

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2303114
<b>Decision Date:</b>	7/11/2023	<b>Hearing Date:</b>	05/24/2023
<b>Hearing Officer:</b>	Patricia Mullen		

**Appearances for Appellant:**



**Appearances for MassHealth:**

Brad Goodier, RN, Disability Reviewer II, UMass Medical School, Disability and Community Based Services Unit; Linda Phillips, RN, Associate Director of Appeals and Regulatory Compliance; Eileen Cynoman, RN, Disability Reviewer II (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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	MFP/CL Waiver
<b>Decision Date:</b>	7/11/2023	<b>Hearing Date:</b>	05/24/2023
<b>MassHealth's Rep.:</b>	Brad Goodier, RN, UMass Medical School, Disability Reviewer II; Linda Phillips, RN, Associate Director of Appeals and Regulatory Compliance; Eileen Cynoman, RN, Disability Reviewer II (observing)	<b>Appellant's Reps.:</b>	
<b>Hearing Location:</b>	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 a notice dated March 7, 2023, MassHealth denied the appellant's application for the MassHealth Moving Forward Plan Community Living Home and Community Based Services (MFP-CL) waiver, because MassHealth determined that the appellant cannot be safely served in the community within the terms of the waiver. (Exhibit 1 and 130 CMR 519.007(H)). The appellant filed this appeal in a timely manner on April 18, 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-CL waiver application because it determined that the appellant could not be safely served in the community within the terms of the waiver.

## **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-CL waiver program because he cannot be safely served in the community within the terms of the waiver.

## **Summary of Evidence**

The appellant appeared telephonically at the hearing with a social worker from his nursing facility (hereinafter "the appellant's representative"), and another social worker from the nursing facility. MassHealth was represented telephonically by a Disability Reviewer II from the UMass Medical School Disability and Community Based Services Unit (hereinafter "the MassHealth representative") and by the Associate Director of Appeals and Regulatory Compliance for the Disability and Community Based Services Unit (hereinafter "the Associate Director"). Another Disability Reviewer II observed the appeal telephonically.

The appellant is over age 18 and under 65 and open on MassHealth Standard as a disabled adult. (Exhibit 5). The appellant is currently a resident at a skilled nursing facility (SNF). (Testimony).

The MassHealth representative submitted his testimony at Exhibit 7 and testified as follows:

MassHealth has two home and community-based service (HCBS) Waivers that assist Medicaid-eligible persons, move into the community, and obtain community-based services, 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-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. The MFP-RS Waiver is for individuals who need supervision and staffing 24 hours/day, 7 days per week. The appellant applied for the MFP-CL Waiver on December 27, 2022 (Exhibit 7; exhibit 8, p. 43).

The MassHealth representative stated that the the eligibility criteria for the MFP-CL Waiver is as follows. (Exhibit 7, p. 1; exhibit 8, pp. 5, 6):

- 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 be in need of the Waiver services that are available through the MFP-CL Waiver;
- The applicant must be able to be safely served in the community within the terms of the MFP-CL Waiver;
- The applicant must meet the financial requirements to qualify for MassHealth special financial rules existing for Waiver participants;
- The applicant will transition to an MFP-qualified residence in the community.

At issue for this appeal is:

Regulation 130 CMR 519.007 (H) (2):

- Is MassHealth correct in denying Mr. [REDACTED] application for the MFP-CL Waiver; because, he cannot be safely served in the community within this Waiver?

(Exhibit 7, p. 2; exhibit 8, pp. 37, 38).

