

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2509161
Decision Date:	7/29/2025	Hearing Date:	07/17/2025
Hearing Officer:	Amy B. Kullar, Esq.		

Appearances for Appellant:



Appearances for MassHealth:

Linda Phillips, R.N., B.S.N., L.N.C.-C.Sp.,
Associate Director – Appeals and Regulatory
Compliance, Disability and Community-based
Services; Sarah Morse, R.N., Nurse Reviewer

Interpreter:



*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:	7/29/2025	Hearing Date:	07/17/2025
MassHealth's Reps.:	Linda Phillips, R.N., B.S.N., L.N.C.-C.Sp., Sarah Morse, R.N.	Appellant's Reps.:	[REDACTED]
Hearing Location:	Quincy Harbor South 5 (Telephone)	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 May 28, 2025, MassHealth notified the appellant that it determined he was not clinically eligible for the Moving Forward Plan – Community Living (MFP-CL) Waiver. *See* Exhibit 1. The appellant filed this appeal in a timely manner on June 17, 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 appeared at hearing telephonically, verified his identity, and testified through a Spanish interpreter; he was accompanied by a caseworker from his home health agency, and the appellant granted verbal permission for her to be present and to testify on his behalf. MassHealth was represented at hearing via telephone by its Associate Director of Appeals and Regulatory Compliance and a Nurse Reviewer. The Associate Director testified as follows: the appellant applied for the Moving Forward Plan Community Living (MFP-CL) Waiver on September 24, 2024. Exhibit 5 at 87. On May 28, 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 Associate Director 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 to obtain community-based services. Exhibit 5 at 6-7. 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. 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 special financial requirements to qualify for MassHealth as a Waiver participant;
- The applicant will transition to an MFP-qualified residence in the community.

On April 16, 2025, an assessment for Waiver eligibility was conducted in-person at the appellant's skilled nursing facility (SNF). Exhibit 5 at 117. The appellant, a SNF staff nurse, a social worker from the appellant's SNF, and the MassHealth Nurse Reviewer who appeared at this hearing were present for this assessment. The appellant is a male between the ages of 18 and 65 who had formerly been living in the community until [REDACTED] of 2024. He ambulates with a wheelchair. His primary medical history includes cerebrovascular accident (CVA), or a stroke, in [REDACTED] 2024, acute encephalopathy, dysphagia, type II diabetes, history of alcohol and opioid abuse, history of intravenous (IV) polysubstance abuse, anxiety disorder, panic attacks, bipolar disorder, and depression. *Id.* at 69. The Associate Director testified that the appellant was initially diagnosed with a stroke in [REDACTED] 2024, hospitalized for that stroke, and then, after receiving treatment for

the stroke, was discharged to his home from a local hospital. She stated that sometime shortly after the appellant's discharge to home in [REDACTED] 2024, the appellant was found unresponsive at his home and 911 was called. "The EMTs that assessed him found pinpoint pupils and apneic breathing." Testimony. The appellant was transported to a local hospital, and he was admitted to the hospital's Intensive Care Unit (ICU) with diagnoses of opioid abuse (uncomplicated), chronic respiratory failure with hypoxia, and acute encephalopathy (brain dysfunction) following a possible drug overdose, as his urine toxicology screening at the hospital was positive for cocaine, opiates, and fentanyl. After receiving a full workup at the local hospital, and after treatment in the ICU there, the appellant was discharged on [REDACTED] 2024 to a skilled nursing facility (SNF) for short term rehabilitation. On [REDACTED] 2024, the appellant was transferred to his current SNF, as his previous SNF had closed, and this is where he currently resides. Testimony.

Additional medical history includes heart attack (NSTEMI), hypertension, hyperlipidemia, anemia, benign prostatic hyperplasia without urinary tract symptoms, obstructive and reflux uropathy, osteoarthritis, chronic pain, GERD, history of a GI bleed, vitamin D deficiency, seasonal allergic rhinitis, and insomnia. Exhibit 5 at 69.

