

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2154021
Decision Date:	9/23/2021	Hearing Date:	07/20/2021
Hearing Officer:	Casey Groff		

Appearance for Appellant:




Appearance for MassHealth:

Linda Phillips, R.N.



*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:	Moving Forward Plan Residential-Supports (MFP-RS) Waiver
Decision Date:	9/23/2021	Hearing Date:	07/20/2021
MassHealth's Rep.:	Linda Phillips, R.N.	Appellant's Rep.:	
Hearing Location:	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 dated April 26, 2021, MassHealth denied Appellant's application to participate in MassHealth's Moving Forward Plan Residential Supports Home-and-Community Based Services Waiver (MFP-RS Waiver) because MassHealth determined that Appellant was not clinical eligible for enrollment. See 130 CMR 519.007(H)(1) and Exhibit 4, p. 3. Appellant filed this appeal in a timely manner on May 21, 2021, however, did not reference or include a copy of the disputed notice. See 130 CMR 610.015(B) and Exhibit 1. On June 2, 2021, the Board of Hearings (BOH) dismissed the appeal for failing to demonstrate the existence of an appealable action. See Exh. 2 and 130 CMR §§ 610.034, 610.035. On June 9, 2021, Appellant requested that BOH vacate the dismissal by providing a copy of the April 26, 2021 notice in dispute. See Exh. 4, p. 3. Denial of assistance is valid grounds for appeal. See 130 CMR 610.032. BOH scheduled a hearing for the appeal on July 20, 2021. See Exh. 6.

Action Taken by MassHealth

MassHealth determined that Appellant could not be safely served in the community within the terms of the MFP-RS Waiver and therefore denied Appellant's application for enrollment.

Issue

The appeal issue is whether MassHealth was correct in determining that Appellant cannot be safely served in the community within the terms of the MFP-RS Waiver and thus, whether MassHealth correctly denied his application for enrollment in the MFP-RS Waiver.

Summary of Evidence

A MassHealth representative appeared at the hearing by telephone and testified that she is a Registered Nurse and is the Associate Director of Appeals and Regulatory Compliance, Disability & Community Based Solutions division of MassHealth. Based on testimony and documentary submissions, MassHealth presented the following information: Appellant is a [REDACTED] male resident of [REDACTED].¹ Appellant's diagnoses include alcohol abuse; unspecified psychosis; major depression; anxiety; hypertension; hypertensive heart disease with heart failure; history of pulmonary embolism; anemia; Type 2 diabetes and obesity. See Exh. 7(E), page 61. On January 28, 2021, MassHealth received an application from Appellant seeking enrollment in the Moving Forward Plan Residential Supports (MFP-RS) Waiver program. See Exh. 7(D) pp. 2-3.

According to the MassHealth representative, the MFP-RS Waiver allows residents of nursing and other types of facilities, who are in need of 24/7 supervision and staffing, to move into the community and obtain MassHealth community-based services.² MassHealth imposes numerous criteria to qualify for this program, including the condition that the "applicant must be able to be safely served in the community within the terms of the MFP Waivers." See Exh. 7(B), p. 2. As part of the application process, a registered nurse (RN) from MassHealth's waiver program (the "Nurse Reviewer") conducted a virtual assessment of Appellant; collected and reviewed Appellant's medical records from various hospitals, treatment centers, and nursing facility; conducted interviews; and completed various Waiver-related evaluations to assess Appellant's care needs. See Exh. 7(D), p. 32.

According to medical documents reviewed by MassHealth, Appellant entered the nursing facility after having two hospitalizations in the fall of 2020 due to alcohol intoxication. Upon release from the first admission, Appellant was discharged home with numerous community and alcohol support services, including VNA, behavioral health services, medication management, social work services, outpatient therapy, and a recovery coach. See Exh. 7(E), p. 18; see also 7(D), p. 25. Approximately one month following the discharge, Appellant was transferred via ambulance to the ED of the same hospital after being found on the ground, incontinent, and surrounded by alcohol bottles. See Exh. 7(E), p. 6. In the ED, Appellant's blood alcohol level was 144. Id. He remained in the hospital for approximately five days. Admission records indicated that Appellant was well-known to, and

¹ As of the hearing date, Appellant had been transferred from [REDACTED] to the [REDACTED] nursing facility. For purposes of clarity, any references to "the nursing facility" in this Decision refer to [REDACTED] – Appellant's prior nursing home, which was where he resided at all relevant times during the application process.

² MassHealth also has a Community Living waiver under the MFP program, known as the "MFP-CL waiver," which helps individuals who require *less than* 24-hour supervision to obtain support services within the community.

was supported by, the hospital's social work department since 2009 for alcohol related concerns; he was followed by the Lahey Crisis team starting around 2015; and he had a history of detox placements, including one in 2019. Id. at 18.

Upon discharge, Appellant was transferred to the High Point Treatment Center via a Section 35 order from the district court. At the treatment center he was started on Vivitrol injections. Id. Treatment center notes described Appellant as "a severe alcoholic putting himself in harm's way or severely getting hurt or possibly hurting himself and has put his health in grave danger due to it and can't function." Id. at 24. Appellant was found to be "in need of more support and strategies to help maintain his sobriety and reduce the risk of relapse." Id.

