

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	DENIED	Appeal Number:	2500350
Decision Date:	02/28/2025	Hearing Date:	02/20/2025
Hearing Officer:	Sharon Dehmand		

Appearance for Appellant:




Appearance for MassHealth:

Linda Phillips, RN, Associate Director of
Appeals and Regulatory Compliance
Bethany Landry, RN, Nurse Reviewer II



*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:	Waivers; Moving Forward Program (MFP) Waivers
Decision Date:	02/28/2025	Hearing Date:	02/20/2025
MassHealth's Rep.:	Linda Phillips Bethany Landry	Appellant's Rep.:	
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 December 23, 2024, MassHealth notified the appellant that she is not clinically eligible for MassHealth's Moving Forward Plan – Community Living Waiver (MFP-CL Waiver) because MassHealth determined that she cannot be safely served in the community within the terms of the MFP-CL Waiver. See 130 CMR 519.007(H)(2) and Exhibit 1. The appellant filed this appeal in a timely manner on January 7, 2025. See 130 CMR 610.015(B) and Exhibit 2. Denial of assistance is valid grounds for appeal to the Board of Hearings. See 130 CMR 610.032(A)(1).

Action Taken by MassHealth

MassHealth denied the appellant's application for MFP-CL Waiver because she cannot be safely served in the community within the terms of the waiver.

Issue

Whether MassHealth correctly determined that the appellant was not clinically eligible for the MFP-CL Waiver because she cannot be safely served in the community within the terms of the MFP-CL Waiver. See 130 CMR 519.007(H)(2).

Summary of Evidence

All parties appeared telephonically. MassHealth was represented by two registered nurses from MassHealth's Disability and Community Based Services. The appellant appeared pro se and verified her identity. The following is a summary of the testimonies and evidence provided at the hearing:

The MassHealth representative testified that generally MassHealth offers two home and community-based service waivers: the MFP Residential (MFP-RS) Waiver 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.

The following are the criteria for eligibility for the MFP Waivers:

- 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 with special financial rules existing for Waivers' participants;
- The applicant will transition to an MFP-qualified residence in the community; and
- For the MFP-CL Waiver, the applicant must need residential support services with staff supervision 24 hours/day, 7 days/week.

The MassHealth representative stated that the appellant is an adult under the age of 65 who was presented to a hospital in [REDACTED] after a fall at home with left shoulder pain. She has had three previous surgeries on that shoulder and after an MRI and x-ray, a recurrent rotator cuff tear was noted but no surgery was recommended. According to hospital documentation, the appellant tested positive for opioids, Oxycodone, Amphetamines, cannabinoids, and she has a

history of alcohol and cocaine use. On [REDACTED], the appellant was transferred to a skilled nursing and rehabilitation facility for short-term rehabilitation. See Exhibit 5, p. 68. On September 10, 2024, the appellant applied for the MFP-CL Waiver. See Exhibit 5, p. 45. The MFP-CL Waiver provides for 84 hours of services per week.

On November 26, 2024, an assessment for MFP-CL Waiver eligibility was conducted in person at the rehabilitation facility. Both MassHealth nurses were in attendance. See Exhibit 5, p. 76. The MassHealth's waiver assessment consists of the completion of the following documents: Minimum Data Set-Home Care (MDS-HC); 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 facility staff. See Exhibit 5, pp. 50-75.

The appellant's past medical history included spinal stenosis; T7-T10 disc protrusion; compression fracture of T11-T12; left shoulder rotator cuff tear; Barrett's esophagus; gastroesophageal reflux disease (GERD); chronic hepatitis; pain; anemia; asthma; obesity; history of falls; weakness; type 2 diabetes mellitus; hypertension; polysubstance use; major depressive disorder; and adjustment disorder. See Exhibit 5, p. 68.

During the clinical determination of waiver eligibility assessment, the MassHealth nurse reviewer noted the following events and episodes as examples of appellant's health and safety risks to herself and to others:

- October 14, 2024: The Nurse's Note indicates that the appellant set an alarm to remind her to request PRN pain medication every 8 hours. She was observed throughout the shift with no physical or facial sign or symptoms of pain noted. She was also observed to be self-propelling her w/c, transferring in/out of the BR, attending activities and attending meals in the dining room. When the 8 hours were up, the appellant requested pain medication, and the nurse reminded her that pain medication is PRN only and should only be requested if she is experiencing pain. She responded "bullxxx, I can have whatever I want and it's none of your business." See id. at 218.
- November 9, 2024: The Psychiatric Consultation Note states that the appellant was seen today for a psychiatric assessment due to staff reported concern about increased anxiety and depression. This was following back-to-back ER visits and her own calling of 911 because of reported pain. See id. at 104-105.
- November 23, 2024: Director of Nursing Risk Note states that the appellant, "continues with behaviors of being verbally aggressive towards staff as well as accusatory with staff." She was followed up with the Psychiatric Registered Nurse Practitioner (RNP) on a visit on 11/22/2024, and the appellant stated that she wanted to speak with her or the MD before, "agreeing to medication." See id. at 148.

