

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2503908
Decision Date:	5/7/2025	Hearing Date:	04/10/2025
Hearing Officer:	Thomas J. Goode		

Appearance for Appellant:



Appearance for MassHealth:

Linda Phillips, RN Associate Director-Appeals
and Regulatory Compliance
Bethany Low, 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:	Waivers-Moving Forward Program (MFP) Waivers
Decision Date:	5/7/2025	Hearing Date:	04/10/2025
MassHealth's Rep.:	Linda Phillips, RN, et al.	Appellant's Rep.:	[REDACTED]
Hearing Location:	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 February 11, 2025, MassHealth determined that Appellant is not clinically eligible for the Moving Forward Plan Community Living Home and Community Based Services Waiver (130 CMR 519.007(H)(2) and Exhibit 1). Appellant filed this appeal in a timely manner on March 10, 2025 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that Appellant is not clinically eligible for the Moving Forward Plan Community Living Home and Community Based Services Waiver.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.007(H)(2), in determining that Appellant is not clinically eligible for the Moving Forward Plan Community Living Home and Community Based Services Waiver.

Summary of Evidence

MassHealth was represented by Linda Phillips, RN, Associate Director-Appeals and Regulatory Compliance, and Bethany Low, RN. MassHealth offers two home and community-based service (HCBS) Waivers; the MFP Residential Waiver (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. 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-RS 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 18, 2024 (Exhibit 4, at Ex. C, p. 46).

Below are the eligibility criteria for the MFP Waivers (Exhibit 4, at Ex. A, pp. 6-7):

- 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 ■ years old or older, and have a disability, or be aged ■ 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 with special financial rules existing 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 support services with staff supervision 24 hours/day, 7 days/week.

At issue for this appeal is:

Regulation 130 CMR 519.007 (H) (2)(a): Individuals Who Would be Institutionalized MFP HCBS Waivers (Exhibit 4, at Ex. B, pp. 38-39).

- Was MassHealth correct in denying Appellant's application for the MFP-CL Waiver; because, she cannot be safely served in the community within this Waiver?

On January 14, 2025, an assessment for Waiver eligibility was conducted in person at

[REDACTED] In attendance at the assessment were: Appellant; [REDACTED] Social Worker; [REDACTED] MassHealth Nurse Reviewer, representing the ABI/MFP Waiver program. (Exhibit 4 at Ex. C, p. 74).

The assessment consists of completion of MFP documents including Minimum Data Set-Home Care (MDS-HC) (Exhibit 4 at Ex. C, pp. 51-63); Clinical Determination of Waiver Eligibility (Exhibit 4 at Ex. C, pp. 64-72); Acquired Brain Injury (ABI)/MFP Waivers Community Risks Assessment (Exhibit 4 at Ex. C, p. 73); a review of the applicant's medical record; and a discussion with the facility staff.

Appellant is a [REDACTED]-year-old female who presented to [REDACTED] on July 29, 2023, after calling EMS due to excessive heat and humidity in her apartment and dissatisfaction with the condition of the apartment she was residing in. Appellant stated that she was tired living in an apartment without air conditioning and she, "wanted to end it all as a result." During EMS transport to the ER, she was verbally aggressive and stated, "she would rather die than return to her apartment." At the ER, Appellant was fully alert, and she stated that she did have a chronic left hip fracture for which she was awaiting hip surgery, but she had yet to follow up with the orthopedic surgery team. Appellant's suicidal statements had caused her to be placed in Section 12 which required a 1:1 sitter. In addition, Appellant was noted to be intoxicated with an alcohol level of .305 (normal level is less than .10). Appellant stated that she, "drinks a lot of beer daily and gets the shakes when does not drink." She was placed on CIWA protocol for concern of alcohol withdrawal, and she was noted to develop a seizure and became unresponsive which required ICU placement and monitoring. Appellant was finally stabilized, denied a plan to harm herself and she was discharged to [REDACTED] on August 11, 2023 (Exhibit 4 at Ex. C, p. 68).

