

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2300857
Decision Date:	6/5/2023	Hearing Date:	April 04, 2023
Hearing Officer:	Brook Padgett	Record Open:	May 05, 2023

Appellant Representatives:



MassHealth Representatives:

Brad Goodier, BS, RN, Disability Reviewer II
Linda Phillips, RN, BSN, LNC-CSp., Assoc.
Director Appeals and Regulatory Compliance
Katherine Blodgett, RN, BS, Clinical
Coordinator



*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:	Approved	Issue:	130 CMR 519.007
Decision Date:	6/5/2023	Hearing Date:	April 04, 2023 ¹
MassHealth Rep.:	B. Goodier, BS, RN L. Phillips, RN, BSN, LNC-CSp.	Appellant Rep.:	
Hearing Location:	Telephonic		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

The Appellant received a notice dated December 13, 2023, stating: "This is a Notice of Disenrollment from the MassHealth Moving Forward Plan Community Living Home-and-Community-Based Services Waiver (MFP-CL waiver). You are receiving this Notice of Disenrollment because it has been determined that you no longer meet the requirements for participation in the MFP-CL Waiver... because you cannot be safely served in the community within the terms of the MFP-CL Waiver, as provided at 130 CMR 519.007(H)(2)(a)(5)." (Exhibit 1).² The Appellant filed this appeal timely on January 27, 2023. (130 CMR 610.015(B); Exhibit 2). Eligibility is valid grounds for appeal (130 CMR 610.032).

¹ This appeal was originally scheduled for March 07, 2023 but was rescheduled at appellant's request. (Exhibit 3).

² On February 02, 2023, the Appellant submitted a second application for an MFP-Waiver which was denied on February 27, 2023 as the Appellant did not meet the 90-day continuous stay in a nursing facility eligibility requirement for the MFP-CL waiver. (See Exhibit 5). The Appellant's representative acknowledged the Appellant did not meet the 90-day continuous stay in a nursing facility requirement for the MFP-CL waiver dated February 02, 2023 and this issue will not be addressed in this decision.

Action Taken by MassHealth

MassHealth disenrolled the Appellant from the MFP-CL waiver.

Issue

Does the Appellant meet the eligibility requirements to receive an MFP-CL waiver?

Summary of Evidence

MassHealth stated the MFP-CL waiver helps 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/day, 7 days per week.

MassHealth testified the Appellant is a [REDACTED] woman currently residing at [REDACTED] Hospital. Past pertinent medical history includes: paraplegia, chronic pain syndrome, nontoxic single thyroid nodule, polyneuropathy, chronic pancreatitis, sciatica, muscle spasms, overactive bladder, insomnia, opioid abuse, history of IV drug abuse, other psychoactive substance abuse, bipolar disorder, major depressive disorder (MDD), anxiety disorder, post-traumatic stress disorder (PTSD), borderline personality disorder (BPD), attention-deficit hyperactivity disorder (ADHD), and a chronic suprapubic catheter.

MassHealth stated the Appellant applied and was approved for the MFP-CL waiver on [REDACTED] 2022, while she was residing at [REDACTED] (SRHC). The Appellant intended to transition to the home of GR for informal support, after installation of accessibility modifications. However, on [REDACTED] 2022, the Appellant left the skilled nursing facility without permission and was found offsite with a self-inflicted neck laceration.

On [REDACTED], 2022, a redetermination visit was held at [REDACTED] (UMMMC) Hospital. In attendance was the Appellant and the UMass Waiver Nurse and phone calls were made to the Appellant's social worker, mother and informal support (GR). During the redetermination, MassHealth noted the following:

- [REDACTED] 2022: UMMC emergency room assessment states the Appellant presented as a level 1 trauma after "self-inflicting slash wounds to the anterior neck. Patient is extremely agitated".
- [REDACTED] 2022: Section 12 (emergency restraint and hospitalization of persons posing risk of serious harm to themselves) has been ordered.

- [REDACTED] 2022: UMMMC trauma note states that “psychiatry was consulted – the patient continues to meet Section 12 criteria. The patient will require inpatient placement once medically cleared”.
- [REDACTED] 2022: UMMMC behavioral health note indicates that behavioral health consult was reactivated. “The Appellant endorses depressed/anxious mood, hopelessness, poor energy, poor concentration, increased appetite, and psychomotor slowing. She also endorses episodes of cyclical anxious thinking that things will never get better”.
- [REDACTED] 2022: UMMMC trauma note indicates that the patient is medically ready for discharge pending inpatient rehab placement. Referrals are in place; however, there are no bed offers at this time.