During the Waiver eligibility assessment review, MassHealth noted the following documentation as being indicative of the appellant's health and safety risks:

- [REDACTED] 2025: SNF Note states that the appellant was sent out to a local hospital because he had complaints of chest pain. He returned to the SNF still stating he had chest pain but with no new orders, and discharge instructions were in Spanish. *Id.* at 132.
- [REDACTED] 2025: SNF Progress Note states that the appellant was stating that he was having chest pain and pain in the left arm earlier in the shift. He requested to be sent to the ER for evaluation. After assessments completed at local ER, he returned with no new orders. *Id.* at 141-142.
- [REDACTED] 2025: SNF Progress Note states that the appellant was seen smoking inside the SNF and he admitted that he was smoking inside because it was raining. A room search was conducted, and no smoking materials were found in his room. The appellant was agreeable to have supervised smoking. *Id.* at 135.

MassHealth included medical records from the appellant's SNF as part of its prehearing submission. See Exhibit 5. Included within that record were all the documented instances that the appellant spoke to the SNF's Substance Use Disorder (SUD) counselor since residing at his current SNF. Since entering his current SNF, the appellant has met with a SUD counselor at his SNF on only five occasions. At the initial session, the appellant stated that he has "four years of sobriety" and he denied having any cravings to use drugs. Exhibit 5 at 173. At the next session, the appellant again denied having cravings for drugs and also expressed a desire to return to the community. The next two sessions involved discussions surrounding planning for the

appellant's return to the community. At the final documented SUD session, on March 31, 2025, the appellant signed a "no-harm agreement," which meant that he agreed to only having supervised visits with his visitors at the SNF and supervised smoking sessions for the duration of his stay at the SNF. *Id* at 172.

The Nurse Reviewer present at the hearing was also present during the appellant's Waiver eligibility assessment meeting that occurred on April 16, 2025.¹ During the assessment meeting, the Nurse Reviewer spoke to the appellant to find out more about his history and current needs should he return to the community. During that assessment meeting, the appellant stated to the Nurse Reviewer that he "did not want any SUD (substance abuse disorder) services in the community," and he denied having any sober supports, "reporting that he did not need them." Testimony. When the appellant was asked by the Nurse Reviewer why he would want to return to the area where he previously lived and had used drugs, he responded it is where he is "familiar with everything," and he is "comfortable there." Testimony. The Associate Director continued her testimony, noting that despite being medically stable at the time of the assessment, the appellant is at risk for medical complications and repeat hospitalizations. The assessment team attempted to reach the SUD counselor at the appellant's SNF several times in early May, 2025, to clarify the treatment he is participating in for his SUD disorder, but they never received a return call.

The Associate Director testified that on May 15, 2025, the MassHealth Waiver Clinical Team discussed the appellant's case at a review meeting. On May 23, 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. The appellant has many significant health and safety risks regarding his return to the community due to significant SUD history with no documented plan for recovery. In addition, the appellant does not have any reliable informal support available currently, or a firm support plan for sobriety in the community. 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 support, care, and supervision due to his untreated SUD disorder and complex medical conditions, and he lacks informal support in the community. Testimony.

The appellant began his testimony by asking why he was here today. The Hearing Officer stated that this hearing is regarding his application to the MFP-CL waiver program. He stated that he wants to go to an apartment and does not want to stay at his skilled nursing facility. Testimony.

¹ The Nurse Reviewer also testified that the assessment meeting was conducted in English, with no interpreter present. She stated that the appellant was asked if he wanted an interpreter present, which he declined, and he answered the assessment team questions in English. Testimony.

At this time, the appellant's representative asked if she could speak on behalf of the appellant; the appellant granted verbal permission for her to speak.

The appellant's representative then testified on behalf of the appellant. She assisted the appellant in May 2025 with his applications for apartments in the community. She testified that the appellant has a supportive family in the local community that includes his two brothers. She thinks they will be available to provide support to the appellant. Testimony. She stated that she believes that the appellant does not understand why he is here today and that he does not have a good understanding of his medical and safety needs. Testimony. The appellant's representative is concerned that MassHealth is not aware of the appellant's diagnosis of schizophrenia, which is the reason that the appellant needs services in the community, and that he cannot access these services if he is not approved for this Waiver program. When questioned by the Hearing Officer as to the status of the appellant's discharge plan from the SNF to the community, she stated in response that there is no discharge plan for the appellant at this time, that he is looking for housing, and that she is relying on the services provided by the Waiver to allow him to return to the community safely. Testimony. The appellant's representative acknowledged that the appellant was not participating in any SUD treatment.

