

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2205785
Decision Date:	10/12/2022	Hearing Date:	09/16/2022
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Linda Phillips



*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:	Waiver Eligibility
Decision Date:	10/12/2022	Hearing Date:	09/16/2022
MassHealth's Rep.:	Linda Phillips	Appellant's Rep.:	Pro se
Hearing Location:	All Parties Appeared by Telephone	Aid Pending:	No

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 July 26, 2022, MassHealth notified the appellant that he was not clinically eligible for the Moving Forward Plan Community Living and Home-and-Community-Based Waiver (MFP-CL Waiver) because he could not be safely served in the community within the terms of the waiver. (130 CMR 519.007(H); Exhibit 1). The appellant filed a timely appeal on August 3, 2022. (Exhibit 2). A decision regarding the scope or amount of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified the appellant that he is not eligible for the MFP-CL Waiver Program.

Issue

Whether MassHealth was correct in their decision regarding the appellant's eligibility for the MFP-CL Waiver Program.

Summary of Evidence

All parties appeared by telephone. Documents presented by MassHealth were incorporated into the hearing record as Exhibits 4 and 5.

In April 2022, MassHealth performed an assessment for waiver eligibility in person at the facility where the appellant currently resides. (Testimony; Exhibit 4; Exhibit 5). The appellant was at the assessment as well as a social worker from the facility and the nurse conducting the assessment. (Testimony; Exhibit 4; Exhibit 5). Prior to his admission into the current facility, the appellant presented to the Salem Hospital Emergency Department (Salem ED) due to a fall. (Testimony; Exhibit 4; Exhibit 5). Notes from the Salem ED indicate that the appellant was drinking alcohol frequently and provided a Clinical Institute Withdrawal Assessment (CIWA). (Testimony; Exhibit 4; Exhibit 5). The appellant was diagnosed with failure to thrive, alcohol use, hypokalemia and hypomagnesemia likely related to alcohol abuse. (Testimony; Exhibit 4; Exhibit 5). At that time, a determination was made that the appellant was unable to return to the community. (Testimony; Exhibit 4; Exhibit 5). The appellant was admitted into the current facility for continued care and rehabilitation. (Testimony; Exhibit 4; Exhibit 5).

The appellant's medical history includes: Fracture of an unspecified part of the neck of the left femur; chronic obstructive pulmonary disease (COPD) with acute exacerbation; a left hip arthroplasty; chronic pain in the left hip; dysphagia; alcohol dependence with withdrawal delirium; alcoholic hepatitis with ascites; alcoholic cirrhosis of the liver with ascites; alcohol dependence with alcohol-induced persisting dementia; adult failure to thrive, hypokalemia; hyposmolality; hyponatremia; gastroesophageal reflux disease (GERD); unspecified dementia without behavioral disturbance; adjustment disorder with mixed anxiety; and depressed mood. (Testimony; Exhibit 4; Exhibit 5).

Records from May 2022 indicate that the appellant was medically stable and denied feelings of persistent depression. (Testimony; Exhibit 4; Exhibit 5). At that time, it was determined that the appellant remained care compliant. (Testimony; Exhibit 4; Exhibit 5). A July 2022 physician note indicates that the appellant had general muscle and joint pain, muscle weakness, and a loss of balance when ambulating. (Testimony; Exhibit 4; Exhibit 5). A review of additional medical records presented a long history of alcohol abuse including a statement from the appellant that he has consumed alcohol since the age of ten. (Testimony; Exhibit 4; Exhibit 5).

At the interview with the nurse performing the waiver assessment, the appellant stated that prior to his admission into the current facility, he was drinking daily,

often "a pint on the lower end and a quart most in a day". (Testimony; Exhibit 4; Exhibit 5). During the interview the appellant noted multiple arrests due to driving under the influence and public intoxication. The appellant also noted a history of court-ordered inpatient detoxes due to excessive drinking. (Testimony; Exhibit 4; Exhibit 5). MassHealth records indicate the appellant reported serving time in the Middleton House of Correction due to domestic abuse. (Testimony; Exhibit 4; Exhibit 5). The nurse performing the assessment contacted the Peabody District Court Clerk and found no open cases or outstanding warrants for the appellant. (Testimony; Exhibit 4; Exhibit 5).

The records presented by MassHealth indicate that the appellant was vague on his ability to sustain from alcohol use in the community, declined to be followed by psychiatry for on-on-one psychotherapy, and not open to attending alcoholics anonymous (AA). (Testimony; Exhibit 4; Exhibit 5). The records show that the appellant did not have a formal treatment or recovery plan at the time of the assessment. (Testimony; Exhibit 4; Exhibit 5). The report from the MassHealth Waiver Clinical Team states that while the appellant maintained recovery in the facility, his past behaviors suggest that he will not be able to manage his drinking responsibly if he were in an environment with reduced supervision. (Testimony; Exhibit 4; Exhibit 5). A second clinical review was performed by the Massachusetts Rehabilitation Commission (MRC) clinical team as part of the MFP waiver eligibility process. (Testimony; Exhibit 4; Exhibit 5).

