

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2402295
Decision Date:	5/28/2024	Hearing Date:	03/26/2024
Hearing Officer:	Marc Tonaszuck	Record Open to:	04/05/2024

Appearance for Appellant:



Appearance for MassHealth:

Linda Phillips, RN, BSN, LNC, C.Sp., Associate
Director of Appeals and Regulatory Compliance



*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:	Moving Forward Plan Waiver
Decision Date:	5/28/2024	Hearing Date:	03/26/2024
MassHealth's Rep.:	Linda Phillips, RN, BSN, LNC, C.Sp., Associate Director of Appeals and Regulatory Compliance	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South	Aid Pending:	No

Authority

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

Jurisdiction

Through a notice dated 01/23/2024, MassHealth informed the appellant that it determined she was not eligible for the Moving Forward Plan Community Living (MFP-CL) program because she did not provide sufficient documentation for the University of Massachusetts to determine her eligibility for the waiver(s) (130 CMR 519.007(H)(2); Exhibit 1). The appellant filed this appeal in a timely manner on 02/14/2024 (130 CMR 610.015(B); Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

A fair hearing took place on 03/26/2024, at which time the appellant representative requested time to submit additional documentation in support of the appellant's case. Her request was granted, and the record was held open until 03/26/2024 for her submission and until 04/05/2024 for MassHealth's response (Exhibit 5). The appellant made no submission during the record open period.

Action Taken by MassHealth

MassHealth determined the appellant was not eligible for the MFP-CL Waiver.

Issue

The appeal issue is whether MassHealth was correct in determining that the appellant is ineligible for the MFP-CL Waiver because she did not submit sufficient documentation for the University of Massachusetts to determine her eligibility for the Waiver.

Summary of Evidence

Linda Phillips, RN, testified on behalf of MassHealth. She stated that MassHealth has two home and community-based service (HCBS) Waivers that assist Medicaid-eligible persons, move into the community, and obtain community-based services, the MFP-Residential services (RS) Waiver, and the MFP Community Living (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. The appellant applied for the MFP-CL Waiver on 11/07/2023 (Exhibit 4C).

Below are the eligibility criteria for the MFP Waivers:

- The applicant must be living in a nursing facility or long-stay hospital, and lived there for at least 90 consecutive days;
- The applicant must be 18 years old or older, and have a disability, or be age 65 and older;
- The applicant must meet 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.

(Emphasis added.)

Ms. Phillips cited MassHealth regulations 130 CMR 519.007 (H) (1) and (2): (Exhibit 4B, pages 38-39).

Ms. Phillips testified that the clinical part of the Waiver application process is performed by the University of Massachusetts. The financial and other eligibility is performed by MassHealth. The University of Massachusetts received a Waiver application from the appellant; however, in order for MassHealth to review other eligibility criteria, a MassHealth Senior Application (SACA) needs to be submitted. On 12/06/2023, the University of Massachusetts Waiver program sent a letter to the appellant requesting that she complete and return the SACA to MassHealth by 01/05/2024.

Ms. Phillips testified that MassHealth did not receive the SACA by the 01/05/2023 deadline. On 01/23/2024, her MFP-CL Waiver application was denied for a failure to provide sufficient documentation for MassHealth to determine her eligibility for the Waiver.

The hearing officer asked Ms. Phillips whether she would be able to make a determination of eligibility if the appellant were to submit a SACA as soon as possible. Ms. Phillips responded that because the appellant is no longer living in the skilled nursing facility, a new clinical determination would have to take place, since the relevant clinical information concerning her eligibility has changed since November 2023.

The appellant was represented at the fair hearing by [REDACTED]. She acknowledged that the SACA was not submitted by the requested deadline. [REDACTED] requested additional time to show that the SACA was submitted shortly after the deadline and in time for MassHealth to make an eligibility determination. Her request was granted and the record remained open until 03/26/2024 for her submission and until 04/05/2024 for MassHealth's response (Exhibit 5).

No submission was made during the record open period.

Findings of Fact

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

1. MassHealth offers two home and community-based service (HCBS) waivers; the Moving Forward Plan (MFP) Waiver for Residential Services (RS), and the MFP Community Living (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.
2. 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.

3. In order to qualify for the MFP-CL Waiver, an application must meet clinical eligibility requirements and financial eligibility requirements.
4. The clinical part of the Waiver application process is performed by the University of Massachusetts. The financial and other eligibility is performed by MassHealth.
5. The appellant submitted an MFP-CL Waiver application to the University of Massachusetts on 11/07/2023.
6. On 12/06/2023, the University of Massachusetts Waiver program sent a letter to the appellant requesting that she complete and return a Senior Application for Benefits (SACA) to MassHealth by 01/05/2024.
7. There is no evidence in the hearing record that the appellant submitted a SACA to MassHealth.
8. Through a notice dated 01/23/2024, MassHealth informed the appellant that it determined she was not eligible for MFP-CL program because she did not provide sufficient documentation for the University of Massachusetts to determine her eligibility for the waiver(s).
9. A fair hearing was held on 03/26/2024 before the Board of Hearings.
10. At the fair hearing, the appellant's representative requested an opportunity to show that the SACA was submitted to MassHealth.
11. The record remained open until 03/26/2024 for the appellant's submission and until 04/05/2024 for MassHealth's response.
12. No submission was made by the appellant during the record open period.

