

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2411880
Decision Date:	11/22/2024	Hearing Date:	September 05, 2024
Hearing Officer:	Brook Padgett	Record Open:	October 18, 2024

MassHealth Representatives:

Linda Phillips, RN, BSN, LNC-CSp.,
Assoc. Director Appeals and Regulatory Compliance
Leanne Govoni, RN, BSN,
Med. Associate Director – Clinical Eligibility

Appellant's Representatives:



*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

Appeal Decision:	Approved	Issue:	Acquired Brain Injury Waiver (ABI) 130 CMR 519.007
Decision Date:	11/22/2024	Hearing Date:	September 05, 2024
MassHealth Rep.:	L. Phillips, RN, BSN, LNC-CSp.	Appellant's Reps:	[REDACTED] [REDACTED]

Authority

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

Jurisdiction

The appellant received a notice dated June 04, 2024 stating: "This notice is to inform you that you have been determined not to be clinically eligible for the Acquired Brain Injury Residential Habilitation Waiver (also known as the ABI-RH) Waiver. ... *This notice is about your clinical eligibility.* ... A review of your medical records indicates a diagnosis of Alzheimer's disease or a similar neuro-degenerative disease, the primary manifestation of which is dementia." (130 CMR 519.007(G)(1); Exhibit 1).

The appellant filed this timely appeal on July 31, 2024. (Exhibit 2).

The denial of assistance is grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's application for an ABI-RH Waiver.

Issue

Does the appellant meet the clinical requirements for an ABI-RH Waiver?

Summary of Evidence

MassHealth was represented by a registered nurse (RN) who is also the Associate Director of Appeals and Regulatory Compliance. The representative testified that MassHealth offers home and community-based service (HCBS) waivers. The ABI-RH waiver is for individuals who need placement in a residence that has supervision and staffing 24 hours a day, 7 days a week. The appellant applied for the ABI-RH Waiver on November 22, 2023.¹

MassHealth maintains the appellant is not eligible for the ABI-RH Waiver; because, a review of her medical records indicates a diagnosis of Alzheimer's disease or a similar neuro-degenerative disease, the primary manifestation of which is dementia. Due to this diagnosis the appellant was denied the ABI-RH Waiver (130 CMR 519.007(G)(1)(a)(2)).

MassHealth testified that on April 29, 2024, a MassHealth Nurse Reviewer visited the appellant and her caregivers at [REDACTED] (nursing facility/facility) and reviewed the appellant's medical documentation from the facility as well as hospitalizations at [REDACTED] and noted the following: the appellant is [REDACTED] and has a diagnosis of Alzheimer's disease, CVA with right sided hemiparesis (2016), vascular dementia disease, depression, Parkinson's disease, hypertension, hyperlipidemia, aphasia, extensive osteoarthritis in lumbar spine, kidney calculus, rectal prolapse, total right knee replacement, and Ptosis of right eyelid.² MassHealth stated that on February 06, 2024 Alzheimer's disease was noted as a new diagnosis by a Nurse Practitioner. Due to this diagnosis MassHealth outreached to the facility Administrator on May 31, 2024, and confirmed the Alzheimer's diagnosis.

MassHealth highlighted the following documentation within the appellant's medical record at the nursing facility to support the diagnosis:

- [REDACTED] states under Diagnosis Information Alzheimer's Disease with Early Onset.

¹ The appellant had previously applied for the Moving Forward Plan- Community Living Waiver (MFP-CL Waiver) in June 2018, but was denied as she required 24/7 services due to limited informal support in the community.

² Nurse Reviewer clinical summary states: "[p]er previous assessment, [the appellant] suffered a left cerebral CVA in 2016 while living in Louisiana, which resulted in left sided hemiparesis and along with documentation of cognitive impairment. After rehab she went to live in [REDACTED] to be closer to her daughter, then she moved to Massachusetts to live with several of her cousins. During this time, she became increasingly depressed over several months. [The appellant] had major stressors and conflicts with her cousin and felt her cousin was taking her money and controlling her. She felt hopeless and wanted to die. She overdosed on [REDACTED] with Lisinopril and Citalopram in a suicide attempt and was admitted to the hospital as a voluntary psych inpatient. [The appellant] did not want to return to her cousin's home and still has not resolved this conflict with her cousin. Her previous residence was not a good living situation, which was also supported by the involvement of Elder protection agency that knew [the appellant] well. Her mood started to improve, and she appeared less depressed with medication changes. Once stable she was then transferred to [REDACTED] where she continues to reside.

