

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

[REDACTED]

Appeal Decision:	Denied	Appeal Number:	2205121
Decision Date:	10/25/2022	Hearing Date:	10/13/2022
Hearing Officer:	Paul C. Moore		

Appearances for Appellant:

[REDACTED]

Appearance for MassHealth:

Linda Phillips, R.N., associate director for appeals, regulatory compliance and complex cases, University of Massachusetts Medical School (by telephone)



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Clinical Eligibility for Moving Forward Plan waiver
Decision Date:	10/25/2022	Hearing Date:	10/13/2022
MassHealth Rep.:	Linda Phillips	Appellant Reps.:	Pro se, with social worker
Hearing Location:	Remote	Aid Pending:	No

Authority

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

Jurisdiction

By notice dated June 14, 2022, MassHealth notified the appellant that she is not clinically eligible for participation in MassHealth's Moving Forward Plan Community Living Home- and Community-Based Services Waiver (MFP-CL) because she cannot be safely served in the community within the terms of the MFP-CL waiver (Exhibit 1). The appellant filed a timely appeal with the Board of Hearings (BOH) on July 11, 2022 (Exhibit 2). A determination regarding clinical eligibility for a waiver program is a valid basis for appeal to BOH (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant is not clinically eligible for participation in the MFP-CL waiver program.

Issue

The issue is whether MassHealth correctly determined that the appellant is not clinically eligible for participation in the MFP-CL waiver because she cannot be safely served in the community within the terms of the waiver.

Summary of Evidence

MassHealth was represented at hearing by a Registered Nurse who is associate director for appeals, regulatory compliance and complex cases at the University of Massachusetts Medical School (“MassHealth nurse”). The MassHealth nurse testified that the MFP-CL (“community living”) waiver is for disabled MassHealth members who can move into their own home or apartment, or into the home of someone else, and who can receive services in the community for fewer than twenty-four hours a day, seven days a week (Testimony).

The MassHealth nurse testified that in order to be approved for the MFP-CL waiver, a MassHealth member must meet the following criteria:

- be living in a nursing facility or long-stay hospital, and have lived there for at least 90 consecutive days;
- be 18 years old or older, and have a disability, or be age 65 and older;
- meet the clinical requirements for, and be in need of, the waiver services that are available through the MFP waivers;
- be able to be safely served in the community within the terms of the MFP waiver;
- meet the financial requirements to qualify for MassHealth (special financial rules exist for waiver participants); and
- is transitioning to an MFP-qualified residence in the community.

(Testimony)

The MassHealth nurse testified that the appellant, who is under age 65, applied for services under the MFP-CL waiver in March, 2022.¹ She is currently residing in a nursing facility. The appellant’s medical diagnoses include chronic obstructive pulmonary disease (COPD), type two diabetes, hypertension, bilateral shoulder pain, nephrolithiasis, obstructive sleep apnea, congestive heart failure (CHF), hypothyroidism, chronic kidney disease, anemia, obesity, osteoarthritis, generalized anxiety disorder, a history of a pulmonary embolism, and major depression (Testimony, Exhs. 4 & 5).

According to the MassHealth nurse, an in-person assessment for waiver eligibility was conducted at Carvalho Grove Health and Rehabilitation Center (“the facility”) in Fall River on May 20, 2022. The appellant was present, along with a facility nurse and a Registered Nurse from the MFP-CL waiver program. Documents completed at that time included the Minimum Data Set – Home Care (MDS-HC) tool, a community risk assessment questionnaire, and a risk assessment caregiver supplemental questionnaire (Testimony, Exh. 4C). The appellant’s medical record from the facility was also reviewed by the waiver nurse. The medical record review reflected that the appellant has been a resident of the facility since [REDACTED]. Just prior to this, in [REDACTED], the appellant had been hospitalized at Cambridge Health Alliance hospital for treatment of sepsis, secondary to a

¹ A second MFP waiver, the MFP-residential supports (RS) waiver, also exists; however, the appellant did not apply for this waiver.

urinary tract infection (UTI), requiring the administration of intravenous (IV) antibiotics (Testimony, Exhs. 4 & 5). Previously, prior to this hospitalization, the appellant lived at a nursing facility in [REDACTED] (*Id.*).²

