

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2402475
Decision Date:	8/28/2024	Hearing Date:	06/06/2024
Hearing Officer:	Kimberly Scanlon		

Appearance for Appellant:




Appearance for MassHealth:

Linda Phillips, RN, BSN, LNC-CSp., Associate
Director of Appeals and Regulatory
Compliance;
Victoria Lapriore, RN, BSN, Nurse Reviewer II
(via videoconference)



*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 Waiver eligibility
Decision Date:	8/28/2024	Hearing Date:	06/06/2024
MassHealth's Rep.:	Linda Phillips, R.N; Victoria Lapriore, RN	Appellant's Rep.:	
Hearing Location:	Charlestown MassHealth Enrollment Center - Room 1	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 January 2, 2024, MassHealth informed the appellant that it determined that he was not clinically eligible to transfer from the MassHealth Moving Forward Plan Residential Services Waiver (MFP-RS Waiver) to the Moving Forward Plan Community Living Waiver (MFP-CL Waiver) because MassHealth determined that he cannot be safely served in the community within the terms of the MFP-CL Waiver (Exhibit 1). The appellant filed this appeal in a timely manner on or about February 10, 2024 (130 CMR 610.015(B) and Exhibit 6).¹ Denial of assistance is valid grounds for appeal (130 CMR 610.032).

¹ On February 20, 2024, the Board of Hearings (BOH) dismissed the appeal for failure to submit written authorization from the MassHealth member or applicant (Exhibit 5). Upon receipt of additional documentation, the BOH scheduled a hearing (Exhibits 5-7, 9). Upon receipt of the appellant's request to re-schedule, BOH granted the request and re-scheduled the hearing (Exhibit 10-11).

Action Taken by MassHealth

MassHealth notified the appellant that it determined that he was not clinically eligible to transfer from the MFP-RS Waiver to the MFP-CL Waiver because he cannot be safely served in the community within the terms of the MFP-CL Waiver.

Issue

The appeal issue is whether MassHealth appropriately determined that the appellant is not clinically eligible to transfer from the MFP-RS Waiver to the MFP-CL Waiver because he cannot be safely served in the community within the terms of the MFP-CL Waiver.

Summary of Evidence

MassHealth was represented at hearing by two registered nurses from MassHealth's Disability and Community Services. The appellant appeared at the hearing with his parents, a clinician from his group home, Seven Hills, and his appeal representative from Personal Disability Consulting.

The MassHealth nurse testified that MassHealth offers two home-and community-based MFP service waivers, the MFP-RS Waiver and the MFP-CL Waiver. Both waivers help individuals who are qualified for the MFP Demonstration to move from a nursing facility or long-stay hospital to an MFP-qualified residence in the community and obtain community-based services. The MFP-CL Waiver is designed for individuals who can move into their own home or apartment, or to the home of someone else, and receive services in the community that are less than 24 hours per day, 7 days per week.

The following are the criteria for the MFP Waivers:

- The applicant must be living in a nursing facility or long-stay hospital, and lived there for at least 90 consecutive days;
- The applicant must be ■ years old or older, and have a disability, or be age ■ and older;
- The applicant must meet the clinical requirements for, and be in need of the waiver services that are available through the MFP Waivers;
- The applicant must be able to be safely served in the community within the terms of the MFP Waivers;
- The applicant must meet the financial requirements to qualify for MassHealth; special financial rules exist for Waiver participants;
- The applicant will transition to an MFP-qualified residence in the community; and

- For the MFP-RS Waiver, the applicant must need residential supports with staff supervision 24 hours per day, 7 days per week.

In this case, MassHealth notified the appellant that he was not clinically eligible to transfer from the MFP-RS waiver to the MFP-CL Waiver because MassHealth determined that he cannot be safely served in the community within the terms of this waiver (Exhibit 1).

MassHealth offered the following testimony in support of its position: Appellant is an adult male who was found to be eligible for the MFP-RS Waiver in April of 2015. He transitioned to a group home in [REDACTED] upon stabilization. In [REDACTED] the appellant's guardian/mother submitted a request to transfer the appellant from the MFP-RS Waiver to the MFP-CL Waiver. She stated that the appellant would like to be able to live independently in the community in his own home and not a group home setting, as he plans to live with his fiancé soon (Exhibit 13, p. 73).

