

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

[REDACTED]

Rehearing Decision:	APPROVED	Appeal Number:	2402001
Rehearing Decision Date:	3/7/2025	Hearing Date:	November 7, 2024
Hearing Officer:	Macy Lee, Director	Record Open to:	January 6, 2025

Appearance for Appellant:

[REDACTED]

Appearance for MassHealth:

In-person:
Linda Phillips, RN
By Teams:
Leanne Govoni

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

REHEARING DECISION

Rehearing Decision:	APPROVED	Issue:	MFP-CL Waiver
Rehearing Decision Date:	3/7/2025	Hearing Date:	November 7, 2024
MassHealth's Rep.:	Linda Phillips, RN Leanne Govoni	Appellant's Rep.:	[REDACTED]
Hearing Location:	Springfield MEC		

Authority

This rehearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, 130 CMR 610.091, and the rules and regulations promulgated thereunder.

Jurisdiction

By notice dated January 16, 2024, MassHealth denied Appellant's requests to participate in the MassHealth the Moving Forward Plan Residential Supports Home and Community Based Services Waiver (hereinafter, "the MFP-CL Waiver") on the basis that he "cannot be safely served in the community within the terms of this waiver." Exhibit A; Exhibit B at 46. Appellant filed for an appeal in a timely manner, which was received by the Board of Hearings on February 8, 2024. *See* 130 CMR 610.015(B); Exhibit A. Denial of a request to participate in a MassHealth program constitutes valid grounds for appeal. *See* 130 CMR 610.032.

On April 11, 2024, a hearing officer conducted an in-person fair hearing on the appellant's appeal at the Springfield MassHealth Enrollment Center. Exhibit H. On August 8, 2024, after a record open period until May 17, 2024, the hearing officer issued a decision denying the appellant's appeal. *Id.*

On August 22, 2024, the appellant requested a rehearing. Exhibit E. On October 7, 2024, pursuant to 130 CMR 610.091, the Medicaid Director ordered a limited rehearing for the purpose of allowing additional evidence and testimony and findings of fact for, and analysis on, whether the appellant can safely have his medical needs met in the community with the services available in

the MFP-CL waiver. The Medicaid Director also ordered the Board of Hearings “to allow testimony from a medical provider of [his] choice to testify regarding these issues, and to take additional evidence and testimony from MassHealth on this issue, if necessary.” Exhibit F.

On November 7, 2024, an in-person re-hearing was held by the Director of the Board of Hearings at the Springfield MassHealth Enrollment Center.¹ Exhibit G.

Action Taken by MassHealth

MassHealth denied the appellant's request to participate in the MFP-CL Waiver program.

Issue

The issue for re-hearing is whether the appellant can safely have his medical needs met in the community with the services available in the MFP-CL waiver.

Summary of Evidence

Decision dated August 8, 2024

The following application and assessment history and facts from the first hearing on April 11, 2024, are incorporated herein:

Prior to the hearing held on April 11, 2024, MassHealth submitted a packet of documentation (Exhibit B). Prior to the hearing, the appellant sent an email which included a copy of email communications with a worker at the Massachusetts Rehabilitation Commission. Exhibit C1. During the hearing, the appellant filed a copy of a police incident report and supplemental narrative from the [REDACTED] Police Department regarding incident # 23-168-OF. Exhibit C2.

At this hearing, the MassHealth representatives testified that MassHealth offers two home and community-based service (hereinafter, “HCBS”) Waivers; the MFP Residential Waiver (hereinafter, “the MFP-RS Waiver”) and the MFP-CL Waiver. Both waivers help individuals move from a nursing home or long-stay hospital to an MFP-qualified residence in the community and obtain community-based services. The MFP-CL Waiver is 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/day, 7 days per week. The MFP-RS Waiver is for individuals who need supervision and staffing 24 hours/day, 7 days per week. Appellant applied for the MFP-CL Waiver on June 22, 2023. Exhibit B, Tab C at 45; Exhibit H at

¹ Per 130 CMR 610.091(A), the Director of the Board of Hearings conducted the rehearing.

2.

The MassHealth representatives testified that, on December 13, 2023, an assessment for Waiver eligibility was conducted in person at Fairview Commons Nursing and Rehabilitation Center in [REDACTED], Massachusetts (hereinafter, "Fairview Commons"). In attendance at the assessment were the appellant, Jenna Bodnar, Social Worker and Holly Faria RN, MassHealth Nurse Reviewer who was representing the MFP Waiver Program. Exhibit B, Tab C at 81; Exhibit H. The Waiver assessment consists of completion of MFP documents, including Minimum Data Set-Home Care (MDS-HC) (Exhibit B, Tab C at 51-71); Clinical Determination of Waiver Eligibility (Exhibit B, Tab C at 72-79); Acquired Brain Injury (ABI)/MFP Waivers Community Risks Assessment (Exhibit B, Tab C at 80); a review of the applicant's medical record; and a discussion with the facility staff.

According to the assessment, the appellant is a male in his [REDACTED] who currently resides at Fairview Commons. Since 2016, the appellant has had several medical complications that have required hospital level of care and rehabilitation stays. On March 18, 2018, he was approved for the MFP-CL Waiver and after returning home, he was then readmitted to Fairlawn Commons. This pattern of applying and being approved for the waivers and then being readmitted to a skilled nursing facility continued for the next two years. Upon a second MFP-CL approval, on August 12, 2021, MRC submitted a request for transfer from the MFP-CL Waiver to the MFP-RS Waiver, as the appellant withdrew from the MFP-RS waiver on February 24, 2023, reporting that he wished to return to the community independently. MRC worked diligently to identify supportive services for the appellant while in the community, but he was indecisive with MRC regarding whether he should leave to return to the community or stay at Fairview Commons. On June 22, 2023, Appellant reapplied for the MFP-CL Waiver. Exhibit B, Tab C at 45 and 76.

