

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

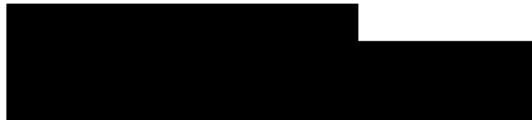


Appeal Decision:	Denied	Appeal Number:	2155395
Decision Date:	9/24/2021	Hearing Date:	September 09, 2020
Hearing Officer:	Brook Padgett		

Appellant Representative:
Pro se

MassHealth Representative:
L. Phillips, RN, BSN, LNC-CSp.

Witnesses:



*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:	130 CMR 519.007
Decision Date:	9/24/2021	Hearing Date:	September 09, 2020
MassHealth Rep.:	L. Phillips, RN, BSN, LNC-CSp.	Appellant Rep.:	Pro se
Hearing Location:	Springfield	Aid Pending:	Yes

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

The appellant received a notice dated June 22, 2021, stating: “This is a Notice of Disenrollment from the MassHealth Moving Forward Plan Community Living Home-and-Community-Based Service Waiver (MFP-CL Waiver). You are receiving this Notice of Disenrollment because it has been determined that you no longer meet the requirements for participation in the MFP-CL Waiver, as required by 130 CMR 519.007(H)(2). This determination is based on the following information: You are no longer clinically eligible for participation in the MFP-CL Waiver because you cannot be safely served in the community within the terms of MFP-CL Waiver as required by 130 CMR 519.007(H)(2)(a)(5) ... Accordingly you will be disenrolled from participation in the MFP-CL Waiver on July 02, 2021.” (Exhibit 1).

The appellant filed this appeal timely on July 01, 2021 and has continued to receive aid pending the outcome of this appeal. (130 CMR 610.015(B); Exhibit 2).

Continued eligibility is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth intends to disenroll the appellant from participation in the MFP-CL waiver.

Issue

Does the appellant meet the eligibility requirements to continue to receive an MFP-CL waiver?

Summary of Evidence

MassHealth testified that MassHealth offers two home and community-based service (HCBS) waivers; the MFP-RS Waiver for Residential Services, and the MFP-CL Waiver for Community Living. Both waivers help individuals move from a nursing home or long-stay hospital settings to an MFP qualified residence in the community and obtain community-based services. The MFP-CL Waiver is for individuals who can move into their own home or apartment, or to the home of someone else, and receive services in the community that are less than 24 hours/day, 7 days per week. On February 16, 2021, Massachusetts Rehabilitation Commission (MRC) requested an MFP-CL Waiver status redetermination assessment for the appellant due to increased mental health issues and non-compliance to work with MRC in finding suitable community housing.

MassHealth stated that to be eligible for the MFP-CL Waiver an applicant must be living in a nursing facility or long-stay hospital, for at least 90 consecutive days, excluding rehabilitation days; be 18 years old or older, and have a disability, or be age 65 and older; must meet clinical requirements for, and be in need of the waiver services that are available through the MFP Waivers; must be able to be safely served in the community within the terms of the MFP Waivers; must meet the financial requirements to qualify for MassHealth special financial rules exist for waivers' participants; and will transition to an MFP qualified residence in the community.

The appellant is 71 years old and currently resides at CareOne at Northampton and was determined eligible for the MFP-RS Waiver in 2017. During this time, DDS had offered the appellant multiple housing options under the MFP-RS Waiver, but she had refused all housing offers. The appellant applied for a waiver transfer from MFP-RS to MFP-CL and was determined eligible for the MFP-CL Waiver on July 23, 2019. After the appellant's transfer to MFP-CL Waiver, MRC and Stavros offered the appellant several community housing options which she also refused. The appellant's medical history includes complex regional pain syndrome (CRPS); diabetes with neuropathy; hypertension; asthma; neuralgia; neuritis; causalgia of left lower limb; edema; anxiety; depression and history of alcohol abuse.

