

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	DENIED	Appeal Number:	2402001
Decision Date:	8/8/2024	Hearing Date:	04/11/2024
Hearing Officer:	Kenneth Brodzinski	Record Open to:	06/14/2024

Appearance for Appellant:



Appearance for MassHealth:

Linda Phillips, RN; Eileen Cynamon, RN; in-person and Holly Faria, RN by 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:	Waiver MFP-CL
Decision Date:	8/8/2024	Hearing Date:	04/11/2024
MassHealth's Rep.:	Linda Phillips, RN	Appellant's Rep.:	Pro se
Hearing Location:	Springfield MEC		

Authority

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

Jurisdiction

Through notice dated February 1, 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") ([Exhibit A](#)). Appellant filed for an appeal in a timely manner on March 12, 2024 (see 130 CMR 610.015(B) and [Exhibit A](#)). Denial of a request to participate in a MassHealth program constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

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

Issue

The appeal issue is whether MassHealth properly applied the controlling regulation(s) to accurate facts when it denied Appellant's request to participate in the MFP-CL Waiver program.

Summary of Evidence

Prior to the hearing, MassHealth submitted a packet of documentation (Exhibit B). Prior to the hearing, Appellant sent an email which included a copy of email communications with a worker at the [REDACTED] (Exhibit C1). During the hearing, Appellant filed a copy of a police incident report and supplemental narrative from the [REDACTED] Police Department regarding incident [REDACTED] (Exhibit C2).

The MassHealth representatives testified that MassHealth offers two home and community-based service (HCBS) Waivers; the MFP Residential Waiver (RS) 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, page 45).

The MassHealth representatives testified that, on December 13, 2023, an assessment for Waiver eligibility was conducted in person at [REDACTED] in Great [REDACTED]. In attendance at the assessment were: Appellant, [REDACTED] Social Worker and [REDACTED] MassHealth Nurse Reviewer who was representing the MFP Waiver Program (Exhibit B, Tab C, page 81).

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, pages 72-79); Acquired Brain Injury (ABI)/MFP Waivers Community Risks Assessment (Exhibit B, Tab C, page 80); a review of the applicant's medical record; and a discussion with the facility staff.

According to the assessment, Appellant is a male in his [REDACTED] who currently resides at [REDACTED]. Since 2016, 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 [REDACTED]. This pattern of applying and being approved for the waivers and then being readmitted to a skilled nursing facility continued for the next [REDACTED]. 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 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 supports 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 [REDACTED]. On June 22, 2023, Appellant reapplied for the MFP-CL Waiver (Exhibit B, Tab C, pages 45 and 76).

Appellant's medical history includes paraplegia at age [REDACTED] due to a skiing 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, page 76).

The Waiver eligibility assessment found the following documentation which indicates that Appellant poses a significant safety risk to himself and others:

- [REDACTED] Interdisciplinary Nursing Progress Note states that Appellant called the nurse to his room at 5pm to assess a blister that was on his right testicle. The MD assessed the wound and Appellant stated that he needs to go to the ER. Paperwork was drafted, but prior to calling the ambulance, Appellant stated, "No, I do not want to go." Appellant was asked by nursing 3 times, and he stated that, "I don't want to go sit in the ER right now." At 8:30pm, the same evening, the police called [REDACTED] and notified the nurse of an allegation of neglect related to the dressing change not being completed by Appellant. The MD, Director of Nursing, and the Administrator were all notified of this phone call from the police and the wound care was completed at 10:40pm. Nursing reported no signs/symptoms of infection (Exhibit B, Tab D, page 124).
- [REDACTED] Interdisciplinary Nursing Progress Note states that Appellant was yelling at this nurse and pointing his finger aggressively close to her face. Appellant was angry because the wound dressing doctor's order states, "do not leave supplies in resident room." New dressing supplies are brought into the room to change the dressing and then the packaging and supplies are removed when the dressing is completed. Appellant, "became verbally aggressive creating a hostile and unsafe environment for this writer." Will need to provide education to Appellant regarding appropriate interaction with staff in addition to facility policies regarding the dressing change (Exhibit B, Tab D, page 109).

