

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2301208
Decision Date:	5/16/2023	Hearing Date:	03/17/2023
Hearing Officer:	Patrick Grogan	Record Open to:	N/A

Appearance for Appellant:



Appearance for MassHealth:

Linda Phillips, RN
Leanne Govoni, RN
Susan Tomasz-Taylor, RN

Interpreter:

N/A



*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 Waiver
Decision Date:	5/16/2023	Hearing Date:	03/17/2023
MassHealth's Rep.:	Linda Phillips, RN	Appellant's Rep.:	[REDACTED]
Hearing Location:	Remote (Tel)	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 February 7, 2023, MassHealth denied the Appellant's application for a MFP-CL Waiver because MassHealth determined that the Appellant was not clinically eligible. (see 130 CMR 519.007(H)(2) and Exhibit 1). The Appellant filed this appeal in a timely manner on February 19, 2023 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the Appellant's application for a MFP-LC Waiver finding that that Appellant was not clinically eligible for the waiver. (Exhibit 1)

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.007(H)(2), in denying the Appellant's MFP-LC Waiver because of its finding that the Appellant cannot be safely served in the community within the Waiver.

Summary of Evidence

The Appellant is a [REDACTED]-year-old MassHealth member. The Appellant's primary psychiatric diagnoses include alcohol abuse and dependence, polysubstance abuse depression, anxiety, bipolar disorder, and schizoaffective disorder. (Testimony, Exhibit 7, p. 65) The Appellant's medical history indicates hypertension, hyperglycemia, coronary artery disease s/p (status post) DES (Drug-eluting stents): nephrogenic diabetes, spinal stenosis requiring laminectomies and fusions, sleep apnea, peripheral vascular disease, neuropathy, benign prostatic hyperplasia, upper GI (gastrointestinal) bleed with hemorrhagic shock in 2018, duodenal ulcer, hyperlipidemia, malignant neoplasm s/p (status post) thyroidectomy and chronic pancreatitis. (Testimony, Exhibit 7, page 67).

In January 2019, the Appellant was deemed eligible for the MFP-CL Waiver. However, due to a lack of formal supports, he was hospitalized until he transitioned in [REDACTED] of 2020. (Exhibit 7, p.65) Despite his formal supports, the Appellant began to decline psychiatrically. He developed significant behaviors including threatening staff, utilizing foul language, utilizing sexual language, and physically touching aids. In addition to these behaviors, the Appellant initiated physical altercations and abusive behaviors, and frequently terminated staff. The Appellant assaulted a caregiver in [REDACTED] 2021. The police were contacted, and a Section 12 was filed on [REDACTED] 2021. (Exhibit 7, p.65) MGL c. 123 §12 is titled Emergency Restrain and Hospitalization of Persons Posing Risk of Serious Harm by Reason of Mental Illness, and states, in part:

A physician who is licensed pursuant to section 2 of chapter 112, an advanced practice registered nurse authorized to practice as such under regulations promulgated pursuant to section 80B of said chapter 112, a qualified psychologist licensed pursuant to sections 118 to 129, inclusive, of said chapter 112 or a licensed independent clinical social worker licensed pursuant to sections 130 to 137, inclusive, of said chapter 112 who, after examining a person, has reason to believe that failure to hospitalize such person would create a likelihood of serious harm by reason of mental illness may restrain or authorize the restraint of such person and apply for the hospitalization of such person for a 3-day period at a public facility or at a private facility authorized for such purposes by the department. (MGL c. 123 §12(a))

While hospitalized under the [REDACTED], Section 12, the Appellant required both chemical and physical restraints. Ultimately, the Appellant was discharged on [REDACTED] 2021. Later that same month, the Appellant assaulted an individual in his apartment complex.¹ (Exhibit 7, p.65) In November of 2021, the Appellant was the subject of another Section 12 on account of the Appellant having made homicidal threats to his brother and sister-in-law, as well as hypersexual comments to his sister-in-law. (Exhibit 7, p.65) The Appellant was ultimately discharged and despite efforts to maintain stability and safety in the community, his unsafe and

¹ This led to an eviction notice in [REDACTED] of 2022.

problematic behaviors continued, and Clinical Redetermination was sought regarding the Appellant's inability to reside safely within the community.

