Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2205096
Decision Date:	10/13/2022	**Hearing Date:**	08/19/2022
Hearing Officer:	Casey Groff, Esq.		

Appearance for Appellant:
Pro se;
[redacted]

Appearance for MassHealth:
Francine McCarthy RN BSN, CSSM; Tri-Valley, Inc.;
Aileen C. Dellana RN BSN, Nurse Manager; Tri-Valley, Inc.;
Sharon Thompson LSW, SHC Program Director, Tri-Valley, Inc.

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:**	Clinical Eligibility Nursing Facility Svs.
Decision Date:	10/13/2022	**Hearing Date:**	08/19/2022
MassHealth's Rep.:	Francine McCarthy, R.N.; Aileen Dellana, R.N.; Sharon Thompson, LSW	**Appellant's Rep.:**	*Pro se*; [redacted]
Hearing Location:	Board of Hearings (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 June 29, 2022, MassHealth denied Appellant's application for coverage of MassHealth nursing facility services because MassHealth, through its agent Tri-Valley, Inc., determined that Appellant did not meet clinical eligibility requirements under 130 CMR 456.409. See Exh. 3. Appellant filed this appeal in a timely manner on July 9, 2022, however, did not include a copy of underlying denial notice. See Exh. 1 and 130 CMR 610.015(B). On July 14, 2022, the Board of Hearings (BOH) notified Appellant pursuant to 130 CMR 610.034(B) that it would dismiss the appeal unless Appellant submitted a copy of the notice prompting his appeal. See Exh. 2. On July 19, 2022, Appellant sent BOH a copy of the June 29, 2022 denial, thereby establishing he had an appealable action. See Exh. 3 and 130 CMR 610.032. BOH scheduled a hearing for the appeal to be held on August 19, 2022. See Exh. 4.

Action Taken by MassHealth

MassHealth denied Appellant's request for payment of nursing facility services because it determined Appellant did not meet clinical eligibility requirements under 130 CMR 456.409.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 456.409, in determining that Appellant was not clinically eligible for MassHealth coverage of nursing facility services.

Summary of Evidence

Appearing on behalf of MassHealth were two registered nurses and a licensed social worker from Tri-Valley, Inc. Tri Valley, Inc. is one of several aging service access point (ASAP) agencies that contracts with MassHealth to perform clinical eligibility assessments for individuals seeking coverage of nursing facility services. According to documentation and testimony presented by the MassHealth representatives, Appellant is over the age of 65 and has been a resident of the Blackstone Valley Health and Rehabilitation Center ("the facility") for approximately eight months. He was admitted to the facility following a hospitalization for multiple sclerosis. Appellant's past medical history includes metabolic encephalopathy, hepatic failure, cognitive communication deficit, malnutrition, abnormality of gait and mobility, autoimmune hepatitis, alcohol dependence (in remission), hyperlipidemia, major depressive disorder, anxiety disorder, cerebellar stroke syndrome, sleep apnea, hypertension, chronic kidney disease, and failure to thrive. See Exhs. 5-6.

Upon admission to the nursing home, Appellant was enrolled in a "Comprehensive Service and Screening Model (CSSM) and was identified by the UMASS pre-admission screening resident review (PASRR) unit as being an appropriate candidate for discharge in the community. See Exh. 5. On March 22, 2022, Tri-Valley, Inc. received a referral from the PASRR Unit to assess and assist the consumer for discharge planning. Id. at 51. A case manager from Tri-Valley initiated the assessment process and made numerous attempts to speak with Appellant, which Appellant declined. See id.

On May 2, 2022, Tri-Valley received an initial nursing facility conversion screening request for Appellant seeking a Medicaid start date of April 2, 2022. A registered nurse from Tri-valley completed an assessment screening based on a paper-review of Appellant's clinical documentation, including the patient face sheet, minimum data set (MDS), Level I and Level II PASRR forms, medication records, and activity of daily living (ADL) flowsheets. The documentation indicated that Appellant was dependent for medication management and pain assessments; that he required limited assistance for bathing and dressing; he was mobile and ambulated with a walker; and that he completed both physical therapy (PT) and occupational therapy (OT) in March of 2022. Based on the assessment, Appellant was approved for coverage of short-term nursing services from April 2, 2022 through June 5, 2022,

On June 5, 2022, Tri-Valley received a request for short term review for Appellant. See id. at 56. On June 16, 2022, a Tri-Valley nurse, Francine McCarthy, R.N., conducted an on-site

assessment for purposes of conducting a short-term review screening. See id. at 56. Upon meeting with Appellant, Nurse McCarthy reported that Appellant was alert and oriented; that he expressed a need for support but felt he did not require nursing facility level of care and expressed anger regarding the level of supervision which he felt was not needed. Id. at 46. Appellant informed the Tri-Valley R.N. that he was independent with ADLs and did not receive assistance performing ADLs from nursing staff. Appellant had a walker in his room but reported ambulating independently. Appellant explained that he no longer has his apartment and was exploring possibly living with a friend. Id. He has also been working with a facility social worker to find placement at a rest home. Nurse McCarthy also reviewed Appellant's clinical documentation, including an MDS from April 27, 2022, indicating that Appellant was independent with ADLs, that he is continent, and that he did not require an assistive device for locomotion. See id. at 70-73. Records reflected that a diagnosis of multiple sclerosis was present but not subject to focused treatment or monitoring at that time. Id. at 31.