On [REDACTED] 2022, the Appellant's case was discussed at the MassHealth Waiver team review meeting which determined the Appellant was not clinically eligible for further participation in the MFP-CL waiver. The review determined the Appellant was significant health and safety risk to herself and that she lacked an informal live-in caregiver. MassHealth and MRC then rescinded the Appellant's MFP-CL waiver effective December 23, 2022. MassHealth submitted into evidence the Appellant's MFP-CL case file. (Exhibit 5).

The Appellant's representative responded that the record does not support MassHealth's ineligibility redetermination. The representative argued that while the Appellant did have a mental health crisis in [REDACTED] 2022, she has not been considered a threat to herself since [REDACTED] 2022. The Appellant's requirements for assistance with activities of daily living (ADL) have not changed since the initial evaluation, dated [REDACTED] 2022, which found her eligible for the MFP-CL waiver. The availability of informal supports in her home has not changed and does not justify a reversal of MassHealth's initial determination of eligibility. The Appellant has been cleared for discharge from the hospital without any behavioral health restrictions or needed supports since [REDACTED] 2022. Without home and community-based services in place, the hospital can only discharge the Appellant to a skilled nursing facility or inpatient rehabilitation.

The Appellant testified that MassHealth's characterization of her restriction on personal care provided by GR was incorrect. While her preference is that any personal care be provided by a female, whether formal or informal, she is not opposed to GR providing such care when necessary and will certainly accept this support if needed. She also testified that, while she does have feelings of sadness and anxiety it is the result of being stuck in a facility away from home for so long. The Appellant maintained she currently has no thoughts about harming herself and has not had such thoughts for a long while.

A social worker (NC) at UMMMC, testified in support of the Appellant and stated the emergency detention order was discontinued on [REDACTED] 2022, because the Appellant was no longer a risk to herself and the hospital is no longer proposing a psychiatric placement. Although there was a behavioral health check-in with the Appellant in [REDACTED] of 2022, the

Appellant is not under a 24/7 supervision order and does not require 24/7 supervision. NC testified that the Appellant is very independent, with minimal assistance on personal care and no assistance in feeding herself. NC indicated that she believes the Appellant could safely live in the community with appropriate home modifications and community supports available through the MFP-CL waiver program.

The record remained open until April 18, 2023 for the Appellant's representative to submit documentation regarding the Appellant's current physical and mental status; and a Memorandum in Support and until May 02, 2023 for MassHealth to respond to the Appellant's submission. (Exhibit 6).

The Appellant's representative submitted the requested information within the required time limit. (Exhibit 7, 8). MassHealth responded to the additional information within the required time limits. (Exhibit 9).

The Appellant's representative's Memorandum in Support states the Appellant's updated medical records (██████████ 2022 through ██████████ 2023) demonstrate the Appellant remains cleared for discharge to a long term rehab facility, with no behavioral constraints. A progress note dated ██████████ 2022, remarked that psychiatry had evaluated the Appellant multiple times, readjusted medications, and determined she is not at risk of harm that would justify a psychiatric order under Section 12. On ██████████ 2022, a consultation liaison psychiatry progress note remarked that the Appellant's depression was fairly well controlled though anxiety could be a problem. Despite the occasional anxiety, the Appellant has "not been asking for both doses of Ativan even though the medication is helpful to lower the levels of anxiety." No other concerns were noted. The Appellant continued to meet with psychology intermittently for therapy and ongoing support. A ██████████ 2023 psychology progress note summarized a follow-up meeting with the Appellant where she expressed her frustration over placement issues as she approached the 6-month mark post her suicide attempt. The note stated, "While discouraged and low, patient affirmed that she is not suicidal and has no intention of harming/killing herself." The Appellant reported continuing to go outside on a daily basis and stays in contact with her family. She remained engaged throughout the interview. On ██████████ 2023, psychiatry conducted an updated evaluation at the request of a social worker and progress note states that she "has been able to maintain safety, has not displayed any self-injurious behaviors and continues to be in good behavioral control." Additionally, the Appellant reported that she was doing much better psychiatrically and denied suicidal ideation. The Appellant's diagnoses were listed as major depressive disorder, severe, currently in remission; substance use disorder, currently in remission; and likely borderline personality disorder. No new recommendations were made with respect to the Appellant's mental health treatment. On ██████████ 2023, Mission Care, a skilled nursing facility in Holyoke, Massachusetts, accepted the Appellant for admission pending bed availability. Psychology Progress notes dated ██████████ 2023 state the Appellant reported feeling sad about the status of her MFP-CL waiver and her feelings of frustration and disappointment. The Appellant reiterated that she was not suicidal