During the [REDACTED] 2022 Clinical Status Redetermination, the UMass Complex Team determined that the Appellant was psychiatrically unstable with a significant health and safety risk to himself as well as others. The UMass Complex Team deemed the instability was due, in part, to the Appellant's poor insight into his behaviors as well as his difficulty maintaining staff. The UMass Complex Team determined that the Appellant required 24 hours/7day a week support with services and terminated the Appellant from the Waiver program on April 11, 2022. The Appellant sought a hearing to appeal this April 11, 2022, decision to terminate him from the Waiver program. An appeal hearing was held, and the Board of Hearings upheld MassHealth's decision to terminate the Appellant from the Waiver program². (Testimony, Exhibit 7, p.65) Before the decision issued, the Appellant was once again the subject of a Section 12 petition filed by his primary care physician. The Appellant's primary care physician specifically noted concern that the Appellant exhibited disorganized thoughts, homicidal ideation, and paranoia towards family. The Appellant was transferred to UMass Memorial on [REDACTED] 2022, where he remained in the inpatient psychiatric unit until he was discharged home on [REDACTED] 2022. During the Section 12 hold that was initiated in [REDACTED] of 2022, a temporary guardianship was ordered on [REDACTED] 2022, until [REDACTED] 2023, at which point an independent evaluation for state assigning guardianship of the Appellant will occur. (Testimony, Exhibit 7, p.65, Exhibit 4)

During his hospitalization in [REDACTED] 2022, the Appellant was unwilling to agree to voluntary admission and continued to be admitted pursuant to Section 12 for acute symptom management, medication optimization and establishment and implementation of community supports. The Appellant underwent a diagnostic evaluation and was determined to have signs and symptoms consistent with schizoaffective disorder. (Exhibit 7, p. 65) The Appellant was reported to have an extensive history of disorganized behavior, grandiosity, longstanding irritability, and delusions involving members of his family stealing from him. The Appellant was reported refusing to follow his antipsychotic medication regimen. The Appellant was reported to be verbally abusive and noncompliant with his medication, as well as failing to attend outpatient appointments. During the Appellant's admission evaluation, he was observed to be guarded, uncooperative and withdrawn. The Appellant repeatedly refused to answer questions. (Testimony, Exhibit 7, p. 66, Exhibit 7, p. 82-85) Throughout the nearly five month hospitalization, the Appellant exhibited continued verbal outbursts, trouble self-regulating his behavior, and demonstrated physically volatile behaviors. (Exhibit 7, p. 66, Exhibit 7, p. 85-224)

Through an application dated October 4, 2022, the Appellant once again applied for a Home-and Community-Based Services Waivers for MFP – Community Living Waiver. (Exhibit 7, p.43)

² A different Hearing Officer presided over the appeal from the decision of termination dated April 11, 2022. The Hearing Officer's decision was dated June 14, 2022.

On [REDACTED] 2023, an in-home visit occurred for Waiver Assessment. (Testimony, Exhibit 7, p. 67-69). The Appellant has had few consistent staff, and he continues to fire them if they are unable to appear for any reason, or if they request a modification to their schedules. The Appellant reported to the nurse who conducted the in-home visit that he had no incontinence issue, however, he had reported to his Guardian that he had an issue with incontinence immediately prior to the visit. (Exhibit 7, pg. 67-69)

The Appellant has demonstrated a history of being sexually inappropriate with both male and female staff, therefore retaining staff has been difficult. When he was asked about his pending criminal charges, the Appellant stated it had been resolved. However, an inquiry to [REDACTED] District Court revealed that a pending criminal case for assault had a return date of [REDACTED] 2023. When asked about this inconsistency, the Appellant responded with anger and annoyance and claimed that nothing had occurred. The Appellant was observed as initially pleasant, but when questions about inaccuracies or inconsistencies were raised, he would often respond angrily. (Exhibit 7, p. 66-67)

Regarding his medications, the Appellant was able to tell the nurse reviewer what his medications were, what they treated, and how/when he was to take the medication. However, the nurse reviewer noted that the Appellant did not have any of his blood pressure medication he had been prescribed and was unable to state how long it had been since he had the medication available nor when he had taken it. (Exhibit 7, p. 66-67) but not exhibit concern that he didn't have any of his spironolactone (blood pressure medication) and he didn't know how long that had been. (Exhibit 7, p. 67)

In regard to the Appellant's history of alcohol and polysubstance abuse, the Appellant reported to the nurse reviewer that he had been sober for over ten years from alcohol and his last use of illicit drugs has been eighteen years or more. However, the Appellant admits he smokes marijuana occasionally and utilizes marijuana to manage his anxiety. During his initial assessment and within the most recent UMass records, the Appellant self-reported he has had multiple attempts at detoxification. Annual Redetermination in June of 2021 reveals that the Appellant had been observed smoking marijuana in his apartment, utilizing wet towels by his door to hide the smoke. Although he possesses a medical marijuana card, the observations of his marijuana use are inconsistent with the Appellant's self-reporting. The Appellant admitted to the nurse reviewer that he continues to smoke marijuana. The nurse reviewer noted the Appellant became frustrated easily. The nurse review recorded that the Appellant has not followed through with his plan of care in the past, declining physical therapy/occupational therapy, even after agreeing to a plan. (Exhibit 7, p. 68)

