

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2407103
Decision Date:	6/24/2024	Hearing Date:	06/13/2024
Hearing Officer:	Thomas J. Goode		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Linda Phillips, RN, Associate Director of
Appeals and Regulatory Compliance
Marilyn Hart, 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:	130 CMR 519.007
Decision Date:	6/24/2024	Hearing Date:	06/13/2024
MassHealth's Rep.:	Linda Phillips, RN, Marilyn Hart, RN	Appellant's Rep.:	Pro se
Hearing Location:	Remote	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 3, 2024, MassHealth determined that Appellant is not clinically eligible for the Moving Forward Plan Community Living Home and Community Based Services Waiver (130 CMR 519.007(H)(2) and Exhibit 1). Appellant filed this appeal in a timely manner on May 2, 2024 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that Appellant is not clinically eligible for the Moving Forward Plan Community Living Home and Community Based Services Waiver.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.007(H)(2), in determining that Appellant is not clinically eligible for the Moving Forward Plan Community Living Home and Community Based Services Waiver.

Summary of Evidence

MassHealth was represented by a nurse reviewer and the Associate Director of Appeals and Regulatory Compliance who testified that MassHealth offers two home and community-based service (HCBS) Waivers: the MFP Residential Waiver (RS) and the MFP Community Living (CL) Waiver. Both waivers help individuals move from a nursing home or long-stay hospital to a 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 per day, 7 days per week. The MFP-RS Waiver is for individuals who need supervision and staffing 24 hours per day, 7 days per week. By notice dated April 3, 2024, MassHealth determined that Appellant is not clinically eligible for the Moving Forward Plan (MFP) Community Living (CL) Waiver (Exhibit 1). Appellant also applied for the MFP-RS Waiver and was approved on April 2, 2024 (Exhibit 4, pp. 47-48).

MassHealth outlined the eligibility criteria for the MFP Waivers to include:

- The applicant must be living in a nursing facility or long-stay hospital, and lived there for at least 90 consecutive days;
- The applicant must be ■ years old or older, and have a disability, or be age ■ or 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 Waiver participants;
- The applicant will transition to an MFP-qualified residence in the community; and
- For the MFP-RS Waiver, the applicant must need residential support services with staff supervision 24 hours per day, 7 days per week.

The MassHealth representative testified that the issue on appeal centers on regulation 130 CMR 519.007(H)(2) Individuals Who Would be Institutionalized MFP HCBS Waivers, and whether MassHealth was correct in denying Appellant 's application for the MFP-CL Waiver because he cannot be safely served in the community within the MFP-CL Waiver.

On October 10, 2023, an assessment for Waiver eligibility was conducted in-person with Appellant and a MassHealth Nurse Reviewer representing the MFP Waiver Program. The MFP nurse reviewer also spoke to [REDACTED] MRC Case Manager via a phone on October 26, 2023 (Exhibit 4, p. 77). The Waiver assessment consists of completion of MFP documents including Minimum Data Set-Home Care (MDS-HC) (Exhibit 4, pp. 54-67); Clinical Determination of Waiver Eligibility (Exhibit 4, pp. 68-75); Acquired Brain Injury (ABI)/MFP Waivers Community Risks Assessment (Exhibit 4, p. 76); a review of the applicant's medical record; and a discussion with the nursing facility staff. Appellant is [REDACTED] years old and was admitted to a nursing facility on [REDACTED]. Prior to this admission, Appellant was a participant in the MFP-CL Waiver program; however, he was unenrolled due to an extended medical leave of absence greater than 90 days. Records dated [REDACTED] record that Appellant "was found on the ground" and reports state that he was in this position for 4 days. While at the ER, Appellant was not able to give a lot of history. He reported that he was carrying bags, lost his balance and was unable to get up. Hospital records report altered mental status and that he was covered with urine and feces when he arrived at the ER. At the hospital, Appellant was described as critically ill and required ICU admission. Appellant was treated for multiple medical conditions and was stabilized and transferred to the nursing facility (Exhibit 4, pp. 72, 92-96).

