

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2406109
Decision Date:	9/12/2024	Hearing Date:	8/22/2024
Hearing Officer:	Patrick Grogan	Record Open to:	N/A

Appearance for Appellant:



Appearance for MassHealth:

Linda Phillips, RN


Interpreter:

N/A



*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:	MFP-CL Waiver
Decision Date:	9/12/2024	Hearing Date:	8/22/2024
MassHealth's Rep.:	Linda Phillips	Appellant's Rep.:	
Hearing Location:	Remote (Tel)	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 April 2, 2024, MassHealth denied the Appellant's application for an MFP-CL Waiver because MassHealth determined that the Appellant was not clinically eligible. (see 130 CMR 519.007(H)(2) and Exhibit 1). The Appellant filed this appeal in a timely manner on April 10, 2024 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the Appellant's application for an MFP-CL Waiver finding that the Appellant was not clinically eligible for the waiver. (Exhibit 1)

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.007(H)(2), in denying the Appellant's MFP-CL Waiver because of its finding that the Appellant cannot be safely served in the community within the Waiver.

Summary of Evidence

The Appellant is a MassHealth member over the age of [REDACTED] (Testimony, Ex. 4) The Appellant had been admitted to a hospital in [REDACTED] in [REDACTED] due to a urinary tract infection. The Appellant was subsequently transferred to a Skilled Nursing Facility in [REDACTED]. The Appellant was then discharged to her home with home care services. The Appellant reported that the homecare services that had been arranged never appeared and she was unable to eat, drink, bathe, or take her prescribed medications. The Appellant was readmitted to the hospital in [REDACTED] suffering from dehydration and malnutrition. Once the Appellant was medically stabilized, she was discharged to her current residence at [REDACTED] (hereinafter the "Rehab Facility") (Testimony, Exhibit 5, pg. 69).

The Appellant's medical history includes diagnoses for schizoaffective disorder, major depressive disorder (MDD), post-traumatic stress disorder (PTSD), a history of multiple psychiatric hospitalizations for depression, failure to thrive, ETOH misuse, chronic obstructive pulmonary disease (COPD), psoriasis and spinal stenosis with fusion (Testimony, Ex. 6, pg. 69) The Appellant is at risk of falls, mental health decompensation related to schizoaffective disorder and isolation. The Appellant exhibits health status decompensation related to refusals of lactulose, skin breakdown due to immobility and incontinence, difficulty evacuating in an emergency related to dependence on a lift to transfer and a wheelchair for locomotion, a history of alienating care staff due to a history of care refusal and accusatory behavior, and self-care deficit related to care refusal and comorbidities. (Exhibit 5, pgs. 71-72)

MassHealth was represented by a Registered Nurse (RN), the Associate Director of Appeals and Regulatory Compliance for UMass Chan Medical School. The Nurse testified regarding the Residential and Community waivers offered by MassHealth. The Nurse explained that MassHealth offers two home and community-based service (HCBS) Waivers; the MFP Residential Waiver (RS) and the MFP-CL Waiver. (Testimony, Exhibit 6) Both of these waivers aid individuals to move from a nursing home or hospital to an MFP-qualified residence in the community and obtain community-based services. The MFP-CL Waiver, specifically, 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 per day, 7 days per week. The Appellant applied for an MFP-CL Waiver, pursuant to 130 CMR 519.007(H)(2) on January 29, 2024 (Ex. 5, pg. 46).

Within the submission on behalf of UMass, the eligibility criteria for the MFP Waivers may be found. (Ex.5, pgs.6-7) Additionally, the criteria are codified within 130 CMR 519.007(H)(2)(a).

The Nurse testified that the criteria include:

- The applicant must be living in a nursing facility or long-stay hospital, and has resided 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; (Emphasis added)**
- 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
- For the MFP-RS Waiver, the applicant must need residential support services with staff supervision 24 hours/day, 7 days/week.