Analysis and Conclusions of Law

MassHealth regulations at 130 CMR 519.007 describe the eligibility requirements for MassHealth Standard coverage for individuals who would be institutionalized if they were not receiving home- and community-based services. Money follows the person community living waivers are described in subpart (H) as follows:

Money Follows the Person Home- and Community-based Services Waivers.

(1) Money Follows the Person (MFP)¹ Residential Supports Waiver.

(a) Clinical and Age Requirements. The MFP Residential Supports Waiver, as authorized under § 1915(c) of the Social Security Act, allows an applicant or member who is certified by the MassHealth agency or its agent to be in need of nursing facility services, chronic disease or rehabilitation hospital services, or, for participants 18 through 21 years of age or 65 years of age or older, psychiatric hospital services to receive residential support services and other specified waiver services in a 24-hour supervised residential setting if he or she meets all of the following criteria:

1. is 18 years of age or older and, if younger than 65 years old, is totally and permanently disabled in accordance with Title XVI standards;
2. is an inpatient in a nursing facility, chronic disease or rehabilitation hospital, or, for participants 18 through 21 years of age or 65 years of age or older, psychiatric hospital with a continuous length of stay of 90 or more days, excluding rehabilitation days;
3. must have received MassHealth benefits for inpatient services, and be MassHealth eligible at least the day before discharge;
4. must be assessed to need residential habilitation, assisted living services, or shared living 24-hour supports services within the terms of the MFP Residential Supports Waiver;
5. is able to be safely served in the community within the terms of the MFP Residential Supports Waiver; and
6. is transitioning to the community setting from a facility, moving to a qualified residence, such as a home owned or leased by the applicant or a family member, an apartment with an individual lease, or a community-based residential setting in which no more than four unrelated individuals reside.

(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 or member regardless of his or her marital status. The applicant or member must

1. meet the requirements of 130 CMR 519.007(H)(1)(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

¹ MassHealth renamed this program the Moving Forward Plan (MFP).

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 Residential Supports 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 Residential Supports Waiver are eligible for the waiver services described in 130 CMR 630.405(C): Money Follows the Person Residential Supports (MFP-RS) Waiver.

(2) Money Follows the Person (MFP) Community Living Waiver.

(a) Clinical and Age Requirements. The MFP Community Living Waiver, as authorized under § 1915(c) of the Social Security Act, allows an applicant or member who is certified by the MassHealth agency or its agent to be in need of nursing facility services, chronic disease or rehabilitation hospital services, or, for participants 18 through 21 years of age or 65 years of age or older, psychiatric hospital services to receive specified waiver services, other than residential support services in the home or community, if he or she meets all of the following criteria:

1. is 18 years of age or older and, if younger than 65 years old, is totally and permanently disabled in accordance with Title XVI standards;
2. is an inpatient in a nursing facility, chronic disease or rehabilitation hospital, or, for participants 18 through 21 years of age or 65 years of age or older, psychiatric hospital with a continuous length of stay of 90 or more days, excluding rehabilitation days;
3. must have received MassHealth benefits for inpatient services, and be MassHealth eligible at least the day before discharge;
4. needs one or more of the services under the MFP Community Living Waiver;
5. is able to be safely served in the community within the terms of the MFP Community Living Waiver; and
6. is transitioning to the community setting from a facility, moving to a qualified residence, such as a home owned or leased by the applicant or a family member, an apartment with an individual lease, or a community-based residential setting in which no more than four unrelated individuals reside.

(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): Money Follows the Person Community Living (MFP-CL) Waiver.

(Emphasis added.)

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass. App. Ct. 333 , 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386, 390 (1998).

The appellant applied for the MFP-CL Waiver on 11/07/2024. The University of Massachusetts, on behalf of MassHealth, informed the appellant on 12/06/2023 that she must submit a SACA to MassHealth by 01/05/2024. There is no evidence that she did so. MassHealth is unable to determine whether the appellant is eligible for the MFP-CL Waiver without the requested information. Accordingly, MassHealth's decision to deny the appellant's application for the MFP-CL Waiver is supported by the facts in the hearing record as well as the regulations. This appeal is therefore denied.

Order for MassHealth

None.

Notification of Your Right to Appeal to Court

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

Marc Tonaszuck
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

[REDACTED]