On October 20, 2020, a consult report was performed by a consulting social worker mental health clinician from MRC, via telehealth zoom meeting with the appellant and the MRC MFP case manager. The purpose of the meeting was for the social worker to provide consultation to MRC regarding concerns with the appellant's mental health and behaviors that may present as potential barriers to transfer to the community within the MFP-CL Waiver. The MRC case manager informed the consulting social worker that the appellant has been previously accusatory and verbally threatening towards her by stating "you are never doing enough" and "I will call my state rep to get this resolved". During this telehealth meeting, the social worker reported that both the case manager and she attempted to engage appellant in discussion regarding available housing that is suitable for her needs. The appellant required redirection throughout this meeting

as she kept focusing on an apartment complex where she stated, “this apartment is the only place I want” and she refused to discuss other options. When the case manager researched this apartment complex it appears the apartment complex does not exist. The appellant stated during this meeting that “she is good friends with Robert Kennedy Jr. and will utilize him if necessary”. At the conclusion of the meeting, appellant would not engage in further discussions regarding available housing that would allow for an appropriate move into the community within the MFP-CL Waiver. It was concluded that given the length of time the appellant has been eligible for the MFP-CL Waiver, this may warrant further discussion with the MRC supervisor and administrator around her willingness and desire to transfer to community living.

On May 24, 2021, an assessment for redetermination of MFP-CL Waiver continued eligibility was conducted via zoom. In attendance were the appellant; a social worker from CareOne and a MassHealth Nurse Reviewer, (representing the MFP Waiver program). The nurse reviewer attempted to conduct the reassessment by first explaining the purpose of this meeting to appellant. The appellant became irate, used profanities and she terminated the zoom meeting. As a result only the available documentation from CareOne was reviewed for the purpose of this reassessment. The MFP redetermination assessment consists of completion of MFP documents including Minimum Data Set-Home Care (MDS-HC); ABI/MFP Clinical Redetermination Assessment for Continued Eligibility; a review of appellant’s medical record; and discussion with MRC and CareOne staff. Additional documentation from CareOne was reviewed by MassHealth and MRC that indicates appellant has continued to have increased delusions, accusatory behaviors, and non-compliance with MRC for housing searches.

Documentation included:

- February 17, 2021: CareOne Social Service Progress note indicates that the social worker and Director of Nurses (DON) met with appellant per her request. Appellant complained about her care, treatment and CNAs regarding her previous nursing facility and the current nursing facility (CareOne) where she is currently residing. During this meeting, appellant was offered to transfer to another nursing facility due to her numerous complaints but refused because she stated, “she was leaving June 01, 2021, with her fiancé, a doctor from Dartmouth.”
- March 01, 2021: CareOne Care Plan states the appellant “exhibits verbal agitation/aggression towards staff i.e., yelling, screaming, demanding as well as refusing care at times. She has a diagnosis of adjustment disorder with anxiety and depression and history of substance abuse.” One of the interventions/tasks is for staff to use consistent routines and 2 caregivers when providing assist with Activities of Daily Living (ADLs).
- April 02, 2021: HealthDrive-Behavioral Health Group Progress Note states that appellant has history of accusatory behaviors toward staff and she self-reports having claustrophobia is impacting her ability to find community housing. She has chronic delusions about her family history and continues to report “her fiancé is a surgeon at Dartmouth, and she reports that she is very close with the Kennedys”.
- May 15, 2021: CareOne Progress Note states appellant was riding her scooter around the unit and repeating “all the CNAs are ignoring the call bells”. Resident educated that staff

are not ignoring call bells. Resident denying this, standoff behavior with new agency CNAs.

- On June 17, 2021: Appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting where it was determined that appellant would not continue to be clinically eligible for participation in the MFP-CL Waiver due to her lack of insight into her mental health, unwillingness to work with MRC regarding suitable housing and her ongoing psychiatric instability as evidenced by delusions and verbal, derogatory and accusatory behaviors which require the presence of two staff to assist with ADLs. Per the MRC case manager's discussion with appellant's daughter, all her grandiose claims are false. At this time, appellant is determined to require 24/7 care and support and is not able to be safely supported within the MFP-CL Waiver.