In the nurse reviewer's summation, she noted the Appellant historically has been verbally abusive and demeaning to care givers. In the past, the Appellant has threatened to kill not only caregivers, but family as well, with very detailed outlines of how he would physically harm others. The nurse reviewer noted that the Appellant has been observed to either refuse

or be incapable of accepting responsibility for his action. (Exhibit 7, p.69) The Appellant has demonstrated that he is resistant to receive support around his psychiatric medications and has again started manipulating his medications (one example noted by the nurse reviewer involved that Appellant taking his Seroquel in split doses and stating that he didn't need to discuss this medication modification with his psychiatrist). As noted above, the Appellant has demonstrated difficulty managing his blood pressure medication. Although he reported to the nurse reviewer that he was aware of his medication being empty, he revealed no plan to order or retrieve his missing prescribed blood pressure medication. (Exhibit 7, p.69)

The nurse reviewer observed that the Appellant remains psychiatrically and emotionally volatile and has been a significant safety risk when last on the Waiver, not only to himself but to caregivers as well. The Appellant has repeatedly demonstrated a comfort modifying his medication orders without the consult of his psychiatrist. Significantly, the nurse reviewer observed that the Appellant appears to echo the troubling behaviors he exhibited when he was last on the Waiver which led to significant psychiatric decompensation and led to the Appellant's instability in the past to a dangerous degree. The UMass Chan Waiver Complex Eligibility Team has determined that due to these ongoing concerns, the Appellant cannot be safely served in the MFP-CL waiver. (Exhibit 7, p. 68-69)

On January 26, 2023, The UMass Chan Waiver Complex Clinical Eligibility Team reviewed the clinical assessment and community needs and risks of the Appellant. (Exhibit 7, p. 70) The UMass Chan Waiver Complex Clinical Eligibility Team determined that the Appellant poses a significant health and safety risk to himself due, in part, to psychiatric instability with poor insight into care needs and decision making. Additionally, the UMass Chan Waiver Complex Clinical Eligibility Team found that the Appellant has no local informal supports and has a pending criminal court case. The UMass Chan Waiver Complex Clinical Eligibility Team determined that the Appellant cannot be safely served within the terms of the MFP-CL waiver. The UMass Chan Waiver Complex Clinical Eligibility Team submitted its finding to the Massachusetts Rehabilitation Commission (MRC) for Clinical review. (Exhibit 7, p.70)

On February 1, 2023, the MRC Clinical Team reviewed the recommendation of the UMass Chan Waiver Complex Clinical Eligibility Team decision to deny the Appellant's application for the MFP-CL Waiver. (Exhibit 7, p.70) Following the review of materials provided and the discussion of those materials, the MRC Clinical Team concurred with the UMass Chan Waiver Complex Clinical Eligibility Team's denial of the Appellant's application for the MFP-CL Waiver. In support of this determination, the MRC Clinical Team noted the Appellant's chronic behavioral challenges including his verbal abuse and accusations, his displays of irritability and impulsivity. These displays include the Appellant's firing of multiple caregivers, the Appellant's physical aggression, the Appellant's refusal to take medications and attend appointments, the Appellant's self-modification of his medication dosing and regimen without consulting anyone, including his doctors. The MRC Clinical Team highlighted that the Appellant's Guardian resides out-of-state, and the Appellant has no local informal supports to provide him daily care. The

MRC Clinical Team documented the Appellant was hospitalized as recently as last summer (2022) for psychiatric reasons. In addition, the MRC Clinical Team considered the Appellant's open criminal case for Assault and Battery. Based on consideration of all of this information, the MRC Clinical Team concluded that the Appellant is not psychiatrically or behaviorally stable and still requires 24 hours a day/7 day a week care and agreed with the U Mass Chan Waiver Complex Eligibility Team determination that the Appellant poses a significant safety risk and cannot be safely served within the terms of the MFP-CL Waiver. (Exhibit 7, p.71-72)

The Appellant submitted documentary evidence in support of his application for the MFP-CL Waiver which included correspondence, a MassHealth Application for PCA Services, including a list of the Appellants prescribed medications, as well as a letter dated March 6 from the Appellant's doctor. (Exhibit 8). The Appellant's doctor stated that the Appellant had previously received MRC services but those services were terminated due to the Appellant's aggressive behavior during medication non-compliance. (Exhibit 8, p. 36). The Appellant's doctor stated that the Appellant currently adheres to his medication regimen and his symptoms are in remission. (Exhibit 8, p.36). The Appellant's doctor concluded the one paragraph letter indicating that her opinion was that the Appellant would benefit from reinstatement of services and that she believes that the Appellant poses no risk of harm to himself or others at this time. (Exhibit 8, p. 36)

