

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2301887

Decision Date: 5/3/2023

Hearing Date: 04/11/2023

Hearing Officer: Patricia Mullen

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Brad Goodier, RN, Disability Reviewer II,
Disability & Community Services Appeals
Unit; Linda Phillips, RN, Associate
Director, Appeals/Regulatory Compliance;
Eileen Cynoman, RN (observing)



*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 Waiver
Decision Date:	5/3/2023	Hearing Date:	04/11/2023
MassHealth's Rep.:	Brad Goodier, RN, Disability Reviewer II, Disability & Community Services Appeals Unit; Linda Phillips, RN, Associate Director, Appeals/Regulatory Compliance; Eileen Cynoman, RN (observing)	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South (remote)		

Authority

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

Jurisdiction

Through notices dated February 24, 2023, MassHealth denied the appellant's applications for the MassHealth Moving Forward Plan (MFP) Residential Supports (RS) waiver and MFP Community Living (CL) waiver, because MassHealth determined that the appellant cannot be safely served in the community within the terms of the waivers. (Exhibits 1, 2, and 130 CMR 519.007(H)). The appellant filed this appeal in a timely manner on March 9, 2023. (Exhibit 3 and 130 CMR 610.015(B)). A denial of a requested MassHealth benefit is valid grounds for appeal. (130 CMR 610.032)

Action Taken by MassHealth

MassHealth denied the appellant's MFP-RS and MFP-CL waiver applications because it

determined that the appellant could not be safely served in the community within the terms of the waivers.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.007(H), in determining that the appellant is clinically ineligible to participate in the MFP-RS and MFP-CL waiver programs because he cannot be safely served in the community within the terms of the waivers.

Summary of Evidence

The appellant appeared telephonically. MassHealth was represented telephonically by a registered nurse, Disability Reviewer II, with the Disability and Community Services Appeals Unit for MassHealth's agent, UMass Medical School, (hereinafter "the MassHealth representative), and the Associate Director of Appeals and Regulatory Compliance for the Disability and Community Services Appeals Unit. A registered nurse from the unit observed the appeal.

The MassHealth representative explained that MassHealth offers two home and community-based service (HCBS) Waivers; the MFP RS Waiver and the MFP-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. (Testimony). 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. (Testimony). The MFP-RS Waiver is for individuals who need supervision and staffing 24 hours/day, 7 days per week. (Testimony). The appellant applied for the MFP-CL and MFP-RS Waivers on November 7, 2022 (Exhibit 9, pp. 45, 51).

The MassHealth representative testified that the eligibility criteria for the MFP Waivers are as follows:

- The applicant must be living in a nursing facility or long-stay hospital, and have 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 or older;
- The applicant must meet clinical requirements for, and be in need of, 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, the applicant must need residential support services with staff supervision 24 hours/day, 7 days/week.

The MassHealth representative stated that on January 24, 2023, an assessment for Waiver eligibility was conducted in person at the appellant's nursing facility. In attendance at the assessment were the appellant, Jessica Prescott, Social Worker (introductions only), and Susan Tomasz-Taylor RN, MassHealth Nurse Reviewer (hereinafter "the Nurse Reviewer"), who was representing the MFP Waiver Program. (Testimony). Ms. Tomasz-Taylor spoke with social worker Samantha White, and appellant's friend. (Testimony).

The assessment consisted of completion of MFP documents including Minimum Data Set-Home Care (MDS-HC); Clinical Determination of Waiver Eligibility; Acquired Brain Injury (ABI)/MFP Waivers Community Risks Assessment; a review of the applicant's medical record; and a discussion with the facility staff. (Testimony, exhibit 9, pp. 57-80).

The MassHealth representative stated that the appellant is under age 65 and was admitted to the hospital for evaluation of sciatica on [REDACTED]. At the hospital emergency room (ER), the appellant was noted to be under severe alcohol intoxication and required CIWA (Clinical Institute Withdrawal Assessment) protocols. (Testimony). In the ER, the appellant reported that his last drink was just prior to his arrival at the ER, and although he was unsure of the quantity of how much he consumed, he vomited several times in the ER. (Testimony). The appellant expressed suicidal ideation with the ER physician and was seen by psychiatry. (Testimony). The MassHealth representative noted that the appellant was treated for several medical diagnoses in the cardiac care unit, and he required 1:1 supervision due to suicidal ideation. When he was determined medically stable, the appellant was discharged to the nursing facility on [REDACTED] [REDACTED] (Testimony).

