

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2208644
Decision Date:	2/24/2023	Hearing Date:	01/04/2023
Hearing Officer:	Scott Bernard	Record Open to:	01/12/2023

Appearance for Appellant:




Appearance for MassHealth:

Brad Goodier, BSN, RN *via* telephone
Linda Phillips, RN, BSN, LNC-CSp.
(Observing)



*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:	MFP-CL
Decision Date:	2/24/2023	Hearing Date:	01/04/2023
MassHealth's Rep.:	Brad Goodier, BSN, 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 November 1, 2022, MassHealth determined that the appellant was not 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.) 1). The appellant filed this appeal in a timely manner on November 21, 2022. (See 130 CMR 610.015(B) and Ex. 2). Denial of assistance is valid grounds for appeal. (See 130 CMR 610.032).

At the conclusion of the hearing, the appellant's representative, a social worker for the SNF, requested time to submit updated clinical documentation concerning the appellant's condition. (Ex. 7). The appellant's representative was given until January 5, 2023 to do so and the MassHealth representative was given until January 12, 2023 to respond. (Id.). The appellant's representative submitted the documentation directly to the MassHealth representative, who responded to the information in a timely fashion, at which time the record closed. (Ex. 8; Ex. 9).

Action Taken by MassHealth

MassHealth determined that the appellant was not 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 not eligible for the MFP-CL Waiver.

Summary of Evidence

The MassHealth representative, a registered nurse, testified to the following. MassHealth has two home and community-based service (HCBS) Waivers that assist Medicaid-eligible persons, move into the community, and obtain community-based services, the MFP-Residential services (RS) Waiver, and the MFP Community Living (CL) Waiver. Both waivers help individuals move from a nursing home or long-stay hospital to an MFP-qualified residence in the community and obtain community-based services. 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*. The MFP-RS Waiver is for individuals who need supervision and staffing 24 hours *per day*, seven days *per week*. The appellant applied for the MFP-CL Waiver on July 27, 2022. (Ex 6, p. 44).

Below are the eligibility criteria for the MFP Waivers (Ex. 6, pp. 5-6):

- 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 Waivers' participants;
- The applicant will transition to an MFP-qualified residence in the community; and
- In addition to the above, to qualify for the MFP-RS Waiver, an applicant must need residential support services with staff supervision 24 hours *per day*, seven days *per week*.

The appellant is a male who is under the age of 65 and is currently residing in a skilled nursing facility (SNF). The appellant was living and working independently in the community when in [REDACTED] 2022 he was hospitalized for bacteremia and cellulitis. He transferred to an SNF for rehab. On [REDACTED] 2022 the SNF discharged the appellant home. The appellant had difficulty getting into his apartment, and in the process fell to the floor, where he stayed for some time until a visiting nurse arrived and sent him to the emergency room. Testing revealed the appellant was in decompensated liver failure. He was treated and when stabilized he was transferred to his current SNF in early spring 2022 for continued care and rehab.

The appellant's medical history includes hypertension, recurrent lower extremity deep vein

thrombosis (DVT), pulmonary embolism, chronic venous insufficiency, aortic insufficiency, aortic valve endocarditis with vegetation, chronic right lower extremity ulcer, history of acute renal failure, end stage renal failure requiring hemodialysis three times per week, hyperlipidemia, diabetes, anemia, acute embolic strokes (2022) due to septic brain emboli, bacteremia, pneumonia, spontaneous bacterial peritonitis, toxic metabolic encephalopathy, erosive gastritis/esophagitis/duodenitis, alcoholic cirrhosis with ascites, hoarding, anxiety, obsessive compulsive disorder, and depression.

The Clinical Eligibility meeting with the appellant was held in his room at the SNF on [REDACTED] 2022. Present for the meeting was the appellant, Toni Evans, LPN (present for introduction only), social worker and MassHealth waiver nurse Mary Jo Kaye, RN. (Ex. 6, p. 74).

During the Waiver eligibility assessment review, MassHealth noted the following documentation indicating the appellant's severe medical conditions:

- [REDACTED] 2022: SNF progress note by the Director of Nursing, indicates that the appellant was sent to the hospital due to critical lab results from his bloodwork. (Ex. 6, p. 96).
- [REDACTED] 2022: Hospital discharge summary by the hospital's doctor indicates that the appellant was admitted with anemia and given three blood transfusions, caused by a destroyed aortic valve. In the discharge, the doctor states, "[t]his is not going to stop until his valve is replaced" (Ex. 6, pp. 86-87).
- [REDACTED] 2022: SNF progress note by a facility nurse indicates that the appellant's hemoglobin (Hgb) was 4.8 (normal Hgb 13.8 – 17.2) upon return from dialysis. 911 was called; however, the appellant refused care from emergency responders who left without resident. Nursing educated the appellant on the urgency of his condition, and the appellant changed his mind. 911 was called again. (Ex. 6, p. 97).
- [REDACTED] 2022: SNF progress note by the facility's nurse indicates that the appellant's blood pressure is 76/24 (normal BP is 120/80). BP was rechecked by nursing supervisor and was 80/25. The appellant was given midodrine (medication to treat hypotension), and one hour later his blood pressure was 66/24. The appellant was then admitted to the hospital. (Ex. 6, p. 99).
- [REDACTED] 2022: SNF physician progress note by a facility physician's assistant indicates that a repeat echocardiogram shows severe aortic regurgitation with aortic vegetation, and the appellant is not a candidate for cardiac surgery at this time. (Ex. 6, p. 153).

