

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2177170
Decision Date:	11/29/2021	Hearing Date:	11/04/2021
Hearing Officer:	Casey Groff		

Appearance for Appellant:

Pro se

Appearance for MassHealth:

Linda Phillips, RN, BSN, LNC-Csp.,
Associate Director, Appeals and Regulatory
Compliance;
Sarah Morse, RN, Clinical Reviewer;
Brad Goodier, RN (observing), Clinical
Reviewer



*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 Community-Living Waiver
Decision Date:	11/29/2021	Hearing Date:	11/04/2021
MassHealth's Rep.:	Linda Phillips, R.N.; Sarah Morse, R.N.; Brad Goodier, R.N.	Appellant's Rep.:	<i>Pro se</i>
Hearing Location:	Telephonic	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 September 7, 2021, MassHealth denied Appellant's application to participate in MassHealth's Moving Forward Plan Community Living Home-and-Community Based Services (MFP-CL) Waiver because MassHealth determined that Appellant did not meet clinical eligibility criteria. See 130 CMR 519.007(H)(2) and Exhibit 1, p. 3. Appellant filed this appeal in a timely manner on September 20, 2021. See 130 CMR 610.015(B); Exhibit 1. Denial of assistance is valid grounds for appeal. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied Appellant's application to participate in MassHealth's MFP-CL Waiver.

Issue

The appeal issue is whether MassHealth was correct, in determining that Appellant was not clinically eligible to participate in MassHealth's MFP-CL Waiver.

Summary of Evidence

A MassHealth representative appeared at the hearing by telephone and testified that she is a Registered Nurse and the Associate Director of Appeals and Regulatory Compliance, Disability & Community Based Solutions division at MassHealth. Based on testimony and documentary submissions, MassHealth presented the following information: Appellant is a [REDACTED] former resident of the Oxford Rehabilitation and Health Care Center (“The Oxford” or “the nursing facility”).¹ On June 21, 2021, MassHealth received an application from Appellant seeking enrollment in MassHealth’s Moving Forward Plan (MFP) waiver programs. There are two MFP waivers: the Residential Supports (RS) waiver and the Community Living (CL) waiver. Both programs help members move from a nursing home or long-stay hospital to a residence within the community (either an “MFP qualified-residence” or a home of their own or someone else) where they can obtain community-based health services, such as assistance with activities of daily living (ADLs).² At the time the application was received, Appellant was still residing at the nursing facility. MassHealth imposes numerous eligibility criteria to qualify for the programs, including the condition that the “applicant must be able to be safely served in the community within the terms of the MFP Waivers.” *Id.* at 2. On September 7, 2021, MassHealth denied Appellant’s application for both the MFP-RS and MFP-CL waivers. *See id.* at 3, 7; *see also* Exh. 1, p. 3. Appellant appealed only the denial pertaining to the MFP-CL waiver.³ *See* Exh. 1, p. 2.

On August 3, 2021, following receipt of Appellant’s application, a MassHealth registered nurse from the MFP program conducted an in-person assessment of the Appellant at her nursing home. In addition, the MassHealth nurse reviewer collected and reviewed Appellant’s medical records, interviewed facility staff, and completed several waiver-related evaluations to assess Appellant’s care needs and whether she met clinical eligibility requirements. *See* Exh. 4(C), pp. 10-34. According to the sources reviewed, Appellant has a long-standing history of substance abuse which has led to hospital admissions, over 10 detox admissions and overdoses. *Id.* Her medical diagnoses include osteomyelitis of vertebrae; chronic viral hepatitis C; history of intravenous drug use; history of cocaine dependence; chronic obstructive pulmonary disease (COPD); chronic smoker; anxiety disorder; and post-traumatic stress disorder (PTSD). *See id.* at 28. In [REDACTED], Appellant was hospitalized for osteomyelitis. During the admission, she tested positive for marijuana, fentanyl, and cocaine. *Id.* at 29. Appellant was then transferred to The Oxford nursing facility where she received several months of physical rehabilitation. According to a nursing facility psychiatric note written the date Appellant was discharged, Appellant expressed her desire not to be discharged, reported feeling unsafe in her home, that people were using drugs, and was doubtful that she would stay sober. *Id.* at 29. Approximately

¹ Prior to the hearing, the nursing home discharged Appellant from the facility. Appellant did not dispute the discharge and was living in the community at the time of the hearing.

² The MFP-RS waiver is designed to assist individuals in need of 24/7 supervision and staffing to move into a qualified residence where they can receive support services within the community; whereas the MFP-CL waiver is designed to assist individuals who require *less than* 24/7 supervision and staffing to move into their own home, or the home of someone else, and receive services in the community.