Appellant's medical history includes Subluxation of Left Hip; Hip Pain; Chronic Obstructive Pulmonary Disease (COPD); Asthma; Hypothyroidism; Hypertension; Alcoholism with History of Withdrawal Seizures; Alcohol Hepatitis; Low Back Pain; Anxiety; Depression; Dementia with Behavioral Issues; Major Neurocognitive Disorder; Traumatic Brain Injury (2016); Umbilical Hernia, Type 2 Diabetes; Anemia, and Cerebrovascular Accident Secondary to Rheumatic Fever (1986) (Exhibit 4 at Ex. C, p. 68).

During the Waiver eligibility assessment review, the following documentation indicates that Appellant continues to be non-compliant with care and does not follow through with a plan for sobriety:

- October 12, 2024: [REDACTED] Nurse's note states that the "patient refused meds after many attempts. Supervisor aware" (Exhibit 4 at Ex. D, p. 144).
- October 24, 2024: [REDACTED] Psychiatric Nurse Practitioner (NP) evaluated Appellant this afternoon and Appellant reported that she was having increased

symptoms of depression but denies SI/HI. The NP wanted to add medications, but Appellant is refusing. In addition, Appellant stated that she did not want to speak to the NP and asked the NP to leave her room (Exhibit 4 at Ex. D, p. 123).

- December 16, 2024: Psychiatric Evaluation and Consultation states that Appellant was assessed for ongoing low-grade depressive symptoms, including persistent low mood, fatigue and decreased motivation, irritability. She denies any acute worsening or suicidal ideation. Appellant appears in an irritable mood, explains that she wants to get out of the facility, but she was asked for ID for housing purposes (Exhibit 4 at Ex. D, p. 168).
- January 7, 2025: [REDACTED] Physician note states that Appellant met with the assistant director of nurses (ADON) nursing and the physician regarding a bottle of nitroglycerin that she was keeping on her bedside table in her room. This medication was not prescribed, and the expiration date was 2017. The administrator asked for medication and proceeded to throw it away. Appellant began to use inappropriate language towards the staff and asked everyone to leave (Exhibit 4, at Ex. D, p. 115).

During the eligibility interview on January 14, 2025, with [REDACTED] (Waiver nurse), Appellant stated that she has a history of alcohol use but did not consider herself a heavy drinker. She stated that she felt alcohol helps her relax and did not feel that she had a problem. She has attended detox and AA in the past and she stated, “she hated it and all everyone does is talk about themselves.” Appellant indicated that she is not open to sobriety support and that she doesn’t want people to invade her privacy. When [REDACTED] asked Appellant if she planned on returning to drinking, Appellant stated, “yes, that if she wanted a few beers, she would.” Appellant’s last known alcohol use was in July 2023, when she was admitted to [REDACTED] (Exhibit 4 at Ex. C, p. 70).

On January 30, 2025, Appellant’s case was discussed at the MassHealth Waiver Clinical Team review meeting. In addition, on February 5, 2025, as part of the MFP Waiver eligibility process, a second clinical review was conducted by MassAbility (previously known as MRC) which oversees the community living waivers. MassHealth and MassAbility determined that Appellant is not considered to be clinically eligible for participation in the MFP-CL Waiver at this time. Appellant continues to be a significant health and safety risk to herself and has previously refused care when she lived in the community. On February 11, 2025, a denial notice for the MFP-CL Waiver was mailed to Appellant (Exhibit 4 at Ex. C, pp. 47-48).

Based on the in-person assessment and the completed MFP documentation including: MDS-HC, ABI/MFP Waivers Community Risks’ assessment, and Clinical Determination of Waiver Eligibility; and a thorough review of Appellant’s medical record by both MassHealth and MassAbility, Appellant does not meet eligibility for the MFP-CL Waiver, as documentation shows complications from continued alcohol abuse upon discharge including potential seizures and falls, psychiatric decompensation with further SI and noncompliance with her plan of care including poor follow through with appointments. Therefore, 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.

