

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2406992
<b>Decision Date:</b>	6/14/2024	<b>Hearing Date:</b>	06/11/2024
<b>Hearing Officer:</b>	Marc Tonaszuck		

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Linda Phillips, RN, BSN, LNC-CSp., Associate  
Director, Appeals and Regulatory Compliance



*The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, Quincy, Massachusetts 02171*

## APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Moving Forward Program (MFP) Waivers
<b>Decision Date:</b>	6/14/2024	<b>Hearing Date:</b>	06/11/2024
<b>MassHealth's Rep.:</b>	Linda Phillips, RN, BSN, LNC-CSp., Associate Director, Appeals and Regulatory Compliance	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Quincy Harbor South	<b>Aid Pending:</b>	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 03/26/2024, MassHealth informed the appellant that it determined she was not clinically eligible for the Moving Forward Plan Community Living (MFP-CL) Waiver program because she cannot be safely served in the community within the terms of the MFP Waiver (130 CMR 519.007(H)(2); Exhibit 1). The appellant filed this appeal in a timely manner on 05/02/2024 (130 CMR 610.015(B); Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

### Action Taken by MassHealth

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

## Issue

The appeal issue is whether MassHealth was correct in determining that the appellant is not eligible for the MFP-CL Waiver because she cannot be safely served in the community within the terms of the Waivers.

## Summary of Evidence

Linda Phillips, RN, testified on behalf of MassHealth. The appellant testified on her own behalf. All parties appeared telephonically. Exhibits 1-4 were admitted to the hearing record.

Linda Phillips, RN, testified that MassHealth has two home and community-based service (HCBS) Waivers that assist Medicaid-eligible persons move into the community and obtain community-based services: the MFP-Residential services (RS) Waiver; and the MFP Community Living (CL) Waiver. Both waivers help individuals move from a nursing home or long-stay hospital to an MFP-qualified residence in the community and obtain community-based services. The MFP-CL Waiver is for individuals who can move into their own home or apartment, or to the home of someone else, and receive services in the community that are less than 24 hours/day, 7 days per week. The MFP-RS Waiver is for individuals who need supervision and staffing 24 hours/day, 7 days per week. The appellant applied for the MFP-CL Waiver on 12/20/2023 (Exhibit 4C, page 45).

Below are the eligibility criteria for the MFP Waivers (Exhibit 4A, page 6-7):

- 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.

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

On 03/05/2024, an assessment for Waiver eligibility was conducted in person at Wedgemere Healthcare in Taunton, MA. In attendance at the in-person assessment were the appellant, Chloe

Benton RN (Assistant Director of Nurses) ADON and Sarah Morse RN, MassHealth Nurse Reviewer who was representing the MFP Waiver Program. In addition, on 03/08/2024, Ms. Morse spoke to Maryse Delphonse, RN from 7-3 shift who knows the appellant quite well as a patient (Exhibit 4C, page 75).

The assessment consists of completion of MFP documents including Minimum Data Set-Home Care (MDS-HC) (Exhibit 4C, pages 50-63); Clinical Determination of Waiver Eligibility (Exhibit 4C, pages 64-72); Acquired Brain Injury (ABI)/MFP Waivers Community Risks Assessment (Exhibit 4C, pages 73-74); a review of the applicant's medical record; and a discussion with the nursing facility staff.

Ms. Phillips testified that the appellant is [REDACTED] years old and was living alone when she was admitted to Morton Hospital on [REDACTED]/2023, after she reported that she fell down a flight of stairs on 05/16/2023, resulting in multiple musculoskeletal injuries. In addition, the appellant was diagnosed with seizure, noncompliance with medication regimen, fractured coccyx, and chronic pain syndrome. The appellant's toxicology screen was positive in the ER for amphetamines and benzodiazepines, of which neither are prescribed to her. Also, she was positive for methadone, which she currently takes. The appellant stated to staff at Morton Hospital that she had difficulty remembering her medications and following up with her providers. She stated, "I am scared to be alone." The appellant was documented to have impaired insight, impaired judgement, impaired problem solving and impaired safety awareness. She was discharged on [REDACTED]/2023, to Wedgemere Healthcare for continued care and rehabilitation (Exhibit 4C, page 68).