The Nurse testified that on March 12, 2024, an assessment for MFP-CL Waiver eligibility was conducted in person at the Rehab Facility. The Appellant was present along with a nurse, a social worker as well as a reviewing nurse from MassHealth. In addition, via telephone, appeared the Appellant's appeal representative as well as others. (Ex.5, pg. 79). The Nurse testified that the assessment consisted of the completion of MFP documentation including Minimum Data Set-Home Care (MDS-HC) (Ex.5, pgs. 51-64), Clinical Determination of Waiver Eligibility (Ex. 5, pgs. 65-73), Acquired Brain Injury (ABI)/MFP Waivers Community Risks Assessment (Ex. 5, pgs. 74-75), Risk Assessment-ABI-N/MFP-CL Caregiver Supplement (Ex. 5 pgs. 76-78), a review of the Appellant's medical record (Exhibit 5, pgs. 86-200), as well as a discussion with the nursing facility staff. (Testimony)

In the Minimum Data Set – Home Care Report, dated March 15, 2024, it is indicated that the Appellant requires assistance with multiple Activities of Daily Living (ADLs) and Instrumental (IADLs). Specifically, regarding the ADLs, the Appellant requires aid with Transfers, Bathing, Dressing and Undressing, Bladder and Bowel Care. Regarding the IADLs, the Appellant requires aid with Meal Preparation, Medication Preparation and Administration, Housework, Shopping, as well as Transportation. (Ex. 5, pgs. 55-56)

Within the submission by UMass are various behavioral health group notes, various physical therapy notes, as well as various notes from the Rehab Facility. (Exhibit 5, pgs. 82-200) In a behavioral health group note dated January 3, 2024, the Appellant inquired of the therapist, in very hushed tones, "are they sending me somewhere today?" The therapist indicated that the Appellant stated that she believes she is being abused but declined to say how or by who. In addition, the Appellant stated that she didn't trust anyone and that everyone was against her. (Exhibit 5, pg. 93).

In a subsequent behavioral health group note, dated January 13, 2024, the therapist

noted the Appellant presented as well-groomed and calm and willing to speak with the therapist. It was submitted that the Appellant had underwent changes in her medication over the previous weeks. The Appellant stated that the medication she was taking was helping her improve. The Appellant had reported that she was back in [REDACTED] and was letting go of past issues about which she had been angry. (Ex.5, pg. 107)

In a physical therapy note, dated January 20, 2024, it is written that the Appellant is at baseline. The note continues, indicating the Appellant has bilateral lower extremity contractures which limit her ability to stand and transfer. The Appellant is primarily wheelchair bound and utilizes a lift for all transfers. The Appellant is independent in wheelchair management throughout the Rehab Facility. (Ex. 5, pg.198).

In a subsequent behavioral health group, dated February 1, 2024, the therapist noted that the Appellant presented as angry. The Appellant stated, "I am getting very little cooperation for who I need help with to make decisions that are right for me." The staff nurse reported that the Appellant again began making negative remarks, exhibiting mild paranoia, and an increasingly angry mood over the previous 10 days. This was reportedly after a period of no negative remarks, paranoia, or accusatory statements from the Appellant. (Ex.5, pg. 114).

In a note from the Rehab Facility, dated March 18, 2024, it is memorialized that the Appellant was unable to tolerate a gradual dose reduction (GDR) of her medication prescribed to treat the Appellant's schizophrenia. The attempt to decrease this medication from 6 milligrams to 3 milligrams since March 10, 2024 through March 16, 2024 had caused the Appellant to remain in bed more and increased her paranoia symptoms. The medical team, including the Appellant, had agreed to increase the medication back to the original dose (Ex.5, pg. 128).

On March 21, 2024, The UMass Chan Waiver Complex Clinical Eligibility Team reviewed the Appellant's clinical assessment; community needs and risks. The summary specifically notes that the Appellant's medical history also includes hospitalizations in the summer of [REDACTED] pursuant to section 12¹ for major depression with delusions. The summary highlights that a

¹ MGL c. 123 §12 is titled Emergency Restraint and Hospitalization of Persons Posing Risk of Serious Harm by Reason of Mental Illness, and states, in part: A physician who is licensed pursuant to section 2 of chapter 112, an advanced practice registered nurse authorized to practice as such under regulations promulgated pursuant to section 80B of said chapter 112, a qualified psychologist licensed pursuant to sections 118 to 129, inclusive, of said chapter 112 or a licensed independent clinical social worker licensed pursuant to sections 130 to 137, inclusive, of said chapter 112 who, after examining a person, has reason to believe that failure to hospitalize such person would create a likelihood of serious harm by reason of mental illness may restrain or authorize the restraint of such person and apply for the hospitalization of such person for a 3-day period at a public facility or at a private facility authorized for such purposes by the department. (MGL c. 123 §12(a))

