

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2415509
<b>Decision Date:</b>	01/07/2025	<b>Hearing Date:</b>	11/21/2024
<b>Hearing Officer:</b>	Susan Burgess-Cox		

**Appearances for Appellant:**



**Appearances for MassHealth:**

Linda Phillips & Marylin Hart



*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) Waiver
<b>Decision Date:</b>	01/07/2025	<b>Hearing Date:</b>	11/21/2024
<b>MassHealth's Reps.:</b>	Linda Phillips & Marilyn Hart	<b>Appellant's Reps.:</b>	
<b>Hearing Location:</b>	All Parties Appeared via Microsoft Teams		

### 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 September 3, 2024, MassHealth notified the appellant that he was not clinically eligible for the Moving Forward Plan Community Living and Home-and-Community-Based Wavier (MFP-CL Waiver) because he could not be safely served in the community within the terms of the waiver. (130 CMR 519.007(H); Exhibit 1). A party listed as the appellant's representative filed the request for hearing on October 18, 2024. (Exhibit 2).

The Board of Hearings dismissed the appeal as the party filing the appeal did not indicate that she was a MassHealth member, applicant, nursing home resident or appeal representative. (130 CMR 610.004; 130 CMR 610.034; 130 CMR 610.035; Exhibit 3). In response to the dismissal, the individual filing the appeal provided a Health Care Proxy naming herself as the appellant's health care agent. (Exhibit 4). The Board of Hearings vacated the dismissal and scheduled a hearing for November 21, 2024. (130 CMR 610.048(C); Exhibit 5).

A MassHealth determination regarding the scope or amount of assistance is valid grounds for appeal. (130 CMR 610.032).

## **Action Taken by MassHealth**

MassHealth notified the appellant that he is not eligible for the MFP-CL Waiver.

### **Issue**

Whether MassHealth was correct in their decision regarding the appellant's eligibility for the MFP-CL Waiver. (130 CMR 519.007(H)).

### **Summary of Evidence**

All parties appeared by telephone. Documents presented by MassHealth are incorporated into the hearing record as Exhibits 6 and 7.

The appellant applied for a Moving Forward Plan Community Living and Home-and-Community-Based Waiver (MFP-CL Waiver). In July 2024, MassHealth performed an in-person assessment for waiver eligibility at a long-term care facility. (Testimony; Exhibit 6; Exhibit 7). The MassHealth representative testified that the MFP-CL Waiver helps individuals move from a long-term care facility to a MFP-qualified residence in the community and obtain community-based services.

The appellant was at the assessment along with a social worker from the facility, the appellant's sister, a unit manager from the facility, and the nurse conducting the assessment. (Testimony; Exhibit 6; Exhibit 7). Prior to the current nursing facility admission, the appellant was living in the community with a history of stroke. (Testimony; Exhibit 6; Exhibit 7). The appellant's medical history includes: cerebral infarction; non-traumatic intracranial hemorrhage; transient ischemic attack; hypertension; adult failure to thrive; acute kidney failure; non-rheumatic aortic valve insufficiencies; peripheral vascular disease; myocardial infarction; thoracic aortic aneurysm without rupture; obstructive sleep apnea; peripheral vascular disease; dyspnea; coronary artery dissection; encephalopathy; esophageal dysphagia; atrial fibrillation; chronic kidney disease; testicular hypofunction; vascular dementia; expressive language disorder; nicotine dependence; bipolar disorder; personality disorder; adjustment disorder; anxiety; and major depressive disorder. (Testimony; Exhibit 6; Exhibit 7).

The appellant presented to the [REDACTED] due to his inability to care for himself at home and experiencing falls, despite a caregiver's assistance. (Testimony; Exhibit 6; Exhibit 7). The MassHealth representative testified that records indicate that the appellant was leaving the stove on, the refrigerator open, not taking his medications, and having suicidal ideations. (Testimony; Exhibit 6; Exhibit 7). The MassHealth representative testified that the appellant was evaluated by psychiatric services and diagnosed with cognitive deficits and depression. (Testimony; Exhibit 6; Exhibit 7).

When the appellant was determined stable, he was transferred to a long-term care facility.

