

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2502972
<b>Decision Date:</b>	04/18/2025	<b>Hearing Date:</b>	04/01/2025
<b>Hearing Officer:</b>	Stanley Kallianidis		

**Appellant Representative:**



**MassHealth Representative:**

Linda Phillips, RN



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, 6<sup>th</sup> Floor  
Quincy, MA 02171*

## APPEAL DECISION

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Moving Forward Plan-Community Living Waiver
<b>Decision Date:</b>	04/18/2025	<b>Hearing Date:</b>	04/01/25
<b>MassHealth Rep.:</b>	Linda Phillips, RN		

### Authority

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

### Jurisdiction

A notice dated January 21, 2025 was sent to the appellant stating that MassHealth had determined that she was not eligible for the Moving Forward Plan-Community Living Waiver (MFP-CL Waiver) due to a lack of clinical eligibility (see 130 CMR 519.007(H) and Exhibit 1). The appellant filed this timely appeal on February 20, 2025 (Exhibit 2). A dispute over the scope of assistance is grounds for appeal (130 CMR 610.032).

Notice of the hearing was sent to the appellant on February 28, 2025 (Exhibit 3).

### Action Taken by MassHealth

MassHealth denied the appellant's request for an MFP-CL Waiver.

### Issue

Pursuant to 130 CMR 519.007(H)(5), does the appellant meet the clinical requirement of safety for an MFP-CL Waiver?

## Summary of Evidence

The MassHealth representative testified that on January 21, 2025, the appellant's application for an MFP-CL Waiver was denied following a determination that she cannot be safely served within the terms of the Waiver. She stated that the purpose of the MFP-CL Waiver is to allow individuals to move into the community, either in their own home or the home of someone else and receive services in the community less than 24 hours a day, seven days per week (Exhibit 1).

The appellant has been receiving MFP-Residential Supports (RS) Waiver services since 2023. She moved to her current group home managed by the Department of Developmental Services (DDS) in [REDACTED]. On September 30, 2024, the DDS requested that the appellant be transferred from the MFP-RS to the MFP-CL Waiver because her family wanted to care for her in their own home (Exhibit 4).

An in-person assessment was conducted on December 18, 2024 at the appellant's group home. Her medical history includes a traumatic brain injury, [REDACTED] (Exhibit 4).

During the assessment, MassHealth noted the appellant's need for 24/7 support due to her medical conditions. A July 2024 medical note indicated that the appellant has ankle pain and was unable to bear weight on them. A July 2024 Care Plan meeting noted the appellant's hesitance to get out of bed and participate in activities. An October 8, 2024 progress note indicated that the appellant started her day program and needed help to complete her activities of daily living (ADLs). A December 2024 site visit review showed the appellant eating lunch at the table with her two sisters visiting. A December 2024 report indicated that the appellant needs help with as Instrumental Activities of Daily Living as well as with ADLs (Exhibit 4).

In a January 2025 meeting, the appellant's case was discussed with the MassHealth Waiver team. They found that the appellant was at risk for mental decompensation related to depression, anxiety and change in caregivers. Therefore, MassHealth concluded that the appellant needs 24/7 support and supervision and her needs cannot be safely met with the terms of the MFP-CL Waiver program because the MFP-CL program is capped at 84 hours weekly, or 12 hours daily (Exhibit 4).

The appellant's attorney disagreed with MassHealth's assessment that the appellant cannot be cared for safely with the appellant living at home on an MFP-CL Waiver. He explained that the appellant would not be living alone but rather would be living in the family home with one of her sisters, who previously care for her in the home between [REDACTED] and would be her primary caregiver going forward.

According to a letter from the appellant's health advocate, the family has concerns about the group home because the appellant fell twice recently and is often neglected by staff members. This neglect contrasts with the care that the appellant would receive in her own home with her sister who would be her primary caregiver, added to the 12 hours per day of care available through the MFP-CL Waiver program. The sister would cover 12 hours also and would consider hiring any supplemental help deemed necessary. The sister underwent cancer treatments in [REDACTED] but is currently healthy and able to once again provide care for the appellant (Exhibit 5A).

The sister submitted a letter and a detailed, hour-by-hour plan of care in the home, noting all of the appellant's daily needs (Exhibit 5B).

According to a letter from the appellant's physician, the appellant would be safe in the family home with care from her sister and personal care support from the MFP-CL Waiver program (Exhibit 5C).

