

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2400793
Decision Date:	4/11/2024	Hearing Date:	02/15/2024
Hearing Officer:	Kimberly Scanlon		

Appearance for Appellant:



Appearance for MassHealth:

Linda Phillips, RN, BSN, LNC-CSp., Associate
Director of Appeals and Regulatory
Compliance;

Leanne Govoni, RN, BSN, Associate Director of
Waiver Clinical Services (*via telephone*)



*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:	Disenrollment from Moving Forward Plan Waiver
Decision Date:	4/11/2024	Hearing Date:	02/15/2024
MassHealth's Rep.:	Linda Phillips, RN; Leanne Govoni, RN	Appellant's Rep.:	Pro se; Son
Hearing Location:	Tewksbury MassHealth Enrollment Center Room 2	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 December 18, 2023, MassHealth informed the appellant that she would be disenrolled from the MassHealth Moving Forward Plan Community Living Home-and-Community-Based Services Waiver (MFP-CL Waiver) because MassHealth determined that she is no longer clinically eligible as she cannot be safely served in the community (Exhibit 1). The appellant filed this appeal in a timely manner on January 9, 2024 (130 CMR 610.015(B) and Exhibit 2). Denial and/or termination of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified the appellant that she would be disenrolled from the MFP-CL Waiver effective January 3, 2024, because she cannot be safely served in the community within the terms of the MFP-CL Waiver.

Issue

The appeal issue is whether MassHealth appropriately disenrolled the appellant from the MFP-CL Waiver.

Summary of Evidence

MassHealth was represented at hearing by two (2) registered nurses from MassHealth's Disability and Community Services. Appellant appeared at hearing with her son.

The MassHealth nurse testified that MassHealth offers two home-and community-based MFP service waivers, the MFP-RS Waiver and the MFP-CL Waiver. Both waivers help individuals who are qualified for the MFP Demonstration to move from a nursing facility or long-stay hospital to an MFP-qualified residence in the community and obtain community-based services. The MFP-CL Waiver is designed 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 per day, 7 days per week.

The following are the criteria for the MFP Waivers:

- 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 the 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 exist for waiver participants;
- The applicant must meet the MassHealth financial requirements as well as the special financial rules for Waiver participants; and
- For the MFP-RS Waiver, the applicant must need residential supports with staff supervision 24 hours per day, 7 days per week.

In this case, MassHealth notified the appellant that she was being disenrolled from the MFP-CL Waiver because MassHealth determined that she is no longer clinically eligible as she cannot be safely served in the community within the terms of this waiver (Exhibit 1).

MassHealth offered the following testimony in support of its position: The appellant is a [REDACTED] female who was initially approved for the MFP-CL Waiver in [REDACTED]. She transitioned

to the community in [REDACTED]. The appellant currently resides in the same community.

On May 30, 2023, Massachusetts Rehabilitation Commission (MRC) submitted a clinical status redetermination for the appellant due to ongoing episodes of verbal abuse and physical threats, including threats to stab and slap a staff member.¹ A total of 11 provider changes have occurred due to these behaviors since the appellant transitioned to the community in [REDACTED]. The appellant has significant issues, including medical and psychiatric instability with aggressive behaviors, as well as refusal of care, and therefore cannot be safely served within the terms of the MFP-CL Waiver (Exhibit 6, pp. 62-63).

The appellant's medical history primarily includes stroke, aphasia, and dysphagia. Her associated diagnoses include asthma, hyperlipidemia, sciatica, depression, and anxiety. Since the appellant transitioned into the MFP-CL Waiver, her associated diagnoses further include cognitive deficits and behavioral concerns.

The UMass Waiver nurse conducted an annual redetermination visit at the appellant's residence on July 19, 2023. There was a delay in a final decision because of the appellant's frequent hospitalizations and updating required consent forms. The redetermination process was completed on or about October 20, 2023.

