

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2401271
Decision Date:	04/18/2024	Hearing Date:	02/29/2024
Hearing Officer:	Thomas Doyle		

Appearances for Appellant:



Appearances for MassHealth:

Linda Phillips, RN BSN, LNC-CSP., Associate
Director-Appeals and Regulatory Compliance
Bethany Landry, RN, Nurse Reviewer



*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 Waiver, Clinical Eligibility
Decision Date:	04/18/2024	Hearing Date:	02/29/2024
MassHealth's Rep.:	Linda Phillips, RN BSN, LNC-CSP., Associate Director- Appeals and Regulatory Compliance	Appellant's Rep.:	
Hearing Location:	Taunton MassHealth Enrollment Center Room 1; Virtual	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 December 26, 2023, MassHealth notified the appellant that he is not clinically eligible for participation in MassHealth's Acquired Brain Injury Non-Residential Habilitation Waiver (ABI-N Waiver program). (Ex. 1). Appellant filed a request for a fair hearing on January 20, 2024. (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 denied the ABI-N waiver to appellant because he was found not clinically eligible.

Issue

Was MassHealth correct in denying appellant the ABI-N waiver due to being not clinically eligible.

Summary of Evidence

MassHealth was represented at hearing by two Registered Nurses. One is the associate director for appeals, regulatory compliance at the University of Massachusetts Medical School ("MassHealth nurse") and the other is a nurse reviewer. Appellant was represented by his brother. Appellant's son and sister-in-law also appeared. The MassHealth nurse, appellant's brother and appellant's sister-in-law were present in a hearing room in Taunton. Appellant, his son, and the nurse reviewer appeared via video.

Appellant is a male in his [REDACTED] who was initially approved for the ABI-RH Waiver in January 2023. This waiver is for individuals who need placement in a residence that has supervision and staffing 24 hours/day, 7 days/week. (Testimony; Ex. 5, p. 1). Appellant requested a transfer to the ABI-N waiver in September 2023. This waiver is for individuals who can move to their own home or apartment or to the home of someone else. (Testimony; Ex. 4, p. 46; Ex. 5, p. 1).

On December 26, 2023, a denial notice for the ABI-N Waiver was mailed to appellant. (Ex. 4, p. 47). Appellant was transferred to a Skilled Nursing Facility (SNF) in March 2023 after a hospital admission. (Testimony; Ex. 5, p. 10). Appellant and his family are unhappy with the quality of care that he is receiving at the SNF. (Testimony; Ex. 5, p. 1). Appellant's medical history includes Cerebral Infarction (3/2022); COVID-19; acute respiratory distress syndrome; Chronic Obstructive Pulmonary Disease (COPD); Cervicalgia; Dorsalgia; Functional Quadriplegia; Myopathy; Type II Diabetes Mellitus; Crohn's Disease; Hypogonadism; Morbid Obesity; Gout; Hypertension; History of Stage IV Sacral Ulcer; Anxiety; and Depression. (Testimony; Ex. 5, p. 1; Ex. 4, pp. 69, 75, 100, 141). Appellant has a history of taking twenty medications. (Ex. 4, p. 63, 70).

For his Instrumental Activities of Daily Living (IADLs), others did the following for appellant: Meal Preparation; Housework; Managing Finances; Managing Medications; Transportation. Regarding Shopping, appellant performed with help all the time. (Ex. 4, p. 55, 70). For Activities of Daily Living (ADLs), the appellant shows total dependence for Transfers, for which he uses a Hoyer lift; Locomotion in home and outside of home, for which he uses a manual wheelchair; Dressing, upper and lower body and toilet use. (Ex. 4, p. 55, 70).

Appellant was evaluated in the Emergency Room on two different days in [REDACTED] for chest pain and COPD exacerbation; in [REDACTED] appellant required an emergency ultrasound to his lower extremities; in [REDACTED] appellant was evaluated on two separate occasions in the Emergency Room, and again in [REDACTED] due to poor circulation and GI bleeding; the appellant was hospitalized in [REDACTED] with complaints of shortness of breath, cough and

fever. (Ex. 4, p. 69).

Appellant had two Section 12 commitments for Mental Health, one in [REDACTED] after which he was diagnosed with anxiety and [REDACTED], when he exhibited aggressive and verbally abusive behavior. (Testimony; Ex. 4, p. 70).

MassHealth testified that the location where appellant desires to live needs modifications made for accessibility. (Testimony; Ex. 4, p. 66). The location where appellant wishes to live needs doors to be widened for his wheelchair, and it does not have ramps for his wheelchair. (Testimony). Appellant and his brother, sister-in-law and his son plan to live in the same dwelling with each of them having their own space. (Testimony).

