

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2304222
Decision Date:	8/11/2023	Hearing Date:	08/08/2023
Hearing Officer:	Marc Tonaszuck		

Appearances for Appellant:



Appearances for MassHealth:

Linda Phillips, RN, BSN, LNC-CSp.
Brad Goodier, BSN, RN
Danielle Proodian, RN



*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:	8/11/2023	Hearing Date:	08/08/2023
MassHealth's Reps.:	Linda Phillips, RN, BSN, LNC-CSp., Associate Director – Appeals and Regulatory Compliance Brad Goodier, BSN, RN Disability Reviewer II Danielle Proodian, RN, Nurse Reviewer	Appellant's Reps.:	Pro se with Social Worker
Hearing Location:	Quincy Harbor South	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 May 16, 2023, MassHealth informed the appellant that it determined he was not clinically eligible for the Moving Forward Plan Community Living (MFP-CL) and Residential Supports (MFP-RS) Waiver programs because he cannot be safely served in the community within the terms of the MFP Waivers (130 CMR 519.007(H)(2); Exhibit 1). The appellant filed this appeal in a timely manner on May 22, 2023 (130 CMR 610.015(B); Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined the appellant was not clinically eligible for the MFP-CL or the MFP-RS Waivers.

Issue

The appeal issue is whether MassHealth was correct in determining that the appellant is not eligible for the MFP-CL or MFP-RS Waivers because he cannot be safely served in the community within the terms of the Waivers.

Summary of Evidence

Brad Goodier, RN, testified on behalf of MassHealth. He stated that 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 and MFP-RS Waivers on February 16, 2023 (Exhibit C, pages 45 and 49).

Below are the eligibility criteria for the MFP Waivers (Exhibit A, page 6-7):

- 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 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
- In addition to the above, to qualify for the MFP-RS Waiver, an applicant must need residential support services with staff supervision 24 hours/day, 7 days/week.

Mr. Goodier cited MassHealth regulation 130 CMR 519.007 (H) (1) and (2): (Exhibit B, pages 38-39). Is MassHealth correct in denying the appellant's application for the MFP-CL and MFP-RS Waivers because he cannot be safely served in the community within this Waiver?

The appellant is a [REDACTED]-year-old male who presented to Holy Family Hospital on [REDACTED] 2022, with 5 days of left leg pain and edema along with a reported fall. The appellant reported four falls in the month leading to hospitalization. A venous duplex ultrasound showed an extensive left lower extremity deep vein thrombosis (DVT). The appellant was diagnosed with a pulmonary embolism 2 months prior and was started on Xarelto (medication to prevent blood clots); however, per MD "was noncompliant with it" (Exhibit D, page 141). The appellant was admitted to Holy Family Hospital for management of DVT and alcohol withdrawal, as he has a long history of alcohol use disorder (Exhibit D, page 92). While detoxing, the appellant experienced delirium, hallucinations, and agitation. Due to these aggressive behaviors a psychiatric consult was ordered, and the appellant was started on Zyprexa (antipsychotic medication) and Ativan (Exhibit D, page 145). The appellant was discharged to Oxford Rehab on September 7, 2022 (Exhibit D, page 189).

Past medical history includes alcohol dependence with alcohol induced dementia, acute embolism and thrombosis of unspecified deep veins of left lower extremity, delirium due to known physiological condition, chronic obstructive pulmonary disease (COPD), metabolic encephalopathy, essential hypertension, adjustment disorder with mixed disturbance of emotions and conduct, acute kidney failure, generalized muscle weakness, difficulty in walking, tremor, lymphedema, gastroesophageal reflux disease (GERD), hyperlipidemia and pulmonary embolism (Exhibit D, page 190).

The Waiver eligibility interview was conducted on April 11, 2023 in the day room at the skilled nursing facility (SNF) where the appellant resides. The appellant was introduced to the MassHealth Waiver nurse by front desk staff. During the interview the appellant stated he has no memory of any of the events that occurred prior to his transfer to the SNF but stated, "I had issues with my brain and was having hallucinations and they put me in the nuthouse." The appellant's ex-wife is his healthcare proxy which was initially invoked; however, per social worker has since been uninvoked, and he is his own person (Exhibit C, page 71 and 81).

The Waiver assessment consists of documents including Minimum Data Set-Home Care (MDS-HC) (Exhibit C, pages 53-66); MFP Clinical Determination Assessment (Exhibit C, pages 67-75); MFP Waivers Community Risks Assessment (Exhibit C, page 76); MFP Waivers Caregiver Risk assessment (Exhibit C, page 78-80); a review of the applicant's medical record; and a discussion with the nursing facility staff.

