

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2206817
Decision Date:	11/28/2022	Hearing Date:	10/11/2022
Hearing Officer:	Casey Groff, Esq.	Record Open to:	10/13/2022

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Brad Goodier, R.N., BSN, Disability
Reviewer, UMass Medical School;
Linda Phillips, RN, BSN, LNC-Csp., UMass
Medical School

Interpreter: Spanish



*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 CL- Waiver
Decision Date:	11/28/2022	Hearing Date:	10/11/2022
MassHealth's Rep.:	Brad Goodier, RN, BSN, <i>et. al.</i>	Appellant's Rep.:	<i>Pro se</i>
Hearing Location:	Board of Hearings (Remote)	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 19, 2022, MassHealth denied Appellant's application to participate in MassHealth's Moving Forward Plan Community Living Home-and-Community Based Services (MFP-CL) Waiver because MassHealth determined that Appellant did not meet clinical eligibility criteria. See 130 CMR 519.007(H)(2) and Exhibit 1, p. 4. Appellant filed this appeal in a timely manner on September 1, 2022. See 130 CMR 610.015(B); Exhibit 1, p. 2. Denial of assistance is valid grounds for appeal. See 130 CMR 610.032. A hearing was scheduled to take place on October 11, 2022. See Exhs. 2-3. At the conclusion of the hearing, the record was left open until October 13, 2022 to allow Appellant the opportunity to submit additional information.

Action Taken by MassHealth

MassHealth denied Appellant's application to participate in MassHealth's MFP-CL Waiver.

Issue

The appeal issue is whether MassHealth was correct, in determining that Appellant was not clinically eligible to participate in MassHealth's MFP-CL Waiver.

Summary of Evidence

A registered nurse/disability appeals reviewer from UMass Medical School appeared at the hearing via telephone. Based on testimony and documentary submissions, MassHealth presented the following information: Appellant is a female MassHealth member under the age of 65 and a resident of Highview of Northampton nursing facility (“the facility”). On April 7, 2022, MassHealth received an application from Appellant seeking enrollment in MassHealth’s Moving Forward Plan-Community Living Waiver (MFP-CL waiver). See Exh. 4, p. 47. The MassHealth representative testified that the MFP-CL waiver is a MassHealth program that allows individuals to move from a nursing home or long-stay hospital into their own home or the home of someone else, and receive services in the community that are less than twenty-four hours per-day, seven days per-week.^{1,2} In order to be approved for the MFP-CL waiver, a MassHealth member must meet all regulatory criteria outlined in 130 CMR 519.007(H)(2), including the requirement that the applicant “must be able to be safely served in the community within the terms of the MFP-CL waiver.” Id. at 38.

Upon receipt of Appellant’s application, a MassHealth registered nurse began the eligibility review process, which includes an in-person assessment of the applicant, a review of pertinent medical records and nursing facility documents, interviews of clinical staff, and waiver-related evaluations that assess the applicant’s care needs and whether the member meets all clinical eligibility requirements. See id. at 10-34.

According to clinical records obtained during the review, Appellant has a relevant medical history including chronic left knee pain, hypertension, type 2 diabetes with peripheral angiopathy, hypoxic respiratory failure, gastroesophageal reflux disease, deep vein thrombosis, morbid obesity, chronic Hepatitis C, anxiety, pancreatitis, tobacco use, opiate use disorder on agonist therapy with buprenorphine, schizoaffective disorder with multiple inpatient psychiatric hospitalization, chronic left lower extremity cellulitis, venous ulcer, chronic dysuria, alcohol use disorder, bilateral lower extremity edema, dyslipidemia, skin graft secondary to burns, severe chronic obstructive pulmonary disease (COPD) with a history of exacerbations, seizure disorder MRSA infection, falls, and a personality disorder. See id. at 54; 258.

The MassHealth representative cited portions of Appellant’s medical record, which had been flagged by the nurse reviewer as being indicative that Appellant presented a significant safety risk to herself in others. Specifically, Appellant’s physician and clinical staff repeatedly documented episodes during which Appellant demanding increased or excessive doses of oxycodone. Although Appellant is prescribed oxycodone on as as-needed (PRN) basis, progress notes indicated that Appellant became frequently upset and accusatory when nursing staff did not automatically include a dose of her pain medication during standard medication administration times. See id. at 108; 273; 265. After one such episode, the attending nurse wrote that Appellant

¹ MassHealth also has a Residential Services waiver under the MFP program, known as the “MFP-RL waiver,” which is designed for people who need supervision and staffing 24 hours per day, seven days per week in a provider-operated residence.

