

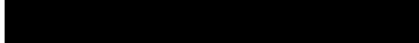
**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2511735
<b>Decision Date:</b>	10/10/2025	<b>Hearing Date:</b>	09/23/2025
<b>Hearing Officer:</b>	Thomas J. Goode		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Linda Phillips, RN Associate Director-Appeals  
and Regulatory Compliance;  
Lindsay Sullivan, RN



*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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Waivers-Acquired Brain Injury (ABI)
<b>Decision Date:</b>	10/10/2025	<b>Hearing Date:</b>	09/23/2025
<b>MassHealth's Rep.:</b>	Linda Phillips, RN Lindsay Sullivan, RN	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Remote	<b>Aid Pending:</b>	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 June 24, 2025, MassHealth determined that Appellant is not clinically eligible for the Acquired Brain Injury-Non-Residential Habilitation Waiver (ABI-N) Waiver (130 CMR 519.007(G)(2) and Exhibit 1). Appellant filed this appeal in a timely manner on August 11, 2025 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth determined that Appellant is not clinically eligible for the Acquired Brain Injury-Non-Residential Habilitation Waiver (ABI-N) Waiver.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.007(G)(2), in determining that Appellant is not clinically eligible for the Acquired Brain Injury-Non-Residential Habilitation Waiver (ABI-N) Waiver.

## Summary of Evidence

The MassHealth representative testified that MassHealth has two home and community-based services (HCBS) Waivers that assist Medicaid-eligible persons who have experienced an Acquired Brain Injury (ABI) move into the community and obtain community-based services. The ABI-N Waiver is for individuals who can move to their own home or apartment or to the home of someone else. 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 February 18, 2025, Appellant applied for the ABI-N Waiver (Exhibit 5. p.87).

The ABI Waiver eligibility criteria specify:

- 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 (Exhibit 5, p. 7). MassHealth determined that Appellant cannot be safely served in the community within the Waivers and pursuant to 130 CMR 519.007(G)(2).

Appellant is a [REDACTED] male who was admitted to [REDACTED] [REDACTED]. Appellant had been living with his brother who found Appellant unresponsive in his room. [REDACTED] discharge summary was unavailable, but Appellant reported that he was intubated and was in a coma at that time and suffered seizure activity while admitted to [REDACTED]. The hospitalization was complicated by polysubstance abuse, metabolic encephalopathy, and malnutrition. In addition, at [REDACTED] Appellant was unable to be successfully extubated and required a tracheostomy and G-tube placement (Exhibit 5, p. 109). Appellant's past medical history includes COPD, status post tracheostomy and G-tube, hypertension, seizures, substance use disorder, hepatitis C, GERD, arthritis, and abdominal aortic aneurysm status post repair (Id.). On May 20, 2025, an assessment for clinical waiver eligibility was conducted in person at Vibra Healthcare. In attendance were Appellant and Lindsay Sullivan RN, MassHealth Nurse Reviewer representing the ABI/MFP Waiver program, Appellant's representative, and Appellant's father

who is also his health care proxy, both of whom were called by phone and answered questions (Exhibit 5, p. 118). The Waiver assessment consists of completion of ABI/MFP documents including Minimum Data Set-Home Care (MDS-HC) (Exhibit 5, pp. 92-104); ABI/MFP Clinical Determination Assessment (Exhibit 5, pp. 105-113); ABI/MFP Waivers Community Risks Assessment (Exhibit 5, p. 114); Risk Assessment- ABI-N/MFP-CL Caregiver Supplement (Exhibit 5, pp. 115-117); a review of the applicant's medical record; and a discussion with the nursing facility staff. During the Waiver eligibility assessment review, MassHealth noted the following documentation indicating Appellant's complex medical conditions:

- February 1, 2025: [REDACTED] Notes state that the Case Manager ([REDACTED]) discussed discharge planning with Appellant. She explained that she would assist him in applying for the MFP waiver, but this would only work if his brother could assist him in the home (Exhibit 5, p. 143).
- March 19, 2025: [REDACTED] addendum from [REDACTED] states that, "it is the belief of this provider that patient should not be discharged home alone to manage tracheostomy and PEG tube." In addition, the physician writes that Appellant needs a confident provider to manage his medical devices and requirements in case of an emergency (Exhibit 5, p. 131).
- April 9, 2025: [REDACTED] Note by [REDACTED] states that Appellant's long-term plan is to discharge to the community. Appellant had recently visited the cardiologist, and he was informed that he needs to follow up with a cardiac surgeon for possible surgery. Ongoing bed search continues by the case manager for another LTC facility. Barriers outlined for discharge to the community include housing insecurities, suction and trach management (Exhibit 5, p. 158).

