

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2502195
Decision Date:	05/09/2025	Hearing Date:	02/25/2025
Hearing Officer:	Kimberly Scanlon		

Appearances for Appellant:



Appearance for MassHealth:

Linda Phillips, RN, BSN, LNC-CSp., 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

Appeal Decision:	Denied	Issue:	Moving Forward Waiver eligibility
Decision Date:	05/09/2025	Hearing Date:	02/25/2025
MassHealth's Rep.:	Linda Phillips, RN	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South 1 (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 January 14, 2025, MassHealth informed the appellant that it determined that she was not clinically eligible for the 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 (Exhibit 1). The appellant filed this appeal in a timely manner on or about February 5, 2025 (130 CMR 610.015(B); Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified the appellant that it determined that she was not clinically eligible for the MFP-CL Waiver because she cannot be safely served in the community within the terms of this waiver.

Issue

The appeal issue is whether MassHealth appropriately determined that the appellant is not clinically eligible for the MFP-CL Waiver because she cannot be safely served in the community

within the terms of this waiver.

Summary of Evidence

MassHealth was represented at hearing telephonically by a registered nurse from MassHealth's Disability and Community Services. The appellant appeared at the hearing telephonically with her daughter.

The MassHealth nurse testified that MassHealth offers two home-and community-based MFP service waivers, the MFP-RS Waiver and the MFP-CL Waiver.¹ Both waivers help individuals who are qualified for the MFP Demonstration to 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 designed 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 following are the criteria 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 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 financial requirements to qualify for MassHealth; special financial rules exist 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 supports with staff supervision 24 hours per day, 7 days per week.

In this case, MassHealth notified the appellant that she was not clinically eligible for the MFP-CL Waiver because MassHealth determined that she cannot be safely served in the community within the terms of this waiver (Exhibit 1).

MassHealth offered the following testimony in support of its position: The appellant is an adult female who was initially at Alliance Health (the facility) from [REDACTED] to [REDACTED] [REDACTED] for right foot gangrene. She was transferred to [REDACTED] due to vascular

¹ MassHealth testified that the appellant had also applied for the MFP-RS waiver, however, she withdrew this application on January 9, 2025.

complications and had a right below-the-knee amputation on [REDACTED]. [REDACTED] later, the appellant had a right above-the-knee amputation. The appellant had a few short-term rehabilitation admissions thereafter and was transferred to the facility for long-term care on [REDACTED].

The appellant's medical history primarily includes atrial fibrillation, heart failure, Type 2 Diabetes², restless leg syndrome, right above-the-knee amputation, neuropathy, esophageal ulcers, mood disorders, depression, peripheral vascular disease, pressure ulcer, lumbar spinal stenosis, arthritis, and phantom syndrome pain (Exhibit 6, p. 69).

On October 29, 2024, an assessment for Waiver eligibility was conducted in person at the facility. In attendance at the assessment were: the appellant, her two daughters, the facility's social worker, and the MassHealth nurse reviewer representing the MFP Waiver program (Exhibit 6, p. 75). The assessment consisted of completion of MFP documents, including, the Minimum Data Set-Home Care (MDS-HC), Clinical Determination of Waiver Eligibility, Acquired Brain Injury (ABI)/MFP Waivers Community Risk Assessment, a review of the applicant's medical record, and a discussion with the facility staff (Exhibit 6, pp. 51-74).

During the waiver eligibility assessment review, MassHealth noted the following documentation that indicates the appellant's medical conditions:

- September 12, 2024: the facility's Progress Note indicates that the appellant was sitting in the lobby throughout the day with her family. She had a large, iced coffee and Chinese food. The appellant was educated on her diabetic diet and stated that "she does not care to listen" (Exhibit 6, p. 87).
- September 24, 2024: the facility's Care Plan states that the appellant has a diagnosis of depression and that she accepts psychotropics. In addition, she has not been home since her hospitalization in November 2023 (Exhibit 6, p. 152).
- September 25, 2024: Facility's Social Service Note states that the appellant is adamant that she is returning home. She spends most of her day in the lobby where she eats her lunch and works on her adult coloring. Her daughters remain supportive and visit frequently (Exhibit 6, p. 103).

