

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2311301
Decision Date:	02/27/2024	Hearing Date:	01/02/2024
Hearing Officer:	Thomas Doyle		

Appearance for Appellant:



Appearances for MassHealth:

Linda Phillips, Associate Director Appeals and
Regulatory Compliance;
Kristen Stahl, Nurse Reviewer



*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:	02/27/2024	Hearing Date:	01/02/2024
MassHealth's Rep.s:	Linda Phillips Kristen Stahl	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.

Jurisdiction

By notice dated October 31, 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). The appellant filed a timely appeal with the Board of Hearings (BOH) on November 13, 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-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), and another Registered Nurse who was the Community Risk Assessment Assessor (reviewer 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; Ex. 7, pp. 6-7).

The MassHealth nurse testified that the appellant, who is over age 65, applied for services under the MFP-CL waiver in August 2023. (Testimony; Ex. 7, p. 44). Appellant is currently residing in a skilled nursing facility (SNF), where she has lived for over a year. She was transferred there from a hospital after suffering a fall at her home. Tests at the hospital showed that appellant had bilateral tibia/fibula fractures requiring surgical interventions but only had surgery on her right leg. (Ex. 7, p. 81). Physical and occupational therapy recommended that appellant be discharged to a SNF for rehabilitation and strengthening. Appellant was transferred in [REDACTED] to the SNF. (Testimony, Ex. 7, p. 66). The appellant’s medical diagnoses include bilateral tibia/fibula fractures, right tib/fib ORIF, type 2 diabetes, hypertension, muscle weakness, osteoarthritis, spinal stenosis, hyperlipidemia, vertigo, migraines, polyneuropathy, history of MI, hypothyroidism, GERD, insomnia, and anxiety. (Testimony; Ex. 7, p. 90-91).

On September 27, 2023, an assessment for Waiver eligibility was conducted in person at the SNF in Braintree, MA. In attendance at the in-person assessment were appellant, the Assessor nurse, who is a MassHealth Nurse Reviewer who was representing the MFP Waiver Program. A social worker introduced appellant to the reviewer nurse. (Testimony; Ex. 7, p. 73). The reviewer assessment consists of completion of MFP documents including Minimum Data Set-Home Care (MDS-HC); Clinical Determination of Waiver Eligibility; Acquired Brain Injury (ABI)/MFP Waivers Community Risks Assessment; the Risk Assessment-ABI-N/MFP-CL Caregiver Supplement; a review of the applicant’s medical record and a discussion with the nursing facility staff. (Testimony; Ex. 7, pp. 49-72).

During the Waiver eligibility assessment review, MassHealth noted documentation indicating appellant's medical conditions. On [REDACTED] 2023, the SNF Nursing Progress note indicates that appellant had refused to stand with therapy today and PT/OT were asked by nursing staff to work on transfers with appellant, as she has refused to allow staff to transfer her or assist her with a shower. (Testimony; Ex. 7, p. 142). On [REDACTED] 2023, [REDACTED] Healthcare Progress note states that appellant has been on Lovenox for deep vein thrombosis (DVT) prophylaxis because she does not get out of bed most of the time. (Testimony; Ex. 7, p. 120). On [REDACTED] 2023, [REDACTED] Healthcare progress note states that appellant is continuing with therapy, and she has been getting out of bed but continues to receive Eliquis twice a day because she is still having difficulty with standing and transfers. The appellant is seeing a shoulder specialist because of a right rotator cuff insufficiency. (Testimony; Ex. 7, pp. 118-119).

The MDS-HC Report dated October 13, 2023 indicates appellant needs some type of assistance with Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs): for mobility in bed, appellant needs limited assistance; transfers, appellant is totally dependent; for dressing upper and lower body appellant needs extensive assistance; for toilet use, appellant is totally dependent; for personal hygiene, appellant needs extensive assistance. Regarding managing medications, it is performed by others and appellant has little or no involvement. For transportation, it is performed by others and appellant has little or no involvement. (Testimony; Ex. 7, pp. 53-54).

On October 19, 2023, appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting. In addition, on October 25, 2023, as part of the MFP Waiver eligibility process, a second clinical review was conducted by the Massachusetts Rehabilitation Commission (MRC) Clinical team, who oversees the community living waiver. MassHealth and MRC determined that appellant is a significant health and safety risk to herself. Appellant continues to require 24/7 support due to her physical care needs and lacks informal support with no one living with her in the community. (Testimony; Ex. 7, p. 68).

Appellant testified on her own behalf and submitted a written statement. (Ex. 5). She stated she wanted to go home. She stated she lives in senior citizen housing and has no children but does have several nieces and nephews. She stated she was not satisfied with the physical therapy she was receiving.¹

Findings of Fact

¹ As late as September 2023, appellant was refusing to get up out of bed (Ex. 7, p. 146) and she also refused to take a shower so she could be evaluated for the amount of assistance she would need. Appellant refused the shower evaluation three times. (Ex. 7, p. 142).

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

1. On August 8, 2023, appellant applied for the MFP-CL waiver. (Ex. 7, p. 44).
2. On October 31, 2023, a Denial of Clinical Eligibility for the MFP-CL waiver was served on appellant. (Testimony; Ex. 1).
3. Appellant has resided at the skilled nursing facility for over a year. (Ex. 7, p. 66).
4. Appellant is in her [REDACTED] with diagnoses and medical history including bilateral tibia/fibula fractures, right tib/fib ORIF, type 2 diabetes, hypertension, muscle weakness, osteoarthritis, spinal stenosis, hyperlipidemia, vertigo, migraines, polyneuropathy, history of MI, hypothyroidism, GERD, insomnia, and anxiety. (Testimony; Ex. 7, p. 90-91).
5. Appellant needs assistance with bathing, grooming, dressing and toileting. (Ex. 7, p. 67, 146).
6. Appellant plans to live alone and is bladder and bowel incontinent. (Ex. 7, pp. 54, 67, 146).
7. Appellant is unable to self-transfer or toilet herself. (Ex. 7, pp. 67; 69).
8. Appellant requires twenty-four-hour care, seven days a week, and oversight. (Ex. 7, p. 67).
9. Appellant has no informal support in the community. (Testimony; Ex. 7, p. 70).
10. While at the facility, appellant has refused to get up out of bed or to take a shower in order to be assessed on the amount of assistance she would need to take a shower. (Ex. 7, pp. 142, 146).

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 was concerned that appellant needs some form of assistance with multiple activities of daily living and instrumental activities of daily living, specifically mobility, appellant needs limited assistance; transfers, she is totally dependent; for dressing, she needs extensive assistance; regarding toilet use, appellant is totally dependent and for personal hygiene she needs extensive assistance. (Ex. 7, p. 146). MassHealth found appellant has no informal support in the community. Appellant does have several nieces and nephews, but none live with her and could only provide emergency back up care. (Testimony; Ex. 7, p. 67). Appellant is at risk for falls and injury because she needs assistance with her ADL's, and is unable to self-transfer. While at the facility, appellant has at times refused to get out of bed and refused to take a shower for her to be assessed to determine what amount of assistance she requires to shower.

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.

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