Appellant's medical history includes alcohol abuse with intoxication, chronic obstructive pulmonary disease, difficulty in walking, hypertension, repeated falls, chronic embolism and thrombosis of unspecified vein, anemia, cognitive communication deficit and major depressive disorder (Exhibit 4, p. 72). During the Waiver eligibility assessment review, MassHealth noted the following documentation indicating Appellant's requirement for 24/7 care and supervision:

- July 31, 2023: Social Services Note indicates that Appellant inquired about discharge planning and the social worker spoke with [REDACTED] who was concerned about reapplying for section 8 housing due to Appellant's past substance use disorder (SUD). [REDACTED] had recommended that a discussion take place with Appellant regarding residential-group home options (Exhibit 4, pp. 109).
- August 17, 2023: Health Drive-Behavioral Health Group assessment indicates that Appellant benefits from psychotherapy and was looking forward to an overnight visit with his family. His mother was traveling from [REDACTED] and he looks forward to this family get together this upcoming weekend (Exhibit 4, p. 122-123).
- September 19, 2023: Health Drive-Behavioral Health Group states that Appellant appears to be in good behavioral control, makes good eye contact and engages easily.

Appellant does not appear to be a harm to himself or others. The benefits of the treatment with psychotropic medication continue to outweigh the potential risks (Exhibit 4, pp. 128-129).

Because Appellant previously failed in the community in the MFP-CL Waiver, MassHealth is offering community placement with a higher level of support with 24/7 services. MassHealth testified that at the level of services at the SNF, Appellant does quite well, and if he progresses at a group home, the staff may be amenable to assessing him for a lower level of community support in the MFP-CL Waiver.¹ On November 2, 2023, Appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting. MassHealth, MRC and DDS determined that Appellant is medically and psychiatrically stable in a structured 24/7 environment with the support of staff. Appellant is compliant with the plan of care, and has verbalized that he has a plan for sobriety. Therefore, it is MassHealth's clinical and professional opinion that, at this time, based on the available medical records and interviews, Appellant can be safely served within the MFP-RS Waiver, and he cannot be safely served in the community within the MFP-CL Waiver.

Appellant acknowledged his struggles with sobriety that lead to an unsuccessful community placement in 2023. He testified that he would prefer to live independently in the community with Waiver services, and that people are searching for apartments for him. Appellant added that he would benefit from more structured assistance provided in a group home setting, but he would like to be able to go into the community independently and be visited by friends and family. Appellant testified that he is not opposed to residing at a group home as a first step to returning to the community, but he would like to have his own apartment again.

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 Residential Waiver (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.

¹ Transferring from the MFP-RS Waiver to the MFP-CL Waiver was discussed at hearing; however, future placements and living arrangements are outside the scope of this appeal which is limited to MassHealth's determination that Appellant is not clinically eligible for the CL Waiver upon discharge from the nursing facility.

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 per day, 7 days per week.
3. The MFP-RS Waiver is for individuals who need supervision and staffing 24 hours per day, 7 days per week.
4. By notice dated April 3, 2024, MassHealth determined that Appellant is not clinically eligible for the Moving Forward Plan (MFP) Community Living (CL) Waiver. Appellant also applied for the MFP-RS Waiver and was approved on April 2, 2024.
5. On October 10, 2023, an assessment for Waiver eligibility was conducted in-person with Appellant and a MassHealth Nurse Reviewer representing the MFP Waiver Program. The MFP nurse reviewer also spoke to [REDACTED] MRC Case Manager via a phone on October 26, 2023.
6. The assessment consists of completion of MFP documents including Minimum Data Set-Home Care; Clinical Determination of Waiver Eligibility; Acquired Brain Injury (ABI)/MFP Waivers Community Risks Assessment; a review of the applicant's medical record; and a discussion with the nursing facility staff.
7. Appellant is [REDACTED] years old and was admitted to a nursing facility on [REDACTED]
8. Appellant's medical history includes alcohol abuse with intoxication, chronic obstructive pulmonary disease, difficulty in walking, hypertension, repeated falls, chronic embolism and thrombosis of unspecified vein, anemia, cognitive communication deficit and major depressive disorder (Exhibit 4, pp. 72).
9. Prior to admission to the nursing facility, Appellant was a participant in the MFP-CL Waiver program, however, he was unenrolled due to an extended medical leave of absence greater than 90 days.
10. Records dated [REDACTED] record that Appellant "was found on the ground" and reports state that he was in this position for 4 days. While at the ER, Appellant was not able to give a lot of history. He reported that he was carrying bags, lost his balance and was unable to get up. Hospital records report altered mental status and that he was covered with urine and feces when he arrived at the ER. At the hospital, Appellant was described as critically ill and required ICU admission. Appellant was treated for multiple medical conditions and was stabilized and transferred to the nursing facility (Exhibit 4,

pp. 92-101).