On [REDACTED], Appellant was transferred from the treatment center to [REDACTED] nursing facility. At the facility, Appellant had monthly visits to address depression, insomnia, and anxiety. He was started on a new medication to help with sleep and began Acamprosate to reduce his craving for alcohol, which he reported as being effective. Id. at 46; see also Exh. 7(D). p. 27. A behavioral health progress note dated February 22, 2021 stated that that Appellant was "fairly stable in mood and behaviors" and "continues to spend all of his time in bed and exhibit low motivation." See Exh 7(E), p. 46.

On March 26, 2021, following his application for the MFP-RS Waiver, Appellant attended a virtual assessment conducted by the MassHealth Nurse Reviewer. When asked to describe how he would avoid a relapse to drinking alcohol in the community, Appellant responded, "I just don't think I will be drinking again," and indicated that he would "maybe" seek supports to avoid drinking. Appellant was unable to describe what a day in the community would look like stating "I hadn't really thought about it." The facility's director of social work, who was present at the assessment, reported that she and other facility staff, such as OT, were assisting Appellant in finding a recovery coach and online AA meetings.

The Nurse Reviewer also interviewed Appellant's sister, who is his designated Health Care Proxy.³ During the interview, his sister stated that she was not in favor of Appellant leaving the facility. She stated her family is "exhausted trying to help Appellant" and that in the last 10 years, he has been in a constant cycle of detox and drinking. She reported that when Appellant's homeless shelter found him an apartment "as soon as he got any money, he was out drinking." He then lost his apartment and was living in his father's storage unit where he was frequently intoxicated. A restraining order was obtained to keep him out of the storage unit. The sister stated that Appellant "has never consistently participated in sobriety supports, as he does recognize or care that he has a problem." Id. at 27-28.

On April 15, 2021, the UMass Waiver Complex Clinical Eligibility Team - comprised of members from the MassHealth waiver program, the Massachusetts Rehabilitation Commission (MRC) and Department of Developmental Services (DDS) - met to review Appellant's case. The Waiver Team found that "given his history of repeated detox admissions and intoxications consistently for 10 years, this 6-month period in recovery and only recent commitment to SUD

³ There was no evidence that Appellant's HCP was activated at the time of the hearing.

supports, he remains a very high risk of relapse.” See Exh. 7(D), p. 30. The Waiver Team determined that Appellant was “a significant health and safety risk to himself and requires a higher level of supervision and supports than the services within the MFP-RS Waiver can provide.” Id. On April 21, 2021, a second clinical review was conducted by the MRC Clinical Team. Based on its review, the MRC Team agreed with Waiver Team’s decision and concluded that Appellant did not meet clinical eligibility requirements for participation in the MFP-RS Waiver because he cannot be safely served within the terms of the program. Id. Accordingly, via an April 26, 2021 letter, MassHealth notified Appellant that his application for the MFP-RS Waiver was denied. Id. at 4-5.

The MassHealth representative further clarified that that primary focus of the MFP-RS Waiver is *not* to provide addiction care or to protect individuals from relapse; rather, the program is intended for individuals who require physical assistance with activities of daily living (ADLs), i.e. PCA services, to help members with getting dressed, toileting, transferring and such. The residences are set up for individuals who can otherwise care for themselves; they are not set up to protect individuals that are at risk for substance abuse and relapse.

Appellant and the director of social work from the nursing facility appeared at the hearing via telephone. Appellant disagreed with MassHealth’s decision stating he was ready for this next step in his recovery. He felt that the statements made by his sister were inaccurate as she has been highly supportive in making sure he gets the care he needs. Appellant stated that he has been working to get involved with the community supports he had prior to his admission – many of which had been reduced due to the Covid-19 pandemic. Now he attends virtual AA meetings and wants to maintain his therapy and recovery meetings.

Additionally, the director of social work testified that Appellant has made tremendous improvement since his admission. Although he initially showed low motivation, he has gone through a major transformation. He is now proactive in seeking the help that will keep him from relapse and wants to get better. She believes the MFP-RS Waiver program would be the right next step to give Appellant the independence he needs to move forward. In response to MassHealth’s testimony about program’s focus, the representative testified that Appellant is indeed seeking enrollment in order to receive the physical assistance he needs with daily living, including diabetes management and medication administration assistance and management. His history of alcoholism is one piece of the picture and she believes he could successfully manage himself with the supports offered by the program.