The MassHealth representative stated that the appellant's medical history includes chronic alcohol dependence, coronary artery disease, myocardial infarction, chronic pancreatitis, degenerative disk disease, GERD, hepatitis C, idiopathic peripheral autonomic neuropathy, chronic sleep apnea not on CPAP, hypertension, conversion disorder with seizure disorder, asthma, COPD, tobacco use, syncope and collapse, generalized edema, Lyme disease, hepatitis C w/o coma. The appellant's surgical history includes anterior dislocation of left shoulder following shoulder repair (11/19/2021) and left shoulder revision total shoulder arthroplasty on 10/27/2022 due to dislocation likely from a fall, spinal surgery (cervical and lumbar with hardware, date unknown), amputation (all toes left foot from frost bite), angioplasty with stent. (Testimony, exhibit 9, page 75). The appellant has a long history of depression and multiple psychiatric hospitalizations, and multiple detox. (Exhibit 9, p. 75). The appellant reported to the

Nurse Reviewer that the only time he has been able to remain sober for any period of time has been in facilities. (Exhibit 9, p. 76). The Nurse Reviewer noted that the appellant has several risks in returning to the community, most notably his substance abuse history. (Exhibit 9, p. 77). The Nurse Reviewer wrote that the appellant has made some progress towards sobriety due to facility controls, but even with such controls, there is concern that he is drinking while residing in the facility. (Exhibit 9, p. 77). The Nurse Reviewer wrote that the appellant shows lack of commitment and interest in participating in substance abuse supports offered at the facility. (Exhibit 9, p. 77). The Nurse Reviewer stated that the appellant has several significant health concerns related to his alcohol use including alcohol induced chronic pancreatitis, and conversion disorder/seizure. (Exhibit 9, p. 77). The Nurse Reviewer noted that the appellant has not been sober long enough or identified the supports necessary to allow him to remain sober at this time. (Exhibit 9, p. 78).

The MassHealth representative testified that the following documentation indicates that the appellant is a significant safety risk to himself and others:

- June 1, 2022 hospital consultation note for alcohol use disorder states that the appellant has a long history of alcohol use disorder; he stated that his last drink was 2 days ago, and he was “currently drinking a few sleeves and a few pints of liquor daily”. (Exhibit 9, p. 98).
- June 2, 2022 hospital progress note by Lauren Davis NP states that the appellant “is receiving prescriptions for Oxycodone from 3 different providers in 3 different cities in Massachusetts”. (Exhibit 9, p. 109).
- November 3, 2022 behavioral progress note by Hailey Leavitt, CNP, indicates that the appellant would benefit from starting Lamictal for bipolar depression. (Exhibit 9, p. 160).
- December 1, 2022 behavioral progress note by Hailey Leavitt, CNP, indicates that the appellant remains anxious and depressed, and would benefit from an increase in Lamictal dose. (Exhibit 9, p. 164).
- December 29, 2022 behavioral progress note by Hailey Leavitt, CNP, indicates that a contraband search was conducted in the appellant’s room at the nursing facility and 2 nips of fireball were found; the appellant refused substance use program because “it is just people complaining and gossiping and it’s not for me”. (Exhibit 9, p. 169).

The MassHealth representative stated that on February 16, 2023, the appellant’s case was

discussed at the MassHealth Waiver Clinical Team review meeting. In addition, on February 22, 2023, as part of the MFP Waiver eligibility process, a second clinical review was conducted by the Massachusetts Rehabilitation Commission (MRC) Clinical team, who oversees the community living waiver. (Testimony). The MassHealth representative stated that MassHealth and MRC determined that the appellant is not considered to be clinically eligible for participation in the MFP-CL and -RS Waivers due to his being a significant health and safety risk to himself and others due to his severe alcohol abuse history and psychiatric instability, which precludes transition to the community. MassHealth and MRC determined that the appellant is not able to be safely supported within the MFP-CL and MFP-RS Waivers. (Testimony).

The MassHealth representative stated that based on the in-person assessment; the completed MFP documentation including: MDS-HC, ABI/MFP Waivers Community Risks' assessment, and Clinical Determination of Waiver Eligibility; and a thorough review of the appellant's medical record by both MassHealth and MRC, the appellant does not meet eligibility requirements for the MFP-CL and MFP-RS Waivers. The MassHealth representative stated that the appellant continues to require ongoing acute psychiatric stabilization efforts including medication adjustments; he has not shown the ability to follow a medical plan of care related to contraband being found in his room at the nursing facility; and he is not willing to use available substance abuse programs. The MassHealth representative testified that it is MassHealth's clinical and professional opinion that, at this time, based on the available medical records and interviews, the appellant cannot be safely served in the community within the MFP-CL and MFP-RS waivers.

