


Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2310003
Decision Date:	1/8/2024	Hearing Date:	11/28/2023
Hearing Officer:	Christopher Jones		

Appearance for Appellant:

 – Self
Elder Services
– Social Worker
– Unit Manager Nurse


Appearance for MassHealth:

Linda Phillips, RN, BSN, LNC-CSp - Associate
Director – Appeals and Regulatory Compliance



*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:	Over-65; Waiver; MFP-CL; Clinical
Decision Date:	1/8/2024	Hearing Date:	11/28/2023
MassHealth's Rep.:	Linda Phillips, RN, BSN, LNC-CSp	Appellant's Rep.:	
Hearing Location:	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

Through a notice dated October 10, 2023, MassHealth denied the appellant's application for the Moving Forward Plan Community Living Home-and-Community-Based Waiver because the appellant could not be safely served in the community within the terms of the waiver. (Exhibit 1; 130 CMR 519.007(H)(2).) The appellant filed this timely appeal on October 18, 2023. (Exhibit 1; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth denied appellant's application for the Moving Forward Plan Community Living Home-and-Community-Based Waiver because the agency determined that the appellant did not have a complete grasp on his medical condition sufficient for him to succeed within the scope of services available through the program.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.007, in determining that the appellant was clinically ineligible for the Moving Forward Plan Community Living Home-and-Community-Based Waiver.

Summary of Evidence

The appellant is currently residing in a nursing facility following a hospitalization for the treatment of several medical conditions, including alcohol abuse, diabetes, and chronic obstructive pulmonary disease (“COPD”). He is over the age of 65. At the time of his hospitalization, he was homeless and consuming in excess of 10 alcoholic beverages per day. In the hospital, he was treated with IV steroids, IV fluids, albuterol, and insulin; he was stabilized and transferred to the nursing facility at which he currently resides. (Exhibit 4, pp. 67, 80.) On or around January 18, 2023, he applied for the Moving Forward Plan Community Living Home-and-Community-Based Waiver (“MFP-CL Waiver”).

His psychological progress notes repeatedly showed little inclination to deal with his history of alcohol abuse. Rather, he repeatedly identified his smoking cigarettes as the primary addiction he needed to address. (Exhibit 4, pp. 69, 100, 107.) During an interview with clinical nurse reviewers from MassHealth in September 2023, the appellant stated that he has been drinking since he was [REDACTED] and his longest period of sobriety was about nine months, which referred to the time he had been in the nursing facility. When asked about getting assistance with alcohol dependence, he responded that he would be open to counseling or attending Alcohol Anonymous meetings, but he also indicated that he was looking forward to going home and having a few beers while watching sports. He reported that, if he drinks, it will only be “minimal.” (Exhibits 4, p. 69; Exhibit 5, p. 3.)

MassHealth’s clinical reviewers determined that the appellant was at high risk for rapid decompensation due to his multiple complex chronic conditions and his unwillingness to address his chronic alcohol abuse disorder. Given his unwillingness to address his alcohol abuse disorder, he was considered a high risk of relapsing, and the MFP Waiver program felt they could not successfully support him in the community.

The appellant acknowledged that he had been ignoring his alcohol abuse disorder, and he now recognizes that he needs to face it more aggressively. He testified that he has recently made great strides in this, and he was surprised by how recently he was still downplaying how serious his battle with alcohol was. He testified that, based upon the psychological records MassHealth had to review, he was not surprised that they denied his eligibility. He also testified that he is working on developing sound habits and building a structured lifestyle in order to ensure he succeeds in the community. He testified that he has strong community support that are ready to help him when he moves back into the community. When asked why he was pursuing the MFP-CL Program, he testified that he feels he would benefit from ongoing nursing visits, physical therapy, and some assistance around the house.

MassHealth’s representative testified that all of these services were available to the appellant outside of the MFP-CL Waiver program, directly through MassHealth. The appellant responded that his income was too high to qualify for MassHealth in the community without the Waiver. It was pointed out that the appellant could contact a MassHealth eligibility worker to discuss other

options, such as the Frail Elder Waiver or CommonHealth coverage. The appellant understood that he may not be eligible for the MFP-CL Waiver program; he has applied to every program he could find in hopes that one of them will enable him to safely return to the community.

The members of the appellant's care team also testified as to how hard he has been working and how genial he is. They believe that he will succeed in the community.

Findings of Fact

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

The appellant is currently residing in a nursing facility, following a hospitalization for alcohol abuse, diabetes, and COPD. In the hospital, he was treated with IV steroids, IV fluids, albuterol, and insulin; he was stabilized and transferred to the nursing facility at which he currently resides. (Exhibit 4, pp. 67, 80.)

On or around January 18, 2023, the appellant applied for the MFP-CL Waiver. (Exhibit 4, p. 44.)

From the time of his arrival at the nursing facility through at least September 2023, the time at which the Waiver program reviewed the appellant's clinical record, the appellant did not believe he had an alcohol abuse disorder. (Exhibit 4, pp. 69, 100, 107; testimony by MassHealth's representative and appellant.)

The appellant has only recently started to confront the extent of his alcohol abuse disorder, and he is progressing well. (Testimony by the appellant and appellant's representatives.)

The Waiver program denied the appellant's eligibility for the MFP-CL Waiver because his underlying medical conditions make him high risk for rapid decompensation if he succumbed to his alcohol abuse disorder. He was deemed at high risk for relapsing based upon his view of his condition at the time the decision was made. (Exhibit 4; testimony by MassHealth's representative.)

Analysis and Conclusions of Law

The home-and community-based services waivers allow individuals currently institutionalized in a nursing facility or hospital to be placed in a residential housing program or live on their own in the community. (See 130 CMR 519.007.) The "Moving Forward Plan Waivers (MFP Waivers)" are "approved by the CMS under § 1915(c) of the Social Security Act for persons with disabilities who are transitioning from long-stay facilities."¹ (130 CMR 630.402.) The management of these waivers

¹ "The Moving Forward Plan Waivers were formerly named the Money Follows the Person Waivers, and any reference to "Money Follows the Person Waivers" should be given the same effect as if it

can be very resource intensive, and enrollment in the MFP-CL Waiver “is subject to a limit on the total number of waiver participants ... limited in a manner determined by the MassHealth agency.” (130 CMR 519.007(H)(2)(c).)

There is very limited guidance with regards to the clinical eligibility for the MFP-CL 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 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) (emphasis added).)

Waiver services are individually tailored to each member, and providing the support needed to manage a member’s participation requires a great deal of effort on behalf of multiple state agencies and their contractors. Because of the limited resources for these programs, the agencies

read "Moving Forward Plan Waivers," unless the context requires otherwise.” (130 CMR 630.402 (definition of Moving Forward Plan Waivers).)

attempt to maximize their use by seeking to approve the most likely to be able to medically thrive in the community.

The appellant acknowledged that, at the time the clinical review was done by the Waiver program, he was still not confronting his alcohol abuse disorder. MassHealth's clinical reviewers reasonably concluded that this lack of awareness put the appellant at high risk for relapsing, which, combined with his other serious medical conditions, posed a significant threat to his success in the community. Therefore, MassHealth was correct that the appellant was unlikely to be able to safely reside in the community, and 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.

Christopher Jones
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