Since admission to the SNF, the appellant was re-hospitalized eight times between [REDACTED] 2022 and [REDACTED] 2022 for symptoms related to severe anemia, aortic valve dysfunction and gastrointestinal bleeding. The appellant is at very high risk for hospital readmissions until his aortic valve can be repaired or replaced. *Per* medical documentation, the appellant is not currently a surgical candidate.

On October 20, 2022, the appellant's case was discussed at the MassHealth Waiver Clinical Team

review meeting. In addition, on October 26, 2022, as part of the MFP Waiver eligibility process, a second clinical review was conducted by the Massachusetts Rehab Commission (MRC) Clinical Team, which oversees the Community Living waiver. MassHealth and MRC determined that the appellant is not considered to be clinically eligible for participation in the MFP-CL Waiver due to his significant health and safety risk related to his medical complexity and instability, as well as high risk for relapse of alcohol with significant alcohol related co-morbidities; therefore, he cannot be safely served within the terms of the MFP-CL Waiver.

The appellant testified that he has gotten better and is now able to “do stuff on my own.” The appellant stated that his blood levels are good, and he has not had blood transfusions in over two months. The appellant stated that he was progressing, not regressing. The appellant stated he was able to take care of himself and was feeling good every day. The appellant stated he believed he could live in the community. The appellant's representative, an individual working for the SNF, stated that the appellant has not had to go to the hospital recently. The appellant's representative stated that though she has not looked at the appellant's medical records at the SNF, the appellant's blood levels are reported as improving because of dialysis. Unfortunately, the appellant did test positive for COVID-19 recently. The appellant, however, is doing better overall and is up and independent. The appellant's representative requested time to submit updated medical records after the hearing. The record was therefore left open until January 12, 2023 for the appellant's representative to submit the records and for the MassHealth representative to respond. (Ex. 7).

The appellant's representative did send the medical records to the MassHealth representative, who forwarded a copy to this hearing officer. (Ex. 8). The MassHealth representative stated the following in his response:

The following attached documents were received by MassHealth...:

- Pages 1-3 – Bear Mountain - SNF – Physician Progress Note, dated January 4, 2023.
- Pages 4-8 – Quarterly nutrition assessment, dated January 9th, 2023.
- Pages 9-17 – Bear Mountain medication review report, dated July 1, 2022
January 10, 2023

MassHealth reported during the appeal that [the appellant] is not able to be safely served within the MFP-CL waiver due to medical complexity. He is at risk for medical decompensation due to multiple medical conditions; at risk for resuming alcohol use due to his SUD history; and at risk for social isolation and self-neglect due to lack of informal supports in the community.

Based on review of additional documentation received in this record open period, [the appellant] remains medically complex, and unable to be safely served under the MFP-CL waiver.

- January 4, 2023: Physician progress note by Laura Morris NP indicates that [the appellant] will continue to have his labs monitored, and to give a blood transfusion if hemoglobin is less than 7...

- January 4, 2023: Physician progress note by Laura Morris NP indicates that [the appellant] is not a cardiac surgical candidate for his diagnosis of aortic valve endocarditis...
- January 9, 2023: Nutrition assessment note by Dr. Elder indicates that [the appellant] is on a 1500ml fluid restriction, for which he is non-compliant. Dr. Elder states that “Fluid shift likely to occur”....
 - Fluid shifts occur at the vascular level and can result in a water electrolyte imbalance.

At this time, [the appellant] presents at risk due to complex medical comorbidities; at risk for alcohol relapse; and he has no substantial informal community supports to assist him in the community. Therefore, it is MassHealth’s continued professional opinion that, at this time, [the appellant] cannot be safely served in the community within the MFP-CL Waiver. (Ex. 9).

