

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2500545
Decision Date:	03/25/2025	Hearing Date:	02/11/2025
Hearing Officer:	Rebecca Brochstein, BOH Deputy Director		

Appearances for Appellant:




Appearances for MassHealth:

Linda Phillips, RN



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

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Moving Forward Program (MFP) Waiver
Decision Date:	03/25/2025	Hearing Date:	02/11/2025
Appearance for MassHealth:	Linda Phillips	Appearances for Appellant:	
Hearing Location:	Board of Hearings (Remote)		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated December 23, 2024, MassHealth notified the appellant that he is not clinically eligible for participation in MassHealth's Moving Forward Plan Community Living Waiver (MFP-CL Waiver) (Exhibit 1). The appellant filed a timely appeal on January 9, 2025 (Exhibit 1). Denial of eligibility for a waiver program is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant is not clinically eligible for participation in the MFP-CL Waiver.

Issue

The issue is whether MassHealth correctly determined that the appellant is not clinically eligible for participation in the MFP-CL Waiver because he cannot be safely served in the community within the terms of this waiver.

Summary of Evidence

MassHealth was represented at hearing by a registered nurse who is the Associate Director of Appeals and Regulatory Compliance for ForHealth Consulting at UMass Chan Medical School. She presented the following background information: MassHealth offers two home- and community-based MFP service waivers, the MFP Residential Supports (MFP-RS) Waiver and the MFP Community Living (MFP-CL) Waiver. Both waivers help individuals move from a nursing facility 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 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.

The criteria for the MFP Waivers are as follows:

- 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 the 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 MassHealth financial requirements including the special financial rules 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 appellant, who is in his [REDACTED], has resided in a nursing facility since [REDACTED]. On July 11, 2024, he applied for the MFP-CL Waiver, which would enable him to live in the community in his own home or in the home of another person. On November 19, 2024, a MassHealth nurse reviewer visited the nursing facility to conduct an assessment of the appellant's clinical eligibility, which included a review of the clinical records and interviews with facility staff. After conducting its assessment, MassHealth concluded that the appellant could not be safely served within the terms of the waiver and therefore did not meet the criteria for approval. Specifically, the assessment form indicates that the reasons for denial were that the appellant "exhibits significant health and safety risks which preclude transition to the community" and that his support needs (i.e., homemaker, home health aide, personal care, adult companion, individual support and community habilitation, and supportive home care aide) exceed 84 combined hours per week. See Exhibit 4 at 68.

The clinical summary in the assessment document includes the following notes about the appellant's clinical status and history at the facility:

- The appellant's medical history includes pneumonia, chronic pancreatitis, chronic kidney disease (stage 4), opioid dependence, atherosclerotic heart disease, chronic obstructive pulmonary disease, chronic pain syndrome, severe protein-calorie malnutrition, emphysema, cannabis use, paroxysmal atrial fibrillation, upper abdominal pain, anemia, alcohol abuse in remission, other psychoactive drug abuse, depression, anxiety disorder, attention deficit hyperactivity disorder, left-side conductive hearing loss, hypertension, hypertensive urgency, hypertrophic cardiomyopathy, atrial flutter, cyclical vomiting syndrome, adult failure to thrive, and hepatitis C. (Exhibit 4 at 69)
- The appellant has had multiple hospitalizations since he was admitted to the nursing facility. He was hospitalized [REDACTED] (for acute kidney injury and lung infection); [REDACTED] (epigastric pain, nausea, vomiting); [REDACTED] (abdominal pain due to marijuana use); [REDACTED] (abdominal pain, hypertensive emergency, acute renal failure); [REDACTED] (abdominal pain, pancreatitis due to marijuana use); [REDACTED] (pain, acute renal failure); [REDACTED] (abdominal pain, acute kidney injury). (Exhibit 4 at 69-70)
- The appellant takes medications for pain (acetaminophen 650 mg every 6 hours as needed, suboxone sublingual two 0.5 mg daily; atrial fibrillation (apixaban 2.5 mg twice daily); cardiovascular health (amiodarone 100 mg twice daily, nifedipine 30 mg daily, Lipitor 40 mg daily). GERD (Protonix 40 mg daily), constipation (bisacodyl, Milk of Magnesia, and enemas as needed); and nausea (Zofran as needed). His vital signs are checked once a week. (Exhibit 4 at 70)
- The appellant receives psychological services in the nursing facility for treatment of adjustment disorder, anxiety, and depression. He was previously prescribed Sertraline and Trazadone but currently does not take any psychotropic medications. (Exhibit 4 at 70)
- The appellant has a history of behavioral incidents at the facility, including numerous instances of violating the facility's smoking policies, leaving the property, and behaving aggressively towards staff and other residents. These incidents (all from 2024) include the following:
 - Appellant was smoking outside of allowed time. When confronted, he told the nurse to "shut the f*** up" and to mind her business. When reeducated he walked towards the nurse and got close to her face and stated "get the f*** away from me." He then went to the bathroom and slammed the door. Later while walking by the nurse, he stated to the nurse "f*** you, you fat ***hole."