Findings of Fact

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

1. Appellant is a male in his [REDACTED] who was initially approved for the ABI-RH Waiver in January 2023. This waiver is for individuals who need placement in a residence that has supervision and staffing 24 hours/day, 7 days/week. (Testimony; Ex. 5, p. 1).
2. Appellant requested a transfer to the ABI-N waiver in September, 2023. This waiver is for individuals who can move to their own home or apartment or to the home of someone else. (Testimony; Ex. 4, p. 46; Ex. 5, p. 1).
3. On December 26, 2023, a denial notice for the ABI-N Waiver was mailed to appellant. (Ex. 4, p. 47).
4. Appellant was transferred to a Skilled Nursing Facility (SNF) in March, 2023 after a hospital admission. (Testimony; Ex. 5, p. 10).
5. Appellant and his family are unhappy with the quality of care that he is receiving at the SNF. (Testimony; Ex. 5, p. 1).
6. Appellant's medical history includes Cerebral Infarction (3/2022); COVID-19; acute respiratory distress syndrome; Chronic Obstructive Pulmonary Disease (COPD); Cervicalgia; Dorsalgia; Functional Quadriplegia; Myopathy; Type II Diabetes Mellitus; Crohn's Disease; Hypogonadism; Morbid Obesity; Gout; Hypertension; History of Stage IV Sacral Ulcer; Anxiety; and Depression. (Testimony; Ex. 5, p. 1; Ex. 4, pp. 69, 75, 100, 141).
7. Appellant was evaluated in the Emergency Room on two different days in [REDACTED] for chest pain and COPD exacerbation; in [REDACTED] appellant required an emergency

ultrasound to his lower extremities; in [REDACTED], appellant was evaluated on two separate occasions in the Emergency Room, and again in [REDACTED] due to poor circulation and GI bleeding; the appellant was hospitalized in [REDACTED] with complaints of shortness of breath, cough and fever. (Ex. 4, p. 69).

8. Appellant had two Section 12 commitments for Mental Health, one in [REDACTED] after which he was diagnosed with anxiety and [REDACTED] when he exhibited aggressive and verbally abusive behavior. (Testimony; Ex. 4, p. 70).
8. Appellant has a history of being prescribed twenty medications. (Ex. 4, p. 63, 70).
9. For Instrumental Activities of Daily Living (IADLs), others did the following for appellant; Meal Preparation; Housework; Managing Finances; Managing Medications; Transportation. Regarding Shopping, appellant performed with help all the time. (Ex. 4, p. 55, 70).
10. For Activities of Daily Living (ADLs), appellant shows total dependence for Transfers, for which he uses a Hoyer lift; Locomotion in home and outside of home, for which he uses a manual wheelchair; Dressing, upper and lower body and Toilet use. (Ex. 4, p. 55, 70).
11. The location where appellant desires to live needs modifications made for his accessibility. (Testimony; Ex. 4, p. 66).
12. The location where appellant wishes to live needs doors to be widened for his wheelchair and it does not have ramps for his wheelchair. (Testimony).
13. Appellant and his brother, sister-in-law and his son plan to all live in the same dwelling with each of them having their own space. (Testimony).

Analysis and Conclusions of Law

The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). Moreover, "[p]roof by a preponderance of the evidence is the standard generally applicable to administrative proceedings." Craven v. State Ethics Comm'n, 390 Mass. 191, 200 (1983).

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.

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

...

(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 they meet all of the following criteria:

1. are 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. are 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. need one or more of the services under the Non-residential Habilitation Waiver; and

5. are 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.

(emphasis added)

MassHealth determined appellant did not meet the requirement at 130 CMR 519.007(G)(2) that appellant is able to be safely served in the community. MassHealth previously approved appellant for the ABI-RH waiver. The record reflects appellant has a lengthy medical history. (supra, p 3). He has had multiple visits to the Emergency Room for various reasons. He is dependent for most, if not all his Activities of Daily Living and Instrumental Activities of Daily Living, including total dependence for Dressing and Toileting. Because of his size, appellant requires a Hoyer lift and there was no evidence anyone who will be living with appellant has been trained on using a Hoyer lift. Appellant uses a wheelchair and the dwelling he plans on living in has no ramps and needs widening for his wheelchair. It is clear appellant's family cares for the appellant, and wants the best for him, but the record supports MassHealth's conclusion that appellant cannot be safely served in the community.

Appellant has not demonstrated that MassHealth's determination that he cannot be safely served in the community as required by 130 CMR 519.007(G)(2) was made in error. Accordingly, 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.

Thomas Doyle
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