

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	DENIED	Appeal Number:	2500633
Decision Date:	05/01/2025	Hearing Date:	03/19/2025
Hearing Officer:	Kenneth Brodzinski		

Appearance for Appellant:



Appearance for MassHealth:

Linda Phillips, 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:	MFP-CL Waiver
Decision Date:	05/01/2025	Hearing Date:	03/19/2025
MassHealth's Rep.:	Linda Phillips, RN	Appellant's Rep.:	██████
Hearing Location:	Quincy		

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 17, 2024, MassHealth denied Appellant's request to participate in the MassHealth Moving Forward Plan Community Living Waiver program (hereinafter, "the MFP-CL Waiver") ([Exhibit A](#)). Appellant filed for an appeal in a timely manner on January 10, 2025 (see 130 CMR 610.015(B) and [Exhibit A](#)). Denial of a request to participate in a MassHealth program constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied Appellant's request to participate in the MFP-CL Waiver program.

Issue

The appeal issue is whether MassHealth properly applied the controlling regulation(s) to accurate facts when it denied Appellant's request to participate in the MFP-CL Waiver program.

Summary of Evidence

Both parties appeared by telephone. MassHealth filed a packet of documentation relative to its review and assessment of Appellant's application for MFP-CL Waiver services (Exhibit B). Appellant's only filing was her Fair Hearing Request (Exhibit A).

MassHealth was represented by a Registered Nurse (RN) who serves as the Associate Director of Appeals and Regulatory Compliance. She explained that MassHealth has two waivers that assist Medicaid-eligible persons to move into the community and obtain community-based services: the MFP-Residential Supports 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-Residential Supports Waiver is for individuals who need supervision and staffing 24 hours/day, 7 days per week. Appellant applied for the MFP-CL Waiver on August 24, 2024 (Exhibit B, Tab C, page 45).

On November 12, 2024, an assessment for Waiver eligibility was conducted in person at [REDACTED]. In attendance at the in-person assessment were Appellant, [REDACTED] from [REDACTED], and Susan Tomasz-Taylor RN, MassHealth Nurse Reviewer who was representing the MFP Waiver Program. In addition, Linda Kembo, RN participated in this interview via the phone (Exhibit B, Tab C, page 75).

The assessment consists of completion of MFP documents including Minimum Data Set-Home Care (MDS-HC) (Exhibit B, Tab C, pages 50-63); Clinical Determination of Waiver Eligibility (Exhibit B, Tab C, pages 64-73); Acquired Brain Injury (ABI)/MFP Waivers Community Risks Assessment (Exhibit B, Tab C, page 74); a review of the applicant's medical record; and a discussion with the nursing facility staff.

Appellant is in her [REDACTED]s and was initially hospitalized at [REDACTED] for chest pain and leg weakness. Following this hospitalization and rehabilitation for major depression, declining mental status and history of CVA (stroke) with residual, Appellant was discharged home with VNA nursing and Home Health Aid services 7 days per week. Appellant received home care services for approximately 1 month in which she had many difficulties with housekeeping, managing her medications, and treatments. At that time, she was hospitalized with chest pain and leg weakness/wound care. After this hospitalization, she was transferred to [REDACTED], where she currently resides (Exhibit B, Tab C, page 68).

Appellant's medical and mental health history includes Chronic Kidney Disease Stage 5 and receiving hemodialysis 3x/week. She has a port-a-cath in her right chest for dialysis. Polyneuropathy that she reported is felt from the knee to her feet bilaterally, Type 2 diabetes, Cerebral Infarction (2020), Asthma - unspecified, Hypothyroidism, Anemia, Vitamin D Deficiency, Hypertension, Congestive Heart Failure, Lower Back Pain, Peripheral Vascular disease, Charcot's Joint right ankle, Osteoarthritis, Adult Failure to Thrive, Gastro-Intestinal reflux. Amputation of 3rd of left foot (9/2021). Appellant was noted to have a history of 3 cardiac events requiring CPR that led to a cracked sternum and has a pro clip for a hole in her heart. Additional mental disorder diagnoses include Bi-polar Disorder, Major Depression, Post-traumatic Stress Disorder, Bi-polar II disorder, Fetal Alcohol Syndrome and Hallucinations (Exhibit B, Tab C, page 68).