The MassHealth representative testified that per the SNF initial medical assessment dated [REDACTED] 2022, the appellant was homeless when, on [REDACTED] 2022, he was brought to the hospital for altered mental status (AMS). (Exhibit 8, p. 117). The Admitting History and Physical notes from the nursing facility physician state that the appellant was brought by ambulance to the hospital after being found minimally responsive, down in the roadside near his wheelchair. (Exhibit 8, p. 151). While hospitalized, the appellant was diagnosed with a UTI (urinary tract infection), and toxic encephalopathy/metabolic encephalopathy in the context of UTI and substance abuse. (Exhibit 8, pp. 117, 151). During hospitalization, the appellant was also treated for pressure ulcers and debridement of his left ischium wound. (Exhibit 8, p. 117). The hospital discovered the appellant had been non-compliant with anti-coagulation medication prior to admission, and he was restarted on Eliquis. (Exhibit 8, p. 117). A toxicology screen was positive for marijuana and cocaine. (Exhibit 8, p. 118). The hospital noted that oxycodone had been discontinued due to history of opiate overdose; appellant had an opiate overdose in [REDACTED] 2022, requiring Narcan. (Exhibit 8, p. 117). Per the initial review notes, the appellant's past medical history included chronic osteomyelitis of the right ischial tuberosity and inferior pubic ramus; stage III pressure ulcer on left ischium; stage IV pressure ulcer on right ischium; left buttocks pressure ulcers; diabetes mellitus type II with peripheral vascular disease (PVD)

and neuropathy; pyelonephritis; recurrent UTIs; neurogenic bladder requiring intermittent self catheterization; right wrist fracture secondary to fall in [REDACTED] 2021; chronic deep vein thrombosis (DVT), status post IVC (inferior vena cava) filter; paraplegia secondary to closed fracture of T12 with spinal cord injury; dyslipidemia; cocaine use disorder; history of falls; history of fracture of left orbital floor and right orbital roof fracture; alcohol use disorder; anemia; history of pulmonary embolism; depression with multiple suicide attempts and prior inpatient psychiatric hospital admissions; extensive burn injury, 1995; history of sepsis due to chronic wounds; risk for malnutrition, among other things. (Exhibit 8, p. 117). The appellant uses a wheelchair for mobility. (Exhibit 8, p. 118). The appellant had previously been admitted to the nursing facility in [REDACTED] 2021 and in [REDACTED] 2017. (Exhibit 8, p. 80). The admission from [REDACTED] 2021 to [REDACTED] 2021 was for urosepsis, right 4<sup>th</sup> metacarpal fracture, and ischial decubitus ulcer. (Exhibit 8, p. 151). On [REDACTED] 2022, Mr. [REDACTED] was transferred from the hospital to the nursing facility for continued care and rehab. (Exhibit 8, p. 80). In the [REDACTED] 2022 Admitting History and Physical note from the nursing facility physician, the physician noted that the appellant is not always cooperative with care. (Exhibit 8, p. 151). Since his [REDACTED] 2022 SNF admission, the appellant has been hospitalized twice, from [REDACTED] 2022 to [REDACTED] 2022, and from [REDACTED] 2022 to [REDACTED] 2022. (Exhibit 8, pp. 194, 226).

The MassHealth representative stated that the waiver eligibility visit took place at the nursing facility on [REDACTED] 2023. (Exhibit 8, p. 72). In attendance were the appellant, the UMass Waiver nurse evaluator, a nurse from the nursing facility, and the social worker from the nursing facility, who was present for introductions only. (Exhibit 8, p. 72). The UMass Waiver nurse evaluator also spoke with a nurse from the nursing facility, over the phone. (Exhibit 8, p. 72).

The MassHealth representative stated that the waiver assessment consists of documents including Minimum Data Set-Home Care (MDS-HC) (Exhibit 8, pages 48-60); MFP Clinical Determination Assessment (Exhibit 8, pages 61-69); MFP Waivers Community Risk Assessment (Exhibit 8, page 70-71); a review of the applicant's medical record; and a discussion with the nursing facility staff. In the MFP Clinical Determination Assessment, the nurse reviewer from MassHealth determined that the appellant exhibits significant health and safety risks which preclude transition to the community. (Exhibit 8, p. 64). The nurse reviewer noted in the Community Risk Assessment that the community safety concerns for the appellant include risk for falls, risk for relapse to illicit substance abuse, risk for psychiatric decompensation related to depression, risk for recidivism to criminal activities, risk for UTIs related to self catheterization, risk for impaired skin integrity, wounds, and infection related to impaired mobility and diabetes, and risk for infection related to hip wound. (Exhibit 8, p. 70). In the Community Risk Assessment, the nurse reviewer reported that the appellant's polysubstance abuse began at age 14 and he last used marijuana and cocaine in [REDACTED] 2022; the nurse reviewer reported further, under legal/forensic history, that, starting in 2009, the appellant spent 2 years in county jail for possession of cocaine. (Exhibit 8, pp. 70, 71). The nurse reviewer noted that there were no nursing

