

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2204097
Decision Date:	10/13/2022	Hearing Date:	09/13/2022
Hearing Officer:	Scott Bernard		

Appearance for Appellant:




Appearance for MassHealth:

Linda Phillips, RN, BSN, LNC-CSp. (the
MassHealth representative) *via* telephone
Brad Goodier, BSN, RN (Observing) *via*
telephone
Sue Tomasz-Taylor, RN (Observing) *via*
telephone



*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 (MFP) Community Living (CL) Waiver
Decision Date:	10/13/2022	Hearing Date:	09/13/2022
MassHealth's Rep.:	Linda Phillips, RN	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South		

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 May 16, 2022, MassHealth determined that the appellant was no longer clinically eligible for the MassHealth Moving Forward Plan Community Living Home and Community Based Services Waiver (MFP-CL Waiver) because MassHealth determined that The appellant could not be safely served in the community within the terms of the MFP-CL Waiver. (See 130 CMR 519.007(H)(2) and Exhibit (Ex.) 4). The appellant filed this appeal in a timely manner on May 26, 2022. (See 130 CMR 610.015(B) and Ex. 1). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

The Board of Hearings initially dismissed the appellant's appeal because he had not attached a copy of the underlying notice to his fair hearing request. (Ex. 1). Scheduling of the hearing was delayed because the appellant had thought that he was appealing an action taken by his managed care provider. (Ex. 3). The appellant submitted a copy of the underlying notice on July 20, 2022, at which time the Board of Hearing was able to schedule the hearing with the correct parties.

Action Taken by MassHealth

MassHealth determined that the appellant was no longer clinically eligible 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 was no longer eligible for the MFP-CL Waiver.

Summary of Evidence

The MassHealth representative, a Registered Nurse (RN) and Associate Director of Appeals and Regulatory Compliance, testified as follows about MassHealth's decision regarding the disenrollment of the Moving Forward Plan (MFP) Community Living (CL) Waiver for the appellant.

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, seven days per week. (Ex. 7, pp. 5-35).

The appellant is [REDACTED] years old. (Ex. 3; Ex. 7, p. 45). His primary diagnoses are T2-T6 paraplegia, history of C7 fusion, sleep apnea, chronic pain treated with prescribed Suboxone, neurogenic bladder with suprapubic catheter, neurogenic bowel, history of respiratory failure, pneumonia, urinary tract infections (UTI), hepatitis C, seizure disorder and thrombus with IVC filter placement. (Ex. 7, p. 61). In addition, the appellant has been hospitalized multiple times with Acute Respiratory Failure with hypoxia, at times requiring intubation and admissions to the Intensive Care Unit (ICU), hypercapnia acute encephalopathy, unresponsiveness, and related altered mental status. (Ex. 7, p. 61). Also, he has had multiple infections and several instances where the toxicology screens have shown use of non-prescribed substances. (Ex. 7, p. 63). The appellant is prescribed Suboxone 8 mg-2 mg film, three times daily that started on November 11, 2021. (Ex. 7, p. 63).

The appellant applied and was approved for the MFP-CL Waiver in July 2015. (Ex. 7, p. 62). In [REDACTED], he moved from his parent's home in [REDACTED] to an apartment in [REDACTED]. (Ex. 7, p. 62). Within a year, he failed in the apartment due to drug related activity and transitioned back to his parent's home. (Ex. 7, p. 62). The appellant has had a history of addiction and drug related activity, and this has continued since his return to his parents' home. (Ex. 7, p. 62).

The MFP-CL denial notice dated May 16, 2022, stated that in accordance with Federal Regulations 42 CFR 441.302(c)(2) requires periodic re-evaluations, at least annually, of their continued participation in the MFP-CL Waiver. (Ex. 4; Ex. 7, pp. 43-44). In addition, to continue participation in the Waiver, a participant must continue to meet to the clinical requirements which are found in 130 CMR 519.007(H)(2). (Ex. 4; Ex. 7, pp. 43-44). The appellant's clinical eligibility was to end on May 30, 2022, but because of his appeal filing with the Board of Hearing was determined timely, his waiver eligibility is in aid pending until the Board of Hearings issues a decision. (Ex. 4; Ex. 7, pp. 43-44).