- Nursing Progress Notes dated [REDACTED] lists diagnosis as Alzheimer's Disease with Early Onset.
- Physician Progress Notes discusses Alzheimer's disease with early onset. Medication lists Zyprexa (antipsychotic medication to help treat severe mental health conditions).

The Waiver Clinical Eligibility team determined the appellant to be ineligible for the ABI-RH waiver, due to the [REDACTED] diagnosis of Alzheimer's disease or a similar neuro-degenerative disease, the primary manifestation of which is dementia (130 CMR 519.007 (G)(1)(a)(2)). MassHealth submitted into evidence: MassHealth MFP fair hearing package. (Exhibit 4).

The appellant's attorney responded that the appellant meets all the required criteria for the ABI-RH Waiver. Counsel argues the Alzheimer's diagnosis which MassHealth relies on is a secondary diagnosis and not the underlying condition for the appellant's brain injury which was caused by a stroke in [REDACTED]. The representative maintains there is almost no evidence to demonstrate the appellant has been diagnosed with Alzheimer's other than a statement from the appellant's cousin. The representative maintained the appellant and her cousin were not getting along at the time when the appellant moved to Massachusetts and her cousin stated the appellant had Alzheimer's disease. The representative argues that it is unclear why the facility has continued to maintain this diagnosis as the appellant performs most of her own Activities of Daily Living (ADL's) and Instrumental Activities of Daily Living (IADL's) by herself with little assistance.

The representative from Minuteman Senior Services testified that she has been involved with the Waiver program with a focus on Alzheimer's patients for more than 10 years and has a great deal of experience in what is required to obtain a waiver. The representative stated the appellant is a strong candidate for the waiver as she is very oriented, has shown no cognitive decline and gets along with all the other residents at the facility. The appellant is very cooperative with no complaints from any staff or other residents of the facility and performs well with supervision outside of the facility. The representative stated that in her many years of experience with the waiver program the appellant would be an excellent candidate for an RH waiver.

The hearing officer suggested the record remain open for the appellant to undergo a neuropsychological evaluation to determine if the appellant has been properly diagnosed with Alzheimer's disease.

The appellant's representatives argued that it was unnecessary as the appellant currently meets the MassHealth criteria for the waiver and it would be more than a year before they could obtain an evaluation.

At the request of the hearing officer the record-open period was extended until October 04, 2024 for the appellant and or her representatives to provide any additional medical documentation or testing to support a misdiagnosis of Alzheimer's disease to supplement the appellant's MFP-RH

Waiver request as well as a Memorandum in Support and October 18, 2024 for MassHealth to respond to the additional information. (Exhibit 5).

The appellant's representative submitted a memorandum in support prior to the close of the record open period arguing the appellant is clinically eligible for the ABI-RH waiver program as she meets the criteria listed at 130 CMR 519.007(G)(1)(a). The representative further maintains that neither the CMS waiver of the MassHealth regulations state that Alzheimer's or other neurodegenerative diseases disqualify an individual categorically from the ABH-RH waiver program. The MassHealth regulations state an individual is categorically excluded from the ABI-RH waiver program only if their brain injury is the result of Alzheimer's disease or other dementia and not the result of an external force such as a stroke. So an individual, such as the appellant, whose brain injury is derived from an external force such as a stroke is not excluded from the ABI-RH waiver program if she is later diagnosed with Alzheimer's or another neurodegenerative disease. The representative maintains there is "zero record" of a clinical evaluation performed by a physician using acceptable methods which results in a diagnosis of Alzheimer's or other dementia. MassHealth's only evidence is the admission record from the facility which states, "unspecified dementia" and "Alzheimer's disease with early onset" under diagnosed information. The representative argues that the lack of a diagnosis in combination with the appellant's testimony that she has never been diagnosed with Alzheimer's disease while at the nursing facility undermines the reliability of the record relied on by MassHealth.