The MassHealth nurse testified that an occupational therapy evaluation of the appellant conducted at the facility on March 2, 2022 reflects that she is a two-person assist to get into and out of bed, and that she requires maximum assistance with bathing (Testimony, Exh. 4D, pp. 81-82). She ambulates by wheelchair. In addition, a nurses note dated May 4, 2022 reflects that the appellant requested Tylenol with codeine, for which she has an as-needed (PRN) order, every morning for her bilateral shoulder pain; the facility planned a rehabilitation evaluation of the appellant at that time (Testimony, Exh. 4D, p. 29). Further, a May 8, 2022 nurses note documents that the appellant had an increase in aggressive behaviors during the day, including swearing at nursing staff, shouting demands, and refusing to self-propel her manual wheelchair, requiring redirection (Exh. 4D, p. 28). The same nurses note reflects that the appellant was resistant to re-education about her consumption of excess carbohydrates in light of her type two diabetes diagnosis (*Id.*).

The MassHealth nurse testified that the MDS-HC tool completed at the May 20, 2022 in-person assessment reflects that the appellant is dependent and/or requires maximum or extensive assistance with mobility in bed, transfers, bathing, personal hygiene, and dressing (Testimony, Exh. 4C, pp. 9-22). In addition, the MDS-HC shows that the appellant needs assistance with the following instrumental activities of daily living: meal preparation; managing finances; housework; managing medications; shopping and transportation (*Id.*, p. 13).

According to the MassHealth nurse, following the in-person evaluation, the waiver nurse spoke to one of the appellant's daughters, [REDACTED] by telephone on May 27, 2022.³ The purpose of this discussion was to determine the amount of informal support that might be available to the appellant should she be approved for services in the community under the MFP-CL waiver. [REDACTED] told the waiver nurse that [REDACTED] lives in [REDACTED] and does not drive. [REDACTED] expressed concern to the waiver nurse about the appellant transitioning to live in the community, as the appellant requires maximum assistance with transfers and bathing. [REDACTED] told the waiver nurse that she has not spoken to the appellant in about one year. [REDACTED] purportedly told the waiver nurse that one of the appellant's other daughters is "violent" and not involved in the appellant's care (Testimony, Exh. 4C, p. 30).

The MassHealth nurse testified that in 2017, the appellant had also applied for services under the MFP-CL waiver. She noted that after an evaluation, MassHealth had denied the appellant's previous application because the appellant was deemed to need skilled nursing services on a 24-hour basis due to her high medical acuity (Testimony, Exh. 4C, p. 31).

The MassHealth nurse testified that on June 2, 2022, the MFP-CL review team met to discuss the appellant's current application; in addition, on June 8, 2022, a second review of the application was

² The MassHealth nurse stated that a medical record review showed that in 2015, the appellant was hospitalized for a possible benzodiazepine overdose (Testimony).

³ Initials are used to protect confidentiality.

conducted by the Massachusetts Rehabilitation Commission clinical team, which oversees the MFP-CL waiver. Both teams determined, based on the evidence, that the appellant is not considered to be clinically eligible for participation in the MFP-CL waiver, due to her impaired judgment, insight, a lack of informal supports, and due to the fact that she requires a two-person assist for transfers (Testimony). A written notice of denial of clinical eligibility was sent to the appellant on June 14, 2022 (Exh. 1).

The appellant appeared by telephone and testified with the assistance of a licensed social worker from the facility. She testified that she can transfer from her wheelchair to the toilet independently using grab bars. She weighs 223 lbs. She needs two people to assist her to get out of bed. She testified that she located a subsidized apartment in [REDACTED] that she would like to move into. She testified that the apartment is wheelchair-accessible. She has been working with an advocate from the Southeast Center for Independent Living (Testimony).

The MassHealth nurse stated that the maximum amount of services that can be provided under the MFP-CL waiver program is 84 hours per week. These services include personal care attendant (PCA) services, homemaker services, independent living support, and community habilitation services (Testimony).

The facility social worker testified that the appellant, if approved for the MFP-CL waiver, will need PCA services and homemaker services. The appellant is independent in grooming herself, including combing her hair and brushing her teeth, and independent with eating. She can self-propel her wheelchair. She is prescribed a number of psychiatric medications, including Wellbutrin, Trazadone, Depakote, and Buspar. The appellant testified that prior to entering a nursing facility, about eight years ago, she lived on her own in [REDACTED]. She testified that she initially was injured in an accident in her home, when the leg of a dining room chair impaled her leg when she was chasing her cat. As a result, she underwent surgery. She testified that if approved for the MFP-CL services, one of her daughters, who lives in [REDACTED], could assist her. She noted that her one of her other daughters, [REDACTED] is not involved in her life at all. She has no other relatives or friends who could assist her informally (Testimony).

