

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



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| Appeal Decision: | Approved | Appeal Number: | 2405998 |
| Decision Date: | 06/07/2024 | Hearing Date: | 05/23/24 |
| Hearing Officer: | Stanley Kallianidis | | |

Appellant Representative:

Pro Se

MassHealth Representative:

Linda Phillips, RN



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th Floor
Quincy, MA 02171*

APPEAL DECISION

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|-------------------------|--------------------|----------------------|------------------------------------|
| Appeal Decision: | Approved | Issue: | Acquired Brain Injury (ABI) Waiver |
| Decision Date: | 06/07/2024 | Hearing Date: | 05/23/24 |
| MassHealth Rep.: | Linda Phillips, RN | | |

Authority

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

Jurisdiction

A notice dated April 2, 2024 was sent to the appellant stating that MassHealth was disenrolling her from the Acquired Brain Injury Residential Habilitation Waiver (ABI-RH Waiver) due to a lack of clinical eligibility (see 130 CMR 519.007(G) and Exhibit 1). The appellant filed this timely appeal on April 10, 2024 (Exhibit 2). A dispute over the scope of assistance is grounds for appeal (130 CMR 610.032).

Notice of the hearing was sent to the appellant on April 26, 2024 (Exhibit 5). The appellant was entitled to continue in the ABI-RH Waiver pending the outcome of this appeal as an aid-pending case due to her appeal being received within 10 days of the April 2, 2024 notice date (Exhibit 6).

Action Taken by MassHealth

MassHealth plans on stopping the appellant's eligibility for an ABI-RH Waiver.

Issue

Pursuant to 130 CMR 519.007(G), does the appellant continue to meet the clinical requirements for an ABI-RH Waiver?

Summary of Evidence

The MassHealth representative testified that on April 2, 2024 the appellant's continued eligibility for an ABI-RH Waiver was denied following a reassessment and determination that she cannot continue to be safely served within the terms of the Waiver. She stated that the purpose of the ABI-RH Waiver is to allow individuals who have experienced an acquired brain injury to move into the community by placement in a residence that has supervision and staffing 24 hours a day, seven days per week.

The appellant has been receiving ABI-RH waiver services since July 2022. At that time, she transitioned from an MFP Community Living Waiver (MFP-CL Waiver) that she was approved for in October 2015, due to difficulty maintaining care providers and requiring 24-hour support. The appellant has been receiving Waiver services for the past 8 ½ years.

An in-person assessment was conducted on February 27, 2024 at the appellant's apartment. The appellant is [REDACTED] old and resides in the community. Her medical history is significant for a subdural hematoma and cerebral vascular accident (CVA) following an assault from her ex-husband that resulted in her brain injury. She also has a seizure disorder, bipolar disorder, hypertension, asthma, anxiety, PTSD, hepatitis C, and a history of substance abuse (Exhibit 3).

A review of the appellant's continued eligibility for the ABI-RH program noted several of the appellant's questionable behaviors. Specifically: a November 2023 Behavioral Health Center progress note indicated that the appellant was frustrated with her current staff and that the social worker was trying to help the appellant discuss the issue calmly (Id. at p 110). Also in November 2023, the appellant refused the help of a substance abuse recovery coach despite agreeing to use these services (Id. at p. 81).

On November 21, 2023, the appellant was informed of her need of an ABI-Waiver redetermination and was upset of the prospect of losing services and going into a nursing facility (Id. at pp. 173-4). A December 26, 2023 doctor's note indicated that the appellant is not compliant with her medications, vapes and smokes marijuana and has mild depression (Id. at pp. 180-181).

In January 2024, the appellant met with her case manager and coordinator regarding her redetermination and at that time the appellant considered moving back to the MFP-CL Waiver program. The MFP-CL program is capped at 84 hours weekly, and there was concern that the appellant would not have enough care given her lack of informal support in the community from friends and family (Id. pp. 177-78).

The MassHealth representative testified further that the appellant has gone through 22 providers during her eight years of receiving services. She is at high risk for falls due to her marijuana use and is also at high risk of relapsing into alcohol abuse. Furthermore, she is at risk of exploitation and neglect. MassHealth concluded that the appellant therefore cannot continue to be safely

served within the terms of either the MFP-CL or ABI-RH Waiver.

