

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2504384
Decision Date:	4/25/2025	Hearing Date:	4/22/2025
Hearing Officer:	David Jacobs		

Appearances for Appellant:

Pro se

Appearances for MassHealth:

Linda Phillips, Associate Director of Appeals

Margie Morel, Senior Program Director

Kristen Stahl, Waiver Nurse Reviewer



***Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171***

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Eligibility for Moving Forward Plan Waivers
Decision Date:	4/25/2025	Hearing Date:	4/22/2025
Appearances for MassHealth:	Linda Phillips, Margie Morel, Kristen Stahl	Appearances for Appellant:	Pro se
Hearing Location:	Board of Hearings (Quincy)		

Authority

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

Jurisdiction

Through notice dated March 4, 2025, MassHealth notified the appellant that he is not clinically eligible for participation in MassHealth's Moving Forward Plan Community Living Waiver (MFP-CL Waiver) because he cannot be safely served in the community within the terms of the waiver (Exhibit 1). The appellant filed a timely appeal on March 18, 2025 (Exhibit 2). Denial of eligibility for a waiver program is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant is not eligible for participation in the MFP-CL Waiver.

Issue

The issue is whether MassHealth correctly determined that appellant is not eligible for participation in the MFP-CL Waiver because he cannot be safely served in the community within the terms of this waiver?

Summary of Evidence

MassHealth appeared at the hearing in-person and was represented by the associate director of appeals (“director”) and a registered nurse. The appellant appeared at the hearing in-person, pro se.

The director testified that “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. The appellant applied for the MFP-CL Waiver on December 5, 2024 (Exhibit 5, pg. 45). Below are the eligibility criteria for the MFP Waivers (Exhibit 5, pgs. 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 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 with special financial rules existing for Waivers’ participants;
- The applicant will transition to an MFP-qualified residence in the community; and
- For the MFP-CL 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 5, pgs 38-39).

- Was MassHealth correct in denying The Appellant’s application for the MFP-CL Waiver because he cannot be safely served in the community within this Waiver?

On January 28, 2025, an assessment for Waiver eligibility was conducted in person at Mattapan Health and Rehabilitation Center (Mattapan) in Boston, MA. In attendance at the assessment were: The appellant; and Kristen Stahl RN MassHealth Nurse Reviewer, representing the ABI/MFP Waiver program (Exhibit 5, pg. 72).

The assessment consists of completion of MFP documents including Minimum Data Set-Home Care (MDS-HC) (Exhibit 5, pgs. 50-62); Clinical Determination of Waiver Eligibility (Exhibit 5, pgs. 63-70); Acquired Brain Injury (ABI)/MFP Waivers Community Risks Assessment (Exhibit 5, pg. 71); a review of the applicant's medical record; and a discussion with the facility staff.

The appellant is a [REDACTED]-year-old male who presented to Boston Medical Center (BMC) when he was found by his neighbor, and he was yelling and disheveled on the floor of his apartment experiencing seizure activity. The appellant reported that his last drink was 3-4 days prior and there was no detectable alcohol found in his system. At the hospital, the appellant was started on IV Phenobarbital, and he was admitted to the medical intensive care unit (MICU). The test results determined that it was unlikely to be epileptic seizures, and further testing was conducted with an MRI and EEG. The appellant's altered mental status (AMS) continued as he stated, "he is a doctor and is there for a research study." There was concern for Wernicke's encephalopathy versus Korsakoff syndrome (chronic memory disorders caused by a deficiency of thiamine often resulting from ETOH) due to confabulation on multiple interviews in the setting of severe alcohol use disorder (AUD). However, this could not be officially diagnosed due to the continued delirium. The appellant was transferred to [REDACTED] on [REDACTED], 2024, for further care management (Exhibit 5, pg. 67).

The appellant medical history includes alcohol use disorder, Wernicke's encephalopathy, bipolar disorder, major depressive disorder, anxiety disorder, alcohol withdrawal with seizures, delirium, history of a TBI (date unknown), myocardial infarction, right bundle branch block, hypokalemia, hypotension, hemorrhage of the anus, unsteadiness on feet, thrombocytopenia, vomiting, and history of falling (Exhibit 5, pg. 67).

During the Waiver eligibility assessment review, the following documentation indicated that the appellant is at serious risk for alcohol relapses and cognitive impairment:

- October 10, 2024: Social Work Psychosocial Assessment indicates that, "patient reports ETOH use but denies this as a concern. Patient reports he sometimes drinks when he's with his friends but denies feeling that his ETOH use is a problem or an issue" (Exhibit 5, pg. 127).
- October 30, 2024: HealthDrive Behavioral Health Group indicates during the session the appellant was asked if his goal is to abstain from alcohol after discharge and he stated, "I would never want that, the people who don't drink are the ones with the real problem" (Exhibit 5, pg. 89).
- December 11, 2024: HealthDrive Behavioral Health Group session states that the appellant reports to be "very depressed," then "jovial," affect was "restless and labile." The therapist discussed again with the Appellant the correlation between alcohol withdrawal and seizures, and the appellant, "denied a drinking problem and disagreed that alcohol use contributes to his seizures." "Rt. displayed poor insight and judgement" (Exhibit 5, pg. 104).

