

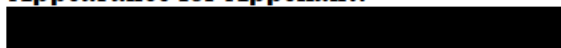
# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2203122
<b>Decision Date:</b>	8/23/2022	<b>Hearing Date:</b>	6/28/2022
<b>Hearing Officer:</b>	Cynthia Kopka	<b>Record Open to:</b>	7/26/2022

**Appearance for Appellant:**



**Appearance for MassHealth:**

Linda Phillips, RN, BSN, LNC-CSp.,  
Associate Director – Appeals and Regulatory  
Compliance  
Heather Smith, RN, Nurse Reviewer II  
Brad Goodier, BSN, RN (Observing)



*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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	MFP-CL Waiver
<b>Decision Date:</b>	8/23/2022	<b>Hearing Date:</b>	6/28/2022
<b>MassHealth's Rep.:</b>	Linda Phillips, Heather Smith, Brad Goodier	<b>Appellant's Rep.:</b>	Pro se, with social worker
<b>Hearing Location:</b>	Quincy (remote)	<b>Aid Pending:</b>	No

## Authority

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

## Jurisdiction

By notice dated April 19, 2022, MassHealth notified Appellant that he is not eligible for MassHealth's Moving Forward Plan Community Living Home-and-Community-Based Services Waiver (MFP-CL Waiver). Exhibit 1. Appellant filed a timely appeal on May 25, 2022. Exhibit 2. A determination regarding eligibility for a waiver program is a valid basis for appeal. 130 CMR 610.032. The hearing record was held open through July 26, 2022 for the submission of additional evidence. Exhibit 5.

## Action Taken by MassHealth

MassHealth notified Appellant that he is not eligible for MassHealth's MFP-CL Waiver.

## Issue

The appeal issue is whether MassHealth correctly determined that Appellant is not eligible for the MFP-CL Waiver because he cannot be safely served in the community within the terms of this waiver.

## Summary of Evidence

MassHealth was represented at remote hearing by its Associate Director of Appeals and Regulatory Compliance and other participants. Appellant appeared with his social worker. Documents were submitted in advance of hearing. Exhibit 4. A summary of documentation and testimony follows.

MassHealth offers home and community based service waivers, including the MFP-CL waiver, to help qualified individuals move from a long-term care facility to a 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. Another waiver, the MFP Residential Supports (MFP-RS) waiver is for people who need supervision and staffing 24 hours a day, seven days a week in a provider-operated residence. Exhibit 4 at A1. The MFP-CL waiver is available through MassHealth for people who have been living in a skilled facility and serves members who can move into their own home or apartment or to the home of someone else and receive services in the community. *Id.* To qualify for one of the waivers, an individual must:

- Be living in a nursing facility or in a chronic disease, rehabilitation, or psychiatric hospital for at least 90 days
- Either be
  - 18 years of age or older and have a disability, or
  - 65 years of age or older
- Meet clinical requirements (that is, be at a facility),
- Need MFP waiver services
- Be able to be safely served in the community within the terms of the MFP waivers, and
- Meet the financial requirements to qualify for MassHealth Standard in the community. Special financial rules exist for waiver applicants and participants.

*Id.* at A2.

Appellant is in his forties with diagnoses and medical history including substance use disorder (SUD) for alcohol, cervical spinal cord; alcohol use with intoxication; idiopathic peripheral autonomic neuropathy; major depressive disorder; anxiety disorder; history of falls; fusion of cervical spine; sciatica; and muscle weakness. *Id.* at C24. Appellant was admitted to a skilled facility in [REDACTED] after an alcohol relapse. *Id.* at C5. Appellant suffered a fall and head injury while intoxicated, losing consciousness. Appellant was admitted to the emergency room for this injury and for possible alcohol withdrawal, and was transferred to the facility the following day. *Id.* at C24.

On January 11, 2022, Appellant applied for the MFP-CL waiver after residing at the nursing facility for over nine months. *Id.* at C2. On March 14, 2022, a nurse reviewer representing MassHealth's waiver program performed an eligibility assessment at the facility with Appellant present. During the assessment, the nurse reviewer made note of recent incidents indicating that Appellant may pose a significant safety risk to himself and others:

- On October 3, 2021, Appellant's behavioral health specialist made the following notes during a mental status exam: speech is pressured; thought process is rapid and impoverished; abnormal thoughts include delusions and paranoia; mood is anxious; and judgement/insight is limited. *Id.* at D18-19.
- On January 30, 2022, a facility nurse wrote that another resident called police to report that Appellant charged the resident's checking account to make online purchases without the resident's knowledge. The police indicated that criminal charges will be brought up against Appellant if he does not pay the resident back. *Id.* at D43.
- On March 19, 2022, a facility nurse wrote that Appellant instigated and physically hit another resident in an altercation in the lobby. There were no injuries, but police were called and appropriate parties were notified. *Id.* at D25.

