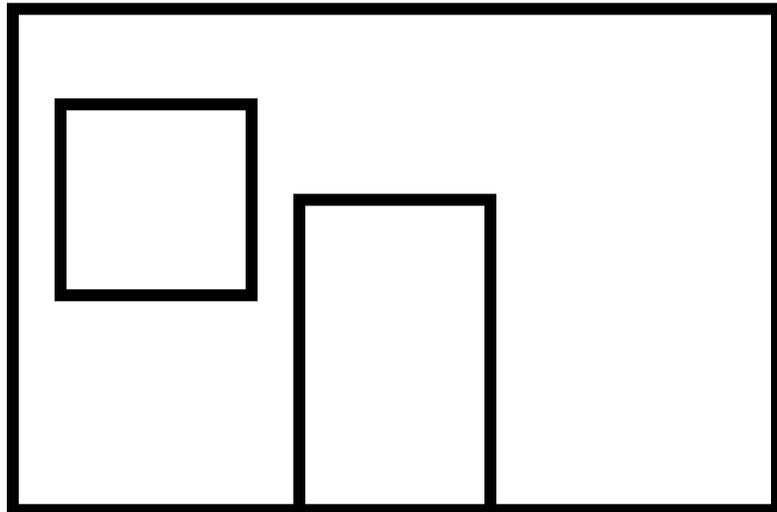


Module III. Acquired Brain Injury Eligibility Determination Guide (Update from 04/01/2018)

“The most beautiful thing we can experience is the mysterious.” (Albert Einstein)



Instructions to this module:

- This module is designed to be interactive. It only is able to reflect the tools in regards to ABI eligibility determination. Every eligibility determination process is different (depending on the person). Eligibility can be considered a fine art.
- You are highly encouraged to discuss the ABI Eligibility Determination Process with your:
 - a) Supervisor, or with the
 - b) ABI Program Administrator, Rolf M. Halbfell (contact number is (801) 809-5391)

Objectives of this module:

- a) Become familiar with the eligibility determination process.
- b) Become familiar with the Administrative Rule relating to eligibility.
- c) Understand the term “related conditions.”
- d) Become familiar what to look for in a case scenario.

ABI Eligibility Criteria

What is Acquired Brain Injury (ABI):

Acquired brain injury is defined as being injury related and neurological in nature, and may include cerebral vascular accident (stroke) and brain injuries that have occurred after birth.

The ABI Eligibility Criteria is not only documented in the actual ABI State Implementation Plan also known as Waiver, but is further documented in Administrative Rule R539-1-8.

See link: <https://rules.utah.gov/publicat/code/r539/r539-001.htm#T8>

State Eligibility is part of the core documentation to identify if an applicant satisfies the ABI eligibility criteria.

State Eligibility documents:

- whether or not the person resides and continues to reside in Utah,
- that a person has a qualifying diagnosis for their service type (in this example ABI), and
- that a person continues to have the minimum number of functional limitations required by their service type (please also see page 4 for more detailed information under “Functional Limitations”)
- If the person is found to not satisfy any one of those conditions, then they will not be determined eligible.

The information below documents the eligibility conditions and requirements that must be satisfied for the service type Acquired Brain Injury (ABI).

ABI Eligibility is being determined by DSPD division staffs who were awarded the ABISC credentials

Residency:

The person must demonstrate that they continue to satisfy the residency criteria while receiving services (i.e. they do so by having a resident address in Utah).

Diagnosis:

The person must have documentation that the diagnosis they have qualifies them for services.

Requirements for ABI qualifying Diagnoses:

The qualifying ABI diagnosis is one that is identified in DSPD Directive 1.40 “Qualifying Acquired Brain Injury Diagnoses” and needs to be given by a licensed physician (MD or DO) on Form 18 with the date when the diagnosis was given and the physician’s signature and credentials.

See link:

<http://dspd.utah.gov/pdf/1.40%20Acquired%20Brain%20Injury%20Qualifying%20Diagnoses.pdf>

It is given in form of the most current ICD Coding Catalogue. ICD stands for International Code of Diseases. We further need the medical documentation that goes along with the ICD code.