The appellant testified that she has been doing better since she moved into a new apartment in [REDACTED]. She stated that the apartment is bigger than her previous one and is in a better community. It is handicapped accessible and has several amenities. She stated also that her staffing has improved and that she has not changed providers in the past nine months. The appellant testified that she stopped using marijuana in March 2024 and that she goes to counseling once per month.

The appellant further stated that she wants to stay in the ABI-RH Waiver or go back to the MFP-CL waiver with additional support through community MassHealth. She testified that she has a cousin that lives very close to her and can help her in an emergency if staff cannot come to her apartment.

The appellant submitted into evidence letters from friends and providers indicating the necessity for the continuation of her 24-hour support services due to her medical needs (Exhibit 4).

Findings of Fact

The record shows, and I so find:

1. On April 2, 2024 the appellant's continued eligibility for an ABI-RH Waiver was denied following a reassessment and determination that she cannot continue to be safely served within the terms of the Waiver (Exhibit 1).
2. The appellant has been receiving ABI-RH waiver services since July 2022 when she transitioned from an MFP-CL Waiver that she started in October 2015. The appellant has continuously been receiving Waiver services for the past 8 ½ years (testimony).
3. The appellant is [REDACTED] old and resides in the community. An in-person assessment was conducted on February 27, 2024 at the appellant's apartment (Exhibit 3).
4. Her medical history is significant for a subdural hematoma and CVA following an assault from her ex-husband that resulted in her brain injury. She also has a seizure disorder, bipolar disorder, hypertension, asthma, anxiety, PTSD, hepatitis C, and a history of substance abuse (Exhibit 3).
5. A November 2023 Behavioral Health Center progress note indicated that the appellant was frustrated with her current staff and that the social worker was trying to help the appellant discuss the issue calmly (Exhibit 3).
6. In November 2023, the appellant refused the help of a substance abuse recovery coach

despite agreeing to use these services (Exhibit 3).

7. On November 21, 2023, the appellant was informed of her need of an ABI-Waiver redetermination and was upset of the prospect of losing services and going into a nursing facility (Exhibit 3).
8. A December 26, 2023 doctor's note indicated that the appellant is not compliant with her medications, vapes and smokes marijuana and has mild depression (Exhibit 3).

Analysis and Conclusions of Law

130 CMR 519.007(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.

In this case, MassHealth plans on stopping the appellant's eligibility for an ABI-RH Waiver for the reason that she cannot continue to be safely served within the terms of either the MFP-CL or ABI-RH Waiver. The appellant has been on the ABI-RH Waiver since 2022 and prior to that, since 2015, she was on the MFP-CL waiver. The appellant has continuously been receiving Waiver services in the community for over eight years.

MassHealth states that the appellant's marijuana use and her not getting along with her caregivers as reasons that she cannot be safely cared for in the Waiver program. The appellant claimed at hearing that she no longer smokes marijuana and that her relationship with her caregivers has improved. While this may or may not be the case, there is no indication in the record that the appellant's current behavior has changed in any material way from prior assessments when her Waivers were approved. For instance, there is no indication that the appellant's marijuana use is a new issue. Also, MassHealth testified that the appellant has always had issues with her providers.

MassHealth also has concerns about the appellant not having a dedicated informal support in the community when staff are not available and gives this an additional basis for stopping her ABI-RH Waiver. Again, there is no evidence that this is a situation that has changed over the years that she has been approved for and receiving Waiver services. Moreover, even if the appellant transitions from the ABI-RH to the MFP-CL Waiver and has her staffing hours reduced, she may make up the lost hours through traditional community MassHealth. Thus, the appellant will remain eligible for 24-hour care no matter which Waiver she ends up with.

Accordingly, due to insufficient evidence that the appellant's condition has adversely changed in the past year, I conclude that the appellant may continue to be safely served within the terms of the ABI-RH Waiver.

The appellant's appeal is therefore approved.

Order for the MassHealth

Rescind planned disenrollment of the appellant from the ABI-RH Waiver.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this notice, you should contact your local office. 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.

Stanley Kallianidis
Hearing Officer
Board of Hearings

cc:

Leanne Govoni, RN
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