SLUMS² on April 20, 2023 was 19/30 prior to treatment for elevated ammonia and repeat SLUMS on May 8, 2023 was 26/30 noting mild cognitive impairment with a mental status that waxes and wanes related to metabolic encephalopathy for which the Appellant is given lactulose every 48hrs, although the Appellant refuses at times. The Appellant refused four times in January of 2024 and seven times in February of 2024. The Appellant was re-evaluated by physical therapy on January 20, 2024, at the request of nursing to address the Appellant's request to have therapy for use of slide board. She was noted to be dependent with a sara lift for transfers from bed to wheelchair and toilet transfers. It was noted that she is at baseline and that she lacks insight into her condition and risk factors. The summary indicates that per an MD note dated June 6, 2023, the Appellant requires 24-hour care. The Appellant has been observed to cycle through behaviors which include accusations towards staff such as alleged staff abuse (deemed unfounded), refusing to get out of bed, paranoia, refusing meals, and refusing medications. Psych closely monitors the Appellant as she is known to cycle very rapidly into episodes of depression and paranoia and recently as of March 18, 2024, was noted to have failed a GDR of her medication to treat her schizophrenia. The Appellant previously failed living alone in the community despite receiving 42 hours of aid through an elder services program. The review indicates that the Appellant is unable to identify any informal support and lacks insight into level of care needs. The UMass Chan Waiver Complex Clinical Eligibility Team concluded that the Appellant poses a significant health and safety risk to herself and continues to require 24/7 supports due to her psychiatric instability, physical care needs and lack of informal supports. Accordingly, the Team concluded that the Appellant cannot be safely served within the terms of the MFP-CL Waiver. The UMass Chan Waiver Complex Clinical Eligibility Team submitted its finding to the Massachusetts Rehabilitation Commission (MRC) for Clinical review. (Ex. 5, p. 72)

On March 27, 2024, the MRC Clinical Team met to review the recommendation of the UMass Chan Waiver Complex Clinical Eligibility Team that the Appellant be denied for the MFP-CL Waiver. Following the review of materials provided and the discussion of these materials, the MRC Clinical team concurred with the UMass Chan Waiver Complex Clinical Eligibility Team's recommendation for denial of eligibility. The MRC Clinical Team noted that the Appellant has an extensive psychiatric and substance use disorder history along with a history of failure to thrive while in the community. While in her current facility, the Rehab Facility, the Appellant has exhibited ongoing psychiatric symptoms such as delusional thinking, paranoia, and depressed mood. Her presentation has been very inconsistent in the context of multiple medication adjustments. The Appellant exhibits frequent, chronic behaviors daily that include accusatory statements, paranoia, resisting care, and crying; redirection typically is not effective and sometimes worsens her behaviors. The Appellant has identified informal support, but none have committed to being a live-in caregiver, and one friend admitted that she is exhausting to have as a friend given the constant complaints she makes. Based on this information, MRC

² The Saint Louis University Mental Status Examination (SLUMS), is a screening test for Alzheimer's disease and other kinds of dementia.

concluded that the Appellant is psychiatrically unstable and requires 24/7 care and supervision at this time. Accordingly, the MRC Clinical Team concurred with the UMass Chan Waiver Complex Eligibility Team that the Appellant cannot be safely served within the terms of the MFP-CL Waiver.

The Appellant and the Appeal Representative appeared and testified on behalf of the Appellant. The Appellant stated that the Rehab Facility has undergone a lot of turmoil. (Testimony) The Appellant stated that many of the workers that were present during the Waiver meeting no longer work at the Rehab Facility and the Rehab Facility is under state control. (Testimony) The Appeal Representative confirmed that the Rehab Facility is under receivership. (Testimony).

The Appellant testified that prior to her admission to the Rehab Facility, she had procured a two-bedroom apartment in [REDACTED] which she continues to pay for to this day. (Testimony) All of the Appellant's personal belongings are in the apartment, and she wishes to return to the apartment through the MFP-CL Wavier program. (Testimony) The Appellant complained of the restrictions in her attempts to obtain physical therapy. (Testimony). The Appellant was seeking to have additional physical therapy to aid her in becoming independent with her transfers but surmised that the turmoil at the facility may be a cause of the lack of physical therapy services she has received. (Testimony)