Findings of Fact

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

1. The appellant is a person under the age of 65. (Testimony of the MassHealth representative; Ex. 6).
2. In [REDACTED] 2022 the appellant was hospitalized for bacteremia and cellulitis after which he transferred to an SNF for rehab. (Testimony of the MassHealth representative; Ex. 6).
3. On [REDACTED] 2022 that SNF discharged the appellant home. (Testimony of the MassHealth representative; Ex. 6).
4. Upon returning home, the appellant had difficulty getting into his apartment, and in the process fell to the floor, where he stayed for some time until a visiting nurse arrived. (Testimony of the MassHealth representative; Ex. 6).
5. The visiting nursing sent the appellant to the emergency room, where testing revealed the appellant was in decompensated liver failure. (Testimony of the MassHealth representative; Ex. 6).
6. The appellant was treated and when stabilized he was transferred to his current SNF in early [REDACTED] 2022 for continued care and rehab. (Testimony of the MassHealth representative; Ex. 6).
7. The appellant’s medical history includes hypertension, recurrent lower extremity DVT, pulmonary embolism, chronic venous insufficiency, aortic insufficiency, aortic valve endocarditis with vegetation, chronic right lower extremity ulcer, history of acute renal failure, end stage renal failure requiring hemodialysis three times per week, hyperlipidemia,

diabetes, anemia, acute embolic strokes (2022) due to septic brain emboli, bacteremia, pneumonia, spontaneous bacterial peritonitis, toxic metabolic encephalopathy, erosive gastritis/esophagitis/duodenitis, alcoholic cirrhosis with ascites, hoarding, anxiety, obsessive compulsive disorder, and depression. (Ex. 6; Testimony of the MassHealth representative).

8. On [REDACTED] 2022: the appellant was sent to the hospital due to critical lab results from his bloodwork. (Ex. 6, p. 96).
9. The appellant was admitted with anemia and given three blood transfusions, caused by a destroyed aortic valve. (Ex. 6, pp. 86-87).
10. The appellant was discharged on [REDACTED] 2022. (Ex. 6, pp. 86-87).
11. In the discharge summary, the appellant's doctor concluded that the appellant's condition would not stop until his heart valve was replaced. (Ex. 6, pp. 86-87).
12. On [REDACTED] 2022, the appellant's hemoglobin (Hgb) was 4.8 (normal HgB 13.8 – 17.2) upon return from dialysis. (Ex 6, p. 97).
13. The SNF called 911 but the appellant refused care from emergency responders who left without resident. (Ex. 6, p. 97).
14. Upon education on the urgency of his condition, the appellant changed his mind and 911 was called again. (Ex. 6, p. 97).
15. On [REDACTED] 2022 the appellant's blood pressure was 76/24 (normal BP is 120/80). (Ex. 6, p. 99).
16. The appellant BP was rechecked by a nursing supervisor and was 80/25. (Ex. 6, p. 99).
17. The appellant was given midodrine (medication to treat hypotension), and one hour later his blood pressure was 66/24. (Ex. 6, p. 99).
18. The appellant was then admitted to the hospital. (Ex. 6, p. 99).
19. On [REDACTED] 2022, a repeat echocardiogram showed severe aortic regurgitation with aortic vegetation, but the appellant was not a candidate for cardiac surgery at that time. (Ex. 6, p. 153).
20. The Clinical Eligibility meeting with the appellant was held in his room at the SNF on [REDACTED] 2022 and reviewed the above information. (Testimony of the MassHealth representative)
21. On October 20, 2022, the appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting. (Testimony of the MassHealth representative)
22. On October 26, 2022, as part of the MFP Waiver eligibility process, a second clinical review

was conducted by the MRC Clinical Team, who oversees the Community Living waiver. (Testimony of the MassHealth representative)

23. MassHealth and MRC determined that the appellant is not considered to be clinically eligible for participation in the MFP-CL Waiver due to his significant health and safety risk related to his medical complexity and instability, as well as high risk for relapse of alcohol with significant alcohol related co-morbidities; therefore, he cannot be safely served within the terms of the MFP-CL Waiver. (Testimony of the MassHealth representative; Ex. 1).
24. The record was left open in order for the appellant and his representative to submit updated medical documentation and for MassHealth to respond. (Ex. 7).
25. The appellant and his representative submitted the updated medical documentation to MassHealth. (Ex. 8).
26. After reviewing the medical documentation, MassHealth concluded that it was its continued professional opinion that, at this time, the appellant could not be safely served in the community within the MFP-CL Waiver. (Ex. 9).

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*.

Based on the above stated criteria, the record does not demonstrate that the appellant is currently eligible for the MFP-CL Waiver. The record shows that the appellant was first hospitalized in February 2022 after which he was sent to an SNF. The appellant was discharged from the SNF in [REDACTED] 2022, but then immediately re-hospitalized after falling upon return to his apartment. The appellant was discharged from the hospital to the present SNF. After being admitted to the SNF, the appellant was hospitalized for significant portions of [REDACTED] 2022. Although the updated medical records submitted after the hearing do show that the appellant has not been hospitalized since [REDACTED] 2022, they also do not show that the appellant's condition has substantially improved since that time. 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-CL Waiver. For that reason, he is not currently eligible for that waiver.

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, UMass Medical School - Commonwealth Medicine, Disability and Community-Based Services, 333 South Street, Shrewsbury, MA

[REDACTED]