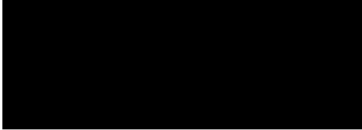


Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2178424
Decision Date:	4/20/22	Hearing Date:	January 20, 2022
Hearing Officer:	Brook Padgett	Record Open:	April 04, 2022

Appellant Representative:

Pro se

MassHealth Representatives:

Leanne Govoni, RN, BSN, LNC-CSp.



*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:	4/20/22	Hearing Date:	January 20, 2022 ¹
MassHealth Rep.:	L. Govoni, RN, BSN, LNC-CSp.	Appellant Rep.:	Pro se
Hearing Location:	Quincy		

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 September 07, 2021, stating: “This notice is to inform you that you have been determined not to be clinically eligible for Moving Forward Plan Community Living Home-and-Community-Based Services Waiver (also known as the MFP-CL Waiver). ... *This notice is about your clinical eligibility ...* which are found in the MassHealth Regulations at 130 CMR 519.007(H)(2). ... **You cannot be safely served in the community within the terms of this waiver.**” (Exhibit 1). The Appellant filed this appeal timely on November 03, 2021. (130 CMR 610.015(B); Exhibit 2).² Eligibility for an MFP-CL waiver is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the Appellant’s request for an MFP-CL waiver.

Issue

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

¹ The appeal was initially scheduled for December 07, 2021 but was rescheduled at the Appellant’s request due to admission to the hospital for a medical procedure. (See Exhibit 4).

² During the COVID-19 national emergency, individuals have up to 120-days to request an appeal.

Summary of Evidence

MassHealth testified it offers two home and community-based service (HCBS) waivers; the Moving Forward Plan Residential Waiver (MFP-RS) and the Moving Forward Plan Community Living Community Living Home-and-Community-Based Services Waiver (MFP-CL). Both waivers help individuals move from a nursing home or long-stay hospital to an MFP-qualified residence in the community and obtain community-based services. The MFP-RS Waiver is for individuals who need supervision and staffing 24 hours/day, 7 days per week. 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. MassHealth stated the Appellant previously applied for an MFP-RS Waiver in February 2020 and was denied due to her medical and psychiatric instability. In December 2020, the Appellant applied for both the MFP-RS and MFP-CL waivers and was again denied.

Prior to these requests the Appellant was residing at New England Sinai Hospital (NESH) from December 11, 2019, until April 16, 2020, when was transferred to Beth Israel Deaconess Hospital Medical Center (BIDMC) for evaluation of flank pain and urinary tract infection (UTI) with pain at her suprapubic site. She was treated for her medical issues and was transitioned to J-Tube enteral feedings. NESH refused to readmit the Appellant because of her complex needs related to multiple overlapping medical diagnoses which causes her significant physical, medical, and psychosocial disorders and documentation indicates the Appellant requires 24/7 medical support and skilled nursing care as she had a long history of homelessness and chronic institutional placements over the last 10 years while residing with her mother. On June 03, 2020, the Appellant was transferred to Tewksbury Hospital.

The Appellant applied for the MFP-CL Waiver on May 28, 2021.

Eligibility criteria for the MFP Waivers includes:

- 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;
- The applicant will transition to an MFP-qualified residence in the community; and
- For the MFP-RS Waiver, the applicant must need residential support services with staff supervision 24 hours/day, 7 days/week.

On July 20, 2021, an assessment for Waiver eligibility was conducted in person at the Tewksbury Hospital. In attendance were the Appellant and the MassHealth Nurse Reviewer,

representing the MFP Waiver Program and after the assessment, on August 11, 2021, a Department of Public Health (DPH) social worker. The assessment consists of completion of MFP documents including Minimum Data Set-Home Care (MDS-HC); Clinical Determination of Waiver Eligibility; Acquired Brain Injury (ABI)/MFP Waivers Community Risks Assessment; Risk Assessment ABI-N/MFP-CL Caregiver Supplement; and a review of the applicant's medical record; and a discussion with the facility staff.