MassHealth and MRC determined that the appellant continues to remain at high risk for alcohol use disorder (AUD), presents at high risk for medical decompensation, has a high risk for falls, and requires a higher level of services and/or support that cannot be provided within the MFP-CL waiver. Therefore, MassHealth and MRC determined that the appellant was not clinically eligible for participation the MFP-CL Waiver program as he could not be safely served in the community with the services provided through the MFP-CL Waiver program. (Testimony; Exhibit 4; Exhibit 5). The MassHealth representative noted at hearing that there are other programs and services that the appellant may be eligible for should he return to the community and this decision was only regarding eligibility for the waiver program.

The appellant responded that the criminal history noted by MassHealth was not correct. The appellant did not recall applying for the MFP-CL waiver program. The appellant stated that he has talked to individuals about returning to the community but he did not have a plan. The appellant did not recall filing an appeal. The appellant was not certain if he had assistance in filing an appeal. The appellant testified that he has gained weight during his stay at the facility. The appellant testified that his goal was to return to the community. The appellant

stated that programs like AA do not work for him but he did not have an alternative plan that would address some of the issues raised by MassHealth such as remaining a high risk for alcohol use disorder (AUD), medical decompensation and falls.

Findings of Fact

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

1. The appellant submitted an application for the Moving Forward Plan Community Living Waiver (MFP-CL Waiver).
2. In April 2022, MassHealth conducted an assessment for waiver eligibility in person at the facility where the appellant resides.
3. The appellant was at the assessment as well as a social worker from the facility and the nurse conducting the assessment.
4. Prior to his admission into the current facility, the appellant presented to the Salem Hospital Emergency Department (Salem ED) due to a fall.
5. Notes from the Salem ED indicate that the appellant was drinking alcohol frequently and provided a Clinical Institute Withdrawal Assessment (CIWA).
6. The appellant was diagnosed with failure to thrive, alcohol use, hypokalemia and hypomagnesemia likely related to alcohol abuse.
7. A determination was made that the appellant was unable to return to the community.
8. The appellant was admitted into the current facility for continued care and rehabilitation.
9. The appellant's medical history includes: fracture of an unspecified part of the neck of the left femur; chronic obstructive pulmonary disease (COPD) with acute exacerbation; a left hip arthroplasty; chronic pain in the left hip; dysphagia; alcohol dependence with withdrawal delirium; alcoholic hepatitis with ascites; alcoholic cirrhosis of the liver with ascites; alcohol dependence with alcohol-induced persisting dementia; adult failure to thrive; hypokalemia; hypoosmolality; hyponatremia; gastroesophageal reflux disease (GERD); unspecified dementia without behavioral disturbance; adjustment disorder with mixed anxiety; and depressed

mood.

10. Medical records from May 2022 indicate that the appellant was medically stable and denied feelings of persistent depression.
11. A July 2022 physician note indicates that the appellant had general muscle and joint pain, muscle weakness, and a loss of balance when ambulating.
12. A review of additional medical records presented a long history of alcohol abuse including a statement from the appellant that he has consumed alcohol since the age of ten.
13. Prior to his admission into the current facility, the appellant was drinking daily, often "a pint on the lower end and a quart most in a day".
14. At the time of the assessment, the appellant noted multiple arrests due to driving under the influence and public intoxication.
15. The appellant has a history of court-ordered inpatient detoxes due to his excessive drinking.
16. At the time of the assessment, the Peabody District Court did not have any open cases or outstanding warrants for the appellant.
17. The appellant was not receptive to involvement in programs like alcoholics anonymous (AA).
18. During his stay at the facility, the appellant declined to be followed by psychiatry for on-on-one psychotherapy.
19. The appellant did not have a formal treatment or recovery plan at the time of the assessment.
20. The appellant does not have any informal supports in the community.

Analysis and Conclusions of Law

The MassHealth regulations at 130 CMR 519.000 explain the categorical requirements and financial standards that must be met to qualify for a MassHealth coverage type. The 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.

The Moving Forward Plan Community Living Waiver (MFP-CL 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. (130 CMR 519.007(H)(1)(a)).

MassHealth also has income and asset eligibility requirements for the MFP-CL program but the only issue raised in this appeal was appellant's the clinical eligibility. (130 CMR 519.007(H)(1); 130 CMR 519.007(H)(2)). The testimony and evidence presented by both MassHealth and the appellant clearly demonstrate that the appellant requires a high level of services and/or support. The appellant failed to demonstrate how he could be safely served in the community with the services provided through the MFP-CL waiver program. The decision made by MassHealth regarding the clinical eligibility for the MFP-CL waiver was correct.

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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Prior Authorization