During the Waiver eligibility assessment review, MassHealth noted the following documentation indicating Appellant's medical conditions:

- August 8, 2024: Care Plan from Advinia in [REDACTED] states that "need for safe, appropriate discharge plan: Need for care and support. Discharge plan ongoing. [REDACTED] would need 24/7 supervision to hands on care for safe community discharge. [REDACTED] prefers to stay here @ ACS for LTC and does not wish to be asked quarterly" (Exhibit B, Tab D, page 114).
- September 30, 2024: Psychiatric Evaluation and Consultation indicates that Appellant reported "distressing experiences of feeling the presence of her deceased husband, specifically describing sensations of being touched by the ghost, which she is finding it frightening." The therapist discussed altering her medication and participating in relaxation exercises to help alleviate these experiences (Exhibit B, Tab D, page 87).
- November 15, 2024: Psychological Services describes what Appellant was working on during this session. Tasks included managing her hallucinations, anxiety, depression and delusions. Psychotropic medication was increased and Appellant reported that she was having less experiences of the hallucinations (Exhibit B, Tab D, page 104).
- November 18, 2024: Order Summary Report states that Dialysis schedule is every Tuesday, Thursday and Saturday. Diagnosis is Chronic Kidney Disease Stage 5 (end stage renal disease) (Exhibit B, Tab D, page 194).

MDS-HC Report dated November 4, 2024, indicates that Appellant needs some assistance with the following Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs) (Exhibit B, Tab C, pages 55-56): Meal Preparation; Housework; Medication assistance; Shopping; Transportation; Transfers; Bathing; Dressing/Undressing and Bowel/Bladder care.

On December 11, 2024, Appellant's case was discussed at the MassHealth Waiver Clinical Team

review meeting which includes the Massachusetts Rehabilitation Commission clinical team, now known as MassAbility, who oversees the community living waiver. MassHealth and MassAbility determined that Appellant is a significant health and safety risk to herself as she is not able to manage her diabetes, kidney support care, and her many other care needs for her physical and mental health. Appellant has required 10 ED and Hospital visits over the past year. In addition, Appellant continues to require 24/7 support due to her physical needs and she lacks a capable live-in caregiver that will be providing the assistance for her diabetic care needs multiple times per day. The MassHealth representative noted that waiver services are only available for 12 hours per day.

The MassHealth representative opined that is the agency's clinical and professional opinion that, at this time, based on the available medical records and interviews, Appellant cannot be safely served in the community within the MFP-CL Waiver due to having no informal support and no capable live-in caregiver in her home to assist her with the 24/7 care needs required to support her. On December 17, 2024, MassHealth issued a denial notice for the MFP-CL Waiver to Appellant (Exhibit B, Tab C, pages 46-47).

Appellant appeared on her own behalf accompanied by a social worker who helped Appellant to advocate for her position. Appellant stated she wanted to go home either with or without the waiver services and that she generally disagreed with everything the MassHealth representative stated. Appellant stated she has a friend in the community named [REDACTED] who is helping her to find a personal care attendant (PCA). Appellant noted that she is able to ambulate with a rollator and can use a manual wheelchair. She also testified that she is able to transfer without assistance and can get her own water when she needs to.

The Social Worker testified that Appellant had lived in the community with her husband until he passed in [REDACTED]. According to the Social Worker, Appellant sleeps through the evening and overnight hours so she does not believe that the lack of waiver services during those 12 hours would be an impediment to Appellant's ability to return home. The Social Worker testified that Appellant is currently alert and oriented X3 and only requires oversight and medication management which had previously been provided to her by her husband. The Social Worker noted that Appellant's hallucinations are not commanding and have never interfered with her ability to be in the community. Additionally, due to her medications, her hallucinations are infrequent with the last experience being several months ago. The Social Worker acknowledged that Appellant failed to succeed in the community after her husband passed, but that was with far fewer services than the waiver will be able to provide to her. The Social Worker believes the needed services can now be provided by through the CL-waiver and Appellant can succeed in the community.

