

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2502928
<b>Decision Date:</b>	5/5/2025	<b>Hearing Date:</b>	04/08/2025
<b>Hearing Officer:</b>	Susan Burgess-Cox		

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Linda Phillips & Leanne Govoni



*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>	Waiver Disenrollment
<b>Decision Date:</b>	5/5/2025	<b>Hearing Date:</b>	04/08/2025
<b>MassHealth's Reps.:</b>	Linda Phillips & Leanne Govoni	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	All Parties Appeared by Telephone	<b>Aid Pending:</b>	No

### Authority

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

### Jurisdiction

On January 14, 2025, MassHealth issued a notice of disenrollment from the Moving Forward Plan – Residential Supports Waiver Program (MFP-RS) because the agency determined that the appellant could not be safely served in the community within the terms of the waiver. (130 CMR 519.007(H); Exhibit 1). On February 20, 2025, the Board of Hearings received a request for hearing form. (Exhibit 2).

On February 20, 2025, the Board of Hearings dismissed the appeal as the request for hearing form was not signed; it was not clear whether the individual submitting the request for hearing was a MassHealth member, applicant, nursing home resident or appeal representative; and individual did not provide a copy of the notice prompting the appeal. (130 CMR 610.004; 130 CMR 610.034; 130 CMR 610.035; Exhibit 3). On February 26, 2025, the Board of Hearings received another request for hearing form with a signature. (Exhibit 4). On February 26, 2025, the Board of Hearings dismissed the appeal as the individual filing the appeal did not provide a copy of the notice on appeal. (130 CMR 610.034; 130 CMR 610.025; Exhibit 5). On February 28, 2025, the Board of Hearings received a copy of the notice on appeal but issued a notice dismissing the appeal as the appellant did not provide proof that he was a MassHealth member, applicant or nursing home resident. (130 CMR 610.034; 130 CMR 610.35; Exhibit 1; Exhibit 6). On March 4, 2025, the Board of Hearings received the information necessary to move forward with an appeal,

vacated the dismissal and scheduled a hearing for April 8, 2025. (130 CMR 610.048(C); Exhibit 7).

A decision 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-RS Waiver.

## **Issue**

Whether MassHealth was correct in their decision regarding the appellant's eligibility for the MFP-RS 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 8 and 9.

In 2020, the appellant moved into a residential home in [REDACTED] Massachusetts with support of the Moving Forward Plan Residential Services Waiver (MFP-RS). The appellant's medical history includes:

[REDACTED]

(Testimony; Exhibit 8; Exhibit 9).

On December 3, 2024, a UMass Waiver nurse conducted an annual redetermination for the appellant's waiver eligibility. (Testimony; Exhibit 8; Exhibit 9). As part of that redetermination, the nurse reviewed documentation including information about appointments, behavior, communications, activities, progress notes and alerts. (Testimony; Exhibit 8; Exhibit 9). Upon reviewing the records, MassHealth determined that the appellant was a significant health and safety risk to himself and others. (Testimony; Exhibit 8; Exhibit 9). At hearing, the MassHealth representative provided a summary of some of the incidents that led to this decision.

In February 2024, the appellant was served with an Abuse Prevention Order for the protection of another residential home resident. (Testimony; Exhibit 8; Exhibit 9). The order required the appellant to remain at least 15 feet away from the other resident. (Testimony; Exhibit 8; Exhibit 9).

9). The police were contacted on several occasions due to the appellant violating the order and the police filed a violation of the order. (Testimony; Exhibit 8; Exhibit 9). In March 2024, the Department of Developmental Services (DDS), who assisted the appellant with supports in the community, performed a consultation and informed the appellant of the possibility of a waiver eligibility redetermination due to ongoing behaviors including: noncompliance of prescribed medications and plan of care; disruptions to the home by making it uncomfortable for peers; verbal and physical aggression toward staff and peers; and creating unsafe situations including bringing sharps to his room with a history of self-harm and threatening statements. (Testimony; Exhibit 8; Exhibit 9). The status of the change at that time was pre-contemplative. (Testimony; Exhibit 8; Exhibit 9). During the consultation, the appellant verbalized understanding that certain behaviors will not be tolerated, and he intended to adhere to the guidelines moving forward. (Testimony; Exhibit 8; Exhibit 9).

In July 2024, the appellant went to the Emergency Department of [REDACTED] Hospital where he was diagnosed with pneumonia and cellulitis. The appellant requested discharge and removal against the advice of medical providers. (Testimony; Exhibit 8; Exhibit 9). In August 2024, the appellant was admitted to [REDACTED] Hospital due to low oxygen levels. (Testimony; Exhibit 8; Exhibit 9). The appellant was discharged to [REDACTED] in [REDACTED] following the hospitalization. (Testimony; Exhibit 8; Exhibit 9). While at [REDACTED], the appellant was noncompliant with his oxygen and his oxygen saturation levels kept dropping. (Testimony; Exhibit 8; Exhibit 9). During his stay at [REDACTED] the appellant had incidents including yelling at an occupational therapist (OT) and then stating that he could do it again. (Testimony; Exhibit 8; Exhibit 9).