At the hearing held on March 17, 2023, the Appellant was represented by his court appointed Guardian, his sister-in-law. (Exhibit 2, 4) The Appellant's Guardian stated that the testimony provided by MassHealth was inaccurate. (Testimony) The Appellant's Guardian stated that the Appellant had been hospitalized infrequently and had been consistently compliant with his medication. (Testimony). The Appellant's Guardian testified that beginning in 2015, the Appellant suffered from spinal stenosis which led to hospitalization. The Appellant's Guardian stated that the Appellant was discharged in 2019 on a previous MFP-CL Waiver without any psychiatric care, and as a result the Appellant became progressively more psychotic while he was living in the community on the Waiver. (Testimony). The Appellant's Guardian stated that despite requests, no psychiatric care was provided which directly led to the Appellant's 3 Section 12's. (Testimony) The Appellant's Guardian testified that the Appellant's case required looking through a specific lens and that she believes MassHealth discriminated against the Appellant due to his mental health diagnoses. (Testimony) The Appellant's Guardian stated the sexual inappropriate behavior, abusive behavior, and medication non-compliance was a direct result of his schizoaffective disorder that was not being treated. (Testimony) The Appellant's Guardian testified that his most recent Section 12 at UMass has returned him to his baseline, and that he is no longer assaultive and is compliant with his medication currently. (Testimony) The Appellant's Guardian further testified that the probability of a future relapse by the Appellant is remote due to her belief of his current compliance, support, and stability. (Testimony) The Appellant's Guardian testified that the Appellant does not have a history of assaultive behavior and medication non-compliance except for the 3 Section 12 commitments and pending criminal charges that are directly attributable to

the Appellant's decompensation, which she conceded was a long duration episode.(Testimony) The Appellant's Guardian states she believes the denial of the MFP-CL Waiver was based upon his prior psychiatric episode of last year and that the Waiver program did not take into account his current situation. When asked about the Appellant's current support system, she indicated that the Appellant's support system includes individuals from the Edinburg center, including his psychiatrist³, as well as his PCA⁴, herself (Guardian/Sister-in-law) as she is able to manage from Oregon, where she resides, people she sends to help him, as well as others in the building. (Testimony, Exhibit 8, p. 36).

When asked about the Appellant's recent non-compliance with medication, the Appellant's Guardian testified that regarding the Seroquel, which she testified he had been prescribed for sleep, the Appellant is authorized to change the dosage without contacting his psychiatrist⁵. Regarding running out of the blood pressure medication, the Appellant's Guardian stated that he has not run out of his medication, but for the time it took someone to refill it⁶. The Appellant's Guardian further testified that she did not believe running of the medication was a sufficient reason to deny the Waiver. (Testimony)

Regarding the pending criminal charges, the Appellant's Guardian stated that the incident involved an allegation that the Appellant had grabbed a peer's wrist and that the Appellant's PCA called the police due to the peer behaving badly and that the facts were in considerable dispute⁷. (Testimony) The Appellant's Guardian stated that the incident did not involve an assault upon any caregiver, that the peer has disabilities, and that she (the Appellant's Guardian) anticipated the charges would ultimately be dismissed. (Testimony) Upon the request of this Hearing Officer, a copy of the incident report by the Arlington Police Department (Exhibit 10) and an incident report form Atlantic Charter (Exhibit 11) have been provided after the hearing, with a copy mailed to the Appellant's Guardian/Sister-in-law. The incident reports relate to the [REDACTED] 2021 assault on his care giver and state that the complaining witness called the police after an altercation with the Appellant where the Appellant grabbed at the breast of the complaining witness and that the Appellant grabbed the telephone the complaining witness was using to call the police for help. (Exhibit 10, Exhibit 11)

³ He has had his current psychiatrist arranged before his discharge in [REDACTED] of 2022 and has been seeing her since [REDACTED] 2022.

⁴ He has had his current PCA for 2 months as of the time of the hearing.