On December 6, 2023, an assessment for transfer of Waiver eligibility to the MFP-CL Waiver was conducted in person at the group home. In attendance at the assessment were: the appellant, the director of the group home, the group home clinician, a Certified Brain Injury Specialist (CBIS), residential staff members and the MassHealth nurse reviewers representing the MFP Waiver program. Additionally, the MassHealth nurse reviewers communicated with the DDS Human Service Coordinator and the appellant's mother by telephone and through e-mail correspondence after the meeting (Exhibit 13, p. 82). The assessment consisted of completion of MFP documents, including, the Minimum Data Set-Home Care (MDS-HC), Clinical Determination of Waiver Eligibility, Acquired Brain Injury (ABI)/MFP Waivers Community Risk Assessment, a review of the applicant's medical record, and a discussion with the facility staff (See, Exhibit 13, pp. 56-81).

The appellant's medical history primarily includes: a traumatic brain injury (TBI) after a motor vehicle accident as a minor child, dementia, history of polysubstance abuse (alcohol and marijuana), bipolar disorder, depression, and anti-social personality disorder (Exhibit 13, pp. 73, 93-95).

The UMass Waiver nurse conducted an eligibility visit at the appellant's group home on November 28, 2023 with the appellant and group home staff. During this meeting, the appellant was noted to be alert and friendly but appeared fixated to live independently in the community because he was engaged and planned to be married within the next year. During the waiver eligibility assessment review, MassHealth noted the following documentation that indicates the appellant is a significant safety risk to himself in the community due to impaired judgment and insight under the MFP-CL Waiver:

- [REDACTED] DDS-Incident Report describes an incident at the group home where the appellant was observed, and admitted to, smoking marijuana. At the conclusion of the incident, the appellant agreed to give the marijuana vape pen

to his mother because it is illegal to smoke marijuana at the group home (Exhibit 13, p. 108).

- [REDACTED] Case Manager note by the DDS Human Service Coordinator describes that the group home reported an incident involving the appellant going on a bike ride without informing the group home staff. Additionally, the appellant appeared upset regarding a situation with his partner not obtaining a [REDACTED]. The appellant engaged in property destruction at the group home, but he was able to calm down with staff support (Exhibit 13, p. 124).
- [REDACTED] Case Manager note by the DDS Human Service Coordinator describes that the appellant is concerned with how much money he was spending on his female partner. The appellant was also having sporadic stomach aches but declined to be seen for this. Additionally, the appellant was concerned about some arguments between his mother and sibling (Exhibit 13, p. 121).
- [REDACTED] Case Manager note by the DDS Human Service Coordinator states that the group home manager informed her that the appellant's mother had a discussion with him about the appellant's future. The appellant's mother explained to him that she would like the appellant to be moved out of the waiver before his fiancé moves to the [REDACTED]. The appellant's mother further explained certain details that she was planning for the appellant to become more independent, including a trial period for the appellant and his fiancé to live together for 3 months to see if they truly wanted to get married. She explained that even if the marriage does not happen, she would still like to continue the plan for him to move out of the MFP-RS home and live independently in his own apartment (Exhibit 13, p. 132).
- [REDACTED] Case Manager note by the DDS Human Service Coordinator describes a meeting that day with the appellant where he stated that he is more aware of his behavior and will not engage in maladaptive behaviors due to some changes in his medications that he wanted to discuss with his physician. The appellant indicated that he thinks his girlfriend will be in the [REDACTED] around [REDACTED] [REDACTED] but he has an extensive arrest record (due to prior arrests) and the immigration lawyer stated that should not be an issue. The appellant continues to work with PT on strength and ability (Exhibit 13, p. 131).
- [REDACTED] The group home Annual Medical Review states that although the appellant has a right leg AFO brace ordered, he elects when he would like to wear it. Although it is recommended that he wears daily while he is awake (Exhibit 13, p. 118).

The DDS Risk Review dated June 7, 2023, indicates that since [REDACTED] the appellant has been under review by DDS RISK due to concerns regarding his impulsive behavior, impaired judgment, lack of insight as well as a history of [REDACTED]. It is believed that the appellant may present a risk to himself or the broader community, leading to regular meetings between the appellant's DDS ISP and the group home's residential team regarding his mood, behavioral patterns, adherence to medical protocols, and the impact of protective factors in his life. Based on the current circumstances, the team collaboratively develops an action plan for implementation. Currently, the residential team is instructed to continue implementing and updating staff interaction guidelines, as necessary, while also ensuring that the appellant maintains regular appointments with his psychiatrist, scheduled every two months or as needed (Exhibit 13, p. 145).