On January 4, 2024, the appellant's application was discussed at the MassHealth Waiver Clinical Team review meeting. In addition, on January 10, 2024, as part of the MFP Waiver eligibility process, a second clinical review was conducted by the Massachusetts Rehabilitation Commission (hereinafter, "MRC") Clinical team, who oversees the community living waiver. Based on the in-person assessment, the completed MFP documentation which included the MDS-HC, ABI/MFP Waivers Community Risks' assessment, and Clinical Determination of Waiver Eligibility, and a thorough review of the appellant's medical record by both MassHealth and MRC, both agencies determined that the appellant was not considered to be clinically eligible at this time for participation in the MFP-CL Waiver Exhibit B, Tab C at 78-79; Exhibit H at 4.

Before the hearing concluded, the MassHealth representative explained that the current denial is based on an assessment made at a particular time. The MassHealth representative explained that the appellant can reapply for the waiver at any time and a new assessment with updated information would be performed.

By the record close date of May 17, 2024, the hearing officer did not receive additional information from the appellant and no request was made to extend the record open period. On May 22, 2024, the appellant emailed a lengthy written request to the Board of Hearings seeking to have the in-person hearing reconvened and the record-open period extended beyond May 23, 2024. Exhibit D; Exhibit H at 7. The appellant did not request a specific date for a new record-open period. *Id.* The hearing officer responded that the record had already closed on May 17, 2023, and denied the requests to extend the record open period and to reconvene the hearing. Exhibit H at 7. The hearing officer then denied the request after reviewing the appellant's email and concluding that, in addition to failing to make his request prior to his record-close date, the appellant had made no attempt to provide the information requested at the end of the hearing. Instead, the hearing officer found that the "[a]ppellant fixated his efforts on one particular incident mentioned in the assessment involving a statement contained in a record from the Massachusetts Rehabilitation Commission. Given the amount of extra time that was already afforded to Appellant at the hearing, and a record open period of five weeks and a day, the hearing officer concluded that neither reconvening the hearing or re-opening the record were warranted and neither would result in the receipt of significant and reliable information." Exhibit H at 7.

The hearing officer denied the appellant's appeal on the basis that "the administration of such care in the community requires a level of cooperation with caregivers that, on this record, [the] [a]ppellant fails to demonstrate." *Id.* at 16. The hearing officer also said that the appellant may reapply for the waiver as he deems appropriate.

Rehearing on November 7, 2024

An in-person hearing was held at the Springfield MassHealth Enrollment Center. The appellant was present and represented by his attorneys from Community Legal Aid in Springfield. Exhibit BB. Sophie Shrum, a Nursing Home Transition Coordinator from AdLib Independent Living Center in [REDACTED], Massachusetts, testified on the appellant's behalf. MassHealth was represented by Linda Phillips, RN, Associate Director, Appeals and Regulatory Compliance/Community Case Management at UMass Chan Medical School, and Leanne Govoni, Associate Director of the Clinical Eligibility for the Waiver Program. Exhibit CC.

The appellant testified that he has been paraplegic for over 56 years. He suffered a spinal cord injury at the age of nineteen while [REDACTED] which resulted in paraplegia with kyphosis. Exhibit B at 78. He has lived and worked in the community most of the time as a paraplegic. During his testimony, the appellant was a very strong and effective self-advocate. He was articulate, confident, and informed. He testified that he lived in the community on the MFP-CL waiver for the six months before he became a resident at Fairview Commons. He has spent time in hospitals, rehabilitation centers, and nursing facilities due to complications related to paraplegia. After six months of receiving services from the MFP-CL Waiver program from December 2018 to June 2019, the appellant entered the Fairview Commons Nursing Home

(hereinafter, "Fairview Commons"). This occurred after a hospitalization for a sacral wound that has not healed. For the past five years, he has been a resident of Fairview Commons. In 2023, the appellant, with the help of Ms. Shrum, applied for the MFP-CL waiver.

The appellant testified that he has a sister who has a home in New York City and another 75 miles north of [REDACTED], New Hampshire. Exhibit N. She is also his designated healthcare proxy. She is a financial and personal resource to the appellant. His sister is four hours away from the appellant and available to assist the appellant. In a letter dated November 1, 2024, the appellant's sister offered that she and her husband "serve as back-up helpers if and when [the appellant] moves out of Fairview Commons . . . [w]e can also provide material support and finances for aides to the extent that Massachusetts would permit him, including emergency transport." Exhibit N. The appellant also testified that he has available resources in the community that are five to ten minutes from him and can provide him with transportation. Exhibits K and L. He has two other sisters, but they are not nearby and unavailable. He testified that he has a car that is adaptable to his needs. His operator's license, however, expired during the pandemic and it was too difficult to renew during that time. It is on his "to do list" to obtain his license. The appellant also has a hired driver who regularly drives him in his car. Indeed, the driver drove him to the rehearing with his car. He has been driving since 1969 with hand controls and has driven "a million miles."

The appellant also testified that he fully cooperated with his MRC worker so that the necessary support is in place. He had one home care provider during those six months. She performed laundry, errands, housekeeping, etc. He is fine without 24-hour supportive services. He recently had one fall in the past year but was able to manage and access support. He can function 12 hours or less per day without support. without He can prepare food for himself. He can travel to and from appointments on his own. He is also able to set up Zoom and participate in telehealth without any assistance. He can peacefully interact with the providers at Fairview Commons. He regularly participates in social and political events. In spring 2023, he ran for [REDACTED] in the town of [REDACTED]. In summer 2023, he was able to attend an out-of-town family event. The most important physical need is assistance with showering; he can bathe himself. He also needs the same housekeeping help that he had in 2018-2019: laundry, changing bed linens, cleaning his apartment, and occasional grocery shopping. These are not round-the-clock care. The appellant is also willing to use an emergency life alert as a backup measure as safety is also a concern for the appellant.

