

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved / Remanded	Appeal Number:	2514350
Decision Date:	10/29/2025	Hearing Date:	10/28/2025
Hearing Officer:	Casey Groff, Esq.		

Appearance for Appellant:



Appearance for MassHealth:

Lauren Silva, Team Leader, Waiver Unit,
Special Eligibility Programs & Audits (SEPA)



*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:	Approved / Remanded	Issue:	ABI Waiver; Financial Eligibility; Excess Assets
Decision Date:	10/29/2025	Hearing Date:	10/28/2025
MassHealth's Rep.:	Lauren Silva	Appellant's Rep.:	Attorney
Hearing Location:	BOH (Remote)	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 9/17/25, MassHealth denied Appellant's application for enrollment in the Acquired Brain Injury (ABI) Waiver program because his assets exceeded the program limit. *See* 130 CMR 519.007(G); Exh. 1. Appellant, through his court appointed guardian, filed this appeal in a timely manner on 10/2/25. *See* 130 CMR 610.015(B); Exhs. 2 and 3. Denial of assistance is valid grounds for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied Appellant's application for enrollment in the ABI Waiver program based on its determination that his assets exceeded the program limit.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.007(G), in determining that Appellant's assets exceeded the limit to qualify for the ABI Waiver program.

Summary of Evidence

A MassHealth representative appeared at the hearing and testified that she is the Team Leader of MassHealth's Special Eligibility Programs & Audits (SEPA) Waiver Unit. Appellant is an adult between the ages of 21 and 64. On 8/14/25, MassHealth received an application on behalf of Appellant seeking enrollment in MassHealth's Acquired Brain Injury (ABI) Home & Community Based Waiver Program (hereinafter "ABI Waiver"). To qualify for the ABI Waiver, applicants must meet both the financial and clinical eligibility requirements. The MassHealth representative testified that, in her role at SEPA, she is, in part, responsible for rendering financial eligibility determinations for waiver applicants, such as Appellant. If a waiver applicant is deemed to have met all financial eligibility requirements, only then will their application be referred to the MassHealth waiver unit at UMASS Medical School, which is responsible for determining whether the individual meets clinical eligibility criteria. To be financially eligible for MassHealth Standard under the ABI Waiver, the applicant or member must have countable assets of \$2,000 or less.

On 9/17/25, MassHealth notified Appellant that he was not eligible to get ABI Waiver services because his assets were over the program limit. *See* Exh. 1. In addition, the notice indicated that if Appellant reduced his assets to \$2,000 within 30 days, he may be eligible for ABI waiver services in the community. *Id.* The MassHealth representative testified that the 9/17/25 determination was based on three accounts, each held in Appellant's name, including \$1,780 held in a checking account, \$23,176 held in a savings account, and \$60,341 in a security/retirement account. The MassHealth representative testified that, as of the hearing date, MassHealth had not received any information to indicate that these funds had been reduced to the allowable limit.

Counsel for Appellant appeared at the hearing and argued that the assets should be temporarily deemed inaccessible under 130 CMR 520.006 because Appellant is not competent to access and/or spend down his funds and he currently has an active petition pending in the probate court seeking appointment of a conservator. For background, counsel explained that in August of 2025, the hospital where Appellant was, and currently is, staying, filed the ABI Waiver application on his behalf. Counsel became involved in this matter after the application was submitted, which is also after Appellant was deemed incapacitated by his physicians.

Counsel did not dispute the existence or amount of the assets at issue, but rather, asserted that Appellant is currently unable to access the funds because of his mental incapacity. Counsel explained that while the Appellant currently has a court-appointed guardian, their authority is limited to personal and medical decisions and does not extend to financial matters. For this reason, they are seeking a conservator who will be able to access the account funds on Appellant's behalf. Prior to the hearing, counsel submitted documentation showing that a petition for appointment of a conservator had been filed and docketed in the applicable county probate and family court on 9/12/25. *See* Exh. 5. A copy of the petition shows the filing date and docket number assigned to the matter. *Id.* Counsel explained that pursuant to court order, notice of the petition has already been given to all interested parties, and the deadline for filing objections passed on 10/17/25. At this point, counsel is awaiting further action from the court, either by the appointment of a conservator

or to schedule a date on the petition, or both.

Counsel asserted that once a conservator is appointed, they intend to access and appropriately reduce the bank account funds, which may include establishing a pooled trust for the Appellant. As soon as this is done, Counsel will notify MassHealth so that he can be deemed financially eligible once the proposed period of ineligibility expires. Currently, Appellant remains in the hospital and will likely remain there until he can get the community-based services he will need to be discharged.

The MassHealth representative testified that if ordered to deem the assets inaccessible, MassHealth would update Appellant's case accordingly, and with financial eligibility established, his ABI Waiver application would proceed to UMASS to review whether he met the program's clinical eligibility criteria. However, absent an order from the Board of Hearings or evidence of a spend-down, MassHealth's position at this time is that Appellant remains financially ineligible for the ABI Waiver based on assets mentioned.