During the waiver eligibility redetermination process, MassHealth noted the following events and episodes as examples of appellant's health and safety risks to herself and others:

- May 8, 2023: Incident Management Report states that per a caregiver from Home Care and More, the appellant was looking for a pair of scissors and could not find any, which made her very agitated. The appellant made the following statement to the staff member that "she is going to stab all the PCAs as things in her house go missing all the time and the PCAs are robbing her." The staff member was pretty shaken up by the comment and notified her supervisor (Exhibit 6, pp. 167-173).
- May 22, 2023: Incident Management Report states that when a caregiver from Home Care and More reported for her shift which started at 5:00 p.m., the appellant slammed the door on her. The appellant continued to be verbally abusive to the aide and asked her to leave and stated "If she comes back tomorrow, she will slice her head in two." The aide immediately reported the incident to her supervisor who tried to call the appellant and could not reach her. The supervisor asked the caregiver to leave the building and go home (Exhibit 6, pp. 174-180).

¹ At hearing, the MassHealth nurse explained that MRC assisted appellant with supports in the community.

- June 26, 2023: MRC Case Manager Note indicated that an incident occurred in the appellant's residence. The appellant and her son² got into a very heated argument due to the appellant accusing him of stealing her cigarettes. Her son became enraged and threatened to kill the appellant. Due to the increased yelling, the appellant's neighbors called the police and the appellant explained what happened. She was encouraged by the police to obtain a restraining order (Exhibit 6, p. 132).
- July 11, 2023: MRC Case Manager Note stated that the appellant's Individual Support and Community Habilitation (ISCH) called the case manager because she found the appellant on the floor on July 10, 2023. The appellant was sent to the emergency room for an evaluation and returned home. On July 11, 2023, the appellant went to see her PCP with the ISCH worker and the doctor stated to the appellant that "she needs to start thinking about long term placement in a nursing home because she is no longer safe to be left alone overnight (Exhibit 6, p. 126).
- August 16, 2023: MRC Case Manager received a call from the ISCH worker regarding an incident where the appellant missed an appointment with her primary care physician (PCP). However, when the ISCH worker contacted the appellant's PCP office to reschedule, the office stated that the appellant did not have an appointment to see the PCP. Rather, the appellant was supposed to have blood work done at the lab in the same building. The office staff explained to the ISCH worker that the appellant appeared at her PCP's office in person and was very confused when staff attempted to explain to the appellant about the necessity for lab work to be completed. Additionally, the appellant is known to cross very busy intersections in her electric wheelchair without looking and stated that "it is the drivers' responsibility to watch out for her" (Exhibit 6, p. 121).
- August 23, 2023: Physical Therapy Evaluation at [REDACTED] indicates that the appellant is familiar with this clinic. In the last 4 weeks, she has had 7 falls and 3 of them resulted in the appellant being transferred to the hospital. The most recent fall resulted in the appellant falling on her left side and hitting her head. At the emergency room, after x-rays and examinations, a left shoulder contusion was determined. During this current evaluation, the appellant began expressing suicidal thoughts. She denied talking to her PCP about her depressive thoughts. The [REDACTED] social worker came to talk to the appellant during this visit (Exhibit 6, p. 195).

² The appellant's other son was present at the hearing.

- November 9, 2023: MRC Case Manager stated that a Focus (waiver community provider) employee reported an incident that occurred on November 1, 2023 that involved her son and an aide from Focus. The incident involved the appellant and her son getting into a verbal disagreement and her son threatened “to kill the participant and she threatened to stab him.” The aide stated that the appellant and her son get into horrible fights over cigarettes. Management from Focus have instructed their staff to leave the apartment if the two of them are fighting and when they are in a safe location to call the police. The MRC Case Manager stated the appellant has a court date scheduled in [REDACTED] to make the restraining order against her son permanent. Shortly after, the appellant told the MRC Case Manager that she is “already allowing her son to reside with her at the apartment even though she has a temporary restraining order against him” (Exhibit 6, p. 292).

On November 29, 2023, the appellant’s case was discussed at the MassHealth Waiver Clinical Team review meeting which includes the MRC clinical team, who oversees the MFP-CL Waiver. MassHealth and MRC determined that the appellant is not considered to be clinically eligible for any further participation in the MFP-CL Waiver due to the numerous physical and verbal assaults outlined above. Following the clinical redetermination performed by the UMass Waiver Complex Clinical team, it was subsequently determined that the appellant cannot be safely served in the community within the terms of the MFP-CL waiver. The appellant poses a significant health and safety risk to herself and to others, due to the following: aggressive outbursts, homicidal statements, medical and psychiatric instability, and an unwillingness to accept care that she requires at a higher level of support. The appellant was notified on December 18, 2023 that MFP-CL waiver services will be terminating on January 3, 2024, to allow for additional time for non-waiver support to be put into place (Exhibit 1; Exhibit 6, pp. 45-46). The MassHealth nurse testified that prior to disenrolling a member, MRC will contact the member’s providers, to notify them that services will be ending to ensure that all providers are made aware.

