

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2309106
Decision Date:	4/25/2024	Hearing Date:	11/07/2023
Hearing Officer:	Thomas Doyle	Record Open to:	11/28/23 Appellant 12/19/23 UMass

Appearance for Appellant:



Appearance for MassHealth:

Linda Phillips, R.N. B.S.N.
Leanne Govoni, R.N.
Charles Sheehan, Esq.

*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

¹ [REDACTED] was added as counsel post hearing.

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Moving Forward Plan Residential Supports Home-and-Community-Based Services Waiver
Decision Date:	4/25/2024	Hearing Date:	11/07/2023
MassHealth's Rep.:	Linda Phillips, R.N. B.S.N.; Leanne Govoni, R.N.; Charles Sheehan, Esq.	Appellant's Rep.:	 
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.

Jurisdiction

By notice dated September 12, 2023, MassHealth notified the appellant that he is not clinically eligible for participation in MassHealth's Moving Forward Plan Residential Supports Home and Community Based Services Waiver (MFP-RS) because he cannot be safely served in the community within the terms of the MFP-RS waiver. (Ex. 1). The appellant filed a timely appeal with the Board of Hearings (BOH) on November 7, 2023. (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-RS waiver program.

Issue

The issue is whether MassHealth correctly determined that the appellant is not clinically eligible for participation in the MFP-RS waiver because he 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 at the University of Massachusetts Medical School (MassHealth nurse) and another Registered Nurse who is the Associate Director, Clinical Services. Also present for MassHealth was an attorney. Appellant's Guardian appeared at the hearing with an associate from her office. Also present for appellant was an attorney, accompanied by a person from her office. All appeared by phone and were sworn.

Appellant applied for the MFP-RS waiver on July 10, 2023 and an in-person assessment was performed to determine whether the appellant was appropriate on August 7, 2023. (Testimony; Ex. 8, p. 46, 69-71, 74). MassHealth determined that the appellant was ineligible for the MFP-RS Waiver because he could not safely reside in the community on September 12, 2023. (Ex. 1). Appellant timely appealed on November 7, 2023. (Ex. 2). Appellant has a past medical history that includes dementia with psychosis and with behavioral disturbance, major depressive disorder, mood disorder, auditory hallucination, benign prostate hyperplasia (BPH), GERD, seizures, hyperlipidemia, type 2 diabetes, fracture of left humerus and left femur, left hip replacement, osteoarthritis, hypothyroidism, Addison's disease, insomnia, post-traumatic stress disorder (PTSD) and alcohol use disorder. (Testimony; Ex. 8, pp. 69 83-84, 176). Appellant has a court appointed guardian with [REDACTED] treatment plan. (Ex. 8, pp. 43-45, 69). Reports from April 2023 indicate appellant has a history of emotional distress without psychotropics and aggression towards others while at lower doses of psychotropics. (Ex. 8 pp. 154). In April 2023, appellant had some angry outbursts and auditory hallucinations. (Ex. 8, p. 160). Appellant can be angry, especially about food and money. He screams and yells if his needs are not being immediately met. He is at his baseline regards to hallucinations. When a physician's assistant was entering appellant's room, he was loudly responding to internal stimuli stating, "the voices, they won't stop." (Ex. 4, pp. 163, 166). As of June 2023, appellant is at risk of falling due to his multiple falls with fractures. He has moments of yelling and hallucinations every day. (Ex. 8, p. 182). As of July 2023, appellant continued to hallucinate and scream the entire night, and he continued to demand sleeping medication; he had multiple episodes of verbal agitation towards peers and staff; behavior monitoring, and interventions needed to be attempted for appellant at least once each day out of the 24 days noted. Behaviors include cursing and

screaming at others, expressing frustration and agitation towards others. (Ex. 4, pp. 178, 181). Appellant requires pretty significant psychiatric oversight. (Guardian Testimony). Appellant still struggles with hallucinations. (Spooner Associate Testimony). During the evaluation period, the UMass waiver nurse emailed appellant's Guardian and her associate in August 2023 and received no response. (Testimony; Ex. 8, p. 74).

Appellant was represented by counsel. Counsel for appellant called two witnesses, his guardian, and an associate of the guardian. Appellant requested the record be left open for three additional written statements from other witnesses. Those statements were received and marked as Exhibits 11-14. MassHealth was given time to respond and their response was received and marked as Exhibit 15. After the record closed, appellant counsel requested the hearing officer reopen the record for new evidence that was unavailable at hearing. (Ex. 17). The request was allowed and a report from the Disability Law Center was marked as Exhibit 18.

