

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	DENIED	Appeal Number:	2305554
Decision Date:	10/10/2023	Hearing Date:	08/29/2023
Hearing Officer:	Kenneth Brodzinski		

Appearance for Appellant:

Pro se

Appearance for MassHealth:

Linda Phillips, RN; Brad Goodier, RN and Eileen Cynamon, 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

Appeal Decision:	DENIED	Issue:	ABI-N and MFP Waiver denials
Decision Date:	10/10/2023	Hearing Date:	08/29/2023
MassHealth's Rep.:	Linda Phillips, RN	Appellant's Rep.:	Pro se
Hearing Location:	Quincy		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through notices dated June 13, 2023 and June 14, 2023, MassHealth denied Appellant's requests to participate in the MassHealth Acquired Brain Injury Non-Residential Habilitation Waiver (hereinafter, "the ABI-N Waiver") and the Moving Forward Plan Residential Supports Home and Community Based Services Waiver (hereinafter, "the MFP-RS Waiver") (Exhibit A). Appellant filed for an appeal in a timely manner on June 17, 2023 (see 130 CMR 610.015(B) and Exhibit A). Denial of a request to participate in a MassHealth program constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied Appellant's request to participate in the ABI-N and MFP-RS Waiver programs.

Issue

The appeal issue is whether MassHealth properly applied the controlling regulation(s) to accurate facts when it denied Appellant's request to participate in the ABI-N and MFP-RS Waiver programs.

Summary of Evidence

Both parties appeared by telephone. MassHealth submitted a packet of documentation (Exhibit B).¹ Appellant submitted no documentation other than his Fair Hearing Request (Exhibit A).

MassHealth was represented by three registered nurses who testified as follows:

The subject actions concern MassHealth's denial of Appellant's applications for the Acquired Brain Injury (ABI) Non-Residential Habilitation (ABI-N) Waiver and the Moving Forward Plan Residential Supports (MFP-RS) Waiver.

Appellant is a [REDACTED]-year-old male currently residing at [REDACTED] in [REDACTED] MA since [REDACTED] 2022, following hospitalization at [REDACTED] due to alcohol withdrawal syndrome with perceptual disturbance. Medical records document that Appellant was hospitalized [REDACTED], 2022, requiring ICU admission due to metabolic encephalopathy and hallucinations R/T ETOH. He was discharged home on an Ativan taper and clonidine 0.1mg twice daily after refusal of short-term rehab admission. Appellant began drinking as soon as he left the hospital and presented to the ED at approximately 10pm on [REDACTED], 2022, with his last drink being reported as minutes before arrival. Appellant was again admitted and treated for alcohol withdrawal. Appellant was discharged to [REDACTED] for ongoing care and rehabilitation on [REDACTED] 2022. Medical records document Appellant having a previous admission to [REDACTED] in February of 2022 with rhabdomyolysis and ETOH withdrawal. Previous admission records document that he was found down at home with a head strike after an unwitnessed fall due to being intoxicated after a 7-month period of sobriety (Exhibit B, Tab C, page 80).

Past medical history includes alcohol dependence, spinal stenosis cervical region, low back pain, muscle weakness, abnormalities of gait and mobility, morbid obesity, HTN, major depressive disorder, anxiety disorder, repeated falls, gastric bypass surgery (2008) and benign prostatic hyperplasia (Exhibit B, Tab C, page 80).

Appellant has a substance use disorder (SUD) history involving alcohol. He reports he was drinking 2-4 pints of vodka daily until hospitalization and he states his problems with alcohol were made worse by gastric bypass surgery in 2008. He reports he began drinking at the age of [REDACTED] and it became a problem as a young adult. He reported that he attempted alcoholics anonymous (AA) and had a period of sobriety of approximately 8 months in 2014. He describes

¹ The Hearing Officer uses lettered Exhibits. Where a party's submission also contains lettered exhibits, the Hearing Officer uses the term "Tab." For example: if a party's submission is marked for this record as Exhibit B and the submission itself has "exhibits" attached such as "exhibit C", it is herein identified as (Exhibit B, Tab C).

stress as a trigger and feels that he needs to stay busy to avoid relapse. Appellant's wife, with whom he is not currently residing, is his sobriety support in the community and he reports that he would like to obtain a new AA sponsor. SUD notes also document that his desire to continue substance use is 3/10. [REDACTED] was contacted on [REDACTED] 2023, and confirmed that there is currently an open case pending trial with 3 charges against Appellant for OUI, leaving the scene of an accident and negligent operation of a motor vehicle. Appellant also has a previous OUI case that was closed in 2018 (Exhibit B, Tab C, page 81).

The Waiver eligibility interview was conducted in the day room at [REDACTED]. In attendance was the Appellant and MassHealth Waiver RN Heather Smith. Introductions were made by social worker [REDACTED] (Exhibit B, Tab C, 80 and 88).

