


**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2304412
<b>Decision Date:</b>	08/03/2023	<b>Hearing Date:</b>	7/11/2023
<b>Hearing Officer:</b>	Cynthia Kopka		

**Appearance for Appellant:**

Pro se, 

**Appearance for MassHealth:**

Linda Phillips, RN, BSN, LNC-CSp  
Brad Goodier, BSN, 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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	MFP-CL Waiver
<b>Decision Date:</b>	08/03/2023	<b>Hearing Date:</b>	7/11/2023
<b>MassHealth's Rep.:</b>	Linda Phillips and Brad Goodier	<b>Appellant's Rep.:</b>	Social worker
<b>Hearing Location:</b>	Quincy (remote)	<b>Aid Pending:</b>	No

### Authority

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

### Jurisdiction

By notice dated May 23, 2023, MassHealth notified Appellant that she is not eligible for MassHealth's Moving Forward Plan Community Living Home-and-Community-Based Services Waiver (MFP-CL Waiver). Exhibit 1. Appellant filed a timely appeal on May 30, 2023. Exhibit 2. A determination regarding eligibility for a waiver program is a valid basis for appeal. 130 CMR 610.032.

### Action Taken by MassHealth

MassHealth notified Appellant that she is not eligible for MassHealth's MFP-CL Waiver.

### Issue

The appeal issue is whether MassHealth correctly determined that Appellant is not eligible for the MFP-CL Waiver because she cannot be safely served in the community within the terms of this waiver.

### Summary of Evidence

MassHealth was represented at remote hearing by its Associate Director of Appeals and Regulatory Compliance and a nurse reviewer. Appellant appeared with her social worker. Documents were submitted in advance of hearing by MassHealth, Exhibit 4. A summary of documentation and testimony follows.

MassHealth offers home and community based service waivers, including the MFP-CL waiver, to help qualified individuals move from a long-term care facility to a 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. Another waiver, the MFP Residential Supports (MFP-RS) waiver is for people who need supervision and staffing 24 hours a day, seven days a week in a provider-operated residence. Exhibit 4 at 6. The MFP-CL waiver is available through MassHealth for people who have been living in a skilled facility and serves members who can move into their own home or apartment or to the home of someone else and receive services in the community. *Id.* To qualify for one of the waivers, an individual must:

- Be living in a nursing facility or in a chronic disease, rehabilitation, or psychiatric hospital for at least 90 days
- Either be
  - 18 years of age or older and have a disability, or
  - 65 years of age or older
- Meet clinical requirements (that is, be at a facility),
- Need MFP waiver services
- Be able to be safely served in the community within the terms of the MFP waivers, and
- Meet the financial requirements to qualify for MassHealth Standard in the community. Special financial rules exist for waiver applicants and participants.

*Id.* at 7.

Appellant is in her seventies with diagnoses and medical history including stroke with right sided hemiplegia, weakness and pain, ataxic gait, falls, 9mm aneurysm of the right carotid artery (diagnosed in 2022), hypertension, asthma, hyperlipidemia, lumbar spinal stimulator, anxiety, and bipolar disorder. *Id.* at 66. In [REDACTED], Appellant sustained a fall in her home while ambulating with her walker, leading to hospitalization and short term rehabilitation. Two weeks after she was discharged home, on [REDACTED], Appellant fell at home again and was hospitalized two days later. Appellant reported that she had fallen several times and was experiencing right leg weakness. *Id.* at 66, 81. On [REDACTED], Appellant was transferred from the hospital to the skilled nursing facility, where she currently resides.

On [REDACTED], Appellant applied for the MFP-CL waiver. *Id.* at 44. On [REDACTED], a nurse reviewer representing MassHealth's waiver program performed an eligibility assessment at