Having been institutionalized for the last five years has negatively affected the appellant's social abilities. His anxiety is significantly reduced when living independently as there is less opportunity for conflict. He found that the Fairview Commons staff can be extremely rude and abrupt because they are stressed and understaffed. He has requested and obtained copies of nursing records so that he is able to manage his expectations and relationships with nursing facility staff. The appellant is not at risk of mood decompensation. He has not participated in-house psychiatric care at the Fairview Commons because, since February 2016, he sees his own

longtime therapist, Dr. David Lotto, weekly. Exhibit I. Dr. Lotto opined that the appellant “would be able to live safely and productively in the community with appropriate support services.” *Id.* Dr. Lotto also stated that, “[i]n eight plus years I have been seeing him I have seen no signs of psychiatric decompensation, nor is there any reason to think that there is a risk for decompensation should he be living independently.” *Id.*

The appellant also regularly speaks with family and friends to meet his emotional and psychological needs. He pursues social interests privately as this helps with regulating his moods. The appellant does best one on one. Since 1980, he began hiring a massage therapist to help manage his anxiety and mobility. He continues to use a manual wheelchair. He believes that he is equipped to manage his mental help needs on his own and with friends and family.

For the past 11 years, Dr. Joseph Cooney has been the appellant’s primary physician. He remains his physician during his time in Fairview Commons. The appellant also sees Dr. Laurence Cohen bi-weekly for a sacral wound that he has had since late March 2019. Dr. Cohen is the physician at the wound center at Fairview Hospital. The dressing for the appellant’s sacral wound needs to be changed twice per day. The appellant needs someone to change the bandages and can train a personal care attendant on how to do so. Other than this wound, the appellant does not have other existing medical needs. He goes to the wound care center bi-weekly and has the bandages are changed twice per day. He does not take any prescription medications but takes daily vitamins. He can purchase and administer any over the counter pain medications. Since 1967, he has independently managed his urinary and bowel functions.

Ms. Shrum testified that she is the Nursing Home Transition Coordinator. She receives referrals from social workers from nursing facilities in Berkshire County. The nursing facilities refer residents to her when the facilities believe that a resident no longer needs long term care. Ms. Shrum is an advocate and connects her referrals with programs. She assists residents with housing, public benefits, and home care programs such as the MFP-CL waiver program. Ms. Shrum then meets with the resident to understand their needs in order to successfully transition them back to the community. She acts as a liaison between the programs and subsidized housing agencies and connects the residents to these resources. She has helped the appellant on several public housing lists. As of the day of the rehearing, the appellant remains active on the waiting list for public housing. She met with the appellant with his housing applications once per week for several months. Ms. Shrum believes that the appellant is a good candidate for the MFP-CL waiver program. The appellant falls within the bracket of where he needs some care to be successful in the community. An in-person assessment involves a qualitative determination of whether the referral is oriented, aware, the type of activities and personal care services needed. Her role does not involve reaching out to an applicant’s physicians. On behalf of the appellant, Ms. Shrum has submitted subsidized housing applications to five agencies and properties in Berkshire County. Exhibit J. In addition to her testimony, Ms. Shrum submitted a letter dated October 30, 2024, stating that, “[o]ver the course of almost a year and a half that I have worked with [the appellant], I have experienced

him to be very cooperative with all requests. He is also an excellent self-advocate. I believe that, with the right supportive services in place, [the appellant] would do very well transitioning to community-based living.” *Id.*

On behalf of MassHealth, Ms. Phillips testified that each application is reviewed individually, and she does not compare applicants. Many applicants reapply for the waiver programs. She looks at the most recent application. Ms. Phillips testified that, while the appellant was on the MFP-CL waiver for six months, the Massachusetts Rehabilitation Commission (hereinafter, “MRC”) found the appellant to be rude and uncooperative and it was unable to provide services for him. Ms. Phillips, however, was unable to provide specific examples of the appellant’s alleged rude or unmanageable behavior. There were no instances of violence, and Ms. Phillips was unable to elaborate on these claims of the appellant’s rudeness. She did not speak to MRC about this, but this was noted in the appellant’s record. Ms. Phillips stated that an applicant’s rudeness makes it difficult to find and retain staffing to come to the appellant’s home. She also testified that she “looked back” on the appellant’s record and obtained information from the six-month period when the appellant was on the MFP-CL waiver in 2019.

Ms. Govani testified to the safety issues concerning the appellant’s return to the community. Upon receiving a waiver application, Ms. Govani will review the most updated medical records from the facility. She will consider medical records from the appellant’s provider so long as the appellant consents to this. There is a 90 day look back period. During the review, she will consider the least restrictive environment, look at failed placements, and whether MassHealth has the proper services to support the individual. As to the appellant, because there were behavior issues noted in the appellant’s record, MassHealth had to base their determination on this documented information. Ms. Govani testified that there were instances in the appellant’s record where he refused care due to his anxiety which resulted in his wound becoming infected and having him hospitalized. She stressed that the concern is keeping the appellant healthy and safe in his home. She also said that her greatest concern is the wound care and ensuring that it does not become infected again. Ms. Govani, however, is hopeful that there is new documentation that demonstrates his ability to cooperate with his caregivers while living in the community. She is also optimistic that the appellant’s behavior has changed since he was last living in the community. She noted that, at the time of his MFP-CL waiver application, there was no medical documentation from his outside providers, particularly from his psychologist. With the documentation provided by the application, she then determines the least restrictive environment for the applicant at the time of the application. Ms. Govani acknowledged that she herself would not want to be in a nursing facility because such places are understaffed, overworked, and underpaid. She also recognized that Fairview Commons is not a good place for the appellant.

In rebuttal to the testimony of Ms. Phillips and Ms. Govani, the appellant denied that he had refused wound care. He stated that he had requested to go to the hospital because Fairview Commons did not have the bandage size he needed for his wound. The appellant also stated

that there are countless nursing notes from Fairview Commons that indicate that he was, “cooperative.” Exhibit B.

Exhibits A to D are a part of the record from the hearing on April 11, 2024.

Record Open Period

The Director allowed the hearing record to remain open until December 20, 2024, for the appellant and his attorneys to file the following via email:

1. All medical records for the appellant during the period of October 22, 2023, to November 7, 2024;
2. Letter from treating physicians, specifically Dr. Lawrence Cohen, at Fairview Commons Nursing and Rehabilitation pertaining to the appellant’s wound and wound care;
3. All medical records for the appellant from Dr. David Lotto, PhD, during the period of October 23, 2023, to November 7, 2024;
4. Letter from Dr. Joseph Cooney, MD, regarding appellant’s ability to return to the community; and
5. Memorandum of Law.

