

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2178590
Decision Date:	02/02/2022	Hearing Date:	12/30/2021
Hearing Officer:	Christine Therrien		

Appearance for Appellant:

Pro se

Appearance for MassHealth:

Linda Phillips, RN, Assoc. Dir. Appeals and
Regulatory Compliance
Heather Smith, RN, 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:	MFP-CL Waiver
Decision Date:	02/02/2022	Hearing Date:	12/30/2021
MassHealth's Rep.:	Linda Phillips, RN, Assoc. Dir. Appeals and Regulatory Compliance; Heather Smith, RN, Clinical Reviewer	Appellant's Rep.:	Pro se
Hearing Location:	All parties appeared by phone		

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 10/18/21, MassHealth denied the appellant's application for the MassHealth Moving Forward Plan Community Living Home and Community Based Services Waiver (MFP-CL) because MassHealth determined that the appellant is not clinically eligible (130 CMR 519.007 and Exhibit 1). The appellant filed this appeal in a timely manner on 11/12/21 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's application for the MFP-CL waiver.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.007(H)(2), in determining that the appellant is not clinically eligible for the MFP-CL waiver.

Summary of Evidence

The MassHealth representative testified that MassHealth offers two home and community-based service (HCBS) waivers; the MFP Waiver for Residential Services (RS), and the MFP-CL Waiver. 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-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. The MFP-RS Waiver is for individuals who need supervision and staffing 24 hours/day, 7 days per week. The appellant applied for the MFP-CL Waiver on July 29, 2021 (Exhibit 4, p. C2).

The MassHealth representative outlined the eligibility criteria for the MFP Waivers (Exhibit 4, pp. A1-2):

- 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.

The MassHealth representative testified that on September 14, 2021, an in-person assessment for Waiver eligibility was conducted at the nursing facility where the appellant currently resides. The assessment was attended by the appellant, a CNA from the facility and two MassHealth Nurse Reviewers, representing the MFP Waiver Program (Exhibit 4, p. C 32).

The MassHealth representative testified that the assessment consists of completion of MFP documents including Minimum Data Set-Home Care (MDS-HC) (Exhibit 4, pp. C 6-18); Clinical Determination of Waiver Eligibility (Exhibit 4, pp. C 19-27); Acquired Brain Injury (ABI)/MFP Waivers Community Risks Assessment (Exhibit 4, p. C 28); ABI-N/MFP-CL Caregiver Supplemental Risk Assessment (Exhibit 4, pp. C 29-31); a review of the applicant's medical record; and a discussion with the nursing facility staff.

The MassHealth representative testified that the appellant was previously assessed for the MFP-CL Waiver in October 2020, and she was determined clinically ineligible for the MFP-CL Waiver by the UMass Waiver Complex Clinical Eligibility Team in November 2020, as she required nearly 24/7 due to her physical limitations and lacked informal supports. The MassHealth representative testified that per the previous assessment, the appellant was admitted to the nursing facility in [REDACTED] following a ten-month period of hospitalizations and rehabilitation admissions secondary to ongoing bilateral leg weakness with inability to self-transfer, due to history of polio and

acute poliomyelitis (Exhibit 4, p. C 24). The MassHealth representative testified that the appellant has remained medically stable with no acute hospitalizations or documented falls.

The MassHealth representative testified that during the waiver eligibility meeting, the appellant presented as alert and oriented times four. The appellant was able to give the waiver nurse reviewer a general overview of events leading up to her current facility placement, as well as a detailed history of her life with polio. The MassHealth representative testified that when the appellant was asked what she would do if there was a fire in her home, she reported that “she would call 9-1-1, and then get to the door if she were up in her wheelchair.” The MassHealth representative testified that the waiver nurse reviewer asked the appellant what she would do if she were in bed and there was a fire; because she requires assistance to transfer from the bed to her wheelchair. The appellant stated that “she is unsure, as she does not think that her sister would be able to help her due to her own physical limitations.” The MassHealth representative testified that when the appellant was asked what she would do if she was running out of medication, she reported that “she would call her doctor’s office.” The MassHealth representative testified that when the appellant was asked what she would do if a home health aide did not show up as scheduled, she reported that “she would call their office” (Exhibit 4, p. C 25).