The appellant testified that he was previously in a nursing facility in [REDACTED] for rehabilitation after having his toes amputated. The appellant noted that after discharge, he had an apartment through his city's housing authority for about 4 months, but was evicted because people in his apartment were caught using drugs. The appellant noted that he was living in a sober house, but was evicted because of detection of a drug he received at the hospital. The appellant stated that after the eviction in 2010, he was homeless and living on the streets with some time spent in rehabilitation facilities after surgeries due to alcohol related falls. The appellant stated that he was staying at a shelter prior to his hospitalization in [REDACTED]. The appellant stated that he is applying for housing but a local housing authority recently denied him due to his past eviction. The appellant stated that he believes he is on the psychiatric medication Zoloft now, but he cannot remember the other psych medication he is on. The appellant noted that at this time, he has no home to go to in the community.

The appellant stated that he is on Suboxone and oxycodone for pain. The appellant stated that he had his testicle removed over the winter due to some problems, and had an appointment with his urologist that day. The appellant noted that he has to use a catheter for 48 hours and then needs to go back to the urologist. The appellant stated that he is also having vision problems and his

right eye is blurry. The appellant noted that he does not believe he is taking Lamictal at this time, but clarified that he is not sure what he is taking and is concerned that the nursing facility staff is not giving him his medications. The appellant stated that he does not participate in AA meetings or similar programs.

Findings of Fact

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

1. The appellant applied for the MFP-CL and MFP-RS Waivers on November 7, 2022.
2. The appellant is between the ages of 18 and 65, disabled, and has been living in a nursing facility for more than 90 days.
3. On January 24, 2023, an assessment for Waiver eligibility was conducted in person at the appellant's nursing facility; the assessment consisted of completion of MFP documents including Minimum Data Set-Home Care (MDS-HC); Clinical Determination of Waiver Eligibility; ABI/MFP Waivers Community Risks Assessment; a review of the applicant's medical record; and a discussion with the facility staff.
4. The appellant was admitted to the hospital for evaluation of sciatica on [REDACTED] in the hospital ER, the appellant was noted to be under severe alcohol intoxication and required CIWA protocols; the appellant reported that his last drink was just prior to his arrival at the ER, and although he was unsure of the quantity of how much he consumed, he vomited several times in the ER; the appellant reported that he was currently drinking a few sleeves and a few pints of liquor daily; the appellant expressed suicidal ideation and was seen by psychiatry; the appellant was treated for several medical diagnoses in the cardiac care unit, and he required 1:1 supervision due to suicidal ideation; the appellant was discharged to the nursing facility on [REDACTED]
5. The appellant's medical history includes chronic alcohol dependence, coronary artery disease, myocardial infarction, chronic pancreatitis, degenerative disk disease, GERD, hepatitis C, idiopathic peripheral autonomic neuropathy, chronic sleep apnea not on CPAP, hypertension, conversion disorder with seizure disorder, asthma, COPD, tobacco use, syncope and collapse, generalized edema, Lyme disease, hepatitis C w/o coma; surgical history includes anterior dislocation of left shoulder following shoulder repair in November, 2021, and left shoulder revision total shoulder arthroplasty in October, 2022 due to dislocation likely from a fall, spinal surgery (cervical and lumbar with hardware, date unknown), amputation (all toes left foot from frost bite), angioplasty with stent.
6. The appellant has a long history of depression and multiple psychiatric hospitalizations, and multiple detox; the appellant reported to the Nurse Reviewer that the only time he has been able to remain sober for any period of time has been in facilities.

7. The appellant has several significant health concerns related to his alcohol use including alcohol induced chronic pancreatitis, and conversion disorder/seizure.
8. At the time of his hospitalization, the appellant was receiving prescriptions for Oxycodone from 3 different providers in 3 different cities in Massachusetts.
9. While in the nursing facility, the appellant was started on the prescription medication Lamictal, and his dose was increased a month later.
10. A contraband search was conducted in the appellant's room at the nursing facility and 2 nips of fireball were found; the appellant refused substance use program stating that "it is just people complaining and gossiping and it's not for me".
11. The appellant continues to require ongoing acute psychiatric stabilization efforts including medication adjustments; he has not shown the ability to follow a medical plan of care related to contraband being found in his room at the nursing facility; and he is not willing to use available substance abuse programs.
12. The appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting, and in addition, a second clinical review was conducted by the MRC Clinical team, who oversees the community living waiver.
13. MassHealth and MRC determined that the appellant is not considered to be clinically eligible for participation in the MFP-CL and -RS Waivers due to his being a significant health and safety risk to himself and others due to his severe alcohol abuse history and psychiatric instability, which precludes transition to the community.
14. MassHealth and MRC determined that the appellant is not able to be safely supported within the MFP-CL and MFP-RS Waivers.
15. The appellant was previously in a nursing facility in [REDACTED] for rehabilitation after having his toes amputated; after discharge, the appellant had an apartment through his city's housing authority for about 4 months, but was evicted because people in his apartment were caught using drugs.
16. The appellant was living in a sober house, but was evicted because of detection of a drug he received at the hospital.
17. After the eviction in 2010, the appellant was homeless and living on the streets with some time spent in rehabilitation facilities after surgeries due to alcohol related falls.
18. The appellant was staying at a shelter prior to the hospitalization that led to his current nursing facility admission.
19. The appellant is applying for housing but a local housing authority recently denied him due to his past eviction.

