

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2301839

Decision Date: 5/26/2023

Hearing Date: 04/06/23

Hearing Officer: Stanley Kallianidis

Appellant Representative:

Pro Se

MassHealth Representative:

Linda Phillips, RN



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th Floor
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Denial of MFP Waiver
Decision Date:	5/26/2023	Hearing Date:	04/06/23
MassHealth Rep.:	Linda Phillips, RN		

Authority

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

Jurisdiction

A notice dated February 27, 2023 was sent to the appellant stating that MassHealth had denied his application for a Moving Forward Plan (MFP) Community Living Waiver due to a lack of clinical eligibility (see 130 CMR 519.007(H) and Exhibit 1). The appellant filed this timely appeal on March 7, 2023 (Exhibit 2).

The denial of assistance is grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's application for a Home and Community-Based MFP Community Living Waiver.

Issue

Pursuant to 130 CMR 519.007(H), does the appellant meet the clinical requirements for an MFP Community Living Waiver?

Summary of Evidence

The MassHealth representative testified that the appellant's application for an MFP Community Living Waiver was denied due to a lack of clinical eligibility. Specifically, the appellant did not meet the eligibility criterion of being "able to be safely served in the community within the terms of the MFP Waivers." The appellant met all other clinical eligibility criteria. There are two types of MFP Waivers: MFP-CL and MFP-RS. MFP-CL Waivers are for individuals who can reside in their own or someone else's home, with less than 24-hour supports. MFP-RS Waivers are for individuals in a group home who need 24-hour supervision. The appellant applied for the MFP-CL Waiver (Exhibit 3).

The appellant applied for the waiver on October 11, 2022. An in-person assessment was conducted on [REDACTED] 2023 at the appellant's nursing facility. The appellant is [REDACTED] years old. He was admitted to his nursing facility on [REDACTED] 2022 following two hospital admissions for infection, COVID-19 and alcohol abuse and withdrawal. His medical history includes hypertension, atrial fibrillation, asthma, COPD, nicotine dependence, morbid obesity, cirrhosis, hepatitis C, diverticulitis, acute colitis, GI hemorrhage, ileostomy, ulcer and hernia, peritonitis, MRSA, cellulitis, and polysubstance abuse (Exhibit 3, p. 67).

The MassHealth representative noted that the appellant's history of substance use disorder (SUD) includes, alcohol, cocaine, crack and IV heroin. Currently, he denied the desire to use these substances again due to the withdrawal symptoms that follow. According to facility staff, the appellant does not attend the SUD meetings that are offered to him and does not want to attend to them when he discharges because he likes to be alone and is not comfortable around people. The appellant states that he has no community supports. He has a history of arrests related to alcohol intoxication and has been placed in treatment centers multiple times (Id. at p. 68).

The MassHealth representative testified further that the MassHealth Waiver Team conducted clinical reviews of the appellant on [REDACTED] 2023. It was the Waiver Team's opinion that, while the appellant is open about his alcohol and drug abuse, because he is unwilling to attend the SUD groups available to him at the facility and seek SUD supports upon discharge, he was not considered to be able to be safely served in the community within the terms of the MFP Community Living Waiver (Exhibit 3).

The appellant testified that he is currently sober and does not want to return to drugs and alcohol because they make him ill and cause him problems. The appellant acknowledged his alcoholism but denied having a drug problem. He stated that he does not want to attend SUD meetings because being in large groups of people make him anxious. He stated that he would think about attending SUD meetings or counseling in the future if he could do this in a one-to-one setting but indicated that he has no current plans to do this. The appellant testified that he would like to return to the community but has no place to go and no family or friends to help him with housing.