The appellant denied ever taking a medication overdose in the past. She added that she can identify and distinguish her current medications. At her current nursing facility, she is no longer undergoing physical therapy because she cannot stand up, according to the social worker.

However, the appellant testified that she can stand up using a walker for support, for about 10 minutes at a time (Testimony).

The appellant is no longer receiving occupational therapy because she met her goals and is at her baseline, according to the social worker (Testimony).

The apartment that she has been approved for has a stove and a microwave, which the appellant asserted she can reach and use independently. She would like to move into this apartment because it will afford her more independence and privacy than she has in the nursing facility (Testimony).

The MassHealth nurse stated that should the appellant be approved for the MFP-CL waiver services, MassHealth cannot guarantee that a PCA or other worker assigned to assist the appellant will always show up for his or her assigned shift. She added that it is unlikely that an agency will send two workers at the same time to assist the appellant to get out of bed in the morning; the agency would more likely send only one worker, and the appellant would need to get a friend or family member to assist her as well (Testimony).

Findings of Fact

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

1. The appellant is a MassHealth member under the age of 65 (Testimony).
2. The appellant's medical diagnoses include COPD, type two diabetes, hypertension, bilateral shoulder pain, nephrolithiasis, obstructive sleep apnea, CHF, hypothyroidism, chronic kidney disease, anemia, obesity, osteoarthritis, generalized anxiety disorder, a history of a pulmonary embolism, and major depression (Testimony, Exhs. 4 & 5).
3. The appellant has resided in a [REDACTED] (*Id.*).
4. The appellant applied for services under the MFP-CL waiver in March, 2022 (Testimony, Exh. 4).
5. In order to be approved for the MFP-CL waiver, a MassHealth member must meet the following criteria: (a) be living in a nursing facility or long-stay hospital, and have lived there for at least 90 consecutive days; (b) be 18 years old or older, and have a disability, or be age 65 and older; (c) meet the clinical requirements for, and be in need of, the waiver services that are available through the MFP waivers; (d) be able to be safely served in the community within the terms of the MFP waiver; (e) meet the financial requirements to qualify for MassHealth (special financial rules exist for waiver participants); and (f) is transitioning to an MFP-qualified residence in the community (Testimony).
6. An in-person assessment for waiver eligibility was conducted at the facility in [REDACTED] on May 20, 2022, at which the appellant, a facility nurse, and a MassHealth waiver nurse were present (Testimony, Exh. 4).
7. Prior to the appellant's nursing home admission in [REDACTED], the appellant had been hospitalized at Cambridge Health Alliance hospital for treatment of sepsis, secondary to a UTI requiring the administration of IV antibiotics (Testimony, Exhs. 4 & 5).
8. Documents completed at the in-person assessment of the appellant included the Minimum Data Set – Home Care (MDS-HC) tool, a community risk assessment questionnaire, and a risk assessment caregiver supplemental questionnaire (Testimony, Exh. 4C).

9. An occupational therapy evaluation of the appellant conducted at the facility on March 2, 2022 reflects that she is a two-person assist to get into and out of bed, and that she requires maximum assistance with bathing (Testimony, Exh. 4D, pp. 81-82).
10. The appellant ambulates by wheelchair, which she can self-propel (Testimony).
11. A facility nurses note dated May 4, 2022 reflects that the appellant requested Tylenol with codeine, for which she has an as-needed (PRN) order, every morning for her bilateral shoulder pain; the facility planned a rehabilitation evaluation of the appellant at that time (Testimony, Exh. 4D, p. 29).
12. A May 8, 2022 nurses note documents that the appellant had an increase in aggressive behaviors during the day, including swearing at nursing staff, shouting demands, and refusing to self-propel her manual wheelchair, requiring redirection (Exh. 4D, p. 28).
13. The May 8, 2022 nurse note also documented that the appellant was resistant to re-education about her consumption of excess carbohydrates in light of her type two diabetes diagnosis (*Id.*).
14. The MDS-HC tool completed at the May 20, 2022 in-person assessment reflects that the appellant is dependent and/or requires maximum or extensive assistance with mobility in bed, transfers, bathing, personal hygiene, and dressing (Testimony, Exh. 4C, pp. 9-22).
15. In addition, the MDS-HC shows that the appellant needs assistance with the following instrumental activities of daily living: meal preparation; managing finances; housework; managing medications; shopping and transportation (*Id.*, p. 13).
16. In 2017, the appellant had also applied for services under the MFP-CL waiver. After an evaluation, MassHealth had denied the appellant's previous application because the appellant was deemed to need skilled nursing services on a 24-hour basis due to her high medical acuity (Testimony, Exh. 4C, p. 31).
17. Following the in-person evaluation of the appellant, the waiver nurse spoke to one of the appellant's daughters, [REDACTED] by telephone on May 27, 2022, in order to determine the amount of informal support that might be available to the appellant should she be approved for services in the community under the MFP-CL waiver (Testimony).
18. [REDACTED] told the waiver nurse that [REDACTED] lives in [REDACTED] and does not drive, expressed concern to the waiver nurse about the appellant transitioning to live in the community because the appellant requires maximum assistance with transfers and bathing, and told the waiver nurse that she has not spoken to the appellant in about one year (Testimony, Exh. 4).
19. On June 2, 2022, the MFP-CL review team met to discuss the appellant's current application (Testimony).