In response, the MassHealth representative redirected attention to Appellant's previous trial in the community which lasted less than a month. The MassHealth representative noted that during that time, Appellant had Home Health Aid and VNA services, yet she still did not

succeed. The MassHealth representative also focused on the fact that Appellant has no informal supports in the community who could fill-in not just during the 12-hour period per day when waiver services are not available, but also when scheduled waiver services are suddenly not available due to cancelations or providers being out sick or otherwise unavailable on a given day. The MassHealth representative also highlighted the fact that Appellant had to go to the Emergency Department or hospital 10 times this past year. The MassHealth representative explained that while residing in a skilled nursing facility, there is staff available 24/7 who can manage Appellant's care needs as they arise, including the need to go to the hospital on an emergency or urgent basis. In the community, without informal supports, Appellant could have no one to help her for an entire day if scheduled waiver services were unexpectedly unable to tend to her, which includes having her blood sugar checked throughout the day and necessary insulin injections which Appellant cannot do on her own.

Findings of Fact

By a preponderance of the evidence, this record supports the following findings:

1. MassHealth has two waivers that assist Medicaid-eligible persons to move into the community and obtain community-based services: the MFP-RS Waiver and the MFP-CL Waiver.
2. 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.
3. 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.
4. The MFP-RS Waiver is for individuals who need supervision and staffing 24 hours/ day, 7days per week.
5. Appellant applied for the MFP-CL Waiver on August 24, 2024 (Exhibit B, Tab C, page 45).
6. On November 12, 2024, an assessment for Waiver eligibility was conducted in person at [REDACTED]
7. In attendance at the in-person assessment were Appellant, [REDACTED] and Susan Tomasz-Taylor RN, MassHealth Nurse Reviewer who was representing the MFP Waiver Program and Linda Kembo, RN participated in this interview by telephone (Exhibit B, Tab C, page 75).

8. The assessment consists of completion of MFP documents including the Minimum Data Set-Home Care (MDS-HC) (Exhibit B, Tab C, pages 50-63); Clinical Determination of Waiver Eligibility (Exhibit B, Tab C, pages 64-73); Acquired Brain Injury (ABI)/MFP Waivers Community Risks Assessment (Exhibit B, Tab C, page 74); a review of the applicant's medical record; and a discussion with the nursing facility staff.
9. Appellant is in her [REDACTED]s and was initially hospitalized at [REDACTED] for chest pain and leg weakness.
10. Following this hospitalization and rehabilitation for major depression, declining mental status and history of CVA (stroke) with residual, Appellant was discharged home with VNA nursing and Home Health Aid services 7 days per week.
11. Appellant received home care services for approximately 1 month in which she had many difficulties with housekeeping, managing her medications and treatment, and was ultimately hospitalized with chest pain and leg weakness/wound care.
12. After this hospitalization, Appellant was transferred to [REDACTED] on [REDACTED] where she currently resides (Exhibit B, Tab C, page 68).
13. Appellant's medical and mental health history includes Chronic Kidney Disease Stage 5 and receiving hemodialysis 3x/week; a port-a-cath in her right chest for dialysis; polyneuropathy reported to be felt from the knee to foot bilaterally; Type 2 diabetes; Cerebral Infarction (2020); Asthma – unspecified; Hypothyroidism; Anemia; Vitamin D Deficiency; Hypertension; Congestive Heart Failure; Lower Back Pain; Peripheral Vascular disease; Charcot's Joint right ankle; Osteoarthritis; Adult Failure to Thrive; Gastro-Intestinal reflux; Amputation of 3rd of left foot (9/2021); history of 3 cardiac events requiring CPR that led to a cracked sternum; and a pro clip for a hole in the heart.
14. Appellant's mental disorder diagnoses include Bi-polar Disorder, Major Depression, Post-traumatic Stress Disorder, Bi-polar II disorder, Fetal Alcohol Syndrome and Hallucinations (Exhibit B, Tab C, page 68).
15. During the Waiver eligibility assessment review, MassHealth noted the following documentation indicating Appellant's medical conditions:
 - August 8, 2024: Care Plan from [REDACTED] states that "need for safe, appropriate discharge plan: Need for care and support. Discharge plan ongoing. [REDACTED] would need 24/7 supervision to hands on care for safe community discharge. [REDACTED] prefers to stay here @ ACS for LTC and does not wish to be asked quarterly" (Exhibit B, Tab D, page 114).