MassHealth concluded that the appellant does not require 24/7 care and supervision based on

interviews and available documentation. The MassHealth representative stated that the appellant does have numerous behaviors, mostly revolving around her seeking pain medications and a history of polysubstance abuse with no dedicated plan to stay sober. During the interview with the MassHealth nurse, the appellant stated that she smoked heroin three days prior to her hospitalization in [REDACTED]. In the past four months (August 2024 to November 2024) the appellant was sent to the emergency room a total of eight times due to her behavior, seeking medications, and attempts to receive additional narcotics in the hospital.

On December 12, 2024, the appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting. In addition, on December 18, 2024, as part of the MFP Waiver eligibility process, a second clinical review was conducted by MassAbility (previously known as Massachusetts Rehabilitation Commission - MRC) who oversee the community living waivers. MassHealth and MassAbility determined that the appellant is not considered to be clinically eligible for participation in the MFP-CL Waiver because she cannot be safely managed in the community. The appellant continues to be a significant health and safety risk to herself, due to medication seeking behaviors with no plan for recovery. In addition, the appellant is documented to be disruptive to staff and she has a history of repeat hospitalizations to obtain narcotics. See Exhibit 5, pp. 46-47. On December 23, 2024, MassHealth notified the appellant that her application for the MFP-CL Waiver was denied. See id.

The appellant testified that she is no longer at the facility and is currently renting a room in a home located near her mother. She stated that her goal of being geographically closer to her mother was the primary reason for seeking emergency room visits. She explained that she was informed that going to the emergency room would eventually lead to placement in a facility closer to her mother. She denied being verbally abusive to the facility staff and disagreed with the claim that she was seeking drugs. She stated that she does not have any issues with drugs or alcohol. She concluded by saying that she was doing well, is no longer using pain medication, and only takes Tylenol to manage her pain.

The MassHealth representative responded by referencing the medical records which documented a pattern of verbal argument with the facility staff over pain medication followed by cursing at staff and throwing objects in her room. She added that the notes also indicated that the appellant had made multiple requests to go to the emergency room and had called 911 on several occasions. See Exhibit 5, pp. 84, 114, 176.

Findings of Fact

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

1. The Appellant is an adult under the age of 65 (Testimony; Exhibits 4; and Exhibit 5).

2. The appellant was presented to a hospital in [REDACTED], after a fall at home. (Testimony and Exhibit 5).
3. After an MRI and x-ray, a recurrent rotator cuff tear was noted but no surgery was recommended. Id.
4. At the hospital, the appellant tested positive for opioids, Oxycodone, Amphetamines, cannabinoids, and has a history of alcohol and cocaine use. Id.
5. On [REDACTED] the appellant was transferred to a skilled nursing and rehabilitation facility for short-term rehabilitation. Id.
6. On September 10, 2024, the appellant applied for the MFP-CL Waiver. Id.
7. On November 26, 2024, an assessment for MFP-CL Waiver eligibility was conducted in person at the rehabilitation facility. Id.
8. The appellant has a past medical history of spinal stenosis; T7-T10 disc protrusion; compression fracture of T11-T12; left shoulder rotator cuff tear; Barrett's esophagus; gastroesophageal reflux disease (GERD); chronic hepatitis; pain; anemia; asthma; obesity; history of falls; weakness; type 2 diabetes mellitus; hypertension; polysubstance use; major depressive disorder; and adjustment disorder. Id.
9. MassHealth noted the following events and episodes as examples of appellant's health and safety risks to herself and to others:
 - a. October 14, 2024: The Nurse's Note indicates that the appellant set an alarm to remind her to request PRN pain medication every 8 hours. She was observed throughout the shift with no physical or facial sign or symptoms of pain noted. She was also observed to be self-propelling her wheelchair, transferring in/out of the BR, attending activities and attending meals in the dining room. When the 8 hours were up, the appellant requested pain medication, and the nurse reminded her that pain medication is PRN only and should only be requested if she is experiencing pain. She responded "bullxxx, I can have whatever I want and it's none of your business." Id. at 218.
 - b. November 9, 2024: The Psychiatric Consultation Note states that the appellant was seen today for a psychiatric assessment due to staff reported concern about increased anxiety and depression. This was following back-to-back ER visits and her own calling of 911 because of reported pain. Id. at 104-105.
 - c. November 23, 2024: Director of Nursing Risk Note states that the appellant, "continues with behaviors of being verbally aggressive towards staff as well as accusatory with

staff.” She was followed up with the Psychiatric Registered Nurse Practitioner (RNP) on a visit on 11/22/2024, and the appellant stated that she wanted to speak with her or the MD before, “agreeing to medication.” Id. at 148.