20. On June 8, 2022, a second review of the appellant's current application was conducted by the Massachusetts Rehabilitation Commission clinical team, which oversees the MFP-CL waiver (Testimony).
21. Both teams determined, based on the evidence, that the appellant is not considered to be clinically eligible for participation in the MFP-CL waiver, due to her impaired judgment, insight, a lack of informal supports, and due to the fact that she requires a two-person assist for transfers (Testimony).
22. A written notice of denial of clinical eligibility was sent to the appellant on June 14, 2022 (Exh. 1).
23. The appellant filed a timely appeal of this denial with the BOH on July 11, 2022 (Exh. 2).
24. The appellant can transfer from her wheelchair to the toilet, and back, independently, using grab bars (Testimony).
25. The appellant is independent with grooming and eating (Testimony).
26. The appellant has been approved to move into a wheelchair-accessible subsidized apartment in [REDACTED], where she would live alone (Testimony).
27. If she lived in the community, the appellant would need PCA services and homemaker services (Testimony).
28. One of the appellant's daughters, who lives in [REDACTED], could assist the appellant if the appellant lived in the community (Testimony).
29. The appellant is no longer receiving physical therapy or occupational therapy at the nursing facility (Testimony).
30. The appellant is prescribed a number of psychiatric medications, which she can identify and distinguish from each other (Testimony).
31. The appellant has resided in nursing facilities since at least 2015 (Testimony).
32. Prior to her first nursing home admission, the appellant lived independently in [REDACTED] (Testimony).
33. It is unlikely that MassHealth would pay two PCAs working for the appellant on the same shift (Testimony).

Analysis and Conclusions of Law

MassHealth regulations at 130 CMR 519.007 describe the eligibility requirements for MassHealth Standard coverage for individuals who would be institutionalized if they were not receiving home- and community-based services. In particular, 130 CMR 519.007(H)(2)(a) describes the eligibility criteria for the MFP-CL waiver, as follows:

(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 § 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.

(Emphasis added)

There is no dispute that the appellant meets the age and disability requirements set forth above. The only issue in dispute is the appellant's ability to be safely served in the community under the MFP-CL waiver.

The appellant has a number of serious diagnoses, including CHF, COPD, major depression, diabetes, and chronic kidney disease. She has resided in nursing facilities since at least 2015. She is unable to transfer from her bed to her wheelchair, and from her wheelchair to her bed, independently, requiring two persons to assist her. She has demonstrated poor insight into how to

manage her diabetes. She needs assistance with dressing, bathing, and her instrumental activities of daily living, such as cooking and managing finances.

The appellant has located an apartment where she would like to live independently, with services under the MFP-CL waiver. The record shows, however, that the appellant has only one relative, a daughter, who could possibly assist her informally, as a supplement to the services she could receive under the MFP-CL waiver. That daughter did not testify at the hearing, nor did she submit any documents for the record addressing her willingness and ability to assist the appellant if needed.

MassHealth deemed the appellant to be clinically ineligible for services under the MFP-CL waiver due to her risk for decompensation while living in the community.

I find that all of the above considerations, taken together, support MassHealth's determination that appellant cannot be safely served in the community within the terms of the waiver. The terms of the MFP-CL waiver program do not meet the needs of an individual who requires constant assistance and supervision, and I find that the evidence supports a conclusion that appellant needs just that.

The appellant may reapply for the MFP-CL waiver at any time, and may also submit an application for MFP-RS waiver services as well, if she chooses.

At this time, however, for the reasons stated, this appeal must be 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.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Linda Phillips, R.N., Associate Director, Appeals, Regulatory Compliance and Complex Cases,
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