Findings of Fact

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

1. Appellant is an adult under the age of 65.
2. On 8/14/25, MassHealth received an application from Appellant seeking enrollment in MassHealth's ABI Waiver program.
3. On 9/17/25, MassHealth denied Appellant's application for ABI Waiver services based on its determination that he had countable assets that exceeded the program limit.
4. Appellant is the owner of three accounts which hold respective balances of \$1,780, \$23,176, and \$60,341.
5. Appellant does not have the mental capacity to access or manage his funds.
6. On 9/12/25, a petition for appointment of a conservator was filed on behalf of Appellant in the applicable county probate and family court in Massachusetts.
7. At the hearing, counsel for Appellant submitted proof that the petition for conservatorship has been docketed in the probate court and is currently pending the court's decision on the appointment of a conservator.

Analysis and Conclusions of Law

MassHealth is responsible for determining eligibility for the most comprehensive coverage available to an applicant or member. See 130 CMR 519.001. MassHealth regulations at 130 CMR 519.007(G) set forth the eligibility requirements for individuals seeking to receive MassHealth Standard under the *Residential Habilitations Waiver for Persons with Acquired Brain Injury*, also referred herein as the “ABI Waiver.” To qualify for ABI Waiver services, the applicant or member must: (1) meet the clinical and age requirements described under subsection (1)(a) of § 519.007(G), (2) have countable income that is less than or equal to 300% of the federal benefit rate for an individual, (3) have countable assets of \$2,000 or less for an individual, and (4) not have transferred resources for less than fair market value, as described in 130 CMR 520.018. See 130 CMR 519.007(G)(b).

In the present case, MassHealth denied Appellant’s application for ABI Waiver services based on its determination that Appellant’s countable assets exceed the \$2,000 individual limit. Because Appellant was not financially eligible for the waiver, no determination was made as to whether Appellant would meet the requisite clinical criteria under § 519.007(G)(1)(a).

The evidence indicates that Appellant is the owner of three accounts which hold respective balances of \$1,780, \$23,176, and \$60,341. Counsel does not dispute that Appellant owns these funds, but rather, argues that Appellant is unable to access these accounts due to his mental incapacity and therefore, the assets should be temporarily exempted from consideration for eligibility determination purposes.

MassHealth regulation 130 CMR 520.006 describes the treatment of inaccessible assets as follows:

520.006: Inaccessible Assets

(A) Definition. An inaccessible asset is an asset to which the applicant or member *has no legal access*. The MassHealth agency does not count an inaccessible asset when determining eligibility for MassHealth for the period that it is inaccessible or is deemed to be inaccessible under 130 CMR 520.006.

(B) Examples of Inaccessible Assets. Inaccessible assets include, but are not limited to (1) property, the ownership of which is the subject of legal proceedings (for example, probate and divorce suits); ...

...

(C) Date of Accessibility. The MassHealth agency considers accessible to the applicant or member all assets to which the applicant or member is legally entitled

(1) from the date of application or acquisition, whichever is later, ***if the applicant or member does not meet the conditions of 130 CMR 520.006(C)(2)(a) or (b); or***

(2) ***from the period beginning six months after the date of application or acquisition, whichever is later, if***

(a) the applicant or member cannot competently represent his or her interests, has no guardian or conservator capable of representing his or her interests, and

the authorized representative (which may include a provider) of such applicant or member is making a good-faith effort to secure the appointment of a competent guardian or conservator; ...

...

130 CMR 520.006 (emphasis added).

While there is no dispute that Appellant owns more than \$2,000 in assets, the evidence presented at hearing demonstrates that Appellant lacks capacity to access or manage these funds, and, because of this, a petition for conservatorship is currently pending in the applicable county probate and family court. A copy of the petition, which was filed with the court on 9/12/25, and submitted into evidence with proof of docketing, satisfies the requirement that a “good-faith effort [is being made] to secure the appointment of a competent guardian or conservator.” *Id.* Appellant has therefore demonstrated that the assets are currently inaccessible under 130 CMR 520.006(C)(2)(a) and thus non-countable for a temporary six-month period following the date of application. See 130 CMR 520.008 (noncountable assets are those assets exempt from consideration when determining the value of assets and include those considered inaccessible under 130 CMR 520.006). As Appellant filed the ABI waiver application on 8/14/25, the assets will be considered accessible on 2/16/26, which is the first business day following the six-month period of inaccessibility.

For these reasons, the appeal is APPROVED insofar as Appellant demonstrated his assets are non-countable until the temporary period of inaccessibility expires on 2/16/26. The appeal is REMANDED to MassHealth to proceed in processing Appellant’s ABI Waiver application in accordance with the order below.

Order for MassHealth

Rescind denial notice dated 9/17/25. Deem Appellant’s assets non-countable for a temporary six-month period of inaccessibility from 8/14/25 through 2/16/26. Continue to process Appellant’s application for enrollment in the ABI Waiver program and if all financial eligibility criteria are met, refer for clinical eligibility review. Ensure that Appellant receives written notice with appeal rights of any subsequent determination regarding his ABI Waiver. If approved, MassHealth should reassess Appellant’s financial eligibility for benefits once the period of inaccessibility ends on 2/16/26.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. 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.

Casey Groff, Esq.
Hearing Officer
Board of Hearings

[REDACTED]

[REDACTED]

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