

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2305662
Decision Date:	11/13/2023	Hearing Date:	8/15/2023
Hearing Officer:	Cynthia Kopka	Record Open to:	10/2/2023

Appearance for Appellant:



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

Appeal Decision:	Denied	Issue:	MFP-CL waiver disenrollment
Decision Date:	11/13/2023	Hearing Date:	8/15/2023
MassHealth's Rep.:	Linda Phillips, Brad Goodier	Appellant's Rep.:	Pro se, with spouse
Hearing Location:	Quincy (remote)	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

By notice dated May 30, 2023 MassHealth notified Appellant that she would be disenrolled from the MassHealth's Moving Forward Plan Community Living Home-and-Community-Based Services Waiver (MFP-CL Waiver). Exhibit 1. Appellant filed a timely appeal on July 12, 2023. Exhibit 2. Termination from a waiver program is a valid basis for appeal. 130 CMR 610.032. The hearing record was held open through October 2, 2023. Exhibit 5.

Action Taken by MassHealth

MassHealth notified that Appellant would be disenrolled from the MFP-CL Waiver.

Issue

The appeal issue is whether MassHealth was correct in determining that Appellant no longer qualified to participate in the MFP-CL 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 spouse. 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 5. 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 6. The MassHealth representative testified that the MFP-CL waiver makes available up to 84 hours per week, or 12 hours per day, of home services for the member. If a member requires more than 84 hours per week of care, they cannot be safely served under the MFP-CL waiver.

Appellant is in her [REDACTED] and was initially approved for the MFP-CL Waiver in 2019. Appellant transitioned to the community in March 2020 to live with her spouse. A note from a reviewing nurse showed that at the time of approval, Appellant required one-person assist with her activities of daily living (ADLs), ambulated with a rolling walker and stand-by assist, and managed her own insulin, colostomy, foley catheter and tracheostomy care, including suctioning independently. *Id.* at 68. Appellant also had the support of her spouse who could provide setup assistance if needed.

On February 14, 2023, Massachusetts Rehabilitation Commission (MRC), who had assisted Appellant with supports in the community, submitted a clinical status redetermination for Appellant, suggesting that Appellant's spouse can no longer manage Appellant's physical and

medical needs. MRC requested that Appellant's status be redetermined because at the time, Appellant required more than the 84 hours of physical support provided by MRC. Exhibit 4 at 59-60 and 67.

On January 11, 2023, MRC conducted its annual redetermination visit to Appellant with a nurse and case manager. During the visit, Appellant was unable to get out of bed because she could not put weight on her foot. Appellant reported that her spouse cannot help her because he has cardiac issues and is very sick. Appellant reported that she has no informal support and fully depends on personal care attendant (PCA) support. *Id.* at 67.

During a follow-up call to Appellant on May 1, 2023, Appellant reported to the nurse that she has had plumbing issues and she was low on food. She borrowed money from her family to make it to the end of the month. *Id.* Appellant also reported that her house was in foreclosure, but she found a buyer and moved to a new town. Appellant reported that she had not seen her PCP in over a year. Appellant was overwhelmed and depressed. Appellant reported two recent hospitalizations, including one for a stroke in [REDACTED] and another for a clogged suprapubic catheter, tracheostomy replacement, and foot drop pain. Appellant reported that since her stroke, she had difficulty with forgetting words, goes blank during a conversation and her right side and leg is numb and flaccid. *Id.*

MassHealth noted that Appellant had been discharged from multiple programs due to noncompliance and nonparticipation, including integrated care management program (ICMP) to monitor blood pressure and home physical therapy. *Id.* at 68. At her old address, Appellant relied on the fire department to assist her in getting in and out of the house at times. The MRC case manager noted that Appellant has cancelled meetings at the last minute. *Id.* MRC noted that Appellant has no informal support, fragile skin related to immobility, and she cannot get out of the house in case of an emergency. For these reasons, MRC recommended that Appellant be found ineligible for the MFP-CL waiver because she requires more than 84 hours of care. Appellant requires 24/7 care support due to her medical complex conditions and her spouse is not able to support Appellant in her care needs due to his own critical medical condition. *Id.* at 63, 68.

