

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2417200
Decision Date:	1/29/2025	Hearing Date:	12/10/2024
Hearing Officer:	Emily Sabo		

Appearances for Appellant:




Appearance for MassHealth:

Clifford Cazeau, Waiver Unit



*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; Moving Forward Program (MFP) Waiver
Decision Date:	1/29/2025	Hearing Date:	12/10/2024
MassHealth's Rep.:	Clifford Cazeau	Appellant's Reps.:	
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 two notices dated October 11, 2024, MassHealth notified the Appellant that he is not eligible for MassHealth's Acquired Brain Injury (ABI) and Moving Forward Plan (MFP) waivers on the grounds that his income is over program limits. 130 CMR 519.007(G), 130 CMR 519.007(H), and Exhibits 1 & 6. The Appellant filed this appeal in a timely manner on November 8, 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 income-eligible for participation in the ABI and MFP waiver programs.

Issue

The appeal issue is whether MassHealth, pursuant to 130 CMR 519.007(G) and (H), correctly determined that the Appellant is not income-eligible for participation in the ABI and MFP waiver programs.

Summary of Evidence

The hearing was held by telephone. MassHealth was represented by a specialist from its waiver unit. The Appellant and his representative appeared at the hearing. The Appellant verified his identity.

The MassHealth representative testified that to be eligible for the ABI and MFP waiver programs, the Appellant's income had to be at or below 300% of the federal benefit rate, which is \$2,829/month. The MassHealth representative testified that the Appellant's income is \$2,976/month in Social Security income, and that the Appellant has a household size of one. The MassHealth representative testified that because the Appellant's Social Security income is unearned income, there is a \$20 deduction, based on 130 CMR 520.013(A), resulting in a total income of \$2,956/month. The MassHealth representative testified that because the Appellant is not income eligible for the program, MassHealth did not determine whether he is asset eligible.

The Appellant testified that he was admitted to a nursing facility in June 2024. He testified that he is still on a leave of absence from work and that he hopes to return to his home, with modifications, and live in the community. He added that the waiver programs would help him do that. The Appellant's representative testified that the Appellant has expenses that should be considered, including weekly alimony payments of \$220, and the Appellant's BlueCross COBRA plan of \$180/month. The Appellant's representative testified that the alimony payment was finalized in 2017.

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. Exhibit 4.
2. The Appellant's income is \$2,976/month in Social Security benefits. The Appellant has a household size of one. Testimony.
3. Three hundred percent of the 2024 federal benefit rate is \$2,829/month. Testimony.
4. On October 11, 2024, MassHealth denied the Appellant's applications for the ABI and MFP waivers on the grounds that his income is over the limit. Exhibit 1.

5. On November 8, 2024, the Appellant filed a timely appeal with the Board of Hearings.

Analysis and Conclusions of Law

The ABI and MFP home and community-based services waivers are described at 130 CMR 519.007(G) and (H). The requirements for the waivers 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.

(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 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 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 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 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 Non-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)(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.

(H) Money Follows the Person Home- and Community-based Services Waivers.

(1) Money Follows the Person (MFP) Residential Supports Waiver.¹

(a) Clinical and Age Requirements. The MFP Residential Supports Waiver, 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, chronic disease or rehabilitation hospital services, or, for participants 18 through 21 years of age or 65 years of age and older, psychiatric hospital services to receive residential support services and other specified waiver services in a 24-hour supervised residential setting if they meet all of the following criteria:

1. are 18 years of age or older and, if younger than 65 years old, is totally and permanently disabled in accordance with Title XVI standards;
2. are an inpatient in a nursing facility, chronic disease or rehabilitation hospital, or, for participants 18 through 21 years of age or 65 years of age and older, psychiatric hospital with a continuous length of stay of 90 or more days, excluding rehabilitation days;
3. must have received MassHealth benefits for inpatient services, and be MassHealth eligible at least the day before discharge;
4. must be assessed to need residential habilitation, assisted living services, or shared living 24-hour supports services within the terms of the MFP Residential Supports Waiver;
5. are able to be safely served in the community within the terms of the MFP Residential Supports Waiver; and
6. are transitioning to the community setting from a facility, moving to a qualified residence, such as a home owned or leased by the applicant or a family member, an apartment with an individual lease, or a community-based residential setting in which no more than four unrelated individuals reside.

(b) Eligibility Requirements. In determining eligibility for MassHealth Standard and for

¹ It is noted that although “MFP” now stands for “Moving Forward Plan,” the applicable regulation still references Money Follows the Person, the program’s previous name (130 CMR 519.007(H)).

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 (H)(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 MFP Residential Supports 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 MFP Residential Supports Waiver are eligible for the waiver services described in 130 CMR 630.405(C): *Moving Forward Residential Supports (MFP-RS) Waiver*.

(2) Money Follows the Person (MFP) Community Living Waiver.

(a) Clinical and Age Requirements. The MFP Community Living Waiver, 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, chronic disease or rehabilitation hospital services, or, for participants 18 through 21 years of age or 65 years of age and older, psychiatric 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 18 years of age or older and, if younger than 65 years old, is totally and permanently disabled in accordance with Title XVI standards;
2. are an inpatient in a nursing facility, chronic disease or rehabilitation hospital, or, for participants 18 through 21 years of age or 65 years of age and older, psychiatric hospital with a continuous length of stay of 90 or more days, excluding rehabilitation days;
3. must have received MassHealth benefits for inpatient services, and be MassHealth eligible at least the day before discharge;
4. needs one or more of the services under the MFP Community Living Waiver;
5. are able to be safely served in the community within the terms of the MFP Community Living Waiver; and
6. are transitioning to the community setting from a facility, moving to a qualified residence, such as a home owned or leased by the applicant or a family member, an apartment with an individual lease, or a community-based residential setting in

which no more than four unrelated individuals reside.

(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 (H)(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 MFP Community Living 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 MFP Community Living Waiver are eligible for the waiver services described in 130 CMR 630.405(D): Moving Forward Plan Community Living (MFP-CL) Waiver.

(130 CMR 519.007(G), (H))

520.013: Community Unearned-income Deductions

In addition to business expenses described at 130 CMR 520.010, the MassHealth agency allows the deductions listed below from the total gross unearned income. These deductions do not apply to the income of a community spouse described at 130 CMR 520.026(B). The deductions allowed from the total gross unearned income are the following:

(A) a deduction of \$20 per individual or married couple; or. . .

(130 CMR 520.013(A))

In the present case, 300% of the 2024 federal benefit rate is \$2,829/month. The Appellant's monthly income is \$2,976 in Social Security income. As this is unearned income, the Appellant is only entitled to a community unearned-income deduction of \$20, resulting in \$2,956. 130 CMR 520.013(A). Accordingly, the Appellant's income is greater than 300% of the federal benefit rate, and he is therefore not eligible for the waiver programs. 130 CMR 519.007(G)(1)(b)2.; (G)(2)(b)2.;

(H)(1)(b)2.; (H)(2)(b)2.² Therefore, MassHealth did not err in issuing the October 11, 2024 notices, and the appeal is denied.³


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: MassHealth Waiver Unit, Attn: Lauren Silva, 100 Hancock St., 6th Flr., Quincy, MA 02171

² While not the subject of this appeal, the Appellant may be eligible for other services in the community as a MassHealth CommonHealth member that could help him in discharging to his home.

³ This determination does not prevent the Appellant from being discharged from the nursing facility or from seeking a living situation in the community. The denial of this appeal also does not preclude the Appellant from re-applying for any waiver programs, particularly if his income changes.