The appellant's sister testified that she is retired and would take care of the appellant full time. She stated that she is now in very good health. She is cancer-free and goes to the gym three days per week. She explained that the family home is handicapped accessible with ramps and grab bars. The appellant has a Life-Line button and there would be an alarm and camera in the appellant's bedroom. The sister testified that she is confident that she can once again take care of the appellant in the family home because she was her sole caregiver between [REDACTED]. She submitted a letter in which she detailed her disappointment with the appellant's group home, her current good health, and the close bond that she has always had with the appellant (Exhibit 5D).

A second sister of the appellant testified that she lives close by to the family home and that she could assist with the appellant's care if needed. She further testified that she has two daughters who are nurses, and they also have offered to provide the appellant any additional needed care.

## Findings of Fact

The record shows, and I so find:

1. On January 21, 2025, the appellant's application for an MFP-CL Waiver was denied following a determination that she cannot be safely served within the terms of the Waiver (Exhibit 1).
2. The appellant has been receiving MFP-RS Waiver services since [REDACTED]. She moved to her current group home managed by the DDS in February 2024 (Exhibit 4).
3. On September 30, 2024, the DDS requested the appellant's transfer from the MFP-RS to the MFP-CL Waiver because her sister wanted to care for her in the family home (Exhibit 4).

4. An in-person assessment was conducted on December 18, 2024 at the appellant's group home. During the assessment, MassHealth noted the appellant's need for 24/7 support due to her medical conditions (Exhibit 4).
5. The appellant's medical history includes [REDACTED] (Exhibit 4).
6. The appellant's progress notes from July-December 2024 indicated that she needs assistance with ADLs and IADLs (Exhibit 4).
7. The MFP-CL Waiver program is capped at 84 hours weekly, or 12 hours daily (Exhibit 4).
8. The appellant's care plan for moving into the community would be to live with her sister in their family home, and the sister would take care of her on a full-time basis (Exhibit 5).
9. According to a letter from the appellant's physician, the appellant would be safe in the family home with care from her sister and personal care support from the MFP-CL Waiver program (Exhibit 5).
10. The sister had previously taken care of the appellant in the family home as her sole caregiver between [REDACTED] (Exhibit 5 and testimony).
11. A second sister of the appellant is available to assist with the appellant's care, as are her two nurse daughters (Exhibit 5 and testimony).

## **Analysis and Conclusions of Law**

130 CMR 519.007 (H) Money Follows the Person Home- and Community-based Services Waivers. (1) Money Follows the Person (MFP) Residential Supports Waiver. (a) Clinical and Age Requirements.

The MFP Residential Supports 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 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.

In this case, on January 21, 2025, MassHealth denied the appellant's MFP-CL Waiver request following a determination that she cannot be safely served within the terms of the Waiver. The appellant has been on the MFP-RS Waiver since 2023 and moved to her current group home managed by the DDS in February 2024. On September 30, 2024, the DDS requested the appellant's transfer from the MFP-RS to the MFP-CL Waiver because her sister wanted to care for her in the family home.

The appellant's medical history includes traumatic brain injury, osteoarthritis, hyperlipidemia, anxiety, depression, aphasia, ataxia, mood disorder, overactive bladder, cognitive communication deficit, muscle weakness, incontinence, GERD, and dysphagia.

An in-person assessment was conducted on December 18, 2024 at the appellant's group home. During the assessment, MassHealth noted the appellant's need for 24/7 support. The MFP-CL Waiver program is capped at 84 hours weekly, or 12 hours daily. MassHealth considered this to be problematic as this would leave the appellant without care for the remaining 12 hours of the day.

The appellant's care plan for moving into the community would be to live with her sister in their family home, and the sister would take care of her on a full-time basis. The sister is retired and in good health, having recovered from cancer. The sister had previously taken care of the appellant in the family home as her sole caregiver between 2008-2022. A second sister of the appellant is available to assist with the appellant's care, as are her two nurse daughters.

Contrary to the MassHealth determination that the appellant's health would be at risk at home, according to the appellant's physician, the appellant would be safe in the family home with care from her sister and personal care support from the MFP-CL Waiver program.

I agree with the assessment of the appellant's physician. Given the details of the appellant's care plan, combined with compelling testimony from the appellant's primary caregiver sister as well as a second sister, I conclude that the live-in, full-time care and support from the appellant's family would supplement the available 12 hours of daily MFP-CL Waiver care to the extent that it would allow the appellant the 24-hour care that she needs.

Accordingly, I conclude that the appellant may be safely served within the terms of the MFP-CL Waiver.

The appellant's appeal is therefore approved.

## **Order for the MassHealth**

Approve appellant for the MFP-CL Waiver.

## Implementation of this Decision

If this decision is not implemented within 30 days after the date of this notice, you should contact your local office. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings at the address on the first page of this decision.

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Stanley Kallianidis  
Hearing Officer  
Board of Hearings

cc:

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