Appellant was represented by a Social Worker who appeared on her behalf at hearing. She stated that Appellant requested the appeal because she feels she is being unfairly treated in the review of waiver eligibility; however, Appellant declined to appear at hearing.

Findings of Fact

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

1. MassHealth offers two home and community-based service (HCBS) Waivers: the MFP Residential Waiver (RS) and the MFP-Community Living (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.
2. 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 per day, 7 days per week.
3. The MFP-RS Waiver is for individuals who need supervision and staffing 24 hours per day, 7 days per week.
4. On January 14, 2025, an assessment for Waiver eligibility was conducted in person at [REDACTED]. The assessment consists of completion of MFP documents including Minimum Data Set-Home Care (MDS-HC); Clinical Determination of Waiver Eligibility; Acquired Brain Injury (ABI)/MFP Waivers Community Risks Assessment; a review of the applicant's medical record; and a discussion with the facility staff.
5. Appellant is a [REDACTED]-year-old female who presented to [REDACTED] on July 29, 2023, after calling EMS due to excessive heat and humidity in her apartment and dissatisfaction with the condition of the apartment she was residing in. Appellant stated that she was tired living in an apartment without air conditioning and she, "wanted to end it all as a result." During EMS transport to the ER, she was verbally aggressive and stated, "she would rather die than return to her apartment." At the ER, Appellant was fully alert, and she did state that she did have a chronic left hip fracture for which she was awaiting hip surgery, but she had yet to follow up with the orthopedic surgery team. Appellant's suicidal statements had caused her to be placed in Section 12 which required a 1:1 sitter. In addition, Appellant was noted to be intoxicated with an alcohol level of .305 (normal level is less than .10). Appellant stated that she, "drinks a lot of

beer daily and gets the shakes when does not drink.” She was placed on CIWA protocol for concern of alcohol withdrawal, and she was noted to develop a seizure and became unresponsive which required ICU placement and monitoring. Appellant was finally stabilized, denied a plan to harm herself and she was discharged to [REDACTED] in [REDACTED]

6. Appellant’s medical history includes Subluxation of Left Hip; Hip Pain; Chronic Obstructive Pulmonary Disease (COPD); Asthma; Hypothyroidism; Hypertension; Alcoholism with History of Withdrawal Seizures; Alcohol Hepatitis; Low Back Pain; Anxiety; Depression; Dementia with Behavioral Issues; Major Neurocognitive Disorder; Traumatic Brain Injury (2016); Umbilical Hernia, Type 2 Diabetes; Anemia, and Cerebrovascular Accident Secondary to Rheumatic Fever (1986).
7. During the Waiver eligibility assessment review, the following documentation indicates that Appellant continues to non-compliance with care and does not follow through with a plan for sobriety:
 - October 12, 2024: [REDACTED] Nurse’s note states that the “patient refused meds after many attempts. Supervisor aware.”
 - October 24, 2024: [REDACTED] Psychiatric Nurse Practitioner (NP) evaluated Appellant this afternoon and Appellant reported that she was having increased symptoms of depression but denies SI/HI. The NP wanted to add medications, but Appellant is refusing. In addition, Appellant stated that she did not want to speak to the NP and asked the NP to leave her room.
 - December 16, 2024: Psychiatric Evaluation and Consultation states that Appellant was assessed for ongoing low-grade depressive symptoms, including persistent low mood, fatigue and decreased motivation, irritability. She denies any acute worsening or suicidal ideation. Appellant appears in an irritable mood, explains that she wants to get out of the facility, but she was asked for ID for housing purposes.
 - January 7, 2025: [REDACTED] Physician note states that Appellant met with the assistant director of nurses (ADON) nursing and the physician regarding a bottle of nitroglycerin that she was keeping on her bedside table in her room. This medication was not prescribed, and the expiration date was 2017. The administrator asked for medication and proceeded to throw it away. Appellant began to use inappropriate language towards the staff and asked everyone to leave.
8. During the eligibility interview on January 14, 2025, Appellant stated that she has a history of alcohol use but did not consider herself a heavy drinker. She stated that she