- [REDACTED] Interdisciplinary Nursing Progress note states that a nurse walked into the kitchenette on the unit to make coffee when Appellant was seen heating up water in the microwave. The nurse explained the staff were only allowed in this kitchenette due to potential injury to patients. Appellant became upset, and the nurse apologized because he had asked staff twice for this hot water and then decided to get it himself. Although, the nurse did explain for safety reasons, she had to get the water for him, and he returned to his room (Exhibit B, Tab D, page 100).
- [REDACTED] Care Plan indicates that Appellant is at risk for altered mood state and mood decompensation related to diagnosis of major depressive disorder. At times, Appellant presents himself as anxious and this anxiety interrupts his activities. Appellant chooses not to receive in-house psychiatric services and medications, and he may be hypervigilant and accusatory of others which can impact his social relationships and with his community (Exhibit B, Tab D, page 141).

On January 4, 2024, 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 [REDACTED] (MRC) Clinical team, who oversees the community living waiver. Based on the in-person assessment; the completed MFP documentation including: MDS-HC, ABI/MFP Waivers Community Risks' assessment, and Clinical Determination of Waiver Eligibility; and a thorough review of Appellant's medical record by both MassHealth and MRC, both agencies determined that Appellant was not considered to be clinically eligible at this time for participation in the MFP-CL Waiver (Exhibit B, Tab C, pages 78-79).

According to MassHealth, Appellant has exhibited examples of arguing with staff, manipulating staff, verbal abuse, calling the police, refusing care, and falsely claiming neglect. Appellant has a history of failure in the community while exhibiting behaviors that affected providers coming into the home. The MassHealth representative testified that, it is MassHealth's clinical and professional opinion at this time, based on the available medical records and interviews, Appellant cannot 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, pages 46-47).

At the outset of Appellant testimony, Appellant expressed an intention to go through the MassHealth packet in a very detailed manner. The hearing officer informed Appellant that there was a time limit on the hearing. The hearing was scheduled for one hour. The hearing

officer stated that because the matter was the last appeal of the day, the hearing could exceed an hour, but Appellant still had to be mindful of how he was going to use his time and that his time was not unlimited. At several points during the hearing, the hearing officer tried to direct Appellant away from focusing on excessive detail about specific instances and instead focusing on the question of whether or not he could be safely maintained in the community within the service limitations of the MFP-CL program. These attempts were largely ignored. The hearing ultimately lasted two hours and 28 minutes.

At the conclusion of the hearing, the record was left open until May 17, 2024 for Appellant to submit additional documentation. The hearing officer urged Appellant to use the record-open period to write out a succinct explanation of his disputes with the assessment and to attach any supporting documentation. MassHealth was given until June 14, 2024 to file a written response.

Appellant acknowledged that he received the MassHealth packet on March 8, 2024. Appellant began by questioning the narrative written by [REDACTED] as part of the assessment (Exhibit B, Tab C pages 72-79). Appellant questioned nurse [REDACTED] as to whether an item in the second half of page 74 should have been checked off. In response, nurse [REDACTED] said that was a mistake and this should not have been checked. Appellant asserted that the readmission date indicated on page 76 was incorrect. He also stated that he did not have a wound in his buttocks at the time of his admission. Appellant testified that he is been a paraplegic for over 50 years, is rigorous about his wound care, and would readily recall whether or not he had such a wound at the time of his admission.

In response, the MassHealth representative agreed that Appellant has significant wound care and skin management issues and noted that, under the MFP-CL waiver program, nursing support is limited to a maximum of 12 hours per day. The MassHealth representative also noted that Appellant did not provide any information about having a backup person or persons to assist him when nursing supports were not available. These times not include not only time beyond 12 hours (should he be awarded the maximum amount of nursing hours) but for times when the nurse is out sick or otherwise unavailable on short notice.

Nurse [REDACTED] for MassHealth acknowledged that no specific person was identified Appellant, but Appellant had indicated he had many friends and family in the area who assist him with meals, appointments, and companionship. Nurse [REDACTED] stated that she felt that this would be adequate for Appellant; however, the MassHealth representative stated she saw no follow-up in the documentation to verify the identity or availability of these people.

Appellant also addressed some of the incidents of alleged noncompliance and aggression with nursing staff that were asserted in the assessment. Appellant acknowledged that he did call the police on [REDACTED] after he had been in bed for 36 hours and the facility's nursing staff refused to follow the physician's orders regarding changing the dressing on a sacral wound.

