

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2308213
Decision Date:	12/5/2023	Hearing Date:	10/13/2023
Hearing Officer:	Thomas Doyle	Record Open to:	

Appearance for Appellant:



Appearance for MassHealth:

Linda Phillips, R.N., B.S.N., Associate Director,
Appeals and Regulatory Compliance
Brad Goodier, R.N., B.S.N.,
Danielle Proodian, R.N., Waiver Nurse

Interpreter:



*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:	Eligibility MFP-CL Waiver
Decision Date:	12/5/2023	Hearing Date:	10/13/2023
MassHealth's Rep.:	Linda Phillips, B.S.N.; Brian Goodier, B.S.N.; Danielle Proodian, R.N., Waiver Nurse	Appellant's Rep.:	Pro se
Hearing Location:	Remote (phone)	Aid Pending:	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder. HERE 10.13.23

Jurisdiction

By notice dated September 5, 2023, MassHealth notified the appellant that she is not clinically eligible for participation in MassHealth's Moving Forward Plan Community Living Home- and Community-Based Services Waiver (MFP-CL) because she cannot be safely served in the community within the terms of the MFP-CL waiver. (Ex. 1, p. 2). The appellant filed a timely appeal with the Board of Hearings (BOH) on September 11, 2022. (Ex. 2). A determination regarding clinical eligibility for a waiver program is a valid basis for appeal to BOH. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant is not clinically eligible for participation in the MFP-CL waiver program.

Issue

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

Summary of Evidence

MassHealth was represented at hearing by a Registered Nurse who is associate director for appeals, regulatory compliance and complex cases at the University of Massachusetts Medical School (“MassHealth nurse”). The MassHealth nurse testified that the MFP-CL (“community living”) waiver is for disabled MassHealth members who can move into their own home or apartment, or into the home of someone else, and who can receive services in the community for fewer than twenty-four hours a day, seven days a week (Testimony).

The MassHealth nurse testified that to be approved for the MFP-CL waiver, a MassHealth member must meet the following criteria:

- be living in a nursing facility or long-stay hospital, and have lived there for at least 90 consecutive days;
- be 18 years old or older, and have a disability, or be age 65 and older;
- meet the clinical requirements for, and be in need of, the waiver services that are available through the MFP waivers;
- be able to be safely served in the community within the terms of the MFP waiver;
- meet the financial requirements to qualify for MassHealth (special financial rules exist for waiver participants); and
- is transitioning to an MFP-qualified residence in the community.

(Testimony)

The MassHealth nurse testified that the appellant, who is under age 65, applied for services under the MFP-CL waiver in February 2023.¹ She is currently residing in a nursing facility. The appellant’s medical diagnoses include presence of right artificial knee joint, morbid (severe) obesity, diverticulitis of the large intestine without perforation, chronic kidney disease stage 3, acute on chronic congestive heart failure, type 2 diabetes mellitus with diabetic chronic kidney disease, essential hypertension, bilateral secondary osteoarthritis of knee, repeated falls, cardiomyopathy, endometriosis, hyperlipidemia, hypothyroidism, chronic pain, cardiac pacemaker, gastroesophageal reflux, abnormalities of gait and mobility, generalized muscle

¹ A second MFP waiver, the MFP-residential supports (RS) waiver, also exists and the appellant was approved for this waiver. (Ex. 1, p. 1).

weakness, suicidal ideations, and anxiety disorder. (Testimony; Ex. 5, pp. 71, 89, 115-116).

On [REDACTED] an assessment for clinical waiver eligibility for the MFP-CL and MFP-RS Waivers was conducted in-person at the rehabilitation facility with appellant and a waiver nurse present. 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. (Ex. 5, pp. 67-77). During this eligibility visit on [REDACTED], appellant reported to the waiver nurse that she had no issues with alcohol or substances at this time. Health Group notes from [REDACTED], notes that appellant has a history of IV Opiate drug use. The waiver nurse also contacted appellant's social worker and she reported that appellant has not had any substance abuse or IV drug use or any other concerns since she has been at the nursing facility. Documentation from the nursing facility supports that appellant has attended recovery groups, but appellant's social worker stated this was more for "socialization." (Testimony; Ex. 5, pp. 73, 93).

Appellant reported to the waiver nurse that she has not worked in the past 10 years due to her own health complications, and she was caring for her chronically ill husband until he passed in [REDACTED]. (Testimony; Ex. 5, p. 72). Prior to this most recent hospitalization and rehabilitation, appellant stated that she was homeless and living in a shelter and with a friend for a short time. Appellant stated she has no contact with her 2 children or 4 siblings. Appellant states that she has no informal support in the community, and she would prefer to reside in the [REDACTED] areas. (Ex. 5, p. 73). Appellant also told the waiver nurse during an interview that she has had occasional fleeting thoughts of not wanting to be here anymore. (Ex. 5, p. 72).