The appellant’s son testified that his mother formerly received therapy until her significant other passed away in [REDACTED]. Thereafter, there was a large timeframe where the lack of receiving therapy may have been a result of the appellant’s aggression. The appellant’s son explained that he had multiple conversations with his sister because they both were concerned that their mother’s memory appeared to be deteriorating. The appellant’s son further explained that the examples of the appellant’s health and safety risks testified to by MassHealth all occurred in 2023.

The appellant’s son explained that his mother experiences short-term memory loss and suggested that she may have forgotten about the recommendations that were given to her. By way of example, the appellant’s son testified that his mother believes that he still works overnights when in fact he changed his work schedule 8 months ago. He urged that

MassHealth providers should be more tolerant, and that it is not fair to disenroll his mother from a program that she participated in for the past eight years. He suggested that perhaps some of his mother's behavioral issues could be alleviated by implementation of counseling on a regular basis.

In response, the MassHealth nurses stated that in this case, there were several providers and several case managers that reported incidents involving the appellant. Thus, it was not an isolated incident that triggered the appellant's disenrollment of the MFP-CL waiver. Specifically, there were 11 providers and 3 case managers that reported feeling at risk when in the appellant's residence. As a result, there were not any providers left that were willing to see the appellant. The MassHealth nurses explained that within the past year, there were significant safety issues that arose. The appellant did not pose said risks when she initially entered the waiver program in 2014.

The MassHealth nurses further explained that MRC had their consulting neuropsychologist meet with the appellant to perform an assessment in May of 2023. His results included specific recommendations to help keep the appellant safe. The recommendations made by the MRC neuropsychologist for the appellant included the following: To have the appellant obtain a new PCP (which she obtained), to have VNA oversight for medication intake, obtain mental health support and see a psychiatrist and a counselor. Although the appellant initially appeared agreeable to these recommendations, she subsequently declined. Thus, while MRC continued to try to offer the appellant services to keep her safe, despite all providers reporting that they did not feel safe when visiting the appellant, she declined all recommended services. These concerns were also noted by MassHealth during her annual redetermination. The case remained opened for some time to attempt to work with the appellant to maintain her safety.

The MassHealth nurses explained that several providers, case managers and a UMass nurse spoke to the appellant on several occasions. The appellant's own PCP noted in July of 2023 that the appellant needs to start thinking about long term placement. MRC noted a decline in the appellant as well, which is the reason that additional services were offered to the appellant. The appellant had exhibited further concerning behaviors regarding non-compliance with medications, which is the reason for the VNA recommendation, to help monitor appellant's medications. However, appellant repeatedly declined all recommended services. Thus, all services were exhausted.

The appellant testified about her general dissatisfaction with her current PCAs and the services they provide, and provided several examples of what she considers substandard service. She explained that she has missed 6 doctor appointments in the past month and her transportation services stopped upon her disenrollment of the MFP-CL Waiver. Further, the Lifeline program, which she depends on, was discontinued. The MassHealth nurse clarified that transportation, the Lifeline program and certain PCA services should continue because disenrollment from the MFP-CL waiver would not affect these services. She explained, however, that case management

and personal care workers (PCWs) would discontinue.

The MassHealth nurses explained that the appellant's PCP can request PCA services through MassHealth. The MassHealth nurses explained that another recommended service suggested to the appellant for socialization purposes included a day program. The program even accepted the appellant, but she ultimately refused to enter the program. The MassHealth nurses reiterated it was not just one behavior exhibited by the appellant, it was a combination of all behaviors. The MassHealth nurses stated that they would never remove someone from the waiver program just because that member is difficult. Rather, it was the appellant's refusal of services.

