

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2414849
<b>Decision Date:</b>	1/17/2025	<b>Hearing Date:</b>	12/10/2024
<b>Hearing Officer:</b>	Marc Tonaszuck		

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Linda Phillips, RN, Associate Director of 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>	1/17/2025	<b>Hearing Date:</b>	12/10/2024
<b>MassHealth's Rep.:</b>	Linda Phillips, RN, Associate Director of 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 09/13/2024, 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 09/26/2024 (130 CMR 610.015(B); Exhibit 2). Individual MassHealth agency determinations regarding scope and amount of assistance (including, but not limited to, level-of-care determinations); are 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.

Ms. Phillips 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.

There was only an Acquired Brain Injury-Residential Habilitation (ABI-RH) Waiver application submitted to MassHealth, and the appellant was approved for this ABI-RH Waiver on 09/13/2024 (Exhibit 4C, pages 56-58). This waiver was approved because she requires 24/7 care and support services that are offered through the ABI-RH Waiver. An MFP-CL Denial of Clinical Eligibility letter was also mailed to the appellant on 09/13/2024, although an application for the MFP-CL waiver was not received by MassHealth, the appellant was assessed and determined that she was not clinically eligible for this waiver (Exhibit 4C, pages 59-60).

On 08/20/2024, an assessment for Waiver eligibility was conducted in person at [REDACTED] in [REDACTED], Massachusetts ([REDACTED]). In attendance at the assessment were: the appellant, [REDACTED], Social Worker provided introductions, and [REDACTED], RN MassHealth Nurse Reviewer, representing the ABI/MFP Waiver program. In addition, Ms. L [REDACTED] spoke with the appellant's partner and primary caregiver via the phone on 8/20/2024 and 8/30/2024 and she spoke with [REDACTED] telephonically on 9/6/2024 (Exhibit 4C, page 88).

The assessment consists of completion of MFP documents including Minimum Data Set-Home Care (MDS-HC) (Exhibit 4C, pages 63-75); Clinical Determination of Waiver Eligibility (Exhibit 4C, pages 76-83); Acquired Brain Injury (ABI)/MFP Waivers Community Risks Assessment (Exhibit 4C, pages 84-85); Risk Assessment-ABI-N/MFP-CL Caregiver Supplement (Exhibit 4C, pages 86-87); a

review of the applicant's medical record; and a discussion with the facility staff.

The appellant is a female in her mid-40's. Previously, in January 2017, the appellant was determined eligible for the MFP-CL Waiver and transitioned to her home in April 2019; however, she began refusing all waiver services in February 2020, preferring state Adult Foster Care (AFC) and state VNA services. In December 2020, she was disenrolled from waiver services due to refusal of services. The appellant reapplied for MFP-CL services in September 2021, after an admission to a skilled nursing facility (SNF), but she was denied because she required 24/7 care, and she did not have reliable community support. From this point in time to November 2021, there were several incidents between her boyfriend and the SNF where she was residing. The appellant was transferred from GMAC to her current facility, [REDACTED] (Exhibit 4C, page 80).

The appellant's medical history includes Multiple Sclerosis (MS), Chronic Pain Syndrome, neurogenic bladder, status post suprapubic catheter, frequent urinary tract infections, lumbar spondylosis, obesity, bilateral trans-metatarsal amputations, vitamin deficiencies, muscle weakness, mild cannabis use disorder, anxiety disorder and depression (Exhibit 4C, page 80).

During the Waiver eligibility assessment review, the following documentation indicates that the appellant continues to require 24/7 support and supervision in the community:

- June 6, 2024: [REDACTED] Nursing Progress note states that the appellant around 5am was, "yelling, screaming at the nursing assistant" because she was looking for something that she had dropped. Staff were looking for it and the appellant threatened to put herself on the floor if it was not found. The item was found, and it was a vape. The appellant was informed that she could not have it because it was unsafe. The Director of Nursing was made aware, and the appellant concurred with the decision (Exhibit 4D, page 117).
- June 7, 2024: Social Service Progress note indicates that the appellant was having difficulty sleeping because of the new roommate. The appellant stated that she will continue to call out for help when needed and her goal is to return to the community, and she would like to discharge to a group home (Exhibit 4D, page 114).