notes or SUD notes in the SNF record indicating that the appellant was attending substance abuse disorder meetings at the SNF. (Exhibit 8, p. 66). The nurse reviewer listed homelessness under the section on Failed Community/facility placements and noted further that the appellant's mental health was a risk factor in light of his depression, post traumatic stress disorder (PTSD), 5 psychiatric hospitalizations since 2014, and 2 suicide attempts; no psychiatric medications are listed in the SNF record, however behavioral health provider notes state that the appellant is on Risperdal. (Exhibit 8, pp. 66, 69, 70, 163). The behavioral health notes have the caveat that the listed medication list should not be used as a medication administration list or medication dispensing list. (Exhibit 8, p. 164). Admission and discharge notes from the appellant's hospitalizations do not note Risperdal in the medication lists. (Exhibit 8, pp. 194, 204). The nurse reviewer listed as another risk, the appellant's unstable and/or complex medical conditions, including, paraplegia from spinal cord injury following a jump from 40 foot high wall<sup>1</sup>, significant burns over 85% of his body, diabetes, insomnia, muscle spasms, neurogenic bladder, hypertension, DVT with IVC filter placement, chronic pain syndrome, UTIs, depression with psychotic features, PTSD, and polysubstance abuse. (Exhibit 8, p. 70).

In the clinical summary, the MassHealth nurse reviewer noted that the appellant was denied for a MFP-CL waiver in 2017 due to open court cases and history of intentional overdose; the nurse reported that the court cases were now resolved. (Exhibit 8, p. 65). The nurse reviewer wrote that per a SNF physician progress note dated [REDACTED] 2022, the appellant refused to see the wound care nurse, refused prescribed treatments, and tried to dictate his own wound care. (Exhibit 8, p. 65). On [REDACTED] 2022, the appellant was brought to the hospital for pain and foul odor emanating from his left ischium wound. (Exhibit 9, p. 65). The appellant was diagnosed with sepsis, the wound was surgically debrided, and a wound vac was placed; the appellant was put on antibiotics and remained in the hospital for 8 days. (Exhibit 8, p. 65).

Per SNF physician assistant (PA) notes dated [REDACTED] 2022, the appellant asked to be sent to the ER for concern for infection of his left hip wound secondary to a foul odor and pain; he refused to let the SNF physician look at his hip; refused labs and refused exam by rounding wound specialist. (Exhibit 8, p. 139). Per PA note dated [REDACTED] 2022, when the ambulance arrived to take the appellant to the hospital, the appellant was outside smoking and refused to come in and refused to go to the hospital, attributing the leg pain to the rain. (Exhibit 8, p. 141). On [REDACTED] 2022, the appellant reported burning with urination for the past few days, urinalysis was done, and he was started on antibiotics. (Exhibit 8, pp. 136, 137). On [REDACTED] 2022, the appellant called 911 due to worsening pain in his left leg and ischium wound; he was admitted to the hospital; labs and CT scan indicated chronic osteomyelitis; antibiotics were initiated and wet to dry dressing twice a day was ordered; the appellant was discharged back to the SNF on [REDACTED] 2022; the PICC line was removed on [REDACTED] 2022. (Exhibit 8, p. 65).

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<sup>1</sup> Some notes stated that the appellant's spinal cord injury is from a jump/fall, while other notes state that the injury is from a gunshot wound. (Exhibit 8, pp. 195, 203).

The nurse reviewer reported that SNF nursing notes dated [REDACTED] 2022 to [REDACTED] 2023, document 4 dressing change refusals by the appellant. (Exhibit 8, pp. 66, 220, 221). The nurse reviewer wrote that the appellant's care plan noted behaviors of screaming, threatening, cursing, resisting care, and verbal abuse; CNA behavioral flowsheets from [REDACTED] 2022 through [REDACTED] 2023, document disruptive/inappropriate behavior 55 times; verbal abuse 18 times; and wandering to inappropriate areas 3 times. (Exhibit 8, p. 67). The CNA behavioral flowsheets were not submitted in MassHealth's hearing record.