Appellant requires assistance or is dependent in all activities of daily living (ADLs) (transfers, mobility, bathing, dressing/undressing, toileting) and instrumental activities of daily living (IADLs) (meal preparation, housework, medication assistance, shopping, and transportation). *Id.* at 50-51. The MassHealth reviewing nurse noted that Appellant has had a significant decline and now requires 24/7 support. *Id.* at 68-69. Appellant's medical history includes chronic respiratory failure, tracheostomy requiring a ventilator with oxygen and self-suction, difficult intubation due to stenosis, asthma, chronic obstructive pulmonary disease (COPD), rectal cancer treated with chemotherapy and radiation, congestive heart failure (CHF), hypertension (HTN), type 2 diabetes, depression, anxiety, morbid obesity, gastric bypass surgery, bladder surgery status post fistula [REDACTED] suprapubic catheter, colostomy status post rectal cancer, osteoporosis, positive for Covid in sleep apnea, left foot drop, and stroke. *Id.* Appellant is dependent for ADL and remains in

bed due to foot pain and fractures. Since her stroke, Appellant reported decreased use of her right side, including right lower extremity flaccidity. She also reported increased difficulty with memory and currently receives speech therapy 1-2 times per week. *Id.*

On May 18, 2023, at a waiver team review meeting, MassHealth and MRC clinical teams determined that Appellant is no longer clinically eligible for any further participation in the MFP-CL Waiver because she cannot be safely served in the community within the terms of the MFP-CL waiver. MassHealth determined that Appellant is a significant health and safety risk to herself, as she requires a higher level of support than available in the MFP-CL Waiver and lacks informal support. *Id.* at 69. MassHealth notified Appellant on May 30, 2023 that she would be disenrolled on June 19, 2023. Exhibit 1.

Appellant and her spouse testified that at the time of January 2023 evaluation, Appellant was going through bankruptcy and foreclosure, which accounted for about 90% of Appellant's depression and confusion. Appellant and her spouse were unsure about where they would live and what services they would get. The waiver program offered no help with Appellant's transition and move to a new home. In the middle of this, Appellant had a stroke. Thankfully it was a minor event and Appellant's right-side is functional except for her foot.

The drop foot on the left was a result of a misdiagnosis by an emergency room doctor. In [REDACTED], Appellant stepped off of a curb and ended up fracturing her foot. The ER doctor diagnosed a high ankle sprain and prescribed physical therapy, which was causing Appellant serious pain in her foot. Months later, after an MRI, Appellant received her correct diagnosis of fracture and osteoporosis. Appellant was not an unwilling patient for physical therapy but rather was in tremendous pain.

In her new home, Appellant received grants for a wide doorway and a heavy duty mechanical lift to get from her bed to the wheelchair. Appellant no longer needs the fire department's assistance. Appellant has multiple call buttons and automated options if she needs assistance. Appellant is well set up in her new home thanks to the work done improving her environment and making it accessible. Appellant and her spouse testified that it was unconscionable that the waiver provided no transition plan to another agency, and Appellant and her spouse are still on their own.

Though Appellant has many complex chronic medical issues, all are stable at this time. Appellant's spouse is not clear how it was determined that Appellant needs 24/7 coverage but then her coverage was completely stopped after June 19. Since the waiver services stopped, Appellant's spouse has been caring for Appellant, making her meals, helping her get dressed, and providing all of her respiratory care. Appellant has had a tracheotomy since [REDACTED]. Appellant's spouse is an EMT and qualified to assist. Elder Services came out to evaluate Appellant for eligibility for a PCA or visiting nurse.

Appellant's spouse testified that his health has improved. He had three cardiac ablations to cure

arrhythmia and developed congestive heart failure around the time of Appellant's evaluation. Appellant's spouse spent [REDACTED] in the hospital and had [REDACTED] of fluid drained, but he is better now and has lost weight. Since [REDACTED] [REDACTED] Appellant's spouse has fallen twice and needed emergency assistance once.

In sum, Appellant's chronic issues have stabilized since her very stressful period and some of the noncompliance issues noted by MassHealth were due to pain and misdiagnosis. Appellant's spouse is also in better health and can provide the informal care necessary for Appellant to stay in the community with home assistance from PCAs.

The MassHealth representative asked about Appellant's attendance to medical appointments and seeing her doctor in person, as she was not leaving the home at the time of assessment. The MassHealth representative stressed the importance of individuals on the waiver to follow up with physicians and not to refuse care. Appellant's spouse testified that things have improved now that Appellant has a lift. Their new home is close to a trauma center and her current PCP is a few miles away at [REDACTED]. Appellant has been attending appointments and has transportation lined up for her next appointment. Appellant's house has a ramp and the door is wide. Appellant's spouse is paying for a PCA to go to Appellant's appointment with her because they are transitioning to a new company. Appellant is in the best position she has been since 2015. Appellant's next appointment with her PCP is in September.

The hearing record was held open through September 18, 2023 for Appellant to submit documents showing that she is following up with her doctors and making and keeping appointments, and otherwise to show MassHealth that circumstances have improved and the waiver should be reinstated. Exhibit 5.