Findings of Fact

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

1. Appellant is a [REDACTED] female.
2. Appellant was initially approved for the MFP-CL Waiver in March of 2014 and transitioned into the community in [REDACTED].
3. Appellant currently resides in the community.
4. On May 30, 2023, MRC, who assisted the appellant with supports in the community, submitted a clinical status redetermination due to the appellant's ongoing episodes of verbal abuse and physical threats, including the threat of stabbing and slapping a staff member.
5. There has been a total of 11 provider and 3 case manager changes since appellant transitioned into the community in [REDACTED].
6. Appellant poses significant concerns including medical and psychiatric instability with aggressive behaviors and refusal of care.
7. Appellant has a past medical history of strokes, aphasia, and dysphagia. Her associated diagnoses include asthma, hyperlipidemia, sciatica, depression, and anxiety.
8. Since the appellant transitioned into the waiver program, appellant developed cognitive deficits and behavioral concerns.
9. On July 19, 2023, the UMass Waiver nurse conducted an annual redetermination visit where the appellant resides. The final determination was delayed because of appellant's

frequent hospitalizations and the need to update consents. The redetermination process was completed on or about October 20, 2023.

10. On November 29, 2023, appellant's case was discussed at the MassHealth Waiver team review meeting, including the MRC clinical team, who oversees the MFP-CL Waiver.
11. MassHealth and MRC determined that appellant is not considered to be clinically eligible for any further participation in the MFP-CL Waiver due to numerous physical and verbal assaults.
12. MassHealth noted the following events and episodes as examples of appellant's health and safety risks to herself and to others:
 - a. May 8, 2023: Incident Management Report states that per a caregiver from Home Care and More, the appellant was looking for a pair of scissors and could not find any, which made her very agitated. The appellant made the following statement to the staff member that "she is going to stab all the PCAs as things in her house go missing all the time and the PCAs are robbing her." The staff member was pretty shaken up by the comment and notified her supervisor.
 - b. May 22, 2023: Incident Management Report states that when a caregiver from Home Care and More reported for her shift which started at 5:00 p.m., the appellant slammed the door on her. The appellant continued to be verbally abusive to the aide and asked her to leave and stated, "If she comes back tomorrow, she will slice her head in two." The aide immediately reported the incident to her supervisor who tried to call the appellant and could not reach her. The supervisor asked the caregiver to leave the building and go home.
 - c. June 26, 2023: MRC Case Manager Note indicated that an incident occurred in the appellant's residence. The appellant and her son got into a very heated argument due to the appellant accusing him of stealing her cigarettes. Her son became enraged and threatened to kill the appellant. Due to the increased yelling, the appellant's neighbors called the police and the appellant explained what happened. She was encouraged by the police to obtain a restraining order.
 - d. July 11, 2023: MRC Case Manager Note stated that the appellant's Individual Support and Community Habilitation (ISCH) called the case manager because she found the appellant on the floor on July 10, 2023.

The appellant was sent to the emergency room for an evaluation and returned home. On July 11, 2023, the appellant went to see her PCP with the ISCH worker and the doctor stated to the appellant that “she needs to start thinking about long term placement in a nursing home because she is no longer safe to be left alone overnight.”

- e. August 16, 2023: MRC Case Manager received a call from the ISCH worker regarding an incident where the appellant missed an appointment with her primary care physician (PCP). However, when the ISCH worker contacted the appellant’s PCP office to reschedule, the office stated that the appellant did not have an appointment to see the PCP. Rather, the appellant was supposed to have blood work done at the lab in the same building. The office staff explained to the ISCH worker that the appellant appeared at her PCP’s office in person and was very confused when staff attempted to explain to the appellant about the necessity for lab work to be completed. Additionally, the appellant is known to cross very busy intersections in her electric wheelchair without looking and stated that “it is the drivers’ responsibility to watch out for her.
- f. August 23, 2023: Physical Therapy Evaluation at Whittier Rehab-Bradford indicates that the appellant is familiar with this clinic. In the last 4 weeks, she has had 7 falls and 3 of them resulted in the appellant being transferred to the hospital. The most recent fall resulted in the appellant falling on her left side and hitting her head. At the emergency room, after x-rays and examinations, a left shoulder contusion was determined. During this current evaluation, the appellant began expressing suicidal thoughts. She denied talking to her PCP about her depressive thoughts. The Whittier Rehab-Bradford social worker came to talk to the appellant during this visit.
- g. November 9, 2023: MRC Case Manager stated that a Focus (waiver community provider) employee reported an incident that occurred on November 1, 2023 that involved her son and an aide from Focus. The incident involved the appellant and her son getting into a verbal disagreement and her son threatened “to kill the participant and she threatened to stab him.” The aide stated that the appellant and her son get into horrible fights over cigarettes. Management from Focus have instructed their staff to leave the apartment if the two of them are fighting and when they are in a safe location to call the police. The MRC Case Manager stated the appellant has a court date scheduled in