MassHealth had until January 3, 2025, to submit a written response by email.

On or before December 20, 2024, the appellant submitted the following for the Director’s consideration:

1. An amended Memorandum of Law (Exhibit AA);
2. Letter from Dr. Joseph Cooney dated November 22, 2024 (Exhibit P);
3. Medical records from Dr. Joseph Cooney from January 2, 2024 to November 22, 2024 (Exhibit Q);
4. Letter from Dr. Laurence Cohen dated November 25, 2024 (Exhibit R);
5. Medical Records from Dr. Laurence Cohen and the Center for Wound Care and Hyperbaric Medicine at Fairview Hospital (Exhibit S);
6. Dr. David Lotto’s email regarding dates of treatment (Exhibit T);
7. Records from Fairview Commons Nursing Home from October 23, 2023 to November 19, 2024 (Exhibit U);
8. Moving Forward Plan Demonstration Fact Sheet (Exhibit V);
9. Moving Forward Plan Demo Web Page (Exhibit W); and
10. U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services Report to Congress Best Practices in the Money Follows the Person (MFP) Demonstration (February 2024) (Exhibit X).

A letter dated November 22, 2024, from Dr. Joseph Cooney, shows that the appellant’s “current

condition is good. Chronic complications of and care needs related to his condition of paraplegia are all managed as they have been for decades: vastly independently.” Exhibit P. Dr. Cooney also stated that the appellant has been his patient of his primary care practice since 2013. *Id.* The appellant is “under [his] care for every aspect of his medical needs, including all matters related to paraplegia, the cause of his disability.” *Id.* Dr. Cooney stated that the appellant “has a chronic sacral wound for which he receives daily dressing changes. Additionally, he is receiving assistance with some transfers, specifically from bed to chair.” *Id.* He opined that, “[the appellant] can be adequately cared for in the community with his current conditions. Daily dressing changes, assistance with showering and transfers . . . and moderate assistance with housekeeping, laundry, cleaning, and shopping would be required.” *Id.* Dr. Cooney also stated that the appellant “would continue to be a patient of mine after discharge from Fairview Commons . . . [and that] I have every reason to expect a safe and successful transition to the community.”

Medical records from the appellant’s appointment with Dr. Cooney on [REDACTED] 2024, shows that the appellant is “independent in colostomy management and urinary drainage/catheter.” Exhibit Q at 4. The medical notes from this appointment also indicate that the chronic sacral wound showed “slow improvement/stalled.” *Id.* at 4, 5, 24. He can feed and dress himself. *Id.* With regards to transfer, he is “halfway independent for many months; using a hooyer to help with wound healing.” *Id.* Dr. Cooney also noted that the appellant showed “good judgment,” and his mental status was “normal mood and affect and active and alert.” *Id.* at 5. Medical records maintained by Dr. Cooney’s office also show that the appellant participated in telehealth for several appointments. *Id.* at 14, 17, 23, 30, 35, 43, 46, 50, *et seq.* The appellant’s medical records also indicated that he had one major depressive disorder, a single episode, when he was 18 years old. *Id.* at 3, 7, 11, 15, *et seq.*

A letter dated November 25, 2024, from Dr. Laurence Cohen, who treats the appellant for his sacral wound, was also submitted as part of the record. Exhibit R. Dr. Cohen is a physician at the Center for Wound Care and Hyperbaric Medicine at Fairview Hospital. In his letter, Dr. Cohen stated that, since April 24, 2017, he has seen the appellant weekly and “for the past several years every other week for that period of 6+ years.” *Id.* He also stated that the “wound condition is poor and it is unlikely to heal” and that “[h]e will likely need, and can receive, adequate wound care between visits to our clinic while living in the community . . . [h]e can also be seen, as now, every 2 weeks as an outpatient and he would require nursing in the form of wound dressings to be carried out by a nonprofessional or professional 3 times a week.” *Id.* The appellant “can continue as a patient in our clinic after discharge from Fairview Commons.” *Id.* Dr. Cohen did express concern about the appellant falling from his bed or chair but acknowledged that it was “an infrequent occurrence.” *Id.* He also stated that the appellant “‘knows’ his body well enough to recognize when something is off, as when he has systemic problem such as an infection that needs addressing and can certainly find a means to report to an emergency department . . . [h]e can either transport himself or seek outside help.” *Id.* The most recent progress notes dated November 4, 2024, from the Center for Wound Care and Hyperbaric Medicine at Fairview Hospital show that the appellant’s sacral wound is “well

defined” with “no change noted in the wound progression.” Exhibit S at 109. Another wound on the appellant’s left buttock was “well defined” and “improving.” *Id.* The plan of care was to measure the wound weekly and “[i]f no evidence of healing within 2-4 weeks, re-evaluate plan of care and patient adherence . . . [w]ound photo on admission, every 4 weeks during treatment.” *Id.* at 110. The progress notes also stated that the appellant “has appropriate offloading bed air mattress and wheelchair cushion [and] reports offloading diligently.” *Id.* The goal was to keep the “wound clean and uninfected.” *Id.* at 111.

An email from Dr. David Lotto, the appellant’s psychologist, showed that the appellant has weekly one-hour sessions for psychodynamic therapy. Exhibit T. The sessions typically occur on Wednesdays at 4:00 p.m. *Id.*

Updated Interdisciplinary Nursing Progress Notes from Fairview Commons from December 2023 to December 2024 show that the appellant was largely cooperative with staff.² Exhibit U. There were three notable incidences: on December 17, 2023, the appellant “demanded to see used dressing, advised [the appellant] that dressing was discarded” *Id.* at 3. The appellant became agitated and accused the nurse that “she can’t read!” *Id.* Another incident followed on [REDACTED], 2023. The progress notes stated that the appellant “became very angry” when the nurse did not show him “the dirty dressings” and was unwilling to retrieve them from the garbage. *Id.* at 1. He was then transported to the wound clinic and returned without further incident. *Id.* On [REDACTED], 2023, the appellant “tolerated dressing change well.” *Id.* Another incident occurred on [REDACTED], 2024, when the appellant became “verbally aggressive” and refused wound care because he had an appointment with Dr. Cohen the following day; he eventually agreed to have the dressings changed. *Id.* at 40. The period of January 2024 to November 2024 was overall uneventful and the appellant was generally “pleasant,” “cooperative,” and “compliant” with staff.³ *Id.* at 22, 44, 50, 51, 87, 89, 91, 92, 98, 104, *et seq.*