The appellant's medical history includes unspecified convulsions, coccyx fracture, cognitive communication deficit, ataxia, hypotension, cervical radiculopathy, C5/C6 disc protrusion, lumbar radiculopathy, migraines, dorsalgia, chronic pain syndrome on Methadone, opioid dependence, COVID-19, insomnia, depression, and anxiety (Exhibit 4C, page 68).

During the Waiver eligibility assessment review, MassHealth noted the following documentation indicating the appellant's medical conditions:

- 11/16/2023: HealthDrive- Behavioral Health Group session indicates that the appellant verbalized, "that she was feeling under a cloud of stigma and suspicion by some staff persons, and she thought that inaccurate and prejudicial attitudes about her might be interfering with her needed care" (Exhibit 4D, page 85).
- 12/19/2023: HealthDrive-Behavioral Health Group session indicates that the appellant's pain appears to be well controlled at this time, as reported by staff. She participates in facility activities and no reported issues of sleep/appetite, and current psychotropic (medication that affects behavior and mood) medications appear appropriate (Exhibit 4D, page 103).
- 01/09/2024: HealthDrive-Behavioral Health Group session states the appellant was seen

today by the therapist per request of the SNF staff. Recently, staff have raised concerns that recently the appellant was taking medications other than those prescribed to her. Staff had tested her urine, and the test was positive for benzodiazepines, which she is not prescribed for. The physician also had prescribed an additional dose of Trazadone (medication to treat depression) in the afternoon for the appellant. Therefore, there are two scheduled doses for this medication prescribed for the appellant (Exhibit 4D, page 107).

- 01/15/2024: Wedgemere Healthcare Progress Notes indicate that the administrator had talked with the appellant about her concerns regarding having her medications crushed. She requested a toxicology screen in one month and then to readdress the crushing medications process at that time. The appellant also discussed other concerns about another resident with the administrator and these concerns will be addressed (Exhibit 4D, page 139).
- 02/28/2024: ACO Health Solutions-Laura Cline, FNP-BC was assessing the appellant for her necessity of starting the prescription Methadone 60 mg every am (a medication taken daily to reduce symptoms and cravings for opioids). Ms. Cline states that the nursing staff has been educated in terms of side effects, like drowsiness, constipation, and agitation. These possible side effects can be from Methadone and nursing staff were instructed to notify Ms. Cline of any significant side effects and medication can be discontinued if necessary (Exhibit 4D, page 204-205).

Ms. Phillips testified that, on 03/14/2024, the appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting. In addition, on 03/20/2024, 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. MassHealth and MRC determined that the appellant is a significant health and safety risk to herself due to substance abuse in the setting of uncontrolled anxiety and poor insight/judgment by using unprescribed benzodiazepines which she tested positive for when they are not prescribed for her. In addition, the appellant has a history of medication noncompliance while in the community, related to her seizure disorder and as a result, she has experienced seizures and falls with injury requiring hospitalization. The appellant also lacks an informal support that will be living with her in the community.

Therefore, it is MassHealth's clinical and professional opinion that, at this time, based on the available medical records and interviews, the appellant cannot be safely served in the community within the MFP-CL Waiver. On 03/26/2024, a denial notice for the MFP-CL Waiver was mailed to the appellant (Exhibit 4C, pages 46-47).

The appellant testified that "all of that could not be more untrue." She testified that she did indeed fall and suffered lumbar and cervical injuries. She suffers from convulsions due to pressure on her spinal column. She addressed her medications next. The appellant testified that she had a prescription for the "benzos" in the past and still "had them on me" when she went to the hospital.

She also takes Klonopin 0.5 mg. three times a day. She took “a couple” before she went to the hospital. The appellant stated that the toxicology screens “never occurred.” She referenced that three people were fired from the facility “because of untrue documentation in my chart,” and they “illegally went through my stuff.” She asserted she can be safely served in the community because “there is no way I need someone to live with or watch over me.” She reported that her “seizures are [now] under control because she was not on the correct dose of medications.” The appellant testified that she is in “constant pain,” and she has been “waiting a year to see a doctor” for her disc problems because “this place screws up my appointments.” She argued that “this place is the problem,” and she “can live on my own.”