MassHealth concluded that after review of documentation from MRC Consulting Mental Health Clinician, the appellant's social worker, the additional documentation from CareOne; MassHealth and MRC determined that appellant exhibits verbally aggressive and accusatory behaviors towards MRC and CareOne staff and she has a lack of insight of her psychiatric illness which includes delusions. In addition, appellant is noncompliant with MRC staff in finding her suitable housing in the community. Therefore, appellant was determined to no longer be eligible for the MFP-CL Waiver. MassHealth submitted into evidence waiver documentation, regulations, appellant's case record, and medical records. (Exhibit 4, A-E).

The appellant responded that she has been at the nursing facility for three years and has looked at many apartments with MRC, but they all have very small rooms. The appellant maintained she recently discovered she is claustrophobic and requires a larger space than the locations she has been shown. The appellant argued a real estate agent should be contacted so that she can see apartments that will suit her needs, which include her claustrophobia. The appellant stated that she is not argumentative or aggressive but can get upset when she is confronted by antagonistic or negative people as she will not remain quiet and will respond in kind. The appellant asserted she had recently been seen by a psychiatrist who stated she had no psychological issues and she also sees a therapist weekly who maintains she has no psychological issues either. The appellant maintained she was no longer seeing her surgeon boyfriend.

None of the appellant's witnesses wished to testify.

The appellant declined the opportunity to supplement the record with medical evidence from the psychiatrist and therapist demonstrating her current mental state, stating it was not necessary.

MassHealth indicated the appellant could reapply for the RS and or CL waiver in the future and until such time will remain in her current facility.

Findings of Fact

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

- 1) The appellant is over 65 years of age and currently resides at CareOne at Northampton. (Exhibit 4 at D, pg.2).
- 2) The appellant's medical history includes complex regional pain syndrome (CRPS); diabetes with neuropathy; hypertension; asthma; neuralgia; neuritis; causalgia of left lower limb; edema; anxiety; depression and history of alcohol abuse. (Exhibit 4 at D, pg.22).
- 3) The appellant was determined eligible for the MFP-RS Waiver in 2017. (Exhibit 4 at D, pg.22).
- 4) The appellant applied for a waiver transfer from MFP-RS to MFP-CL and was determined eligible for the MFP-CL Waiver on July 23, 2019. (Exhibit 4 at D, pg.22).
- 5) The appellant has refused all housing offers from MRC, Stavros, and any other community housing options from the time the appellant was determined eligible for the MFP-RS Waiver in 2017, and the MFP-CL Waiver on July 23, 2019, to the present. (Exhibit 4 at D, pg.23).
- 6) On October 20, 2020, a consult report by MRC to determine if the appellant had mental health and behaviors that may be a potential barrier to transfer to the community within the MFP-CL Waiver indicated:
 - a. The appellant had been accusatory and verbally threatening towards the social worker.
 - b. During the telehealth meeting, the social worker and case manager attempted to engage appellant in discussion regarding available housing that is suitable for her needs. The appellant required redirection throughout the meeting as she kept focusing on an apartment complex which appears not to exist.
 - c. The appellant stated during this meeting that “she is good friends with Robert Kennedy Jr. and will utilize him if necessary”.
 - d. The appellant would not engage in further discussions regarding available housing that would allow a timelier move into the community within the MFP-CL Waiver. (Exhibit 4 at E, pg.3).
- 7) On February 16, 2021, MRC requested the appellant be disenrolled from the MFP-CL Waiver due to her increased mental health issues and non-compliance with MRC in finding suitable community housing. (Exhibit 4 at E, pg.21).
- 8) On May 24, 2021, an assessment for redetermination of MFP-CL Waiver continued eligibility was conducted via zoom. The nurse reviewer attempted to conduct this reassessment by first explaining the purpose of this meeting to appellant. The appellant became irate, used profanities and she terminated the zoom meeting. (Exhibit 4 at D, pgs.7-10).
- 9) Additional documentation from CareOne indicated the appellant has continued to have increased delusions, accusatory behaviors, and non-compliance with housing searches:

