

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2515972
<b>Decision Date:</b>	1/21/2026	<b>Hearing Date:</b>	12/02/2025
<b>Hearing Officer:</b>	Emily Sabo		

**Appearance for Appellant:**

Pro se

**Appearance for MassHealth:**

Linda Philips, RN, Associate Director—Appeals  
& Regulatory Compliance



*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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Waivers; Moving Forward Program (MFP) Waivers
<b>Decision Date:</b>	1/21/2026	<b>Hearing Date:</b>	12/02/2025
<b>MassHealth's Rep.:</b>	Linda Phillips	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Quincy Harbor South (Telephone/Virtual)	<b>Aid Pending:</b>	No

## Authority

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

## Jurisdiction

Through notices dated August 26, 2025, MassHealth notified the Appellant that he is not clinically eligible for MassHealth's Moving Forward Plan Community Living Home-and-Community-Based Services Waiver (MFP-CL Waiver) and the Moving Forward Plan Residential Supports Home-and-Community-Based Services Waiver (MFP-RS Waiver) because he cannot be safely served in the community. 130 CMR 519.007(H)(1), (2) and Exhibit 1. The Appellant filed this appeal in a timely manner on October 27, 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 or MFP-RS Waiver programs.

## Issue

The appeal issue is whether MassHealth, pursuant to 130 CMR 519.007(H)(1) & (2), correctly determined that the Appellant is not eligible for participation in the MFP-CL and MFP-RS waivers because he cannot be safely served in the community within the terms of this waiver.

## Summary of Evidence

MassHealth was represented at the hearing by Linda Phillips, a registered nurse, who is the Associate Director of Appeals and Regulatory Compliance for the UMass Chan Medical School Disability and Community Based Services Unit. The MassHealth representative appeared virtually and testified as follows: MassHealth has two home and community-based service waivers that assist Medicaid-eligible persons move into the community and obtain community-based services. They are the MFP-RS Waiver 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. To be eligible for the MFP Waivers:

- 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 [REDACTED] years old or older, and have a disability, or be age [REDACTED] 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 special financial rules existing for Waivers' 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.

The Appellant applied for the MFP-CL and MFP-RS Waivers on May 22, 2025. Exhibit 6 at 103, 106. The issue in dispute is whether the Appellant can be safely served in the community within the terms of the MFP-CL and MFP-RS Waiver.

The MassHealth representative testified as follows: the Appellant is a [REDACTED]-year-old male who was living with his stepdaughter, when he went to [REDACTED]. The Appellant presented with right eye swelling and pain, and he was life flighted to [REDACTED] due to a severe oculo-facial infection. After several infections, treatments, and transfers between [REDACTED]

[REDACTED] and the hospital, the Appellant stabilized. On [REDACTED] the Appellant was transferred again to [REDACTED] emergency room due to increased left foot pain (left midfoot was amputated on [REDACTED]). At the hospital, his wound had dehisced. Additional surgery was conducted, he was treated with antibiotics, but he refused to have his blood sugar checked or insulin administered for his diabetes while he was hospitalized. The Appellant was discharged back to [REDACTED] and he was later transferred to [REDACTED].

Medical history includes chronic obstructive pulmonary disease, alcoholic polyneuropathy with withdrawal, narcotic drug abuse, pulmonary embolism, deep vein thrombosis, vasculopathy, type 2 diabetes, gout, right eye removal, necrotizing fasciitis, congestive heart failure, ejection fraction 30%, tremors, cardiac arrest, severe chronic kidney disease stage 4, metabolic encephalopathy, cardiomyopathy, depression, skin graft to right orbit, femoral bypass, muscle spasms, and peripheral vascular disease. On July 21, 2025, an assessment for waiver clinical eligibility was conducted in-person at [REDACTED]. In attendance were the Appellant and the MassHealth Nurse Reviewer representing the ABI/MFP Waiver program. After this meeting, a social worker from the facility emailed the MassHealth Nurse Reviewer.

The Waiver assessment consists of completion of Waiver documents including Minimum Data Set-Home Care (MDS-HC); ABI/MFP Clinical Determination Assessment; ABI/MFP Waivers Community Risks Assessment; a review of the applicant's medical record; and a discussion with the nursing/medical staff at the nursing facility. During the Waiver eligibility assessment review, MassHealth noted the following documentation indicating the Appellant's significant risks:

- April 17, 2025: Nurse Practitioner (NP) Note states that during the NP's visit today, she found 2 bottles of Vodka (1 bottle was ½ full and the other bottle was full) in Appellant's room. The Appellant stated that "his friend brought it in as a joke." The NP removed the bottles and gave them to nursing and provided education to the Appellant regarding the danger of taking prescribed medication and alcohol. Exhibit 6 at 229.
- May 20, 2025: Social Worker (SW) Note indicates that the SW searched the Appellant's room with his permission. The SW found a "full pack of cigarettes and a cleaned-out Vaseline container was found in his bedside table containing marijuana." These items were confiscated by the SW and Appellant denied knowing how he obtained them. Appellant agreed to not bring any more marijuana into the building per building/substance use policy. *Id.* at 279.
- June 11, 2025: Physician Note states that patient is reported to have a cannabis and smoking issue. The Appellant was encouraged to avoid smoking and adhere to facility policy that prohibits recreational drug use. The physician informed the Appellant that "he is not to share controlled substances with others." Oxycodone was discontinued; the Appellant can take Tylenol. *Id.* at 206-207.