felt alcohol helps her relax and did not feel that she had a problem. She has attended detox and AA in the past and she stated, “she hated it and all everyone does is talk about themselves.” Appellant indicated that she is not open to sobriety support and that she doesn’t want people to invade her privacy. When asked if she planned on returning to drinking, Appellant stated, “yes, that if she wanted a few beers, she would.” Appellant’s last known alcohol use was in [REDACTED] when she was admitted to [REDACTED].

9. On January 30, 2025, Appellant’s case was discussed at the MassHealth Waiver Clinical Team review meeting. In addition, on February 5, 2025, as part of the MFP Waiver eligibility process, a second clinical review was conducted by MassAbility (previously known as MRC) which oversees the community living waivers. MassHealth and MassAbility determined that Appellant is not considered to be clinically eligible for participation in the MFP-CL Waiver at this time. Appellant continues to be a significant health and safety risk to herself and has previously refused care when she lived in the community. On February 11, 2025, a denial notice for the MFP-CL Waiver was mailed to Appellant.
10. 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.
11. Appellant declined to appear at hearing.

Analysis and Conclusions of Law

Eligibility requirements for the MFP-CL Waiver are outlined at 130 CMR 519.007(H)(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 [REDACTED] years of age and 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 [REDACTED] of age or older and, if younger than [REDACTED] 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 [REDACTED]

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. **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.

(b) Eligibility Requirements. In determining eligibility for MassHealth Standard and for these waiver services, the MassHealth agency determines income eligibility based solely on the applicant's or member's income regardless of his or her marital status. The applicant or member must:

1. meet the requirements of 130 CMR 519.007 (H)(2)(a);

2. have countable income that is less than or equal to 300% of the federal benefit rate (FBR) for an individual;

3. have countable assets of \$2,000 or less for an individual and, for a married couple, if the initial Waiver eligibility determination was on or after January 1, 2014, have assets that are less than or equal to the standards at 130 CMR 520.016(B): *Treatment of a Married Couple's Assets When One Spouse Is Institutionalized*; and

4. not have transferred resources for less than fair market value, as described in 130 CMR 520.018: *Transfer of Resources Regardless of Date of Transfer* and 520.019: *Transfer of Resources Occurring on or after August 11, 1993*.

(c) Enrollment Limits. Enrollment in the MFP Community Living Waiver is subject to a limit on the total number of waiver participants. The number of participants who can be enrolled in this waiver may be limited in a manner determined by the MassHealth agency.

(d) Waiver Services. Eligible members who are enrolled as waiver participants in the MFP Community Living Waiver are eligible for the waiver services described in 130 CMR 630.405(D): *Moving Forward Plan Community Living (MFP-CL) Waiver*.

The MassHealth testimony is credible and consistent with the clinical evidence in the hearing record and shows that due to her medical conditions and alcohol use, Appellant cannot be safely served in the community within the terms of the MFP CL Waiver (Exhibits 4, 5). Appellant bears the burden of proof in demonstrating that the MassHealth action denying the MFP-CL

Waiver application is incorrect.¹ Appellant declined to appear at hearing. Although she was represented by a Social Worker who reported that Appellant felt that she was being unfairly punished and can be safely served in the community, neither Appellant nor her representative presented any evidence or testimony to support that assertion.

Appellant has not met the burden of showing that the February 11, 2025 notice of denial of clinical eligibility for the MFP-CL Waiver is incorrect. The appeal is therefore 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.

Thomas J. Goode
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 See Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333 , 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386 , 390 (1998).