² In August of 2021, Appellant applied for both the MFP-CL and RS Waivers and was subsequently denied for both. Id. at 285. In the present application, Appellant only sought enrollment in the MFP-CL waiver. Id. at 43.

“is not willing to listen to reason and threatens to report nursing staff to administration as a means to intimidate staff to giving her medication that does not seem appropriate.” Id. at 178. MassHealth also pointed to the frequency of falls sustained by Appellant. Appellant had several documented instances of falling out of her bed, multiple times per night, resulting in injury. and complaining that her pain medication regime was inadequate. See id. at 197; 239; 251. On another occasion, Appellant was described as over-sedated such that she presented as a fall risk. Id. at 178.

MassHealth testified that the reviewing nurse flagged the additional concern of Appellant’s inability to manage her diabetes. Both Appellant’s treating physician and the facility dietician noted that Appellant refused to adhere to diabetic food restrictions despite continuous elevated glucose readings. According to the clinical record, Appellant regularly consumed food that was not compatible with her diabetic diet and would then blame her elevated blood sugar levels on her prescribed medication (prednisone). See id. at 197. Appellant’s physician also noted that she did not appear to recognize the signs or symptoms of hypo/hyperglycemia, was unable to check her blood sugars, and could not self-inject her medication. Id. at 200, 68.

On June 14, 2022, the MassHealth nurse conducted an in-person assessment of Appellant. During the assessment, Appellant answered all mini-mental status questions correctly. It was noted that Appellant last scored a 13/15 on her last BIMS assessment from March 3, 2022. According to her report, the nurse had to repeatedly redirect Appellant back to many of the questions, as Appellant spent most of the assessment complaining about the facility and her efforts to obtain housing. At one point, Appellant accused a facility social worker of stealing her money and told the nurse that they are trying “to keep me here.” Id. at 67. The MassHealth nurse noted that Appellant has a plan of care that addresses her anxiety with spending, forgetfulness on how/where she stores cash, and accusing others of stealing and threatening to all the police. Id.

During the final stage of the eligibility process, Appellant’s case was reviewed on July 1, 2022 by the MassHealth waiver clinical team, and again on July 13, 2022 by the Massachusetts Rehabilitation Commission (MRC) clinical team. Both MassHealth and MRC concluded that Appellant was not clinically eligible for participation in the MFP-CL waiver program because she presented a significant health and safety risk to herself and others due to her frequent falls, psychiatric instability, high risk for relapse and requiring 24/7 skilled oversight and physical care. Accordingly, through a notice dated July 19, 2022, MassHealth informed Appellant that it denied her application because she could not be “safely served in the community within the MFP-CL waiver,” as required under 130 CMR 519.007(H)(2). See Exh. 1, p. 4; see also Exh. 4, p. 44.

Appellant appeared at the hearing by telephone and testified that many of the assertions presented by MassHealth were incorrect. Appellant stated that she no longer takes oxycodone. This medication was prescribed to her after she had a fall and injured her leg. During her hospitalization it was discovered she had a severe infection in her leg and received care through the hospital wound clinic. When the hospital had to discharge Appellant, they did not have

anywhere to send her. Appellant explained that following the death of her mother, she became homeless. With nowhere to live, the hospital discharged her to the nursing facility. Upon her admission, Appellant immediately applied for Section 8 low-income housing. Appellant explained that although she meets all criteria for low-income housing, she has been waiting for an apartment for two years. She does not have a criminal record, she has low-income, and does not do drugs or smoke cigarettes. No one will visit her at the nursing facility because of the location. Her daughter and grandchildren do not live nearby, and it is too expensive for them to visit. Appellant explained that back when she lived with her mother, she was stable. Since her mother's death, she has developed health issues including severe COPD and requires two oxygen tanks.

After Appellant provided this testimony, the hearing officer posed a question to MassHealth to explain the housing differences between the MFP-CL and MFP-RS programs. Before MassHealth responded, it was noted that Appellant disconnected from the call. The hearing officer attempted to call Appellant several times thereafter; however, on each occasion there was no answer. On the final attempt, the hearing officer, through a Spanish interpreter, left a voice message to inform Appellant that the hearing record would be left open for an additional two days should Appellant wish to submit any final comments in writing to be considered in BOH's decision. BOH did not receive any additional information from Appellant during the record open period.