20. The appellant is not sure what psychiatric medication he is on, and is concerned that the nursing facility is not giving him his medications.
21. The appellant takes Suboxone and oxycodone for pain.
22. The appellant has ongoing urological issues and at the time of the hearing, had a 48 hour catheter placement.
23. The appellant is also having vision problems and his right eye is blurry.
24. The appellant does not participate in AA meetings or similar programs.

Analysis and Conclusions of Law

Money Follows the Person Home- and Community-based Services Waivers.

(1) Money Follows the Person (MFP) Residential Supports Waiver.

(a) Clinical and Age Requirements. The MFP Residential Supports 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 residential support services and other specified waiver services in a 24-hour supervised residential setting 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. must be assessed to need residential habilitation, 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 determines income eligibility based solely on

the applicant's or member's income regardless of his or her marital status. The applicant or member must

1. meet the requirements of 130 CMR 519.007 (H)(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.

(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.

(b) Eligibility Requirements. In determining eligibility for MassHealth Standard and for these waiver services, the MassHealth agency determines income eligibility based solely on the applicant's or member's income regardless of his or her marital status. The applicant or member must

1. meet the requirements of 130 CMR 519.007 (H)(2)(a);
2. have countable income that is less than or equal to 300% of the federal benefit rate (FBR) for an individual;
3. have countable assets of \$2,000 or less for an individual and, for a married couple, if the initial Waiver eligibility determination was on or after January 1, 2014, have assets that are less than or equal to the standards at 130 CMR 520.016(B): Treatment of a Married Couple's Assets When One Spouse Is Institutionalized; and
4. not have transferred resources for less than fair market value, as described in 130 CMR 520.018: Transfer of Resources Regardless of Date of Transfer and 520.019: Transfer of Resources Occurring on or after August 11, 1993.

(c) Enrollment Limits. Enrollment in the MFP Community Living Waiver is subject to a limit on the total number of waiver participants. The number of participants who can be enrolled in this waiver may be limited in a manner determined by the MassHealth agency.

(d) Waiver Services. Eligible members who are enrolled as waiver participants in the MFP Community Living Waiver are eligible for the waiver services described in 130 CMR 630.405(D): Money Follows the Person Community Living (MFP-CL) Waiver.

(130 CMR 519.007(H)).

The home-and community-based services waivers allow individuals currently institutionalized in a nursing facility or hospital to be placed in a residential housing program or live on their own in the community. (130 CMR 519.007(H)(1), (2)). Pertinent here, the waivers require that the applicant "is able to be safely served in the community within the terms of the ... Waiver." (130 CMR 519.007(H)(1)(a)(5); 519.007(H)(2)(a)(5)).

As the MassHealth representative explained, this involves a comprehensive review to determine whether a particular applicant's medical needs can be met given the available community resources. MassHealth determined the appellant has multiple risk factors with regard to returning to living in the community, most notably his psychiatric condition and substance abuse history. The appellant has several significant health concerns related to his alcohol use including alcohol induced chronic pancreatitis, and conversion disorder/seizure, as well as falls resulting in the need for surgeries. The appellant reported to the Nurse Reviewer that the only time he has been able to remain sober for any period of time has been in facilities. Further the appellant has a long history of depression with multiple psychiatric hospitalizations. The appellant's psychiatric instability requires ongoing stabilization efforts including medication adjustments. The appellant was unsure of the psychiatric medications he is taking at this time and thus there is concern for his compliance with medications in the community. . Past attempts at living in the community

have failed due to his substance abuse. The appellant's severe alcohol abuse and psychiatric instability, and his inability to follow a medical plan of care and refusal to use available substance abuse programs, preclude a safe transition to the community

Based on the evidence noted above, the appellant cannot be safely served in the community within the terms of the MFP-CL Waiver or the MFP-RH Waiver. Because the appellant does not meet the criteria in 130 CMR 519.007(H) necessary for eligibility for either of the waiver programs, MassHealth's denials of the applications are upheld. 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.

Patricia Mullen
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