MassHealth stated the review indicated the Appellant is currently 21 years old and alert and oriented and her medical history includes Ehler's Danlos Syndrome³, Gastroparesis, Mild Protein-Calorie Malnutrition, Urinary Retention S/P Suprapubic catheter, Gastrostomy Tube, Chronic Pain, Chronic Nausea, Iron Deficiency Anemia, Sinus Tachycardia, Autism Spectrum/Asperger's Disorder, Anxiety Disorder, Major Depressive Disorder, Attention Deficit-Hyperactivity Disorder (ADHD), and Post-Traumatic Stress Disorder (PTSD).

During the Waiver eligibility assessment review, the MassHealth Nurse Reviewer noted the following documentation detailing the Appellant's complex medical and psychiatric conditions:

- May 10, 2021: Tewksbury Hospital Neurology Consult Request stated the Appellant was diagnosed at age 12 with Ehlers-Danlos syndrome. She has chronic pain and physical weakness of her lower extremities, back and neck.
- May 14, 2021: Tewksbury Hospital Patient Note detailed the Appellant was educated by nursing about infection control and encroachment. The Appellant remains non-compliant with these aspects of care, and she was reminded she needs to keep items off the floor, bed side table needs to be kept clear and open food items need to be removed at the end of every shift. The Appellant verbalized understanding, and she was concerned about easy access to her items. The Appellant was educated that due to the volume of items in her room, emergencies could be compromised
- May 21, 2021: Tewksbury Hospital Admission and Physical documents the Appellant was transferred and admitted to Lowell General Hospital (LGH) from May 17, 2021, through May 21, 2021 due to complaints of tachycardia and heart palpitations (third hospital admission within 4 months). The Appellant was also treated at LGH for chronic nausea and treatments for several other chronic diagnoses. Physician notes concluded "ongoing discussions with state agencies about options for discharge planning. Currently, no discharge plan is identified, and she has numerous active medical needs that warrant a medical setting at this time. Continue to discuss with team and DDS".
- June 13, 2021: Tewksbury Hospital Patient Notes detail the central intravenous (IV) line to right upper chest is intact. The Appellant has IV normal saline fluids running at 70 ml/hour for hydration.

³ A group of inherited disorders that affects connective tissues.

- June 28, 2021: Tewksbury Hospital Patient Notes indicate the Appellant attempted to leave against medical advice (AMA) due to a disagreement with staff regarding the kitchen being closed, and she was not able to get a food item that she was requesting. The Appellant said that she felt “like a prisoner”, and her plan was to leave and go to a Boston acute care facility and have herself admitted for placement. Nursing staff attempted to educate the Appellant several times that this was not a safe discharge plan. The Appellant did not leave AMA.
- September 01, 2021: Waiver Clinical Summary states that per MassHealth Nurse Reviewer’s discussion with SW from Tewksbury, the Appellant is limited with no informal supports and her mother is not always reliable.

A Waiver Eligibility Assessment Review concluded on August 08, 2021, indicates the Appellant continues to face many risks when entering into the community. She has been hospitalized several times and she has never lived on her own. She is medically complex and is at risk for medical decompensation such as skin breakdown and infection. Additionally, she is at risk for psychiatric decompensation such as self-neglect and exploitation.

On August 12, 2021 and August 27, 2021, the Appellant’s case was discussed at the MassHealth Waiver Clinical Team review meeting which includes the Department of Developmental Services (DDS) who oversees residential waiver services. On September 01, 2021, as part of the MFP Waiver eligibility process, a second clinical review was conducted by the Massachusetts Rehabilitation Commission (MRC) Clinical team, who oversees the community living waiver. MassHealth and MRC determined that the Appellant was not considered to be clinically eligible for participation in the MFP-CL Waiver at this time, as the Appellant is not able to be safely supported within the MFP-CL Waiver due to her numerous medical complexities and psychiatric diagnoses along with her current care needs which includes a J tube, G-tube, IV and suprapubic catheter require 24/7 medical oversight and skilled nursing care. On September 07, 2021, the Appellant was sent a denial notice for the MFP-CL Waiver.