During the Waiver eligibility assessment review, MassHealth noted the following documentation indicating the appellant's medical and psychiatric conditions:

- [REDACTED] 2022: Holy Family Psychiatry progress note indicates that this consultation

was ordered due to the appellant throwing his phone and chair alarm while agitated. This psychiatry note states that The appellant was drinking alcohol daily prior to admission, is incontinent, and that he has a “propensity toward aggression towards objects and throwing things” (Exhibit D, page 98-99).

- [REDACTED] 2022: Holy Family Hospital provider progress note by a Nurse Practitioner (NP), indicates that counseling was provided on the importance of supports to maintain alcohol abstinence. The appellant then stated that he is not interested (Exhibit D, page 89).
- [REDACTED] 2022: Oxford social service progress note by the licensed independent social worker (LISW), indicates that the appellant had been living on the second floor of his ex-wife’s house prior to hospitalization due to his alcoholism interfering with his occupation status. Ms. White indicates that the appellant’s living conditions were found to be in “deplorable condition,” as his ex-wife did not go upstairs where the appellant was living until he was hospitalized (Exhibit D, page 211).
- [REDACTED] 2023: SNF provider progress note by a NP indicates that the appellant is diagnosed with alcohol-induced persistent dementia (Exhibit D, page 220).

On May 4, 2023, the appellant’s case was discussed at the MassHealth Waiver Clinical Team review meeting. In addition, on May 10, 2023, as part of the MFP Waiver eligibility process, a second clinical review was conducted by the Massachusetts Rehab Commission (MRC) Clinical Team, who oversees the Community Living Waiver, and The Department of Developmental Services (DDS), who oversees the MFP-RS waiver.

MassHealth, MRC and DDS determined that the appellant is not considered to be clinically eligible for participation in the MFP -CL or -RS Waivers. Ineligibility is related to the appellant’s long-standing history of alcohol abuse and medication noncompliance. The appellant reported he began drinking at 9 or 10 years old, and that his only period of sobriety being current due to institutionalization. The appellant does not attend, nor does he have any interest in attending substance use disorder (SUD) therapy and was unable to list any sober supports in the community. During the eligibility interview he showed poor insight into remaining sober when he reported that upon discharge one of the first things he would do was visit his friends who liked to party and drink alcohol (Exhibit C, pages 72-73). The appellant has previously failed in the community due to alcohol use disorder and continues to show poor insight to remaining in recovery. The appellant also has a history of medication noncompliance which resulted in hospitalization (Exhibit D, page 141), putting him at risk of medical decompensation.

Mr. Goodier testified that the appellant is a significant health and safety risk to himself due to his unwillingness to participate in SUD support during this period of institutionalized sobriety, placing him at a high risk of relapse once back in the community; of which the MFP-CL and -RS Waivers cannot safely support.

Mr. Goodier concluded that the UMass Chan Waiver Complex Clinical Eligibility Team, MRC, and DDS have determined that The appellant is a significant health and safety risk to self and others due to a high risk of relapse of alcohol abuse with no SUD (substance use disorder) supports or plan to remain sober in the community; medical decompensation due to inability to follow a medical plan of care in the setting of his complex medical conditions; and psychological decompensation due to his alcohol induced dementia, delirium and adjustment disorder; therefore, The appellant cannot be safely served within the terms of the MFP -CL or -RS Waivers. A denial notice for the MFP -CL and -RS waivers was mailed to the appellant on May 16, 2023 (Exhibit C, page 46 and 50).

The appellant testified with the assistance of the social worker from the SNF. The social worker explained that since the time MassHealth denied the appellant's application for the Waivers, he has begun to attend substance abuse support programs. She also testified that she is aware of no behavioral issues since the appellant was admitted. The social worker stated that the appellant does "most things on his own," and she has seen "no aggressive behavior." He is more independent and has positive insights into his life.

The MassHealth representative responded that this decision was made in May 2023 and is a "point-in-time" decision. As a result, additional information from any point after the decision was made is not considered; however, the appellant may reapply for both Waivers again at any time.

Findings of Fact

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

1. MassHealth offers two home, and community-based service (HCBS) waivers; the MFP Waiver for Residential Services (RS), 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.
2. 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.
3. The MFP-RS Waiver is for individuals who need supervision and staffing 24 hours/day, 7 days per week.
4. The appellant applied for the MFP-CL and MFP-RS Waivers on February 16, 2023.
5. The appellant is a [REDACTED]-year-old male who presented to Holy Family Hospital on [REDACTED] 2022, with 5 days of left leg pain and edema along with a reported fall. The appellant

reported four falls in the month leading to hospitalization. A venous duplex ultrasound showed an extensive left lower extremity deep vein thrombosis (DVT). The appellant was diagnosed with a pulmonary embolism 2 months prior and was started on Xarelto (medication to prevent blood clots); however, per MD “was noncompliant with it” (Exhibit D, page 141).