The MassHealth representative stated that during the waiver eligibility assessment review, MassHealth noted the following documentation indicating the appellant's medical and psychiatric conditions:

- [REDACTED] 2022: Nursing facility progress note from discharge coordinator states "[appellant] has been chronically homeless for over three years, while struggling with substance use disorder, or physical disability. He has stayed at Friends of the homeless they do not have any bed available currently. SW will check in weekly for updates. He has also stayed at recuse (rescue) mission where he is currently restricted. [appellant] has also applied for MFP and SMOC housing" (Exhibit 8, p. 215).
- [REDACTED] 2022: Hospital physician progress note indicates that the appellant has intermittently refused care at the nursing facility and was being treated for an infection of his left ischial wound (Exhibit 8, pp. 199-200).
- [REDACTED] 2022: Progress note by licensed independent certified social worker states that "Rt (resident) discussed concerns with relapse if his drug of choice was available in the building" (Exhibit 8, p. 177)
- [REDACTED] 2022: Nursing facility nursing progress note indicated that the appellant was involved in a verbal altercation with staff and security at the SNF in which he was "yelling and agitated". According to the note, the appellant could not be redirected, continued to yell at staff before refusing all care and medications for the remainder of the night (Exhibit 8, p. 219).
- [REDACTED] 2023: Nursing facility progress note by facility NP indicates that the appellant was reported to be pocketing his meds; appellant denied it, however meds would be crushed going forward (Exhibit 8, pp. 85-87).

The MassHealth representative stated that on February 23, 2023, the appellant's case was

discussed at the MassHealth Waiver Clinical Team review meeting. In addition, on March 1, 2023, as part of the MFP Waiver eligibility process, a second clinical review was conducted by the Massachusetts Rehab Commission (MRC) Clinical Team, which oversees the Community Living Waiver. (Exhibit 7, p. 4). MassHealth and MRC determined that the appellant is not considered to be clinically eligible for participation in the MFP-CL Waiver due to a high risk of substance abuse relapse; the inability to follow a medical plan of care; prior failed attempts in the community; and behaviors toward staff. (Exhibit 8, p. 69; exhibit 7, p. 4).

The MassHealth representative stated that the appellant has failed multiple times in the community, noting further that the appellant is restricted from at least one homeless shelter, has a history of homelessness, and was found on the side of the road, minimally responsive prior to this current admission (Exhibit 8, p. 151). The MassHealth representative stated that the appellant has not shown the ability to follow a medical plan of care; medical documentation shows numerous refusals of lab work, wound care, and medications, all of which have negatively impacted the appellant's functional and psychiatric conditions leading to hospitalizations. The appellant is at high risk of substance abuse relapse; most recent overdose was [REDACTED] of 2022 and required Narcan. (Testimony; exhibit 8, p. 154). The MassHealth representative stated further that the appellant has documented verbal outbursts and agitation, which puts him at risk of caregiver neglect, therefore, the appellant cannot be safely served within the terms of the MFP-CL Waiver.

The MassHealth representative noted that the appellant would need to find housing that meets MFP-CL criteria, but his lack of housing was not a determining factor in the denial of the application.

The appellant stated that he goes to AA and NA meetings and has a sponsor to whom he reaches out for support. The appellant stated that he was homeless for 3 years prior to his SNF admission and is on a waiting list for Section 8 housing. The appellant's representative stated that the appellant got selected for low income housing but he cannot move in yet because the building is being renovated. The appellant stated that while he was homeless, he relapsed and ended up using drugs again in [REDACTED] 2022. The appellant noted that his [REDACTED] 2021 SNF admission was for bed sores. The appellant stated that he called the ambulance in [REDACTED] 2022 and told the ambulance to come to the house he was staying at. The appellant stated that he was waiting outside for the ambulance when it came. The appellant's representative questioned how MassHealth determined that the appellant failed in the community setting.

## **Findings of Fact**

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

1. The appellant is over age 18 and under 65, open on MassHealth Standard as a disabled



adult, and currently a resident at a SNF.