Findings of Fact

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

1. Appellant is a female MassHealth member under the age of 65 and a resident of the nursing facility.
2. On April 7, 2022, MassHealth received an application from Appellant seeking enrollment in MFP-CL waiver.
3. Appellant has a relevant medical history including chronic left knee pain, hypertension, type 2 diabetes with peripheral angiopathy, hypoxic respiratory failure, gastroesophageal reflux disease, deep vein thrombosis, morbid obesity, chronic Hepatitis C, anxiety, pancreatitis, tobacco use, opiate use disorder on agonist therapy with buprenorphine, schizoaffective disorder with multiple inpatient psychiatric hospitalization, chronic left lower extremity cellulitis, venous ulcer, chronic dysuria, alcohol use disorder, bilateral lower extremity edema, dyslipidemia, skin graft secondary to burns, severe COPD with a history of exacerbations, seizure disorder MRSA infection, falls, and a personality disorder.
4. Appellant clinical record documented episodes during which Appellant demanded increased or excessive doses of oxycodone, and her tendency to become upset and

accusatory when nursing staff did not automatically include a dose of her PRN pain medication during standard medication administration times.

5. Appellant has sustained several falls from her bed, resulting in injury.
6. Appellant fails to comply with prescribed diabetic diet, has consistent elevated glucose readings, does not recognize the signs or symptoms of hypo/hyperglycemia, is unable to check her blood sugars, and cannot self-inject her insulin medication.
7. During an in-person assessment on June 14, 2022, a MassHealth reviewing nurse noted that Appellant answered all mini-mental status questions correctly; had scored a 13/15 on her last BIMS assessment; and described Appellant as frequently going off-topic to complain about the facility, efforts to obtain housing, and her belief that staff was stealing from her.
8. Upon review of Appellant's case, the MassHealth and MRC clinical waiver teams concurred that Appellant was not clinically eligible for participation in the MFP-CL waiver program because she presented a significant health and safety risk to herself and others due to her frequent falls, psychiatric instability, high risk for relapse and requiring 24/7 skilled oversight and physical care.
9. Through a notice dated July 19, 2022, MassHealth informed Appellant that it denied her application because she could not be "safely served in the community within the MFP-CL waiver," as required under 130 CMR 519.007(H)(2).

Analysis and Conclusions of Law

The sole issue on appeal is whether MassHealth erred in denying Appellant's application for enrollment in the MFP-CL waiver program based on its determination that she did not meet clinical eligibility criteria. 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. With respect to the MFP-CL Waiver program, MassHealth has set forth the following eligibility requirements:

(2) Money Follows the Person (MFP) Community Living 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 specified waiver services, other than residential support services in the home or community, if he or she meets all of the following criteria:

- (i) 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;

- (ii) 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;
- (iii) must have received MassHealth benefits for inpatient services, and be MassHealth eligible at least the day before discharge;
- (iv) needs one or more of the services under the MFP Community Living Waiver;
- (v) is able to be safely served in the community within the terms of the MFP Community Living Waiver;*** and
- (vi) 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) (Emphasis added)

In this case, MassHealth denied Appellant's application for the MFP-CL waiver because it determined Appellant did not meet the criteria under subsection (v) above; specifically, that she could not be safely served within the community within the terms of the waiver program. *Id.* In consideration of the evidence in the record, MassHealth did not err in denying Appellant's application on this basis. As part of the eligibility process, MassHealth conducted a thorough assessment of Appellant's medical history, reviewed nursing facility records, and conducted an in-person assessment of Appellant to assess her health care needs. The reviewing sources detailed Appellant's tendency to engage in accusatory behavior and outbursts towards staff in relation to demands for increased doses of pain medication; frequent falls; and inability to manage diabetes through adhering to a proper diet, checking blood sugars, or understanding signs of hypo/hyperglycemia. In reviewing this information, the clinical teams from MassHealth and the Massachusetts Rehabilitation Commission concurred that Appellant would be at risk for community failure and is in continued need for a highly structured environment with 24/7 supervision and psychiatric counseling. Appellant did not demonstrate by a preponderance of the evidence that MassHealth erred in denying her application to participate in the MFP-CL Waiver.

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.

Casey Groff, Esq.
Hearing Officer
Board of Hearings

cc:
MassHealth Representative: Prior Authorization