- September 30, 2024: Psychiatric Evaluation and Consultation indicates that Appellant reported “distressing experiences of feeling the presence of her deceased husband, specifically describing sensations of being touched by the ghost, which she is finding it frightening.” The therapist discussed altering her medication and participating in relaxation exercises to help alleviate these experiences (Exhibit B, Tab D, page 87).
 - November 15, 2024: Psychological Services describes what Appellant was working on during this session. Tasks included managing her hallucinations, anxiety, depression and delusions. Psychotropic medication was increased and Appellant reported that she was having less experiences of the hallucinations (Exhibit B, Tab D, page 104).
 - November 18, 2024: Order Summary Report states that Dialysis schedule is every Tuesday, Thursday and Saturday. Diagnosis is Chronic Kidney Disease Stage 5 (end stage renal disease) (Exhibit B, Tab D, pages 194).
16. An MDS-HC Report dated November 4, 2024 indicates that Appellant needs some assistance with the following Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs) (Exhibit B, Tab C, pages 55-56): Meal Preparation; Housework; Medication assistance; Shopping; Transportation; Transfers; Bathing; Dressing/Undressing and Bowel/Bladder care.
17. Appellant is able to ambulate with a rollator and can use a manual wheelchair.
18. Appellant requires blood sugar checks and insulin injections throughout the day which she is unable to provide by herself.
19. On December 11, 2024, Appellant’s case was discussed at the MassHealth Waiver Clinical Team review meeting which includes the Massachusetts Rehabilitation Commission clinical team, now known as MassAbility, who oversees the community living waiver.
20. MassHealth and MassAbility determined that Appellant is a significant health and safety risk to herself as she is not able to manage her diabetes, kidney support care and many other care needs for her physical and mental health.
21. Appellant has required 10 ED and Hospital visits over the past year.
22. Appellant continues to require 24/7 support due to her physical needs.

23. Appellant lacks a capable live-in caregiver that will be providing the assistance for her diabetic care needs multiple times per day.
24. Waiver services are only available for 12 hours per day.
25. It is MassHealth's clinical and professional opinion that, at this time, based on the available medical records and interviews, Appellant cannot be safely served in the community within the MFP-CL Waiver due to having no informal support and no capable live-in caregiver in her home to assist her with the 24/7 care needs required to support her.
26. On December 17, 2024, MassHealth issued a denial notice for the MFP-CL Waiver to Appellant (Exhibit B, Tab C, pages 46-47).

Analysis and Conclusions of Law

The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity (*Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989)). On this record, Appellant has not met her burden.

Eligibility criteria for the MFP-CL Waiver are stated in 130 CMR 519.007(H) (emphasis supplied):

(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 they meet 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 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. 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.

At the hearing, MassHealth presented a clinical professional who reviewed Appellant's medical documentation to support the agency's findings and conclusions about Appellant's current state of health and behaviors which place her outside of the regulatory requirements of the waiver program. MassHealth has shown that an extensive assessment was performed with Appellant and staff members from her current institutional residence in attendance. Appellant's assessment was considered by the MassHealth Waiver Clinical Team review and MassAbility (the Massachusetts Rehabilitation Commission). Both the Waiver Team and MassAbility concluded that based on their professional clinical opinion, Appellant requires 24/7 care which cannot be effectively and safely provided in the community setting through the MFP-CL waiver program.

Appellant and her advocating Social Worker offered assurances that Appellant could be safely maintained in the community. They noted that Appellant's hallucinations have largely abated with proper medication and asserted that Appellant did not require services for 12 hours per day as she largely spent the evening and overnight hours sleeping. While sincere, these assurances were not supported by objective clinical documentation, and they do not overcome the fact that Appellant has no informal support in the community. Such support is essential to fill in when waiver services are suddenly not available due to unexpected yet foreseeable caregiver absences. Additionally, care needs and emergencies can and do arise even while people are in bed sleeping. Given Appellant's lengthy list of serious illnesses, including Stage 5 kidney disease, diabetes with significant neuropathy, and a related partial foot amputation, a cerebral infarction and CHF, and the assessments finding that Appellant requires assistance with most of her ADLs, the record supports MassHealth's conclusion that Appellant requires 24/7 care which is simply not available under the MFP-CL Waiver.

This record presents no basis in fact or law to disturb the agency's action. The 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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

cc:

[REDACTED]

MassHealth Representative: Linda Phillips, UMass Medical School - Commonwealth Medicine, Disability and Community-Based Services, 333 South Street, Shrewsbury, MA 01545-7807