the facility with Appellant. The assessment included an in-person visit and review of documents, including the Minimum Data Set-Home Care (MDS-HC); MFP Clinical Determination Assessment; MFP Waivers Community Risks Assessment; a review of the applicant's medical record; and a discussion with the nursing facility staff. *Id.* at 49-71. During the assessment, MassHealth noted instances in the record of Appellant becoming upset with staff, refusing important wound care, and refusing assistance with activities of daily living (ADLs). *Id.* at 85, 86, 229. Per a progress note dated April 4, 2023, Appellant transferred to a hospital the week prior because she did not want to stay at the skilled nursing facility. Appellant was seen by psychiatry at the hospital, where it was determined that she had the capacity to refuse to return to the SNF. However, case management was unable to attain placement at an alternative facility. Appellant agreed to return to the skilled nursing facility and was readmitted at a custodial level secondary to her inability to care for herself at home. *Id.* at 149-153.<sup>1</sup> Per the MDS-HC report dated May 4, 2023, Appellant requires assistances with the following ADLs and instrumental activities of daily living (IADLs): transfers, mobility, bathing, dressing/undressing, bowel/bladder care, meal preparation, housework, medication assistance, shopping, and transportation. *Id.* at 53-54.

On May 4, 2023, Appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting. In addition, on May 17, 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. MassHealth and MRC determined that Appellant is not considered to be clinically eligible for participation in the MFP-CL Waiver because she presents a significant health and safety risk to herself. Appellant continues to require 24/7 support due to her limited judgement, lack of safety awareness, and significant physical care needs. In addition, Appellant lacks informal support in the community. Therefore, Appellant is not able to be safely supported within the terms of the MFP-CL Waiver.

Appellant testified that the record cited by MassHealth is not true, as she has never refused services or care. Appellant previously lived alone in a senior living apartment but lost her housing after having resided at the facility for six months. Appellant is applying for new housing and is aware of the risks, but wants to return to living in the community. Appellant believes she will be safe in the community even without 24/7 care. Appellant was able to ambulate independently with a hemi-walker and manage her own ADLs prior to being admitted at the facility. Appellant is not able to use her right leg. Appellant cannot ambulate currently, and cannot tolerate sitting in a wheelchair for more than one hour due to herniated discs. Appellant testified that her right leg became paralyzed because she has been lying in the bed at the facility for so long. Appellant is not currently getting physical therapy, indicating that this service stopped about one month prior. When she was receiving physical therapy, Appellant would be taken down to the gym to work on standing. Appellant does not want to remain at the facility, as she is not getting appropriate care. Appellant lays in bed all day and staff does not respond when she rings the bell to address her pain. Appellant does not believe an MFP-RS waiver would be appropriate for her, as she wants to

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<sup>1</sup> A corresponding social services note dated March 31, 2023 is discussed *infra*. *Id.* at 197.

live alone and not in a group home.

A social services note dated March 15, 2023 stated that the social worker met with Appellant after she called and asked to return home. *Id.* at 197. The note states that Appellant is not happy with the care she is receiving at the facility. The social worker wrote that Appellant is working with rehab and the social worker to discharge home, but that it is not safe at the moment. The note stated that Appellant is non-ambulatory and cannot propel herself in a wheelchair. Appellant is dependent for all ADLs and requires bed-level toileting. The social worker wrote that Appellant acknowledged that discharge home would not be safe. *Id.* Another note dated March 31, 2023 indicated that Appellant requested to go to the hospital because she did not want to stay at the facility. *Id.* Appellant requested to go home, but would be unable to due to her functional status and needing 24 hour care. *Id.*

The records contain a progress note dated February 3, 2023 which noted that Appellant refused physical therapy in the past. *Id.* at 133. Another note dated February 6, 2023 indicated that Appellant was continuing PT and occupational therapy (OT). *Id.* at 139. A PT progress note dated March 27, 2023 referenced Appellant's "inconsistent participation" with therapy due to back pain and refusal for participation with self-limiting behaviors. *Id.* at 209. Appellant referenced being cut off from PT and OT to the MassHealth nurse reviewer on May 1, 2023. *Id.* at 66. The nurse reviewer's notes reference Appellant's refusal of PT services. *Id.* at 66, 68. There are multiple references by a variety of staff members to Appellant's accusatory behavior and refusal of care. *See, e.g. id.* at 85-87, 118, 128 (refuses Hoyer lift), 132 (refuses psych services), 190 (asked behavioral health provider to leave), 197, 213.