MassHealth concluded that based on the in-person assessment; the completed MFP documentation including: MDS-HC, ABI/MFP Waivers Community Risks’ assessment, and Clinical Determination of Waiver Eligibility; and a thorough review of the Appellant’s medical record by both MassHealth, MRC, and DDS, MassHealth determined the Appellant is at risk for significant health and safety risks due to her multiple medical and psychiatric complexities and therefore cannot be safely served in the community within the MFP-CL Waiver at this time. (Exhibit 5).

The Appellant responded that she disagrees with the assessment that she requires 24-hour 7 day a week care. The Appellant argues the nurse is in her room perhaps one hour or an hour and a half and for that small period of time the Appellant argued she should not have to be locked up in a hospital for the rest of her life. The Appellant questioned her safety being in a hospital surrounded by patients who are ill rather than being placed on her own where fewer sick people would be around her particularly during COVID. The Appellant argued that she is a young

person who has been in the hospital setting for more than a year with no expectation that she will leave. The Appellant asked if it was the intention for the state to keep her in the hospital indefinitely. The Appellant testified she would be safer and more functionally independent on her own with a number of PCA's rather than relying on a rotating staff in the hospital who do not know her or her condition. Although the Appellant acknowledges she has never lived on her own, she pointed out that she is only 21 and that is not unusual for someone of her age. Further in order to live on your own you need to be given the opportunity at some point to do so and she is requesting that opportunity now. The Appellant maintained she could live with her mother and have access to sufficient informal supports in the community.

At the Appellant's request the record remained open until February 21, 2022, for the Appellant to submitted additional medical records for review and March 21, 2022, for MassHealth to respond to the additional submission. (Exhibit 6). At the Appellant's request the record open period was extended to March 21, 2022, and April 04, 2022. (Exhibit 6A).

The Appellant submitted the following documents for review within the required time period:

- March 10, 2022, psychiatrist notes state the Appellant reports that she is attending school; although, she has no scheduled classes and has not even completed and submitted her Individualized Education Plan (IEP). Currently she is behind in the 3 classes that she is taking. The Appellant "reports problems with planning and initiation with her assignments, which she can take and complete at any time". The psychiatrist concludes no changes to her current medications were made but indicated to the Appellant that he will discuss a proposed plan with the treating team. He also stated, "it would be important for the treating team to convene so that a unified plan regarding especially her psychiatric treatment can be developed". The psychiatrist uses an MSE⁴ and notes, "pressured speech and flight of ideas are particularly prominent during today's eval (similar to assessments on 1/06 and 1/10), along with abnormally reactive and labile mood, alternating between laughing-elation and feeling low frustrated". "Cognitive functioning includes significantly impaired concentration, insight: absent, judgement: impaired".
- March 15, 2022, Interdisciplinary Team Meeting notes state the Appellant is currently being monitored and treated in a 24/7 care unit at Tewksbury Hospital. The team meeting details several factors regarding for which the Appellant is currently being monitored and assessed. Medical documentation under barriers to discharge notes, the Appellant "is very medically complex, making placement options limited/unavailable at this time".
- March 18, 2022, Attending Physician clinical summary states:

⁴ Mental State Examination is a structured tool and process that allows you to observe and assess a patient's current mental state.

