

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2176952
Decision Date:	11/05/2021	Hearing Date:	11/02/2021
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:

Via telephone:



Appearance for MassHealth:

Via telephone:


Linda Phillips, RN, Assoc. Dir. Appeals &
Regulatory Compliance

Jennifer Bock, RN, Clinical Coordinator



*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:	MFP-CL Waiver
Decision Date:	11/05/2021	Hearing Date:	11/02/2021
MassHealth's Rep.:	Linda Phillips, RN Jennifer Bock, RN	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South	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

Through a notice dated August 30, 2021, MassHealth notified the appellant that he would be disenrolled from the MassHealth Moving Forward Plan Community Living Home and Community-Based Services Waiver (MFP-CL Waiver) because he does not reside in a community-based setting in which MFP-CL Waiver services can be delivered (see 130 CMR 519.007 and Exhibit 1). The appellant filed this appeal in a timely manner on September 9, 2021 (see 130 CMR 610.015(B) and Exhibit 2). Denial and/or termination of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified the appellant that he would be disenrolled from the MassHealth MFP-CL Waiver because he does not reside in a community-based setting in which MFP-CL Waiver services can be delivered.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.007(H), in determining that the appellant should be disenrolled from the MFP-CL Waiver program.

Summary of Evidence

The MassHealth representative appeared at hearing via telephone and testified as follows: the appellant is under the age of 65 and his primary diagnosis is Guillain Barre Syndrome. On August 30, 2021, MassHealth informed the appellant that he would be disenrolled from the Moving Forward Plan Community Living (MFP-CL) Waiver because he does not reside in a community-based setting in which MFP-CL Waiver services can be delivered. To maintain eligibility for the MFP-CL Waiver, a waiver participant must need one or more of the waiver services available under the MFP-CL Waiver.

The MassHealth representative explained that MassHealth offers two home and community-based service waivers: the Moving Forward Plan Waiver for Residential Services (MFP-RS) and the MFP-CL. Both waivers help individuals move from a nursing home or long-stay hospital to a 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 per day, 7 days per week. The appellant applied and was approved for the MFP-CL Waiver on July 9, 2013. That approval notice also stated “Your continued eligibility is subject to review.”

She testified that the following are the eligibility criteria for the MFP Waiver’s initial and continued eligibility status:

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

She testified that the appellant does not currently reside in a community-based setting in which MFP-CL Waiver services can be delivered because he has resided in South Carolina since March 2020. In addition, to maintain eligibility for the MFP-CL Waiver, a waiver participant must be in need of one or more of the waiver services available under the MFP-CL Waiver. There are no MFP-CL waiver services being utilized by the appellant at this time.

She stated that the appellant has been an MFP-CL participant since 2013 and received services through the waiver at his home in Massachusetts until March 4, 2020 when he left on vacation to his home in South Carolina. Over the previous six years, the appellant has gone on vacation multiple times to his South Carolina home. But after March 4, 2020, he did not feel safe traveling back to

Massachusetts. He is currently still in South Carolina. The appellant submitted a letter from his doctor dated September 2, 2021 stating that the appellant “is at high risk for Covid complications if he travels and is safer to remain out of state.” She testified that with the appellant residing in South Carolina, MFP-CL Waiver services are not available to be delivered to him in that location. To maintain eligibility, participants in the waiver program need to receive services.

She noted that the appellant was determined eligible for aid pending during the appeal process and has not been disenrolled from the MFP-CL Waiver, pending the Board of Hearings decision; however, aid pending has no impact on his waiver services as no waiver services are being utilized by the appellant.

The MassHealth representative stated that she has been in consistent contact with the appellant’s case manager. On August 9, 2021, she emailed the case manager to determine when the appellant planned to return home and was not given a return date. As of August 2021, the appellant had a 523-days leave of absence from the program. Typically, per the waiver program policy, services need to be utilized at least one time per month and a participant is disenrolled after a leave of absence of 90 days. There has been some flexibility with COVID-19, but there are a limited number of slots for each waiver program. The appellant is living out of state, not using waiver services, and holding a slot that could be used for someone else.

The appellant testified that he understood MassHealth’s testimony; however, these regulations and policies were all produced prior to COVID-19, which is a completely unprecedented situation. He still owns his home in Massachusetts and wants to return but has to be very careful during COVID-19 and does not want to risk going through a busy airport or sitting on a crowded plane. His doctors have told him it is not safe for him to travel right now. In addition to the doctor’s letter MassHealth referenced, he stated he also sent one from his diabetes specialist who stated something similar.