Appellant testified that, according to the physician's order, the dressing was supposed to be changed twice per day, but the nurse that day was doing a double shift and she never once came into the room in 16 hours. Appellant filed a copy of a police report and supplemental narrative from the [REDACTED] Police Department concerning the incident which confirmed that the nurse did not change his dressing and perjured herself to the police when the matter was investigated (Exhibit C).

Appellant testified that a lot of important things did not get documented and were not considered as part of the assessment. Appellant did not provide specifics or supporting documentation or other corroboration to support this assertion.

Appellant proceeded to address each of the 14 bullet points contained in the assessment (Exhibit B, Tab C pages 77-78). Appellant stated that he disagreed with the assertion that he is ornery or drives caregivers away. Appellant testified that he had only one caregiver when he was last on the waiver and there was never a bad word between them. Appellant stated that he did not see any documentation supporting the assertion that he is not cooperative with his caregivers. The MassHealth representative acknowledged that there were not a lot of examples.

Regarding bullet one at page 77 of the assessment, Appellant explained that he saw something on his testicle and was at first very concerned and thought that might be a blister that needed immediate attention, but after some reflection he thought it wasn't urgent and decided not to go to the ER. Regarding bullet two, Appellant stated that, often times, he is too tired to get himself to bed and he might have fallen asleep once or twice in his chair and later complained, but he did not see this as being very important or why it should be used against him to deny access to the MFP-CL waiver program.

Appellant questioned one of the social workers from the facility concerning a dispute he had with the facility administrator concerning where his van was parked at the facility. Appellant acknowledged that, at times, he got angry over the matter but eventually over the course of a year, the matter was resolved amicably. While this incident was not part of the assessment, Appellant referenced it as an example of how normal interactions can go. He stated his belief that he had reasons to be upset with the nursing facility administrator on the matter of the van because the administrator was proceeding on unfounded hearsay. Similarly, Appellant believes that a number of the records reviewed in the subject assessment were improperly interpreted in a manner to portray him as argumentative and uncooperative which he does not believe to be true. Appellant acknowledged, however, that sometimes he has to become assertive to protect his interests and health.

Appellant addressed the last bullet point regarding the progress note at page 104 stating that he disagreed with the note. Appellant stated he called 911 because he needed to go to the emergency room to have his wound tended to correctly pursuant to the physician's order. The

order stated that Appellant's wound was to be packed with one-quarter-inch gauze and the facility informed him that they while they had gauze, they did not have one-quarter-inch gauze. Appellant explained that he had an ambulance take him to the ER so that the wound could be packed with the proper size gauze.

In response, the MassHealth representative explained that calling 911 because the facility did not have the precise size gauze is an example of a level of care that would not be available to Appellant under the MFP-CL waiver program. The MassHealth representative explained that at a skilled nursing facility, Appellant has access to both 24-7 care from facility staff as well as assistance with obtaining off-site care at a hospital or emergency room as may be needed, but this would not be available to him in the community setting under the MFP-CL waiver program. The MassHealth representative indicated that she believes Appellant would expect the same level of care as he is now receiving in the facility and that is simply not accurate. Appellant indicated that it was his right to receive such care.

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 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 Board had received no additional information from Appellant and no request was made to extend the record open period. On May 22, 2024, Appellant emailed a lengthy written request to the Board seeking to have the in-person hearing reconvened and the record-open period extended beyond May 23, 2024 (no specific date for a new record-open period was requested) (Exhibit D). The Board responded that the record had already closed on May 17, 2023 and the hearing officer had denied the requests to extend the record open period and to reconvene the hearing.

The hearing officer denied the request after reviewing Appellant's email and concluding that, in addition to failing to make his request prior to his record-close date, Appellant had made no attempt to provide the information requested at the end of the hearing. Instead, Appellant fixated his efforts on one particular incident mentioned in the assessment involving a statement contained in a record from the [REDACTED]. 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.

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 skiing 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, page 76).
8. On December 13, 2023, MassHealth conducted an in-person assessment for Waiver eligibility at [REDACTED] in [REDACTED]
[REDACTED]
9. In attendance at the assessment were: Appellant, [REDACTED] Social Worker and [REDACTED] MassHealth Nurse Reviewer who was representing the MFP Waiver Program (Exhibit B, Tab C, page 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, pages 72-79); Acquired Brain Injury (ABI)/MFP Waivers Community Risks Assessment (Exhibit B, Tab C, page 80); a review of the applicant's medical record; and a discussion with the facility staff.

