

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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| Appeal Decision: | Denied | Appeal Number: | 2503503 |
| Decision Date: | 06/12/2025 | Hearing Date: | 04/29/2025 |
| Hearing Officer: | Alexandra Shube | | |

Appearance for Appellant:



Appearance for MassHealth:

Via telephone:

Linda Phillips, RN, BSN, LNC-CSp.



*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

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|---------------------------|---------------------|--------------------------|--------------|
| Appeal Decision: | Denied | Issue: | Waiver – MFP |
| Decision Date: | 06/12/2025 | Hearing Date: | 04/29/2025 |
| MassHealth's Rep.: | Linda Phillips | Appellant's Rep.: | [REDACTED] |
| Hearing Location: | Quincy Harbor South | 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 7, 2025, MassHealth notified the appellant that it determined he was not clinically eligible for the Moving Forward Plan – Community Living (MFP-CL) Waiver (Exhibit 1). The appellant filed this appeal in a timely manner on March 3, 2025 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant was not clinically eligible for the MFP-CL Waiver.

Issue

The appeal issue is whether MassHealth was correct in determining that the appellant was not clinically eligible for the MFP-CL Waiver.

Summary of Evidence

The appellant was represented at hearing via telephone by his mother. MassHealth was represented at hearing via telephone by its Associate Director of Appeals and Regulatory Compliance who testified as follows: the appellant applied for the Moving Forward Plan Community Living (MFP-CL) Waiver on September 17, 2024. Exhibit 5 at 46. On January 7, 2025, MassHealth denied the MFP-CL Waiver because the appellant cannot be safely served in the community within the terms of the Waiver. Exhibit 1.

The MassHealth representative explained that MassHealth offers two home and community-based service waivers: the MFP-Residential Services (RS) 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. Exhibit 5 at 6. 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. *Id.* The MFP-RS Waiver is for individuals who need supervision and staffing 24 hours/day, 7 days per week. The appellant applied for the MFP-CL Waiver on September 17, 2024. Exhibit 5 at 46. The eligibility 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 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's special financial rules existing for Waivers' participants;
- The applicant will transition to an MFP-qualified residence in the community.

On November 26, 2024, an assessment for Waiver eligibility was conducted in-person. Exhibit 5 at 76. The appellant is a male between the ages of 18 and 65 who had formerly been living in an apartment with his mother. His primary medical history includes cerebral palsy, a gunshot wound to his abdomen at the age [REDACTED] anoxic brain injury, and quadriplegia. *Id.* at 69. The appellant was known to the Department of Developmental Services (DDS) and received services at home. His mom was his PCA and his guardian. Medical records report a facility admission in [REDACTED] a move out of state with his mom for four years, and then a return to Massachusetts. *Id.* Due to chronic bilateral ischium wounds and wound debridement, he was admitted to the hospital on [REDACTED] and required treatment and surgery. *Id.* The appellant was self-advocating at the hospital and making his own decisions. Thus, on [REDACTED], his

guardianship was officially terminated. Due to his medical condition and lack of support, he was unable to be safely discharged to the community and he was admitted to his current facility on [REDACTED]. *Id.*

Additional medical history includes osteomyelitis, sepsis, urinary tract infection, protein-calorie malnutrition, neuromuscular dysfunction of bladder, suprapubic catheter, colostomy status, iron deficiency anemia, seizures, cannabis abuse, muscle weakness, need for assistance with personal care, neuromuscular dysfunction of bladder, iron deficiency anemia, major depressive disorder, post-traumatic stress disorder, unspecified infectious disease, hypomagnesemia, and acute kidney failure. *Id.*

During the Waiver eligibility assessment review, MassHealth noted the following:

- September 4, 2024: Facility Nursing Progress note indicates that the appellant had a KUB (abdominal x-ray) and it showed constipation. In addition, the appellant had been experiencing gross hematuria (a large amount of blood in the urine), nausea, vomiting, not eating, and overall tiredness. The appellant was assessed and requested to be sent out to the emergency room. He was seen at the hospital and admitted with a diagnosis of urinary tract infection. *Id.* at 109.
- September 12, 2024: Facility Nursing Progress note states that the appellant was transported by his request due to abdominal discomfort that he was experiencing, and he was admitted to the hospital for a urinary tract infection and hypokalemia (low potassium level). *Id.* at 103-104.
- November 21, 2024: Facility Nursing Progress note describes the appellant's wound, which is evaluated by the doctor weekly due to this stage 4 ulcer not showing improvement, and the dressing order is changed to twice per day. In addition, nursing is to continue to encourage the appellant to spend more time in bed throughout the day to increase healing. *Id.* at 134.

During the assessment, the waiver nurse spoke to the appellant to find out more about his history and current needs for the community. He reported that the most recent move in 2022 from out of state back to Massachusetts was after his mom found out that she needed medical treatments for cancer. In addition, the appellant reported that he "wasn't doing too well either" and he wanted to be closer to his family. The appellant stated that he did not want to burden his mom with his care needs, as she has her own medical issues. As a standard part of the waiver review process, the waiver nurse called the district court on December 10, 2024 to inquire about any open warrants. There is an open warrant for the appellant due to his failure to appear to court in June 2024 for enticing a minor under 16. *Id.* at 71.

When asked the standard waiver question about owning or accessing any firearms, the appellant reported that he has a license to carry firearms and he keeps his gun in a locker at his mother's residence. The appellant stated that he uses them as a hobby and goes shooting at a local range. *Id.* 71.