The appellant acknowledged that he is not using the waiver services at the moment, but he is homebound and needs home health care. Both his hands and feet are disabled, and his condition has not changed. While in South Carolina, he is privately paying for those services. He is not planning on returning to Massachusetts right now and does not have a return date planned because the pandemic is still in force. He argued that he is not costing MassHealth anything to keep things the way they are. But it would be more expensive for MassHealth if they terminated him because upon his return to Massachusetts, he would have to enter a nursing facility for at least 90 days to re-qualify for the waiver program. He clarified that he flew down to South Carolina in December 2019 to spend the winter there, as he always does. He returned at the beginning of March 2020, after being gone about 90 days, to meet with his case manager and utilize waiver services before heading back to South Carolina on March 4, 2020. But he has not been able to return since then due to the COVID-19 pandemic. The program is very important to him, and he does not want to jeopardize losing it, but the pandemic has been unprecedented and upset everyone’s schedule.

The MassHealth representative stated that the MassHealth determination was an administrative disenrollment and not based on his clinical eligibility.

Findings of Fact

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

1. The appellant is a male under the age of 65 years old with a primary diagnosis of Guillain Barre Syndrome who is living out of state in his home in South Carolina (Testimony).
2. The appellant applied and was approved for the MFP-CL Waiver on July 9, 2013 (Testimony and Exhibit 4).
3. The approval notice stated that the appellant's continued eligibility was subject to review (Testimony and Exhibit 4).
4. On August 30, 2021, MassHealth notified the appellant that he would be disenrolled from the MFP-CL Waiver because he does not reside in a community-based setting in which MFP-CL Waiver services can be delivered. To maintain eligibility for the MFP-CL Waiver, a waiver participant must be in need of one or more of the waiver services available under the MFP-CL Waiver. (Testimony and Exhibit 1).
5. The appellant timely appealed the notice on September 9, 2021 (Exhibit 2).
6. The appellant has been living at his home in South Carolina since March 4, 2020 (Testimony).
7. The appellant does not currently reside in a community-based setting in which MFP-CL Waiver services can be delivered because he resides in South Carolina (Testimony and Exhibit 4).
8. The appellant is not utilizing any MFP-CL Waiver services at this time and has not done so since March 4, 2020, a leave of absence of over 600 days (Testimony and Exhibit 4).
9. The appellant has various comorbidities that put him high risk for COVID-19 complications (Testimony and Exhibit 4).

Analysis and Conclusions of Law

130 CMR 519.007(H) states the following regarding the Money Follows the Person Community Living Waiver:

- (2) Money Follows the Person (MFP) Community Living Waiver.
 - (a) Clinical and Age Requirements. The MFP Community Living 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 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 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. **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...

(c) Enrollment Limits. Enrollment in the MFP Community Living Waiver is subject to a limit on the total number of waiver participants. The number of participants who can be enrolled in this waiver may be limited in a manner determined by the MassHealth agency.

Additionally, in MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- MassHealth will protect coverage for all individuals who have Medicaid coverage as of March 18, 2020, and for all individuals newly approved for coverage during the COVID-19 outbreak national emergency, and through the end of the month in which such national emergency period ends. These members will not lose coverage or have a decrease in benefits during this time period.
 - **Coverage will end only if an individual:**
 - requests termination of eligibility;
 - **is no longer a resident of Massachusetts;** or
 - is deceased.

(Emphasis added).

MassHealth's decision to disenroll the appellant from the MFP-CL waiver program was correct. The appellant does not meet the criteria set out in MassHealth regulation 130 CMR 519.007(H). He has lived in South Carolina since March 4, 2020 which means he does not reside in a community-based setting in which MFP-CL Waiver services can be delivered. Additionally, a waiver

participant must be in need of one or more of the waiver services, but the appellant is not utilizing MFP-CL waiver services and cannot while residing in South Carolina.

Furthermore, MassHealth has allowed for numerous flexibilities in response to the unprecedented situation created by the COVID-19 pandemic. The MassHealth representative explained at hearing that typically, a participant in the waiver program is disenrolled from the waiver program after a 90-day leave of absence. Due to COVID-19, it has been flexible with the time frame. MassHealth did not issue its disenrollment notice to the appellant until August 30, 2021, after a more than 523-day leave of absence. As of hearing, the appellant has not utilized any waiver services for more than 600 days and he has no plans to return to Massachusetts at this time. Additionally, per EOM 20-09, one of the exceptions to MassHealth protecting coverage is if an individual no longer resides in Massachusetts. While the appellant has kept his home in Massachusetts, he has not lived there since March 4, 2020 and has no plans to return.

For these reasons, MassHealth's decision is correct and the appeal is denied.

Order for MassHealth

Remove aid pending. Proceed with intended action.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:
MassHealth Representative: Prior Authorization