On September 18, 2023, Appellant and her spouse wrote and provided an update and medical records in support. Exhibits 6-8. Appellant had a few medical issues since the hearing, including hospitalization, but was back in stable condition. Appellant and her spouse wrote that Appellant went to an appointment on [REDACTED] [REDACTED] to [REDACTED], where her trach tube was changed but they were unable to insert her catheter back in. Exhibit 7. They recommended Appellant see a urologist within 7-10 days, but Appellant was not able to get an appointment. On [REDACTED], [REDACTED], Appellant went to [REDACTED], where her records were available. While there, doctors found an acute kidney problem from her diuretics. Exhibit 8. Staff also set up a treatment plan for her wounds and replaced her super pubic catheter. She was released on [REDACTED] [REDACTED]. On [REDACTED] [REDACTED], Appellant had severe pain at the catheter site and could only go to [REDACTED] as the town ambulance would only take her to the closest appropriate facility. At [REDACTED], staff had to remove the catheter and replace it with a Foley catheter as it was not properly placed at the [REDACTED]. Exhibit 6.

Appellant had an appointment with a thoracic surgeon on [REDACTED] to set up another trach change but she canceled the appointment so the visiting nurse could come and evaluate her

surgical wounds. Appellant was not able to go to the PCP appointment as scheduled because the social worker wrote the wrong address on the PT-1 form. *Id.* Appellant has a new appointment with a new PCP set up. Appellant re-emphasized that the Hoyer lift has been a game changer as far as getting Appellant to appointments. The modifications in her home have allowed Appellant to get in and out of the house in minutes when it used to take an hour. *Id.*

MassHealth provided a response on September 21, 2023.¹ Exhibit 9. MassHealth representative reviewed the documentation provided by Appellant and her spouse. MassHealth noted that in the [REDACTED] [REDACTED] medical record, the doctor stated that Appellant presented for suprapubic tube (SPT) evaluation as SPT had fallen out 2 months ago. Urine had been leaking from urethra, even with SPT in place and SPT was dislodged two months prior. Though MassHealth wrote that the SPT was able to be replaced by this physician, and Appellant recovered well after the procedure, the records state that Appellant was not able to have the SPT replaced “due to closed track and unable to visualize bladder under US and fluoro.” Exhibit 7 at 6.

MassHealth noted that the records from [REDACTED] [REDACTED] - [REDACTED] [REDACTED] state that Appellant presented to the ER with difficulty caring for herself. The note goes on to explain Appellant’s multiple medical diagnoses, including a stage 4 sacral wound and a hemorrhagic stroke in [REDACTED] that has left her hemiplegic. The note also explains that Appellant’s spouse has fallen multiple times over the past week, and her care at home was not safe, leading her to present to the emergency room. Appellant also stated that she has poor oral intake due to a history of gastric sleeve. Appellant was able to work with case management and obtain PCA services for 43.5 day/evening hours and 14 hours at night per week.

The MassHealth representative responded that in her professional opinion based on the following review of additional documentation received in the record open period, Appellant remains medically complex. MassHealth reiterated that Appellant has limited support due to her spouse’s medical issues and requires a higher level of consistent 24/7 (or nearly) support than the services available within the MFP-CL Waiver. Therefore, she is unable to be safely served under the MFP-CL waiver in the community.

Findings of Fact

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

1. Appellant was initially approved for the MFP-CL waiver in 2019 and transitioned to the community in March 2020 to live with her spouse

¹ Due to a miscommunication, Appellant and her spouse were not copied on the response until October 13, 2023. Exhibit 10.

