

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2300314
Decision Date:	4/11/2023	Hearing Date:	02/17/2023
Hearing Officer:	Kimberly Scanlon		

Appearance for Appellant:

Via telephone



Appearance for MassHealth:

Via telephone

Linda Phillips, RN, BSN, LNC-CSp.,
Associate Director of Appeals and Regulatory
Compliance;
Brad Goodier, BSN, RN, Disability Reviewer
II;
Sue Tomasz/Taylor, RN, Nurse Reviewer II



*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:	Eligibility for Moving Forward Plan Waiver
Decision Date:	4/11/2023	Hearing Date:	02/17/2023
MassHealth's Rep.:	Linda Phillips, RN; Brad Goodier, RN; Sue Tomasz/Taylor, RN	Appellant's Rep.:	<i>Pro se</i>
Hearing Location:	Quincy Harbor South 5 (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 December 20, 2022, MassHealth notified the Appellant that he is not clinically eligible in MassHealth's Moving Forward Community Living Home and Community-Based Services Waiver (MFP-CL Waiver). (Exhibit 1). The appellant filed this appeal in a timely manner on January 11, 2023. (Exhibit 2). Denial of eligibility for a waiver program is a valid basis for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the Appellant is not eligible for participation in the MFP-CL Waiver.

Issue

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

Summary of Evidence

The MassHealth nurses appeared at the hearing via telephone and testified as follows: MassHealth has two (2) home and community-based service (HCBS) waivers that assist Medicaid-eligible persons move into the community and obtain community-based services. They are 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, apartment or the home of someone else and receive services in the community that are less than 24 hours per day, 7 days per week. The MFP-RS Waiver is for individuals who need supervision and staffing 24 hours per day, 7 days per week. The Appellant applied for the MFP-CL waiver on August 22, 2022. (See, Exhibit 5, p. 43).

The following are the criteria for the MFP Waivers:

- 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 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, 7 days per week.

(See, Exhibit 5, pp. 5-6).

In this case, MassHealth evaluated whether the Appellant meets the eligibility criteria for the MFP-CL waiver and determined that he is not eligible because he cannot be safely served in the community within the terms of this waiver. (See, Exhibit 1).

MassHealth offered the following testimony in support of its position: The Appellant is a male who is over the age of 18 who experienced a substance use induced psychosis that resulted in falling asleep outside during a snowstorm. As a result, the Appellant sustained severe bilateral lower extremity frostbite. According to documentation noted, the Appellant did not obtain treatment until approximately five (5) days after the event occurred. The Appellant was subsequently hospitalized for extensive debridement, followed by a bilateral trans metatarsal amputation (otherwise known as surgical removal of parts of his foot) in February of 2022. The Appellant left the hospital against medical advice, returning the following day and receiving further revisions of both amputations in the subsequent weeks. Approximately two (2) weeks later, the Appellant required additional debridement and a wound vac replacement was required to his left foot and right heel. That same

day, the Appellant left the hospital against medical advice after pulling off his wound vacs.

Approximately three (3) days later, the Appellant presented to the Emergency Department of another hospital and was transferred to Massachusetts General Hospital. There, he received a left below the knee amputation and remained at the hospital to complete his treatment.

In [REDACTED], the Appellant was transferred to a nursing and rehabilitation center for services. However, further surgery was required and in October of 2022, the Appellant received a below the knee amputation of his right leg. The Appellant was then transferred back to the nursing and rehabilitation center for continued rehabilitation.

The MassHealth representatives further testified that the Appellant's medical history includes acute osteomyelitis, right ankle and foot frostbite with tissue necrosis of the right foot, amputation of the Appellant's toe on his right foot, followed by amputation of his right leg below the knee, frostbite with necrosis of his left foot, followed by amputation of the Appellant's toes on his left foot then amputation of his left leg below the knee, opioid dependence, sedative, hypnotic or anxiolytic dependence (in remission), anxiety disorder, attention-deficit hyperactivity disorder and depression. Substances that the Appellant is known to use include: cocaine, fentanyl and prescribed opiates.

On November 16, 2022, MassHealth conducted an eligibility interview of the Appellant, at the nursing and rehabilitation center. The Appellant, and a MassHealth nurse reviewer were both in attendance.¹ (See, Exhibit 5, p. 71). The waiver assessment consists of documents including: Minimum Data Set-Home Care (MDS-HC) (See, Exhibit 5, pp. 48-60); MFP Clinical Determination Assessment (See, Exhibit 5, pp. 61-69); MFP Waivers Community Risks Assessment (See, Exhibit 5, p. 70); a review of the Appellant's medical record and discussion with the nursing care facility team.