Findings of Fact

The record shows, and I so find:

1. A notice dated February 27, 2023 was sent to the appellant stating that MassHealth had denied his application for MFP Community Living Waiver due to a lack of clinical eligibility (Exhibit 1).
2. The appellant applied for the MFP-CL Waiver on October 11, 2022. An in-person assessment was conducted on [REDACTED] 2023 at the appellant's nursing facility (Exhibit 3).
3. The appellant is [REDACTED] years old (Exhibit 3).
4. The appellant was admitted to his nursing facility on [REDACTED] 2022 following two hospital admissions for infection, COVID-19 and alcohol abuse and withdrawal (Exhibit 3).
5. The appellant's medical history includes hypertension, atrial fibrillation, asthma, COPD, nicotine dependence, morbid obesity, cirrhosis, hepatitis C, diverticulitis, acute colitis, GI hemorrhage, ileostomy, ulcer and hernia, peritonitis, MRSA, cellulitis, and polysubstance abuse (Exhibit 3).
6. The appellant's history of substance use disorder (SUD) includes, alcohol, cocaine, crack and IV heroin. He has a history of arrests related to alcohol intoxication and has been placed in treatment centers multiple times (Exhibit 3).
7. The appellant is currently sober. He acknowledges his alcoholism but denies abusing illicit drugs (Exhibit 3 and testimony).
8. Currently, the appellant does not attend the SUD meetings that are offered to him and does not intend to access SUD supports when he discharges to the community (Exhibit 3 and testimony).
9. The appellant does not have any friends or family in the community willing to help with his housing search (Exhibit 3).
10. The MassHealth Waiver Team conducted clinical reviews of the appellant on [REDACTED] and [REDACTED] 2023 (Exhibit 3).
11. It was the Waiver Team's opinion that the appellant was not considered to be able to be safely served in the community within the terms of the MFP Community Living Waiver because he is unwilling to attend the SUD groups available to him at the facility and seek SUD supports upon discharge (Exhibit 3).

Analysis and Conclusions of Law

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:

(i) 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;

(ii) 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;

(iii) must have received MassHealth benefits for inpatient services, and be MassHealth eligible at least the day before discharge;

(iv) needs one or more of the services under the MFP Community Living Waiver;

(v) is able to be safely served in the community within the terms of the MFP Community Living Waiver; and

(vi) 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 (130 CMR 519.007(H)(2)).

In the instant case, MassHealth denied the appellant's application for an application for an MFP Community Living Waiver due to a lack of clinical eligibility. Specifically, he was denied under 130 CMR 519.007(H)(2)(v). MassHealth is of the opinion that given the appellant's history of substance abuse, particularly with alcohol, combined with his refusal to engage in any SUD counseling or services, renders him unable to be "safely served in the community within the terms of the MFP Community Living Waiver managed in the community." The appellant met all other clinical eligibility criteria.

I have found that the appellant applied for the MFP Waiver-CL Waiver on October 11, 2022. An in-person assessment was conducted on [REDACTED] 2023. The appellant is [REDACTED] years old. He was admitted to his nursing facility on [REDACTED] 2022.

The appellant's medical history includes hypertension, atrial fibrillation, asthma, COPD, nicotine dependence, morbid obesity, cirrhosis, hepatitis C, diverticulitis, acute colitis, GI hemorrhage, ileostomy, ulcer and hernia, peritonitis, MRSA, cellulitis, and polysubstance abuse.

The appellant is currently sober. He acknowledges his alcoholism but denies abusing illicit drugs. The appellant's history of SUD includes, alcohol, cocaine, crack and IV heroin. He has a history of arrests related to alcohol intoxication and has been placed in treatment centers multiple times.

The appellant acknowledged that he does not attend the SUD meetings that are offered to him and does not intend to access SUD supports when he discharges to the community. He stated that the reason for this is that he does not like crowds and prefers to be by himself. In the community, the appellant does not have any friends or family willing to help with his housing search.

Based upon the above facts chronicled in the appellant's clinical record and testimony, specifically the appellant's history of SUD and his unwillingness, at least currently, to attend SUD counseling or access SUD supports, and where he has no friends or family to help him transition to the community, I conclude that MassHealth was correct to conclude that the appellant is unable "to be safely served in the community within the terms of the MFP Community Living Waiver."

The appeal is therefore denied.

Order for the 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.

Stanley Kallianidis
Hearing Officer
Board of Hearings

cc: Linda Phillips, RN