On December 21, 2023, the appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting. In addition, on December 27, 2023, as part of the MFP Waiver eligibility process, a second thorough clinical review was conducted by the Massachusetts Rehabilitation Commission (MRC) Clinical Team, who oversees the community living waiver. This comprehensive review showed that the appellant continues to have behaviors that have decreased with the support in a 24/7 residential setting provided by MFP-RS Waiver and is psychiatrically and medically stable in this Waiver. The two teams have concluded that without these supports, the appellant would be at high risk for medical and psychiatric decompensation, including him being at a higher risk for relapse of [REDACTED] and impulsivity. On January 2, 2024, MassHealth's clinical and professional opinion is that, at this time, that the appellant cannot be safely served in the community within the MFP-CL Waiver (Exhibit 13, pp. 52-53). The MassHealth nurse testified that the appellant currently remains eligible for the MFP-RS Waiver.

The appellant's representative testified that certain portions of the documentation submitted by the MassHealth nurses needs clarification and correction. Specifically, the appellant's representative noted that part of the assessment (Section F. "Social Functioning") indicates that the appellant is alone for about one hour during the day (Exhibit 13, p. 59). She clarified that when the appellant is at his parent's house or a family member's house, he can be left alone for long periods of time. The group home clinician, where the appellant resides, added that while at the group home, the appellant has community alone time. She explained that the appellant's alone time was previously suspended approximately 3 years ago, however, the appellant's alone time has increased since then which affords him the ability to ride his bicycle, and his E-bike, work while unsupervised, attend grocery shopping, have his hair cut, attend the gym, and independently transport himself while doing so.

The appellant's representative stated that the assessment further indicates that the appellant does not have informal support services. *Id.* She clarified that the appellant's mother is his guardian and both parents are actively involved. Additionally, the appellant speaks to his girlfriend

daily. His girlfriend is comfortable telling the appellant when he is out of line. Further, the appellant's aunt and uncle live one mile away and his cousins live nearby as well. The appellant's representative explained that all the appellant's contacts described above are available to give advice, emotional support, in-person support and assistance. Thus, the appellant has a large, supportive, in-person network.

In response, the MassHealth nurse explained that this particular section of the assessment (Section G. Informal Support Services) solely refers to Activities of Daily Living (ADLs) that the appellant just received over the last seven days, indicating that he does not need extensive help from family, friends, or neighbors.

With respect to the appellant's support system in the community, his representative testified that in terms of finances, the appellant's mother is his guardian and his representative payee. If the appellant were to reside in the community, he would want help with paying his bills and with budgeting, whether it is from support staff through the CL program, or his mother as his rep-payee. That is one of the appellant's expectations. Similarly, in terms of the appellant's medications, while the appellant talks about what he does not want, his actions show differently. Here, the appellant has knowledge of the fact that if he wants to reside in the community, he must take his medications on a regular basis. The appellant would obtain assistance in doing so either from a nurse through the CL program, a home health agency, or his mother. The group home clinician added that although the appellant has disclosed at times that he wanted to stop taking his medication during times he was feeling frustrated, there have not been any incidents where the appellant refused to take his medication. Additionally, she noted that the appellant will advocate for his health during PCP and psychiatry appointments, though he consistently follows what the prescriber indicates.

As to transportation, the appellant's representative noted that the appellant regularly travels independently by bicycle. There are instances where the appellant is transported by vehicle. When he is being transported by vehicle, while there have been instances where the appellant threatened to jump out of the vehicle, he has never attempted it. Rather, the appellant is simply a big talker. Additionally, the appellant can learn new routes, he is able to take public transportation independently and while taking college courses after his TBI occurred, he traveled safely on his own to

With respect to the portion of the assessment that indicates there are complex medical conditions present, the appellant's representative stated that it is unclear how that is defined (See, Exhibit 13, p. 70). She testified that the appellant was diagnosed years ago as bipolar, and the impetus was because his physician was trying to get him into a dual diagnosis program for alcoholism. Additionally, there are several references in the MassHealth submission pertaining to personality disorders and anti-social personality disorders that the appellant's representative stated are unclear to her where those diagnoses came from, as they were not indicated in the appellant's recent psychological examination nor is the appellant aware of these diagnoses (See, Exhibit 13, p.