6. The appellant was admitted to Holy Family Hospital for management of DVT and alcohol withdrawal, as he has a long history of alcohol use disorder (Exhibit D, page 92).
7. While detoxing, the appellant experienced delirium, hallucinations, and agitation. Due to these aggressive behaviors a psychiatric consult was ordered, and the appellant was started on Zyprexa (antipsychotic medication) and Ativan (Exhibit D, page 145). The appellant was discharged to Oxford Rehab on [REDACTED] 2022.
8. The appellant has a long-standing history of alcohol abuse and medication noncompliance. He reported he began drinking at 9 or 10 years old, and that his only period of sobriety being current due to institutionalization.
9. As of the date of the assessment, the appellant did not attend, nor did he have any interest in attending substance use disorder (SUD) therapy and was unable to list any sober supports in the community.
10. During the eligibility interview the appellant showed poor insight into remaining sober when he reported that upon discharge one of the first things he would do was visit his friends who liked to party and drink alcohol (Exhibit C, pages 72-73).
11. The appellant has previously failed in the community due to alcohol use disorder and continues to show poor insight to remaining in recovery. The appellant also has a history of medication noncompliance which resulted in hospitalization (Exhibit D, page 141), putting him at risk of medical decompensation.
12. On May 4, 2023, the appellant’s case was discussed at the MassHealth Waiver Clinical Team review meeting. In addition, on May 10, 2023, as part of the MFP Waiver eligibility process, a second clinical review was conducted by the Massachusetts Rehab Commission (MRC) Clinical Team, who oversees the Community Living Waiver, and The Department of Developmental Services (DDS), who oversees the MFP-RS waiver.
13. Through a notice dated May 16, 2023, MassHealth informed the appellant that it determined he was not clinically eligible for the Moving Forward Plan Community Living (MFP-CL) and Residential Supports (MFP-RS) Waiver programs because he cannot be safely served in the community within the terms of the MFP Waivers.

Analysis and Conclusions of Law

MassHealth regulations at 130 CMR 519.007 describe the eligibility requirements for MassHealth Standard coverage for individuals who would be institutionalized if they were not receiving home- and community-based services. Money follows the person community living waivers are described in subpart (H) as follows:

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

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

(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 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 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 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 or member regardless of his or her marital status. The applicant or

¹ MassHealth renamed this program the Moving Forward Plan (MFP).

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 § 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;
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.

(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.

(Emphasis added.)

The appellant applied for both of the above MFP Waivers. MassHealth determined that the appellant does not meet the clinical eligibility requirements for the MFP/CL or MFP/RS Waivers, based on its determination that the appellant is not able to be safely served in the community within the terms of the MFP Waivers. In support of its decision, MassHealth testified in detail to the documentation in the appellant's medical record. The appellant provided no documentary evidence.

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *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).

The appellant has not shown by a preponderance of the evidence that he has met his burden of showing that MassHealth's determination to deny his application for the MFP Waivers is incorrect or unsupported by the facts and the law. First, MassHealth presented uncontroverted documentary evidence that the appellant has a long-standing substance abuse issue and is not compliant with his medications, resulting in hospitalizations. Additionally, the documentation at the time of the assessment shows that, "upon discharge, one of the first things [the appellant] would do was visit his friends who liked to party and drink alcohol." At the time of the assessment, he had no interest in participating in a substance abuse program.

The appellant did not dispute any of the evidence presented by MassHealth in support of the Waivers denials. Instead, he and his social worker provided testamentary evidence that he is independent, has better insight into his life, and has begun a substance abuse program. Because the MassHealth assessment and ultimate denials were based on a "point in time," subsequent actions by the appellant cannot be considered. At no point did the appellant state that he thought he could be safely served in the community. Additionally, aside from the testimony, there was no corroborating documentary evidence submitted to support this testimony. Likewise, his testimony that he is compliant with his medications and is not at risk for substance/alcohol abuse is also not supported by other documentary evidence. There are no affidavits from licensed health care providers to verify the appellant's testimony. In fact, the hearing record is absent of any documentation or evidence in support of the appellant's assertions, other than his own word.

Second, MassHealth's denial is supported by the regulations and the facts in the hearing record including an extensive review of the appellant's clinical record. The appellant's clinical record shows that he has complex medical needs and is at risk of medical decompensation due to failure to take his medication and is at risk of substance abuse. The appellant has not met his burden of showing that that MassHealth's decision is incorrect. On the contrary, I find that MassHealth's decision, as testified to by medical professionals, supports MassHealth's decision that the appellant cannot be safely served in the community within the terms of the MFP-CL or MFP-RS Waivers at this time. Therefore, MassHealth's decision to deny the MFP Waivers is affirmed, as it is supported by the above regulations and the facts in the hearing record. This 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.

Marc Tonaszuck
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