The Appellant stated that all her diagnoses were accurate, except she disputed the diagnosis of schizophrenia. (Testimony) When asked if she was still on the medication for schizophrenia, that Appellant stated she was unsure of which medications she was currently prescribed. (Testimony). When the Appeal Representative was asked about the schizophrenia diagnosis, the Appeal Representative stated that as an advocate for the Appellant, she does not have the medical expertise to ascertain the Appellant's diagnosis. (Testimony) When asked whether she contacted any of the Appellant's physicians to clarify the dispute regarding the Appellant's diagnosis of schizophrenia, the Appeal Representative stated she had not. (Testimony) The Appeal Representative denied any knowledge of the specific medications the Appellant was currently taking. (Testimony). The Appeal Representative offered to check with the Rehab Facility staff to see if the Appellant was still taking her schizophrenia medication. (Testimony) Without objection during the Hearing, the Appeal Representative inquired and confirmed that the Appellant is still taking the schizophrenia medication at 3mg. (Testimony) The Appellant indicated that the decrease to 3 milligrams³ had occurred approximately 3 weeks ago. (Testimony)

Regarding the Appellant's history with alcohol, the Appellant explained that she has been sober for 40 years. (Testimony) The Appellant explained that she has arranged to continue with [REDACTED] while in the Rehab Facility. (Testimony) The Appellant highlighted the positive support

³ This is the same decrease in dosage that was unsuccessfully attempted in March of 2024.

she receives through her [REDACTED] program. (Testimony)

When discussing her paranoia, the Appellant stated that she believed that other causes exacerbated the symptoms, such as being “locked” in the Rehab Facility for the past several years. (Testimony) The Appellant noted that very shortly after her admission, the COVID pandemic broke out. (Testimony) The Appellant has been diagnosed with skin cancer, but the Appellant testified it is curable, and has been undergoing chemotherapy to combat the cancer. (Testimony) The Appellant stated that the reality of the cancer diagnosis is still setting in, and she has had discussions about possible hospice care. (Testimony) The Appellant explained that when she was taken out to treatments, the Rehab Facility discussed sending someone to accompany the Appellant on account of her schizophrenia diagnosis, and that the information about her diagnosis had gotten around the facility. (Testimony) The Appellant stated that staff began treating her differently since the diagnosis became known. The Appellant stated she wished to return to her apartment with the Waiver in place. (Testimony) The Appellant also discussed the possibility of transferring to an assisted living facility, however the Appeal Representative noted that the facility did not have lifts and was unable to accommodate someone with the Appellant’s physical needs. When asked if the Appeal Representative had any concerns about the Appellant residing in the community, the Appeal Representative stated that with the proper supports in place, she would not have any concerns. (Testimony)

The Nurse pointed out that if the assisted living facility was unable to accommodate the Appellant’s physical needs, there were serious concerns about the Appellant thriving without any supports in place. (Testimony) The Appellant does not have any supports currently in place, although the Appellant noted a “slim” chance that a friend would pay for a part-time care giver to live with the Appellant in her apartment. (Testimony) The Nurse noted concerns with the Appellant’s cancer diagnosis, the complications related to chemotherapy treatment, including weakness, confusion and incontinence. (Testimony) The Nurse noted that the MFP-CL program is a maximum of 12 hours, and with no current supports in place, the Appellant was not a candidate for the MFP-CL Waiver. (Testimony) The Nurse pointed out that there were other MassHealth programs for which the Appellant may qualify, but the MFP-CL Waiver was not appropriate for the Appellant at this time. (Testimony)

Findings of Fact

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

1. The Appellant is a MassHealth member over the age of [REDACTED] (Testimony, Ex. 4) The Appellant’s medical history includes diagnoses for schizoaffective disorder, major depressive disorder (MDD), post-traumatic stress disorder (PTSD), a history of multiple psychiatric hospitalizations for depression, failure to thrive, ETOH misuse, chronic obstructive pulmonary disease (COPD), psoriasis and spinal stenosis with fusion

(Testimony, Ex. 6, pg. 69) The Appellant is at risk of falls, mental health decompensation related to schizoaffective disorder and isolation. The Appellant exhibits health status decompensation related to refusals of lactulose, skin breakdown due to immobility and incontinence, difficulty evacuating in an emergency related to dependence on a sara lift to transfer and wheelchair for locomotion, a history of alienating care staff due to history of care refusal and accusatory behavior, and self-care deficit related to care refusal and comorbidities. (Exhibit 5, pgs. 71-72)

2. The Appellant's medical history also includes hospitalizations in the summer of [REDACTED] pursuant to section 12 for major depression with delusions. A SLUMS on April 20, 2023 was 19/30 prior to treatment for elevated ammonia and repeat SLUMS on May 8, 2023 was 26/30 noting mild cognitive impairment with a mental status that waxes and wanes related to metabolic encephalopathy for which the Appellant is given lactulose every 48hrs, although the Appellant refuse at times. The Appellant refused four times in January of 2024 and seven times in February of 2024. The Appellant is dependent with a sara lift for transfers from bed to wheelchair and toilet transfers. The Appellant lacks insight into her condition and risk factors. Through an MD note dated June 6, 2026, the Appellant requires 24-hour care. (Exhibit 5, pgs. 72-73)
3. The Appellant has been observed to cycle through behaviors which include accusations towards staff such as alleged staff abuse (deemed unfounded), refusing to get out of bed, paranoia, refusing meals, and refusing medications. Psych closely monitors the Appellant as she is known to cycle very rapidly into episodes of depression and paranoia. (Exhibit 5, pgs. 72-73)
4. The Appellant had been admitted to a hospital in [REDACTED] in [REDACTED] due to a urinary tract infection. The Appellant was subsequently transferred to a Skilled Nursing Facility in [REDACTED]. The Appellant was then discharged to her home with home care services. The Appellant reported that the homecare services that had been arranged never appeared and she was unable to eat, drink, bathe, or take her prescribed medications. The Appellant was readmitted to the hospital in [REDACTED] [REDACTED] suffering from dehydration and malnutrition. Once the Appellant was medically stabilized, she was discharged to her current residence at the Rehab Facility. (Testimony, Exhibit 5, pg. 69).
5. The Appellant applied for an MFP-CL Waiver, pursuant to 130 CMR 519.007(H)(2) on January 29, 2024 (Ex. 5, pg. 46).
6. On March 12, 2024, an assessment for MFP-CL Waiver eligibility was conducted in person at the Rehab Facility. The Appellant was present along with a nurse, a social worker as well as a reviewing nurse from MassHealth. In addition, via telephone, appeared the Appellant's appeal representative as well as others. (Ex.5, pg. 79).

7. The assessment consisted of the completion of MFP documentation including Minimum Data Set-Home Care (MDS-HC) (Ex.5, pgs. 51-64), Clinical Determination of Waiver Eligibility (Ex. 5, pgs. 65-73), Acquired Brain Injury (ABI)/MFP Waivers Community Risks Assessment (Ex. 5, pgs. 74-75), Risk Assessment-ABI-N/MFP-CL Caregiver Supplement (Ex. 5 pgs. 76-78), a review of the Appellant's medical record (Exhibit 5, pgs. 86-200), as well as a discussion with the nursing facility staff. (Testimony)
8. The Appellant requires assistance with multiple Activities of Daily Living (ADLs) and Instrumental (IADLs). Specifically, regarding the ADLs, the Appellant requires aid with Transfers, Bathing, Dressing and Undressing, Bladder and Bowel Care. Regarding the IADLs, the Appellant requires aid with Meal Preparation, Medication Preparation and Administration, Housework, Shopping, as well as Transportation. (Ex. 5, pgs. 55-56)
9. Pursuant to a behavior group note dated January 3, 2024, the Appellant inquired of the therapist, in very hushed tones, "are they sending me somewhere today?" The Appellant stated that she believes she is being abused but declined to say how or by who. In addition, the Appellant stated that she didn't trust anyone and that everyone was against her. (Exhibit 5, pg. 93).
10. Pursuant to a behavioral health group, dated February 1, 2024, the Appellant presented as angry. The Appellant stated, "I am getting very little cooperation for who I need help with to make decisions that are right for me." The Appellant again began making negative remarks, exhibiting mild paranoia, and an increasingly angry mood over the previous 10 days. This was reportedly after a period of no negative remarks, paranoia, or accusatory statements from the Appellant. (Ex.5, pg. 114).
11. The Appellant was unable to tolerate a gradual dose reduction (GDR) of her medication prescribed to treat the Appellant's schizophrenia. The attempt to decrease this medication from 6 milligrams to 3 milligrams since March 10, 2024 through March 16, 2024 had caused the Appellant to remain in bed more and increased her paranoia symptoms. The medical team, including the Appellant, had agreed to increase the medication back to the original dose (Ex.5, pg. 128).
12. On March 21, 2024, The UMass Chan Waiver Complex Clinical Eligibility Team reviewed the Appellant's clinical assessment; community needs and risks. The UMass Chan Waiver Complex Clinical Eligibility Team concluded that the Appellant poses a significant health and safety risk to herself and continues to require 24/7 supports due to her psychiatric instability, physical care needs and lack of informal supports. Accordingly, the Team concluded that the Appellant cannot be safely served within the terms of the MFP-CL Waiver. The UMass Chan Waiver Complex Clinical Eligibility Team submitted its finding to the Massachusetts Rehabilitation Commission (MRC) for Clinical review. (Ex.