74). Further, the appellant has abstained from alcohol and drugs for the past 15 years, absent some instances of marijuana use. The appellant's mother added that on one occasion where he was observed by group staff using marijuana, the appellant did not deny it.

The appellant's representative further testified that the MassHealth Nurse Reviewer Clinical Summary states that in [REDACTED] the appellant was charged with enticing a minor and threatening to hurt a law enforcement officer (See, Exhibit 13, p. 73). She explained that additional context is required to understand the appellant's position then. The appellant was drinking and riding his bicycle and well known by the police at that time. He was targeted by a police officer on [REDACTED] and all charges were dismissed (See, Exhibit 14). The appellant's representative took exception to the way the incident is written in the summary as it alludes to the appellant being a risk when in fact, he was targeted.

As to the AFO leg brace ordered, the appellant explained that it was painful to use while he was working. He further explained that when working, he stands for longer periods of time and needs assistance with his gait. The appellant expressed this issue to his manager, who in turn, changed his job position to accommodate him. Presently, he is still employed. The group home clinician added that the appellant will always adhere to the medical advice given to him, though it occasionally takes him a little time to process. Moreover, the appellant is very proactive in his own medical care and pays attention to what is going on with his body.

The appellant's representative further noted that the Summary indicates that the appellant frequently orders fast food delivery as meal options instead of participating in meal preparation (See, Exhibit 13, p. 74). The appellant explained that he likes to eat and meal preparation at the group home entails preparing food, such as boiled hamburger, that does not entice his appetite as he comes from a family of good cooks. Recently though, the appellant has become more engaged in meal preparation, including preparing fajitas and chili, for example.

The appellant's representatives further discussed instances where the appellant displayed aggression that are included in the Summary, noting that the [REDACTED] date was the last occurrence documented. At that time, the appellant upturned a kitchen table and/or desk, though it was during COVID so he was in his room at a time where many individuals were feeling upset and/or nervous. While the appellant has displayed verbal aggression since that time, particularly when upset, it is not followed by a physical act. The appellant appears to have developed coping skills when frustrated or nervous and he continues to improve. Moreover, he has a better insight on his communication skills and although there have been previous instances involving altercations with his roommate, currently the appellant assists his roommate with group staff and appears more cordial with him.

As to DDS concerns raised, the appellant's representatives stated that their recollection was that there were no concerns raised from a clinical standpoint. Rather, the concerns were from a financial standpoint surrounding potential exploitation regarding the appellant's girlfriend.

However, there is no longer a concern since the appellant's family has since met his girlfriend in-person since and his mother, as his rep-payee is aware of legal constraints that would prevent anyone else from accessing the appellant's income. The appellant's mother added that she spoke to his girlfriend at length and the girlfriend understands expectations if she were to move to the [REDACTED]. Additionally, a recent neuropsychological and projective evaluation performed on the appellant indicates that he demonstrates consistent and effective language capacities, and effective and efficient problem-solving skills (See, Exhibit 13, pp. 18-19). Moreover, the recent evaluation is devoid of a diagnosis involving personality disorder or anti-social behavior (Exhibit 13).

The appellant's representatives stated that the appellant utilizes his group home support staff as necessary. If the appellant were to reside in the community, they feel that he would utilize available, continuous support from his family members. The appellant's parents testified to additional examples where the appellant handled stressful situations with ease, including planning a trip to meet his fiancé in person.

The MassHealth nurse asked whether the appellant's group home clinician was part of DDS as she was present during the appellant's assessment. The clinician clarified that she was not part of DDS, rather, she is part of neuro-care and wanted to support the appellant at the hearing as she has worked with him since [REDACTED]. The MassHealth nurse explained that it was DDS that brought this case to her team, so the clinician's present role was unclear to her. Further, it appears that the appellant can work and do different things in the community. However, when he returns to the group home, he has support readily available. She explained that this support will not be made readily available under the MFP-CL waiver. The MassHealth nurse stated that the main difference between the two waivers is that the MFP-RS Waiver includes 24/7 staffing and supervision whereas the MFP-CL Waiver does not. The appellant stated that he does not use staff, rather, he will contact his fiancé or a family member.