Mobility: Ehlers Danlos syndrome⁵ the Appellant currently uses a motorized wheelchair in which she has upper body strength and assists in her own personal care needs. She is currently undergoing re-evaluation with physical therapy, but is expected to be recommended to get out of bed during the day and to perform daily exercises to help maintain strength;

Severe gastroparesis: characterized by severe nausea and inability to properly move food from her stomach to her intestine for digestion. Any food by mouth eaten for pleasure drains directly out of her G-tube into a gastric bag and needs to be emptied periodically throughout the day and night. All meaningful nutrition and medications are administered via her feeding J-tube;

G-tube: Drains all stomach contents and needs to be emptied periodically through the day and night. G-tube needs daily dressing changes;

J-tube: This is where medication, tube feeding nutrition, and fluid is administered. Feeding runs 21 hours/day, and medications are administered multiple times a day with flushes required after medications administered and throughout the day. This site needs a daily dressing change and is a separate surgical site from the G-tube;

Suprapubic tube: Drains urine and emptied throughout the day. This site needs to be kept clean and dry and the suprapubic catheter needs to be changed every 6 weeks;

Dysautonomia⁶: Diagnosed with POTS (Postural orthostatic tachycardia syndrome) by cardiology. This syndrome is usually triggered when a person stands up after lying down. Symptoms include lightheadedness, fainting, and rapid heartbeat;

Port-a-cath⁷: Appellant receives supplemental fluids 500ml to 1000ml through the right chest port-a-cath daily to maintain her fluid volume as ordered by her dysautonomia specialist. This site needs to be kept clean and dry with nursing to access the site with a needle and full dressing change every 7 days;

Atonic (flaccid) neurogenic bladder: This makes it hard to urinate. the Appellant is managed with a suprapubic tube that drains urine to a collection bag and needs to be emptied throughout the day. This site needs to be kept clean and dry and the suprapubic catheter needs to be changed every 6 weeks: and currently, is undergoing a reevaluation of physical therapy and is expected to be recommended to be out of bed during the day and perform daily exercises to maintain her strength. (Exhibit 7).

⁵ A rare inherited disorder that affects connective tissue, primarily skin, joints, and blood vessel walls.

⁶ A dysfunction of the nerves that regulate nonvoluntary body functions, such as heart rate, blood pressure, and sweating.

⁷ A port-a-cath is a device that is usually placed under the skin in the right side of the chest. It is attached to a catheter that is threaded into a large vein above the right side of the heart called the superior vena cava. A port-a-cath is used to give intravenous fluids, blood transfusions, chemotherapy, and other drugs.

MassHealth reviewed submission presented during the record open period along with the medical evidence in the record and determined the Appellant continues to present at risk for significant health and safety risks due to her multiple medical and psychiatric complexities that require monitoring and assessment at every shift. The Appellant continues to need reassurance and assistance from nursing staff and medical specialists for her care- in the sub-acute setting. MassHealth concluded that based on the totality of the medical documentation in the record it is their clinical and professional opinion that the Appellant cannot be safely served in the community within the MFP-CL Waiver at this time. (Exhibit 8).

Findings of Fact

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

1. On July 20, 2021, an assessment for Waiver eligibility was conducted in person at the Tewksbury Hospital. In attendance were the Appellant and the MassHealth Nurse Reviewer, representing the MFP Waiver Program. (Exhibit 5).
2. The assessment consists of completion of MFP documents including MDS-HC; Clinical Determination of Waiver Eligibility; ABI/MFP Waivers Community Risks Assessment; Risk Assessment ABI-N/MFP-CL Caregiver Supplement; and a review of the applicant's medical record; and a discussion with the facility staff. (Exhibit 5).
3. The Appellant is 21 years old and alert and oriented and her medical history includes Ehler's Danlos Syndrome, Gastroparesis, Mild Protein-Calorie Malnutrition, Urinary Retention S/P Suprapubic catheter, Gastrostomy Tube, Chronic Pain, Chronic Nausea, Iron Deficiency Anemia, Sinus Tachycardia, Autism Spectrum/Asperger's Disorder, Anxiety Disorder, Major Depressive Disorder, ADHD, and PTSD. (Exhibit 5).
4. The Appellant resided at NESH from December 11, 2019, until she was transferred on April 16, 2020, to BIDMC for evaluation of flank pain and UTI. She was treated for her medical issues and was transitioned to J-Tube enteral feedings. (Exhibit 5).
5. NESH refused to readmit the Appellant due to her complex needs related to multiple overlapping medical diagnoses and significant anxiety, PTSD, past trauma exposure which caused significant physical, medical, and psychosocial disorders. (Exhibit 5).
6. The Appellant has a history of homelessness and chronic institutional placements over the last 10 years while residing with her mother. (Exhibit 5).
7. In February 2020, the Appellant applied and was denied for the MFP-RS Waiver due to her medical and psychiatric instability. (Exhibit 5).
8. On June 03, 2020, the Appellant was transferred to Tewksbury Hospital as she required 24/7 medical support and skilled nursing care. (Exhibit 5).