At issue for this appeal is:

1. Regulation 130 CMR 519.007 (H) (2)(a) (5): Individuals Who Would be Institutionalized MFP HCBS Waivers. (Ex. 7, pp. 37-38).

2. Was MassHealth correct in disenrolling the appellant from the MFP-CL Waiver; because, he cannot be safely served in the community within the terms of the MFP-CL Waiver?

The appellant has had several hospitalizations, specifically within this past year, that have documented several drugs used with subsequent medical difficulties. There were approximately four hospitalizations [REDACTED] since his previous MassHealth redetermination visit on May 24, 2021. (Ex. 7, p. 63). The additional following hospitalizations started [REDACTED], and the following are documented episodes to support these hospitalizations and home care assessments:

- [REDACTED]: [REDACTED] (ER) reports that the appellant was admitted for macular rash on bilateral lower extremities, and he had a fever. (Ex. 7, pp. 77, 89, 90). Antibiotic and fluids were administered. (Ex. 7, pp. 77, 89, 90). The appellant required a dose of Narcan to be administered, as the appellant would not awake except for a sternal rub but then fell back asleep. (Ex. 7, pp. 77, 89, 90). The ER report also indicates toxicology screen was positive for Benzodiazepine, Buprenorphine, and Fentanyl, for which the appellant is not prescribed. (Ex. 7, pp. 77, 89, 90). Documentation reports that the appellant has a history of “multiple hospitalizations related to drug overdoses and concern for surreptitious drug use while inpatient”. (Ex. 7, pp. 77, 89, 90). The appellant was discharged home on [REDACTED]. (Ex. 7, pp. 77, 89, 90).
- December 8, 2021: [REDACTED] states that [REDACTED], LPN had a discussion regarding the results of the [REDACTED] hospitalization in [REDACTED]. (Ex. 7, pp. 86-87). [REDACTED] attempted to explain what the discharge documentation stated regarding the treatment required for the diagnosis of metabolic encephalopathy, and the hospital found “Xanax and other drugs” in his system. (Ex. 7, pp. 86-87). The appellant stated, “[REDACTED] always blames drugs on my diagnosis”. (Ex. 7, pp. 86-87). In addition, documentation states that the appellant is reluctant to shower at times and prefers to stay in bed. (Ex. 7, pp. 86-87). [REDACTED] conclude by indicating that the appellant “maintains adequate ADL function, but hygiene would be much improved if client was compliant with wound care and wound care orders.” (Ex. 7, pp. 86-87).
- [REDACTED]: [REDACTED] reports that the appellant was admitted with diagnosis of altered mental status. (Ex. 7, pp. 109-110). The appellant was unresponsive in the ER. (Ex. 7, pp. 109-110). He was intubated and sedated in the ICU. (Ex. 7, pp. 109-110). Per report given by the mother, the appellant reportedly had taken multiple Xanax and he was found unresponsive by staff, who then called 911. (Ex. 7, pp. 109-110). In the ICU, after the appellant was extubated, he had another episode on somnolence, nonresponsive to commands and barely responded to painful stimuli; therefore, he was reintubated. (Ex. 7, pp. 109-110). Finally, he was extubated on February 22, 2022. (Ex. 7, pp. 109-110). Documentation states that the appellant gets Xanax from friends. (Ex. 7, pp. 109-110). BiPap is ordered to remain in place when sleeping during scheduled day and nighttime shifts. (Ex. 7, pp. 109-110).
- [REDACTED]: [REDACTED] reports that the appellant was previously admitted to the ER on [REDACTED], for altered mental status and he was

administered Narcan by EMS due to myoclonic activity. (Ex. 7, pp. 134-135). The appellant was treated for questionable benzodiazepine versus opioid withdrawal and left the ER Against Medical Advice (AMA). (Ex. 7, pp. 134-135). For this current admission, the appellant is being evaluated for a rash on bilateral lower extremities. (Ex. 7, pp. 134-135). He was evaluated by dermatology with no clear explanation, but rash is self-resolving. This rash could potentially be related to street Fentanyl use. (Ex. 7, pp. 134-135).