██████████ to make the restraining order against her son permanent. Shortly after, the appellant told the MRC Case Manager that she is “already allowing her son to reside with her at the apartment even though she has a temporary restraining order against him”

13. Appellant has demonstrated ongoing refusal of services offered through the MFP-CL Waiver program.
14. Appellant is at significant risk for self-harm and potential harm to others due to her aggressive outbursts, homicidal statements, medical and psychiatric instability, and unwillingness to accept care.
15. Appellant requires a higher level of support than what is available in the MFP-CL Waiver.
16. MassHealth and MRC determined that appellant can no longer be safely served within the terms of the MFP-CL Waiver.
17. By notice dated December 18, 2023, MassHealth notified the appellant of her disenrollment from the MFP-CL Waiver, effective January 3, 2024.
18. Appellant timely appealed this MassHealth action to the Board of Hearings.

Analysis and Conclusions of Law

The issue in this case is whether MassHealth appropriately determined that the appellant no longer meets the eligibility requirements of the MFP-CL Waiver. The MFP home-and community-based services waivers are described at 130 CMR 519.007(H). The requirements to maintain eligibility for the MFP-CL Waiver are set forth below as follows:

(2) 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.

Transfer of Resources Regardless of Date of Transfer and 520.019: Transfer of Resources Occurring on or after August 11, 1993.

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

In July 2023, MassHealth began a redetermination process to evaluate whether the appellant continues to be eligible for services under the MFP-CL Waiver, ultimately determining that she can no longer be safely served in the community within the terms of the waiver (130 CMR 519.007(H)(2)(a)(5)). The appellant has not demonstrated otherwise. First, the record confirms that the appellant's threats of violence pose a significant safety risk to others. Examples of these risks include her threats to stab all her PCAs, and to slice one PCA's head in two. Incidents of this nature resulted in 11 service provider changes and 3 case management changes since the appellant became active on the MFP-CL Waiver. Further, the appellant and her son were witnessed threatening to kill and/or stab each other, which necessitated the issuance of a temporary restraining order against the son.

Second, the record supports MassHealth's conclusion that the appellant exhibits other (non-violent) unsafe behaviors that compromise her safety in the community. In July of 2023, appellant went to see her PCP after being found on the floor the day prior. The appellant's ISCH worker was present at the office visit. The appellant's PCP stated to appellant that she needs to start thinking about long-term placement in a nursing home because she is no longer safe to be left alone overnight. Further, in August of 2023, the appellant's PCP stated to appellant's ISCH worker that appellant appeared confused upon showing up in person at the office when she did

not have an appointment with her PCP that day. The record also notes that the appellant crosses busy intersections in her wheelchair without regard to oncoming traffic. Additionally, a 2023 PT evaluation indicates that appellant had 7 falls in a 4-week span, 3 of which resulted in hospitalization; a recent fall on her left side resulted in a left shoulder contusion. During the evaluation that is the subject of this appeal, the appellant expressed suicidal thoughts which she later denied.

The current evidence reflects that appellant is at significant risk for self-harm and potential harm to others. Importantly, neither the appellant nor her representative disputed any of the testimony about her aggressive behaviors, refusal of care, or confused episodes. The appellant's testimony focused more on the underlying facts that prompted her anger, which, while helpful for context, is ultimately not relevant to the issue of her safety. On this record, MassHealth has supported its determination that the appellant can no longer be safely served in the community within the terms of the MFP-CL waiver.

This appeal is denied.³

Order for MassHealth

None.

³ This denial does not preclude appellant and/or her PCP from requesting services that are available through MassHealth, separate and apart from the MFP-CL Waiver services.

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.

Kimberly Scanlon
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

MassHealth Representative: Leanne Govoni, UMass Medical School – Commonwealth Medicine, Disability and Community-Based Services, 333 South Street, Shrewsbury, MA 01545-7807