⁵ The letter submitted by the Appellant's treating psychiatrist ([REDACTED]) does not state that the Appellant is authorized to modify any of his medications on his own. (Exhibit 8, p. 36) Moreover, the Appellant stated to the nurse reviewer that he decided to change his Seroquel dosage to 25mg despite being prescribed 50mg per day with an additional 50 mg as needed for agitation and that he did not need to discuss this change with his psychiatrist. (Exhibit 7, p. 67)

⁶ This testimony is in direct conflict of the testimony of nurse reviewer that the Appellant had run out of his blood pressure medication and was not able to state how long he had gone without it, but that he had not been taking it for several days. (Testimony, Exhibit 7, p. 67)

⁷ Based on this record, it is unclear which of the two assaults that the Appellant has been accused of is currently pending in [REDACTED] District Court.

The complaining witness was the Appellant's PCA. (Exhibit 10, Exhibit 11) The Appellant's Guardian stated that the Appellant is a different person since his discharge from UMass in [REDACTED] of 2023. (Testimony)

The nurse reviewer responded that she understands decompensation, and that at the time of his decompensation, the Appellant was being treated by his primary care physician with psychotropic medication, and that modification of the prescribed psychotropic medication could lead to a decompensation spiral which was exacerbated by the Appellant's lack of insight into his mental health. (Testimony) The nurse reviewer stated the Appellant presented as stable after residing in a 24-hour 7-day-a-week setting and that the Waiver does not provide that level of care from which he benefited at his time at UMass. (Testimony) The nurse reviewer noted that the Waiver builds upon the support structure in place, and the Appellant lacks local family support structure. (Testimony) The Appellant's Guardian interjected that the nurse reviewer's testimony was inaccurate. (Testimony). The Appellant's Guardian stated that the testimony of the nurse reviewer was "offensive and nonsense" and that she has been a psychiatrist herself for 23 years. (Testimony) Despite prior testimony that the Appellant was discharged without psychiatric care, the Appellant's Guardian testified that the Appellant was released on psychiatric medication that was not a sufficient dosage to treat the Appellant. (Testimony) The Appellant's Guardian stated that the Appellant's decompensation was based upon the Massachusetts Rehabilitation Commission's refusal to provide proper psychiatric care for the Appellant. (Testimony) The Appellant's Guardian testified that the Appellant is stable now because he is receiving the psychiatric care that he needs. (Testimony)

The Appellant's Guardian stated that based upon the Appellant's treatment and her belief that he has been discriminated against due to his mental health diagnoses, she has filed a case with MCAD (Massachusetts Commission Against Discrimination) on behalf of the Appellant. (Testimony) The Appellant's Guardian stated that if there was a way to sue the Massachusetts Rehabilitation Commission for malpractice, she would pursue it because she believes the Appellant was set up to fail. (Testimony) MassHealth responded that the Waiver program does not provide those services the Appellant requires (PCA, doctor visits), but that those services are available through MassHealth, and not the Waiver program. The Appellant's Guardian responded that there were services that the Appellant could not easily get without the Waiver program (PCM, durable medical equipment, evaluations for additional equipment (bed, wheelchair)).(Testimony) The Appellant's Guardian believes that Massachusetts Rehabilitation Commission decision is based upon his past psychotic episodes and is discriminatory in nature, which is why she filed the MCAD (Massachusetts Commission Against Discrimination) case on behalf of the Appellant. (Testimony). The Appellant's Guardian contends that it is clear that the Appellant can reside safely within the community, that it is clear the Appellant is not abusive and that it is clear that the Appellant is currently medication compliant⁸. (Testimony) The Appellant's Guardian continued, stating that the only reason she

⁸ See footnotes 5 and 6.

can see for the denial of the Waiver is because the Massachusetts Rehabilitation Commission is afraid of the Appellant's disability and that the Appellant's denial for the Waiver is discriminatory in nature and is not accommodating for the Appellant's disabilities. (Testimony). The reviewing nurse responded that the Waiver program services many individuals with mental health disorders, and that the focus is on safety, and that this Waiver does not have the level of services to assure the Appellant can reside safely within the community. (Testimony)