The Fairview Commons nursing notes also show that, on [REDACTED], 2024, while outside the facility, the appellant fell out of his wheelchair while wheeling backwards and causing the wheelchair to tilt sideways. *Id.* at 52. He landed on the pavement and sustained an abrasion to the back of his head but refused pain medication. *Id.* He used his cell phone to call the unit for help. He was then educated in proper wheelchair safety and the importance of seeking safety when needed to which he acknowledged his understanding. *Id.* 52-53. The appellant was also able to leave Fairview Commons to visit his sister in New Hampshire from July 13, 2024, to July 18, 2024. *Id.* at 78. Supplies for wound care were given to the appellant for his trip. *Id.* at 79.

² When the appellant submitted his application for the MFP-CL Waiver on June 22, 2023, MassHealth had medical records from Fairview Commons and his providers for the period of February 2023 to October 2023. Exhibit B.

³ Previously submitted Interdisciplinary Nursing Progress Notes also state that, “Resident is alert and oriented and was cooperative with care dressing was done. He was very pleasant.” Exhibit B at 102.

Findings of Fact

By a preponderance of the evidence, this record supports the following findings:

1. MassHealth offers two home and community-based service (HCBS) Waivers; the MFP Residential Waiver (RS) and the MFP-CL Waiver.
2. Both waivers help individuals move from a nursing home or long-stay hospital to an MFP-qualified residence in the community and obtain community-based services.
3. The MFP-CL Waiver is 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/day, 7 days per week.
4. Under the MFP-CL Waiver program, nursing support is limited to a maximum of 12 hours per day.
5. The MFP-RS Waiver is for individuals who need supervision and staffing 24 hours/day, 7 days per week.
6. Appellant applied for the MFP-CL Waiver on June 22, 2023. Exhibit B, Tab C, page 45).
7. Appellant's medical history includes paraplegia at age [REDACTED] due to a [REDACTED] accident, kyphosis, neurogenic bladder, chronic shoulder pain, chronic constipation, chronic anemia, chronic UTI's, osteoporosis, decubitus ulcers, anxiety, depression, gastritis, Covid-19, right hip chronic hematoma, and colostomy. Exhibit B, Tab D at 76; Testimony.
8. On December 13, 2023, MassHealth conducted an in-person assessment for Waiver eligibility at Fairview Commons.
9. In attendance at the assessment were: the appellant, Jenna Bodnar, Social Worker and Holly Faria RN, MassHealth Nurse Reviewer who was representing the MFP Waiver Program. Exhibit B, Tab C at 81.
10. The Waiver assessment consists of completion of MFP documents including Minimum Data Set-Home Care (MDS-HC) (Exhibit B, Tab C, pages 51-71); Clinical Determination of Waiver Eligibility (Exhibit B, Tab C at 72-79); Acquired Brain Injury (ABI)/MFP Waivers Community Risks Assessment (Exhibit B, Tab C at 80); a review of the applicant's medical record; and a discussion with the facility staff.

11. According to the assessment, the appellant is a male in his [REDACTED] who currently resides at Fairview Commons. Since 2016, the appellant has had several medical complications that have required hospital level of care and rehabilitation stays.
12. On March 18, 2018, the appellant was approved for the MFP-CL Waiver and shortly after returning to the community, he was readmitted to Fairlawn Commons.
13. A pattern of applying and being approved for the waivers and then being readmitted to a skilled nursing facility continued for the next two years.
14. Upon a second MFP-CL approval, on August 12, 2021, MRC subsequently submitted a request to transfer to the MFP-RS Waiver; Appellant withdrew from the MFP-RS waiver on February 24, 2023, reporting that he wished to return to the community independently.
15. MRC worked diligently to identify supportive services for Appellant while in the community, but he was indecisive with MRC regarding whether he should leave to return to the community or stay at Fairview Commons.
16. On June 22, 2023, the appellant reapplied for the MFP-CL Waiver (Exhibit B, Tab C, pages 45 and 76).
17. Based on the documents submitted and reviewed, the Waiver eligibility assessment found that the appellant poses a significant safety risk to himself and others. MassHealth concluded that, at that time, based on the available medical records and interviews, the appellant could not be safely served in the community within the MFP-CL Waiver. On January 16, 2024, MassHealth issued a written denial notice for the MFP-CL Waiver to Appellant. Exhibit B, Tab C at 46-47.
18. On August 8, 2024, after a record open period until May 17, 2024, the hearing officer issued a decision denying the appellant's appeal. Exhibit H. The basis for the denial "the administration of such care in the community requires a level of cooperation with caregivers that, on this record, [the] [a]ppellant fails to demonstrate." *Id.* at 16. The hearing officer also said that the appellant may reapply for the waiver as he deems appropriate. *Id.*
19. On August 22, 2024, the appellant requested a re-hearing. Exhibit E. On October 7, 2024, pursuant to 130 CMR 610.091, the Medicaid Director ordered a limited rehearing for the purpose of allowing additional evidence and testimony and findings of fact for, and analysis on, whether the appellant can safely have his medical needs met in the community with the services available in the MFP-CL waiver. The Medicaid Director also ordered the Board

of Hearings “to allow testimony from a medical provider of [his] choice to testify regarding these issues, and to take additional evidence and testimony from MassHealth on this issue, if necessary.” Exhibit F.

