

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2311423
Decision Date:	02/02/2024	Hearing Date:	12/14/2023
Hearing Officer:	Susan Burgess-Cox	Record Open to:	01/16/2024

Appearance for Appellant:
Pro Se

Appearance for MassHealth:
Linda Phillips, Leanne Govoni &
Bethany Landry



*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:	Waiver Disenrollment
Decision Date:	02/02/2024	Hearing Date:	12/14/2023
MassHealth's Rep.:	Linda Phillips et. al	Appellant's Rep.:	Pro se
Hearing Location:	All Parties Appeared by Telephone	Aid Pending:	Yes

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 November 2, 2023, MassHealth took action to disenroll the appellant from the Moving Forward Plan Community Living Home and Community-Based Services Waiver (MFP-CL Waiver) program because the agency determined that the appellant cannot be safely served in the community within the terms of the waiver. (130 CMR 519.007(H); Exhibit 1). The appellant filed a timely appeal on November 14, 2023. (130 CMR 610.015; Exhibit 2). A decision regarding the scope or amount of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified the appellant that she will be disenrolled from the MFP-CL Waiver Program because she cannot be safely serviced in the community within the terms of the waiver. (130 CMR 519.00(H)).

Issue

Whether MassHealth was correct in their decision regarding the appellant's eligibility for enrollment in the MFP-CL Waiver Program.

Summary of Evidence

All parties appeared by telephone. Documents presented by MassHealth were incorporated into the hearing record as Exhibits 4 and 5.

The appellant is under 65 years of age and diagnoses include: multiple sclerosis; nontraumatic perforation of intestine; chronic obstructive pulmonary disease (COPD); lower back pain; dorsalgia; gastro-esophageal reflux disease (GERD) without esophagitis; polyneuropathy; nicotine dependence; alcohol abuse; psychoactive substance use; opioid dependence disorder; major depressive disorder; and anxiety disorder. (Testimony; Exhibit 4; Exhibit 5). The appellant became eligible for the MFP-CL waiver in 2018 following a hospitalization and inpatient rehabilitation. (Testimony; Exhibit 4; Exhibit 5).

In [REDACTED] the appellant reported that she had been using cocaine with her support worker and allowed the worker to “cook” cocaine in her home. (Testimony; Exhibit 4; Exhibit 5). The appellant also reported concerns of missing medications such as oxycodone and Ativan. (Testimony; Exhibit 4; Exhibit 5). As a result of this report, a complaint was filed with the Disabled Persons Protection Commission and the appellant’s locks were changed. (Testimony; Exhibit 4; Exhibit 5).

In the [REDACTED], the appellant required a hospitalization following a fall at home. The appellant was found by care workers who noted finding multiple bottles of Smirnoff Ice and Fireball Whiskey. (Testimony; Exhibit 4; Exhibit 5). The appellant was discharged to a facility for short-term rehabilitation, returned home and within 24-hours suffered another fall. (Testimony; Exhibit 4; Exhibit 5). The appellant had an uneventful 2021. (Testimony; Exhibit 4; Exhibit 5). Beginning in the [REDACTED] the appellant had frequent hospitalizations and rehabilitation admissions due to falls, complaints of joint pain and surgeries. (Testimony; Exhibit 4; Exhibit 5). The appellant was discharged from a rehabilitation admission in the spring of 2023. (Testimony; Exhibit 4; Exhibit 5).

Following the [REDACTED] discharge, the appellant had another fall and discussion with her case manager (CM). (Testimony; Exhibit 4; Exhibit 5). The appellant informed her CM that she felt very tired, was recently diagnosed with anemia and taking iron. (Testimony; Exhibit 4; Exhibit 5). The CM noted that the appellant was unable to stay on topic, recall a timeline of events and slurred her words. (Testimony; Exhibit 4; Exhibit 5). The following week, the appellant went to the liquor store, purchased alcohol, and was intoxicated. (Testimony; Exhibit 4; Exhibit 5). Emergency Medical Services were called, they broke down the door and found the appellant on the floor. (Testimony; Exhibit 4; Exhibit 5). The appellant’s apartment was in disarray. (Testimony; Exhibit 4; Exhibit 5). The MRC CM reported the incident to the appellant’s primary care physician (PCP) to note the appellant’s poor decision making and concerns regarding the appellant seeking pain medications with frequent hospitalizations. (Testimony; Exhibit 4; Exhibit 5). In June 2023, the appellant was noted to be “picking on” one of her regular home health aides by calling her names

