

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2301424
<b>Decision Date:</b>	6/8/2023	<b>Hearing Date:</b>	04/18/2023
<b>Hearing Officer:</b>	Kimberly Scanlon		

**Appearance for Appellant:**

*Via telephone*

, Guardian

**Appearance for MassHealth:**

*Via telephone*

Linda Phillips, RN, BSN, LNC-CSp., Associate  
Director of Appeals and Regulatory  
Compliance



*The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, Quincy, Massachusetts 02171*

## APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Eligibility for Moving Forward Plan Waiver
<b>Decision Date:</b>	6/8/2023	<b>Hearing Date:</b>	04/18/2023
<b>MassHealth's Rep.:</b>	Linda Phillips, RN	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Quincy Harbor South 1 (Remote)	<b>Aid Pending:</b>	No

### Authority

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

### Jurisdiction

Through a notice dated December 6, 2022, MassHealth notified the Appellant that she is not clinically eligible for MassHealth's Moving Forward Plan Residential Supports Home and Community-Based Services Waiver (MFP-RS Waiver). (Exhibit 1). The Appellant filed this appeal in a timely manner on February 21, 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-RS Waiver.

### Issue

The appeal issue is whether MassHealth correctly determined that the Appellant is not eligible for participation in the MFP-RS Waiver because she is not an inpatient in a nursing facility or chronic disease or rehabilitation hospital with a continuous length of stay of 90 or more days at the time of the application of this waiver.

## Summary of Evidence

The MassHealth nurse appeared at the hearing via telephone and testified as follows: MassHealth offers two home and community-based service (HCBS) waivers: 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-RS Waiver is for individuals who need supervision and staffing 24 hours per day, 7 days per week. The MFP-CL Waiver is for individuals who can move into their own home or apartment, or to the home of someone else, and receive services in the community that are less than 24 hours per day, 7 days per week.

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 need the waiver services that are available through the MFP Waivers;
- The applicant must be able to be safely served in the community within the terms of the MFP Waivers;
- The applicant must meet the financial requirements to qualify for MassHealth special financial rules existing for Waivers' participants;
- The applicant will transition to an MFP-qualified residence in the community; and
- 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 9, pp. 5-6).

In this case, MassHealth determined that the Appellant is not clinically eligible for the Moving Forward Plan Residential Supports Home-and-Community Based Services Waiver because she is not an inpatient in a nursing facility or chronic disease or rehabilitation hospital with a continuous length of stay of 90 or more days at the time of the application of the waiver. (See, Exhibit 1).

MassHealth offered the following testimony in support of its position: On October 22, 2022, the Appellant applied for an MFP-RS Waiver. The Waiver states that the Appellant's facility name is [REDACTED]. On November 16, 2022, MassHealth spoke to the Case Manager at said facility telephonically. The Case Manager confirmed that the Appellant was admitted to the facility on [REDACTED] and therefore meets the 90 day criteria. However, the facility is an acute setting and not a nursing facility or chronic disease or rehabilitation hospital. The Case Manager also stated that there have been many referrals made

and the barrier appears to be the Appellant's age.<sup>1</sup> Further, the Appellant is currently a 2-person assist and is not in a psychiatric bed. Rather, the Appellant is on a medical floor with a neurological disorder.

The Appellant's representative appeared at the hearing telephonically and testified that the Appellant has been at the facility since last year. Further, the Appellant has been medically cleared for discharge for months. Due to the amount of care that the Appellant requires and the COVID impact on nursing facilities, the Appellant has not been accepted to a skilled nursing facility. There have been referrals made to over 250 agencies and facilities across the state and the regulation states that an applicant or member must need nursing facility services. While the regulation goes on to say that the applicant must be residing in an applicable facility, here, the Appellant needs nursing facility services. With respect to the Appellant's age, the Case Manager spoke to State officials and the nursing facilities have a different age in their minds, which is incorrect. Thus, the Appellant's representative and the Appellant's social worker have been trying to educate the facilities. Moreover, the Appellant will continue to decompensate in her current setting through no fault of her own. The Appellant's representative reiterated that she wants the Appellant out of the hospital and into a skilled nursing facility.

In response, the MassHealth nurse clarified that the regulation specifies that the applicant must be in a nursing facility, chronic disease, or rehabilitation hospital. With respect to the telephonic discussion with the facility's case manager, this is based upon the fact that an assessment has not been performed on the Appellant because it is in beginning stages. The MassHealth nurse apologized about the skilled nursing facilities mentioned and clarified that she cannot speak about the reasoning why the Appellant has not been accepted, rather she can only testify as to the reasoning that the Appellant was denied the waiver, in accordance with the regulations.

## Findings of Fact

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

1. The Appellant is over the age of 18.
2. On [REDACTED], the Appellant was transferred to an acute facility.
3. On October 22, 2022, the Appellant applied for an MFP-RS waiver.
4. MassHealth determined that the Appellant's admission to an acute facility does not meet the criteria set forth in the regulations because an acute facility is not considered to be a nursing

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<sup>1</sup> At the time of the hearing, the Appellant was [REDACTED]. Accordingly, the Case Manager explained to MassHealth that the cutoff for skilled nursing facility admissions is 23 years of age. Upon inquiry, the Appellant's representative testified that the Appellant will be [REDACTED] in [REDACTED] of 2023.

facility or chronic disease or rehabilitation hospital.

5. On December 6, 2022, MassHealth notified the Appellant of its denial of her application for participation in the MFP-RS Waiver.

## Analysis and Conclusions of Law

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

### (1) Money Follows the Person (MFP) Residential Supports Waiver<sup>2</sup>

(a) Clinical and Age Requirements. The MFP Residential Supports 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 residential support services and other specified waiver services in a 24-hour supervised residential setting 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. must be assessed to need residential rehabilitation, assisted living services, or shared living 24-hour supports services within the terms of the MFP Residential Supports Waiver;
5. is able to be safely served in the community within the terms of the MFP Residential Supports Waiver; and
6. is transitioning to the community setting from a facility, moving to a qualified residence, such as a home owned or leased by the applicant or a family member, an apartment with an individual lease, or a community-based residential setting in which no more than four unrelated individuals reside.

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

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<sup>2</sup> 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)).

solely on the applicant or member regardless of his or her marital status. The applicant or member must

1. meet the requirements of 130 CMR 519.007(H)(1)(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 Residential Supports 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 Residential Supports Waiver are eligible for the waiver services described in 130 CMR 630.405(C): *Money Follows the Person Residential Supports (MFP-RS) Waiver*.

(130 CMR 519.007(H)(1)).

In the present case, MassHealth received the Appellant's application for an MFP-RS Waiver. The application stated that the facility name was Memorial Medical Center-University Campus. The case manager confirmed the Appellant's date of admission to the facility, however, the facility is an acute setting, not a nursing facility or chronic disease or rehabilitation hospital. As a result, unfortunately the Appellant does not meet the criteria, in accordance with 130 CMR 519.007(H)(1)(a)(2).<sup>3</sup> This appeal is denied.<sup>4</sup>

## 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

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<sup>3</sup> It is noted that the Appellant's representative submitted credible documentation showing exhaustive efforts at attempts to transfer the Appellant to a skilled nursing facility, to no avail.

<sup>44</sup> This denial does not preclude the Appellant from re-applying for the MFP-RS waiver upon her transfer to an applicable facility for 90 consecutive days.

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

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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