- [REDACTED]: [REDACTED] reports that the appellant was admitted due to a urinary infection. (Ex. 7, pp. 146-147, 177). During this hospitalization, the appellant was found to have a right proximal femoral fracture because he fell out of his wheelchair two weeks before, outside on the rocks, as described by his mother. (Ex. 7, pp. 146-147, 177). The hospital plan of care was for conservative, nonoperative management because he is non-ambulatory at baseline and the current fracture is not interfering with his transfers. (Ex. 7, pp. 146-147, 177). Occupational Therapy evaluated the appellant and recommended discharge to acute rehabilitation when medically appropriate due to the fact that appellant was currently below baseline with functional mobility, safety/judgement, activity tolerance, bathing, dressing, toileting, grooming, feeding and community engagement. (Ex. 7, pp. 146-147, 177).

The appellant receives 84 hours per week of MFP-CL Waiver services to support him in the community. (Ex. 7, p. 64). According to his homecare agency, [REDACTED], the appellant often refuses to shower and/or get out of bed. (Ex. 7, p. 64). In addition, he requires a lot of encouragement to get out of bed. (Ex. 7, p. 64). The appellant's greatest risks are his continued use of non-prescribed drugs and lack of proper use of his Bi-Pap, which has resulted in respiratory failure and the need to be intubated with numerous hospitalizations (Ex. 7, p. 64).

The appellant's waiver redetermination assessment visit was in the morning of February 14, 2022. (Ex. 7, p. 64). (Note: later that same day, the appellant was found unresponsive by staff and sent to the ER). (Ex. 7, p. 64). The appellant was fully dressed and groomed during his eligibility visit. (Ex. 7, p. 64). He was pleasant to the Waiver nurse but minimally responsive in providing details to questions asked by the nurse. (Ex. 7, p. 64). He was able to answer the orientation questions with ease, but he was not able to or declined to provide details related to recent hospitalizations. (Ex. 7, p. 64). Finally, he reported that he relies on staff for his medications. (Ex. 7, p. 64).

On May 12, 2022, the appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting which includes MRC Clinical Team. (Ex. 7, p. 65). MassHealth and MRC determined that the appellant was not considered to be clinically eligible any further for participation in the MFP-CL Waiver due to the above information, and additional details are in the appeal packet. (Ex. 7, p. 65). The appellant is medically complex and continues to abuse substances leading to unresponsiveness and hospitalizations. (Ex. 7, p. 65). MRC has repeatedly tried to work with the appellant and schedule appointments with providers to directly help the appellant with his polysubstance abuse, but he has refused. (Ex. 7, p. 65). The appellant continues to be admitted to the hospital with many different health problems, and several admissions have resulted in positive results for drugs, such as non-prescribed benzodiazepines and opiates. (Ex. 7, p. 65). Therefore, due to the fact the appellant is a significant health and safety risk to himself and others, due to ongoing SUD and medical non-compliance, and inability to maintain his safety in the community, the appellant can no longer be

served within the terms of the MFP-CL waiver program. (Ex. 7, p. 65).

In accordance with the date of notice May 16, 2022, MassHealth and MRC determined that the appellant cannot continue to be safely served with the terms of the MFP-CL Waiver. (Ex. 7, pp. 43-44).

The appellant stated that he had been doing really good for a while but this last winter ended up relapsing on Fentanyl. The appellant had been prescribed Fentanyl a while back. The appellant stated that he had started getting a lot of panic attacks and he ended up buying the Fentanyl in order to cope. The appellant stated that he realized that the Fentanyl was not pure. The appellant stated that he should have been more cautious and not bought drugs off the street

The appellant stated that he is doing well at the moment. He has been clean for four months and is working with a recovery coach. The appellant's mother is with him a lot. He is attending meetings twice per week and putting in an effort into staying clean. The appellant stated that it has not been easy. It was tough staying away from substances in the environment he was living in. The appellant said that he had moved, and his mother is now watching over him. The appellant stated that he really does need waiver and would do anything to keep it. He would take drug tests every week or whatever MassHealth suggested.

The appellant asked for second chance stating that if he lost the waiver, he would have no help at all. The appellant said that his mother works and could not help him. He had no other services in place, and no other friends to help. It would be tough trying to find programs for him. The appellant has worked with his recovery coach to do this and he and the appellant could not find programs that could accommodate his disability. The appellant had made "tons of phone calls." He emphasized that it was very difficult. The appellant never had any options to go anywhere to seek treatment. Again, the appellant stated he was willing to do anything to stay on the program. The appellant stated that he had been clean, then had a relapsed but was now on track. The appellant plans on staying sober, staying with his recovery. The appellant has started working on his 12 steps with a sponsor, as well as meeting people at meetings who he could call when he struggled.