The Waiver assessment consists of completion of ABI documents including Minimum Data Set-Home Care (MDS-HC) (Exhibit B, Tab C, pages 61-75); ABI/MFP Clinical Determination Assessment (Exhibit B, Tab C, pages 76-83); ABI/MFP Waivers Community Risks Assessment (Exhibit B, Tab C, page 84); ABI/MFP Caregiver risk assessment (Exhibit B, Tab C, page 85-87) and a review of the applicant's medical record.

On June 1, 2023, Appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting. In addition, on June 7, 2023, as part of the ABI and MFP Waiver eligibility process, a second clinical review was conducted by The Department of Developmental Services (DDS), who oversees the MFP-RS waiver, and The Massachusetts Rehab Commission (MRC). MassHealth, DDS and MRC all determined that Appellant cannot be safely served within the terms of the MFP-RS and ABI-N Waivers, nor does he have a qualifying acquired brain injury for the ABI Waiver program.

According to MassHealth, Appellant faces many risks when returning to the community; all related to his longstanding alcohol use disorder and psychiatric conditions. Appellant has limited supports in the community with his only support being his wife, Anna, with whom he is not currently residing. Appellant reports stress as a trigger, with his longest period of sobriety being 8 months in 2014. Appellant remains anxious (Exhibit B, Tab D, page 120) and is at risk for psychiatric decompensation, stress and a return to alcohol use disorder while in the community. He has failed previously in the community, being unable to maintain his sobriety resulting in hospitalizations, including an ICU admission for detox. Appellant had an increase in psychiatric medications due to a reported increase in depression and insomnia in January of 2023 (Exhibit B, Tab D, page 166), placing him at risk for psychiatric decompensation without a highly structured support system. Finally, Appellant currently has open cases in [REDACTED] with pending charges for OUI, leaving the scene of an accident and negligent operation of a motor vehicle and he does not have a qualifying acquired brain injury (ABI) (Exhibit B, Tab C, page 82); therefore, he cannot be safely served within the terms of the ABI-N or MFP-RS waivers at this time.

Appellant appeared on his own behalf and began by disputing MassHealth's testimony concerning his longest time of sobriety asserting that it was 18 months and not eight months as MassHealth testified. Appellant testified that he did not drink prior to 2008.

Appellant acknowledged that his acquired brain injury is not indicated in the clinical records under review. According to Appellant they were mentioned in [REDACTED] records dated [REDACTED] 2018 and [REDACTED] 2021. Appellant stated he did not have the actual records to support this assertion and claims that he saw the records with this information in them. Appellant also testified that he asked for these records on August 17, 2023 from his psychiatric counselor at his current facility, but they were never supplied to him.

Appellant testified that he has been sober for over year and that he has gained a new understanding of his alcoholism and its causes. He stated that he did not believe that MassHealth had this information at the time his waiver applications were considered.

Appellant also alluded to claims of being discriminated against due to his alcoholism and the determination that he could not be safely served in the community due to being an alcoholic.

Findings of Fact

By a preponderance of the evidence, this record supports the following findings:

1. Appellant applied to MassHealth for the Acquired Brain Injury (ABI) Non-Residential Habilitation (ABI-N) Waiver and the Moving Forward Plan Residential Supports (MFP-RS) Waiver.
2. Appellant is a [REDACTED]-year-old male currently residing at [REDACTED] in [REDACTED] MA since [REDACTED] 2022, following hospitalization at South Shore Medical Center due to alcohol withdrawal syndrome with perceptual disturbance.
3. Medical records document that Appellant was hospitalized [REDACTED], 2022, requiring ICU admission due to metabolic encephalopathy and hallucinations R/T ETOH. He was discharged home on an Ativan taper and clonidine 0.1mg twice daily after refusal of short-term rehab admission.
4. Appellant began drinking as soon as he left the hospital and presented to the ED at approximately 10pm on July 19, 2022, with his last drink being reported as minutes before arrival.
5. Appellant was again admitted and treated for alcohol withdrawal.

6. Appellant was discharged to [REDACTED] for ongoing care and rehabilitation on [REDACTED] 2022.
7. Medical records document Appellant having a previous admission to [REDACTED] in February of 2022 with rhabdomyolysis and ETOH withdrawal.
8. Previous admission records document that he was found down at home with a head strike after an unwitnessed fall due to being intoxicated after a 7-month period of sobriety (Exhibit B, Tab C, page 80).
9. Past medical history includes alcohol dependence, spinal stenosis cervical region, low back pain, muscle weakness, abnormalities of gait and mobility, morbid obesity, HTN, major depressive disorder, anxiety disorder, repeated falls, gastric bypass surgery (2008) and benign prostatic hyperplasia (Exhibit B, Tab C, page 80).
10. Appellant reported he was drinking 2-4 pints of vodka daily until hospitalization and he states his problems with alcohol were made worse by gastric bypass surgery in 2008.
11. Appellant reported that he began drinking at the age of 17 and it became a problem as a young adult.
12. Appellant attempted alcoholics anonymous (AA) and had a period of sobriety of approximately in 2014.
13. Appellant described stress as a trigger and feels that he needs to stay busy to avoid relapse.
14. Appellant's wife, with whom he is not currently residing, is his sobriety support in the community and he reports that he would like to obtain a new AA sponsor.
15. Substance use disorder notes also document that Appellant's desire to continue substance use is 3/10.
16. [REDACTED] was contacted on May 16, 2023, and confirmed that there is currently an open case pending trial with 3 charges against Appellant for OUI, leaving the scene of an accident and negligent operation of a motor vehicle. Appellant also has a previous OUI case that was closed in 2018 (Exhibit B, Tab C, page 81).
17. A Waiver eligibility interview was conducted in the day room at [REDACTED]. In attendance was the Appellant and MassHealth Waiver RN Heather Smith. Introductions were made by social worker [REDACTED] (Exhibit B, Tab C, 80 and 88).