Findings of Fact

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

1. The Appellant is a [REDACTED]-year-old MassHealth member whose primary psychiatric diagnoses include alcohol abuse and dependence, polysubstance abuse depression, anxiety, bipolar disorder, and schizoaffective disorder. (Testimony, Exhibit 7, p. 65)
2. The Appellant's medical history indicates hypertension, hyperglycemia, coronary artery disease s/p (status post) DES (Drug-eluting stents): nephrogenic diabetes, spinal stenosis requiring laminectomies and fusions, sleep apnea, peripheral vascular disease, neuropathy, benign prostatic hyperplasia, upper GI (gastrointestinal) bleed with hemorrhagic shock in 2018, duodenal ulcer, hyperlipidemia, malignant neoplasm s/p (status post) thyroidectomy and chronic pancreatitis. (Testimony, Exhibit 7, page 67).
3. In January 2019, the Appellant was deemed eligible for the MFP-CL Waiver. The Appellant transitioned in June of 2020. (Exhibit 7, p.65)
4. The Appellant was accused of assaulting a caregiver in [REDACTED] 2021. (Testimony. Exhibit 10, Exhibit 11).
5. A petition for a Section 12 hold was filed on [REDACTED] 2021. (Exhibit 7, p.65)
6. The Appellant was discharged from the [REDACTED] 2021 hold on [REDACTED] 2021. (Exhibit 7, p. 65)
7. Later in [REDACTED] 2021, the Appellant was accused of assaulting another individual in his apartment complex. (Exhibit 7, p.65)
8. In [REDACTED] of 2021, the Appellant was the subject of another Section 12 on account of the Appellant having made homicidal threats to his brother and sister-in-law, as well as hypersexual comments to his sister-in-law. (Exhibit 7, p. 65)
9. The Appellant was ultimately discharged from this second Section 12 hold and based on his

behavior in the community, a Clinical Redetermination was sought regarding the Appellant's inability to reside safely within the community. The Appellant was terminated from the MFP-CL Waiver on April 11, 2022. (Testimony, Exhibit 7, p. 65)

10. The Appellant appealed this determination, and after hearing, the decision to terminate him from the Waiver program was upheld. (Testimony, Exhibit 7, p. 234-235)

11. Before the Board of Hearing decision issued, the Appellant was once again the subject of a Section 12 petition filed by his primary care physician. (Testimony, Exhibit 7, p. 65)

12. The Appellant's primary care physician specifically noted concern that the Appellant exhibited disorganized thoughts, homicidal ideation and paranoia towards family. The Appellant was transferred to UMass Memorial on [REDACTED] 2022, where he remained in the inpatient psychiatric unit until he was discharged home on [REDACTED] 2022. (Testimony, Exhibit 7, p. 65)

13. During the Section 12 hold that was initiated in [REDACTED] of 2022, a temporary guardianship was ordered on [REDACTED] 2022, until [REDACTED] 2023, at which point an independent evaluation for state assigning guardianship of the Appellant will occur. (Testimony, Exhibit 7, p.65, Exhibit 4)

14. Throughout the nearly five-month hospitalization, the Appellant exhibited continued verbal outbursts, trouble self-regulating his behavior, and demonstrated physically volatile behaviors. (Exhibit 7, p. 66, Exhibit 7, p. 85-224)

15. Through an application dated [REDACTED] 2022, the Appellant once again applied for a Home-and Community-Based Services Waivers for MFP – Community Living Waiver. (Exhibit 7, p.43)

16. On [REDACTED] 2023, an in-home visit occurred for Waiver Assessment. (Testimony, Exhibit 7, p. 67-69).

17. The nurse reviewer observed that the Appellant remains psychiatrically and emotionally volatile and has been a significant safety risk when last on the Waiver, not only to himself but to others, including caregivers, as well. (Exhibit 7, p. 68-69)

18. The nurse reviewer observed that the Appellant appeared to echo the troubling behaviors he exhibited when he was last on the Waiver which led to significant psychiatric decompensation and led to the Appellant's instability in the past to a dangerous degree. (Exhibit 7, p. 68-69)

19. The UMass Chan Waiver Complex Eligibility Team determined that due to these ongoing concerns, the Appellant cannot be safely served in the MFP-CL waiver. (Exhibit 7, p. 68-69)

20. On January 26, 2023, The UMass Chan Waiver Complex Clinical Eligibility Team reviewed

the clinical assessment and community needs and risks of the Appellant. (Exhibit 7, p. 70)

21. The UMass Chan Waiver Complex Clinical Eligibility Team found that the Appellant has no local informal supports and has a pending criminal court case. The UMass Chan Waiver Complex Clinical Eligibility Team determined that the Appellant cannot be safely served within the terms of the MFP-CL waiver. The UMass Chan Waiver Complex Clinical Eligibility Team submitted its finding to the Massachusetts Rehabilitation Commission (MRC) for Clinical review. (Exhibit 7, p.70)

22. On February 1, 2023, the MRC Clinical Team reviewed the recommendation of the U Mass Chan Waiver Complex Clinical Eligibility Team decision to deny the Appellant's application for the MFP-CL Waiver. (Exhibit 7, p.70) Following the review of materials provided and the discussion of those materials, the MRC Clinical Team concurred with the UMass Chan Waiver Complex Clinical Eligibility Team's denial of the Appellant's application for the MFP-CL Waiver.