## Findings of Fact

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

1. MassHealth offers two home, and community-based service (HCBS) waivers; the MFP Waiver for Residential Services (RS), and the MFP Community Living (CL) Waiver. Both Waivers help individuals move from a nursing home or long-stay hospital to an MFP qualified residence in the community and obtain community-based services.
2. The MFP-CL Waiver is for individuals who can move into their own home or apartment, or to the home of someone else, and receive services in the community that are less than 24 hours/day, 7 days per week.
3. The MFP-RS Waiver is for individuals who need supervision and staffing 24 hours/day, 7 days per week.
4. The appellant applied for the MFP-CL Waiver on 12/20/2023.
5. The appellant is [REDACTED] years old and was living alone when she was admitted to Morton Hospital Emergency Room (ER) on [REDACTED]/2023, after she reported that she fell down a flight of stairs on 05/16/2023, resulting in multiple musculoskeletal injuries. In addition, the appellant was diagnosed with seizure, noncompliance with medication regimen, fractured coccyx, and chronic pain syndrome.
6. In the ER, appellant’s toxicology screen was positive for amphetamines and benzodiazepines, of which neither are prescribed to her. Also, she was positive for methadone, which she currently takes.
7. The appellant stated to staff at Morton Hospital that she had difficulty remembering her medications and following up with her providers. She stated, “I am scared to be alone.”

8. The appellant was documented to have impaired insight, impaired judgment, impaired problem solving and impaired safety awareness.
9. The appellant was discharged from Morton Hospital on [REDACTED] 2023, to Wedgemere Healthcare (SNF) for continued care and rehabilitation.
10. The appellant's medical history includes unspecified convulsions, coccyx fracture, cognitive communication deficit, ataxia, hypotension, cervical radiculopathy, C5/C6 disc protrusion, lumbar radiculopathy, migraines, dorsalgia, chronic pain syndrome on Methadone, opioid dependence, COVID-19, insomnia, depression, and anxiety.
11. In a note dated 01/09/2024, HealthDrive-Behavioral Health Group session states the appellant was seen by the therapist per request of the SNF staff. Recently, staff have raised concerns that recently the appellant was taking medications other than those prescribed to her. Staff had tested her urine, and the test was positive for benzodiazepines, which she is not prescribed.
12. On 03/14/2024, the appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting. In addition, on 03/20/2024, 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.
13. MassHealth and MRC determined that the appellant is a significant health and safety risk to herself due to substance abuse in the setting of uncontrolled anxiety and poor insight/judgment by using unprescribed benzodiazepines which she tested positive for when they are not prescribed for her. In addition, the appellant has a history of medication noncompliance while in the community, related to her seizure disorder and as a result, she has experienced seizures and falls with injury requiring hospitalization.
14. The appellant lacks an informal support that will be living with her in the community.
15. Through a notice dated 03/26/2024, MassHealth informed the appellant that it determined she was not clinically eligible for the Moving Forward Plan Community Living (MFP-CL) Waiver program because she cannot be safely served in the community within the terms of the MFP Waiver.

## **Analysis and Conclusions of Law**

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

described in subpart (H) as follows:

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

(1) Money Follows the Person (MFP)<sup>1</sup> Residential Supports Waiver.

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

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

(b) Eligibility Requirements. In determining eligibility for MassHealth Standard and for these waiver services, the MassHealth agency determines income eligibility based solely on the applicant or member regardless of his or her marital status. The applicant or member must

1. meet the requirements of 130 CMR 519.007(H)(1)(a);
2. have countable income that is less than or equal to 300% of the federal benefit rate (FBR) for an individual;
3. have countable assets of \$2,000 or less for an individual and, for a married couple

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<sup>1</sup> MassHealth renamed this program the Moving Forward Plan (MFP).



if the initial Waiver eligibility determination was on or after January 1, 2014, have assets that are less than or equal to the standards at 130 CMR 520.016(B): Treatment of a Married Couple's Assets When One Spouse Is Institutionalized; and

4. not have transferred resources for less than fair market value, as described in 130 CMR 520.018: Transfer of Resources Regardless of Date of Transfer and 520.019: Transfer of Resources Occurring on or after August 11, 1993.

