stephen Conrad, Tewksbury MEC

Interpreter:



*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:	Eligibility for Home- and Community-Based Services Waivers for Persons with Acquired Brain Injury
Decision Date:	5/3/2023	Hearing Date:	03/17/2023
MassHealth's Rep.:	Stephen Conrad	Appellant's Rep.:	
Hearing Location:	Remote (phone)	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 notice dated January 10, 2023, MassHealth notified the appellant that he is not financially eligible for participation in MassHealth's Home- and Community-Based Services Waivers for Persons with Acquired Brain Injury. (ABI Waiver program). (Ex. 1). The appellant filed a request for a fair hearing on February 8, 2023. (Ex. 2). A determination regarding eligibility for a waiver program is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant's income is over the limit for the ABI Waiver program.

Issue

The issue is whether MassHealth correctly determined that appellant's income is over the limit for participation in the ABI Waiver program.

Summary of Evidence

The appellant was represented telephonically at the hearing by his Guardian, who is an attorney. The MassHealth representative from the MassHealth Waiver Unit also appeared telephonically. The MassHealth representative stated that the appellant submitted an application for the Home and Community Based Services Waiver for Persons with ABI. MassHealth reviewed the application and determined that the appellant's income exceeds the limit for the ABI waiver program. (Testimony). The MassHealth representative stated that pursuant to 130 CMR 519.007(G)(1)(b), the income limit for the ABI waiver program is 300% of the federal benefit rate which, in 2023, is \$2,742.00 gross per month for an individual. The MassHealth representative stated that for 2023, the appellant receives gross Social Security income of \$3,102.00 per month and other gross income of \$511.56 per month from a Verizon pension, for a total gross monthly income of \$3,613.56.

Appellant's representative requested the record be left open to be able to communicate with appellant's spouse about his social security check. Post hearing the appeal representative notified this hearing officer and MassHealth via email that she attempted to contact the spouse on several occasions and received no response.

Findings of Fact

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

1. The appellant submitted an application for the Home and Community Based Services Waiver for Persons with ABI. (Ex. 1; Testimony).
2. The appellant receives monthly Social Security income of \$3,102.60 and a monthly pension from Verizon of \$511.56 for a total gross monthly income of \$3,613.56. (Testimony).
3. 300% of the 2023 federal benefit rate is \$2,742.
4. Appellant's monthly income exceeds the federal benefit rate.

Analysis and Conclusions of Law

(G) Home- and Community-based Services Waivers for Persons with Acquired Brain Injury.

(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 Non-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)(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.

130 CMR 519.007 (G).

The income limit for the Home- and Community Based Services Waivers for Persons with Acquired Brain Injury for both residential and non-residential habilitation is 300% of the federal benefit rate. Three hundred percent of the federal benefit rate is \$2742.00 for an individual. The appellant's monthly countable income is \$3613.56 and exceeds 300% of the federal benefit rate thus he is not financially eligible for the Home and Community Based Services Waiver for persons with ABI.

The appellant argued that the PPA calculation should be used in determining the appellant's countable income. A PPA is calculated pursuant to 130 CMR 520.026 for long term care residents and allows for certain income deductions for long term care residents. The regulation at 130 CMR 520.026 does not apply to community MassHealth financial eligibility determinations such as for the Home and Community Based Services Waiver.

MassHealth's determination is upheld and the 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.

Thomas Doyle
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: MassHealth Waiver Unit, Attn: Elvia Cunha, 100 Hancock St., 6th Flr., Quincy, MA 02171