2. The appellant had been homeless for 3 years at the time of the hospital admission leading to the SNF admission; he had stayed at Friends of the homeless and at a rescue mission where he is currently restricted.
3. On [REDACTED] 2022, the appellant was brought by ambulance to the hospital for altered mental status after being found minimally responsive, down in the roadside near his wheelchair.
4. While hospitalized, the appellant was diagnosed with a UTI, and toxic encephalopathy/metabolic encephalopathy in the context of UTI and substance abuse; the appellant was also treated for pressure ulcers and debridement of his left ischium wound.
5. A toxicology screen was positive for marijuana and cocaine.
6. The appellant had been non-compliant with anti-coagulation medication prior to admission, and was restarted on Eliquis.
7. Oxycodone had been discontinued due to history of opiate overdose; appellant had an opiate overdose in [REDACTED] 2022, requiring Narcan.
8. The appellant's past medical history includes chronic osteomyelitis of the right ischial tuberosity and inferior pubic ramus; stage III pressure ulcer on left ischium; stage IV pressure ulcer on right ischium; left buttocks pressure ulcers; diabetes mellitus type II with PVD and neuropathy; pyelonephritis; recurrent UTIs; neurogenic bladder requiring intermittent self catheterization; right wrist fracture secondary to fall in [REDACTED] 2021; chronic DVT, status post IVC filter; paraplegia secondary to closed fracture of T12 with spinal cord injury; dyslipidemia; cocaine use disorder; history of falls; history of fracture of left orbital floor and right orbital roof fracture; alcohol use disorder; anemia; history of pulmonary embolism; depression with suicide attempts and prior inpatient psychiatric hospital admissions; extensive burn injury, 1995; history of sepsis due to chronic wounds; risk for malnutrition, among other things.
9. The appellant uses a wheelchair for mobility.
10. The appellant had previously been admitted to the nursing facility in [REDACTED] 2021 and in [REDACTED] 2017.
11. The appellant's SNF admission from [REDACTED] 2021 to [REDACTED] 2021 was for urosepsis, right 4<sup>th</sup> metacarpal fracture, and ischial decubitus ulcer.

12. On [REDACTED] 2022, Mr. [REDACTED] was transferred from the hospital to the nursing facility for continued care and rehab.
13. In the [REDACTED] 2022 Admitting History and Physical note from the nursing facility physician, the physician noted that the appellant is not always cooperative with care.
14. Since his [REDACTED] 2022 SNF admission, the appellant has been hospitalized twice, from [REDACTED] 2022 to [REDACTED] 2022, and from [REDACTED] 2022 to [REDACTED] 2022.
15. The waiver eligibility visit took place at the nursing facility on [REDACTED] 2023; in attendance were the appellant, the UMass Waiver nurse evaluator, a nurse from the nursing facility, and the social worker from the nursing facility, who was present for introductions only; the UMass Waiver nurse evaluator also spoke with a nurse from the nursing facility, over the phone.
16. The MFP-CL waiver assessment consists of documents including Minimum Data Set-Home Care, MFP Clinical Determination Assessment, MFP Waivers Community Risk Assessment, a review of the applicant's medical record, and a discussion with the nursing facility staff.
17. In the Community Risk Assessment, the nurse reviewer listed the community safety concerns for the appellant which included risk for falls, risk for relapse to illicit substance abuse, risk for psychiatric decompensation related to depression, risk for recidivism to criminal activities, risk for UTIs related to self catheterization, risk for impaired skin integrity, wounds, and infection related to impaired mobility and diabetes, and risk for infection related to hip wound.
18. The appellant's polysubstance abuse began at age 14 and he last used marijuana and cocaine in [REDACTED] 2022 at the time of his hospital admission.
19. Starting in 2009, the appellant spent 2 years in county jail for possession of cocaine; the appellant was denied for a MFP-CL waiver in 2017 due to open court cases and history of intentional overdose; the court cases were now resolved.
20. The appellant had 5 psychiatric hospitalizations since 2014, and 2 suicide attempts; no psychiatric medications are listed in the SNF record.
21. The behavioral health provider notes state that the appellant is on Risperdal; the behavioral health notes caution that the listed medication list should not be used as a medication administration list or medication dispensing list; admission and discharge notes from the appellant's hospitalizations do not note Risperdal in the medication lists.