11. According to the assessment, Appellant is a male in his [REDACTED] who currently resides at [REDACTED]. Since 2016, Appellant has had several medical complications that have required hospital level of care and rehabilitation stays.
12. On March 18, 2018, Appellant was approved for the MFP-CL Waiver and shortly after returning to the community, he was readmitted to [REDACTED].
13. A pattern of applying and being approved for the waivers and then being readmitted to a skilled nursing facility continued for the next [REDACTED].
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 supports 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 [REDACTED].
16. On June 22, 2023, Appellant reapplied for the MFP-CL Waiver (Exhibit B, Tab C, pages 45 and 76).
17. The Waiver eligibility assessment found the following documentation which, according to MassHealth, indicates that Appellant poses a significant safety risk to himself and others.
18. [REDACTED] Interdisciplinary Nursing Progress Note states that Appellant called the nurse to his room at 5pm to assess a blister that was on his right testicle. The MD assessed the wound and Appellant stated that he needs to go to the ER. Paperwork was drafted, but prior to calling the ambulance, Appellant stated, "No, I do not want to go." Appellant was asked by nursing 3 times, and he stated that, "I don't want to go sit in the ER right now." At 8:30pm, the same evening, the police called [REDACTED] and notified the nurse of an allegation of neglect related to the dressing change not being completed by

Appellant. The MD, Director of Nursing, and the Administrator were all notified of this phone call from the police and the wound care was completed at 10:40pm. Nursing reported no signs/symptoms of infection (Exhibit B, Tab D, page 124).

19. [REDACTED] Interdisciplinary Nursing Progress Note states that Appellant was yelling at this nurse and pointing his finger aggressively close to her face. Appellant was angry because the wound dressing doctor's order states, "do not leave supplies in resident room." New dressing supplies are brought into the room to change the dressing and then the packaging and supplies are removed when the dressing is completed. Appellant, "became verbally aggressive creating a hostile and unsafe environment for this writer." Will need to provide education to Appellant regarding appropriate interaction with staff in addition to facility policies regarding the dressing change (Exhibit B, Tab D, page 109).
20. [REDACTED] Interdisciplinary Nursing Progress note states that a nurse walked into the kitchenette on the unit to make coffee when Appellant was seen heating up water in the microwave. The nurse explained the staff were only allowed in this kitchenette due to potential injury to patients. Appellant became upset, and the nurse apologized because he had asked staff twice for this hot water and then decided to get it himself. Although, the nurse did explain for safety reasons, she had to get the water for him, and he returned to his room (Exhibit B, Tab D, page 100).
21. [REDACTED] [REDACTED] Care Plan indicates that Appellant is at risk for altered mood state and mood decompensation related to diagnosis of major depressive disorder. At times, Appellant presents himself as anxious and this anxiety interrupts his activities. Appellant chooses not to receive in-house psychiatric services and medications, and he may be hypervigilant and accusatory of others which can impact his social relationships and with his community (Exhibit B, Tab D, page 141).
22. On January 10, 2024, as part of the MFP Waiver eligibility process, a second clinical review was conducted by the [REDACTED] (MRC) Clinical team, who oversees the community living waiver.
23. On January 4, 2024, Appellant's application was discussed at the MassHealth Waiver Clinical Team review meeting.
24. Based on the in-person assessment, the completed MFP documentation including: MDS-

HC, ABI/MFP Waivers Community Risks' assessment, Clinical Determination of Waiver Eligibility, and a thorough review of Appellant's medical record by both MassHealth and MRC, both agencies determined that Appellant was not considered to be clinically eligible at this time for participation in the MFP-CL Waiver (Exhibit B, Tab C, pages 78-79).