The nurse reviewer's note also referenced other incidents where Appellant was aggressive or violent towards other residents. *Id.* at C25. MassHealth provided progress notes referring to these incidents after hearing upon request. Exhibit 7.

During the assessment, the nurse reviewer noted that Appellant had tried AA in the past but was not successful. Appellant was admitted for inpatient detox in 2020. Exhibit 4 at C26. Appellant reported that stress is a trigger for relapse. Appellant has a sister and friend who he is touch with in the community who are available by phone for support. Appellant denied alcohol cravings, hoping he would remain sober in the community and willing to try AA again. Appellant is not currently attending meetings for SUD. Appellant reported that he had lived in a sober house in the past, but was evicted for not maintaining sobriety. *Id.*

The nurse reviewer found that Appellant faces multiple risks when entering the community, including physical decompensation, psychiatric decompensation, and resuming alcohol use. *Id.* He is at risk for falls and skin breakdown due to impaired mobility; and at risk for social isolation and self-neglect due to lack of informal supports. *Id.*

On April 7, 2022, Appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting. In addition, on April 13, 2022, 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 Appellant was not considered to be clinically eligible for participation in the MFP-CL Waiver because Appellant remains at high risk for a relapse of alcohol use disorder and has minimal informal supports in the community. *Id.* at C27-28. The MassHealth representative testified that Appellant presents at risk due to his failed attempts at a sober living home, he is unable to state a firm plan for continued recovery and has no substantial informal community supports to assist him in the community. Therefore, it is MassHealth's clinical and professional opinion that, at this time, based on the available medical records and interviews, Appellant cannot be safely served in the community within the MFP-CL Waiver.

Appellant testified that reports of his being aggressive or physical with other residents are false.

Appellant argued that the financial incident with another resident was not intentional, but an accident. Appellant denied being evicted from a sober house for consuming alcohol, arguing that he was kicked out for not paying rent. Appellant relapsed with alcohol after the sober house because that was the only way he could get help, so he could be admitted to a hospital.

Appellant has resided at the facility for over a year and has maintained his sobriety the whole time. Any incidents he has been involved in were instigated by others. Appellant argued that he has tried to seek assistance from staff when being provoked by other residents, and this is not documented. Appellant described the claims against him as outrageous and believes his integrity and character are under attack. Appellant is not aggressive and other residents like him. Appellant disputed assaulting another resident in the March 2022 incident described above, arguing that the police came and determined that no assault occurred. Appellant believes the facility does not like him and is making claims against him to get him kicked out. Appellant has seen improvement when ownership and leadership of the facility changed in early 2022. Appellant is having more success with the new administration, as new staff will help him when he gets provoked and are concerned about Appellant's safety. Appellant argued that prior staff were standoffish and would be understanding.

Appellant is ready to return to the community. He is on waiting lists for housing in two cities, but does not want to be in the Boston or Brockton area for safety reasons. Appellant believes he will do better in communities where he does not know anyone. Appellant is enrolled full time in online college, which takes up most of his time. Appellant is working to better himself. Appellant acknowledged not having a lot of community supports and that it will be a challenge, but he is confident he will be successful in the community, and the fact that he has no roots should not be a basis for denial. Appellant has been deemed eligible for a caregiver program called American Dream Home Care Agency.<sup>1</sup> Appellant stated that he has been approved for this program which has space for him and is waiting for his discharge to the community. Appellant has had several meetings with the agency and stated that an advocate for the agency would agree that Appellant could be safe in the community.

The hearing record was held open through July 26, 2022 for Appellant to submit additional supporting materials and for MassHealth to respond. Exhibit 5. In post-hearing submission, Appellant addressed incidents raised in the progress notes provided by MassHealth after the hearing. Appellant did not deny some of these incidents, such as throwing a food tray and inappropriately responding to staff, but provided reasons for his behavior. Exhibit 8. Appellant argued that he has not had verbal or physical altercations with staff or residents since September 17, 2021. *Id.*

MassHealth responded that while it is encouraging that Appellant is finding better ways to manage upsetting situations, the basis for the denial of the MFP-CL waiver is not solely based on the incidents that have occurred. Exhibit 9. MassHealth reiterated that Appellant is

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<sup>1</sup> A cursory internet search shows that this agency provides non-medical assistance with instrumental activities of daily living and companionship. <https://www.care.com/b/l/american-dream-homecare-agency-llc/brockton-ma> (last reviewed July 28, 2022).

at risk for physical decompensation due to multiple medical conditions; at risk for psychiatric decompensation due to a history of anxiety and depression; at risk for resuming alcohol use due to his SUD history; at risk for falls and skin breakdown due to impaired mobility; and at risk for social isolation and self-neglect due to lack of informal supports in the community.