20. On November 7, 2024, an in-person hearing was held by the Director of the Board of Hearings at the Springfield MassHealth Enrollment Center. Exhibit G.
21. At the re-hearing, the appellant testified that he lived in the community on the MFP-CL waiver for the six months before he became a resident at Fairview Commons. Testimony. He has spent time in hospitals, rehabilitation centers, and nursing facilities due to complications related to paraplegia. After six months of receiving services from the MFP-CL Waiver program from December 2018 to June 2019, the appellant entered the Fairview Commons. This occurred after a hospitalization for a sacral wound that has not healed.
22. The appellant has a sister who has a home in New York City and another 75 miles north of Concord, New Hampshire. Exhibit N. She is also his designated healthcare proxy. She is a financial and personal resource to the appellant. His sister is four hours away from the appellant and available to assist the appellant. In a letter dated November 1, 2024, the appellant’s sister offered that she and her husband “serve as back-up helpers if and when [the appellant] moves out of Fairview Commons . . . [w]e can also provide material support and finances for aides to the extent that Massachusetts would permit him, including emergency transport.” Exhibit N; Testimony.
23. The appellant also has available resources in the community that are five to ten minutes from him and can provide him with transportation. Exhibits K and L; Testimony.
24. The appellant has a car that is adaptable to his needs. His operator’s license, however, expired during the pandemic and it was too difficult to renew during that time. It is on his “to do list” to obtain his license. The appellant also has a hired driver who regularly drives him in his car. Indeed, the driver drove him to the rehearing with his car. He has been driving since 1969 with hand controls and has driven “a million miles.” Testimony.
25. The appellant recently had one minor fall in 2024 but was able to manage and access support. Exhibit U at 52. The Fairview Commons nursing notes show that, on April 16, 2024, while outside the facility, the appellant fell out of his wheelchair while wheeling backwards and causing the wheelchair to tilt sideways. *Id.* at 52. He landed on the pavement and sustained an abrasion to the back of his head but refused pain medication. *Id.* He used his cell phone to call the unit for help, which arrived immediately.
26. The appellant can prepare food for himself. He can travel to and from appointments on

his own. He is also able to set up Zoom and participate in telehealth without any assistance. He can peacefully interact with the providers at Fairview Commons. He regularly participates in social and political events. In spring 2023, he ran for [REDACTED] in the town of [REDACTED]. In summer 2023, he was able to attend an out-of-town family event. The most important physical need is showering; he can bathe himself. He also needs the same housekeeping help that he had in 2018-2019: laundry, changing bed linens, cleaning his apartment, and occasional grocery shopping. These are not round-the-clock care. The appellant is willing to use an emergency life alert as a backup measure as safety is also a concern for the appellant.

27. Having been institutionalized for the last five years has negatively affected the appellant's social abilities. Testimony. His anxiety is significantly reduced when living independently as there is less opportunity for conflict. Testimony. He found that the Fairview Commons staff can be extremely rude and abrupt because they are stressed and understaffed. Testimony. He has requested and obtained copies of nursing records so that he is able to manage his expectations and relationships with nursing facility staff. Testimony.
28. The appellant is not at risk of mood decompensation. He has not participated in-house psychiatric care at the Fairview Commons because, since February 2016, he sees his own longtime therapist, Dr. David Lotto, weekly. Exhibit I. Dr. Lotto opined that the appellant "would be able to live safely and productively in the community with appropriate support services." *Id.* Dr. Lotto also stated that, "[i]n eight plus years I have been seeing him I have seen no signs of psychiatric decompensation, nor is there any reason to think that there is a risk for decompensation should he be living independently." *Id.* An email from Dr. Lotto showed that the appellant has weekly one-hour sessions for psychodynamic therapy. Exhibit T. The sessions typically occur on Wednesdays at 4:00 p.m. *Id.*
29. The appellant regularly speaks with family and friends to meet his emotional and psychological needs. He also pursues social interests privately as this helps with regulating his moods. The appellant does best one on one. Since 1980, he began hiring a massage therapist to help manage his anxiety and mobility. He continues to use a manual wheelchair. He believes that he is equipped to manage his mental help needs on his own and with friends and family.
30. For the past 11 years, Dr. Joseph Cooney has been the appellant's primary physician. He remains the appellant's physician while he is a resident at Fairview Commons. A letter dated November 22, 2024, from Dr. Cooney, provides that the appellant's "current condition is good. Chronic complications of and care needs related to his condition of paraplegia are all managed as they have been for decades: vastly independently." Exhibit P. Dr. Cooney also stated that the appellant has been his patient of his primary care

practice since 2013. *Id.* The appellant is “under [his] care for every aspect of his medical needs, including all matters related to paraplegia, the cause of his disability.” *Id.* Dr. Cooney stated that the appellant “has a chronic sacral wound for which he receives daily dressing changes. Additionally, he is receiving assistance with some transfers, specifically from bed to chair.” *Id.* He opined that, “[the appellant] can be adequately cared for in the community with his current conditions. Daily dressing changes, assistance with showering and transfers . . . and moderate assistance with housekeeping, laundry, cleaning, and shopping would be required.” *Id.* Dr. Cooney also stated that the appellant “would continue to be a patient of mine after discharge from Fairview Commons . . . [and that] I have every reason to expect a safe and successful transition to the community.”

31. Medical records from the appellant’s appointment with Dr. Cooney on October 15, 2024, shows that the appellant is “independent in colostomy management and urinary drainage/catheter.” Exhibit Q at 4. The medical notes from this appointment also indicate that the chronic sacral wound showed “slow improvement/stalled.” *Id.* at 4, 5, 24. He can feed and dress himself. *Id.* With regards to transfer, he is “halfway independent for many months; using a hooyer [sic] to help with wound healing.” *Id.* Dr. Cooney also noted that the appellant showed “good judgment,” and his mental status was “normal mood and affect and active and alert.” *Id.* at 5. Medical records maintained by Dr. Cooney’s office also show that the appellant participated in telehealth for several appointments. *Id.* at 14, 17, 23, 30, 35, 43, 46, 50, *et seq.* The appellant’s medical records also indicated that he had one major depressive disorder, a single episode, when he was 18 years old. *Id.* at 3, 7, 11, 15, *et seq.*
32. The appellant also sees Dr. Laurence Cohen bi-weekly for the sacral wound that he has had since late March 2019. Dr. Cohen is a physician at the Center for Wound Care and Hyperbaric Medicine at Fairview Hospital. A letter dated November 25, 2024, from Dr. Cohen provided that, since April 24, 2017, he has seen the appellant weekly and “for the past several years every other week for that period of 6+ years.” Exhibit R. He also stated that the “wound condition is poor and it is unlikely to heal” and that “[h]e will likely need, and can receive, adequate wound care between visits to our clinic while living in the community . . . [h]e can also be seen, as now, every 2 weeks as an outpatient and he would require nursing in the form of wound dressings to be carried out by a nonprofessional or professional 3 times a week.” Exhibit R. The appellant “can continue as a patient in our clinic after discharge from Fairview Commons.” *Id.* Dr. Cohen did express concern about the appellant falling from his bed or chair but acknowledged that it was “an infrequent occurrence.” *Id.* He also stated that the appellant “‘knows’ his body well enough to recognize when something is off, as when he has systemic problem such as an infection that needs addressing and can certainly find a means to report to an emergency department . . . [h]e can either transport himself or seek outside help.” *Id.*