11. Social Services Notes dated July 31, 2023 indicate that Appellant inquired about discharge planning and the social worker spoke with [REDACTED] who was concerned about reapplying for section 8 housing due to Appellant's past substance use disorder (SUD). Ali had recommended that a discussion take place with Appellant regarding residential-group home options (Exhibit 4, p. 109).
12. Health Drive-Behavioral Health Group assessment dated August 17, 2023 indicates that Appellant benefits from psychotherapy and was looking forward to an overnight visit with his family. His mother was traveling from [REDACTED] and he looks forward to this family get together this upcoming weekend (Exhibit 4, pp. 122-123).
13. Health Drive-Behavioral Health Group assessment dated September 19, 2023 documents that Appellant appears to be in good behavioral control, makes good eye contact and engages easily. Appellant does not appear to be a harm to himself or others. The benefits of the treatment with psychotropic medication continue to outweigh the potential risks (Exhibit 4, pp. 128-129).
14. On November 2, 2023, Appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting. MassHealth, MRC and DDS determined that Appellant is medically and psychiatrically stable in a structured 24/7 environment with the support of staff. He is compliant with the plan of care, and he has verbalized that he has a plan for sobriety.
15. It is MassHealth's clinical and professional opinion that, at this time, based on the available medical records and interviews, Appellant can be safely served within the MFP-RS Waiver, and he cannot be safely served in the community within the MFP-CL Waiver.
16. Appellant is not opposed to residing at a group home as a first step to returning to the community, but he would like to have his own apartment again.

Analysis and Conclusions of Law

Eligibility requirements for the MFP-CL Waiver are outlined at 130 CMR 519.007(H)(2):

Money Follows the Person (MFP) Community Living Waiver.

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

1. are ■ years of age or older and, if younger than ■ years old, is totally and permanently disabled in accordance with Title XVI standards;
2. are an inpatient in a nursing facility, chronic disease or rehabilitation hospital, or, for participants ■ through ■ years of age or ■ years of age and older, psychiatric hospital with a continuous length of stay of 90 or more days, excluding rehabilitation days;
3. must have received MassHealth benefits for inpatient services, and be MassHealth eligible at least the day before discharge;
4. needs one or more of the services under the MFP Community Living Waiver;
5. **are able to be safely served in the community within the terms of the MFP Community Living Waiver;** and
6. are 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): *Moving Forward Plan Community Living (MFP-CL) Waiver*.

Appellant's medical history includes alcohol abuse with intoxication, chronic obstructive pulmonary disease, difficulty in walking, hypertension, repeated falls, chronic embolism and thrombosis of unspecified vein, anemia, cognitive communication deficit and major depressive disorder (Exhibit 4, p. 72). Appellant is [REDACTED] years old and was admitted to a nursing facility on [REDACTED]. Prior to admission to the nursing facility, Appellant was a participant in the MFP-CL Waiver program, however, he was unenrolled due to an extended medical leave of absence greater than 90 days. Records dated [REDACTED] record that Appellant "was found on the ground" and reports state that he was in this position for 4 days. While at the ER, Appellant was not able to give a lot of history. He reported that he was carrying bags, lost his balance and was unable to get up. Hospital records report altered mental status and that he was covered with urine and feces when he arrived at the ER. At the hospital, Appellant was described as critically ill and required ICU admission. Appellant was treated for multiple medical conditions and was stabilized and transferred to the nursing facility. Social Service notes document service provider's concerns about Appellant returning to living independently in the community, and the recommendation that he return to the community in a residential setting (Exhibit 4, p. 109). The MassHealth testimony is credible and consistent with the clinical evidence in the hearing record. Appellant bears the burden of proof in demonstrating that the MassHealth action denying the MFP-CL Waiver application is incorrect.² Appellant acknowledged his struggles with sobriety while in the community and is not opposed to residing at a group home as a first step to returning to the community, but otherwise has not carried the burden of showing that the MassHealth determination that he cannot be safely served under the MFP-CL Waiver is incorrect. Therefore, MassHealth correctly determined that Appellant cannot be safely served in the community within the terms of the MFP Community Living Waiver as required at 130 CMR 519.007(H)(2)(a)(5). Therefore, the appeal is DENIED.

² See [REDACTED] v. Board of Registration in Med., 437 Mass. 128, 131 (2002); [REDACTED] v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007); *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).

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.

Thomas J. Goode
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