The MassHealth representative further stated that the documentation referenced in submission was given to her by DDS, and therefore she is limited to review of that information in determining eligibility. She noted receiving the appellant's neuropsychological evaluation and additional documentation submitted, however, this information is very different from the information that is included in the documentation submitted by DDS. She testified that while the appellant's incidents appeared to have taken place in the past, at the time of his assessment, there was nothing in writing from DDS that indicated that the appellant was doing so well. Thus, what the appellant and his representatives are currently testifying to at the hearing, is not included in any documentation or notations that were provided to the MassHealth nurse at the time the decision was made to deny the appellant's request to transfer to the MFP-CL waiver. She stated that group homes are mandated to report every 2 weeks, and she has not received anything since early of 2023 regarding the appellant. The appellant's representatives did not disagree, stating that they understand how the determination was made at the time of the assessment. They explained that the appellant can be mouthy and if you do not know him, his statements will be taken seriously.

The MassHealth representative agreed, noting that the issue was that she did not have any of this information beforehand, nor has she received any additional documentation from DDS since the assessment took place. She added that if there is a stark difference in the documentation given to her from DDS up to present, her suggestion is to have the appellant re-apply for the MFP-CL waiver.

Findings of Fact

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

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

1. The appellant is an adult male.
2. The appellant was approved for MFP-RS Waiver services in [REDACTED] and transitioned to a group home in [REDACTED] upon stabilization.
3. The appellant currently resides in the group home and remains eligible for the MFP-RS waiver.
4. In December of 2023, an assessment for the appellant's transfer of Waiver eligibility to the MFP-CL Waiver was conducted at the group home.
5. The appellant has a past medical history of a TBI, dementia, polysubstance abuse, bipolar disorder, depression and anti-social personality disorder.
6. The appellant disputes the bipolar and anti-social personality disorder diagnoses.
7. During the Waiver eligibility assessment review, MassHealth and DDS determined that the appellant is a significant safety risk to himself in the community due to impaired judgment and insight.
8. MassHealth noted the following events and episodes as examples of appellant's health and safety risks to himself and to others:
 - a. [REDACTED] DDS-Incident Report describes an incident at the group home where the appellant was observed, and admitted to, smoking marijuana. At the conclusion of the incident, the appellant agreed to give the marijuana vape pen to his mother because it is illegal to smoke marijuana at the group home (Exhibit 13, p. 108).

- b. [REDACTED] Case Manager note by the DDS Human Service Coordinator describes that the group home reported an incident involving the appellant going on a bike ride without informing the group home staff. Additionally, the appellant appeared upset regarding a situation with his partner not obtaining a [REDACTED]. The appellant engaged in property destruction at the group home, but he was able to calm down with staff support (Exhibit 13, p. 124).
- c. [REDACTED] Case Manager note by the DDS Human Service Coordinator describes that the appellant is concerned with how much money he was spending on his female partner. The appellant was also having sporadic stomach aches but declined to be seen for this. Additionally, the appellant was concerned about some arguments between his mother and sibling (Exhibit 13, p. 121).
- d. [REDACTED] Case Manager note by the DDS Human Service Coordinator states that the group home manager informed her that the appellant's mother had a discussion with him about the appellant's future. The appellant's mother explained to him that she would like the appellant to be moved out of the waiver before his fiancé moves to the [REDACTED]. The appellant's mother further explained certain details that she was planning for the appellant to become more independent, including a trial period for the appellant and his fiancé to live together for 3 months to see if they truly wanted to get married. She explained that even if the marriage does not happen, she would still like to continue the plan for him to move out of the MFP-RS home and live independently in his own apartment (Exhibit 13, p. 132).
- e. [REDACTED] Case Manager note by the DDS Human Service Coordinator describes a meeting that day with the appellant where he stated that he is more aware of his behavior and will not engage in maladaptive behaviors due to some changes in his medications that he wanted to discuss with his physician. The appellant indicated that he thinks his girlfriend will be in the [REDACTED] but he has an extensive arrest record (due to prior arrests) and the immigration lawyer stated that should not be an issue. The appellant continues to work with PT on strength and ability (Exhibit 13, p. 131).
- f. [REDACTED] The group home Annual Medical Review states that although the appellant has a right leg AFO brace ordered, he elects when

he would like to wear it. Although it is recommended that he wears daily while he is awake (Exhibit 13, p. 118).

