

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2305303
<b>Decision Date:</b>	9/1/2023	<b>Hearing Date:</b>	August 03, 2023
<b>Hearing Officer:</b>	Brook Padgett		

**Appellant Representatives:**

Pro se



**MassHealth Representatives:**

Linda Phillips, RN, BSN, LNC-CSp., Assoc.  
Director Appeals and Regulatory Compliance  
Brad Goodier, BS, RN, Disability Reviewer II



*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 130 CMR 519.007
<b>Decision Date:</b>	9/1/2023	<b>Hearing Date:</b>	August 03, 2023
<b>MassHealth Rep.:</b>	L. Phillips, RN, BSN, LNC-CSp. B. Goodier, BS, RN	<b>Appellant Rep.:</b>	Pro se
<b>Hearing Location:</b>	Telephonic		

### Authority

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

### Jurisdiction

The Appellant received a MassHealth Moving Forward Plan Community Living Home-and-Community-Based Services Waiver denial of Eligibility notice dated June 27, 2023, stating: "This is notice is to inform you that you have been determined not to be clinically eligible for the **Moving Forward Plan Community Living Home-and-Community-Based Services Waiver** (also known as the MFP-CL Waiver)." (Exhibit 1). The Appellant filed this appeal timely on June 28, 2023. (130 CMR 610.015(B); Exhibit 2). Eligibility is valid grounds for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth denied the Appellant's request for an MFP-CL waiver.

### Issue

Does the Appellant meet the eligibility requirements to receive an MFP-CL waiver?

## Summary of Evidence

The MassHealth representative testified that MassHealth offers two home and community-based service (HCBS) Waivers; the MFP Residential Waiver (RS) 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. 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 February 07, 2023. MassHealth stated the eligibility criteria for the MFP Waivers includes: 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 the applicant must need residential support services with staff supervision 24 hours/day, 7 days/week.

On May 30, 2023, an assessment for Waiver eligibility was conducted in person at Sachem Center for Rehabilitation and Nursing (Sachem Center). In attendance at the assessment were: the Appellant, MassHealth Nurse Reviewer and a Social Worker. The assessment consists 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; the Risk Assessment-ABI-N/MFP-CL Caregiver Supplement; a review of the applicant's medical record; and a discussion with the nursing facility staff.

MassHealth testified the Appellant is [REDACTED] years old. On [REDACTED], 2022, the Appellant fell during a transfer at home from her bed to her wheelchair, due to orthostatic hypotension. The Appellant was transferred to [REDACTED] Emergency Room and her issue was resolved by IV fluids. Complications included acute hypoxic respiratory failure and she was treated with Prednisone, Lasix, and she was treated for a urinary tract infection and A1C was 11.8%. The Appellant was stabilized and transferred to [REDACTED] on [REDACTED], 2023. The Appellant's medical history includes acute respiratory failure with hypoxia, type 2 diabetes, COPD, epilepsy, left knee pain, acute cystitis, abnormalities of gait and mobility, acute kidney failure, a-fib, acute on chronic congested heart failure and long-term use of insulin.

During the Waiver eligibility assessment review, MassHealth noted the Appellant previously failed in the community due to falls at home which resulted in hospitalization and SNF placement. The Appellant does not have additional informal supports, aside from her husband, and he does not feel that he can safely care for her at home any longer. MDS-HC Report dated

June 14, 2023, indicates that the Appellant requires assistance with the following Activities of Daily Living (ADLs) and Instrumental (IADLs):

- Meal Preparation
- Housework
- Medication assistance
- Shopping
- Transportation
- Transfers
- Mobility
- Bathing
- Dressing/undressing
- Bowel/bladdercare

On June 15, 2023, the Appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting. On June 21, 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. MassHealth and MRC determined that the Appellant was not considered clinically eligible for participation in the MFP-CL Waiver; because she is a significant health and safety risk to herself and others. The Appellant continues to require 24/7 supervision and care due to her significant physical care needs to maintain safety. Therefore, 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 Waiver and her request was denied on June 27, 2023. MassHealth submitted into evidence the Appellant's MFP-CL case file. (Exhibit 4).