and has no thoughts of self-harm. Another note on [REDACTED] 2023, discussed the Appellant's feeling stuck and helpless and angry about new limitations imposed by the hospital on her freedom of movement. While the Appellant's plan of care has changed to requiring supervision for her trips outdoors, her global plan of care remained unchanged: wound care, bowel regimen, and discharge planning. She continues to receive support from psychology but is not under supervision for suicide or self-harm. The representative stated that as of [REDACTED] 2023, the Appellant has been in the hospital for [REDACTED] days and for [REDACTED] of those days the Appellant has been cleared for discharge to a long-term care facility and awaiting a bed. (Exhibit 7).

The Appellant submitted a statement stating that since the treatment for her physical injuries and she has been ready to leave the hospital to the home of GR. The Appellant argues it has been 2½ years since she has been able to live at home and that she feels with the correct services and supports, she can live safely in her home in the community. The Appellant reiterates she is unhappy to be in the hospital and that she no longer has thoughts about hurting herself.

A statement from the UMMMC social worker asserts the Appellant Section 12 protocol was discontinued on [REDACTED] 2022. Although the Appellant requires assistance out of bed and into her wheelchair, she is otherwise independent with many activities of daily living including eating, brushing her teeth, brushing her hair and navigating her wheelchair. The Appellant has been accepted at Mission Care Holyoke since [REDACTED] 2023 and is awaiting for an open bed and she could go home if she had the appropriate home renovations and services in the community set up. (Exhibit 8).

MassHealth responded to the additional medical records highlighting the following notes:

- [REDACTED] 2023: UMMMC physician progress note indicates that the Appellant is awaiting disposition to facility and that she appears more depressed lately, "refusing to speak with psych at this time".
- [REDACTED] 2023: UMMMC physician progress note states that the Appellant, "continues to remain stable for DC (discharge) to facility".
- [REDACTED] 2023: UMMMC physician progress note states that, "due to numerous safety concerns, patient is now only allowed off floor with supervision, staff, family or friends".
- [REDACTED] 2023: UMMMC physician progress note indicates that the discharge plan is to Mission Care of Holyoke, which is a skilled nursing facility. The attending team also noted that psychology services plan to meet with the patient more regularly.
- [REDACTED] 2023: UMMMC psychology progress note states that, "She (the Appellant) continues to minimize our concerns for her safety". The Appellant had her outdoor access limited to supervised outings, leading to increased anger.

MassHealth argues the Appellant continues to present increased depression and anger, along with recent safety concerns at UMMMC, which has increased the frequency of psychology

services and has limited her outdoor access without supervision. Based on all medical evidence presented, the Appellant's attending physicians' recommendation is a transfer to a skilled nursing facility. The MFP-CL waiver is unable to provide the same level of care and supports as a skilled nursing facility; therefore, the Appellant cannot be safely served under the terms of the MFP-CL waiver and the Appellant's request for reenrollment in the MFP-CL waiver program remains denied. (Exhibit 9).

Findings of Fact

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

- 1) The Appellant is a [REDACTED] year-old woman currently residing at UMMMC. (Exhibit 4).
- 2) Past pertinent medical history include: paraplegia, chronic pain syndrome, nontoxic single thyroid nodule, polyneuropathy, chronic pancreatitis, sciatica, muscle spasms, overactive bladder, insomnia, opioid abuse, history of IV drug abuse, other psychoactive substance abuse, bipolar disorder, MDD, anxiety disorder, PTSD, BPD, ADHD, and a chronic suprapubic catheter. (Exhibit 4).
- 3) The Appellant applied and was approved for the MFP-CL waiver on June 02, 2022, while she was residing at SRHC. (Exhibit 4).
- 4) On [REDACTED] 2022, the Appellant left SRHC without permission and was found offsite with a self-inflicted neck laceration and the Appellant was transported under a Section 12 to [REDACTED] trauma. (Exhibit 4).
- 5) Progress notes dated [REDACTED] 2022 indicate the Appellant continues to meet Section 12 criteria and will require inpatient placement once medically cleared. (Exhibit 4).
- 6) Progress notes dated [REDACTED] 2022 indicate the Appellant's discharge plan is for inpatient psychiatric placement. (Exhibit 4).
- 7) Progress notes dated [REDACTED] 2022, indicate the Appellant's Section 12 protocol was discontinued because the Appellant was no longer a risk to herself and the hospital was no longer proposing a psychiatric placement, or 24/7 supervision order. (Exhibit 4).
- 8) Progress notes dated [REDACTED] 2022, indicate the Appellant has been cleared for discharge from the hospital without any behavioral health restrictions or needed supports. (Exhibit 4).
- 9) Progress notes dated [REDACTED] 2022 indicate the Appellant's behavioral health consult was reactivated, given the Appellant is endorsing increased depression. "The Appellant