³ Appellant affirmed her wish to proceed solely on the issue of MassHealth’s denial of the CL waiver. Appellant stated that she did not wish to pursue the MFP-RS waiver based on her desire to live in an independent environment, rather than a more structured qualified residence.

one month after her discharge from the nursing facility, Appellant was again admitted to the hospital where she was diagnosed with an invasive MRSA bacteremia infection. Id. at 28. Per the hospital record, Appellant received treatment for opioid abuse disorder and reported having used fentanyl after having been discharged from the nursing facility. Medical records also indicated her last confirmed drug use was in December of 2020. Id. On [REDACTED], Appellant was transferred from the hospital to the nursing facility for short term rehabilitation and assistance in performing ADLs. Id.

At the nursing home, Appellant received daily methadone from an outside clinic and participated in substance abuse counseling. Id. at 29. During the assessment, the facility substance use disorder (SUD) clinician reported to MassHealth that while Appellant had demonstrated growth during her admission, she was “still very early in her recovery” and “extremely high risk.” Id. The SUD clinician described Appellant as being ambivalent regarding her sobriety and opined that she needed more time in a sober setting and would be best suited for discharge to a long-term residential sober living situation. Id. at 30.

At the time of the in-person assessment, Appellant reported that she had been sober since her admission. Appellant expressed her desire to maintain her sobriety in the community and identified her mother and daughter as supports in the community. She is currently on a list for public housing and would be most comfortable living in the same city she has previously been, which is where her friends and family live. Documentation also indicated that the longest period Appellant maintained sobriety was for nine months; however during this time she was in a controlled supervised environment.

On August 26, 2021, Appellant’s MFP application was discussed by the MassHealth Waiver Clinical Team which includes the Department of Developmental Services (DDS). In addition, on September 1, 2021, MassHealth conducted a second clinical review of Appellant’s case with the Massachusetts Rehabilitation Commission (MRC) Clinical team. Based on these reviews, MassHealth, MRC and DDS concurred that while Appellant has maintained a short period of recovery, her past behaviors and substance use in the community within the past year, suggest that she will not be able to manage her substance abuse in an environment with reduced supervision and that she remains at high risk for polysubstance relapse and/or overdose. The reviewing entities concluded that Appellant required a higher level structured and /or supervised setting that can focus on polysubstance recovery and therefore she cannot be safely serviced under the MFP-CL waiver at this time.⁴ Id. at 31.

On September 7, 2021, through two separate letters, MassHealth notified Appellant that her application for participation in the MFP-CL and MFP-RS waivers were denied because she could

⁴ The MassHealth representative testified that although the RS waiver affords 24/7 supervision, its focus is on providing assistance with a members physical impairments, such as ADLS, and does not provide the level of substance abuse treatment that Appellant requires.

not be safely serviced under the terms of the waiver and therefore did not meet the program's clinical eligibility requirements. See id. at 3-4, 7-8.

Appellant appeared at the hearing by telephone and testified as follows:⁵ Appellant explained that the purpose of her nursing home stay was not related to her substance abuse issues, but rather, to receive physical rehabilitation and assistance with ADLs. Throughout her admission she remained sober and attended every clinic and substance abuse counseling meeting. Although she could have left the facility at any time, she chose to stay, and is proud of herself for doing so. Appellant challenged the statements made by the facility SUD counselor, explaining that he never took the time to speak with her. He, and other facility staff, falsely accused her of using drugs and possessing paraphernalia. She always tested negative for drugs following each accusation. Approximately one week ago, the nursing facility informed her of its intent to discharge her. She could have appealed the discharge but decided not to. It was a mutual decision to leave the facility. Currently she is living in the community, couch surfing with friends and family. Last night she stayed at a homeless shelter and, at the time of the hearing, was at her daughters home.⁶ Appellant disagreed with MassHealth's decision to deny her application for participation in the MFP-CL waiver as she requires the support services. She has osteomyelitis and COPD, which makes it difficult to move and perform housecleaning tasks.⁷ Prior to entering the nursing facility, she was staying with a friend. She has no intention to return to drugs and will be looking to participate in sobriety supports in the community.

Findings of Fact

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

1. Appellant is a [REDACTED] former resident of the Oxford Rehabilitation and Health Care Center ("The Oxford" or "the nursing facility").
2. Appellant has a long-standing history of substance abuse which has led to hospital admissions, multiple detox placements, and overdoses.
3. Her medical diagnoses include osteomyelitis of vertebrae; chronic viral hepatitis C; history of intravenous drug use; history of cocaine dependence; COPD; chronic smoker; anxiety disorder; and PTSD.