- July 1, 2025: Nursing Note states the Appellant's urine specimen was positive for cannabis and alcohol. The NP and nurse spoke to Appellant in his room and smoking materials were seen on the bedside table, bed and nightstand. The SW will speak to the Appellant about this incident. *Id.* at 193.
- July 1, 2025: Social Service Director Note states that the SW was following up with Appellant regarding his positive toxicology urine test (as described above). The Appellant stated that he did not drink alcohol on the property and since he is allowed to leave the facility independently, he does not feel that he did anything wrong. The SW explained that due to the medications he is on, there could be concern for his safety. The Appellant also agreed that he had a marijuana joint in his room but expressed that it was in his drawer and staff did not have permission to search his room. SW reminded Appellant of the smoking policy at the facility and Appellant stated understanding. *Id.* at 281.

The Appellant denied any history of alcohol abuse to psychiatry and to the MassHealth Nurse Reviewer during the assessment on July 21, 2025. The MassHealth representative testified that the Appellant has community risks that include high risk for relapsing back to alcohol abuse, risk for falls, risk of skin breakdown due to history of necrotizing fasciitis, and risk for respiratory compromise due to smoking.

On August 14, 2025, the Appellant's case was discussed at the MassHealth Waiver Clinical Team review meeting, which includes the Department of Developmental Services (DDS). In addition, on August 20, 2025, as part of the MFP Waiver eligibility process, a second clinical review was conducted by MassAbility clinical team, who oversee the community living waivers. MassHealth and MassAbility determined that Appellant was not considered to be clinically eligible for participation in the MFP-CL or MFP-RS Waivers at this time. The Appellant is at significant risk of relapse in a less restrictive environment. The Appellant has a history of polysubstance abuse and continues to use substances while residing in a facility as evidenced by weekly drug screens which have been positive for marijuana and alcohol. On August 26, 2025, denial notices for the MFP-CL and MFP-RS Waivers were mailed to the Appellant. Based on the in-person assessment; 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 MassHealth, MassAbility, and DDS, the Appellant does not meet eligibility for the MFP-CL or MFP-RS Waiver. The Appellant does not have a formal sobriety plan; he does not participate in any substance-use-disorder supports at the facility and he does not intend to seek substance-use-disorder supports when he is discharged. Therefore, it is MassHealth's clinical and professional opinion that, at this time, based on the available medical records and interviews, the Appellant cannot be safely served in the community within the MFP-CL or MFP-RS Waiver.

The Appellant appeared by telephone and verified his identity. The Appellant testified that he may have trouble admitting that he has a problem with alcohol. The Appellant testified that he is not

drinking anymore. The Appellant testified that he survived being in a coma for one month. The Appellant testified that he had been four months sober from marijuana. The Appellant testified that he was willing to participate in Alcoholics Anonymous. The Appellant testified that he had previously been penniless and hopeless and that it is a miracle that he is alive. The Appellant testified that he did not realize he could not smoke and that the notes testified to by the MassHealth representative were false accusations.

Based on questions from the hearing officer, the MassHealth representative stated that the Appellant could re-apply for the waiver programs in the future and that MassHealth would be evaluating whether he had abstained from alcohol and marijuana and was participating in substance-use-disorder programs as part of their evaluation.

## Findings of Fact

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

1. The Appellant is [REDACTED] years old. Testimony; Exhibits 4 -6.
2. The Appellant's medical history includes chronic obstructive pulmonary disease, alcoholic polyneuropathy with withdrawal, narcotic drug abuse, pulmonary embolism, deep vein thrombosis, vasculopathy, type 2 diabetes, gout, right eye removal, necrotizing fasciitis, congestive heart failure, ejection fraction 30%, tremors, cardiac arrest, severe chronic kidney disease stage 4, metabolic encephalopathy, cardiomyopathy, depression, skin graft to right orbit, femoral bypass, muscle spasms, and peripheral vascular disease. Testimony; Exhibits 5 and 6.
3. The Appellant was hospitalized in [REDACTED] he was admitted to the facility he is presently living at. Testimony; Exhibits 5 and 6.
4. On May 22, 2025, the Appellant applied for the MFP-RS and MFP-CL waivers. Testimony; Exhibits 5 and 6.
5. On July 21, 2025, MassHealth conducted an in-person assessment with the Appellant. MassHealth also received an email from the Appellant's social worker. Testimony.
6. As part of its evaluation, MassHealth noted the following:
  - April 17, 2025: Nurse Practitioner (NP) Note states that during the NP's visit today, she found 2 bottles of Vodka (1 bottle was ½ full and the other bottle was full) in Appellant's room. The Appellant stated that "his friend brought it in as a joke." The NP removed the bottles and gave them to nursing and provided education to the Appellant regarding the danger of taking prescribed medication and alcohol. Exhibit 6 at 229.