22. During the SNF stay, the appellant refused to see the wound care nurse, refused prescribed treatments, and tried to dictate his own wound care.
23. On [REDACTED] 2022, the appellant was brought to the hospital for pain and foul odor emanating from his left ischium wound; the appellant was diagnosed with sepsis, the wound was surgically debrided, and a wound vac was placed; the appellant was put on antibiotics and remained in the hospital for 8 days.
24. On [REDACTED] 2022, the appellant asked to be sent to the ER for concern for infection of his left hip wound secondary to a foul odor and pain; he refused to let the SNF physician look at his hip; refused labs and refused exam by rounding wound specialist.
25. On [REDACTED] 2022, when the ambulance arrived to take the appellant to the hospital, the appellant was outside smoking and refused to come in and refused to go to the hospital, attributing the leg pain to the rain.
26. On [REDACTED] 2022, the appellant reported burning with urination for the past few days, urinalysis was done, and he was started on antibiotics.
27. On [REDACTED] 2022, the appellant called 911 due to worsening pain in his left leg and ischium wound; he was admitted to the hospital; labs and CT scan indicated chronic osteomyelitis; antibiotics were initiated and wet to dry dressing twice a day was ordered; the appellant was discharged back to the SNF on [REDACTED] 2022; the PICC line was removed on [REDACTED] 2022.
28. SNF nursing notes dated [REDACTED] 2022 to [REDACTED] 2023, document 4 dressing change refusals by the appellant.
29. The appellant expressed concerns for relapse if his drug of choice was available in the building.
30. In [REDACTED] 2022, the appellant was involved in a verbal altercation with staff and security at the SNF in which he was "yelling and agitated"; the appellant could not be redirected, continued to yell at staff before refusing all care and medications for the remainder of the night.
31. In [REDACTED] 2023, the appellant was reported to be pocketing his meds; appellant denied it, however meds were to be crushed going forward.
32. On [REDACTED] 2023, the appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting, and on March 1, 2023, as part of the MFP Waiver eligibility process, a second clinical review was conducted by the MRC Clinical Team,

which oversees the Community Living Waiver.

33. MassHealth and MRC determined that the appellant is not considered to be clinically eligible for participation in the MFP-CL Waiver due to a high risk of substance abuse relapse; the inability to follow a medical plan of care; prior failed attempts in the community; and behaviors toward staff.

## **Analysis and Conclusions of Law**

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)(2)).

Pertinent here, the MFP-CL waiver requires that the applicant "is able to be safely served in the community within the terms of the ... Waiver." (130 CMR 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's determination that the appellant has multiple risk factors with regard to returning to living in the community, including high risk of substance abuse relapse, the inability to follow a medical plan of care, prior failed attempts in the community, and behaviors toward staff, is supported by the record. The record further supports MassHealth's findings of community safety concerns for the appellant including risk for falls, risk for relapse to illicit substance abuse, risk for psychiatric decompensation related to depression, risk for UTIs related to self catheterization, risk for impaired skin integrity, wounds, and infection related to impaired mobility and diabetes, and risk for infection related to hip wound. The appellant has failed multiple attempts to live in the community following SNF discharges as indicated by his history of homelessness and restriction from at least one homeless shelter. Prior to the current admission, the appellant was found on the side of the road, next to his wheelchair, minimally responsive with altered mental status. The appellant has not shown the ability to follow a medical plan of care as medical documentation shows refusals of lab work, wound exam and care, and dressing changes, all of which have negatively impacted the appellant's health, leading to hospitalizations. The appellant was hospitalized twice while a resident at the SNF, after refusal of exam and treatment for pressure ulcers, resulting in sepsis. The appellant's non-compliance with his anti-coagulation medication is extremely concerning in light of his DVT diagnosis. The appellant has

recurrent UTIs, and even while a resident at the SNF, he developed a UTI. The appellant has a history of falls and resulting fractures. The appellant is at high risk of substance abuse relapse, and just prior to this most recent admission, he had marijuana and cocaine in his system. Based on the evidence in the record, at this time, the appellant cannot be safely served in the community within the terms of the MFP-CL Waiver.

Because the appellant does not meet the criteria in 130 CMR 519.007(H), necessary for eligibility for the MFP-CL waiver, MassHealth's denial of the application is 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.

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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