In its eligibility assessment review, MassHealth noted the following documentation indicating the Appellant's medical and psychiatric conditions:

- March 19, 2022: Hospital progress notes indicate that since leaving the hospital three (3) days prior, the Appellant was using cocaine and fentanyl. (See, Exhibit 5, p. 81).
- September 19, 2022: Certified Nurse Practitioner Progress notes indicate that the Appellant's mood is worsening and the Appellant has been self-isolating. Said notes further state that the Appellant is "still very depressed and anxious." (See, Exhibit 5, p. 113).
- September 30, 2022: The nursing home and rehabilitation center progress notes indicate that the Appellant is upset and threatening to leave against medical advice. Said notes further indicate that "the Appellant is emotionally overwhelmed with his judgment and insight affected." The Appellant presents as hopeless and helpless and is at a high risk for relapse if he leaves against medical advice, punctuated by the knowledge that the Appellant will not be allowed to discharge with suboxone. (See, Exhibit 5, p. 129).

¹ Also in attendance was a receptionist who was present for introductions only. (See, Exhibit 5, p. 71).

- October 5, 2022: The nursing and rehabilitation center, social service progress notes indicate that the Appellant was discussed in rounds related to elopement risk. In these notes, it is stated that “the Appellant is at high risk for relapse and will need to be supported not only physically but emotionally as well. Will continue to work with the Appellant with the goal of entering long-term residential substance use treatment program once medically ready.” (See, Exhibit 5, p. 127).
- November 8, 2022: the nursing and rehabilitation center, social service progress notes by a substance abuse counselor state that “the Appellant has been accepted to a long-term residential substance use treatment program. The Appellant reports his desire to discharge to said home once amputation site has healed and he is fitted with a prosthetic.” (See, Exhibit 5, p. 122).

On December 8, 2022, the MassHealth Waiver Clinical Team discussed the Appellant’s case at a review meeting. Additionally, and as part of the MFP waiver eligibility process, a second clinical review was conducted by the Massachusetts Rehab Commission (MRC) Clinical Team (who oversees the Community Living Waiver) on December 14, 2022. MassHealth and MRC determined that the Appellant is not considered to be clinically eligible for participation in the MFP-CL Waiver because of significant health and safety risks, in addition to lacking insight into his overall care with a high risk of relapse and psychiatric decompensation. As a result, it was determined that the Appellant cannot be safely served within the terms of the waiver. It was further noted by the MassHealth Waiver Clinical Team that the Appellant requires an acute substance use treatment program as he has not shown the ability to remain substance free in the community. Moreover, the Appellant’s anxiety, depression, medical complexities and history of substance abuse puts him at a high risk of relapse. Thus, at the present time, the Appellant is not able to be safely supported within the MFP-CL Waiver. On December 20, 2022, a denial notice for said waiver was mailed to the Appellant. (See, Exhibit 1; Exhibit 5, pp. 44-45).

The Appellant appeared at the hearing by telephone and testified as follows:² He understands that his substance abuse is in question and is trying to do the best that he can. The Appellant explained that substance use runs in his family and he has struggled with this in general. The Appellant testified that he is attending online meetings and meets with a psychiatrist at the nursing and rehabilitation center and noted that while he is appreciative of this, he realizes that it is not enough for him.

In response, the MassHealth representatives testified that on January 5, 2023, the Associate Director of the Waiver program placed a telephone call to the social worker at the facility and discussed an overall summary of the reasoning for this particular denial of services requested. This conversation included the Appellant’s extensive history of substance use and limited insight of his medical needs and recovery. The MassHealth representative explained that, at the time of the Appellant’s

² Prior to testifying, the Appellant explained that he was not currently in an area where he could speak freely and privately and politely requested five (5) minutes in order to find an area where he could do so. The request was granted.

assessment, he was not attending recovery support. As a result, the documentation submitted at played a large role into the denial of requested services, however, if things have improved, the Appellant is reminded of the option to reapply for this waiver. Indeed, it has been documented that, as of November 8, 2022, the Appellant was accepted into a long-term residential use treatment program.

The Appellant affirmed that he was accepted into this program and expressed his appreciation for the reminder to reapply.

Findings of Fact

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

1. The Appellant is over the age of 18.
2. The Appellant's medical history includes acute osteomyelitis, right ankle and foot frostbite with tissue necrosis of the right foot, amputation of a toe on his right foot followed by amputation of his right leg below the knee, frostbite with necrosis of his left foot followed by amputation of toes on his left foot then amputation of his left leg below the knee, opioid dependence, sedative, hypnotic or anxiolytic dependence (in remission), anxiety disorder, attention-deficit hyperactivity disorder, depression and substances the Appellant is known to use includes cocaine, fentanyl and prescribed opiates.
3. In February of 2022, the Appellant experienced a substance use induced psychosis that resulted in falling asleep outside during a snowstorm. The following took place:
 - a. The Appellant sustained severe bilateral lower extremity frostbite;
 - b. The Appellant did not obtain treatment until approximately five (5) days thereafter;
 - c. The hospitalization of the Appellant included extensive debridement followed by bilateral trans metatarsal amputation;
 - d. The Appellant left the hospital against medical advice, returning the following day;
 - e. That following day, the Appellant required further revisions of both amputations;
 - f. Approximately two (2) weeks later, the Appellant required additional debridement and a wound vac replacement;
 - g. The Appellant left the hospital again, against medical advice after pulling off his wound vacs;
 - h. Approximately three (3) days later, the Appellant went to another hospital and was then transferred to Massachusetts General Hospital;
 - i. There, the Appellant received a left below the knee amputation and remained at the hospital to complete his treatment.
4. The Appellant was transferred to a nursing and rehabilitation center in [REDACTED].
5. On August 22, 2022, the Appellant applied for the MFP-CL waiver.