(Testimony; Exhibit 6; Exhibit 7). The MassHealth representative testified that the appellant has remained medically stable at the current facility but has had approximately 5 emergency room evaluations and/or hospitalizations via Section 12<sup>1</sup> for high-risk behaviors to himself and/or others from [REDACTED] to [REDACTED]. (Testimony; Exhibit 6; Exhibit 7). The MassHealth representative testified that discharge summaries and progress notes show a history of aggressive behavior and violence. (Testimony; Exhibit 6; Exhibit 7).

The MassHealth representative testified that records show that the appellant was admitted to a hospital a few days following his admission into the long-term care facility, as he became agitated with staff, began throwing items, and made threats. (Testimony; Exhibit 6; Exhibit 7). A history of alcohol use was documented as 42 alcoholic drinks each week with the last drink reportedly in 2022. (Testimony; Exhibit 6; Exhibit 7). Documents show that the appellant currently uses marijuana. (Testimony; Exhibit 6; Exhibit 7). August 2024 notes from the long-term care facility indicate that the appellant was showing agitated behavior toward staff, throwing items such as the telephone, yelling, and exit seeking. (Testimony; Exhibit 6; Exhibit 7). Staff discovered a marijuana vape in the appellant's bedside table and the facility placed the appellant on a week long smoking ban. (Testimony; Exhibit 6; Exhibit 7). The appellant was sent to the hospital related to an altered mental status. (Testimony; Exhibit 6; Exhibit 7).

In August 2024, the waiver nurse present at hearing spoke to a nurse at the long-term care facility to discuss the appellant's waiver application. (Testimony; Exhibit 6; Exhibit 7). The nurse at the long-term care facility reported that the appellant continues with his behaviors and noted that he is volatile and has a history of refusing medications. (Testimony; Exhibit 6; Exhibit 7). The nurse at the facility indicated that it would be unsafe for the appellant to live independently in the community due to his high-risk behaviors and inability to care for himself. (Testimony; Exhibit 6; Exhibit 7). The nurse at the facility stated that the appellant requires a structured environment and 24/7 care and supervision. (Testimony; Exhibit 6; Exhibit 7).

The MassHealth Clinical Review Team and individuals from the Massachusetts Rehabilitation Commission performed separate clinical reviews of the appellant's case and both determined that the appellant is a significant safety risk to himself and others. (Testimony; Exhibit 6; Exhibit 7). Both teams determined that the appellant is psychiatrically unstable with high-risk aggressive behaviors and continues to require 24/7 monitoring and interventions that cannot be supported in the community. (Testimony; Exhibit 6; Exhibit 7).

The waiver nurse testified that both the appellant and the service providers need to be safe and reports of a Section 12 to the hospital are not taken lightly. The waiver nurse testified that if the appellant is unable to control frustrations in the facility, it is not clear what may occur in the community. The waiver nurse testified that the appellant can always apply for a waiver in the future, but the agency would need to see signs of stability.

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<sup>1</sup> M.G.L. ch 123 sec 12 controls the admission of a person to a general or psychiatric hospital for psychiatric evaluation and, potentially, treatment.

The appellant's sister testified that the documents presented by MassHealth contained several errors in the history and facts in the assessment and other documents. The appellant's sister testified that the appellant did not engage in the behaviors listed in the records prior to his admission into the current facility. The appellant's sister testified that the appellant is not bi-polar, but he had a sister who was bi-polar and any reference to suicidal ideations related to having a sister who committed suicide and trauma related to that event. The appellant's sister testified that the description of incidents listed in the reports presented by MassHealth look bad on paper, but the appellant is able to control himself before things escalate.

The appellant's sister testified that the appellant can get up on his own and perform activities of daily living such as bathing, grooming and dressing. The appellant's sister testified that the appellant enjoyed being in the community and believes that would be a healthy solution if he receives services provided under the waiver program. The appellant's sister noted that the appellant only remained in the hospital for one night following one of the Section 12 emergency room evaluations. The appellant's sister testified that the appellant returned to the facility following other visits to the emergency room without a hospital admission. The appellant's sister testified that the appellant was able to control himself when he was in the ambulance.

The appellant's sister testified that the facility was prepared to discharge the appellant to a shelter or his sister's home but determined that neither location was safe or appropriate so did not move forward with the discharge. The appellant's sister testified that the discharge was based upon the appellant's behavior as a possible safety risk to other patients. The appellant's sister testified that any incidents are linked to the appellant being in a facility and returning to the community under the waiver program will improve his behavior.