23. In support of this determination, the MRC Clinical Team noted the Appellant's chronic behavioral challenges including his verbal abusive and accusations, his displays of irritability and impulsivity. These displays include the Appellant's firing of multiple caregivers, the Appellant's physical aggression, the Appellant's refusal to take medications, the Appellants refusal to attend appointments, as well as the Appellant's self-modification of his medication dosing and regimen without consulting anyone, including his doctors. (Exhibit 7, p.71-72)

24. The MRC Clinical Team highlighted that the Appellant's Guardian resides out-of-state, and the Appellant has no local informal supports to provide him daily care. The MRC Clinical Team documented the Appellant was hospitalized as recently as last summer (2022) for psychiatric reasons. In addition, the MRC Clinical Team considered the Appellant's open criminal case for Assault and Battery. (Exhibit 7, p.71-72)

25. Based on consideration of all of this information, the MRC Clinical Team concluded that the Appellant is not psychiatrically or behaviorally stable and still requires 24 hours a day/7 day a week care and agreed with the U Mass Chan Waiver Complex Eligibility Team determination that the Appellant poses a significant safety risk and cannot be safely served within the terms of the MFP-CL Waiver. (Exhibit 7, p.71-72)

Analysis and Conclusions of Law

The instant appeal is governed by the MassHealth Regulations, specifically 130 CMR 519.007:

519.007: Individuals Who Would Be Institutionalized

130 CMR 519.007 describes the eligibility requirements for MassHealth Standard

coverage for individuals who would be institutionalized if they were not receiving home- and community-based services.

The criteria for the MFP Community Living Waiver, for which the Appellant has applied, is found within 130 CMR 519.007(H)(2):

(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 § 1915(c) of the Social Security Act, allows an applicant or member who is certified by the MassHealth agency or its agent to be in need of nursing facility services, chronic disease or rehabilitation hospital services, or, for participants 18 through 21 years of age or 65 years of age or older, psychiatric hospital services to receive specified waiver services, other than residential support services in the home or community, if he or she meets all of the following criteria:

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; 130 CMR: DIVISION OF MEDICAL ASSISTANCE 519.007: continued
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. (*Emphasis added*)

On October 4, 2022, the Appellant applied for Home-and Community-Based Services Waivers for MFP-Community Living Waiver. (Exhibit 7, p. 43) On February 7, 2023, MassHealth denied the Appellant's application for the MFP Community Living Waiver based upon 130 CMR 519.007(H)(2)(a)(5), and this appeal followed. (Exhibit 7, p. 44-45) The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228. See also Fisch v. Board of Registration in Med., 437

Mass. 128, 131 (2002); 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). Based upon the evidence presented, the Appellant has not met this burden.

The Appellant has demonstrated a history of psychiatric decompensation when not following his prescribed medication regimen. Symptoms of this decompensation include chronic behavioral challenges including his verbal abuse and accusations, his displays of irritability and impulsivity. These displays include the Appellant's firing of multiple caregivers, the Appellant's physical aggression, the Appellant's refusal to take medications and attend appointments, as well as the Appellant's self-modification of his prescribed medication dosing and regimen without consulting anyone, including his doctors. (Exhibit 7, p.61-71, p.72-73). Prior to the Appellant's appeal from his termination from the Waiver program in April of 2022, the Appellant was the subject of two separate Section 12 holds in [REDACTED] of 2021 and [REDACTED] of 2022. (Exhibit 7, p.61-71, p.72-73) Along with these holds, there are two separate allegations of assault and battery, one against a caregiver, and one against another resident/peer within the Appellant's building. One of these cases has proceeded through the criminal court system and a pending assault case is active through [REDACTED] District Court at the time of the Hearing held on [REDACTED] 2023. (Testimony, Exhibit 7, p.61-71, p.72-73)

Subsequent to the Hearing on his appeal from his April 4, 2022 termination from the Waiver program, but prior to the decision issuing, the Appellant was subject of a third Section 12 petition in less than one calendar year. (Exhibit 7, p.61-71, p.72-73). The Appellant remained hospitalized until [REDACTED] of 2022. (Exhibit 7, p.61-71, p. 85-224).