Findings of Fact

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

1. Appellant is a [REDACTED] resident of a skilled nursing facility with diagnoses including alcohol abuse; unspecified psychosis; major depression; anxiety; hypertension; hypertensive heart disease with heart failure; history of pulmonary embolism; anemia; Type 2 diabetes and obesity .
2. Appellant entered the nursing facility after having two hospitalizations in the fall of 2020 due to alcohol intoxication.
3. After the first hospitalization, Appellant was discharged home with numerous community and alcohol support services, including VNA, behavioral health services, social work, outpatient therapy, a recovery coach, and medication management.
4. Approximately one month following his discharge, Appellant was again admitted to the hospital due to alcohol intoxication where he stayed for five days.
5. Appellant has been treated by the hospital social work department since 2009; the Lahey Crisis team since 2015, and has had been in multiple detox placements, including one in 2019.
6. After the second admission, Appellant was transferred to the High Point Treatment Center via a Section 35 court order.
7. Treatment center notes described Appellant as “a severe alcoholic putting himself in harm’s way or severely getting hurt or possibly hurting himself and has put his health in grave danger due to it and can’t function.” Appellant was found to be “in need of more support and strategies to help maintain his sobriety and reduce the risk of relapse.”
8. Appellant was transferred from the treatment center to the nursing facility where he began monthly visits to address his depression, insomnia, and anxiety; and received medications to reduce alcohol cravings and to help his sleep.
9. On January 28, 2021, MassHealth received an application from Appellant seeking enrollment in the MFP-RS Waiver program.
10. During a March 26, 2021, virtual assessment, Appellant told the MassHealth Nurse Reviewer that he “hadn’t really thought about” what a day in the community would look like and that he would “maybe” seek supports to avoid drinking.
11. The facility director of social work and other facility staff, such as OT have assisted Appellant in finding a recovery coach and online AA meetings.
12. Appellant has improved since his admission to the facility; he has become increasingly motivated to maintain sobriety, participate in therapy, attend virtual AA meetings, and seek out community supports.

13. Appellant's sister informed MassHealth that she was not in favor of Appellant leaving the facility; and reported that Appellant has been in a constant cycle of detox and drinking over the last 10 years and that "he has never consistently participated in sobriety supports, as he does recognize or care that he has a problem."
14. On April 15, 2021, the UMass Waiver Complex Clinical Eligibility Team determined that based on the medical records, interviews, and assessments performed, Appellant was "a significant health and safety risk to himself and requires a higher level of supervision and supports than the services within the MFP-RS Waiver can provide."
15. On April 21, 2021, the MRC Clinical Team reviewed and affirmed the Waiver Team's decision, concluding that Appellant did not meet clinical eligibility requirements for participation in the MFP-RS Waiver because he cannot be safely served within the terms of the program.
16. On April 26, 2021, MassHealth notified Appellant that his application for the MFP-RS Waiver was denied.

Analysis and Conclusions of Law

The sole issue on appeal is whether MassHealth erred in denying Appellant's application for enrollment in the MFP-RS waiver program based on its determination that he did not meet clinical eligibility criteria. MassHealth regulations at 130 CMR 519.007 describe the eligibility requirements for MassHealth Standard coverage for individuals who would be institutionalized if they were not receiving home and community-based services. With respect to the MFP-RS Waiver program, MassHealth has set forth the following eligibility requirements:

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

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

1. is 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. is 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 or 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. is able to be safely served in the community within the terms of the MFP Residential Supports Waiver;** and
6. is 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.

....

130 CMR 519.007(H)(1) (Emphasis added)

MassHealth denied Appellant's application for the MFP-RS Waiver because it determined Appellant did not meet the criteria under subsection (5) above; specifically, that he could not be safely served within the community within the terms of the waiver program. *Id.* In consideration of the evidence in the record, MassHealth did not err in denying Appellant's application on this basis. As part of the application process, MassHealth conducted a thorough assessment of Appellant's medical history; reviewed medical records from Appellant's recent admissions; conducted interviews of Appellant, his sister and facility staff; and completed waiver-related evaluations to assess his health care needs. The reviewing sources all consistently detailed Appellant's long-standing history of alcohol abuse and how it has impaired his health and ability to function. *See* Exh. 7(E), p. 24. Medical records and interview statements indicate that over the past decade, Appellant has been unable to continue with community-based sobriety supports, resulting in a reoccurring cycle of detox followed by relapse. Notes from his most recent treatment center admission concluded that Appellant was "in need of more support and strategies to help maintain his sobriety and reduce the risk of relapse."

At hearing, Appellant and his representative provided compelling testimony about the significant improvements Appellant has made at the facility, including his increased motivation to seek out recovery supports and services. As MassHealth noted, however, the primary focus of the MFP-RS Waiver is to provide assistance with physical functioning and ADLs, and thus lacks the amount of sobriety supports and structure that has led to Appellant's improvements at the nursing facility. While the Waiver Team recognized the strides Appellant had made in the six months since his admission, they ultimately concluded that, in the context of his decade long history of repeated detox admissions and intoxications, Appellant still remained at high risk for relapse and, thus required a higher level of supervision and supports than available in a residential setting. *See* Exh. 7(D), p. 29. This conclusion - which was made after a thorough review of Appellant's case and after deliberation and agreement amongst multiple agencies - was supported by the evidence in the record. MassHealth did not err in denying Appellant's application to enroll in the MFP-RS Waiver.

This appeal is 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.

Casey Groff
Hearing Officer
Board of Hearings

cc: Prior Authorization

A large black rectangular redaction box covers the majority of the text in the 'cc:' line, starting from the end of the words 'Prior Authorization' and extending across the width of the page.