

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2404817
Decision Date:	6/3/2024	Hearing Date:	May 16, 2024
Hearing Officer:	Brook Padgett		

Appellant Representatives:

Pro se



MassHealth Representatives:

Linda Phillips, RN, BSN, LNC-CSp.,
Associate Director Appeals, Regulatory
Compliance & Complex Cases Disability and
Community-based Services



*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 ABI/MFP-RS 130 CMR 519.007
Decision Date:	6/3/2024	Hearing Date:	May 16, 2024
MassHealth Rep.:	L. Phillips, RN, BSN, LNC-CSp.	Appellant Rep.:	Pro se
Hearing Location:	Quincy		

Authority

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

Jurisdiction

The Appellant received a notice dated March 05, 2024, stating: “This notice is to inform you that you have been determined not to be clinically eligible for Moving Forward Plan Residential Supports Home-and-Community-Based Services Waiver (also known as the MFP-RS Waiver). ... *This notice is about your clinical eligibility* ... which are found in the MassHealth Regulations at 130 CMR 519.007(H)(2). ... **You cannot be safely served in the community within the terms of this waiver.**” (Exhibit 1). The Appellant filed this appeal timely on March 26, 2024. 130 CMR 610.015(B); Exhibit 2). Eligibility is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the Appellant’s request for an MFP-RS Waiver.

Issue

Does the Appellant meet the eligibility requirements to receive an MFP-RS Waiver?

Summary of Evidence

MassHealth testified that there are two Home and Community Based Services (HCBS) Waivers that assist Medicaid-eligible persons move into the community and obtain community-based services, 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. The appellant applied for the MFP-RS Waiver on September 18, 2023.

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.

The MassHealth representative testified the appellant is [REDACTED] years old, and was admitted to [REDACTED] in [REDACTED] MA on [REDACTED] 2022. This facility specializes in neurobehavioral care for the treatment of traumatic brain injury and other neurobehavioral disorders. At [REDACTED] the appellant was able to receive mental and behavioral support, ADL care, and medication administration and management. The appellant's past medical history includes diffuse traumatic brain injury (TBI) at age [REDACTED] schizoaffective disorder bipolar type, conduct disorders, chronic neck/back pain, mild cognitive impairment, spinal stenosis, hypothyroidism, sleep terrors, chronic pharyngitis, obesity, generalized abdominal pain, suicidal ideations, and [REDACTED] due to [REDACTED]

On November 28, 2023, an assessment for Waiver eligibility was conducted in person at [REDACTED] in [REDACTED] MA. The Waiver assessment consists of completion of the following MFP documents: Minimum Data Set-Home Care (MDS-HC); ABI/MFP Clinical Determination Assessment; ABI/MFP Waivers Community Risks Assessment; a review of the applicant's medical record; and a discussion with the nursing facility staff.

During the current Waiver eligibility assessment review, the following documentation was noted:

- October 13, 2023: [REDACTED] Nursing Progress note states appellant, “continues on increased supervision (IS) for aggression. Verbally aggressive x 1 towards this nurse. Behavior tech redirected with positive effect”. Is being monitored each shift.
- November 16, 2023: [REDACTED] Activities note describes a trip to Walmart in the community that appellant attended. Appellant did not comply with community trip guidelines. She was loud and yelling at staff around the other shoppers. No further incidents were noted.
- November 22, 2023: [REDACTED] Behavior note indicates care plan was reviewed during clinical rounds to review her target behaviors and behavior date for the last quarter. Appellant “has exhibited 23 verbal aggressions, 0 property destruction, 1 accusatory, 0 intrusive, 3 physical aggressions, and 0 self-harm behaviors.” Appellant continues to be at risk for all target behaviors and no changes made at this time.
- January 23, 2024: [REDACTED] Nursing note states appellant was extremely agitated most of the shift. She was assessed to be very delusional and accusatory. She pounded the counter and alternated behaviors between accusatory, anger and uncontrollable crying. Appropriate staff were notified of this incident.

On February 22, 2024, the appellant’s case was discussed at the MassHealth Waiver Clinical Team review meeting which includes Massachusetts Rehabilitation Commission (MRC) and Department of Developmental Services (DDS). In addition, on February 28, 2024, as part of the MFP Waiver eligibility process, a second clinical review was conducted by the MRC Clinical Team. Based on medical record documentation, and interviews with nursing facility staff, MassHealth, MRC, and DDS determined the appellant is a significant health and safety risk to herself and others. The Appellant continues to be at risk due to psychiatric instability with ongoing aggressive behaviors and she requires a higher level of medical support and supervision that cannot be provided by the MFP-RS Waiver. Therefore, it is MassHealth’s clinical and professional opinion that the appellant cannot be safely served in the community within the MFP-RS Waiver. (Exhibit 4).

The appellant responded that she did not understand the RS-Waiver and that she needs nursing assistance. The appellant agreed that a group home under an RS-Waiver is not appropriate for her at this time. The appellant indicated she wanted to try to get to live closer to her sister and would look into rest homes or other facilities to meet her needs. The appellant stated even though she know she is not appropriate for an RS-Waiver that she would like a decision on her request.

Findings of Fact

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

1. The appellant is [REDACTED] years old, and was admitted to [REDACTED] in [REDACTED] MA on [REDACTED] 2022. (Exhibit 4 and testimony).
2. The appellant's past medical history includes diffuse TBI at age [REDACTED] schizoaffective disorder bipolar type, conduct disorders, chronic neck/back pain, mild cognitive impairment, spinal stenosis, hypothyroidism, sleep terrors, chronic pharyngitis, obesity, generalized abdominal pain, suicidal ideations, and [REDACTED] due to [REDACTED] (Exhibit 4 and testimony).
3. The appellant applied for a MH RS-Waiver and on November 28, 2023, an assessment for Waiver eligibility was conducted in person at [REDACTED] in [REDACTED] MA. (Exhibit 4 and testimony).
4. On February 22, 2024, the appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting which concluded that based on medical record documentation, and interviews with nursing facility staff, the appellant is a significant health and safety risk to herself and others as the appellant continues to be at risk due to psychiatric instability with ongoing aggressive behaviors and she requires a higher level of medical support and supervision that cannot be provided by the MFP-RS Waiver. (Exhibit 4 and testimony).
5. The appellant acknowledged she requires more nursing assistance than is provided by the RS-Waiver.

Analysis and Conclusions of Law

Eligibility for MassHealth's Home and Community Based Waiver program is governed by regulation 130 CMR 519.007 which states in pertinent part:

(H) Money Follows the Person Home- and Community-Based Services Waivers.

(1) Money Follows the Person (MFP) 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. (*Emphasis added*).

On March 05, 2024, the Appellant was determined ineligible for the MFP-RS waiver. The Waiver Eligibility Assessment Review determined the Appellant's medical care continues to be too medically complex to transition to a group home at this time. The Appellant agreed with the Waiver Eligibility Assessment Review and acknowledged that she is not ready for a group home setting.

Based on the assessment for waiver eligibility which consisted of MDS-HC; ABI/MFP Clinical Determination Assessment; ABI/MFP Waivers Community Risks Assessment; a review of the applicant's medical record; and a discussion with the nursing facility staff the evidence demonstrates the Appellant does not meet eligibility for the MFP-RS Waiver at this time, as she cannot be safely served in the community as she exhibits significant health and safety risks due to her multiple medical and psychiatric complexities. As a result, this appeal must be DENIED.

Order for MassHealth

Denied.

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.

Brook Padgett
Hearing Officer
Board of Hearings