- January 8, 2025: HealthDrive Behavioral Health Group notes that the appellant appeared, “easily distracted, with racing thoughts and pressured speech.” The appellant expressed some grandiosity and displayed, “psychomotor agitation, was restless throughout interview and pacing at times.” Speech was slightly less rapid compared to previous visit and he denied hallucinations or responding to internal stimuli. The appellant continues to display, “significant symptoms of mania with very mild improvement since initiating quetiapine” (Seroquel is an antipsychotic medication). The appellant continued to deny any problem with alcohol or desire to abstain from alcohol, stating, “the people who don’t drink are the one with a problem” (Exhibit 5, pg. 116).

On February 20, 2025, the appellant’s case was discussed at the MassHealth Waiver Clinical Team review meeting. In addition, on February 26, 2025, as part of the MFP Waiver eligibility process, a second clinical review was conducted by MassAbility (previously known as MRC) who oversee the community living waivers. MassHealth and MassAbility determined that the appellant is not considered to be clinically eligible for participation in the MFP-CL Waiver at this time. The appellant continues to be a significant health and safety risk to himself due to a high risk of alcohol relapses, no plan for recovery with serious alcohol-related comorbidities, including seizures. In addition, he is at risk of elopement with a significant concern for cognitive impairment due to Wenicke’s Korsakoff. On March 4, 2025, a denial notice for the MFP-CL Waiver was mailed to the appellant (Exhibit 5, pgs. 46-47).” (Exhibit 6)

The appellant appeared in person and conceded to most of the facts laid out by the MassHealth representative. However, he disagreed with a few parts of the clinical summary in Exhibit 5, pgs. 67-70. Namely, he disagreed with the characterization that he would leave the facility “without notice” (Exhibit 5, pg. 69) as he always gave notice, he disagreed that he lost his job due to alcoholism (Exhibit 5, pg. 68), as he was on medical leave for his seizures and could not return, and he disagreed with the characterization of many of his comments as indicative of his mental state as he intended most of them as jokes (Exhibit 5, pg. 68).

Although the clinical review suggests the appellant is unwilling to accept his alcohol abuse and formulate a treatment plan, he testified that he accepts that he has an addiction and is ready to begin the path to recovery. He testified that the MFP-CL Waiver would give him the resources he needs to get his life back together and “move forward.” He testified, and the Nurse Reviewer confirmed that the facility does not offer substance abuse programs to assist addicts. The appellant wants to be in the community so that he may start attending such programs as they typically take place in the evening when he is unable to attend due to the facility schedule. The Nurse Reviewer responded that there are substance abuse programs during the day that would work with the facility’s schedule available and the other patients she works with seeking substance abuse support are able to find them. The appellant argues that such programs have not been suggested to him by the social workers he works with and he mostly just “goes along” with whatever ideas and programs they suggest. However, he stated that he will start looking for such programs on his own going forward.

When the hearing officer asked the appellant about his plan for housing, the appellant responded that he was working with MassAbility, the Cambridge Housing Authority, the Brockton Housing Authority, and others, to get affordable housing. He testified that it is a long process, however, and he has mostly just has been put on lists. He testified that even if he were granted the MFP-CL Waiver today he would likely not be able to leave the facility for quite a long while as he waits for housing to become available.

The appellant argues that he would greatly benefit from the MFP-CL waiver as he primarily drinks when he's not active and becomes a recluse. He testified he is very active at the facility and regularly participates in and even leads many of the programs there. With Waiver services, he would be able to be even more active, get more education, and look for a job to support his lifestyle. Moreover, he plans to attend substance abuse programs and is dedicated to maintaining sobriety.

In response to the appellant's testimony, MassHealth focused on the fact that although the appellant is testifying that he has turned a page in his life and is ready to face his alcoholism, he has not taken any affirmative steps in furtherance of this plan. There are substance abuse programs available to him, yet he has not sought them out or attended any. Therefore, MassHealth still stands on their decision that the appellant is not clinically eligible for the MFP-CL Waiver.