9. A DDS Risk Review dated June 7, 2023 indicated that since [REDACTED] the appellant has been under review by DDS RISK due to concerns regarding his impulsive behavior, impaired judgment, lack of insight, as well as a history of [REDACTED]
10. The June 7th DDS Risk Review further indicated that it is believed that the appellant may present a risk to himself or the broader community, leading to regular meetings between his DDS ISP and residential staff regarding his mood, behavioral patterns, adherence to medical protocols, and the impact of protective factors in his life.
11. The June 7th DDS Risk Review states that currently, the appellant's residential team is instructed to continue implementing and updating staff interaction guidelines as necessary, while also ensuring that the appellant maintains regular appointments with his psychiatrist, scheduled every two months or as needed.
12. In December of 2023, MassHealth and MRC determined that the appellant cannot be safely served in in the community within the MFP-CL waiver as the record showed that he continues to have behaviors that have decreased with the support of a 24/7 residential setting provided by the MFP-RS waiver. With these supports, the appellant would be at a higher risk for relapse.
13. By notice dated January 2, 2024, MassHealth notified the appellant that it determined that he was not clinically eligible for the MFP-CL Waiver.
14. The appellant timely appealed this MassHealth action to the Board of Hearings.

Analysis and Conclusions of Law

The issue in this case is whether MassHealth appropriately determined that the appellant is not clinically eligible to transfer from the MFP-RS Waiver to the MFP-CL Waiver. The MFP home-and community-based services waivers are described at 130 CMR 519.007(H). The requirements to maintain eligibility for the MFP-CL Waiver are set forth below as follows:

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

(a) Clinical and Age Requirements. The MFP Community Living Waiver, as authorized under section 1915(c) of the Social Security Act, allows an applicant or member who is certified by the MassHealth agency or its agent to be in need of nursing facility services, chronic disease or rehabilitation hospital services, or, for participants [REDACTED] years of

age or [REDACTED] years of age and older, psychiatric hospital services to receive specified waiver services, other than residential support services in the home or community, if he or she meets all of the following criteria:

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

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

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

In late 2023, MassHealth held an eligibility visit that took place at the appellant's residential group home. In reviewing the assessment of the appellant's request to transfer from the MFP-RS Waiver to the MFP-CL Waiver, MassHealth determined that he cannot be safely served in the community within the terms of the waiver (130 CMR 519.007(H)(2)(a)(5)). The appellant has not demonstrated otherwise. First, the record confirms that the DDS Risk Review dated June 7, 2023 indicates that since [REDACTED] the appellant has been under review by DDS RISK due to concerns regarding his impulsive behavior, impaired judgment, and lack of insight. Further, the June 7th DDS Risk Review indicates that it is believed that the appellant may present a risk to himself or to the broader community, leading to regular meetings between his DDS ISP and residential team regarding his moods, behavioral patterns, adherence to medical protocols, and the impact of protective factors in his life.

Second, the record supports MassHealth's conclusion that the appellant has exhibited significant safety risks during the applicable time, including, smoking marijuana at the group home in one instance, and going on bike rides without informing the group home staff. Additionally, the appellant engaged in property destruction at the group home and though he was able to calm down with staff support, as explained by the MassHealth representatives, said staff support will not be available within the MFP-CL Waiver.

The current evidence reflects that appellant cannot be safely served in the community within the terms of the MFP-CL Waiver. I note the appellant's testimony and while I find it credible, MassHealth has persuasively argued that the additional information and documentation discussed at the hearing was not included in any of the documentation provided to DES at the time of its assessment. Because some of the testimony elicited at the hearing is not consistent with the documentation in the record, updated documentation to corroborate and confirm the testimony is needed. On this record, MassHealth has supported its determination that the appellant cannot be safely served in the community within the terms of the MFP-CL waiver.

This appeal is denied.²

Order for MassHealth

None.

² This denial does not preclude appellant and/or his representatives from re-applying for the MFP-CL Waiver, as discussed at the hearing. In light of the recent developments discussed at the hearing, the appellant is encouraged to do so.

Notification of Your Right to Appeal to Court

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

Kimberly Scanlon
Hearing Officer
Board of Hearings

CC:

[REDACTED]

[REDACTED]

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