Functional Limitations:

A functional limitation represents a deficit the person has in a major life activity that they cannot perform on their own without substantial support. The types and classifications of functional limitations are dependent upon the person's age and type of service eligibility. For Example, ABI has a set of limitations that are somewhat different than those of ID/RC. The system requires the source/documentation of the functional limitation to be recorded with the designation of whether the person has it or not as justification for the answer.

Functional Limitations Requirements for ABI.

The following list applies to everyone who has ABI and be at least 18 years old or older in order to qualify for ABI services. The person needs to meet at least three out of the seven functional limitations below due solely to ABI.

– Memory or Cognition

Definition: Memory or Cognition means the Person's brain injury resulted in substantial problems with recall of information, concentration, attention, planning, sequencing, executive level skills, or orientation to time and place.

– Activities of Daily Life

Definition: Activities of Daily Life means the Applicant's brain injury resulted in substantial dependence on others to move, eat, bathe, toilet, shop, prepare meals, or pay bills.

– Judgment and Self Protection

Definition: Judgment and Self-protection means the Applicant's brain injury resulted in substantial limitation of the ability to:

- (i) provide personal protection;
- (ii) provide necessities such as food, shelter, clothing, or mental or other health care;
- (iii) obtain services necessary for health, safety, or welfare;
- (iv) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

– Control of Emotion

Definition: Control of Emotion means the Applicant's brain injury resulted in substantial limitation of the ability to regulate mood, anxiety, impulsivity, agitation, or socially appropriate conduct.

– Physical Health

Definition: Physical Health means the Applicant's brain injury resulted in substantial limitation of the normal processes and workings of the human body.

– Communication

Definition: Communication means the Applicant's brain injury resulted in substantial limitation in language fluency, reading, writing, comprehension, or auditory processing.

– Employment

Definition: Employment means the Applicant's brain injury resulted in substantial limitation in obtaining and maintaining a gainful occupation without ongoing supports.

Assessments:

Assessments provide detailed information about the person's condition, diagnosis, etc. They also contribute some information about the person's functional limitations. In some cases, more than one type of assessment is required to fully understand the scope of the person's limitations and deficits.

Required Assessment for ABI.

The Comprehensive Brain Injury Assessment (CBIA) is required for anyone who has been diagnosed with ABI and would like to receive services for people with ABI. A score within the range of **36 and 136** must be recorded for the person in order to qualify (or continue to qualify) for ABI. The assessment must be done annually for people in services. Please note: The CBIA is only to be performed by DSPD Division Staff who were awarded the ABISC credentials.

See link: <https://dspd.utah.gov/wp-content/uploads/2018/04/CBIA-Version-3.0-April-2018-DOH-approved.pdf>

Also, the Brain Injury/Social History (824L) needs to be completed.

Exclusions from ABI Services:

- 1) If the person has received a diagnosis of "Intellectual Disability" during their developmental phase, prior to age 18 (dx listed on a psychological assessment), the person will need to have their eligibility determined for services under the Community Supports Waiver (CSW), for persons with Intellectual Disabilities and Related Conditions.

- 2) Persons whose functional limitations are due solely to mental illness, substance abuse, personality disorder, hearing impairment, visual impairment, learning disabilities, behavior disorders, aging process, or
- 3) Persons with deteriorating diseases such as multiple sclerosis, muscular dystrophy, Huntington's chorea, ataxia, or cancer will not be found eligible for ABI services.
- 4) The ABI program is not available to individuals who have suffered congenital (pre-birth) brain injury or brain injuries induced by birth trauma.

Related Conditions- What is it?

The Acquired Brain Injury Waiver states that: "If a person is eligible for more than one of the waivers operated by DSPD, the division will educate the individual about their choices and will advise the individual about which of the waivers will likely best meet their needs."