The MDS-HC Report dated November 4, 2024, indicates that the appellant needs assistance with the following Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs):

- Meal Preparation

² The appellant clarified that she is a Type I (not Type 2) diabetic.

- Housework
- Medication assistance
- Shopping
- Transportation
- Transfers (via Hoyer lift)
- Bathing
- Dressing/undressing
- Bowel/Bladder care

(Exhibit 6, pp. 55-56).

The appellant's spouse still resides at their home and may be able to provide emotional support; however, he is unable to provide any physical assistance to the appellant due to his own medical needs. The appellant's daughters are not able to provide any support at her home due to one of her daughter's physical conditions and her other daughter works full-time. Neither of the appellant's daughters has enough room for the appellant to live with either of them. At the clinical waiver assessment, the appellant stated that she only wanted to be discharged to her home and did not want a residential setting. The appellant continues to require 24/7 physical care and is non-compliant with her diet, has elevated blood sugars, and has difficulty administering insulin due to weak grasps in her hands. The appellant's blood sugar ranged in the 400s, 500s, and even 600s several times, ranging from June 2024-September 2024 (Exhibit 6, pp. 69-70).

On November 20, 2024, the 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 the appellant is a significant health and safety risk to herself. The appellant continues to require 24/7 support due to her physical needs and lacks a capable live-in caregiver that will be providing the assistance for her ADLs and IADLs each day. On January 14, 2025, MassHealth's clinical and professional opinion is that, at this time, the appellant cannot be safely served in the community within the MFP-CL Waiver due to no informal support and no capable live-in caregiver in her home. (Exhibit 6, pp. 47-48).

The appellant testified that there are many people who are missing limbs who live independently. She asked what she needs to do to be discharged to her home. The MassHealth representative responded and explained that the appellant would need a caregiver 24 hours a day, 7 days per week to be physically present at the appellant's home to care for her. The appellant disagreed that she requires 24 hours a day, 7 days per week. She acknowledged that her spouse is unable to provide physical assistance to her. However, she stated that MassHealth can provide some care. The appellant's daughter explained that while MassHealth does provide care, it is not 24 hours, 7 days per week care which is the amount of care that the appellant requires. Next, the appellant inquired whether MassHealth would be able to install a ramp at her home so she can spend some

time with her spouse during the daytime hours and return to the facility at night. The MassHealth representative suggested that she contact the facility's social worker to see if ramp installation can be arranged.

Findings of Fact

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

1. The appellant is a female who is over the age of 65. She was initially admitted to a short-term facility for foot gangrene.
2. The appellant was subsequently hospitalized due to vascular complications and had a right below-the-knee amputation in [REDACTED], followed by an above-the-knee amputation.
3. The appellant was admitted for short-term rehabilitation admissions thereafter and was transferred to a long-term care facility on [REDACTED].
4. The appellant has a past medical history of atrial fibrillation, heart failure, Type 1 Diabetes, restless leg syndrome, right above-the-knee amputation, neuropathy, esophageal ulcers, mood disorders, depression, peripheral vascular disease, pressure ulcer, lumbar spinal stenosis, arthritis, and phantom syndrome pain.
5. On October 29, 2024, an assessment for the appellant's Waiver eligibility was conducted in- person at the facility. In attendance were: the appellant, her daughters, the facility's social worker, and a MassHealth registered nurse and reviewer who represents the MFP Waiver program.
6. During the waiver eligibility assessment review, MassHealth noted the following documentation that indicates the appellant's medical conditions:
 - a. September 12, 2024: the facility's Progress Note indicates that the appellant was sitting in the lobby throughout the day with her family. She had a large, iced coffee and Chinese food. The appellant was educated on her diabetic diet and stated that "she does not care to listen" (Exhibit 6, p. 87).
 - b. September 24, 2024: the facility's Care Plan states that the appellant has a diagnosis of depression and that she accepts psychotropics. In addition, she has not been home since her hospitalization in November 2023 (Exhibit 6, p. 152).