The appellant's therapist reiterated that the appellant is really actively engaged in his treatment. The appellant has not refused treatment. The therapist stated she has been trying to assist the appellant to get substance abuse treatment. Because the appellant requires a PCA in order to assist him with ADL's however, it is hard to find a program that accommodates this. The appellant's therapist also wanted to speak to one aspect of the appellant's behavior raised by MassHealth. She stated that the appellant's not showering was less an effect of substance abuse and more because of the appellant's depression, which makes it hard to get out of bed and shower. The therapist stated that the appellant has never missed or been late for appointments. He is engaged in his treatment.

The appellant's mother wanted to also state that she has worked with the appellant and the therapist to get the appellant into a substance abused treatment. They have tried calling lots of programs but not even a waiver program could help get the appellant in two years. When the appellant was living at his father's home in [REDACTED], it was not a good fit. The appellant fell back into old habits. The appellant's mother stated that the appellant has been living with her and things are going well. The appellant's mother stated that she has taken time off from work to help him and it has been great.

Regarding the February incident, where the appellant was intubated, the appellant's mother alleged it had nothing to do with drugs. The appellant was found non-responsive because he has a sleep disorder and he had stopped breathing in the night. The appellant has undergone sleep studies and now has a CPAP machine.¹

The MassHealth representative inquired about what has occurred since [REDACTED] after the appellant went home. The MassHealth representative stated that the last information MassHealth received indicated that an occupational therapist was seeing if he could get a short-term placement in a facility for substance abuse treatment. The appellant's mother stated that the appellant went to the [REDACTED] in [REDACTED], but the appellant's insurance would not pay for this and he was kicked out in the [REDACTED]. [REDACTED] told her that MassHealth cut the appellant off and that she needed to come and pick him up right away. After this the appellant could not find another rehab to take him. The appellant still has had a broken hip for two months. The MassHealth representative indicated she was not aware of this.

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 per day, seven days per week. (Ex. 7, pp. 5-35).
2. The appellant is [REDACTED] years old. (Ex. 3; Ex. 7, p. 45).
3. The appellant's primary diagnoses are T2-T6 paraplegia, history of C7 fusion, sleep apnea, chronic pain treated with prescribed Suboxone, neurogenic bladder with suprapubic catheter, neurogenic bowel, history of respiratory failure, pneumonia, UTIs, hepatitis C, seizure disorder and thrombus with IVC filter placement. (Ex. 7, p. 61).
4. In addition, the appellant has been hospitalized multiple times with Acute Respiratory Failure with hypoxia, at times requiring intubation and admissions to the ICU, hypercapnia acute encephalopathy, unresponsiveness, and related altered mental status. (Ex. 7, p. 61).
5. Also, he has had multiple infections and several instances where the toxicology screens have shown use of non-prescribed substances. (Ex. 7, p. 63).
6. The appellant is prescribed Suboxone 8 mg-2 mg film, three times daily that started on November 11, 2021. (Ex. 7, p. 63).
7. The appellant applied and was approved for the MFP-CL Waiver in July 2015. (Ex. 7, p. 62).
8. In September 2015, he moved from his parent's home in [REDACTED] to an apartment in [REDACTED].

¹ The appellant's mother also made reference to a letter from a [REDACTED] that was submitted to the Board of Hearings on the day before the hearing. The hearing officer could not find an electric copy of the letter in his email or a hard copy on his mail shelf at the Board of Hearings on a date after the hearing.

(Ex. 7, p. 62).