MassHealth testified that during the in-person visit with Appellant, the skilled nursing facility (SNF) Social Worker confirmed to the Waiver RN that homelessness and lack of support are Appellant's barrier to discharge as he needs assistance with his tracheostomy and G-tube in an emergency. It was further explained to MassHealth that Appellant was working with an agency on securing housing. Appellant reported to MassHealth that his brother would live with him after discharge, and he would be able to help support Appellant with his care and medical needs. However, at the time of the in-person assessment, Appellant's brother had been working on a fishing vessel for the past month and was unreachable. Therefore, neither Appellant nor his brother had received any formal training from the SNF to manage Appellant's medical needs in the community. Appellant's father and uninvoked HCP, reported to MassHealth that he would request that Appellant's brother call to discuss his plans for assisting Appellant. There have been no calls from Appellant's brother (Exhibit 5, p. 111). MassHealth testified that Appellant is at high risk when returning to the community due to medical complications and rehospitalizations related to his complex medical conditions, including risk of bleeding from his anticoagulant medications, respiratory distress, and infections from his tracheostomy. Appellant is also at risk

for falls due to the various tubes that he manages at the bedside and is at high risk of infections due to his fragile state of health. Although alcohol and opiate use have not been an issue for Appellant in the 24/7 staffed nursing facility, he is at greater risk for relapse when he is in the community.

MassHealth also testified that Appellant does not have a confirmed ABI diagnosis in his medical record. MassHealth testified that to qualify for the ABI-N program, a diagnosis of brain injury must be documented in the medical record. Regulation 130 CMR 519.007(G)(2) specifies that in general an applicant must have a brain injury documented by a physician and supported with reports such as a CT scan or MRI. MassHealth added that seizure activity is not considered a brain injury in the absence of another diagnosis related to a brain injury such as epilepsy, stroke or external brain injury. MassHealth testified that Appellant may be appropriate for the MFP-CL waiver; however, the lack of a documented caregiver would also result in the same determination that he cannot be safely served in the community under either waiver.

On June 10, 2025, Appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting. On June 18, 2025, and as part of the Waiver eligibility process, a second clinical review was conducted by the MassAbility Clinical Team. Based on his medical record documentation and interviews with nursing facility staff, MassHealth and MassAbility, it was determined that Appellant requires 24/7 care and oversight for his complex medical conditions. He has a history of polysubstance abuse and lacks a confirmed live-in caregiver. In addition, Appellant does not have a confirmed acquired brain injury incurred after 22 years of age. Therefore, Appellant was determined to be ineligible for the ABI-N Waiver and a denial notice dated June 24, 2025 was mailed to Appellant (Exhibit 5, pp. 88-89).

Appellant and his representative testified that Appellant has seizure activity, memory loss and confusion which was thought to qualify him for the ABI-N program. Appellant's representative testified that Appellant has memory issues and is easily overwhelmed, but he is alert and oriented. Appellant and his representative testified that Appellant's brother is willing to be a caregiver in the community, and although he has not been available for training, attempts to arrange training will be made. Appellant's representative testified that Appellant applied for the ABI-N program months ago, and he should have been told sooner that he was ineligible because he does not have an acquired brain injury. She added that Appellant has been hospitalized for a prolonged period and wishes to return to the community with his brother as caregiver. Appellant testified that he lived with his brother for 20 years, and that his brother found him when he was in respiratory failure. He added that he and his brother want to live together in the community, and that his brother is willing to speak to MassHealth by phone and will join future meetings to discuss his caretaker role in the community and is also willing to be trained by the facility to provide care now that some of his personal problems have cleared up. Appellant acknowledged that he needs monitoring at night to prevent breathing problems. Appellant also testified that he and his brother have not identified or secured a place to live in the community. Appellant and his representative also stated that Appellant would consider submitting an application for the MFP-CL Waiver.

## Findings of Fact

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

1. MassHealth has two home and community-based services (HCBS) Waivers that assist Medicaid-eligible persons who have experienced an Acquired Brain Injury (ABI) move into the community and obtain community-based services.
2. The ABI-N Waiver is for individuals who can move to their own home or apartment or to the home of someone else.
3. The ABI-RH Waiver is for individuals who need placement in a residence that has supervision and staffing 24 hours/day, 7 days/week.
4. On February 18, 2025, Appellant applied for the ABI-N Waiver.
5. Appellant is a [REDACTED] male who was admitted to [REDACTED] on [REDACTED] from [REDACTED].
6. Appellant had been living with his brother who found Appellant unresponsive in his room.
7. [REDACTED] discharge summary was unavailable, but Appellant reported that he was intubated, and in a coma at that time and suffered seizure activity while admitted to [REDACTED]. The hospitalization was complicated by polysubstance abuse, metabolic encephalopathy, and malnutrition.
8. While at [REDACTED] Appellant was unable to be successfully extubated and required a tracheostomy and G-tube placement.
9. Appellant's past medical history includes COPD, status post tracheostomy and G-tube, hypertension, seizures, substance use disorder, hepatitis C, GERD, arthritis, and abdominal aortic aneurysm status post repair.
10. On May 20, 2025, an assessment for clinical waiver eligibility was conducted in person.
11. The Waiver assessment consists of completion of ABI/MFP documents including Minimum Data Set-Home Care (MDS-HC); ABI/MFP Clinical Determination Assessment; ABI/MFP Waivers Community Risks Assessment; Risk Assessment- ABI-N/MFP-CL Caregiver Supplement; a review of the applicant's medical record; and a discussion with the nursing facility staff.
12. During the Waiver eligibility assessment review, MassHealth noted the following