During this assessment, Ms. [REDACTED] (Waiver RN) spoke with the appellant and partner on August 20th and 30th regarding their history of domestic violence, and the appellant stated that she felt safe around her partner. Although her partner verbalized that he would not put his hands on the appellant, he stated that at times, the appellant can become confused and is not the best

reporter during those times. Ms. [REDACTED] also spoke to the Director of Nurses, [REDACTED] at the SNF on 09/06/2024. Ms. [REDACTED] reported that there have been no issues recently with staff, the appellant's partner and the appellant. Ms. [REDACTED] did speak to both the appellant's partner and the appellant regarding the potential concerns with the appellant's return to the community and the history of their previous failures in the community with her partner as her primary support. In addition, the appellant did mention additional family members who could support her, but these family members could not be reached by Ms. [REDACTED] to verify their support. Ms. [REDACTED] did further discuss the residential options (ABI-RH) with the appellant and the increased independence that she would have. The appellant did verbalize that this would be an option she could consider if community living was not viable for her (Exhibit 4C, pages 82-83).

On 09/12/2024, the appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting with the Department of Developmental Disability (DDS) who oversees the ABI-RH Waiver in the community.

The following were reviewed: 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 the appellant's medical record by both MassHealth and DDS. In error, on 09/13/2024, a denial notice for the MFP-CL Waiver was mailed to the appellant (Exhibit 4C, pages 59-60). Although a formal application for the MFP-CL Waiver was not submitted, the documentation was reviewed, and it was determined that she did not qualify for the MFP-CL Waiver. The appellant had only applied for the ABI-RH Waiver (Exhibit 4C, page 56) and she was approved for the ABI-RH Waiver (Exhibit 4C, pages 57-58). MassHealth testified that, at this time, based on the available medical records and interviews as explained above, the appellant can only be safely served in the community within the ABI-RH Waiver.

The appellant testified stated only that she thought there was a "mistake" in the MassHealth testimony; specifically, that she was only seen by one evaluator. She had nothing more to say.

## **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. There was only an Acquired Brain Injury-Residential Habilitation (ABI-RH) Waiver application submitted to MassHealth on the appellant's behalf. She was approved for this ABI-RH Waiver on 09/13/2024 (Exhibit 4C, pages 56-58).
5. An MFP-CL Denial of Clinical Eligibility letter was also mailed to the appellant on 09/13/2024. Although an application for the MFP-CL waiver was not received by MassHealth, the appellant was assessed and MassHealth determined that she was not clinically eligible for this waiver.
6. The appellant is a female in her mid-40's. Previously, in January 2017, the appellant was determined eligible for the MFP-CL Waiver and transitioned to her home in April 2019; however, she began refusing all waiver services in February 2020, preferring state Adult Foster Care (AFC) and state VNA services.
7. In December 2020, she was disenrolled from waiver services due to refusal of services.
8. The appellant reapplied for MFP-CL services in September 2021, after an admission to a skilled nursing facility (SNF), but she was denied because she required 24/7 care, and she did not have reliable community support. From this point in time to November 2021, there were several incidents between her boyfriend and the SNF where she was residing. The appellant was transferred from GMAC to her current facility, [REDACTED].
9. The appellant's medical history includes Multiple Sclerosis (MS), Chronic Pain Syndrome, neurogenic bladder, status post suprapubic catheter, frequent urinary tract infections, lumbar spondylosis, obesity, bilateral trans-metatarsal amputations, vitamin deficiencies, muscle weakness, mild cannabis use disorder, anxiety disorder and depression.
10. During the Waiver eligibility assessment review, the following documentation was reviewed by MassHealth:
  - June 6, 2024: [REDACTED] Nursing Progress note states that the appellant around 5am was, "yelling, screaming at the nursing assistant" because she was looking for something that she had dropped. Staff were looking for it and the appellant

threatened to put herself on the floor if it was not found. The item was found, and it was a vape. The appellant was informed that she could not have it because it was unsafe. The Director of Nursing was made aware, and the appellant concurred with the decision (Exhibit D, page 117).

- June 7, 2024: Social Service Progress note indicates that the appellant was having difficulty sleeping because of the new roommate. The appellant stated that she will continue to call out for help when needed and her goal is to return to the community, and she would like to discharge to a group home (Exhibit 4D, page 114).

11. The appellant has a history of domestic violence with her partner.
12. During the assessment, the appellant mentioned additional family members who could support her if she were to live in the community, but these family members could not be reached to verify their support.
13. Through a notice dated 09/13/2024, 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

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

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 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.)***

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 her burden of showing that MassHealth's determination to deny her 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 had a history of previous failures in the community with her partner as her primary support. Second, although the appellant provided the names of people who would provide her support in the community, none of those people were able to be contacted to confirm their availability. 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 appears to disagree with MassHealth's decision; however, she provided no evidence whatsoever to show that the MassHealth denial was incorrect.

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 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 a medical professional, 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 Waiver 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-  
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