The MassHealth nurse testified that appellant has multiple risks when entering the community. She is at risk for medical decompensation due to her complex medical conditions, at risk for psychological decompensation due to her anxiety, depression, and suicidal ideation with a significant attempt in the past, at risk for falls due to right knee replacement with pain and recurrent falls, and at risk for self-neglect due to requiring assistance with activities of daily living (ADLs). (Testimony; Ex. 5, pp. 72-73, 75, 93).

The MassHealth nurse testified appellant does require 24/7 care to maintain safety in the community. Appellant requires assistance with ADLs, and she does not have available informal support in the community. Appellant had attempted to be discharged to the community in [REDACTED] but she was not able to reside at her friend's home; therefore, she remained at the nursing facility. (Ex. 5, pp. 56, 73, 92).

In April 2023, appellants' case was discussed at the MassHealth Waiver Clinical Team review meeting which includes Massachusetts Rehabilitation Commission (MRC) and Department of Developmental Services (DDS). Based on medical record documentation and interviews with nursing facility staff, MassHealth, MRC and DDS determined that appellant can be safely served

within the MFP-RS Waiver because she continues to require nearly 24/7 care and supervision. In addition, appellant is not able to identify any informal support in the community. Therefore, on September 1, 2023, Ms. Valerio was determined clinically eligible for participation under the terms of the MFP-RS Waiver (Ex. 1, p. 1) and on September 5, 2023, appellant was determined ineligible for the MFP-CL Waiver. (Testimony; Ex. 1, p. 2).

Appellant testified on her own behalf. She stated she only tried suicide one time because at the time she thought she had nothing to live for but stated she does have something to live for at this time. She promised she would never do it again. She stated she didn't understand because she has been taking care of herself for years. She testified she does all her activities of daily living, showers herself and does not understand why MassHealth says she can not take care of herself. She stated she wants her own place and wants to be by herself.

Findings of Fact

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

1. On February 13, 2023, appellant applied for the MFP-CL waiver. (Ex. 5, p. 48).
2. Appellant has resided at the skilled nursing facility for over a year. (Ex. 5, p. 71).
3. Appellant is in her [REDACTED] with diagnoses and medical history including presence of right artificial knee joint, morbid (severe) obesity, diverticulitis of the large intestine without perforation, anxiety disorder, major depressive disorder, recurrent, moderate, chronic kidney disease stage 3, acute on chronic congestive heart failure, type 2 diabetes mellitus with diabetic chronic kidney disease, essential hypertension, bilateral secondary osteoarthritis of knee, repeated falls, cardiomyopathy, endometriosis, hyperlipidemia, hypothyroidism, chronic pain, cardiac pacemaker, gastroesophageal reflux, abnormalities of gait and mobility, generalized muscle weakness, suicidal ideations, anxiety disorder, muscle weakness, difficulty in walking, unsteadiness on feet and unspecified abnormalities of gait and mobility. (Testimony; Ex. 5, pp. 59-61, 71, 89, 93, 115-116).
4. Appellant requires set up help, supervision or limited assistances with the following ADLs, transfers, locomotion in home, locomotion outside of home, dressing upper and lower body, eating, toileting, personal hygiene and bathing. (Ex. 5, pp. 57-58, 72).
5. Appellant has no informal support in the community. (Testimony; Ex. 5, p. 56).
6. Appellant had attempted to be discharged to the community in [REDACTED], but she was not able to reside at her friend's home. (Ex. 5, p. 92).

7. Appellant has attempted suicide once in the past. (Testimony; Ex. 5, p. 73).
8. Appellant has a history of IV drug use, opiates. (Ex. 5, p. 93).
9. In [REDACTED] appellant stated to the Waiver Nurse during the in-person assessment that she has had occasional fleeting thoughts of not wanting to be here anymore. (Ex. 5, p. 72).

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. In particular, 130 CMR 519.007(H)(2)(a) describes the eligibility criteria for the MFP-CL waiver, as follows:

(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 § 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.

(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 did approve appellant for Moving Forward Plan – Residential Supports Waiver. The record reflects appellant has a lengthy medical history. (Infra p.4). Physically, MassHealth was concerned that appellant needs some form of assistance with multipole activities of daily living, specifically transfers, locomotion in home, locomotion outside of home, dressing upper and lower body, eating, toileting, personal hygiene, and bathing. Appellant had a knee replacement and has a history of falls. Appellant attempted to be discharged to the community in October 2022, but she was not able to reside at her friend's home and returned to the nursing facility. Appellant has a history of IV drug use with opiates. MassHealth found, and appellant admitted, appellant has no informal support in the community. Regarding appellant's mental health, MassHealth has a legitimate concern due to appellant having anxiety disorder, depression and suicidal ideation, appellant admitting she attempted suicide once in the past. Appellant stated to the waiver nurse that she has had occasional fleeting thoughts of not wanting to be here anymore. (Ex. 5, p. 72). The MassHealth representative testified the waiver only covers a maximum of 12 hours a day and the person has to be independent the other 12 hours of the day. MassHealth concerns are well supported by the record.

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. Having been approved for the MFP-RS waiver, appellant should consider taking advantage of that opportunity.

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.

Thomas Doyle
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