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  - June 11, 2025: Physician Note states that patient is reported to have a cannabis and smoking issue. The Appellant was encouraged to avoid smoking and adhere to facility policy that prohibits recreational drug use. The physician informed the Appellant that “he is not to share controlled substances with others.” Oxycodone was discontinued; the Appellant can take Tylenol. *Id.* at 206-207.
  - July 1, 2025: Nursing Note states the Appellant’s urine specimen was positive for cannabis and alcohol. The NP and nurse spoke to Appellant in his room and smoking materials were seen on the bedside table, bed and nightstand. The SW will speak to the Appellant about this incident. *Id.* at 193.
  - July 1, 2025: Social Service Director Note states that the SW was following up with Appellant regarding his positive toxicology urine test (as described above). The Appellant stated that he did not drink alcohol on the property and since he is allowed to leave the facility independently, he does not feel that he did anything wrong. The SW explained that due to the medications he is on, there could be concern for his safety. The Appellant also agreed that he had a marijuana joint in his room but expressed that it was in his drawer and staff did not have permission to search his room. SW reminded Appellant of the smoking policy at the facility and Appellant stated understanding. *Id.* at 281.
7. Based on its assessment, MassHealth determined that the Appellant has community risks that include high risk for relapsing back to alcohol abuse, risk for falls, risk of skin breakdown due to history of necrotizing fasciitis and risk for respiratory compromise due to smoking, and that he could not be safely served in the community. Testimony.
  8. DDS and MassAbility agreed with MassHealth’s assessment. Testimony, Exhibit 6.
  9. On August 26, 2025, MassHealth notified the Appellant of its denial of his application for participation in the MFP-RS and MFP-CL Waivers. Testimony, Exhibit 1.
  10. On October 27, 2025, the Appellant filed a timely appeal with the Board of Hearings. Exhibit 2.

## **Analysis and Conclusions of Law**

The MFP home and community-based service waivers are described at 130 CMR 519.007(H). In the present case, the Appellant seeks eligibility for the MFP-RS and MFP-CL Waivers. The requirements for the waivers are set forth below:

**1) Money Follows the Person (MFP) Residential Supports Waiver.<sup>1</sup>**

(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 [REDACTED] 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 [REDACTED] years of age or older and, if younger than [REDACTED] 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 [REDACTED] 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.

(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)(1)(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,

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<sup>1</sup> It is noted that although "MFP" now stands for "Moving Forward Plan," the applicable regulation still references Money Follows the Person. (130 CMR 519.007(H)).

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 Residential Supports 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 Residential Supports Waiver are eligible for the waiver services described in 130 CMR 630.405(C): *Moving Forward Residential Supports (MFP-RS) Waiver*.

(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 or [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] years of age or older and, if younger than [REDACTED] 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 [REDACTED] 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. 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.

130 CMR 519.007(H)(1), (2).

In the present case, MassHealth evaluated the Appellant's eligibility for services under the MFP-RS and MFP-CL waivers 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); (H)(2)(a)(5).

The Appellant's medical history includes chronic obstructive pulmonary disease, alcoholic polyneuropathy with withdrawal, narcotic drug abuse, pulmonary embolism, deep vein thrombosis, vasculopathy, type 2 diabetes, gout, right eye removal, necrotizing fasciitis, congestive heart failure, ejection fraction 30%, tremors, cardiac arrest, severe chronic kidney disease stage 4, metabolic encephalopathy, cardiomyopathy, depression, skin graft to right orbit, femoral bypass, muscle spasms, and peripheral vascular disease. After his hospitalization in [REDACTED] the Appellant suffered a number of infections and complications. MassHealth cited the Appellant's use of alcohol and marijuana in the facility, and his unwillingness to participate in substance-use-disorder supports as reasons why he could not be safely served in the community under the MFP-RS and MFP-CL waivers.

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228, 231 (2007). See also Fisch v. Board of Registration in Med., 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 386, 390 (1998). The Appellant must demonstrate, by a preponderance of evidence, that MassHealth's denial of the MFP-RS and MFP-CL Waivers was incorrect, pursuant to 130 CMR 519.007(H)(1), (2).

Here, based upon the evidence presented, the Appellant has not met this burden. I credit MassHealth's testimony and the Appellant did not provide evidence demonstrating that MassHealth erred in its determination that the Appellant could not be safely served within the

community, under the terms of the waivers. Failing to meet this burden, the appeal is denied.<sup>2</sup>

## **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.

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<sup>2</sup> This determination does not prevent the Appellant from being discharged from the rehabilitation center or from seeking a living situation in the community. The denial of this appeal also does not preclude the Appellant from re-applying for the MFP-RS or MFP-CL waivers. The Appellant is encouraged to re-apply for the waivers if his circumstances change, and he can demonstrate that he can be safely served under the terms of the waivers.

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Emily Sabo  
Hearing Officer  
Board of Hearings

cc: MassHealth Representative: Linda Phillips, For Health - Appeals, P.O. Box 2597, Worcester,  
MA 01613