- As inclement weather was approaching, appellant was found outside the rear of the facility. The nurse searched for him in the woods behind the facility. He jumped out of the woods and stated “what the f***?” When reeducated about the dangers of being off property, he replied “whatever man, I can do what I want.”
- Appellant was found outside on the patio at midnight and was advised to return indoors. Responded to nurse to shut up and go away. I’m done with you, I have documentation on you, you’re done. Later that shift, he entered the nursing unit carrying one of the facility’s trash barrels from outside. Inquired as to why he brought it in, he angrily stated it was a gift for one of the other nurses. He was angry and stated “this isn’t over between me and her, I will continue to do things like this to her.” He was angry and raising his voice. When asked to lower his voice, he began to lunge forward, rocking back and forth, pointing at the nurse. He was reeducated and repeated that it was not over between him and the other nurse.
- Appellant was found smoking outside of designated time and he refused to hand over his smoking materials. The nurse proceeded to get the appellant’s bags that were nearby to search. The appellant lunged forward in an attempt to snatch the bag from the nurse. He proceeded to follow the nurse. He was asked to back up and warned that if he became physical, that 911 would be called. Search of the bag revealed loose leaf tobacco and an empty container of Triple M Shake Cannabis Flower with strong odor.
- A nurse went outside to educate appellant regarding being outside facility when it is late and that he needs to remain on the patio. Appellant was hiding from the nurse and refused to answer. The appellant became increasingly agitated and verbally abusive, gesturing towards the nurse to intimidate them. When the nurse asked how they could come to a common ground, appellant replied “go f*** yourself, get away from me.” Appellant grew agitated and was verbally abusive and confrontational towards staff.
- Appellant was reeducated about smoking policies. Later, he reapproached the nurse and began yelling in her face about confronting him. A second nurse on the unit had to administer his scheduled medications to avoid confrontation.
- Appellant took a shower from 2:30-4:00 and was observed lying on the floor with hot water running over him. He was asked if he needed to go to the hospital as this is how he routinely presents prior to hospitalizations.
- Nurse reviewer was scheduled to meet with appellant for an eligibility interview but he was unable to be found. He was later found in the shower feeling unwell. He was

noted to appear uninterested in participating in discharge planning programs.

- Appellant demonstrated extreme agitation when he was asked to sign the sign-out book when he was leaving the unit. He had been educated regarding this multiple times. He was verbally abusive to SNF administration who was present for the episode as he was using expletives directed at staff. He was later found agitated, staring at staff and posturing towards a nurse. Again, later when asked to sign the sign-out book, he threw the sign-out book, ripping pages in the process. He was again noted to be posturing at staff when reeducated on the importance of signing out.
- Progress note indicates that appellant's roommate, who has dementia, had returned from the hospital and asked appellant to help him with a few things. Appellant got very upset about the request and yelled at the other resident quite loudly for a while. It was noted to be an upsetting experience for the other resident.

See Exhibit 4 at 71-72.

