

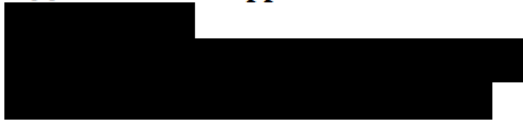
# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2207110
<b>Decision Date:</b>	11/14/2022	<b>Hearing Date:</b>	11/8/2022
<b>Hearing Officer:</b>	Thomas J. Goode		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Linda Phillips, Associate Director, Appeals &  
Regulatory Compliance



*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>	11/14/2022	<b>Hearing Date:</b>	11/8/2022
<b>MassHealth's Rep.:</b>	Linda Phillips, R.N.	<b>Appellant's Rep.:</b>	Pro se with Spouse, et al.
<b>Hearing Location:</b>	Quincy Harbor South	<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

Through a notice dated September 6, 2022, MassHealth denied Appellant's application for the Moving Forward Plan Community Living (MFP-CL) Waiver because it determined that Appellant is not able to be safely served in the community within the terms of the MFP-CL Waiver (130 CMR 519.007(H)(2)(a)(5) and Exhibit 1). Appellant filed this appeal in a timely manner on September 21, 2022 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth denied Appellant's application for the Moving Forward Plan Community Living Waiver.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.007(H)(2)(a)(5) in determining that Appellant is not able to be safely served in the community within the terms of the MFP-CL Waiver.

## Summary of Evidence

The MassHealth representative identified herself as a Registered Nurse and Associate Director of Appeals and Regulatory Compliance and testified that MassHealth offers two home and community-based service waivers: the MFP-RS Waiver, and the MFP-CL Waiver. Both waivers help individuals move from a nursing home or long-stay hospital to a MFP-qualified residence in the community to obtain community-based services. The MFP-CL Waiver is for individuals who can move into their own home or apartment, or to someone else's home, and receive services in the community that are less than 24 hours/day, 7 days per week. The MFP-RS Waiver is for individuals who require 24-hour support services in a group setting.

Eligibility criteria for the MFP Waivers include the following:

- The applicant must be living in a nursing facility or long-stay hospital, and lived there for at least 90 consecutive days;
- The applicant must be 18 years old or older, and have a disability, or be age 65 and older;
- The applicant must meet clinical requirements for, and be in need of the Waiver services that are available through the MFP Waivers;
- The applicant must be able to be safely served in the community within the terms of the MFP Waivers;
- The applicant must meet the financial requirements to qualify for MassHealth special financial rules existing for Waiver participants; and
- The applicant will transition to an MFP-qualified residence in the community.

(Exhibit 5, pp. 6-7)

The MassHealth representative testified that the issue for this appeal involves MassHealth's application of 130 CMR 519.007(H)(2)(a)(5), and whether MassHealth was correct in denying Appellant's application for the MFP-CL Waiver because Appellant cannot be safely served in the community within the services provided by the MFP-CL Waiver.

On August 2, 2022, an assessment of Waiver eligibility was conducted in person at CareOne at Redstone (CareOne) where Appellant is a resident. Appellant, and MassHealth nurse reviewers representing the ABI/MFP Waiver Program were in attendance. The nurse reviewers spoke to a Massachusetts Rehabilitation Commission (MRC) Case Manager via telephone on August 8, 2022, and spoke to Appellant's husband, and the Ombudsman of CareOne on August 22, 2022. The nurse reviewer attempted to speak to Appellant's son and health care proxy at phone numbers provided but neither one was in service.<sup>1</sup> The Waiver eligibility assessment consists of MFP documents including Minimum Data Set-Home Care (MDS-HC), Clinical Determination

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<sup>1</sup> MassHealth testified that it has no evidence that the health care proxy had been invoked, which was corroborated by Appellant and her representatives.

of Waiver Eligibility, Acquired Brain Injury (ABI)/MFP Waivers Community Risks Assessment, Risk Assessment-ABIt-N/MFP-CL Caregiver Supplement, a review of the applicant's medical record, and a discussion with the nursing facility staff (Exhibit 5, pp. 49-77).