25. Appellant has exhibited examples of arguing with staff, manipulating staff, verbal abuse, calling the police, refusing care, and falsely claiming neglect.
26. On August 2, 2023, Appellant requested that a nurse evaluate right testicle wound at 5pm, blister noted MD was in the building assessed him, but he insisted he required ER transfer. Order drafted but prior to ambulance being called he stated he did not want to go was questioned 3 times he declined and requested wound be dealt with the next day. At 8:30pm a police officer notified the nurse that resident had alleged neglect related to dressing change not being completed. Wound care performed at 10:40pm (Exhibit B, Tab C, page 77).
27. On August 20, 2023, Appellant was observed sitting in his wheelchair with head propped on bed sleeping at 8pm, awakened reported being tired and stated he would get ready for bed soon, 9pm still sleeping in same position, 9:45pm woke him up for wound dressing change, he complained staff not helping him so that he could go to bed (Id).
28. On August 30, 2023, Appellant's leg became caught in bed rail. The unit manager and maintenance were called in to add protective padding to rail. Appellant refused the intervention (Id).
29. On September 8, 2023, Appellant reported sparks coming out of his computer educated about danger and suggested not to use computer until it could be evaluated, he stated he was aware of risk but would continue to use the computer (Id).
30. On September 11, 2023, Appellant was yelling at nurse pointing finger aggressively in face, verbally aggressive and hostile after RN completed dressing change and removed supplies from room as orders MD state, unable to educate due to aggression, followed RN to nurse's station to view MD order. After reading the order, the RN requested he leave nurses station to prevent possible HIPPA violation, he stated "HIPPA violations happen all the time this corporation is filled with rude people and the administration is abusive" (Id).

31. On September 12, 2023, Appellant remained in his wheelchair until at 2:00 am, CNA awakened him offered assistance, he was short with CNA did go to bed rang frequently for small tasks, closing shades making a tea, would immediately ring when CNA left room (Id).
32. On September 13, 2023, CNA provided linen change after Texas catheter came off, he rang again nurse answered he asked why and when told CNA was busy with another resident he raised his voice, two bags of trash were noted to be thrown a distance from his bed, lamp on the floor he denied throwing items tried to bait nurse and CNA into conversation regarding complaints with staff (Id).
33. On September 19, 2023, Appellant was up in his wheelchair until 2am being sarcastic and argumentative with CNA assisting him into bed (Id).
34. On September 26, 2023, Appellant threw two bags into hallway one with clothing the other with trash (Id).
35. On September 27, 2023, Appellant was verbally aggressive using foul language towards staff during sacral wound dressing change, became agitated with nurse related to nurse's hearing deficit, instructed nurse how to change dressing in condescending manner, 2 nursing staff present for remainder of dressing change (Id).
36. On September 29, 2023, Appellant refused wound treatment to sacral area called 911 went to [REDACTED] by ambulance, hospital declined to perform wound care returned to SNF wound care provided at 10:45 pm (Id).
37. On October 1, 2023, Appellant left facility at 5pm and was unavailable for treatments returned to SNF at 12:20am (Exhibit B, Tab C, pages 78) (Id).
38. On October 19, 2023, Dr [REDACTED] ordered thoracic spine X-ray; Appellant refused X-ray (Id).
39. On October 21, 2023, Appellant was in kitchenette heating water in microwave, explained area is for staff only, raised his voice reporting he asked staff twice for hot water didn't want to wait and helped himself (Id).
40. On August 29, 2024, Appellant called 911 because he wanted to go to the emergency

room to have his wound packed with one-quarter-inch gauze (ribbon gauze) believing that the physician's order called for the use of ribbon gauze; however, the physician's order did not call for the use of ribbon gauze and the facility informed him that they while they had gauze, they did not have one-quarter-inch gauze (Exhibit B, Tab C, page 104).

41. Appellant called the police on [REDACTED] after he had been in bed for 36 hours and the facility's nursing staff refused to follow the physician's orders regarding changing the dressing on a sacral wound.
42. According to the physician's order, the dressing was supposed to be changed twice per day, but the nurse that day never once came into the room in 16 hours.
43. A police report and supplemental narrative from the [REDACTED] Police Department concerning the incident confirms that the nurse did not change his dressing and perjured herself to the police when the matter was investigated (Exhibit C).
44. Appellant has a history of failure in the community while exhibiting behaviors that affected providers coming into the home (Exhibit B, Tab C, page 104).
45. MassHealth concluded that, at this time, based on the available medical records and interviews, Appellant cannot be safely served in the community within the MFP-CL Waiver.
46. On January 16, 2024, MassHealth issued a written denial notice for the MFP-CL Waiver to Appellant (Exhibit B, Tab C, pages 46-47).
47. Appellant was afforded an in-person hearing that lasted nearly two and a half hours and thereafter was granted 5 weeks and a day to file any additional information.
48. By the record close date for Appellant of May 17, 2024, the Board had received no additional information from Appellant and no written request was made to extend the record-open period.
49. On May 22, 2024, Appellant emailed a lengthy written request to the Board seeking to have the in-person hearing reconvened and the record-open period extended beyond May 23, 2024 (no specific date for a new record-open period was requested) (Exhibit D).
50. The Board responded that the record had already closed on May 17, 2023 and the hearing officer had denied the requests to extend the record-open period and to

reconvene the hearing.