## Findings of Fact

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

1. On February 21, 2023, Appellant applied for the MFP-CL waiver. Exhibit 4 at 44.
2. Appellant has resided at the skilled nursing facility for over six months.
3. Appellant is in her seventies with diagnoses and medical history including stroke with right sided hemiplegia, weakness and pain, ataxic gait, falls, 9mm aneurysm of the right carotid artery (diagnosed in 2022), hypertension, asthma, hyperlipidemia, lumbar spinal stimulator, anxiety, and bipolar disorder. *Id.* at 66.
4. In [REDACTED] and [REDACTED], Appellant sustained falls in her home while ambulating with her walker, leading to hospitalization. Appellant did not seek emergency services for two days after the second fall. Appellant reported that she had fallen several times and was experiencing right leg weakness. *Id.* at 66, 81.

5. Appellant requires assistances with the following ADLs and IADLs: transfers, mobility, bathing, dressing/undressing, bowel/bladder care, meal preparation, housework, medication assistance, shopping, and transportation. *Id.* at 53-54.
6. Appellant cannot ambulate and cannot tolerate being in a wheelchair for more than one hour.
7. During the assessment, MassHealth noted instances of Appellant becoming upset with staff, refusing important wound care, and refusing assistance with ADLs. *Id.* at 85, 86, 229.
8. On [REDACTED], Appellant requested to go to the hospital because she did not want to stay at the facility. A progress note stated that Appellant requested to go home, but would be unable to due to her functional status and needing 24 hour care. Appellant transferred to the hospital. *Id.* at 197.
9. Per a progress note dated April 4, 2023, Appellant was seen by psychiatry at the hospital, where it was determined that she had the capacity to refuse to return to the SNF. However, case management was unable to attain placement at an alternative facility. Appellant agreed to return to the skilled nursing facility and was readmitted at a custodial level secondary to her inability to care for herself at home. *Id.* at 149-153.
10. A PT progress note dated March 27, 2023 referenced Appellant's "inconsistent participation" with therapy due to back pain and refusal for participation with self-limiting behaviors. *Id.* at 209.
11. Appellant referenced being cut off from PT and OT to the MassHealth nurse reviewer on May 1, 2023. The nurse reviewer's notes reference Appellant's refusal of PT services. *Id.* at 66, 68.
12. There are multiple references by a variety of staff members to Appellant's accusatory behavior and refusal of care. *See, e.g. id.* at 85-87, 118, 128 (refuses Hoyer lift), 132 (refuses psych services), 190 (asked behavioral health provider to leave), 197, 213.

## Analysis and Conclusions of Law

Per 130 CMR 519.007(H)(2), an MFP-CL Waiver allows an applicant or member who is certified to need nursing facility services to receive specified waiver services, other than residential support services, in the home or community instead of in a nursing facility setting. To qualify for the MFP-CL Waiver, the member must meet clinical and age requirements:

(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;
- (3iii) 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.

130 CMR 519.007(H)(2) (emphasis added).

MassHealth determined Appellant did not meet the requirement at 130 CMR 519.007(H)(2)(a)(5), that Appellant is able to be safely served in the community. MassHealth referenced Appellant's need for 24/7 support due to her limited judgement, lack of safety awareness, and significant physical care needs, and lack of informal support in the community. MassHealth referenced documented instances where Appellant has refused wound care and assistance with ADLs. There are multiple references in the record to Appellant's inability and/or refusal to participate in her own care, documented by a variety of providers.

Additionally, Appellant did not dispute that she is unable to ambulate and care for herself. Appellant blames being removed from physical therapy and being confined to her bed, exacerbating her symptoms. Whatever the reason, the fact that Appellant is unable to ambulate by any means is indicative of her need for more care than can be provided by the MFP-CL waiver.

However, Appellant is encouraged to advocate for herself for the therapy she needs to attain independence.

Appellant has not demonstrated that MassHealth's determination that she cannot be safely served in the community as required by 130 CMR 519.007(H)(2)(a)(5) was made in error. Accordingly, this appeal is denied. Appellant is encouraged to continue working towards independent living by addressing the specific concerns raised by MassHealth, advocating for the therapy goals she needs, and/or by exploring another waiver option such as the MFP-RS waiver.

## **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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Cynthia Kopka  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Linda Phillips, UMass Medical School - Commonwealth Medicine,