The MassHealth representative testified that in 2024, there were at least 11 different episodes where the appellant required a higher level of medical support than could be provided in the group home. (Testimony; Exhibit 8; Exhibit 9). The appellant continues to be noncompliant with his oxygen; and demonstrates psychiatric and medical instability. (Testimony; Exhibit 8; Exhibit 9). Given all of the health risks displayed in the last year alone, along with the appellant's continued psychiatric and medical instability, DDS, who specializes in mitigating behaviors and manages the MFP-RS waiver program, determined that they are unable to safely manage the appellant's high-risk behaviors that put himself, residents and residential staff at risk. (Testimony; Exhibit 8; Exhibit 9). MassHealth and DDS determined that the appellant is not clinically eligible for further participation in the MFP-RS Waiver program due to his psychiatric and physical instability.

The appellant testified that all of the situations noted by the MassHealth representative at hearing were not accurate. The appellant noted that there have been conflicts in the past and testified that he did violate the restraining order one time. The appellant testified that the violation was an accident. The appellant testified that he does get aggravated at times but there are typically valid reasons for his reactive behavior. The appellant testified that there are more good times than bad, he keeps his room clean, and some remarks are taken out of context. The appellant testified that he tries to joke about things, he does talk about suicide but it's because he knows a lot about it. The appellant testified that he [REDACTED] about 10 years ago. The appellant

admitted to “blasting” the occupational therapist noting that he wanted her to leave the room, she refused and the discussion escalated because she would not leave. The appellant testified that he has had words with some staff members, but he gets along with the manger of the house. The appellant testified that he apologizes to individuals to help resolve most conflicts. The appellant testified that he was [REDACTED] 2024 because he is estranged from his daughter but was able to control the [REDACTED]. The appellant testified that he would like to be in the house rather than a skilled nursing facility as he is not comfortable in the facility and will improve if he returns to the community. It was noted at the hearing that the appellant may not return to the same residence if he is approved for participation in the waiver program.

## Findings of Fact

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

1. In 2020, the appellant moved into a residential home in [REDACTED] Massachusetts with support of the Moving Forward Plan Residential Services Waiver (MFP-RS).
2. The appellant’s medical history includes: [REDACTED]
3. In February 2024, the appellant was served with an Abuse Prevention Order for the protection of another residential home resident.
4. The order required the appellant to remain at least 15 feet away from the other resident.
5. The police were contacted on several occasions due to the appellant violating the order and the police filed a violation of the order.
6. In March 2024, the Department of Developmental Services (DDS) performed a consultation and informed the appellant of the possibility of a waiver eligibility redetermination due to ongoing behaviors including: noncompliance of prescribed medications and plan of care; disruptions to the home by making it uncomfortable for peers; verbal and physical aggression toward staff and peers; and creating unsafe situations including bringing [REDACTED]

7. During the consultation, the appellant verbalized understanding that certain behaviors will not be tolerated, and he intended to adhere to the guidelines moving forward.
8. In 2024, there were at least 11 different episodes where the appellant required a higher level of medical support than could be provided in the residential home.
9. In July 2024, the appellant went to the Emergency Department of [REDACTED] Hospital where he was diagnosed with pneumonia and cellulitis.
10. The appellant requested discharge and removal from the hospital against the advice of medical providers.
11. In August 2024, the appellant was admitted to [REDACTED] Hospital due to low oxygen levels.
12. The appellant was discharged to [REDACTED] in [REDACTED] following the hospitalization.
13. While at [REDACTED] the appellant was noncompliant with his oxygen and his oxygen saturation levels kept dropping.
14. During his stay at [REDACTED] the appellant had incidents including yelling at an occupational therapist (OT) and then stating that he could do it again.
15. DDS determined that they are unable to safely manage the appellant's high-risk behaviors that put himself, residents and residential staff at risk.
16. MassHealth and DDS determined that the appellant is not clinically eligible for further participation in the MFP-RS Waiver program due to his psychiatric and physical instability.

## **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 Money Follows the Person Residential Supports Waiver (MFP-RS), 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 residential support services and other specified waiver services in a 24-hour supervised residential setting 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. must be assessed to need residential habilitation, assisted living services, or shared living 24-hour supports services within the terms of the MFP Residential Supports Waiver
5. are able to be safely served in the community within the terms of the MFP Residential Supports 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.

MassHealth also has income and asset eligibility requirements for the MFP-RS program but the only issue raised in this appeal was 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 demonstrate that the appellant requires a high level of services and/or support. The appellant did not demonstrate that he is able to be safely served in the community within the terms of the waiver. Records presented by MassHealth indicate that the appellant engages in high-risk behaviors and the appellant did not present sufficient evidence or testimony to effectively challenge the findings presented by MassHealth. Instead, the appellant presented testimony to support some of the findings by acknowledging disputes with other residents and staff. The appellant did not present sufficient evidence to demonstrate that he can be safely served in the community within the terms of the waiver. The decision made by MassHealth regarding the clinical eligibility for the MFP-RS 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

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