and not treating her correctly. (Testimony; Exhibit 4; Exhibit 5). Over the course of a month the appellant became verbally abusive and disrespectful to staff. (Testimony; Exhibit 4; Exhibit 5). Concerns regarding the appellant's sobriety were raised and the appellant noted that another incident was likely to happen and she had not desire to seek help or rehabilitation. (Testimony; Exhibit 4; Exhibit 5).

In the [REDACTED], the appellant was in the Emergency Room following another fall and noted to be intoxicated. (Testimony; Exhibit 4; Exhibit 5). The appellant returned to the Emergency Room 2 days later with a dislocated hip. (Testimony; Exhibit 4; Exhibit 5). The appellant stated that she drove her scooter into the middle of traffic due to an argument she had with a neighbor. (Testimony; Exhibit 4; Exhibit 5). The appellant stated that the incident led to her drinking and a suicide attempt. (Testimony; Exhibit 4; Exhibit 5). While the appellant was in the Emergency Room, her blood alcohol content was over 200 and she denied any suicidal ideations. (Testimony; Exhibit 4; Exhibit 5). The appellant was hospitalized and then transferred to a facility for further psychiatric evaluation. (Testimony; Exhibit 4; Exhibit 5). During the period when the appellant was undergoing a psychiatric evaluation, the appellant was passive about the suicide attempt and stated that it was stupid and that she must have been very drunk. (Testimony; Exhibit 4; Exhibit 5). It was suggested that the appellant attend a residential rehabilitation program but she declined. (Testimony; Exhibit 4; Exhibit 5). The appellant stated that she was drinking sporadically before the [REDACTED] hospitalization. (Testimony; Exhibit 4; Exhibit 5).

The appellant returned to the community and in August 2023 the Massachusetts Rehabilitation Commission (MRC) submitted a clinical status change due to ongoing substance abuse, hospitalizations, physical and cognitive decline. (Testimony; Exhibit 4; Exhibit 5). The appellant underwent a waiver reassessment in October 2023. (Testimony; Exhibit 4; Exhibit 5).

During the waiver reassessment, the appellant reported that she remained medically stable since the [REDACTED] hospitalization. (Testimony; Exhibit 4; Exhibit 5). The appellant reported that she is completing all activities of daily living (ADLs) on her own, including showering independently. Following the [REDACTED] hospitalization, the appellant was supposed to see a counselor weekly but she changed it to monthly. (Testimony; Exhibit 4; Exhibit 5). The appellant declined to sign a release for her MRC Case Manager to speak with her counselor. (Testimony; Exhibit 4; Exhibit 5). The appellant acknowledged difficulties with her alcohol use but reported that she had not had a drink since [REDACTED]. (Testimony; Exhibit 4; Exhibit 5). The appellant reported that she attends Alcoholics Anonymous (AA) regularly and has two sponsors who she speaks to daily. (Testimony; Exhibit 4; Exhibit 5). The appellant had the same two sponsors during the June 2023 redetermination and, despite their support, she continued to drink. (Testimony; Exhibit 4; Exhibit 5). The appellant reported that her triggers are situational and related to frustration regarding her physical ailments and limitations. (Testimony; Exhibit 4; Exhibit 5). When asked about plans for dealing with a decline in her physical abilities, the appellant stated that she would talk to her sponsors. In response to a recommendation of speak with additional professionals, the appellant responded that "I am not going to change and this is just who I am".

(Testimony; Exhibit 4; Exhibit 5).