Findings of Fact

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

1. The appellant is a [REDACTED]-year-old male.
2. The appellant's medical history includes alcohol use disorder, Wernicke's encephalopathy, bipolar disorder, major depressive disorder, anxiety disorder, alcohol withdrawal with seizures, delirium, history of a TBI (date unknown), myocardial infarction, right bundle branch block, hypokalemia, hypotension, hemorrhage of the anus, unsteadiness on feet, thrombocytopenia, vomiting, and history of falling.
3. The appellant entered a skilled nursing facility on [REDACTED], 2024.
4. The appellant applied for the MFP-CL Waiver on December 5, 2024.
5. On January 28, 2025, an assessment for Waiver eligibility was conducted in person at Mattapan Health and Rehabilitation Center (Mattapan) in Boston, MA. In attendance at the assessment were: The appellant; and Kristen Stahl RN MassHealth Nurse Reviewer, representing the ABI/MFP Waiver program.
6. During the Waiver eligibility assessment review, the following documentation indicates

that the appellant is at risk for alcohol relapses and cognitive impairment:

- a. October 10, 2024: Social Work Psychosocial Assessment indicates that, “patient reports ETOH use but denies this as a concern. Patient reports he sometimes drinks when he’s with his friends but denies feeling that his ETOH use is a problem or an issue.”
 - b. October 30, 2024: HealthDrive Behavioral Health Group indicates during the session that the appellant was asked if his goal is to abstain from alcohol after discharge and he stated, “I would never want that, the people who don’t drink are the ones with the real problem.”
 - c. December 11, 2024: HealthDrive Behavioral Health Group session states that the appellant reports to be “very depressed”, then “jovial”, affect was “restless and labile.” The therapist discussed again with the appellant the correlation between alcohol withdrawal and seizures, and the appellant, “denied a drinking problem and disagreed that alcohol use contributes to his seizures.” “Rt. displayed poor insight and judgement.”
 - d. January 8, 2025: HealthDrive Behavioral Health Group notes that the appellant appeared, “easily distracted, with racing thoughts and pressured speech.” The appellant expressed some grandiosity and displayed, “psychomotor agitation, was restless throughout interview and pacing at times.” Speech was slightly less rapid compared to previous visit and he denied hallucinations or responding to internal stimuli. The appellant continues to display, “significant symptoms of mania with very mild improvement since initiating quetiapine” (Seroquel is an antipsychotic medication). The appellant continued to deny any problem with alcohol or desire to abstain from alcohol, stating, “the people who don’t drink are the one with a problem.”
7. The appellant has not attended any substance abuse support programs.
 8. The appellant is currently seeking housing and is not ready to move out of the facility.
 9. On March 4, 2025, MassHealth denied appellant’s eligibility for the MFP-CL Waiver because he “cannot be safely served in the community within the terms of this waiver.”
 10. On March 18, 2025, the appellant appealed the March 4, 2025 notice.

Analysis and Conclusions of Law

The instant appeal is governed by the MassHealth regulations, specifically 130 CMR 519.007, which describes the eligibility requirements for MassHealth Standard coverage for individuals

who would be institutionalized if they were not receiving home- and community-based services.

The criteria for the MFP Community Living Waiver, for which the appellant has applied, is found within 130 CMR 519.007(H)(1) and (2):

(H) Money Follows the Person Home- and Community-based Services Waivers.

(2) Money Follows the Person (MFP) Community Living Waiver.

(a) Clinical and Age Requirements. The MFP Community Living Waiver, as authorized under § 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 or 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; 130 CMR: DIVISION OF MEDICAL ASSISTANCE 519.007: continued
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 or 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. (*Emphasis added*)

MassHealth evaluated appellant's eligibility for the MFP-CL Waiver and determined that he is not able to be safely served in the community within the terms of the waivers (130 CMR 519.007(H)(1)(a)(5) and (2)(a)(5). The appellant has not demonstrated otherwise. MassHealth's primary concern is the appellant's history of alcohol abuse present in the record and his seeming unwillingness to accept it and create a plan to manage it.

During the hearing, the appellant appeared ready to accept that he has an alcohol abuse

problem and explained that he has a plan for how to manage it. However, the appellant concedes that he has not taken any affirmative steps to directly further that plan. He argues that the facility where he stays has no substance abuse program and none of the social workers has presented him with any potential programs to join. He argues that such programs are typically in the evening with conflict with his schedule at the facility. However, the Nurse Reviewer responded that there are such programs available to the appellant if he had taken the time to look for them. The appellant concedes that he has not taken the initiative to find a substance abuse program on his own and testified that he has been relying on the facility's social workers to inform him of available resources. MassHealth persuasively argues that even though the appellant says he is ready and willing to start seeking treatment for his alcohol abuse, he has not taken sufficient affirmative steps in furtherance of that goal. Without more, MassHealth argues that the appellant has not demonstrated that he can be safe in the community and is thus clinically eligible for the waiver. I concur with MassHealth's reasoning.

The appellant clearly has expressed his intention to address his addiction issues. However, without any evidence that the appellant has taken any specific actions to manage his addiction, a finding at this time that the appellant is clinically eligible for MFP-CL Waiver would be premature. The appellant also credibly testified that he is ready to start the path of recovery and will begin attending substance abuse treatment programs soon. The appellant also passionately argued that he is getting involved with many activities to stave off the social isolation that causes him to abuse alcohol. These goals are certainly commendable and should be encouraged. However, the evidence falls short of demonstrating that the appellant is able to be safely served in the community. The appellant may re-apply for the MFP-CL Waiver at any time.

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.

David Jacobs
Hearing Officer
Board of Hearings

cc:

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