Appellant is a [REDACTED] female who was admitted to CareOne in August 2019 after an acute asthma exacerbation and pneumonia, and discharged home with her husband. On December 7, 2021, Appellant was transported to the Emergency Room because she had fallen at home during a transfer. In addition, she was diagnosed with upper extremity significant arthritis and a urinary tract infection (UTI). She was transferred to CareOne on December 9, 2021 for continued care and rehabilitation. Appellant's additional medical history includes hypertension, coronary artery disease, congestive heart failure, asthma, morbid obesity, obstructive sleep apnea (OSA) with BiPAP use, insulin dependent Type 2 diabetes with diabetic chronic kidney disease stage 3, acute kidney failure, recurrent UTIs, hypothyroidism, 2002 left sided breast cancer with lumpectomy, chemotherapy; radiation; transient ischemic attack (TIA), osteoarthritis, rheumatoid arthritis, bilateral knee pain, muscle weakness, abnormalities of gait and mobility, falls, impaired hearing and depression (Exhibit 5 p. 69).

The following documentation underscores Appellant's medical and behavioral conditions:

- April 13, 2022: Social Services Note states that Appellant's Primary Care Physician (PCP) did not agree to take her on as a patient in the community which means that she would have to remain here (at the SNF). Appellant responded, "I don't mind staying here". Social worker will follow Appellant for adjustment issues (Exhibit 5, p. 210).
- April 16, 2022: CareOne Progress Notes indicates that Appellant had been yelling and screaming to the care givers, very hard to redirect. In addition, progress note indicates that Appellant refused care on this shift, she was very agitated and verbally inappropriate (Exhibit 5, p. 121).
- April 18, 2022: Social Services Note indicates a physical altercation between Appellant and her husband in which he struck her. Appellant's husband confirmed to the SW that he did strike his wife. Appellant's husband was informed that all visits going forward would be supervised by staff (Exhibit 5, p. 209).
- May 3, 2022: CareOne Progress Note indicates Appellant had continuous episodes of yelling out into the hallway throughout the shift. Nursing staff attempted the following interventions without effect, repositioning, redirection and 1:1 by the nurse. Appellant continued to yell out (Exhibit 5, p. 132).

- July 21, 2022: Licensed Nursing Summary indicates that Appellant is totally dependent for bathing, grooming, dressing, mobility, toileting and requires 2- person assist for repositioning and transfers with a mechanical lift (Exhibit 5, pp. 223-224).

The MassHealth representative testified that following the initial discharge from CareOne to her home, Appellant was unsuccessful living in the community in the care of her husband with formal supports. Further, Appellant's PCP will not be taking her back as a patient in the community and has deemed her unsafe to return home with her husband. Appellant is at significant risk for falls, skin breakdown, wounds, and infections (Exhibit 5, p. 72). The MassHealth representative noted that Appellant is dependent for all Activities of Daily Living and requires two people for repositioning in bed and mechanical assistance for transfers. She testified that the MFP-CL Waiver program is only able to provide up to a maximum of 84 hours of care in the community, and skilled nursing visits only once per week, with no guarantee that providers will show up when needed or scheduled.

On August 25, 2022, Appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting. On August 31, 2022, as part of the MFP Waiver eligibility process, a second clinical review was conducted by the Massachusetts Rehabilitation Commission (MRC) Clinical team which oversees the community living waiver. MassHealth and MRC determined that Appellant is not clinically eligible for participation in the MFP-CL Waiver because Appellant requires 24/7 continuous oversight due to her significant care needs which would require the same level of supports to maintain her safety in the community. Appellant presents at risk for significant health and safety risks due to dementia and cognitive decline. Therefore, it is MassHealth's clinical and professional opinion that based on the available medical records and interviews, Appellant cannot be safely supported within the MFP-CL Waiver. On September 6, 2022, MassHealth issued a denial notice for the MFP-CL Waiver (Exhibit 5, pp. 46-47).

Appellant appeared by telephone with her husband and two CareOne social workers. Appellant testified that she wants to go home but will stay at the facility if that isn't possible. Appellant's husband stated that he wants Appellant to return home and that he would provide necessary care. The social workers acknowledged that program limitations and the absence of a primary care physician to oversee Appellant's care in the community would make the discharge unsafe for Appellant who required 24/7 care.

## **Findings of Fact**

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

1. MassHealth offers two home and community-based service waivers: the MFP-RS Waiver, and the MFP-CL Waiver. Both waivers help individuals move from a nursing home or long-stay hospital to an MFP-qualified residence in the community to obtain community-

based services.