6. In October of 2022, further surgery was required for the Appellant which resulted in a below the knee amputation of his right leg.
7. The Appellant was then transferred back to the nursing and rehabilitation center for continued rehabilitation.
8. On November 16, 2022, MassHealth conducted an eligibility interview at the nursing and rehabilitation center; the assessment consisted of completion of MFP documents, including: MDS-HC, Clinical Determination Assessment and MFP Waivers Community Risks Assessment. The assessment further included a review of the Appellant's medical record and meeting with the nursing care facility team.
9. MassHealth noted the following events and episodes as examples of the Appellant's medical complexities, lack of insight to his overall care and high risk of relapse:
 - a. March 19, 2022: Hospital progress notes indicate that since leaving the hospital three (3) days prior, the Appellant was using cocaine and fentanyl.
 - b. September 19, 2022: Certified Nurse Practitioner Progress notes indicate that the Appellant's mood is worsening and the Appellant has been self-isolating. These notes further state that the Appellant is "still very depressed and anxious."
 - c. September 30, 2022: The nursing home and rehabilitation center progress notes indicate that the Appellant is upset and threatening to leave against medical advice. Said notes further indicate that the "Appellant is emotionally overwhelmed with his judgment and insight affected." The Appellant presents as hopeless and helpless and is at a high risk for relapse if he leaves against medical advice, punctuated by the knowledge that the Appellant will not be allowed to discharge with suboxone.
 - d. October 5, 2022: The nursing and rehabilitation center, social service progress notes indicate that the Appellant was discussed in rounds related to elopement risk. In these notes, it is stated that the "Appellant is at a high risk for relapse and will need to be supported not only physically but emotionally as well. Will continue to work with the Appellant with the goal of entering long-term residential substance use treatment program once medically ready."
 - e. November 8, 2022: The nursing and rehabilitation center, social service progress notes by a substance abuse counselor state that "the Appellant has been accepted into a long-term residential substance use treatment program. The Appellant reports his desire to discharge to said home once amputation site has healed and he is fitted with a prosthetic."
10. The Appellant has significant health and safety risks, including lack of insight into his overall

care, anxiety, depression and history of substance use.

11. The Appellant has medical complexities.
12. MassHealth determined that the Appellant cannot be safely supported by the services available within the MFP-CL Waiver.
13. On December 20, 2022, MassHealth notified the Appellant of its denial of his application for participation in the MFP-CL Waiver.
14. The Appellant struggles with substance use which runs in his family.

Analysis and Conclusions of Law

The MFP home and community-based service waivers are described at 130 CMR 519.007(H). In the present case, the Appellant seeks eligibility for the MFP-CL Waiver. The requirements for the MFP-CL waiver are set forth below:

(2) Money Follows the Person (MFP) Community Living Waiver.³

(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 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.

³ It is noted that although “MFP” now stands for “Moving Forward Plan,” the applicable regulation still references Money Follows the person. (See, 130 CMR 519.007(H)).

(b) Eligibility Requirements. In determining eligibility for MassHealth Standard and for these waiver services, the MassHealth agency determined 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*.

130 CMR 519.007(H)(2).

In the present case, MassHealth evaluated the Appellant's eligibility for services under the MFP-CL waiver and determined that he is not able to be safely served in the community within the terms of this waiver. (130 CMR 519.007(H)(2)(a)(5)). At the time of the evaluation, the Appellant had not demonstrated otherwise. First, it is undisputed that the Appellant has a history of substance abuse that unfortunately resulted in extensive injuries. Moreover, the Appellant did not immediately receive treatment for said injuries which resulted in further hospitalization. These injuries were exacerbated by the fact the Appellant left the hospital against medical advice on more than one occasion. (See, Exhibit 5, p. 81).

The evidence reflects that the Appellant's anxiety, depression, medical complexities and history of substance abuse puts him at a high risk for relapse. The Appellant testified that he struggles with substance use and is currently attending recovery support which he appreciates, however, he feels that it is not enough and needs additional support.

All of these factors, taken together, support MassHealth's determination that, at the time of evaluation, the Appellant cannot be safely served in the community within the terms of the waiver.

This appeal is denied.⁴

⁴ This denial does not preclude the Appellant from re-applying for the MFP-CL waiver, as discussed at the hearing.

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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Linda Phillips, UMass Medical School - Commonwealth Medicine, Disability and Community-Based Services, 333 South Street, Shrewsbury, MA 01545-7807

Given the Appellant's recent attempts to attend recovery support, including acceptance into a long-term residential use treatment program, he is encouraged to do so.