Following the reassessment, the MassHealth Waiver Clinical Team and MHR Clinical Team determined that the appellant was no longer clinically eligible for participation in the MF-CL programs due to the appellant presenting a pattern of instability in the community related to her alcohol abuse and overall mental health. (Testimony; Exhibit 4; Exhibit 5). The team determined that the appellant has continued to demonstrate poor insight into her psychiatric needs as evidenced by changes to her counseling schedule and not allowing the MRC CM to speak to the counselor. (Testimony; Exhibit 4; Exhibit 5). The team concluded that the appellant remains at high risk for psychiatric decompensation and returning to alcohol use. (Testimony; Exhibit 4; Exhibit 5). They determined that this will increase the appellant's risk for falls and further injury, isolation and exploitation. (Testimony; Exhibit 4; Exhibit 5).

The appellant appeared by telephone with a home health aide and a case manager from a service provider. The appellant testified that since the most recent hospitalization and assessment, she has changed and can see the benefits of the services she receives through the MFP-CL Waiver program. The individual from the service provider testified that she has seen changes in the appellant's behavior since August 2024. The appellant testified that she has been sober for 5 months and meets with the individual present at hearing at least one time each week. The appellant testified that she is willing and in agreement to do whatever it takes to remain in the MFP-CL Waiver program. The appellant testified that she needs support to remain in the community. The appellant testified that she now understands what needs to be done in order to remain eligible for the MFP-CL Waiver program.

The appellant's Home Health Aide (HHA) testified that the appellant is now a different person and has promised not to drink alcohol. The HHA testified that the appellant is more active, exercises regularly and trying her best to be a better person. The HHA testified that the appellant needs a second chance.

The MassHealth representative responded that while the appellant had a history of incidents and remained on the program, there was no documentation of prior suicide attempts and while the MRC CM tried to pull in supports and additional services for the appellant following the most recent hospitalization, the appellant did not accept those services. The MassHealth representative testified that the agency tries all types of interventions before disenrolling a member from the MFP-CL Waiver program but if the member does not accept and work with case managers to ensure that they can be safely served in the community within the terms of the waiver, the member can be disenrolled from the program.

At hearing, the record was not held open. However, prior to the issuance of a hearing decision, the appellant submitted a letter to the Board of Hearings to consider as part of the hearing record. The letter was accepted, incorporated into the hearing record as Exhibit 6 and sent to MassHealth to review and respond. (Exhibit 6; Exhibit 7). The letter states that the appellant is on

Supplemental Security Income (SSI). The appellant states that she does not qualify for any other program and needs to continue enrollment in the MFP-CL Waiver program to continue to receive necessary services. (Exhibit 6). The appellant states that she was working against the waiver program in the past but now realizes that she needs assistance and will cooperate in order to continue to receive services through the MFP-CL Waiver program. (Exhibit 6).

In the letter, the appellant refers to the “One Care Program” stating that she is not eligible for that program. (Exhibit 6). The MassHealth representative reviewed the letter and submitted a response that was incorporated into the hearing record as Exhibit 8. In the submission, MassHealth states that disenrollment from the MFP-CL Waiver program does not leave the appellant without services in the community. (Exhibit 8). It does not discontinue her MassHealth coverage and agency records indicate that the appellant is eligible for MassHealth Standard. (Exhibit 8). The MassHealth representative states that MassHealth Standard is the most inclusive health coverage for MassHealth members. (Exhibit 8). The MassHealth representative states that agency records show that the appellant remains eligible for: MassHealth Dental; Primary Care Clinician Plan; Behavioral Health; Visiting Nurse Association (VNA) services; and personal care attendant (PCA) services. (Exhibit 8). The MassHealth representative states that the appellant did not provide any new information to alter the agency’s decision to disenroll her from the MFP-CL Waiver program. (Exhibit 8).

No other correspondence from the parties was accepted as part of the hearing record.