Findings of Fact

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

1. Appellant applied for the MFP-RS waiver on July 10, 2023 and an in-person assessment was performed to determine whether the appellant was appropriate on August 7, 2023. (Testimony; Ex. 8, p. 46, 69-71, 74).
2. On September 12, 2023, MassHealth determined that the appellant was ineligible for the MFP-RS Waiver because he could not safely reside in the community. (Ex. 1). Appellant timely appealed on November 7, 2023. (Ex. 2).
3. Appellant has a past medical history that includes dementia with psychosis and with behavioral disturbance, major depressive disorder, mood disorder, auditory hallucination, benign prostate hyperplasia (BPH), GERD, seizures, hyperlipidemia, type 2 diabetes, fracture of left humerus and left femur, left hip replacement, osteoarthritis, hypothyroidism, Addison's disease, insomnia, post-traumatic stress disorder (PTSD) and alcohol use disorder. (Testimony; Ex. 8, pp. 69 83-84, 176).
4. Appellant has a court appointed guardian with [REDACTED] treatment plan. (Ex. 8, pp. 43-45, 69).
5. Reports from April 2023 indicate appellant has a history of emotional distress without psychotropics and aggression towards others while at lower doses of psychotropics. (Ex. 8 pp. 154).
6. In April 2023, appellant had some angry outbursts and auditory hallucinations. (Ex. 8, p. 160).

7. Appellant can be angry, especially about food and money. He screams and yells if his needs are not being immediately met. He is at his baseline regards to hallucinations. When a physician's assistant was entering appellant's room, he was loudly responding to internal stimuli stating, "the voices, they won't stop." (Ex. 4, pp. 163, 166).

8. As of June 2023 appellant is at risk of falling due to his multiple falls with fractures. He has moments of yelling and hallucinations every day. (Ex. 8, p. 182).

9. As of July 2023, appellant continued to hallucinate and scream the entire night, and he continued to demand sleeping medication; he had multiple episodes of verbal agitation towards peers and staff; behavior monitoring, and interventions needed to be attempted for appellant at least once each day out of the 24 days noted. Behaviors include cursing and screaming at others, expressing frustration and agitation towards others. (Ex. 4, pp. 178, 181).

10. Appellant requires pretty significant psychiatric oversight. (Guardian Testimony).

11. Appellant still struggles with hallucinations. (Bernard Testimony).

12. During the evaluation period, the UMass waiver nurse emailed appellant's Guardian and her associate in August 2023 and received no response. (Testimony; Ex. 8, p. 74)

Analysis and Conclusions of Law

The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). Moreover, "[p]roof by a preponderance of the evidence is the standard generally applicable to administrative proceedings." Craven v. State Ethics Comm'n, 390 Mass. 191, 200 (1983).

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)(1) describes the eligibility criteria for the MFP-RS waiver, as follows:

(1) Money Follows the Person (MFP) Residential Supports Waiver.

(a) Clinical and Age Requirements. The MFP Residential Supports 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 residential support services and other specified waiver services in a 24-hour supervised residential setting if they meet all of the following criteria:

1. are 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. are 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. must be assessed to need residential habilitation, assisted living services, or shared living 24-hour supports services within the terms of the MFP Residential Supports Waiver;
5. are able to be safely served in the community within the terms of the MFP Residential Supports Waiver; and
6. are 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.

During the evaluation period by MassHealth, appellant's psychiatric drugs were adjusted. While this may have not been done for any reason attributed to appellant's actions, he was still in a period of instability regarding his medications. The letters offered by [REDACTED] and [REDACTED] confirm this change in medications. There is a history of aggression by appellant towards others at lower doses of psychotropics. In the evaluation period, appellant showed angry outbursts and auditory hallucinations. At hearing, one of appellant's witnesses testified he still struggles with hallucinations. His Guardian testified he requires "pretty significant psychiatric oversight." The record shows appellant, in July 2023, screaming the entire night. The record reflects behavior monitoring and interventions needed to be attempted for appellant at least once each day out of the 24 days noted. Behaviors include cursing and screaming at others, expressing frustration and agitation towards others. Regarding the written statements offered by appellant authored by [REDACTED], like MassHealth, she reviewed records and spoke to appellant and facility staff. She also spoke to appellant's Guardian. She concluded appellant should be approved for the waiver. Unlike representatives from MassHealth, [REDACTED] was not subjected to cross examination. Therefore, there was no way to determine what parts appellant's record she considered or how much weight she gave to any particular issue in those records. Appellant offered as evidence a written evaluation of the facility where appellant is a resident. (Ex. 18). This assessment, however, is about the facility and not specifically about appellant or his ability to be safely served in the community within the terms of the waiver. The analysis in the writing is not dedicated to appellant's waiver eligibility.

The record also reflects that appellant is subjected to psychological decompensation due to his

complex psychiatric history and frequent adjustments to his psychiatric medications and treatments. The evidence shows that appellant needs a longer period of stability on his psychiatric medications. As he manifests more stability, different documentation will show this stability.

In this case, MassHealth denied the appellant's application for the MFP-RS Waiver because it determined that the appellant did not meet the criteria under subsection (5) above, specifically that his needs cannot be safely served in the community within the terms of the MFP-RS Waiver program. The appellant argues that his needs can be met safely in the community through the MFP-RS Waiver.

After hearing and considering all of the evidence, I find that the appellant has not met his burden of proof to demonstrate error in MassHealth's determination that he is currently ineligible for the MFP-RS Waiver. Therefore, 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.

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

Appeal Representative: [REDACTED]