(c) Enrollment Limits. Enrollment in the MFP Residential Supports Waiver is subject to a limit on the total number of waiver participants. The number of participants who can be enrolled in this waiver may be limited in a manner determined by the MassHealth agency.

(d) Waiver Services. Eligible members who are enrolled as waiver participants in the MFP Residential Supports Waiver are eligible for the waiver services described in 130 CMR 630.405(C): Money Follows the Person Residential Supports (MFP-RS) Waiver.

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

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

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

(b) Eligibility Requirements. In determining eligibility for MassHealth Standard and for these waiver services, the MassHealth agency determines income eligibility based solely

on the applicant's or member's income regardless of his or her marital status. The applicant or member must

1. meet the requirements of 130 CMR 519.007(H)(2)(a);
2. have countable income that is less than or equal to 300% of the federal benefit rate (FBR) for an individual;
3. have countable assets of \$2,000 or less for an individual and, for a married couple if the initial Waiver eligibility determination was on or after January 1, 2014, have assets that are less than or equal to the standards at 130 CMR 520.016(B): Treatment of a Married Couple's Assets When One Spouse Is Institutionalized; and 4. not have transferred resources for less than fair market value, as described in 130 CMR 520.018: Transfer of Resources Regardless of Date of Transfer and 520.019: Transfer of Resources Occurring on or after August 11, 1993. (c) Enrollment Limits. Enrollment in the MFP Community Living Waiver is subject to a limit on the total number of waiver participants. The number of participants who can be enrolled in this waiver may be limited in a manner determined by the MassHealth agency. (d) Waiver Services. Eligible members who are enrolled as waiver participants in the MFP Community Living Waiver are eligible for the waiver services described in 130 CMR 630.405(D): Money Follows the Person Community Living (MFP-CL) Waiver.

**(Emphasis added.)**

The appellant applied for the above MFP-CL Waiver on 12/20/2023. MassHealth determined that the appellant does not meet the clinical eligibility requirements for the MFP/CL Waiver, based on its determination that the appellant is not able to be safely served in the community within the terms of the MFP-CL Waiver. In support of its decision, MassHealth testified in detail to the documentation in the appellant's medical record. The appellant provided no documentary evidence.

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

The appellant has not shown by a preponderance of the evidence that she has met his burden of showing that MassHealth's determination to deny his application for the MFP Waivers is incorrect or unsupported by the facts and the law. First, MassHealth presented uncontroverted documentary evidence that the appellant has a substance abuse issue, which is evidenced by the positive toxicology screens showing use of amphetamines and benzodiazepines, for which the appellant had no current prescription. Second, MassHealth asserted that the appellant is not compliant with her medications in the community, resulting in seizures and falls with injury

requiring hospitalization. Finally, the documentation at the time of the assessment shows that the appellant lacks an informal support that will be living with her in the community. MassHealth concluded that the appellant cannot be safely served in the community within the terms of the MFP Waiver.

The appellant made a number of assertions during her testimony, including allegations of wrongdoing on the part of the facility in which she resides. She claimed that employees were fired from the facility for falsifying documentation in her file and “going through my stuff.” However, the appellant did not provide any proof of the allegations. She also did not provide any documentation to support her claims that she had prescriptions for the medications in question. Finally, she failed to address what type of support she would have in the community. The appellant produced no documentation whatsoever in support of her assertion she can be safely served in the community within the terms of the waiver.

MassHealth’s denial of the appellant’s application for the MFP-CL Wavier is supported by the regulations and the facts in the hearing record including an extensive review of the appellant’s clinical record. The appellant’s clinical record shows that she is at risk of substance abuse, non-compliance with her medications, and that she lacks informal supports in the community. The appellant has not met her burden of showing that that MassHealth’s decision is incorrect. On the contrary, I find that MassHealth’s decision, as testified to by medical professionals, supports MassHealth’s decision that the appellant cannot be safely served in the community within the terms of the MFP-CL Waiver at this time. Therefore, MassHealth’s decision to deny the MFP Waivers is affirmed, as it is supported by the above regulations and the facts in the hearing record. This 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.

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Marc Tonaszuck  
Hearing Officer  
Board of Hearings

cc:

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