51. The hearing officer denied the request after reviewing Appellant's email and concluding that, in addition to failing to make his request prior to his record-close date, Appellant had made no attempt to provide the information requested at the end of the hearing.
52. Instead, Appellant fixated his efforts on one particular incident mentioned in the assessment involving a statement contained in a record from the [REDACTED] [REDACTED] (Exhibit D).
53. The information concerning a statement from an MRC representative was previously addressed in Appellant's filing prior to hearing (Exhibit C1).
54. Appellant's request to re-open the record and reconvene the hearing was denied.

Analysis and Conclusions of Law

The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity (*Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989)). On this record, Appellant has not met his burden.

To be eligible for a MassHealth MFP Waiver:

- 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 [REDACTED] years old or older, and have a disability, or be age [REDACTED] and older;
- The applicant must meet 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 existing for Waivers' participants;
- The applicant will transition to an MFP-qualified residence in the community; and
- In addition to the above, to qualify for the MFP-RS Waiver, an applicant must need residential support services with staff supervision 24 hours/day, 7 days/week.

(130 CMR 519.007(H)(1)(a) (emphasis supplied)).

At hearing, MassHealth presented a medical professional who reviewed Appellant's medical documentation to support the agency's findings and conclusions about Appellant's current state of health and behaviors. MassHealth has shown that an extensive assessment was performed with Appellant and staff members from Appellant's current institutional residence in attendance. MassHealth has provided significant medical documentation supporting MassHealth's conclusion that Appellant's aggressive and non-cooperative behaviors along with his care needs, are beyond the safety parameters of the MFP-CL waiver program. The record is replete with documented instances of Appellant being rude and aggressive with care givers at his present facility and there are several documented instances of mistaken and willful non-compliance with physician's orders and care management directives. There is no documentation in the record that would support a finding that these behaviors would cease to continue.

Appellant's assessment was considered by the MassHealth Waiver Clinical Team review which included input from the [REDACTED] (MRC). A second clinical assessment was thereafter performed which reached the same findings and conclusions – that

Appellant cannot be safely served in the community within the terms of the MFP-CL waiver.

At hearing, specific instances of non-cooperative and aggressive behaviors were discussed. Appellant did successfully dispute several of the instances of non-cooperation, most notably the incident of [REDACTED] involving the facility's failure to change his dressing and the justified need for Appellant to reach out to the local police for assistance. Appellant's position was properly supported by documentation from the [REDACTED] Police Department (Exhibit C2). Nevertheless, as set out in the Findings of Fact above, there were far more instances of uncooperative and aggressive behaviors that were not addressed or justified. Where Appellant disagreed with some of the notes, he offered no corroborative evidence to support his position. The record shows that Appellant has significant diagnoses that require daily professional care. The administration of such care in the community requires a level of cooperation with caregivers that, on this record, Appellant fails to demonstrate.

Appellant spent considerable effort addressing a statement alleged to have been made by an MRC case coordinator who felt that Appellant would not be appropriate for independent living as he is not safe (Exhibits C1 and D). This statement was included in nurse [REDACTED] assessment (Exhibit B, Tab C, page 78). Appellant believes that this statement was highly prejudicial to his request and questioned the source and accuracy of the statement. The statement was purportedly made in July 2020. During the hearing, the MassHealth representative stated that this statement was not particularly meaningful to the assessment which was concerned more with current documented behaviors and care needs. The Masshealth presentative stated, and I agree, that even if this statement were fully discounted, it would not alter the current determination.

This record provides no basis in fact or law to disturb the agency's action. Accordingly, the appeal is DENIED. Appellant may reapply for the waiver as he deems appropriate.

Order for MassHealth

None.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Kenneth Brodzinski
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