documentation indicating Appellant's complex medical conditions:

- February 1, 2025: [REDACTED] Notes state that the Case Manager [REDACTED] discussed discharge planning with Appellant. She explained that she would assist him in applying for the MFP waiver, but this would only work if his brother could assist him in the home (Exhibit 5, p. 143).
- March 19, 2025: [REDACTED] LTAC addendum from [REDACTED] states that, "it is the belief of this provider that patient should not be discharged home alone to manage tracheostomy and PEG tube." In addition, the physician writes that Appellant needs a confident provider to manage his medical devices and requirements in case of an emergency (Exhibit 5, p. 131).
- April 9, 2025: [REDACTED] Note by [REDACTED] states that Appellant's long-term plan is to discharge to the community. Appellant had recently visited the cardiologist, and he was informed that he needs to follow up with a cardiac surgeon for possible surgery. Ongoing bed search continues by the case manager for another LTC facility. Barriers outlined for discharge to the community include housing insecurities, suction and trach management (Exhibit 5, p. 158).

13. During the in-person assessment with Appellant, the skilled nursing facility (SNF) Social Worker confirmed to the Waiver RN that homelessness and lack of support are Appellant's barriers to discharge as he needs assistance with his tracheostomy and G-tube in an emergency.
14. Appellant's brother did not attend the in-person evaluation and was unreachable.
15. Appellant's brother has not received training from the facility in G-tube and tracheostomy care or Appellant's other medical needs.
16. Appellant and his brother have not secured housing in the community and Appellant is working with an agency to obtain housing.
17. Appellant is at high risk when returning to the community due to medical complications and possible rehospitalizations related to his complex medical conditions, including the risk of bleeding from his anticoagulant medications, respiratory distress, and infections from his tracheostomy.
18. Appellant is at risk for falls because of the various tubes that he manages at the bedside, and high risk for infections due to his fragile state of health.
19. Although alcohol and opiate use have not been an issue for Appellant in the 24/7 staffed

nursing facility, he is at greater risk of relapse when he is in the community.

20. Appellant does not have a confirmed acquired brain injury incurred after 22 years of age and documented in his medical record.

21. MassHealth determined that Appellant is ineligible for the ABI-N Waiver and a denial notice dated June 24, 2025, was mailed to Appellant.

## Analysis and Conclusions of Law

Pursuant to 130 CMR 510.007 (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 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.

Appellant bears the burden of proof in demonstrating that MassHealth was incorrect in denying his application for the ABI-Non-Residential Habilitation Waiver for Persons with Acquired Brain Injury.<sup>1</sup> The MassHealth testimony is credible and consistent with the clinical evidence in the

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<sup>1</sup> See Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998).

hearing record and shows that Appellant does not have a diagnosed acquired brain injury incurred after reaching 22 years of age, and also shows that Appellant cannot be safely served in the community within the terms of the ABI Non-Residential Habilitation Waiver for Persons with Acquired Brain Injury. Appellant's testimony is also consistent with the MassHealth determination. It is undisputed that Appellant is at high risk when returning to the community due to the likelihood of medical complications and potential rehospitalizations related to his complex medical conditions, including risk of falls, bleeding from his anticoagulant medications, respiratory distress, and infections from his tracheostomy. While Appellant plans to live with his brother in the community, Appellant's brother did not attend the in-person evaluation and has not received training from the nursing facility in G-tube and tracheostomy care and Appellant's other complex medical conditions. In addition, housing in the community has not been secured. Appellant has not carried the burden of proof in showing that the June 24, 2025 notice of denial of clinical eligibility for the ABI-N Waiver is incorrect. The appeal is therefore 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.

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Thomas J. Goode  
Hearing Officer  
Board of Hearings



MassHealth Representative: Linda Phillips, UMass Medical School - Commonwealth Medicine, Disability and Community-Based Services, 333 South Street, Shrewsbury, MA 01545-7807