The Appellant's husband acknowledged that he is unable to provide the necessary supports for the Appellant to be safely cared for in the community. The Appellant's husband indicated that since COVID it has been extremely difficult to find any in home medical care as well. The Appellant's husband stated he has a lower back injury which limits his ability to assist the Appellant with any of her needs.

The Appellant's Social Worker stated that they are working at finding a new placement for the Appellant in a long term care facility that is closer to her husband. She further stated that although it may be more appropriate for the appellant to complete an MFP-RS Waiver rather than an MFP-CL Waiver there is a multi-year waiting period for placement in a residential facility.

The Appellant testified that she believes she would be better living at home with her husband and her dog.

## Findings of Fact

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

1. On May 30, 2023, an assessment for Waiver eligibility was conducted in person at the Sachem Center. In attendance were the Appellant and the MassHealth Nurse Reviewer, representing the MFP Waiver Program. (Exhibit 4).
2. The assessment consists of completion of MFP documents including MDS-HC; Clinical Determination of Waiver Eligibility; ABI/MFP Waivers Community Risks Assessment; Risk Assessment ABI-N/MFP-CL Caregiver Supplement; and a review of the applicant's medical record; and a discussion with the facility staff. (Exhibit 4).
3. The Appellant is [REDACTED] years old with a medical history which includes acute respiratory failure with hypoxia, type 2 diabetes, COPD, epilepsy, left knee pain, acute cystitis, abnormalities of gait and mobility, acute kidney failure, a-fib, acute on chronic congested heart failure and long-term use of insulin. (Exhibit 4).
4. On [REDACTED] 2022, the Appellant was transferred to [REDACTED] Emergency Room due to a fall at home. The Appellant fell during a transfer at home from her bed to her wheelchair. Complications included acute hypoxic respiratory failure. (Exhibit 4).
5. The Appellant was stabilized and transferred to [REDACTED] on [REDACTED], 2023. (Exhibit 4).
6. In February 2020, the Appellant applied and was denied for the MFP-RS Waiver due to her medical and psychiatric instability. (Exhibit 4).
7. On February 07, 2023, the Appellant applied for MFP-CL waiver. (Exhibit 4).
8. On June 27, 2023, MassHealth denied the Appellant's waiver request after The Waiver Eligibility Assessment Review determined the Appellant was a significant health and safety risk to herself and others; and continues to require 24/7 supervision and care due to her significant physical care needs. (Exhibit 4).
9. The Appellant's husband acknowledged that he is unable to provide the necessary informal supports for the Appellant to be safely cared for in the community. (Testimony).

## Analysis and Conclusions of Law

Eligibility for MassHealth's Home and Community Based Waiver program is governed by regulation 130 CMR 519.007 which states in pertinent part:

(H) Money Follows the Person Home- and Community-Based Services Waivers.

(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.

On June 26, 2023, the Appellant's February 07, 2023 request for eligibility for the MFP-CL waiver was denied. The Waiver Eligibility Assessment Review determined in their 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 Waiver. The medical evidence and testimony indicates the Appellant continues to require 24 hour care and assistance with all ADL's and IADL's and does not have the needed community aid to be safely supported within the MFP-CL Waiver at this time.

While it is perfectly understandable that the Appellant wishes to return home, based on the in-

person assessment and 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 record demonstrates the Appellant does not meet eligibility for the MFP-CL Waiver at this time. The Appellant cannot be safely served in the community as she continue to exhibit significant health and safety risks due to her multiple medical condition and as a result, this appeal must be DENIED.

## **Order for MassHealth**

Denied.

## **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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Brook Padgett  
Hearing Officer  
Board of Hearings

cc:

MassHealth representative: Linda Phillips, RN, BSN, LNC-CSp., Assoc. Director Appeals and Regulatory Compliance, UMASS PA Unit, 333 South Street, Shrewsbury, MA 01545