9. Within a year, he failed in the apartment due to drug related activity and transitioned back to his parent's home. (Ex. 7, p. 62).
10. The appellant has had a history of addiction and drug related activity, and this has continued since his return to his parents' home. (Ex. 7, p. 62).
11. The appellant has had several hospitalizations, specifically within this past year, that have documented several drugs used with subsequent medical difficulties. (Ex. 7, p. 63).
12. There were approximately four hospitalizations [REDACTED] since his previous MassHealth redetermination visit on May 24, 2021. (Ex. 7, p. 63).
13. The additional following hospitalizations started [REDACTED], and the following are documented episodes to support these hospitalizations and home care assessments:
 - a. [REDACTED]:
 - 1) [REDACTED] reports that the appellant was admitted for macular rash on bilateral lower extremities, and he had a fever;
 - 2) Antibiotic and fluids were administered;
 - 3) The appellant required a dose of Narcan to be administered, as the appellant would not awake except for a sternal rub but then fell back asleep;
 - 4) The ER report also indicates toxicology screen was positive for Benzodiazepine, Buprenorphine, and Fentanyl, for which the appellant is not prescribed;
 - 5) Documentation reports that the appellant has a history of "multiple hospitalizations related to drug overdoses and concern for surreptitious drug use while inpatient"; and
 - 6) The appellant was discharged home on [REDACTED]. (Ex. 7, pp. 77, 89, 90).
 - b. [REDACTED]:
 - 1) [REDACTED] states that [REDACTED], LPN had a discussion regarding the results of the [REDACTED] hospitalization in [REDACTED];
 - 2) [REDACTED] attempted to explain what the discharge documentation stated regarding the treatment required for the diagnosis of metabolic encephalopathy, and the hospital found "Xanax and other drugs" in his system;
 - 3) The appellant stated, "[REDACTED] always blames drugs on my diagnosis";

- 4) In addition, documentation states that the appellant is reluctant to shower at times and prefers to stay in bed; and
- 5) [REDACTED] conclude by indicating that the appellant “maintains adequate ADL function, but hygiene would be much improved if client was compliant with wound care and wound care orders.” (Ex. 7, pp. 86-87).

c. [REDACTED]:

- 1) [REDACTED] reports that the appellant was admitted with diagnosis of altered mental status;
- 2) The appellant was unresponsive in the ER;
- 3) He was intubated and sedated in the ICU;
- 4) Per report given by the mother, the appellant reportedly had taken multiple Xanax and he was found unresponsive by staff, who then called 911;
- 5) In the ICU, after the appellant was extubated, he had another episode on somnolence, nonresponsive to commands and barely responded to painful stimuli; therefore, he was reintubated;
- 6) Finally, he was extubated on February 22, 2022;
- 7) Documentation states that the appellant gets Xanax from friends; and
- 8) BiPap was ordered to remain in place when sleeping during scheduled day and nighttime shifts. (Ex. 7, pp. 109-110).

d. [REDACTED]:

- 1) [REDACTED] reports that the appellant was previously admitted to the ER on [REDACTED], for altered mental status and he was administered Narcan by EMS due to myoclonic activity;
- 2) The appellant was treated for questionable benzodiazepine versus opioid withdrawal and left the ER AMA;
- 3) For this current admission, the appellant is being evaluated for a rash on bilateral lower extremities;
- 4) He was evaluated by dermatology with no clear explanation, but rash is self-resolving; and
- 5) This rash could potentially be related to street Fentanyl use. (Ex. 7, pp. 134-135).

e. [REDACTED]:

- 1) [REDACTED] reports that the appellant was admitted due to a urinary infection;
 - 2) During this hospitalization, the appellant was found to have a right proximal femoral fracture because he fell out of his wheelchair two weeks before, outside on the rocks, as described by his mother;
 - 3) The hospital plan of care was for conservative, nonoperative management because he is non-ambulatory at baseline and the current fracture is not interfering with his transfers; and
 - 4) Occupational Therapy evaluated the appellant and recommended discharge to acute rehabilitation when medically appropriate due to the fact that appellant was currently below baseline with functional mobility, safety/judgement, activity tolerance, bathing, dressing, toileting, grooming, feeding and community engagement. (Ex. 7, pp. 146-147, 177).
14. The appellant receives 84 hours per week of MFP-CL Waiver services to support him in the community. (Ex. 7, p. 64).
 15. According to his homecare agency, [REDACTED], the appellant often refuses to shower and/or get out of bed. (Ex. 7, p. 64).
 16. In addition, he requires a lot of encouragement to get out of bed. (Ex. 7, p. 64).
 17. The appellant's greatest risks are his continued use of non-prescribed drugs and lack of proper use of his Bi-Pap, which has resulted in respiratory failure and the need to be intubated with numerous hospitalizations (Ex. 7, p. 64).
 18. The appellant's waiver redetermination assessment visit was in the morning of February 14, 2022. (Ex. 7, p. 64).
 19. The appellant was fully dressed and groomed during his eligibility visit. (Ex. 7, p. 64).
 20. He was pleasant to the Waiver nurse but minimally responsive in providing details to questions asked by the nurse. (Ex. 7, p. 64).
 21. He was able to answer the orientation questions with ease, but he was not able to or declined to provide details related to recent hospitalizations. (Ex. 7, p. 64).
 22. Finally, he reported that he relies on staff for his medications. (Ex. 7, p. 64).
 23. On May 12, 2022, the appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting which includes MRC Clinical Team, and determined the following:
 - a. The appellant was not considered to be clinically eligible any further for participation in the MFP-CL Waiver due to the above information;

