

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2308687
Decision Date:	11/7/2023	Hearing Date:	10/31/2023
Hearing Officer:	Patricia Mullen		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Linda Phillips, RN, Associate Director of
Appeals and Regulatory Compliance, UMass
Chan Medical School Disability and
Community Based Services Unit



*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
Decision Date:	11/7/2023	Hearing Date:	10/31/2023
MassHealth's Rep.:	Linda Phillips, RN, Associate Director of Appeals and Regulatory Compliance, UMass Chan Medical School Disability and Community Based Services Unit	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South		

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 September 5, 2023, MassHealth denied the appellant's application for the MassHealth Moving Forward Plan Community Living Home and Community Based Services (MFP-CL) waiver, because MassHealth determined that the appellant was not an inpatient in a nursing facility or chronic disease or rehabilitation hospital with continuous length of stay of 90 or more days at the time of application. (Exhibit 1 and 130 CMR 519.007(H)(2)). The appellant filed this appeal in a timely manner on September 21, 2023. (Exhibit 3 and 130 CMR 610.015(B)). A denial of a requested MassHealth benefit is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's MFP-CL waiver application.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.007(H)(2), in determining that the appellant is ineligible to participate in the MFP-CL waiver program because he was not an inpatient in a nursing facility or chronic disease or rehabilitation hospital with continuous length of stay of 90 or more days at the time of application.

Summary of Evidence

The appellant appeared telephonically at the hearing and verified his identity. MassHealth was represented telephonically by the Associate Director of Appeals and Regulatory Compliance for the Disability and Community Based Services Unit, UMass Chan Medical School (hereinafter "the MassHealth representative").

The appellant is over age 18 and under 65 and open on community MassHealth Standard as a disabled adult. (Exhibit 4).

The MassHealth representative testified as follows:

MassHealth offers two home and community-based service (HCBS) waivers; the MFP-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. The MFP-RS Waiver is for individuals who need placement in a residence that has supervision and staffing 24 hours/day, 7 days/week. 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.

Below are the eligibility criteria for the MFP Waivers (Exhibit 5, pages 5-6):

- 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
- For the MFP-RS Waiver, the applicant must need residential support services with staff supervision 24 hours/day, 7 days/week.

At issue for this appeal is:

Regulation 130 CMR 519.007 (H) (2)(a) (2): Individuals Who Would be Institutionalized MFP HCBS Waivers (Exhibit 5, pages 37-38):

- Was MassHealth correct in denying the appellant's application for the MFP-CL Waiver, because he was not an inpatient in a nursing facility or chronic disease or rehabilitation hospital with a continuous length of stay of 90 or more days at the time of application for the MFP-CL Waiver?

On [REDACTED] 2023, the appellant applied for the MFP-CL Waiver. (Exhibit 5, p. 43). The Waiver application states the appellant was a resident in a rehabilitation facility. (Exhibit 5, p. 43). The MassHealth representative testified that on August 8, 2023, MassHealth confirmed that the appellant was readmitted to the rehabilitation facility on [REDACTED] 2023. The MassHealth representative testified further that while In process of verifying financial eligibility and scheduling a clinical visit to the facility to assess the appellant for the MFP-CL Waiver application, MassHealth was notified by the Social Worker at the facility, on September 1, 2023, that the appellant was discharged to the community on [REDACTED] 2023.

The MassHealth representative stated that, in accordance with the MassHealth regulation 130 CMR 519.007(H)(2)(a)(2), the appellant does not meet the 90-day criteria, as he was admitted to the facility on [REDACTED] 2023, and discharged to the community on [REDACTED] 2023, which is a total of 6 ½ weeks. The MassHealth representative testified that the appellant was denied for the MFP-CL Waiver on September 5, 2023, because, he was not an inpatient in a nursing facility or chronic disease or rehabilitation hospital with a continuous length of stay of 90 or more days at the time of application for the MFP-CL Waiver. (Exhibit 5, pages 44-45).

The appellant argued that he needs services in the community, such as a ramp into his home and an expanded, modified bathroom to accommodate his wheelchair. The appellant testified that he was first admitted to the hospital on [REDACTED] 2023, then went to the rehabilitation facility for a couple of days, then was admitted back into the hospital, and then back to the rehabilitation facility on [REDACTED] 2023. The appellant argues that the number of days spent in the rehabilitation facility should not matter, because he needs services in the community to keep him out of a nursing facility. The appellant noted that he has a personal care attendant (PCA). The MassHealth representative stated that the appellant's community services covered by MassHealth, including the PCA, are not affected by the denial of the waiver. The MassHealth representative suggested that the appellant contact the Mass Rehabilitation Commission (MRC) about the ramp and modified bathroom, as those services wouldn't be covered by MassHealth. The appellant stated that he has filled out an application with MRC and is awaiting their response.

Findings of Fact

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

1. The appellant is over age 18 and under 65 and open on community MassHealth Standard as a disabled adult.
2. On [REDACTED] 2023, the appellant applied for the MFP-CL Waiver; the appellant was a resident in a rehabilitation facility at that time.
3. The appellant was readmitted to the rehabilitation facility from the hospital on [REDACTED] 2023.
4. The appellant was discharged to the community on [REDACTED] 2023.
5. The appellant was a resident of the rehabilitation facility for [REDACTED] days.

Analysis and Conclusions of Law

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.

(130 CMR 519.007(H)(2)(a)).

Pertinent here, the MFP-CL waiver requires that the applicant must be “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”. (130 CMR 519.007(H)(2)(a)(2)). As the MassHealth representative explained, the appellant was in the rehabilitation facility from [REDACTED] 2023 to [REDACTED] 2023, which is less than 90 days. Accordingly, the appellant does not meet the regulatory criteria necessary for the MFP-CL waiver.

The appellant argued that the amount of time he spent at the facility should not matter, because it does not change the fact that he needs services in the community. The appellant noted that he was admitted to the acute care hospital on [REDACTED] 2023 and from there was admitted to the rehabilitation facility. [REDACTED] 2023 to [REDACTED] 2023, is still less than 90 days.

The hearing officer must not render a decision regarding the legality of federal or state law including, but not limited to, the MassHealth regulations. If the legality of such law or regulations is raised by the appellant, the hearing officer must render a decision based on the applicable law or regulation as interpreted by the MassHealth agency. Such decision must include a statement that the hearing officer cannot rule on the legality of such law or regulation and must be subject to judicial review in accordance with 130 CMR 610.092. (130 CMR 610.082(C)(2)).

Because the appellant does not meet the criteria in 130 CMR 519.007(H)(2)(a)(2), necessary for eligibility for the MFP-CL waiver, and because the hearing officer cannot rule on the legality of

130 CMR 519.007(H)(2)(a)(2), MassHealth's denial of the application is upheld. The 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.

Patricia Mullen
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