10. During the period of August 2024 to November 2024, while the appellant was at the facility, she was sent to the emergency room eight times due to her behavior, seeking medications, and attempts to receive additional narcotics in the hospital. Id.
11. The appellant has engaged in verbal argument with the facility staff over pain medication followed by cursing at staff and throwing objects in her room. Id.
12. MassHealth concluded that the appellant does not require 24/7 care and supervision based on interviews and available documentation. Id.
13. MassHealth determined that the appellant cannot be safely served in the community within the MFP-CL waiver because she has numerous behaviors, mostly revolving around her seeking pain medications and a history of polysubstance abuse with no dedicated plan to stay sober. Id.
14. On December 18, 2024, MassAbility agreed with MassHealth’s assessment that the appellant is not clinically eligible for participation in the MFP-CL Waiver because she cannot be safely managed in the community. Id.
15. On December 23, 2024, MassHealth notified the appellant that her application for the MFP-CL Waiver was denied. (Testimony and Exhibit 1).
16. The appellant filed this appeal in a timely manner on January 7, 2025. (Exhibit 2).
17. The appellant is no longer at the facility and is currently renting a room in a home. (Testimony).

Analysis and Conclusions of Law

The MFP home and community-based service waivers are described at 130 CMR 519.007(H). In this case, the appellant seeks eligibility for the MFP-CL Waiver. The requirement for this waiver is as follows:

(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 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 they meet all of the following criteria:

1. are 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. are 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. 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.

See 130 CMR 519.007(H)(2).

Here, MassHealth evaluated the appellant's eligibility for services under the MFP-CL waiver and determined that she is not able to be safely served in the community within the terms of the waiver. See 130 CMR 519.007(H)(2)(a)(5). In support of this decision, the MassHealth representatives offered detailed testimonies and medical records. The appellant provided no documentary evidence. The appellant has the burden "to demonstrate the invalidity of the administrative determination." See Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228, 231 (2007); Fisch v. Board of Registration in Medicine, 437 Mass. 128, 131 (2002). The appellant must demonstrate, by a preponderance of evidence, that MassHealth's denial of the MFP-CL Waiver was incorrect pursuant to 130 CMR 519.007(H)(2). See Craven v. State Ethics Comm'n, 390 Mass. 191, 200 (1983)("[p]roof by a preponderance of the evidence is the standard generally applicable to administrative proceedings").

Based on the record and testimonies, it is undisputed that the appellant's medical history includes spinal stenosis; T7-T10 disc protrusion; compression fracture of T11-T12; left shoulder rotator cuff tear; Barrett's esophagus; gastroesophageal reflux disease (GERD); chronic hepatitis; pain; anemia; asthma; obesity; history of falls; weakness; type 2 diabetes mellitus; hypertension; polysubstance use; major depressive disorder; and adjustment disorder. See generally Exhibit 5. The appellant's medical records also reflect that she tested positive for opioids, Oxycodone, Amphetamines, and cannabinoids at the time of her admission to the hospital in July 2024. The appellant also has a history of alcohol and cocaine use. See id. at 68.

During her time at the facility, the appellant visited the emergency room at least 8 times. See id. at 84, 97, 176, 179-180. The medical records reflect a recurring pattern of verbal arguments with the facility staff over pain medication followed by instances of cursing and throwing objects in her room. See id. at 84, 114. She would frequently request admission to an emergency room or call 911 to be transported to an emergency room where she would seek narcotics upon arrival. I find that this pattern of behavior supports MassHealth's contention that the appellant has exhibited significant safety risks and as such cannot be safely served in the community within the terms of the MFP-CL Waiver.

The appellant denied engaging in drug-seeking behavior, asserting instead that her frequent emergency room visits were motivated by her desire to be moved closer to her mother. While the record supports her wish to be near her family, this explanation does not provide a credible basis for her repeated and disruptive actions. See id. at 93. Specifically, each time she was transported to an emergency room, she was returned to the same facility, which undermines the plausibility of her claim. As such, the appellant has not proven by a preponderance of the evidence that MassHealth erred in its determination that the appellant was not clinically eligible for the MFP-CL Waiver because she cannot be safely served in the community within the terms of the waiver. See 130 CMR 519.007(H)(2)(a)(5).¹

¹ Although not cited by MassHealth, and so not discussed further, based on the testimony at the

For the foregoing reasons, 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.

Sharon Dehmand, Esq.
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

hearing that the appellant is currently renting a room in a home, it is not clear that the appellant meets the eligibility criteria specified in 130 CMR 519.007(H)(2)(a)(6).