The MassHealth representative testified that the appellant does not carry any formal psychiatric diagnoses, she is not prescribed any psychotropic medication, and she is not followed by psychiatric services at the nursing facility. The MassHealth representative testified that there are no behaviors documented in her current medical records. The MassHealth representative testified that the appellant is not presently working with skilled therapy services. The MassHealth representative testified that the previous waiver eligibility assessment documents the PT discharge summary, dated March 26, 2020, indicated the need for an in-home aide upon discharge (Exhibit 4, p. E 6). The MassHealth representative testified that the appellant continues to require extensive assistance with her activities of daily living (ADLs). The MassHealth representative testified that the appellant requires set up with meals, and she can feed herself. The appellant requires extensive assistance of one for bed mobility. The appellant reports she utilizes a slide board with one assist when getting out of bed; however, she requires a hooyer lift when getting back into bed due to weakness and fatigue. The appellant utilizes a wheelchair for locomotion. The appellant can get around short distances in her room; however, she does require assistance with longer distances. The appellant requires set up with grooming tasks and extensive assistance with bathing and dressing. The appellant is primarily incontinent of urine and utilizes a bedpan for bowel movements. The MassHealth representative testified that the MDS-HC report dated October 7, 2021, indicates that the appellant needs assist with the following ADLs; dressing/undressing, bathing, bowel/bladder care, transfers and the following instrumental activities of daily living (IADLs); housework, medication assistance, meal preparation, shopping, and transportation (Exhibit 4, pp. C 10-11).

The MassHealth representative testified that the appellant’s only informal support in the community is her sister. The appellant’s sister is 71 years old, and per the appellant, she has recently been in and out of the hospital and nursing homes due to recurrent cellulitis. The MassHealth representative testified that the appellant’s sister ambulates with a walker and would only be able to provide emotional support to the appellant. The MassHealth representative testified that the reviewer spoke with the appellant’s sister via the telephone on October 5, 2021, and the appellant’s sister reported that she is

eager for her sister to return home, as they provide companionship to one another. The appellant's sister reported that she would be available to only provide emotional support to the appellant upon discharge. The MassHealth representative testified the appellant's sister continues to utilize a walker for ambulation due to impaired mobility, and she would be unable to provide any hands-on care to her sister due to her own physical limitations (Exhibit 4, p. C 25).

The MassHealth representative testified that during the eligibility assessment the appellant reported that her current plan for discharge is to return to her home to live with her sister and was insistent that she would not be willing to discharge to any other type of setting besides her own home.

The MassHealth representative testified that on October 7, 2021, the appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting. In addition, on October 13, 2021, as part of the MFP Waiver eligibility process, a second clinical review was conducted by the MRC Clinical Team. MassHealth and MRC determined that the appellant was not considered to be clinically eligible for participation in the MFP-CL Waiver. The MassHealth representative testified that the appellant does not have informal supports that can provide hands on, physical support in the community. The appellant's sister is only able to provide emotional support, as she has her own physical limitations, thus leaving the appellant with no informal supports that could provide any direct care and/or a back-up plan if a caregiver did not show-up.

The MassHealth representative testified that the appellant is at increased risk for falls/injury, medical decompensation, skin breakdown, and self-neglect. The MassHealth representative testified that the MFP-CL Waiver is not able to provide 24/7 physical care and supervision to manage the appellant's chronic comorbidities. The appellant is not able to be safely supported within the MFP-CL Waiver. The MassHealth representative testified that while the appellant did not qualify for the MFP-CL Waiver program she could apply to the Personal Care Attendant (PCA) program through MassHealth.

The appellant testified that she wants to return to the home she grew up in and live with her sister. The appellant testified that prior to her admission into the nursing facility she lived alone, and she was able to get around the house in her wheelchair. The appellant testified that she would put her meals in a box and push them along the floor with one foot while wheeling herself. The appellant testified that she no longer requires a hooyer lift to get into bed, but she did not dispute the need for assistance with all of her ADLs and IADLs.

Findings of Fact

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

1. 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.
2. 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 and

MRC, the appellant requires 24/7 care and support.

3. The appellant does not have informal supports that can provide her hands-on physical care.

Analysis and Conclusions of Law

130 CMR 519.007: Individuals Who Would Be Institutionalized

The eligibility requirements for MassHealth Standard coverage for individuals who would be institutionalized if they were not receiving home- and community-based services are as follows:

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

(2) Money Follows the Person (MFP) Community Living (C-L) 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.

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.¹ MassHealth has established, and the appellant did not dispute that the appellant

¹ 130 CMR 519.007(H)(1) Money Follows the Person Home- and Community-based Services Waivers. (1) Money Follows the Person (MFP) Residential Supports 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 residential support services and other specified waiver services in a 24-hour supervised residential setting

requires assistance with all ADLs and IADLs. The appellant has not established that she has support in the community to safely live at home without 24/7 support. For this reason, 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.

Christine Therrien
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Prior Authorization