2. Eligibility criteria for the MFP Waivers include the following:

- The applicant must be living in a nursing facility or long-stay hospital, and lived there for at least 90 consecutive days;
- The applicant must be 18 years old or older, and have a disability, or be age 65 and older;
- The applicant must meet clinical requirements for, and be in need of the Waiver services that are available through the MFP Waivers;
- The applicant must be able to be safely served in the community within the terms of the MFP Waivers;
- The applicant must meet the financial requirements to qualify for MassHealth special financial rules existing for Waiver participants; and
- The applicant will transition to an MFP-qualified residence in the community.

3. The MFP-CL Waiver is for individuals who can move into their own home or apartment, or to someone else's home, and receive services in the community less than 24 hours/day, 7 days per week.
4. On August 2, 2022, an assessment of Waiver eligibility was conducted in person at CareOne at Redstone (CareOne). The assessment consists of MFP documents including Minimum Data Set-Home Care (MDS-HC), Clinical Determination of Waiver Eligibility, Acquired Brain Injury (ABI)/MFP Waivers Community Risks Assessment, ABI-N/MFP-CL Caregiver Supplemental Risk Assessment, review of the applicant's medical record, and a discussion with the nursing facility staff.
5. Appellant is a [REDACTED] female who was previously admitted to CareOne in August 2019 after an acute asthma exacerbation and pneumonia and was discharged home with her husband.
6. On December 7, 2021, Appellant was transported to the Emergency Room because she fell at home during a transfer. Appellant was also diagnosed with upper extremity significant arthritis and a urinary tract infection (UTI).
7. Appellant was transferred to CareOne on December 9, 2021 for continued care and rehabilitation.
8. Appellant's medical history includes hypertension, coronary artery disease, congestive heart failure, asthma, morbid obesity, obstructive sleep apnea (OSA) with BiPAP use, insulin dependent Type 2 diabetes with diabetic chronic kidney disease stage 3, acute

kidney failure, recurrent UTIs, hypothyroidism, 2002 left sided breast cancer with lumpectomy, chemotherapy; radiation; transient ischemic attack (TIA), osteoarthritis, rheumatoid arthritis, bilateral knee pain, muscle weakness, abnormalities of gait and mobility, falls, impaired hearing and depression.

9. Appellant's Primary Care Physician (PCP) did not agree to take her on as a patient in the community.
10. Appellant has had episodes of yelling and screaming at care givers, and has been very hard to redirect, very agitated and verbally inappropriate.
11. There are documented physical altercations between Appellant and her husband in which he struck her. All visits at the nursing facility are supervised by staff.
12. Appellant is totally dependent for bathing, grooming, dressing, mobility, toileting and requires 2- person assist for repositioning and transfers with a mechanical lift.
13. Appellant requires 24/7 skilled nursing care to provide for her medical and chronic care needs.
14. The MFP-CL Waiver is not able to provide 24/7 care.

## **Analysis and Conclusions of Law**

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

- (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*.

(emphasis added)



Appellant bears the burden of proof in demonstrating that the MassHealth action denying her MFP-CL Waiver application is incorrect.<sup>2</sup> Appellant is a [REDACTED] female who was admitted to CareOne in August 2019 after an acute asthma exacerbation and pneumonia, after which she was discharged home with her husband. Appellant was readmitted to CareOne on December 9, 2021 for continued care and rehabilitation after a fall at home. Appellant is totally dependent for bathing, grooming, dressing, mobility and toileting, and requires a 2-person assist for repositioning and transfers with a mechanical lift. Appellant has multiple medical conditions that require 24/7 medical care; and her former Primary Care Physician did not agree to take her on as a patient in the community. The clinical evidence conclusively shows that Appellant requires 24/7 skilled nursing care. Further, documented physical altercations between Appellant and her husband present serious concerns for Appellant's safety in the community. As the MFP-CL Waiver is not able to provide 24/7 care, in addition to safety factors evident in the record, MassHealth correctly determined that Appellant cannot be safely served in the community within the terms of the MFP Community Living Waiver as required at 130 CMR 519.007(H)(2)(a)(5).

Therefore, the 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.

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Thomas J. Goode  
Hearing Officer  
Board of Hearings

cc:  
MassHealth Representative: Prior Authorization

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<sup>2</sup> See Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333 , 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386 , 390 (1998).