

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2176038

**Decision Date:** 12/16/2021

**Hearing Date:** 11/30/21

**Hearing Officer:** Stanley Kallianidis

**Appellant Representative:**



**MassHealth Representative:**

Linda Phillips, RN



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, 6<sup>th</sup> Floor  
Quincy, MA 02171*

## APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Denial of MFP Waiver
<b>Decision Date:</b>	12/16/2021	<b>Hearing Date:</b>	11/30/21
<b>MassHealth Rep.:</b>	Linda Phillips, RN		

### Authority

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

### Jurisdiction

A notice dated May 17, 2021 was sent to the appellant stating that MassHealth had denied her application for a Moving Forward Plan (MFP) Community Living Waiver due to a lack of clinical eligibility (see 130 CMR 519.007(H) and Exhibit 1). The appellant filed this timely appeal on June 21, 2021 (Exhibit 2). A prior hearing date had been rescheduled at the request of the appellant (Exhibit 5).

The denial of assistance is grounds for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth denied the appellant's application for a Home and Community-Based MFP Community Living Waiver.

### Issue

Pursuant to 130 CMR 519.007(H), does the appellant meet the clinical requirements for an MFP Community Living Waiver?

## Summary of Evidence

The MassHealth representative testified that the appellant's application for an MFP Community Living Waiver was denied due to a lack of clinical eligibility. The appellant applied for the waiver on February 23, 2021. An in-person assessment was conducted on April 12, 2021 at the appellant's rest home. The appellant is 70 years old and has been residing in the rest home since April 6, 2021. Prior to this she was in a nursing facility for short-term rehab. Her medical history includes diabetes type 2, back pain, hypertension, hyperlipidemia, hypothyroidism, depression, anxiety, alcohol withdrawal, seizures, pneumonia, cellulitis and MRSA (Exhibit 3).

During the assessment, the following was noted with regard to the appellant's lack of insight into maintaining her sobriety: An August 19, 2020 physical exam at her prior nursing facility indicated that she was guarded and refused to answer all questions asked of her. She was also noted to be medication seeking at times. An April 17, 2021 telephone call to the appellant's brother and health care proxy indicated that she has a lengthy history of significant drinking alcohol and has twice been in detox and has also been hospitalized for drinking. An April 18, 2021 call to the supervisor of the appellant's rest home indicated that on more than one occasion bottles of alcohol were removed from the appellant's room. Also, the appellant seeks out pain medication.

The MassHealth representative testified further that the MassHealth Waiver Team conducted clinical reviews of the appellant on May 6 and May 12, 2021. It was the Waiver Team's opinion that the appellant is a health and safety risk to herself due to her lack of insight in maintaining her sobriety, and also because she does not have any reliable supports such as family in the community. She was therefore not considered to be able to be safely served in the community within the terms of the MFP Community Living Waiver (Exhibit 3).

The appellant's representative testified that the appellant needs the services of an MFP Community Living Waiver so that she can transition to housing in the community. She acknowledged that the appellant has not been in a nursing facility since April 6, 2021. She testified that the appellant was moved to her rest home from the nursing facility unlawfully and without notice. There was never an appeal of the nursing home discharge, however.

The appellant's prior roommate at her rest home testified that she never observed the appellant abusing alcohol during the time that she resided there.

The appellant testified that she has been sober for three years and that she wants to leave the rest home because the living space and services that it provides are inadequate to meet her needs.

## Findings of Fact

The record shows, and I so find:

1. A notice dated May 17, 2021 was sent to the appellant stating that MassHealth had denied her application for an MFP Community Living Waiver due to a lack of clinical eligibility (Exhibit 1).
2. The appellant applied for the MFP Waiver on February 23, 2021. An in-person assessment was conducted on April 12, 2021 at the appellant's rest home (Exhibit 3).
3. The appellant is 70 years old and has been residing in the rest home since April 6, 2021 (Exhibit 3).
4. Prior to this she was in a nursing facility for short-term rehab (Exhibit 3).
5. The appellant's medical history includes diabetes type 2, back pain, hypertension, hyperlipidemia, hypothyroidism, depression, anxiety, alcohol withdrawal, seizures, pneumonia, cellulitis and MRSA (Exhibit 3).
6. An August 19, 2020 physical exam at her prior nursing facility indicated that she was guarded and refused to answer all questions asked of her. She was also noted to be medication seeking at times (Exhibit 3).
7. An April 17, 2021 telephone call to the appellant's brother and health care proxy indicated that she has a lengthy history of significant drinking alcohol and has twice been in detox and has also been hospitalized for drinking (Exhibit 3).
8. An April 18, 2021 call to the supervisor of the appellant's rest home indicated that on more than one occasion bottles of alcohol were removed from the appellant's room. Also, the appellant seeks out pain medication (Exhibit 3).
9. On May 6 and May 12, 2021, it was the Waiver Team's opinion that the appellant is a health and safety risk to herself due to her lack of insight in maintaining her sobriety, and also because she does not have any reliable supports such as family in the community. Because of this she was not considered to be able to be safely served in the community within the terms of the MFP Community Living Waiver (Exhibit 3).

## Analysis and Conclusions of Law

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:

- (i) 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;
- (ii) 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;
- (iii) must have received MassHealth benefits for inpatient services, and be MassHealth eligible at least the day before discharge;
- (iv) needs one or more of the services under the MFP Community Living Waiver;
- (v) is able to be safely served in the community within the terms of the MFP Community Living Waiver; and
- (vi) 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)(2)).

In the instant case, MassHealth denied the appellant's application for an application for an MFP Community Living Waiver due to a lack of clinical eligibility. Specifically, she was denied under 130 CMR 519.007(H)(2)(v). MassHealth believes that the appellant's lack of supports and insight in maintaining her sobriety is evidence that she cannot be "safely served in the community within the terms of the MFP Community Living Waiver."

I have found that the appellant applied for the MFP Waiver on February 23, 2021. An in-person assessment was conducted on April 12, 2021 at the appellant's rest home. The appellant is 70 years old and has been residing in the rest home since April 6, 2021. Prior to this, during the application process, she was in a nursing facility for short-term rehab.

The appellant's medical history includes diabetes type 2, back pain, hypertension, hyperlipidemia, hypothyroidism, depression, anxiety, alcohol withdrawal, seizures, pneumonia, cellulitis and MRSA.

The appellant's clinical record revealed the following: An August 19, 2020 physical exam at her prior nursing facility indicated that she was guarded and refused to answer all questions asked of her. She was also noted to be medication seeking at times. An April 17, 2021 telephone call to the appellant's brother and health care proxy indicated that she has a lengthy history of significant drinking alcohol and has twice been in detox and has also been hospitalized for drinking. An April 18, 2021 call to the supervisor of the appellant's rest home indicated that on more than one occasion bottles of alcohol were removed from the appellant's room. Also, the appellant seeks out pain medication.

While the appellant claims long-term sobriety and her witnesses deny any current alcohol abuse, there is no clinical documentation of this in the record. I thus concur with MassHealth that, at the present time, the appellant is not "able to be safely served in the community within the terms of the MFP Community Living Waiver." Moreover, perhaps more important, because the appellant resides in a rest home and hasn't been in a nursing facility since April 2021, she fails to meet required criteria (ii): "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."

Accordingly, due to a lack of clinical eligibility, the appellant is ineligible for an MFP Community Living Waiver at this time.

The appeal is therefore denied.

## **Order for the 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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Stanley Kallianidis  
Hearing Officer  
Board of Hearings

cc:

