

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	DENIED	Appeal Number:	2406921
Decision Date:	8/5/2024	Hearing Date:	06/27/2024
Hearing Officer:	Kenneth Brodzinski		

Appearance for Appellant:

Pro se

Appearance for MassHealth:

Linda Phillips, RN



*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:	8/5/2024	Hearing Date:	06/27/2024
MassHealth's Rep.:	Linda Phillips, RN	Appellant's Rep.:	Pro se
Hearing Location:	Quincy	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 notices dated April 16, 2024, MassHealth denied Appellant's requests to participate in the MassHealth the Moving Forward Plan Residential Supports Home and Community Based Services Waiver (hereinafter, "the MFP-CL Waiver") (Exhibit A). Appellant filed for an appeal in a timely manner on April 29, 2024 (see 130 CMR 610.015(B) and Exhibit A). Denial of a request to participate in a MassHealth program constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

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

Issue

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

Summary of Evidence

Both parties appeared by telephone. Prior to hearing, Masshealth submitted a packet of documentation (collectively, Exhibit B). Appellant's only submission was her Request For Hearing form (Exhibit A).

The MassHealth representative testified that MassHealth offers two home and community-based service (HCBS) Waivers; the MFP Residential Waiver (RS) and the MFP-CL Waiver. Both waivers help individuals move from a nursing home or long-stay hospital to an MFP-qualified residence in the community and obtain community-based services. The MFP-CL Waiver is for individuals who can move into their own home or apartment, or to the home of someone else, and receive services in the community that are less than 24 hours/day, 7 days per week. The MFP-RS Waiver is for individuals who need supervision and staffing 24 hours/day, 7 days per week. Appellant applied for the MFP-CL Waiver on January 8, 2024 (Exhibit B, Tab C, page 46).

The MassHealth representative testified that on January 10, 2024, an assessment for Waiver eligibility was conducted in person at [REDACTED] in [REDACTED] Massachusetts. In attendance at the assessment were: Appellant; Carli Guerrini RN; and Marilyn Hart RN, MassHealth Nurse Reviewer who was representing the MFP Waiver Program (Exhibit B, Tab C, page 76).

The assessment consists of completion of MFP documents including Minimum Data Set-Home Care (MDS-HC) (Exhibit B, Tab C, pages 50-63); Clinical Determination of Waiver Eligibility (Exhibit B, Tab C, pages 64-71); Acquired Brain Injury (ABI)/MFP Waivers Community Risks Assessment (Exhibit B, Tab C, page 72); a review of the applicant's medical record; and a discussion with the facility staff.

The assessment revealed the following: Appellant is a woman in her mid-60's. On September 27, 2023, Appellant arrived at [REDACTED] Hospital due to a skin rash and pain in her feet which she reported had been ongoing for months. Before this hospitalization, Appellant was staying with a friend because she was homeless. Hospital tests revealed that Appellant had atrial fibrillation with a rapid heartbeat. Appellant was also treated for multiple other conditions while she was admitted at the hospital and once stabilized, she was transferred to [REDACTED] [REDACTED] 2023 (Exhibit B, Tab C, page 69).

Appellant's medical history includes acute respiratory failure, pneumonia, longstanding persistent atrial fibrillation, syncope and collapse, chronic obstructive pulmonary disease, severe protein calorie malnutrition, chronic pain syndrome, osteoarthritis, gastritis with

bleeding, anemia, allergic rhinitis, ataxia, polypharmacy, substance abuse, suicidal ideation, and post-traumatic stress disorder (Exhibit B, Tab C, page 69).

During the Waiver eligibility assessment review, the following documentation indicates that Appellant has severe high-risk behaviors and non-compliance with care plans:

- [REDACTED] 2023: Discharge Summary from [REDACTED] Hospital describes that Appellant was admitted on [REDACTED] 2023, for right sided weakness. She was assessed by a physician that had reviewed her at prior admissions. On this day of admission, she was stating she had double vision and some listing (leaning) to the right. She reported to the physician that “she took a friend’s hydromorphone out of fear of withdrawal symptoms for missing a methadone dose”. At this hospital admission, it was suspected that this incidence could be a consequence of polypharmacy, over sedation and misuse of opioid medications (Exhibit B, Tab D, pages 116-125).
- [REDACTED] 2023: [REDACTED] Hospital ER reports that Appellant appeared to have an altered mental status after she returned to the SNF from a visit to the community today. Medical work-up and labs were requested due to a concern of increased narcotic use (Exhibit B, Tab D, pages 97-101).
- [REDACTED] 2023: [REDACTED] Interdisciplinary Note indicates that Appellant was assessed by nursing after she returned from her appointment and appeared significantly lethargic, slurring more than usual and pupils were pinpoint. Appellant stated something general about medication and weight loss regarding her condition. 1:1 started was later started on December 22, 2023 (Exhibit B, Tab D, page 164).
- [REDACTED] 2024: [REDACTED] session indicates that Appellant was involved in a physical altercation with her previous roommate. On this day of assessment, Appellant is calm, cooperative, and pleasant with this provider. Medication seeking behaviors are present. This report also states, “She has a behavior contract due to drug seeking behaviors and her continued attempts of getting methadone from the pain clinic” (Exhibit B, Tab D, page 206).
- [REDACTED] [REDACTED] Physician Note indicates that Appellant had an altercation with her roommate on January 22, 2024. The physician stated “She spat in her roommate’s face. The roommate pushed her away and [REDACTED] fell landing on her

buttocks. She reported hip pain and was taken to the ER for evaluation” (Exhibit B, Tab D, page 183).

- [REDACTED] 2024: [REDACTED] session states that Appellant was alert and easy to engage during this session. Appellant was also described as being very upset as she tends to blame everyone else for the things that go wrong in her life. The therapist had encouraged Appellant on how to follow through on some issues and counseled her to increase her coping skills (Exhibit B, Tab D, pages 210-211).
- [REDACTED] 2024: [REDACTED] Physical Therapy Discharge Summary indicates that Appellant is noncompliant with weight bearing restrictions on left lower leg (toe touch) and completing mobility independently with use of walker and wheelchair (Exhibit B, Tab D, page 214).
- [REDACTED] 2024: [REDACTED] Progress Note states that Appellant is alert and oriented. She continues on 15-minute safety checks due to previous behavioral issues. Out of bed to wheelchair and out to smoke with supervision. She refused the TED stockings (stockings to help decrease swelling in legs) to be applied but she refused to wear them, even with education provided (Exhibit B, Tab D, page 224).

The MassHealth representative testified that on April 4, 2024, Appellant’s case was discussed at the MassHealth Waiver Clinical Team review meeting. In addition, on April 10, 2024, as part of the MFP Waiver eligibility process, a second clinical review was conducted by the Massachusetts Rehabilitation Commission (MRC) Clinical team, who oversees the community living waiver.

Based on the in-person assessment; the completed MFP documentation including: MDS-HC, ABI/MFP Waivers Community Risks’ assessment, and Clinical Determination of Waiver Eligibility; and a thorough review of Appellant’s medical record by both MassHealth and MRC, it was determined that, currently, Appellant is at significantly high risk for substance use disorder and remains on the 15-minutes safety checks due to high-risk behaviors and illicit substance use. MD and Social Services have many concerns regarding Appellant’s use of substances and frequent transfers to the ER due to substance usage. Appellant also continues to be a significant safety risk to herself, and others related to ongoing substance abuse (Exhibit B, Tab C, pages 73-74). On April 16, 2024, a denial notice for the MFP-CL Waiver was mailed to Appellant (Exhibit B, Tab C, pages 47-48). Therefore, it is MassHealth’s clinical and professional opinion that, at this time, based on the available medical records and interviews as explained

above, Appellant cannot be safely served in the community within the MFP-CL Waiver.

Appellant testified that she has been on methadone for six years and regularly gets drug tested. She testified that she applied to a group home in [REDACTED] and has arranged for a nurse to monitor her methadone treatment. She testified she only received 30 milligrams of methadone daily.

Appellant discussed her various health conditions including advanced arthritis, a hip replacement and bone chips in her neck. She complained that her current facility has refused to give her pain medications, so she has been seeking pain relief. Appellant testified that she has never been in trouble for drug use.

Appellant explained the reason for having difficulties with her roommates including disputes over the control of the television. She also complained that her various roommates have violated her personal space and used her personal belongings. Appellant also described being assaulted by one of her roommates and denied that she attacked her. Appellant insisted that her roommates have always been the cause of problems arising in her living situation at the facility. Appellant denied hurting anyone or being confrontational. She noted that she is in a wheelchair. Appellant also discussed not receiving the physical therapy she has requested while at the facility. Appellant also discussed being subjected to unlawful strip searches by the nurses at the facility.

The hearing officer made various attempts to direct Appellant to address the issue of being able to be safely maintained in the community within the scope of the waiver program. Appellant largely ignored these attempts and instead addressed her behavior at her current facility. Appellant asserted that she abides by the rules and is cooperative and the only problems have been caused by her roommates. Appellant asserted that she is not a danger to anyone and if anything, she has been the victim of others aggression.

Findings of Fact

By a preponderance of the evidence, this record supports the following findings:

1. Appellant applied for the MFP-CL Waiver on January 8, 2024 (Exhibit B, Tab C, page 46).
2. The MFP-CL Waiver helps individuals move from a nursing home or long-stay hospital to an MFP-qualified residence in the community and obtain community-based services.

3. The MFP-CL Waiver is for individuals who can move into their own home or apartment, or to the home of someone else, and receive services in the community that are less than 24 hours/day, 7 days per week.
4. On January 10, 2024, an assessment for Waiver eligibility was conducted in person at [REDACTED] Massachusetts at which [REDACTED] were Appellant; Carli Guerrini RN; and Marilyn Hart RN, MassHealth Nurse Reviewer who was representing the MFP Waiver Program (Exhibit B, Tab C, page 76).
5. The Waiver assessment consists of completion of MFP documents including Minimum Data Set-Home Care (MDS-HC) (Exhibit B, Tab C, pages 50-63); Clinical Determination of Waiver Eligibility (Exhibit B, Tab C, pages 64-71); Acquired Brain Injury (ABI)/MFP Waivers Community Risks Assessment (Exhibit B, Tab C, page 72); a review of Appellant's medical record; and a discussion with the facility staff.
6. The Waiver assessment revealed the following: Appellant is a woman in her mid-60's. On [REDACTED] 2023, Appellant arrived at [REDACTED] Hospital due to a skin rash and pain in her feet which she reported had been ongoing for months. Before this hospitalization, Appellant was staying with a friend because she was homeless. Hospital tests revealed that Appellant had atrial fibrillation with a rapid heartbeat. Appellant was also treated for multiple other conditions while she was admitted at the hospital and once stabilized, she was transferred to [REDACTED] on [REDACTED] 2023 (Exhibit B, Tab C, page 69).
7. Appellant's medical history includes acute respiratory failure, pneumonia, longstanding persistent atrial fibrillation, syncope and collapse, chronic obstructive pulmonary disease, severe protein calorie malnutrition, chronic pain syndrome, osteoarthritis, gastritis with bleeding, anemia, allergic rhinitis, ataxia, polypharmacy, substance abuse, suicidal ideation, and post-traumatic stress disorder (Exhibit B, Tab C, page 69).
8. During the Waiver eligibility assessment review, documentation indicates that Appellant has severe high-risk behaviors and non-compliance with care plans.
9. [REDACTED] 2023: Discharge Summary from [REDACTED] Hospital describes that Appellant was admitted on [REDACTED] 2023, for right sided weakness. She was assessed by a physician that had reviewed her at prior admissions. On this day of admission, she was stating she had double vision and some listing (leaning) to the right.

She reported to the physician that “she took a friend’s hydromorphone out of fear of withdrawal symptoms for missing a methadone dose”. At this hospital admission, it was suspected that this incidence could be a consequence of polypharmacy, over sedation and misuse of opioid medications (Exhibit B, Tab D, pages 116-125).

10. [REDACTED] 2023: [REDACTED] Hospital ER reports that Appellant appeared to have an altered mental status after she returned to the SNF from a visit to the community today. Medical work-up and labs were requested due to a concern of increased narcotic use (Exhibit B, Tab D, pages 97-101).
11. [REDACTED] 2023: [REDACTED] Interdisciplinary Note indicates that Appellant was assessed by nursing after she returned from her appointment and she appeared significantly lethargic, slurring more than usual and pupils were pinpoint. Appellant stated something general about medication and weight loss regarding her condition. 1:1 started was later started on December 22, 2023 (Exhibit B, Tab D, page 164).
12. [REDACTED] 2024: [REDACTED] session indicates that Appellant was involved in a physical altercation with her previous roommate. On this day of assessment, Appellant is calm, cooperative, and pleasant with this provider. Medication seeking behaviors are present. This report also states, “She has a behavior contract due to drug seeking behaviors and her continued attempts of getting methadone from the pain clinic” (Exhibit B, Tab D, page 206).
13. [REDACTED] 2024: [REDACTED] Physician Note indicates that Appellant had an altercation with her roommate on January 22, 2024. The physician stated “She spat in her roommate’s face. The roommate pushed her away and [REDACTED] fell landing on her buttocks. She reported hip pain and was taken to the ER for evaluation” (Exhibit B, Tab D, page 183).
14. [REDACTED] 2024: [REDACTED] session states that Appellant was alert and easy to engage during this session. Appellant was also described as being very upset as she tends to blame everyone else for the things that go wrong in her life. The therapist had encouraged Appellant on how to follow through on some issues and counseled her to increase her coping skills (Exhibit B, Tab D, pages 210-211).

15. [REDACTED] 2024: [REDACTED] Physical Therapy Discharge Summary indicates that Appellant is noncompliant with weight bearing restrictions on left lower leg (toe touch) and completing mobility independently with use of walker and wheelchair (Exhibit B, Tab D, page 214).
16. [REDACTED] 2024: [REDACTED] Progress Note states that Appellant is alert and oriented. She continues on 15-minute safety checks due to previous behavioral issues. Out of bed to wheelchair and out to smoke with supervision. She refused the TED stockings (stockings to help decrease swelling in legs) to be applied but she refused to wear them, even with education provided (Exhibit B, Tab D, page 224).
17. On April 4, 2024, Appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting.
18. On April 10, 2024, as part of the MFP Waiver eligibility process, a second clinical review was conducted by the Massachusetts Rehabilitation Commission (MRC) Clinical team, who oversees the community living waiver.
19. Based on the in-person assessment; the completed MFP documentation including: MDS-HC, ABI/MFP Waivers Community Risks' assessment, and Clinical Determination of Waiver Eligibility; and a thorough review of Appellant's medical record by both MassHealth and MRC, it was determined that, currently, Appellant is at significantly high risk for substance use disorder and remains on the 15-minutes safety checks due to high-risk behaviors and illicit substance use.
20. MD and Social Services have many concerns regarding Appellant's use of substances and frequent transfers to the ER due to substance usage.
21. Appellant continues to be a significant safety risk to herself, and others related to ongoing substance abuse (Exhibit B, Tab C, pages 73-74).
22. On April 16, 2024, MassHealth issued a written denial notice for the MFP-CL Waiver to Appellant (Exhibit B, Tab C, pages 47-48).
23. It is MassHealth's clinical and professional opinion that, at this time, based on the available medical records and interviews as explained above, Appellant cannot be safely served in the community within the MFP-CL Waiver.

Analysis and Conclusions of Law

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

To be eligible for a MassHealth MFP Waiver:

- The applicant must be living in a nursing facility or long-stay hospital, and lived there for at least 90 consecutive days;
- The applicant must be 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.

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

At hearing, MassHealth presented a clinical professional who reviewed Appellant's medical documentation to support the agency's findings and conclusions about Appellant's current state of health and behaviors which place her outside of the regulatory requirements of the waiver program. MassHealth has shown that an extensive assessment was performed with Appellant and staff members from her current institutional residence in attendance. MassHealth has provided significant medical documentation supporting MassHealth's conclusion that Appellant's behaviors were outside of the safety parameters of the MFP-CL waiver program. There is no documentation that would support a finding that these behaviors would not be expected to continue. Appellant's assessment was considered by the MassHealth Waiver Clinical Team review which included input from the Massachusetts Rehabilitation Commission (MRC) and Department of Developmental Services (DDS). A second clinical assessment was thereafter performed which reached the same findings and conclusions.

At hearing, specific instances of disruptive and safety-related behaviors were discussed. Appellant denied all responsibility for any of the behavioral issues documented in her medical records, but she failed to provide any corroborative evidence to support her testimony.

Appellant's assertions and denials were entirely self-serving and at odds with all of the documentation provided by MassHealth. Moreover, despite the repeated urgings of the hearing officer, Appellant simply failed to address how she could be safely maintained in the community setting within the scope of services offered by the MFP-CL waiver program.

The most recent objective medical documentation shows that, at the time the assessment was performed, Appellant's multiple medical conditions and comorbidities together with her latest documented behaviors do not support a finding that Appellant can be safely served in the community within the terms of the subject MFP-CL Waiver.

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

Order for MassHealth

None.

Notification of Your Right to Appeal to Court

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

Kenneth Brodzinski
Hearing Officer
Board of Hearings

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