2. At the time of approval, Appellant required one-person assist with her ADLs, ambulated with a rolling walker and stand-by assist, and managed her own insulin, colostomy, foley catheter and tracheostomy care, including suctioning independently. Appellant also had the support of her spouse who could provide setup assistance if needed. Exhibit 4 at 68.
3. On January 11, 2023, MRC conducted its annual redetermination visit to Appellant with a nurse and case manager. During the visit, Appellant was unable to get out of bed because she could not put weight on her foot. Appellant reported that her spouse cannot help her because he has cardiac issues and is very sick. Appellant reported that she has no informal support and fully depends on PCA support. *Id.* at 67.
4. On February 14, 2023, MRC submitted a clinical status redetermination for Appellant, suggesting that Appellant's spouse can no longer manage Appellant's physical and medical needs. MRC requested that Appellant's status be redetermined because at the time, Appellant required more than the 84 hours of physical support provided by MRC. *Id.* at 59-60 and 67.
5. On May 1, 2023, Appellant reported to the nurse that she has had plumbing issues, she was low on food, she borrowed money from family to make it to the end of the month, and her house was in foreclosure. Appellant reported that she had not seen her PCP in over a year. Appellant was overwhelmed and depressed. Appellant reported two recent hospitalizations, including one for a stroke in [REDACTED] [REDACTED] and another for a clogged suprapubic catheter, tracheostomy replacement, and foot drop pain. Appellant reported that since her stroke, she had difficulty with forgetting words, goes blank during a conversation and her right side and leg is numb and flaccid. *Id.* at 67.
6. Appellant requires assistance or is dependent in all ADLs and IADLs. She was bed bound at the time of the review due to foot pain and fractures. *Id.* at 50-51, 68-69.
7. Appellant's medical history includes chronic respiratory failure, tracheostomy and uses ventilator with oxygen and self-suctions, difficult intubation due to stenosis, asthma, COPD, rectal cancer treated with chemotherapy and radiation, CHF, HTN, type 2 diabetes, depression, anxiety, morbid obesity, gastric bypass surgery, bladder surgery status post fistula [REDACTED] suprapubic catheter, colostomy status post rectal cancer, osteoporosis, positive for Covid in [REDACTED] sleep apnea, left foot drop, and stroke. *Id.* at 68-69.
8. Since her stroke, Appellant reported decreased use of her right side, including right lower extremity flaccidity. She also reported increased difficulty with memory and currently receives speech therapy 1-2 times per week. *Id.*
9. On May 18, 2023, at a waiver team review meeting including the MRC clinical team, MassHealth and MRC determined that Appellant is no longer clinically eligible for any

further participation in the MFP-CL Waiver because she cannot be safely served in the community within the terms of the MFP-CL waiver. MassHealth determined that Appellant is a significant health and safety risk to herself, as she requires a higher level of support than available in the MFP-CL Waiver and lacks informal support. *Id.* at 69.

10. On May 30, 2023, MassHealth notified Appellant that she would be disenrolled from the MFP-CL Waiver. Exhibit 1.
11. Appellant filed a timely appeal on July 12, 2023. Exhibit 2.
12. Appellant has moved to a new community and has a new accessible home, which includes a Hoyer lift, wheelchair ramp, wide doors, and call buttons and other automations.
13. On [REDACTED], [REDACTED], Appellant went to have her SPT evaluated after it was dislodged two months prior. The records state that Appellant was not able to have the SPT replaced “due to closed track and unable to visualize bladder under US and fluoro.” Exhibit 7 at 6.
14. On [REDACTED], [REDACTED], Appellant presented to the ER of Cooley Dickinson Hospital with acute kidney injury and “inability to care for herself at home.” The note refers to Appellant’s ill spouse having fallen multiple times over the past week and Appellant’s “care at home was not safe.” Exhibit 8 at 3.
15. [REDACTED] discharged Appellant home after obtaining 43.5 day/evening PCA hours and 14 night PCA hours weekly. *Id.* at 2, 3.

Analysis and Conclusions of Law

The MassHealth regulations at 130 CMR 519.000 explain the categorical requirements and financial standards that must be met to qualify for a MassHealth coverage type. The 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.

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 that Appellant no longer met the requirement at 130 CMR 519.007(H)(2)(a)(5), that Appellant is able to be safely served in the community. MassHealth determined that Appellant needs more than 84 hours of support in the community with her complex medical conditions and her spouse is not healthy enough to provide the informal support she needs. MassHealth emphasized Appellant's deterioration, her refusal of care and failure to follow up on appointments, and stressful personal issues impacting Appellant's health.

Appellant and her spouse argued at hearing that while Appellant was experiencing stress at the time of the reevaluation, her conditions have stabilized since moving and improving the accessibility of Appellant's house. Appellant's spouse argued that his own medical conditions have also improved. However, Appellant's spouse testified at hearing that he had fallen twice since [REDACTED], and the [REDACTED] hospital record indicated that he had fallen multiple times in late [REDACTED]. The medical records also indicated that even if Appellant had stabilized at the time of hearing, in less than a month following the hearing she had experienced complications and two emergency hospitalizations.

Notably, Appellant was discharged from the hospital after obtaining 43.5 day/evening PCA hours and 14 night PCA hours, which is less than the 84 hour maximum provided through MassHealth by the MFP-CL waiver. Appellant was not transferred to a nursing facility or rehab, which is evidence to support Appellant's position that she does not require the level of care MassHealth suggests. Appellant and her spouse also managed care without any public services after MassHealth disenrolled Appellant from the waiver, demonstrating Appellant's informal support.

Ultimately, the evidence offered by Appellant did not paint a picture that she has stabilized and improved since her decline that prompted the reevaluation. 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.

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.

Cynthia Kopka
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