endorses depressed/anxious mood, hopelessness, poor energy, poor concentration, increased appetite, and psychomotor slowing. She also endorses episodes of cyclical anxious thinking that things will never get better". (Exhibit 4).

- 10) Progress notes dated [REDACTED] 2022, indicate the Appellant was evaluated by psychiatry multiple times, readjusted medications, and determined she is not at risk of harm that would justify a psychiatric order under Section 12. (Exhibit 8).
- 11) Progress notes dated [REDACTED] 2022 indicate the Appellant is medically ready for discharge pending inpatient rehab placement; however, there are no bed offers at this time. (Exhibit 4).
- 12) On [REDACTED] 2022, the MassHealth Waiver team and MRC concluded that the Appellant is determined to be a significant health and safety risk to herself due to her psychiatric and medical records obtained as well as the lack of an informal live-in caregiver that can offer near 24/7 care and determined the Appellant was no longer clinically eligible any further for participation in the MFP-CL waiver effective December 23, 2022. (Exhibit 1 and 4).
- 13) Progress notes dated [REDACTED] 2022 indicate the Appellant expressed her frustration over placement issues as she approached the 6-month mark post her suicide attempt. Note states, "While discouraged and low, patient affirmed that she is not suicidal and has no intention of harming/killing herself." The Appellant reported continuing to go outside on a daily basis and stays in contact with her family. She remained engaged throughout the interview. (Exhibit 8).
- 14) Progress notes dated [REDACTED] 2022, indicate the Appellant's depression is fairly well controlled though anxiety could be a problem. Despite the occasional anxiety, the Appellant has "not been asking for both doses of Ativan even though the medication is helpful to lower the levels of anxiety." No other concerns were noted. (Exhibit 8).
- 15) Progress notes dated [REDACTED] 2023, indicate Appellant "has been able to maintain safety, has not displayed any self-injurious behaviors and continues to be in good behavioral control", the Appellant reported that she was doing much better psychiatrically and denied suicidal ideation. Diagnoses listed as "major depressive disorder, severe, currently in remission"; substance use disorder, currently in remission; and likely borderline personality disorder. No new recommendations were made with respect to the Appellant's mental health treatment. (Exhibit 8).
- 16) Progress notes dated [REDACTED] 2023, indicate the Appellant has been accepted for admission pending bed availability. (Exhibit 8).

17) Without home and community-based services in place, the hospital can only discharge the Appellant to a skilled nursing facility or inpatient rehabilitation. (Testimony).

18) UMMMC social worker asserts:

- a. The Appellant is very independent, with minimal assistance on personal care and no assistance in feeding herself and indicated that she believes the Appellant could safely live in the community with appropriate home modifications and community supports available through the MFP-CL waiver program. (Testimony).
- b. Once the Appellant is assisted out of bed and into her wheelchair, she is independent with many activities of daily living including eating, brushing her teeth, brushing her hair and navigating her wheelchair. (Exhibit 7, B).
- c. The Appellant could go home if she had the appropriate home renovations and services in the community set up. (Exhibit 7, B).

19) The Appellant's most up to date medical records state:

- a. [REDACTED] 2023 Appellant reported feeling sad. She spoke about the status of her MFP-CL waiver and her feelings of frustration and disappointment. She reiterated that she was not suicidal and has no thoughts of self-harm. (Exhibit 8).
- b. [REDACTED] 2023, Appellant's feeling stuck and helpless and angry about new limitations imposed by the hospital on her freedom of movement. Appellant continues to receive support from psychology but is not under supervision for suicide or self-harm. (Exhibit 8).