The representative also submitted a Doctor's Letter Signature Request email from the facility dated September 17, 2024, which states: "I was able to talk to [the appellant's physician] to clarify some of the issues. For one, [the facilities] electronic PCC system that we use to upload documents, add diagnosis, orders etc. is fairly new as of 2023 which can be the reason why [the appellant's] diagnosis was entered into the system that way. Also [the appellant's physician] provided me with the notes from 2021, that her Vascular Dementia was part of her PMH (past medical history)... . This can be an error as far as entering it into our electronic system, but to clarify [the appellant] has been diagnosed prior to admission. The suggestion would be that she have a neurology consult, that won't happen until next year or administer a MOCA to see where her cognition is. Our 1:1 psychotherapist is willing to perform this test but she is not available until the end of the month. The appellant's representative submitted into evidence a Memorandum in Support, Doctor's Letter Signature Request email dated September 17, 2024, and an Application for 1915(c) HCBS Waiver. (Exhibit 6).

MassHealth responded to the appellant's submission stating the submission is a legal memorandum detailing the appellant's attorney's opinion, but offered no medical documentation presented from a medical professional which is contrary to the current diagnosis. The email from the appellant's facility indicates the appellant's Vascular Dementia was part of her past medical history, and her diagnosis prior to her admission. Further, MassHealth submitted the following: All Services Report by Member – MassHealth, dated August 01, 2021 – August 31, 2024 which indicates multiple dates where Alzheimer's Disease with Early Onset (G300 November 16, 18, 2022, February 17, 24, March 03, 08, April 21, 28, July 28, August 09, September 29 and October 11, 2023) or Alzheimer's Disease

Unspecified (G309 August 01, 2021 and April 12, 2022) are listed. Therefore, in accordance with MassHealth regulation 130 CMR 519.007(G)(1)(a)(2), the appellant continues to be ineligible for the ABI-RH waiver as the appellant's Alzheimer's disease is not a new diagnosis. (Exhibit 7).

Findings of Fact

The record shows, and I so find:

1. The appellant was admitted to the [REDACTED]. (Exhibit 4).
2. On November 22, 2023 the appellant applied for the ABI-RH Community Living Waiver. (Exhibit 4).
3. The ABI-RH waiver is for individuals who need placement in a residence that has supervision and staffing 24 hours a day, 7 days a week. (Testimony).
4. On June 04, 2024 MassHealth denied the appellant's request for ABI- RH Community Living Waiver due to a lack of clinical eligibility. (Exhibit 1).
5. MassHealth denied the appellant's ABI-RH Waiver because the medical records indicate the appellant has a diagnosis of Alzheimer's disease or a similar neuro-degenerative disease, the primary manifestation of which is dementia. (Exhibit 4 and Testimony).
6. Alzheimer's disease was noted as a new diagnosis by a Nurse Practitioner on February 06, 2024. (Exhibit 4 and Testimony).
7. On [REDACTED] the facility Administrator confirmed the Alzheimer's diagnosis. (Exhibit 4 and Testimony).
8. Facility medical records indicate the appellant is [REDACTED] with a diagnosis of Alzheimer's disease, CVA with right sided hemiparesis (2016), vascular dementia, disease, depression, Parkinson's disease, hypertension, hyperlipidemia, aphasia, extensive osteoarthritis in lumber spine, kidney calculus, rectal prolapse, total right knee replacement, and Ptosis of right eyelid.
 - a. Admission Record dated [REDACTED] under Diagnosis Information states Alzheimer's Disease with Early Onset.
 - b. Nursing Progress Notes dated March 09, 2024, lists diagnosis as Alzheimer's Disease with Early Onset.
 - c. Physician Progress Notes discusses Alzheimer's disease with early onset. Medication list is to continue Zyprexa³. (Exhibit 4 and Testimony).