33. The dressing for the appellant's sacral wound needs to be changed twice per day. The appellant needs someone to change the bandages and can train a personal care attendant on how to do so. Other than this wound, the appellant does not have other existing medical needs. He goes to the wound care center bi-weekly, and the bandages are changed twice per day. He does not take any prescription medications but takes daily vitamins. He can purchase and administer any over the counter pain medications. The appellant does not respond well to psychotropic medications but responds well to therapeutic treatment. Since 1967, he has independently managed his urinary and bowel functions.
34. On behalf of the appellant, Ms. Shrum has submitted subsidized housing applications to five agencies and properties in Berkshire County. Exhibit J.
35. In addition to her testimony, Ms. Shrum submitted a letter dated October 30, 2024, stating that, "[o]ver the course of almost a year and a half that I have worked with [the appellant], I have experienced him to be very cooperative with all requests. He is also an excellent self-advocate. I believe that, with the right supportive services in place, [the appellant] would do very well transitioning to community-based living." Exhibit J; Testimony.
36. In reviewing the appellant's MFP-CL Waiver application, Ms. Govani's greatest concern is wound care and ensuring that the appellant's wound does not become infected. Testimony. Ms. Govani, however, was hopeful that there was new documentation that demonstrates his ability to cooperate with his caregivers while living in the community. Testimony. She was also optimistic that the appellant's behavior has changed since he was last living in the community. Testimony. She noted that, at the time of his MFP-CL waiver application, there was no medical documentation from his outside providers, particularly from his psychologist. Testimony. With the documentation provided by the application, she then determines the least restrictive environment for the applicant at the time of the application. Testimony. Ms. Govani acknowledged that she herself would not want to be in a nursing facility because such places are understaffed, overworked, and underpaid. Testimony. She also recognized that Fairview Commons is not a good place for the appellant. Testimony.
37. Updated Interdisciplinary Nursing Progress Notes from Fairview Commons from December 2023 to October 2024 show that the appellant was largely cooperative with staff. Exhibit U. Other than three incidents where the appellant was frustrated and agitated about his sacral wound care in December 2023 and March 2024, there were no other recorded incidents of the appellant's refusal to cooperate for dressing changes. *Id.* The period of January 2024 to November 2024 was overall uneventful and the appellant was generally "pleasant," "cooperative," and "compliant" with staff. *Id.* at 22, 44, 50, 51, 87, 89, 91, 92, 98, 104, *et seq.*

38. The appellant was also able to leave Fairview Commons to visit his sister in New Hampshire from July 13, 2024, to July 18, 2024. *Id.* at 78. Supplies for wound care were given to the appellant for his trip. *Id.* at 79.

Analysis and Conclusions of Law

In all appeals stemming from MassHealth action, the appellant bears the burden of proof at fair hearings “to demonstrate the invalidity of the administrative determination.” *Andrews v. Division of Medical Assistance*, 68 Mass. App. Ct. 228, 231 (2007); *Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989); *Fisch v. Board of Registration in Medicine*, 437 Mass. 128, 131 (2002). The appellant must demonstrate, by a preponderance of evidence, that MassHealth’s denial of the MFP-CL Waiver was incorrect pursuant to 130 CMR 519.007(H)(2). See *Craven v. State Ethics Comm’n*, 390 Mass. 191, 200 (1983)(“[p]roof by a preponderance of the evidence is the standard generally applicable to administrative proceedings”). The fair hearing decision, established by a preponderance of evidence, is based upon “evidence, testimony, materials, and legal rules, presented at hearing, including the MassHealth agency’s interpretation of its rules, policies and regulations.” 130 CMR 610.085(A). In reaching a decision, the “hearing officer must give due consideration to Policy Memoranda and any other MassHealth agency representations and materials containing legal rules, standards, policies, procedures, or interpretations as a source of guidance in applying a law or regulation.” 130 CMR 610.085(C)(3). Furthermore, the MassHealth Fair Hearing Rules provide that a hearing officer must render a decision in accordance with the law, including specifically:

... [T]he hearing officer must not render a decision regarding the legality of federal or state law including, but not limited to, the MassHealth regulations. If the legality of such law or regulations is raised by the appellant, the hearing officer must render a decision based on the applicable law or regulation as interpreted by the MassHealth agency. Such decision must include a statement that the hearing officer cannot rule on the legality of such law or regulation and must be subject to judicial review in accordance with 130 CMR 610.092.

Id. at 610.085(C)(2). Based on the testimonies and this record, I find that the appellant has met his burden in demonstrating that he can safely have his medical needs met in the community with the services available in the MFP-CL waiver.

The MFP home and community-based service waivers are described at 130 CMR 519.007(H). In this case, the appellant seeks eligibility for the MFP-CL Waiver. The requirement for this waiver is 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 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 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. are able to be safely served in the community within the terms of the MFP Community Living 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.

(b) Eligibility Requirements. In determining eligibility for MassHealth Standard and for these waiver services, the MassHealth agency determines income eligibility based solely on the applicant's or member's income regardless of his or her marital status. The applicant or member must

1. meet the requirements of 130 CMR 519.007 (H)(2)(a);
2. have countable income that is less than or equal to 300% of the federal benefit rate (FBR) for an individual;
3. have countable assets of \$2,000 or less for an individual and, for a married couple, if the initial Waiver eligibility determination was on or after January 1, 2014, have assets that are less than or equal to the standards at 130 CMR 520.016(B): Treatment of a Married Couple's Assets When One Spouse Is Institutionalized; and
4. not have transferred resources for less than fair market value, as described in 130 CMR 520.018: Transfer of Resources Regardless of Date of Transfer and 520.019: Transfer of Resources Occurring on or after August 11, 1993.