The clinical assessment also references a social services note from July 2024 that includes the following information:

[I]n contrast to his initially quiet and polite presentation, [the appellant] began exhibiting episodes of verbally abusive language while blatantly refusing staff requests to comply with rules of the facility after his arrival in [REDACTED]. With little or no concern for the wellbeing of staff or other residents, [he] uses condescending and derogatory language to establish control over people, places and things. He becomes easily annoyed, argumentative, and tends to make baseless threats when/if he perceives his autonomy is being threatened or being disrespected. [The appellant] appears to identify very strongly with the role of "victim," believing he is being targeted, followed and unfairly judged due to the history of SUD & homelessness. He refuses 1:1 counseling. Often this coincides with exacerbation of acute medical illness & escalating prior to repetitive hospitalizations. [He] also fixates on being in the shower for hours at a time and becomes increasingly agitated with redirection. (Exhibit 4 at 72)¹

¹ The assessment notes that behavioral flow sheets from a one-month period from August to September 2024 reflect numerous instances of problematic physical behaviors (hitting, kicking, pushing, scratching, grabbing, and intrusiveness); nonverbal behaviors (threatening others, screaming, cursing, intrusiveness, being accusatory); as well as other negative behaviors not directed at others (hitting/scratching self, pacing, hoarding, public sexual acts, disrobing in public, throwing or smearing food or bodily waste, screaming/disruptive sounds, and rummaging). See Exhibit 4 at 72. However, the report states that there is no other documentation that describes or details these behaviors. It does not appear that these flow sheets are part of the record.

The assessment states that the appellant reported he had previously lived with a friend on [REDACTED] but left and became homeless when the friend's adult son attacked him. He reported that if he qualifies for the waiver he is only interested in residing on [REDACTED]. He also indicated that he would not be willing to wear a Lifeline device or attend a day program. The record also reflects multiple instances of rejection of care.

The assessment concludes as follows:

[The appellant] presents himself with several risks as he returns to the community. He is at risk for medical decline related to his medical conditions, he is at risk for psychiatric decline related to a history of adjustment disorder, anxiety, and depression. He is at risk of relapse due to a history of alcohol abuse. He is at risk for isolation and exploitation related to his dependence on others for aspects of his care.

After reviewing all available documentation and interviews conducted, it is evident that [the appellant] has demonstrated medical instability as evidenced by 7 hospitalizations in the last 9 months. Additionally, he has exhibited several concerning behaviors with frequent agitation, verbal abusiveness and disregard for other residents and staff. Therefore, he continues to require high level 24/7 care and supervision and cannot be safely serviced [within] the terms of the MFP-CL waiver program. (Exhibit 4 at 73)

The MassHealth representative testified that the UMass Chan Waiver Complex Clinical Eligibility Team reviewed the clinical assessment and concurred that the appellant demonstrates a level of medical instability as well as adverse behaviors that would make a return to community living unsafe. It concluded that the appellant "is a significant health and safety risk to self as he continues to require high level 24/7 support and supervision, risk of overall decompensation, and lacks informal support; therefore, cannot be safely served within the terms of the MFP-CL." Thereafter, the MassAbility Waiver Clinical Eligibility Redetermination Team reviewed and concurred with this determination. See Exhibit 4 at 74-75.²

The appellant appeared at the hearing along with an elder services case manager. He testified that he feels that he can care for himself in the community and does not need 24/7 care. He stated that he takes his medications and attends doctor's appointments unless he is hospitalized. The appellant testified that he is on a waiting list for public housing on Martha's Vineyard and plans to leave the facility to live on his own if and when he is approved for housing.

The elder services case manager testified that she has been working with the appellant since

² The MassHealth representative noted that during the assessment the evaluating nurse asked the appellant if he would consider applying for the MFP-RS waiver, which would allow him to move into a group home in the community and have a higher level of support. The appellant responded that he would not be interested in this option.

October or November 2024 and that she has found him to be professional and compliant. She stated that he is next on the waiting list for public housing.³

