

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2404765
Decision Date:	06/25/2024	Hearing Date:	04/30/2024
Hearing Officer:	Emily Sabo		

Appearances for Appellant:



Appearance for MassHealth:

Linda Phillips, UMass Chan Medical School



*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:	Acquired Brain Injury (ABI) Waiver
Decision Date:	06/25/2024	Hearing Date:	04/30/2024
MassHealth's Rep.:	Linda Phillips	Appellant's Rep.:	[REDACTED]
Hearing Location:	Quincy Harbor South (Telephone)	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 a notice dated March 5, 2024, MassHealth notified the Appellant that he is not clinically eligible for MassHealth's Acquired Brain Injury Residential Habilitation Waiver (ABI-RH Waiver). 130 CMR 519.007(G)(1) and Exhibit 1. The Appellant filed this appeal in a timely manner on March 26, 2024. Exhibit 2. Denial of eligibility for a waiver program is a valid basis for appeal. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth determined that the Appellant is not eligible for participation in the ABI-RH Waiver program.

Issue

The appeal issue is whether MassHealth, pursuant to 130 CMR 519.007(G)(1), correctly determined that the Appellant is not eligible for participation in the ABI-RH waiver because he was under the age of 22 when he acquired his brain injury.

Summary of Evidence

The hearing was held by telephone. MassHealth was represented at the hearing by Linda Phillips, a registered nurse, who is the Associate Director of Appeals and Regulatory Compliance for the UMass Chan Medical School Disability and Community Based Services Unit. The MassHealth representative appeared via telephone and testified as follows: MassHealth offers home and community-based service waivers. The ABI-RH waiver is for individuals who need placement in a residence that has supervision and staffing 24 hours/day, 7 days/week. On September 21, 2023, the Appellant applied for the ABI-RH waiver.

The be eligible for the ABI-RH waiver:

- 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.

The MassHealth representative explained that the Appellant's request for the waiver was denied, under 130 CMR 519.007(G)(1)(a)2., because he acquired his brain injury before the age of 22. The MassHealth representative testified that on February 16, 2024, a MassHealth Nurse Reviewer representing the waiver program, visited the Appellant and his caregivers at CareOne in [REDACTED]. In addition, the nurse reviewer spoke with the Appellant's guardian.

The MassHealth Nurse Reviewer sought to confirm the specific age at which the Appellant acquired his brain injury. In reviewing nursing facility records, MassHealth found the following documentation that specified and supported that the Appellant's brain injury occurred before he was age 22:

- UMass Memorial Healthcare - History and Physical, dated January 8, 2021, states, "[Appellant] is a [REDACTED] gentleman with a past medical history of traumatic brain injury, after a MVA in 1991." Exhibit 5 at 58.

- UMass Memorial Healthcare-Psychiatry CL Consult, dated May 14, 2021, states a substance abuse history, ETOH caused his MVA and TBI (although a specific date is not mentioned for the accident in this section). Exhibit 5 at 65.
- Commonwealth of Massachusetts - Trial Court Decision dated March 9, 2023, states, “[Appellant] was involved in a motor vehicle accident when he was [REDACTED] [Appellant] was driving while intoxicated and the accident resulted in the death of his passenger/friend.” Exhibit 5 at 69.

The MassHealth representative testified that while the exact date of the motor vehicle accident in which the Appellant sustained a traumatic brain injury was unknown, it was documented to have occurred in [REDACTED], when the Appellant would have been between the ages of [REDACTED] years old. The MassHealth representative explained that because of MassHealth’s determination that the Appellant acquired his brain injury before the age of 22, MassHealth did not consider the other eligibility criteria, such as whether the Appellant could be safely served in the community.

The Appellant was represented by his guardian and his social worker, who verified the Appellant’s identity. The Appellant’s guardian testified that he did not dispute that the Appellant’s brain injury occurred prior to the age of 22.

Findings of Fact

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

1. The Appellant is an adult under the age of 65. Testimony; Exhibits 4 & 5.
2. On September 21, 2023, the Appellant applied for the ABI-RH waiver. Testimony; Exhibits 1 & 5.
3. The Appellant was in a motor vehicle accident and sustained a brain injury in [REDACTED], when he was either [REDACTED]. Testimony; Exhibits 4 & 5.
4. On February 16, 2024, a MassHealth Nurse Reviewer met with the Appellant and his caregivers. She also spoke with the Appellant’s guardian. Testimony.
5. On March 5, 2024, MassHealth notified the Appellant of its denial of his application for participation in the ABI-RH Waiver program. Testimony; Exhibit 1.

Analysis and Conclusions of Law

The ABI home and community-based service waivers are described at 130 CMR 519.007(G). In the present case, the Appellant seeks eligibility for the ABI-RH Waiver. The requirements for the waiver are set forth below:

(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 section 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 they meets 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 the age of 22, 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 a residential support service available under the Residential Habilitation Waiver; and
5. are 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;
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*.

130 CMR 519.007(G)(1).

In the present case, MassHealth evaluated the Appellant's eligibility for services under the ABI-RH Waiver and determined that he is not eligible because his brain injury was acquired before reaching the age of 22. As discussed above, the Appellant's representative does not dispute that the Appellant's brain injury occurred before the Appellant was 22 years old. I credit the record evidence and testimony supporting that the Appellant was in a motor vehicle accident and sustained a brain injury in [REDACTED] when he was either [REDACTED] years old. Therefore, I find that the Appellant is not eligible for the ABI-RH Waiver under 130 CMR 519.007(G)(1)(a)2. Accordingly, MassHealth did not err in denying the Appellant's application 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.

Emily Sabo
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

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