"Related conditions" is defined in Federal Law 42CFR435.1009

[Code of Federal Regulations]

[Title 12, Volume 1]

[Revised as of January 1, 2003]

From the U.S. Government Printing Office via GPO Access

[CITE: 42CFR435.1009]

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TITLE 42--PUBLIC HEALTH

CHAPTER IV--CENTERS FOR MEDICARE & MEDICAID SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES--(Continued)

PART 435--ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA--Table of Contents

Subpart K--Federal Financial Participation

Sec. 435.1009 Definitions relating to institutional status.

For purposes of FFP, the following definitions apply:

Persons with related conditions means individuals who have a severe, chronic disability that meets all of the following conditions: (a) It is attributable to

(1) Cerebral palsy or epilepsy; or

(2) Any other condition, other than mental illness,

found to be closely related to intellectual disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of intellectually disabled persons, and requires treatment or services similar to those required for these persons.

(b) It is manifested before the person reaches age 22.

(c) It is likely to continue indefinitely.

(d) results in substantial functional limitations in three or

more of the following areas of major life activity:

- (1) Self-care.
- (2) Understanding and use of language.
- (3) Learning.
- (4) Mobility.
- (5) Self-direction.
- (6) Capacity for independent living.

Persons with related conditions means individuals who have a severe, chronic disability that meets all of the following conditions:

(a) It is **attributable to--**

- (1) **Cerebral palsy or epilepsy; or**

The “severe, chronic disability” has to be “attributable” to the identified condition(s). Some related conditions can be very mild in some individuals (Fragile-X, Cerebral Palsy, Fetal Alcohol Syndrome) and may not qualify.

- (2) **Any other condition, other than mental illness, found to be closely related to **intellectual disability** because **this condition** results in impairment of general **intellectual functioning** or **adaptive behavior** similar to that of intellectually disabled persons, and requires **treatment or services** **similar** to those required for these persons.**

“Any other condition” - has to be a specific identified/diagnosed condition- Most likely qualify: Autism Spectrum Disorder (ASD) and lots of known causes of ID: Down’s Syndrome, Fetal Alcohol Syndrome, and Fragile –X are most common; Other brain/neurological based conditions may qualify: P-W, **severe ABI**, Spina Bifida,

Probably not qualify: Tourette’s, Reactive Attachment Disorder (RAD)
Probably not: Medical/ physical conditions (cancer, AIDS, spinal cord injury, MD, MS), ADHD, Conduct Disorder, Borderline Intellectual Functioning, Learning Disorders, Deaf, Blind, Substance Abuse, Mental Illness (including Psychotic, Mood & Anxiety Disorders and Personality Disorders, Paraphilias)

b) It is **manifested** before the person reaches age 22.

The functional limitations must be present by age 22 years, not just the underlying condition

(c) It is likely to continue indefinitely.

(d) It results in **substantial functional limitations** in three or more of the following areas of major life activity:

- (1) Self-care.
- (2) Understanding and use of language.
- (3) Learning.
- (4) Mobility.
- (5) Self-direction.
- (6) Capacity for independent living.

“substantial functional limitations” must be due to the “condition” noted in “(a)” above.

Oftentimes, persons with an acquired brain injury also suffer dementia secondary to the ABI, meaning that persons with ABI and dementia can present with similar symptoms and impairment as persons with an Intellectual Disability (ID), such as cognitive and sensory difficulties. Looking at the definition of Related Conditions above, a brain injury could be considered a related condition if they meet the criteria as illustrated above.

However, an Acquired Brain Injury can occur at any age after birth, in contrast to an Intellectual Disability, which most commonly exists from birth. What most distinguishes ABI from ID is the fact that most people with an ABI retain their pre-injury intellectual abilities, the injury having merely impaired the expression of these abilities.

What does the ABI Waiver eligibility look like?

Case Scenario

DSPD Eligibility Determination on Acquired Brain Injury and Related Conditions: Please note that the below described person is being reviewed to identify if she continues to meet eligibility criteria for the ABI Waiver. The below case is fictional, but incorporates all areas that need to be identified to determine eligibility.

Issue: Is Elaine eligible for the Home and Community-Based Waiver for Individuals With Acquired Brain Injuries ?