9. In December 2020, the Appellant applied and was denied for an MFP-RS and MFP-CL waiver. (Exhibit 5).
10. On August 08, 2021, the Waiver Eligibility Assessment Review determined the Appellant continues to face many risks when entering into the community as she is medically complex and at risk for medical decompensation such as skin breakdown and infection. Additionally, the Appellant is at risk for psychiatric decompensation such as self-neglect and exploitation. (Exhibit 5).
11. On September 01, 2021, a second clinical review was conducted by the MRC Clinical team which determined that the Appellant was not considered to be clinically eligible for participation in the MFP-CL Waiver, as she cannot be safely supported within the community due to her numerous medical complexities and psychiatric diagnoses along with her current care needs which includes a J tube, G-tube, IV and suprapubic catheter require 24/7 medical oversight and skilled nursing care. (Exhibit 5).
12. On March 21, 2022, the Appellant submitted additional evidence for review. (Exhibit 7).
13. On March 29, 2022, MassHealth responded that after review of the additional submission they determined the Appellant continues to be at risk for significant health and safety risks due to her multiple medical and psychiatric complexities that require monitoring and assessment at every shift. The Appellant continues to require reassurance and assistance from nursing staff and medical specialists for her care. (Exhibit 8).

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.

On September 07, 2021, the Appellant was determined ineligible for the MFP-CL waiver. This was based on the Waiver Eligibility Assessment Review on August 08, 2021 and demonstrated throughout the submitted medical record which determined the Appellant continues to be medically complex and is at risk for medical and psychiatric decompensation and would be at significant risk if she were to transition to the community at this time. The medical record details the Appellant's current condition and shows she is susceptible to skin breakdown and infection as well as self-neglect and exploitation. In the past year the Appellant has been hospitalized several times. While it is perfectly understandable that the Appellant who is a bright, articulate young person would wish to leave her current situation, each review of her medical condition has determined she cannot be safely supported within the MFP-CL Waiver at this time. Although the Appellant maintains she could live on her own with the support of a PCA or with her mother accessing additional formal and informal support, the evidence indicates the Appellant has had a history of homelessness and chronic institutional placements over the last 10 years while residing with her mother. Further, medical professional as of March 15, 2022, have determined the Appellant's numerous medical complexities and psychiatric diagnoses along with her current care needs of her J tube, G-tube, IV and suprapubic catheter all require 24/7 medical oversight and the type of skilled nursing care that is not available under the MFP-CL waiver.

Based on the in-person assessment and MFP documentation including MDS-HC, ABI/MFP Waivers Community Risks' assessment, and Clinical Determination of Waiver Eligibility and a thorough review of the Appellant's medical record by both MassHealth, MRC, and DDS, the evidence demonstrates the Appellant does not meet eligibility for the MFP-CL Waiver at this time, as she cannot be safely served in the community as she exhibits significant health and safety risks due to her multiple medical and psychiatric complexities. As a result, this appeal must be DENIED.

Order for MassHealth

Denied.

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: MassHealth representative: Leanne Govoni, RN, BSN, LNC-CSp., UMASS PA Unit, 333 South Street, Shrewsbury, MA 01545