Findings of Fact

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

1. The appellant is under 65 years of age.
2. The appellant’s diagnoses include: multiple sclerosis; nontraumatic perforation of intestine; chronic obstructive pulmonary disease (COPD); lower back pain; dorsalgia; gastro-esophageal reflux disease (GERD) without esophagitis; polyneuropathy; nicotine dependence; alcohol abuse; psychoactive substance use; opioid dependence disorder; major depressive disorder; and anxiety disorder.
3. The appellant became eligible for the MFP-CL Waiver in 2018 following a hospitalization and inpatient rehabilitation.
4. In [REDACTED], the appellant reported that she had been using cocaine with her support worker and allowed the worker to “cook cocaine” in her home.
5. The appellant also reported concerns of missing medications such as oxycodone and

Ativan.

6. A complaint was filed with the Disabled Persons Protection Commission and the appellant's locks were changed.
7. In the [REDACTED] the appellant required a hospitalization following a fall at home.
8. The appellant was found by care workers who noted finding multiple bottles of Smirnoff Ice and Fireball Whiskey.
9. The appellant was discharged to a facility for short-term rehabilitation, returned home and within 24-hours suffered another fall.
10. The appellant had an uneventful 2021.
11. Beginning in the [REDACTED] the appellant had frequent hospitalizations and rehabilitation admissions due to falls, complaints of joint pain and surgeries.
12. The appellant was discharged from a rehabilitation admission in the [REDACTED]
13. Following the [REDACTED], the appellant had another fall and discussion with her case manager (CM).
14. During the discussion, the appellant was unable to stay on topic, recall a timeline of events and slurred her words.
15. The following week, the appellant went to the liquor store, purchased alcohol, and was intoxicated.
16. Emergency Medical Services were called, they broke down the door and found the appellant on the floor.
17. The appellant's apartment was in disarray.
18. Over the course of a month the appellant became verbally abusive and disrespectful to home health staff.
19. In the [REDACTED], the appellant drove her scooter into the middle of traffic following an argument with her neighbor.
20. The appellant was taken to the Emergency Room and her blood alcohol level was 200.

21. The appellant was hospitalized and then transferred to a facility for further psychiatric evaluation.
22. During the period of psychiatric treatment, it was suggested that the appellant attend a residential rehabilitation program but she declined.
23. The appellant began receiving counseling services at least one time each week following discharge.
24. The appellant changed the counseling schedule to one time each month.
25. In August 2023 the Massachusetts Rehabilitation Commission (MRC) submitted a clinical status change due to ongoing substance abuse, hospitalizations, physical and cognitive decline.
26. The appellant underwent a waiver reassessment in October 2023.
27. During the waiver reassessment, the appellant reported that she remained medically stable since the hospitalization and completing all activities of daily living on her own.
28. The appellant would not sign a release to allow discussions with her counselor as part of the reassessment.

Analysis and Conclusions of Law

The MassHealth regulations at 130 CMR 519.000 explain the categorical requirements and financial standards that must be met to qualify for a MassHealth coverage type. The 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.

The Moving Forward Plan Community Living Waiver (MFP-CL 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)(1)(a)).

MassHealth also has income and asset eligibility requirements for the MFP-CL program but the only issue raised in this appeal was appellant's the clinical eligibility. (130 CMR 519.007(H)(1); 130 CMR 519.007(H)(2)).

Agency regulations at 130 CMR 630.000 govern the provision of services for several Home- and Community-Based Services Waivers including the Moving Forward Plan Home- and Community-based Services waivers (MFP Waivers).

Pursuant to 130 CMR 630.408, nonpayable services under MFP Waivers include services that are unsafe, inappropriate, or unnecessary for a participant. Each HCBS waiver provider is responsible for ensuring that the HCBS waiver services it provides are safe, appropriate, and necessary for the participant. (130 CMR 630.408). The testimony and evidence presented by both MassHealth and the appellant clearly demonstrate that the appellant cannot be safely served in the community under the terms of the MFP-CL waiver program. Testimony by the appellant and those working with her since the time of the evaluation was not sufficient when compared to the extensive history presented by MassHealth of the appellant's behavior and compliance in working with those trying to provide safe and appropriate services. The decision made by MassHealth regarding the clinical eligibility for the MFP-CL waiver was correct.

This appeal is denied.

Order for MassHealth

Release the appellant's aid pending and proceed with disenrollment in the MFP Waiver program.

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.

Susan Burgess-Cox
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