The appellant's sister acknowledged that the appellant takes his medications incorrectly at times and he was brought to the hospital, prior to the admission into the current long-term care facility, due to an inability to care for himself. The appellant's sister testified that the appellant is unable to perform instrumental activities of daily living (IADLs) such as laundry, meal preparation, shopping and housekeeping on his own. The appellant's sister testified that the appellant's behavior has improved and he is more motivated to take steps to return to the community.

## **Findings of Fact**

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

1. The appellant submitted an application for the Moving Forward Plan Community Living Waiver (MFP-CL Waiver).
2. In July 2024, MassHealth performed an in-person assessment for waiver eligibility at a long-term care facility.
3. The appellant was at the assessment as well as a social worker from the facility, the

appellant's sister, a unit manager from the facility and the nurse conducting the assessment.

4. Prior to the current long-term care admission, the appellant was living in the community with a history of stroke.
5. The appellant's medical history includes: cerebral infarction; non-traumatic intracranial hemorrhage; transient ischemic attack; hypertension; adult failure to thrive; acute kidney failure; non-rheumatic aortic valve insufficiencies; peripheral vascular disease; myocardial infarction; thoracic aortic aneurysm without rupture; obstructive sleep apnea; peripheral vascular disease; dyspnea; coronary artery dissection; encephalopathy; esophageal dysphagia; atrial fibrillation; chronic kidney disease; testicular hypofunction; vascular dementia; expressive language disorder; nicotine dependence; bipolar disorder; personality disorder; adjustment disorder; anxiety; and major depressive disorder.
6. The appellant has a history of alcohol abuse including records of having 42 drinks each week and a last drink reportedly in 2022.
7. The appellant currently uses marijuana.
8. The appellant presented to the [REDACTED] due to his inability to care for himself at home and having falls, despite a caregiver's assistance.
9. Records indicate that the appellant was leaving the stove on, the refrigerator open, not taking his medications, and having suicidal ideations.
10. The appellant has a history of aggressive behavior and violence.
11. The appellant was evaluated by psychiatric services and diagnosed with cognitive deficits and depression.
12. When the appellant was determined stable at the hospital, he was transferred to a long-term care facility.
13. The appellant has had approximately 5 emergency room evaluations and/or hospitalizations via Section 12 for high-risk behaviors to himself and others from [REDACTED]
14. In [REDACTED], the appellant was brought to the hospital from the long-term care facility as he became agitated with the staff and began throwing items at the staff and threatening them physically.
15. In August 2024, the appellant was showing agitated behavior toward staff, throwing

items such as the telephone, yelling, and exit seeking.

16. Staff discovered a marijuana vape in the appellant's bedside table.
17. The appellant was sent to the hospital related to an altered mental status.
18. The appellant has a history of refusing to take medications at the facility.
19. The appellant does not have a residence to return to in the community.
20. The appellant cannot perform IADLs on his own.

## **Analysis and Conclusions of Law**

The MassHealth regulations at 130 CMR 519.000 explain the categorical requirements and financial standards that must be met to qualify for a MassHealth coverage type. The 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.

The Moving Forward Plan Community Living Waiver (MFP-CL 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 18 through 21 years of age or 65 years of age and 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 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. 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. (130 CMR 519.007(H)(1)(a)).

MassHealth also has income and asset eligibility requirements for the MFP-CL program but the only issue raised in this appeal was the appellant's clinical eligibility. (130 CMR 519.007(H)(1); 130 CMR 519.007(H)(2)). The testimony and evidence presented by both MassHealth and the appellant's representative demonstrate that the appellant requires a high level of services and/or support. The appellant's representative testified that the appellant did not have a residence that would possibly meet the requirements for the MFP-CL Waiver and did not demonstrate that the appellant is able to be safely served in the community within the terms of the waiver. Records presented by MassHealth indicate that the appellant continued to engage in high-risk behaviors after the July 2024 assessment. While the appellant's representative noted some inconsistencies in the report, she acknowledged that incidents have occurred and she did not present sufficient evidence to demonstrate that the appellant is able to be safely served in the community within the terms of the waiver. The decision made by MassHealth regarding the appellant's clinical eligibility for the MFP-CL waiver was correct.

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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Susan Burgess-Cox  
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