After further questioning by the Hearing Officer regarding the appellant's ability to make his own legal and medical decisions, the Nurse Reviewer from MassHealth confirmed that pursuant to her review of the appellant's medical record, the appellant does not have a signed advanced directive such as a Health Care Proxy document in place at this time. The appellant is responsible for making his own health care decisions and does not have a guardianship or conservatorship in place. Testimony. The Associate Director then explained that the appellant can reapply to the MFP-CL Waiver program at any time in the future if his circumstances change and he returns to the community.

Findings of Fact

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

1. The appellant is an adult male between the ages of 18 and 65.
2. The appellant's medical history includes a cerebrovascular accident (CVA) in [REDACTED] 2024, acute encephalopathy, dysphagia, type II diabetes, history of alcohol and opioid abuse, history of IV polysubstance abuse, anxiety disorder, panic attacks, bipolar disorder, and depression.
3. The appellant entered a skilled nursing facility in June 2024. He was transferred to his current skilled nursing facility in [REDACTED] 2024.
4. The appellant applied for the MFP-CL Waiver on September 24, 2024.

5. On April 16, 2025, an assessment for Waiver eligibility was conducted in person at the appellant's current SNF. In attendance at the assessment were: the appellant, a staff nurse, a social worker from the appellant's SNF, and the MassHealth Nurse Reviewer who appeared at this hearing.
6. As a result of the Waiver eligibility assessment review, the following documentation was reviewed, indicating for the appellant is at risk for substance abuse relapses and cognitive impairment:
 - [REDACTED] 2025: SNF Note states that the appellant was sent out to a local hospital because he had complaints of chest pain. He returned to the SNF still stating he had chest pain but with no new orders and discharge instructions were in Spanish. Exhibit 5 at 132.
 - [REDACTED] 2025: SNF Progress Note states that the appellant was stating that he was having chest pain and pain in the left arm earlier in the shift. He requested to be sent to the ER for evaluation. After assessments completed at local ER, he returned with no new orders. *Id.* at 141-142.
 - [REDACTED] 2025: SNF Progress Note states that the appellant was seen smoking inside the SNF and he admitted that he was smoking inside because it was raining. A room search was conducted, and no smoking materials were found in his room. The appellant was agreeable to have supervised smoking. *Id.* at 135.
7. The appellant has not participated in any substance abuse support programs at his skilled nursing facility. Testimony and Exhibit 5.
8. The appellant is currently seeking housing and is not ready to move out of the facility.
9. Via notice dated May 28, 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 June 16, 2025, the appellant appealed the May 28, 2025 notice to the Board of Hearings.

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 untreated and unacknowledged substance abuse disorder; his cardiac instability and risk of decompensation and re-hospitalization; and the lack of viable supports in the community to prevent the appellant's relapse into substance abuse disorder. Currently, there is no handicapped accessible home for him to return to, and the appellant ambulates with a wheelchair. There is no discharge plan in place. Furthermore, the appellant denies having a substance use disorder despite ample documentation of this condition in his medical records. I agree with the appellant's representative; the appellant does not have a viable discharge plan at this time and he is not connected to the reality of his situation. It is clear from this record that the appellant requires support, care, and supervision due to his untreated substance use disorder and complex medical conditions, and that he lacks informal support in the community.

Presently, I agree with MassHealth that the appellant cannot be safely served in the community within the terms of the MFP-CL waiver, and 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, this appeal is DENIED.²

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.

Amy B. Kullar, Esq.
Hearing Officer
Board of Hearings

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

² As mentioned at hearing, the appellant can reapply for the Waiver at any time and/or also explore other Waivers, such as the MFP-RS Waiver.