³Used to treat Alzheimer's disease, bipolar disorder, Schizophrenia and depression.

9. The All Services Report by Member – MassHealth dated August 01, 2021 and April 12, 2022 (G309) lists the appellant's diagnosis as Alzheimer's Disease Unspecified. (Exhibit 7).
10. The All Services Report by Member – MassHealth, dated November 16, 18, 2022, February 17, 24, 2023, March 03, 08, 2023, April 21, 28, 2023, July 28, 2023 August 09, 2023, September 29, 2023 and October 11, 2023 (G300) lists the appellant's diagnosis as Alzheimer's Disease with Early Onset. (Exhibit 7).
11. A September 17, 2024, email from the appellant's facility states: the facilities electronic PCC system to upload documents, add diagnosis, orders etc., was new as of 2023. Notes from 2021, indicate that her Vascular Dementia was part of her past medical history and a diagnosis prior to admission. (Exhibit 7).

Analysis and Conclusions of Law

MassHealth offers home and community-based service (HCBS) waivers. The ABI-RH waiver is for individuals who need placement in a residence that has supervision and staffing 24 hours a day, 7 days a week. The appellant applied for the ABI-RH Waiver on November 22, 2023.

One of the clinical criteria for the ABI-RH waiver is that the applicant "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." (130 CMR 519.007(G)(1)(a)(2); 519.007(G)(2)(a)(2)).

The medical evidence indicates the appellant is over 22 years old and was diagnosed with a stroke in 2016. If there were no other evidence regarding an ABI diagnosis it is anticipated MassHealth would have approved the appellant for the RH waiver. However a Nurse Practitioner on February 06, 2024 noted a new diagnosis of Alzheimer's disease which MassHealth considers disqualifying for an ABI-RH Waiver per the regulations. The issue here is whether the regulations support the contention that an individual with a brain injury is eligible for the ABI-RH waiver as long as the ABI is not a direct result of Alzheimer's disease or similar neuro-degenerative diseases or if any Alzheimer's diagnosis regardless of the onset date precludes an individual from obtaining an ABI-RN waiver.

The appellant's medical records indicates a CVA in 2016. Although there is testimony that a diagnosis of Alzheimer's disease was noted upon admission in [REDACTED] there are no medical notes or clinical evaluation in the record to determine how and when the initial diagnosis was reached. None of the Admission Notes, Patient Progress Notes and All Services Report by Member records contains a definitive onset date or provide medical documentation or evidence of the medical evaluation to verify the Alzheimer's diagnosis other than to state it was a diagnosis prior to admission. (See Exhibit 4, 6 and 7).

The controlling regulation states the approval of an ABI-RH Waiver requires the applicant to be 22 or older and have a brain injury. The regulations further state the brain injury cannot be the result of Alzheimer's disease. This therefore excludes an individual from the ABI-RH Waiver if their brain injury is a result of Alzheimer's disease. However if a brain injury is acquired from some other external force such as a CVA and is there is a subsequent diagnoses of Alzheimer's disease, this later diagnosis does not preclude the individual from the ABI-RH waiver as the root cause of the brain injury is the CVA and not Alzheimer's.

130 CMR 519.007: Individuals Who Would Be Institutionalized

(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 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. 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; and
5. is able to be safely served in the community within the terms of the Residential Habilitation Waiver. (*Emphasis added*).

The appellant's medical records indicates she was diagnosed with a stroke in 2016, prior to her diagnoses of Alzheimer's disease; therefore she meets the criteria for an ABI-RH waiver at 130 CMR 519.007(G). The MassHealth's denial is reversed and this appeal is APPROVED.

Order for MassHealth

Approve appellant for MFP-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

Brook Padgett
Hearing Officer
Board of Hearings

Cc:

MassHealth representative:

Linda Phillips, RN, BSN, LNC-CSp., Assoc. Director, Appeals and Regulatory Compliance

Appellant's representatives:

[REDACTED]