20) MassHealth maintains that after review of additional documentation the Appellant's attending physicians have, and continue to schedule, a discharge plan only to an inpatient skilled nursing facility highlighting notes:

- a. [REDACTED] 2023, Appellant is awaiting disposition to facility and that she appears more depressed lately, "refusing to speak with psych at this time". (Exhibit 9).
- b. [REDACTED] 2023, Appellant continues to remain stable for discharge to facility.
- c. [REDACTED] 2023, "due to numerous safety concerns, patient is now only allowed off floor with supervision, staff, family or friends". (Exhibit 9).
- d. [REDACTED] 2023, the discharge plan is to a skilled nursing facility, psychology services plan is to meet with the patient more regularly, and the Appellant continues to minimize concerns for her safety and her outdoor access limited to supervised outings, leading to increased anger. (Exhibit 9).

21) MassHealth asserts the Appellant is suitable for transfer only to a skilled nursing facility with 24/7 level of care. (Exhibit 9).

Analysis and Conclusions of Law

The 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:

Eligibility for MassHealth's Home and Community Based Waiver program is governed by regulation 130 CMR 519.007 which states in pertinent part:

(H) Money Follows the Person Home- and Community-Based Services Waivers.

(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.

MassHealth rescinded the Appellant's approval for an MFP-CL waiver due to a lack of clinical eligibility. MassHealth argues the Appellant meets all requirements for a waiver except for 130 CMR 519.007(H)(2)(a)(5) as they have determined the Appellant is not able to be safely served

in the community within the terms of the MFP-CL waiver. MassHealth maintains the Appellant can only be transferred to a skilled nursing facility and as the MFP-CL waiver is unable to provide the same level of care and supports of a skilled nursing facility the Appellant cannot be safely served in the community within the terms of the MFP-CL waiver.

The Appellant was approved for the MFP-CL waiver on June 02, 2022, while she was residing in a skilled nursing facility. Due to a mental health incident on [REDACTED] 2022, the Appellant was transported under a Section 12 to UMMC where she remains. This incident caused MassHealth to rescind the Appellant's prior approval for the MFP-CL waiver.

The most current medical records indicate the Appellant's Section 12 protocol was discontinued as of [REDACTED] 2022 and she has been evaluated a number of times and determined to no longer be at risk of harm to herself. A current physical exam indicates she is under no acute distress (although Appellant appears depressed); and her mental status exam indicates she is oriented x3 and list her suicide attempt as "resolved". The record demonstrates the Appellant has not had a mental health crisis since [REDACTED] 2022 and was cleared for discharge from the hospital without any behavioral health restrictions since [REDACTED] 2022. The record shows the Appellant's requirements for ADL assistance has not changed since her initial evaluation on [REDACTED] 2022, when she approved for the MFP-CL waiver.

While MassHealth is concerned the hospital has authorized discharge only to a skilled nursing facility³ this determination was made because the Appellant has been unable to get home and community-based services in place, a result of the Appellant's disenrollment from the MFP-CL waiver program. MassHealth is also concerned that recent notes indicate the Appellant "due to numerous safety concerns, ... is now only allowed off floor with supervision, staff, family or friends" and the Appellant "appears more depressed lately", "refusing to speak with psych at this time". While notes state the Appellant is feeling stuck and helpless and angry, this is a result of new limitations imposed by the hospital due to issues with the facility smoking policy and not regarding the Appellant's mental health issues.

Although initially there were questions regarding GR attending to the Appellant's personal needs the Appellant has credibly testified she is not opposed to this arrangement when necessary and will accept his support when needed.

The Appellant was approved for the MFP-CL waiver on June 02, 2022 which was rescinded on December 23, 2022 due to a mental health incident the Appellant underwent on [REDACTED] 2022. The medical evidence shows that the mental health issue has been resolved and the Appellant was cleared for discharge from the hospital without any behavioral health restrictions. Subsequent to being cleared for discharge the Appellant has been evaluated multiple times and

³ The Appellant has been accepted for admission to [REDACTED] pending bed availability since [REDACTED] 2023 and Discharge Planning/Placement states "the complexity of management and decision making for the subsequent care of the Appellant is of low intensity."

each time determined not to be at risk of harm to herself. Based on the submitted evidence I find the Appellant is able to be safely served in the community with appropriate home modifications and community supports available through the MFP-CL waiver program.

The medical evidence contained in the record establishes the Appellant meets the requirements of 130 CMR 519.007(H)(2)(a)(1-5) and this appeal is APPROVED.

Order for MassHealth

Approved.

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.

Brook Padgett
Hearing Officer
Board of Hearings

cc:

MassHealth representative: Brad Goodier BS, RN, UMASS PA Unit, 333 South Street, Shrewsbury, MA 01545
[REDACTED]