On December 19, 2024, the MassHealth Wavier Clinical Team discussed the appellant's case at a review meeting. On December 26, 2025, as part of the MFP Waiver eligibility process, a second clinical review was conducted by the MassAbility Clinical Team. Based on medical record documentation and interviews with nursing facility staff, MassHealth, and MassAbility, it was determined that the appellant does not meet eligibility for the MFP-CL Waiver. He has many risks regarding his return to the community as he is at risk for medical decompensation and rehospitalization related to his chronic complex medical conditions and noncompliance with wound care treatments and assessments. Additionally, he has an open warrant with the court system. Therefore, it is MassHealth's clinical and professional opinion that, at this time, the appellant cannot be safely served in the community within the MFP-CL Waiver because he requires 24/7 support, care, and supervision due to his complex medical conditions and he lacks informal support in the community.

The appellant's mother testified that the appellant does not have a gun. He likes to tell stories and says things that aren't true. He can barely hold a toothbrush, let alone a gun. She just learned of the warrant and is trying to work on that with an attorney. When out of state, she was diagnosed with breast cancer and, at the same time, taking care of the appellant and her mother who had dementia. It was a lot at the time but she is in a better place to care for the appellant now. She stated that the appellant is quadriplegic, needs 24/7 care, and her goal is for him to be in a group home. He can't be left alone, but she does not want him living in a nursing facility because he is too young for that. She would be his caregiver in the community and she is working on saving up for a place where they can both live. Currently, she is living with her daughter in a third-floor apartment that is not handicapped accessible. She would not remove him from his current facility unless she had a fully accessible unit for him to return to, which at this time, she does not.

The appellant's mother testified that he is a healthy weight and a grown man and she cannot lift him on her own. His wounds had healed, but as of her last visit a few days ago, one had opened back up again. He knows his medications and what he needs for his care, but he should not be his own guardian and has a mind of a child still. He never developed mentally past the age of [REDACTED], when he was shot. She stated that she wants what is best for her son and she

does not believe that is living with her forever. Ideally, she would find him a group home where he can have 24/7 care and be with other people his own age.

The MassHealth representative responded that the MFP-CL Waiver is not intended for those who need 24/7 care. She agreed with the mother's assessment that the appellant needs 24/7 care, which is also supported by documentation. He needs regular wound care and at the time of the assessment, he did not have an individual who could provide the care he needed in the community. He is a two-person assist for most ADLs, including transfers and showers. She explained that the appellant can reapply to the Waiver program. Additionally, he could apply to the MFP-RS Waiver, and if found eligible, DDS would work with him to find an appropriate group home/residential setting. He is also eligible for the Acquired Brain Injury (ABI) Residential Habilitation (RH) Waiver and could apply for that. But the open warrant will cause issues with any of the Waivers.

Findings of Fact

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

1. On September 17, 2024, the appellant applied for the MFP-CL Waiver.
2. On January 7, 2025, MassHealth denied the MFP-CL Waiver because the appellant cannot be safely served in the community within the terms of the Waiver.
3. On March 3, 2025, the appellant timely appealed the denial.
4. The appellant has resided at the skilled nursing facility for over 90 months.
5. The appellant is between the ages of 18 and 65 and has a disability. His primary medical history includes cerebral palsy, a gunshot wound to his abdomen at the [REDACTED], anoxic brain injury, and quadriplegia. He also has a stage 4 ulcer that is not showing improvement and requires dressing changes twice per day.
6. At the time of the assessment, the appellant did not have an individual who could provide the care he needed in the community.
7. The appellant is a two-person assist for most ADLs, including transfers and showers, and requires 24/7 care and supervision due to his care needs and complex medical conditions.
8. As of the hearing date, the appellant has an open warrant.

Analysis and Conclusions of Law

Per 130 CMR 519.007(H)(2), an MFP-CL Waiver allows an applicant or member who is certified to need nursing facility services to receive specified waiver services, other than residential support services, in the home or community instead of in a nursing facility setting. To qualify for the MFP-CL Waiver, the member must meet clinical and age requirements:

(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;
- (3iii) 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.

130 CMR 519.007(H)(2) (emphasis added).

MassHealth determined the appellant did not meet the requirement at 130 CMR 519.007(H)(2)(a)(5) because the appellant is not able to be safely served in the community. MassHealth referenced the appellant's need for 24/7 care; his regular, complex wound care needs; risk of decompensation and re-hospitalization; and the lack of an individual who could provide the needed care at the time of the assessment. At this time, while the appellant's mother is willing to be the caregiver, there is no handicapped accessible home for him to return

to. The record supports the appellant's 24/7 care needs, complex wound care needs, and risk of decompensation and re-hospitalization.

The appellant's mother did not dispute the appellant's need for 24/7 care. In fact, she felt that the best setting for him would be a group home with 24/7 care and other individuals closer to his age. She acknowledged that she would not remove him from his current facility unless she had a fully accessible unit for him to return to, which at this time, she does not.

Additionally, the appellant has an open warrant that needs to be resolved before he can be safely served by any of the Waiver programs. The unknown outcome of an open warrant could contribute to the inability to safely serve the appellant in the community within the Waiver and affect the appellant's ability to meet other requirements of the program.

The appellant has not demonstrated that MassHealth's determination that he cannot be safely served in the community as required by 130 CMR 519.007(H)(2)(a)(5) was made in error. Accordingly, the appeal is denied.¹

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.

Alexandra Shube
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

¹ As mentioned at hearing, the appellant can reapply for the Waiver and/or also explore other Waivers, such as the MFP-RS Waiver and the ABI-RH Waiver.