Findings of Fact

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

1. The appellant is a male in [REDACTED].
2. The appellant has been a resident of a nursing facility since [REDACTED].
3. The appellant has a past medical history of pneumonia, chronic pancreatitis, chronic kidney disease (stage 4), opioid dependence, atherosclerotic heart disease, chronic obstructive pulmonary disease, chronic pain syndrome, severe protein-calorie malnutrition, emphysema, cannabis use, paroxysmal atrial fibrillation, upper abdominal pain, anemia, alcohol abuse in remission, other psychoactive drug abuse, depression, anxiety disorder, attention deficit hyperactivity disorder, left-side conductive hearing loss, hypertension, hypertensive urgency, hypertrophic cardiomyopathy, atrial flutter, cyclical vomiting syndrome, adult failure to thrive, and hepatitis C.
4. The appellant has had multiple hospitalizations since he was admitted to the nursing facility. He was hospitalized [REDACTED] (for acute kidney injury and lung infection); [REDACTED] (epigastric pain, nausea, vomiting); [REDACTED] (abdominal pain due to marijuana use); [REDACTED] (abdominal pain, hypertensive emergency, acute renal failure); [REDACTED] (abdominal pain, pancreatitis due to marijuana use); [REDACTED] (pain, acute renal failure); October 10-13, 2024 (abdominal pain, acute kidney injury).
5. The appellant takes medications for pain (acetaminophen 650 mg every 6 hours as needed, suboxone sublingual two 0.5 mg daily; atrial fibrillation (apixaban 2.5 mg twice daily); cardiovascular health (amiodarone 100 mg twice daily, nifedipine 30 mg daily, Lipitor 40 mg daily). GERD (Protonix 40 mg daily), constipation (bisacodyl, Milk of Magnesia, and enemas as needed); and nausea (Zofran as needed). His vital signs are checked once a week.
6. The appellant receives psychological services in the nursing facility for treatment of adjustment disorder, anxiety, and depression. He was previously prescribed Sertraline and Trazadone but currently does not take any psychotropic medications.

³ The case manager asked the MassHealth representative about services under the MFP Demonstration, or "Demo". The MassHealth representative responded that the Demo is a separate program that allows members to get services for one year but does not include all of the services that are provided under the waiver. She stated that the Demo can assist members in finding housing and moving but does not provide services such as PCA. She added that Demo participants can still get support through elder services.

7. The appellant has a history of refusing medical care.
8. The appellant has a history of behavioral incidents at the facility, including numerous instances of violating the facility's smoking policies, leaving the building, and acting aggressively towards staff and other residents.
9. The appellant refuses 1:1 counseling and has indicated he would not be willing to wear a Lifeline device or attend a day program. He has rejected care while in the facility.
10. On July 11, 2024, the appellant applied for the MFP-CL Waiver, which would enable him to live in the community in his own home or in the home of another person.
11. On November 19, 2024, a MassHealth nurse reviewer visited the nursing facility to conduct an assessment of the appellant's clinical eligibility, which included a review of the clinical records and interviews with facility staff.
12. The nurse reviewer determined that the appellant continues to require 24/7 care and supervision and cannot be safely serviced within the terms of the MFP-CL Waiver program.
13. The UMass Chan Waiver Complex Clinical Eligibility Team and the MassAbility Waiver Clinical Eligibility Redetermination Team reviewed and upheld the original determination.
14. The appellant is a significant health and safety risk to himself. He is at risk of overall decompensation and lacks informal support. He continues to require 24/7 support and supervision.

Analysis and Conclusions of Law

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

(2) Money Follows the Person (MFP) Community Living Waiver.⁴

(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

⁴ Although "MFP" now stands for Moving Forward Plan, the applicable regulations still reference Money Follows the Person.

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. are 18 years of age or older and, if younger than 65 years old, are 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 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*.

130 CMR 519.007(H)(2).

MassHealth evaluated the appellant's eligibility for services under this waiver and determined that he 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). Specifically, MassHealth determined that the appellant's frequent hospitalizations and aggressive behaviors would pose significant health and safety risks if he returned to the community and indicate that he instead continues to require high-level 24/7 care and supervision.

The record supports MassHealth's position. The appellant was hospitalized seven times in the nine months preceding the evaluation, indicating ongoing medical instability. Importantly, these hospitalizations occurred during a period when he was living in the full-time supportive environment of the nursing facility; it is fair to predict that his medical status could deteriorate further if he were living in the community with far less support and supervision. This concern is exacerbated by the appellant's history of rejecting care and his statements that he would be unwilling to wear a Lifeline device or attend a day program. MassHealth is also justifiably concerned that the appellant's history of aggressive and threatening behavior, his tendency to wander away from the facility, his continued substance abuse, and his lack of informal supports in the community would pose an even greater safety risk to himself and others in a less structured environment.

The appellant has not demonstrated that he can be safely served in the community within the terms of the MFP-CL Waiver. This appeal is therefore 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.

Rebecca Brochstein
Deputy Director
Board of Hearings

cc: Linda Phillips, RN, BSN, LNC-CSp
Associate Director of Appeals and Regulatory Compliance
ForHealth Consulting at UMASS Chan Medical School
Disability and Community-Based Services
333 South Street
Shrewsbury, MA 01545-7807