⁵ At the outset of the hearing, Appellant indicated that her designated appeal representative, a social worker from her former nursing facility, would not attend the hearing. Appellant explained that she had been discharged from the facility and that she would represent herself for purposes of this appeal.

⁶ Appellant requested that a copy of the hearing decision be sent to her at her daughter's home address, which she provided to the hearing officer.

⁷ At the hearing, the parties also discussed Appellant's option for seeking enrollment in the personal care attendant (PCA) program, which does not contain the same clinical eligibility criteria that prevented Appellant's enrollment in the MFP waiver programs.

4. In [REDACTED] Appellant was admitted to a hospital for osteomyelitis where she tested positive for marijuana, fentanyl and cocaine.
5. Several months later, Appellant was again admitted to the hospital where she was diagnosed with a MRSA infection and reported to medical staff that she used fentanyl during her period of discharge.
6. On [REDACTED], Appellant was transferred from the hospital to the nursing facility for short term rehabilitation and assistance in performing ADLs.
7. At the nursing home, Appellant received daily methadone from an outside clinic and participated in substance abuse counseling.
8. The longest period Appellant has maintained sobriety was for nine months while in a controlled supervised environment.
9. On June 21, 2021, MassHealth received an application from Appellant seeking enrollment in MassHealth's Moving Forward Plan (MFP) Residential Supports (RS) waiver and the Community Living (CL) waiver.
10. Following receipt of Appellant's application, MassHealth conducted an in-person assessment of Appellant, collected and reviewed her medical records, interviewed facility staff, and completed several waiver-related evaluations to assess Appellant's care needs and whether she met clinical eligibility requirements.
11. During the assessment, the facility SUD clinician described Appellant as being early in her recovery, "high risk," ambivalent regarding her sobriety, and opined that she would be best suited for discharge to a long-term residential sober living situation.
12. In two clinical review meetings on August 26, 2021 and September 1, 2021, MassHealth DDS, and MRC reviewed Appellant's case and concurred that at this time, Appellant required a higher level structured and/or supervised setting that can focus on polysubstance recovery than is provided under the MFP-CL and MFP-RS waivers.
13. On September 7, 2021, MassHealth notified Appellant through separate letters that it denied her application for the MFP-RS and MFP-CL waivers because she could not be safely serviced under the terms of the waivers and therefore did not meet clinical eligibility requirements.
14. Appellant timely appealed the notice denying her application to the MFP-CL waiver.
15. At the time of the hearing, Appellant was no longer residing in the facility, and was living in the community, staying at homeless shelters and couch surfing with family and friends.
16. During the admission Appellant remained sober and attended scheduled clinic and substance abuse counseling meetings.

17. Appellant's diagnoses, including osteomyelitis and COPD, make it difficult for her to move and perform housecleaning tasks.
18. Appellant identified her mother and daughter as community sobriety supports and intends to participate in substance abuse counseling and programs in the community.
19. She is currently on a list for public housing and would be most comfortable living in the same city she has previously lived, which is where her friends and family are located.

Analysis and Conclusions of Law

The sole issue on appeal is whether MassHealth erred in denying Appellant's application for enrollment in the MFP-CL waiver program based on its determination that she 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-CL Waiver program, MassHealth has set forth the following eligibility requirements:

(2) Money Follows the Person (MFP) Community Living 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 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) (Emphasis added)

In this case, MassHealth denied Appellant's application for the MFP-CL waiver because it determined Appellant did not meet the criteria under subsection (v) above; specifically, that she 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. In its review, MassHealth conducted a thorough assessment of Appellant's medical history, reviewed medical records from recent admissions, conducted an in-person assessment of Appellant, spoke with facility staff, and completed waiver-related evaluations to assess her health care needs and whether she met program clinical eligibility criteria. The reviewing sources detailed Appellant's long-standing history of substance abuse, which has led to overdoses and multiple detox placements. Although Appellant has been able to maintain periods of sobriety, they have occurred in highly supervised and controlled settings. During the hospitalization that preceded her most recent nursing home admission, Appellant reported using drugs while in the community. Additionally, she tested positive for fentanyl, marijuana, and cocaine in December of 2020 during an earlier hospitalization. While the MassHealth waiver team recognized the strides Appellant has made while at the facility, they ultimately concluded that in the context of her long history of repeated detox admissions and overdoses, she still remained at high risk for relapse and thus required a higher level of supervision and supports than are available under the MFP-CL and MFP-RS waivers. This conclusion - which was made after a thorough review of Appellant's case and after deliberation and agreement amongst multiple agencies - is supported by the evidence in the record. MassHealth did not err in denying Appellant's application to enroll in the MFP-CL 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:

MassHealth Representative: Prior Authorization