5, p. 72)

13. On March 27, 2024, the MRC Clinical Team met to review the recommendation of the UMass Chan Waiver Complex Clinical Eligibility Team that the Appellant be denied for the MFP-CL Waiver. The MRC Clinical Team concluded that the Appellant is psychiatrically unstable and requires 24/7 care and supervision at this time. Accordingly, the MRC Clinical Team concurred with the UMass Chan Waiver Complex Eligibility Team that the Appellant cannot be safely served within the terms of the MFP-CL Waiver.

Analysis and Conclusions of Law

The instant appeal is governed by the MassHealth Regulations, specifically 130 CMR 519.007:

519.007: Individuals Who Would Be Institutionalized

130 CMR 519.007 describes the eligibility requirements for MassHealth Standard coverage for individuals who would be institutionalized if they were not receiving home- and community-based services.

The criteria for the MFP Community Living Waiver, for which the Appellant has applied, is found within 130 CMR 519.007(H)(2):

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

(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 [REDACTED] years of age or [REDACTED] 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 [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 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. (*Emphasis added*)

On January 29, 2024, the Appellant applied for Home-and Community-Based Services Waiver for the MFP-Community Living Waiver. (Ex. 5, p. 46) On April 2, 2024, MassHealth denied the Appellant's application for the MFP Community Living Waiver based upon 130 CMR 519.007(H)(2)(a)(5), and this appeal followed. (Ex. 5, pgs. 47-48) The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228. See also 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). Based upon the evidence presented, the Appellant has not met this burden.

The Appellant has demonstrated a history of psychiatric decompensation when not following the prescribed medication regimen. Symptoms of this decompensation include chronic behavioral challenges including paranoia, accusations, and isolationist behaviors. The Appellant has been observed to cycle through behaviors which include accusations towards staff such as alleged staff abuse (deemed unfounded), refusing to get out of bed, paranoia, refusing meals, and refusing medications. Psych closely monitors the Appellant as she is known to cycle very rapidly into episodes of depression and paranoia. The Appellant has a history of refusal of medications, including multiple refusals in the months immediately prior to the in-person Waiver eligibility assessment in March of 2024. The Appellant's medical history includes section 12 hospitalizations in [REDACTED]. In 2021, the Appellant, while living alone with services in place, was hospitalized due to dehydration, and in that episode the Appellant had gone without food, water, bathing, and medications. The Administrative Record indicates the Appellant still requires 24/7 care and monitoring due to the Appellant's psychiatric instability.

The March of 2024 attempt at gradual dose reduction (GDR) highlights the danger even a slight decrease in the Appellant's medication dosage poses. The symptoms and decompensation appeared within one week. Additionally, it is concerning that despite the Appellant's denial of the diagnosis, she continues to receive medication for schizophrenia. It is also concerning that the Appellant's dosage has recently been decreased to the amount that was intolerable in the March attempt to lower the dosage. The Appellant's relatively recent cancer diagnosis, as well as the Appellant's statement that she is still processing the reality of

the diagnosis, poses additional concerns regarding the mental stability of the Appellant. Adding these concerns with the Appellant's inability to identify any informal support and the Appellant's lack of insight into her level of care needs, the Appellant poses a safety risk to herself, were she to reside alone in the community, even with services in place, as exhibited in the fall of 2023.

Based on this record, the Appellant has not met the burden to show, by a preponderance of evidence, that the denial of MFP-CL Waiver was incorrect pursuant to 130 CMR 519.007(H)(2). This is based upon the current instability the Appellant exhibits, including the lack of a support structure for living in the community, recent changes in medication dosage that were unsuccessful just over 5 months ago, recent cancer diagnosis, and a history of a lack of success in the community. Failing to meet this burden, the appeal is 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.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the

address on the first page of this decision.

Patrick M. Grogan
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