- c. September 25, 2024: Facility's Social Service Note states that the appellant is adamant that she is returning home. She spends most of her day in the lobby where she eats her lunch and works on her adult coloring. Her daughters remain supportive and visit frequently (Exhibit 6, p. 103).
7. The MDS-HC Report dated November 4, 2024, indicates that the appellant needs assistance with the following Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs): Meal Preparation, Housework, Medication assistance, Shopping, Transportation, Transfers (via Hoyer lift), Bathing, Dressing/undressing, and Bowel/Bladder care.
8. The appellant's spouse lives at home. He cannot provide any physical assistance to the appellant due to his own medical needs.
9. The appellant's daughters are unable to provide the appellant with any support due to physical limitations and/or full-time employment. Neither has enough room for the appellant to live with them.
10. The appellant wants to be discharged to her home and does not want a residential setting. She withdrew her MFP-RS application in January 2025.
11. The appellant continues to require physical care 24 hours per day, 7 days per week. She is noted to be non-compliant with her diet, has elevated blood sugars, and has difficulty administering insulin due to weak grasps in her hands.
12. The appellant's blood sugar ranged in the 400s, 500s, and even 600s several times for the period between June 2024 and September 2024.
13. On November 20, 2024, the appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting with MassAbility, who oversees the MFP-CL Waiver.
14. MassHealth and MassAbility determined that that the appellant is not eligible for the MFP-CL Waiver because she is a significant health and safety risk to herself.
15. The appellant continues to require 24 hours per day, 7 days per week support due to her physical needs.
16. The appellant lacks a capable live-in caregiver that can provide assistance with ADLs and IADLs.

17. MassHealth and MassAbility determined that appellant cannot be safely served in the community within the terms of the MFP-CL Waiver.

18. By notice dated January 14, 2025, MassHealth notified the appellant that it determined that she is not eligible for the MFP-CL waiver.

Analysis and Conclusions of Law

The issue in this case is whether MassHealth appropriately determined that the appellant does not meet the eligibility requirements of the MFP-CL Waiver. The MFP home-and community-based services waivers are described at 130 CMR 519.007(H). The requirements to maintain eligibility for the MFP-CL Waiver are set forth below 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 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.

Transfer of Resources Regardless of Date of Transfer and 520.019: Transfer of Resources Occurring on or after August 11, 1993.

(130 CMR 519.007(H)(2)(a)). (Emphasis added).

In late 2024, MassHealth held an assessment visit that took place at the facility. In reviewing the assessment of the appellant's request for the MFP-CL Waiver, MassHealth determined that she cannot be safely served in the community within the terms of the waiver (130 CMR 519.007(H)(2)(a)(5)). The appellant has not demonstrated otherwise. First, the record confirms that the appellant requires physical care 24 hours per day, 7 days per week. Specifically, the record supports MassHealth's conclusion that the appellant requires assistance with the following ADLs and IADLs: meal preparation, housework, medication assistance, shopping, transportation, transfers (via Hoyer lift), bathing, dressing/undressing, and bowel/bladder care. It is undisputed that neither the appellant's spouse, nor her daughters, can provide physical care to the appellant 24 hours per day, 7 days per week. Further, there is no evidence that any other third party can provide assistance to the appellant. Thus, the appellant lacks a capable live-in caregiver that can help with her ADLs and IADLs every day.

Second, the record supports MassHealth's conclusion that the appellant can be non-compliant with her diet. Examples of her diet noncompliance include elevated blood sugar levels ranging from the 400s-600s multiple times from June through September 2024. Additionally, the facility noted that on September 12, 2024, while being educated about her diabetic diet, the appellant "does not care to listen" while eating Chinese food and drinking iced coffee. Further, the appellant has difficulty administering insulin due to a weak grasp in her hands.

The current evidence reflects that appellant cannot be safely served in the community within the terms of the MFP-CL Waiver. I note the appellant's testimony and while she does seem motivated to move home, MassHealth has persuasively argued that she needs a level of assistance that is currently not available or in place. On this record, MassHealth has supported its determination that the appellant cannot be safely served in the community within the terms of the MFP-CL waiver. This appeal is denied.³

Order for MassHealth

None.

³ This denial does not preclude the appellant from discussing alternative options with the facility's social worker (i.e. ramp installation at the home) to visit her husband safely, as discussed at the hearing.

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.

Kimberly Scanlon
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