(c) Enrollment Limits. Enrollment in the MFP Community Living Waiver is subject to a limit on the total number of waiver participants. The number of participants who can be enrolled in this waiver may be limited in a manner determined by the

MassHealth agency.

(d) Waiver Services. Eligible members who are enrolled as waiver participants in the MFP Community Living Waiver are eligible for the waiver services described in 130 CMR 630.405(D): Moving Forward Plan Community Living (MFP-CL) Waiver.

130 CMR 519.007(H)(2).

Here, the sole issue and criterion for re-hearing is whether the appellant's medical needs can be safely met in the community with the services available in the MFP-CL waiver. To meet his burden, the appellant provided detailed testimonies about his medical needs. He also submitted voluminous and significant documentary evidence, including letters from his providers and community resources and medical records. Letters from the appellant's long-time medical providers offered professional opinions that the appellant can have his medical needs safely met in the community.

The appellant's longtime primary care physician, Dr. Cooney, opined that, "[the appellant] can be adequately cared for in the community with his current conditions. Daily dressing changes, assistance with showering and transfers . . . and moderate assistance with housekeeping, laundry, cleaning, and shopping would be required." Exhibit P. Dr. Cooney also stated that the appellant "would continue to be a patient of mine after discharge from Fairview Commons . . . [and that] I have every reason to expect a safe and successful transition to the community." He went further to say that the appellant "would continue to be a patient of mine after discharge from Fairview Commons . . . [and that] I have every reason to expect a safe and successful transition to the community." *Id.*

The appellant's wound care physician, Dr. Cohen, opined that, "[the appellant] will likely need, and can receive, adequate wound care between visits to our clinic while living in the community . . . [h]e can also be seen, as now, every 2 weeks as an outpatient and he would require nursing in the form of wound dressings to be carried out by a nonprofessional or professional 3 times a week." Exhibit R. He also stated that the appellant "'knows' his body well enough to recognize when something is off, as when he has systemic problem such as an infection that needs addressing and can certainly find a means to report to an emergency department . . . [h]e can either transport himself or seek outside help." *Id.*

The appellant's psychologist, Dr. Lotto, opined that the appellant "would be able to live safely and productively in the community with appropriate support services." Exhibit I. Dr. Lotto also stated that, "[i]n eight plus years I have been seeing him I have seen no signs of psychiatric decompensation, nor is there any reason to think that there is a risk for decompensation should he be living independently." *Id.* Upon his return to the community, the appellant will continue to see Dr. Lotto on a weekly basis. Testimony. Moreover, the appellant's medical records also indicated that he had one major depressive disorder, a single episode, when he was 18 years old. Exhibit Q at 3, 7, 11, 15, *et seq.*

The voluminous medical evidence submitted by the appellant also demonstrates his ability to independently and effectively care for himself. Medical records from the appellant's appointment with Dr. Cooney on October 15, 2024, shows that the appellant is "independent in colostomy management and urinary drainage/catheter." Exhibit Q at 4. He can feed and dress himself. *Id.* With regards to transfer, he is "halfway independent for many months; using a hooyer to help with wound healing." *Id.* Dr. Cooney also noted that the appellant showed "good judgment," and his mental status was "normal mood and affect and active and alert." *Id.* at 5. Medical records maintained by Dr. Cooney's office also show that the appellant participated in telehealth for several appointments. *Id.* at 14, 17, 23, 30, 35, 43, 46, 50, *et seq.* The appellant was also able to use his cell phone to contact Fairview Commons after a fall from his wheelchair on April 16, 2024. Exhibit U at 52-53. I also credit the appellant's testimony that he does not need 24-hour supportive services and can function 12 hours or less per day without assistance. He can prepare food for himself. He can travel to and from appointments on his own. He regularly participates in social and political events. In spring 2023, he ran for [REDACTED] in the town of [REDACTED]. In summer 2023, he was able to attend an out-of-town family event. The most important physical need is assistance with showering; he can bathe himself. The appellant also needs the same housekeeping help that he had in 2018-2019: laundry, changing bed linens, cleaning his apartment, and occasional grocery shopping. The appellant is also willing to use an emergency life alert as a backup measure.

In addition, isolated incidences of the appellant's alleged aggressive, rude, and non-cooperative behaviors are offset by eleven months of uneventful Interdisciplinary Nursing Progress Notes from Fairview Commons which mention his cooperation, compliance, and pleasantness. Exhibit U. These rare incidences were likely attributed to the stress of being in a nursing facility. Ms. Govini acknowledged that Fairview Commons is not a good place for the appellant and that she herself would not want to be in a nursing facility. Testimony. If anything, the appellant's strong ability to self-advocate and "know his body well" will effectively and safely serve him upon his return to the community. In addition to her testimony, Ms. Shrum submitted a letter dated October 30, 2024, stating that, "[o]ver the course of almost a year and a half that I have worked with [the appellant], I have experienced him to be very cooperative with all requests. He is also an excellent self-advocate. I believe that, with the right supportive services in place, [the appellant] would do very well transitioning to community-based living." Exhibit J.

Based on this record, I find that the appellant's medical needs are within the safety parameters of the MFP-CL waiver program. The record is replete with documented evidence that the appellant's medical needs can be safely met in the community with the services available in the MFP-CL Waiver program. Accordingly, after a re-hearing, the appeal is APPROVED.

Order for MassHealth

Approve the appellant's participation in the MFP-CL Waiver program.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, or if you experience problems with the implementation of this decision, you should report this in writing to the undersigned Director of the Board of Hearings at the address on the first page of this decision.

Macy Lee
Director
Board of Hearings

CC:



Linda Phillips
ForHealth Consulting at UMass Chan Medical School
333 South Street
Shrewsbury, MA 01545