During the [REDACTED] 2023 in-home assessment which occurred for the current Waiver the Appellant seeks, the Appellant gave inconsistent statements and the accuracy of his self-reporting is in doubt. First, the Appellant denied any continence issues, but informed his Appellant's Guardian that he had experienced incontinence immediately prior to the Waiver Assessment visit. (Exhibit 7, p.67-69) When asked about pending criminal charges, the Appellant responded that the case had been resolved, however, [REDACTED] District Court reported that a criminal charge remains pending at the time of the March 17, 2023 hearing. (Testimony, Exhibit 7, p.61-71)

Regarding the Appellant's history of alcohol and polysubstance abuse, the Appellant reported to the nurse reviewer that he had been sober for over ten years from alcohol and his last use of illicit drugs has been eighteen years or more. However, the Appellant admits he smokes marijuana occasionally and utilizes marijuana to manage his anxiety. Annual Redetermination in June of 2021 revealed that the Appellant had been observed smoking marijuana in his apartment, utilizing wet towels by his door to hide the smoke. Although he possesses a medical marijuana card, the observations of his marijuana use are inconsistent with the Appellant's self-reporting. The Appellant admitted to the nurse reviewer that he continues

to smoke marijuana. (Exhibit 7, p. 68)

The nurse reviewer observed that the Appellant became frustrated easily. The nurse reviewer recorded that the Appellant has not followed through with his plan of care in the past, declining physical therapy/occupational therapy, even after agreeing to a plan. (Exhibit 7, p. 68) In the nurse reviewer's summation, she noted the Appellant historically has been verbally abusive and demeaning to care givers. In the past, the Appellant has threatened to kill not only caregivers, but family as well, with very detailed outlines of how he would physically harm others. The nurse reviewer noted that the Appellant has been observed to either refuse or be incapable of accepting responsibility for his action. (Exhibit 7, p. 68-69)

The Appellant has demonstrated that he is resistant to receive support around his psychiatric medications and has again started manipulating his medications (one example noted by the nurse reviewer involved that Appellant taking his Seroquel in split doses and stating that he didn't need to discuss this medication modification with his psychiatrist). The Appellant's Guardian indicated that the Appellant is authorized to modify his medication, however, the letter from the Appellant's treating psychologist dated March 6, 2023 makes no mention that the Appellant may choose to modify his medication without doctor consultation. This inconsistency is particularly concerning where medication issues had a significant role in his decompensation leading to his three Section 12 commitments in less than one calendar year. (Exhibit 7, p.69, Exhibit 8, p. 36)

Additionally, the Appellant has demonstrated difficulty managing his blood pressure medication. Although he reported to the nurse reviewer that he was aware of his medication being empty, he revealed no plan to order or retrieve his missing prescribed blood pressure medication. Moreover, the Appellant was unable to state definitively how long he had failed to take his blood pressure. (Exhibit 7, p.69) The nurse reviewer observed that the Appellant appeared to echo the troubling behaviors he exhibited when he was last on the Waiver when he experienced significant psychiatric decompensation instability to a dangerous degree. (Exhibit 7, p. 68-69)

The Appellant's Guardian has raised concerns regarding MRC's decision to deny the Waiver and her belief that mental health discrimination is involved in the MRC's decision and evaluation. The Appellant's Guardian's position is that the MRC decision was viewed through a lens of past instability and does not properly account for that Appellant's perceived current stability within the community. To that end the Appellant's Guardian testified that a complaint had been filed with the Massachusetts Commission Against Discrimination on behalf of the Appellant. However, the issue in this appeal is whether the Appellant, who bears the burden by a preponderance of evidence, has shown that MassHealth's denial of the MFP-LC Waiver was incorrect, pursuant to 130 CMR 519.007(H)(2), because its finding that the Appellant cannot be safely served in the community within the Waiver was in error. The Appellant has not met this burden. The three Section 12 hospitalizations within a year and a half of the time of the

Appellant's Hearing on March 17, 2023 demonstrate a recent instability requiring institutionalized 24/7 care. Additionally, at the time of the first two Section 12s in the fall of 2021, allegations of the Appellant acting violently surfaced, one of which involved pending criminal charges. According to the Appellant's Guardian, the Appellant has been under the care of his current psychologist since [REDACTED] of 2022 and has benefited from the aid of his current PCA for approximately two months prior to the March 17, 2023 hearing. However, the Appellant's self-reporting during the in-home assessment on [REDACTED] 2023, cast doubt on his ability to self-regulate his behavior as well as his medication. Moreover, his inconsistent statements regarding his marijuana use, his inaccurate statements regarding the status of his criminal charges, his minimization of his physical actions which led to the pending criminal charges, his inability to determine how long he had been missing his blood pressure medication, his modification of his Seroquel dosage coupled with his history of refusing to follow medication regimens, his lack of local family support and scarcity of informal supports all highlight the instability the Appellant has demonstrated in the past year and a half, including the less than five months the Appellant has resided in the community since his [REDACTED] 2022 release from his most recent Section 12 commitment. Based on this record, the Appellant has not met his burden to show, by a preponderance of evidence, that the denial of MFP-LC Waiver was incorrect pursuant to 130 CMR 519.007(H)(2). Failing to meet this burden, the appeal is DENIED.

Order for MassHealth

None.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Patrick M. Grogan
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