- a. February 17, 2021: CareOne Social Service Progress note indicate was offered to transfer to another nursing facility due to her numerous complaints about CareOne, but she refused because she stated “she was leaving June 01, 2021, with her fiancé, a doctor from Dartmouth.”
 - b. March 01, 2021: CareOne Care Plan states the appellant “exhibits verbal agitation/aggression towards staff i.e., yelling, screaming, demanding as well as refusing care at times. She has a diagnosis of adjustment disorder with anxiety and depression and history of substance abuse”. One of the interventions/tasks is for staff to use consistent routines and two caregivers when providing assist with ADL’s.
 - c. April 02, 2021: HealthDrive-Behavioral Progress Note states the appellant has history of accusatory behaviors toward staff and she self-reports having claustrophobia which is impacting her ability to find community housing. She has chronic delusions about her family history and continues to report “her fiancé is a surgeon at Dartmouth, and she reports that she is very close with the Kennedys”.
 - d. May 15, 2021: CareOne Progress Note states appellant was riding her scooter around the unit and repeating “all the CNAs are ignoring the call bells”. Resident educated that staff are not ignoring call bells. Resident denying this, standoff behavior with new agency CNAs.
 - e. June 17, 2021, MassHealth and MRC determined that appellant would not continue to be clinically eligible for participation in the MFP-CL Waiver due to her lack of insight into her mental health, unwillingness to work with MRC regarding suitable housing and her ongoing psychiatric instability as evidenced by delusions and verbal, derogatory and accusatory behaviors which require the presence of two staff to assist with ADLs.
 - f. Appellant’s daughter indicated all the appellant's grandiose claims were false.
 - g. MRC and MassHealth determined the appellant require 24/7 care and support and is not able to be safely supported within the MFP-CL Waiver. (Exhibit 4 at E, pgs.19, 41,69 and 72).
- 10) On June 22, 2021, a denial of the MFP-CL Waiver notice was sent to the appellant due to her lack of insight into her mental health, unwillingness to work with MRC regarding suitable housing and her ongoing psychiatric instability. (Exhibit 4 at D, pg.3).

Analysis and Conclusions of Law

Eligibility for MassHealth's Home and Community Based Waiver program is governed by regulation 130 CMR 519.007 which states in pertinent part:

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

(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 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 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. is able to be safely served in the community within the terms of the MFP Community Living 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.

The appellant was determined eligible for the MFP-CL Waiver on July 23, 2019. The evidence in the record finds that since the appellant was determined eligible for the MFP-CL Waiver she has refused all community housing placements and failed to meaningfully participate with MRC in locating suitable community housing. During this two year period the record indicates the appellant has exhibited increased tendencies to be verbally aggressive and accusatory behavior towards MRC and CareOne staff and she has demonstrated a lack of insight regarding her psychiatric illness including her delusional conviction regarding a number of relationships. Additionally, while the appellant testified she has been seeing a psychiatrist and therapist who can confirm she has no psychological issues and can be safely served in the community within the terms of the CL Waiver; she failed to submit any additional medical evidence to verify her current mental status or to dispute the MassHealth MRC determination despite given the opportunity to present such evidence.

The appellant has provided no evidence to dispute the MassHealth determination that the she cannot be safely served in the community within the terms of the MFP-CL waiver and as a result the MassHealth action is upheld and this appeal is denied.

Order for MassHealth

Proceed with the discontinuation from participation in the MFP-CL waiver.

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.

Brook Padgett
Hearing Officer
Board of Hearings

cc: Linda Phillips, UMASS PA Unit, 333 South Street, Shrewsbury, MA 01545