18. The Waiver assessment consists of completion of ABI documents including Minimum Data Set-Home Care (MDS-HC) (Exhibit B, Tab C, pages 61-75); ABI/MFP Clinical Determination Assessment (Exhibit B, Tab C, pages 76-83); ABI/MFP Waivers Community Risks Assessment (Exhibit B, Tab C, page 84); ABI/MFP Caregiver risk assessment (Exhibit B, Tab C, page 85-87) and a review of the applicant's medical record.
19. On June 1, 2023, Appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting.
20. In addition, on June 7, 2023, as part of the ABI and MFP Waiver eligibility process, a second clinical review was conducted by The Department of Developmental Services (DDS), who oversees the MFP-RS waiver, and The Massachusetts Rehab Commission (MRC).
21. MassHealth, DDS and MRC all determined that Appellant cannot be safely served within the terms of the MFP-RS and ABI-N Waivers, nor does he have a qualifying acquired brain injury for the ABI Waiver program.
22. Appellant faces many risks when returning to the community; all related to his longstanding alcohol use disorder and psychiatric conditions.
23. Appellant has limited supports in the community with his only support being his wife, with whom he is not currently residing.
24. Appellant remains at risk for psychiatric decompensation, stress and a return to alcohol use disorder while in the community.
25. Appellant has failed previously in the community, being unable to maintain his sobriety resulting in hospitalizations, including an ICU admission for detox.
26. Appellant had an increase in psychiatric medications due to a reported increase in depression and insomnia in January of 2023 (Exhibit B, Tab D, page 166), placing him at risk for psychiatric decompensation without a highly structured support system.
27. Appellant does not have a qualifying acquired brain injury (ABI) (Exhibit B, Tab C, page 82).
28. Appellant cannot be safely served within the terms of the ABI-N or MFP-RS waivers at this time.

Analysis and Conclusions of Law

Below are the eligible criteria for the ABI Waiver as stated in 130 CMR 519.007(G)(1)(a) (emphasis supplied):

- 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;**
- 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.

Below are the eligibility criteria for the MFP Waiver as stated in 130 CMR 519.007(H)(1)(a) (emphasis supplied):

- 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.

"The burden of proof is on the appealing party to show that the order appealed from is invalid, and we have observed that this burden is heavy" (*Massachusetts Inst. of Tech. v. Department of Pub. Utils.*, 425 Mass. 856, 867, 684 N.E.2d 585 (1997)).

Appellant has not met his burden.

At hearing, MassHealth presented three clinical professional who reviewed Appellant's medical documentation to support the agency's findings and conclusions about Appellant's current state of health and behaviors which place him outside of the regulatory requirements of the waiver program. MassHealth has shown that an extensive assessment was performed with Appellant and staff members from his current institutional residence in attendance. Appellant's assessment was considered by the MassHealth Waiver Clinical Team review which included input from the Massachusetts Rehabilitation Commission (MRC) and Department of Developmental Services (DDS). A second clinical assessment was thereafter performed which reached the same findings and conclusions. MassHealth, DDS and MRC all determined that due to Appellant's continued alcohol abuse and psychiatric conditions, he cannot be safely served within the terms of the MFP-RS and ABI-N Waivers, nor does he have a qualifying acquired brain injury for the ABI Waiver program.

At hearing, Appellant offered his personal disagreement, but offered no objective documentation or other evidence of any kind to refute MassHealth's professional findings and conclusions. Appellant alluded to various medical records to support some of his claims, such as the existence of an acquired brain injury, but he failed to produce the records. Additionally, Appellant's testimony about his history of alcohol abuse and when he started drinking were remarkably inconsistent with what he reported earlier according to his substance use disorder notes (testifying that he started drinking in 2008 as opposed to 1983 when he was 17 as reported in the notes). As noted above, the legal burden for Appellant to overturn the agency's determination is "heavy", yet Appellant has provided no evidence to support his position.

This record provides no basis in fact or law to disturb the agency's action. 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.

Kenneth Brodzinski
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