- b. The appellant is medically complex and continues to abuse substances leading to unresponsiveness and hospitalizations;
- c. MRC has repeatedly tried to work with the appellant and schedule appointments with providers to directly help the appellant with his polysubstance abuse, but he has refused;
- d. The appellant continues to be admitted to the hospital with many different health problems, and several admissions have resulted in positive results for drugs, such as non-prescribed benzodiazepines and opiates; and
- e. Therefore, due to the fact the appellant is a significant health and safety risk to himself and others, due to ongoing SUD and medical non-compliance, and inability to maintain his safety in the community, the appellant can no longer be served within the terms of the MFP-CL waiver program. (Ex. 7, p. 65).

24. MassHealth issued the MFP-CL denial notice on May 16, 2022, which stated:

- a. In accordance with Federal Regulations 42 CFR 441.302 (c)(2) requires periodic re-evaluations, at least annually, of their continued participation in the MFP-CL Waiver;
- b. In addition, to continue participation in the Waiver, a participant must continue to meet to the clinical requirements which are found in 130 CMR 519.007(H)(2); and
- c. The appellant's clinical eligibility was to end on May 30, 2022. (Ex. 4; Ex. 7, pp. 43-44).

Analysis and Conclusions of Law

Eligibility requirements for the MFP-CL Waiver are outlined at 130 CMR 519.007(H)(2):

(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.
- (b) Eligibility Requirements. In determining eligibility for MassHealth Standard and for these waiver services, the MassHealth agency determines income eligibility based solely on the applicant's or member's income regardless of his or her marital status. The applicant or member must
1. meet the requirements of 130 CMR 519.007 (H)(2)(a);
 2. have countable income that is less than or equal to 300% of the federal benefit rate (FBR) for an individual;
 3. have countable assets of \$2,000 or less for an individual and, for a married couple, if the initial Waiver eligibility determination was on or after January 1, 2014, have assets that are less than or equal to the standards at 130 CMR 520.016(B): *Treatment of a Married Couple's Assets When One Spouse Is Institutionalized*; and
 4. not have transferred resources for less than fair market value, as described in 130 CMR 520.018: *Transfer of Resources Regardless of Date of Transfer* and 520.019: *Transfer of Resources Occurring on or after August 11, 1993*.
- (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.
- (d) Waiver Services. Eligible members who are enrolled as waiver participants in the MFP Community Living Waiver are eligible for the waiver services described in 130 CMR 630.405(D): *Money Follows the Person Community Living (MFP-CL) Waiver*. (bolded emphasis added).

The appellant has not shown by a preponderance of the evidence that he can be safely served in the community within the terms of the MFP Community Living Waiver. MassHealth has documented a number of incidents of great concern. The appellant has been hospitalized multiple times with Acute Respiratory Failure with hypoxia, at times requiring intubation and admissions to the ICU, hypercapnia acute encephalopathy, unresponsiveness, and related altered mental status. He has had multiple infections and several instances where the toxicology screens have shown use of non-prescribed substances. For his part, the appellant does not deny that he has acquired and used non-prescribed substances. He also did not deny that this has resulted in at least some of the hospitalizations. The appellant, his therapist, and his mother each credibly testified that the appellant is vigorously pursuing sobriety at this time. The appellant and his therapist also each testified that some of the appellant's behaviors, for instance not showering, were the result of underlying depression rather than drug use. This may be indicative of a larger problem, which is that the appellant is not able to take care of himself very well in the community and may, in fact, need more intensive services that cannot be provided through MFP-CL.

For the above stated reasons, the 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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

Linda Phillips, RN, c/o Prior Authorization