*Id.* MassHealth reiterated that Appellant cannot be safely served in the community under the terms of the MFP-CL waiver due to failed prior attempts at living in a sober living home, being unable to state a firm plan for continued recovery, and having no substantial informal community supports to assist him in the community. *Id.*

## Findings of Fact

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

1. On January 11, 2022, Appellant applied for the MFP-CL waiver after residing at the nursing facility for over nine months. *Id.* at C2.
2. Appellant is in his forties with diagnoses and medical history including SUD, cervical spinal cord; alcohol use with intoxication; idiopathic peripheral autonomic neuropathy; major depressive disorder; anxiety disorder; history of falls; fusion of cervical spine; sciatica; and muscle weakness. *Id.* at C24.
3. In [REDACTED], Appellant relapsed on alcohol and suffered a fall and head injury while intoxicated, losing consciousness. Appellant was admitted to the emergency room for this injury and for possible alcohol withdrawal, and was transferred to the facility the following day. *Id.* at C5, C24.
4. On April 19, 2022, MassHealth notified Appellant that he is not eligible for MassHealth's MFP-CL Waiver because he cannot be safely served in the community. Exhibit 1.
5. Appellant filed a timely appeal on May 25, 2022. Exhibit 2.
6. On March 14, 2022, a nurse reviewer representing MassHealth's waiver program performed an eligibility assessment at the facility with Appellant present. During the assessment, the nurse reviewer made note of recent incidents indicating that Appellant may pose a significant safety risk to himself and others. Exhibit 4 at D25, D43, Exhibit 7.
7. During the assessment, the nurse reviewer noted that Appellant had tried AA in the past but was not successful. Appellant was admitted for inpatient detox in 2020. Appellant reported that stress is a trigger for relapse. Appellant has a sister and friend who he is touch with in the community who are available by phone for support. Appellant denied alcohol cravings, hoping he would remain sober in the community and willing to try AA again. Appellant is

not currently attending meetings for SUD. Appellant reported that he had lived in a sober house in the past, but was evicted. Exhibit 4 at C26.

8. On October 3, 2021, Appellant's behavioral health specialist made the following notes during a mental status exam: speech is pressured; thought process is rapid and impoverished; abnormal thoughts include delusions and paranoia; mood is anxious; and judgement/insight is limited. Exhibit 4 at D18-19.
9. On April 13, 2022, MassHealth and MRC met to discuss the application and determined that based on available medical records and interviews, Appellant cannot be safely served in the community within the MFP-CL Waiver. Appellant presents at risk due to his failed attempts at a sober living home, inability to state a firm plan for continued recovery, and having no substantial informal community supports to assist him in the community. *Id.* at C26-28.

## Analysis and Conclusions of Law

Per 130 CMR 519.007(H)(2), an MFP-CL Waiver allows an applicant or member who is certified to need nursing facility services to receive specified waiver services, other than residential support services, in the home or community instead of in a nursing facility setting. To qualify for the MFP-CL Waiver, the member must meet clinical and age requirements:

(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;
- (3iii) 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.

130 CMR 519.007(H)(2) (emphasis added).

MassHealth determined Appellant did not meet the requirement at 130 CMR 519.007(H)(2)(v), that Appellant would be safely served in the community. MassHealth relied on documentation of prior incidents of aggression at the facility, failed prior attempts at living in a sober living home, Appellant's inability to offer a firm plan for continued recovery and no substantial informal community supports to assist him in the community. Appellant denied instigating some of the incidents and denied that others occurred as stated in the records. Appellant also argued that he was evicted from sober living for financial reasons, not for failing to maintain sobriety. Appellant also argued that he relapsed after living in the sober living house to be admitted to the hospital and get additional help.

While Appellant is to be commended that he has maintained sobriety at the nursing facility and that he is attending college to better himself, the record supports MassHealth's concerns regarding his safety in the community at this time. Appellant did not dispute MassHealth's concern that he has no plan in place to attend addiction support in the community and acknowledged that the transition will be difficult without community supports. Appellant acknowledged relapsing after leaving the sober living home in the past and did not discuss any plans to avoid a similar fate upon discharge in the future, apart from seemingly avoiding people he knows in certain communities. Appellant used his time at hearing primarily to refute the allegations of aggression and hostility.

Appellant has not demonstrated that MassHealth's determination that he cannot be safely served in the community as required by 130 CMR 519.007(H)(2)(v) was made in error. Accordingly, this appeal is denied. Appellant is encouraged to continue working towards independent living by addressing the specific concerns raised by MassHealth, such as developing plans for maintaining sobriety in the community, and/or by exploring another waiver option such as the MFP-RS waiver.

## **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.



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Cynthia Kopka  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Margie Morel @ Umass Medical