We did not consider which waiver (ABI or CSW) would be most appropriate to meet Elaine’s needs. We did not consider how her disability is best clinically conceptualized for planning and providing supports. We did not consider how this decision might affect her Medicaid medical eligibility or other requirements. This is simply an eligibility issue.

Recommendation: Elaine may be eligible for both, the Home and Community-Based Waiver for Individuals with Acquired Brain Injuries, and the Community Supports Waiver, as her brain injury occurred prior to age 22 and the age eligibility criteria for the Acquired Brain Injury Waiver is 18 and older.

We do not question any of the ABI Waiver eligibility requirements. Elaine had a severe brain injury at age 17 years and she appears to meet the federal definition of "Related Condition."

In the review, we considered her age at the time of her brain injury, the severity of the injury, her overall intellectual functioning, adaptive behavior deficits, and services/support needs as well as her functional limitations. The following are our conclusions with information from the CFR in quotes:

1. Elaine has a "severe, chronic disability"
2. Elaine's disability "is attributable to-" a traumatic head injury as a result of an all-terrain vehicle accident in 1980.
3. Elaine's traumatic head injury meets the definition of "any other condition, other than mental illness, found to be closely related to Intellectual disability..."
Traumatic head injury/acquired brain injury is one of the common direct causes of Intellectual disability.
4. Elaine's "condition results in impairment of general intellectual functioning or adaptive behavior similar to that of intellectually disabled persons"

Results of the Neuro Psychological Evaluation completed by Dr. Franken in 1999 indicated an FSIQ = 65.

Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-V)

While IQ scores are still relevant and important in assessing the level of intellectual disability, the new DSM-V adds another layer of diagnostic criteria (Intellectual Disability: Causes and Characteristics). Mental health professionals must consider the person's ability or impairment across three skill areas: conceptual, social, and practical life skill.

The category details are as follows Only to mention the IQ level in regards to our example "Elaine:"

Mild intellectual disability

IQ 50 to 70

Slower than typical in all developmental areas

No unusual physical characteristics

Able to learn practical life skills

Attains reading and math skills up to grade levels 3 to 6

Able to blend in socially

Functions in daily life

About 85 percent of people with intellectual disabilities fall into the mild category and many even achieve academic success. A person who can read, but has difficulty comprehending what he or she reads represents one example of someone with mild intellectual disability.

We are not suggesting Elaine be diagnosed with Intellectual Disability, just that her general intellectual functioning is similar to that of intellectually disabled persons.

Elaine's record documents deficits in 5 (self-care; home living, self-direction; community resources; and social/interpersonal skills) of these areas of adaptive behavior.

1. Elaine "requires treatment or services similar to those required for these persons;" as she requires supervision and individually designed and implemented skill training programs and behavioral programming to address broad deficits in the above listed major life areas. Her special needs in treatment or service related to the cause of her disability do not distinguish this as different from Intellectual Disability. Brain injury is just one of the many causes of Intellectual Disability that require special considerations in treatment or services.
2. Elaine's condition meets the requirement: "It is manifested before the person reaches age 22;" as her accident occurred at age 17 years.
3. Elaine's condition meets the requirement: "It is likely to continue indefinitely;" as her present condition has persisted for several years and is expected to be life-long.
4. Elaine's condition has resulted in "substantial functional limitations in three or more of the following areas of major life activity: "Elaine's record is clear in documenting substantial functional limitations in (3) Learning, (5) Self-direction, and (6) Capacity for independent living. There is also documentation of limitations in (1) Self-care and (2) Understanding use of language.

The following assessments and documents were used during the review:

1. DSPD Comprehensive Brain Injury Assessment Form (4-1)
2. Brain Injury Social Histories dated 10-08-02 and 10-28-03
3. Hospital Discharge Summary
4. Neuro Psychological Evaluation completed by Dr. Franken dated 10-01-99

Elaine potentially meets the eligibility criteria for both, the Acquired Brain Injury Waiver (ABI) and the Community Supports Waiver (CSW).

According to the ABI waiver, "If a person is eligible for more than one of the waivers operated by DSPD, the division will educate the individual about their choices and will advise the person about which of the waivers will likely best meet their needs."