Tri-Valley received another short-term care request for Appellant on June 22, 2022. On June 23, 2022, Aileen Dellana, R.N., Nurse Manager of Tri-Valley, conducted a separate on-site assessment of Appellant. Nursing staff at the facility reported that Appellant was independent for bathing, dressing, toileting, transfer, mobility, and eating; that he ambulates without an assistive device both inside and outside of the facility; and he does not receive any skilled services. He requires assistance with medication management, monitoring for side effects of antidepressant medications, and pain assessments; however, these services can be managed in another setting and do not qualify him for clinical eligibility. According to a licensed social worker at the facility, Appellant was being evaluated by a rest home as a community alternative.

On June 29, 2022, the Tri-Valley Nurse Manager spoke with Appellant's primary care physician, Dr. Paul Bulat, M.D., to discuss MassHealth's proposed decision to deny Appellant's request for coverage of nursing facility services. Dr. Bulat stated that Appellant has chronic liver disease that is currently stable, and opined that Appellant was not in need of skilled nursing facility care at that time. Id. at 47.

On June 29, 2022, MassHealth denied Appellant's request for nursing facility services based on its determination that Appellant did not meet clinical eligibility requirements under 130 CMR 456.409. See Exh. 3. This determination was based on the assessment findings that Appellant was independent with ADLs and did not require a skilled need. Although he required assistance with medication management, monitoring of medication side effects, and routine pain assessments, such services did not qualify him for placement in a nursing facility and can be provided in another setting, such as a rest home or another Medicaid program (e.g. the moving forward (MFP plan). Tri-Valley also noted that Appellant refused all offered community alternatives. While he verbalized interest in obtaining a private apartment with a friend, there had been no movement in this direction.

It is Tri-Valley's policy to track Appellant monthly for three months following the denial, to ensure his condition remains stable. Should his condition change significantly, a screening request may be submitted to the ASAP for re-evaluation. Id. at 50.

Appellant appeared at the hearing along with a former facility social worker, facility CNA and friend, and was assisted in the hearing process by a facility registered nurse.

Appellant testified with the following background: In June of last year, he was hospitalized after passing out. His liver failed him, and he was brought back to life during his admission. On two occasions, he was released back to his apartment in the community and both times he failed. Although he thought he was ready to live on his own, he was not capable of doing so. When he was discharged to live on his own, he would forget to take pills, he lost significant weight and dropped down to 132 pounds and got a bad liver infection. Since he was hospitalized and been admitted to the facility, he has gained back the weight he lost and made significant improvement. Due to his MS diagnosis, he sees three to four specialists gets his blood drawn frequently. If he were in the community, he would not have the ability to get to these appointments. He has no car, cannot drive, and has no money to pay for transportation. Additionally, he has severe anxiety that makes him petrified of the outside world. He cannot have a roommate. Appellant explained that while he can do most of his care independently, he has benefited from the structure the facility provides and would lose the progress he's gained if he were to leave.

A licensed social worker that previously worked with Appellant at the facility also testified on behalf of Appellant[1]. She stated that while it appears on paper Appellant can bathe himself, and perform ADLs independently, it is his crippling anxiety that prohibits him from carrying out these activities and being able to care for himself. The social worker explained that if he were to leave the structure the nursing facility provides, her biggest concern would be his ability to manage his medication. Appellant gets extremely confused trying to figure out his medication schedule. If he gets off his medication schedule, he gets extremely confused. He is fearful of going home due to his anxiety. When he first arrived, he was lethargic, had difficulty getting out of bed, and was unable to care for himself. However, in the recent months, he has made significant progress. He has adjusted and become more self-motivated. Transferring him into the community would jeopardize all he has gained.

Appellant's friend, who works as a CNA at the facility, also testified on Appellant's behalf. The CNA explained that she has been friends with Appellant for many years. He used to be very active, but about one year ago, she noticed he was becoming more confused. This led to a big episode where he started having involuntary movements and she brought him to the emergency room. He was in a coma for 10-days and his liver had basically shut down. Appellant previously lived in an apartment of his own. At one point, he was released back to his apartment, but became unable to care for himself, as well as his pet cat. Based on what he was told, he got rid of his apartment to become eligible for Medicaid. The CNA stated that she has been trying to look for an apartment for him. Although she considered having him stay with her, she is unable to provide the supervision he requires. She often works twelve-hour shifts. He becomes easily confused and needs meals prepared for him. He needs better accommodations where he can thrive. Sharing a space with another unknown person would add to his depression

[1] The LSW explained that she previously worked at the facility as a social worker and during this time worked closely with Appellant. At the time of the hearing, she was no longer working at the facility.

and anxiety.

Findings of Fact

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

1. Appellant is over the age of 65 and has been a resident of the Blackstone Valley Health and Rehabilitation Center ("the facility") for approximately eight months.
2. He was admitted to the facility following a hospitalization for multiple sclerosis and has a past medical history of metabolic encephalopathy, hepatic failure, cognitive communication deficit, malnutrition, abnormality of gait and mobility, autoimmune hepatitis, alcohol dependence (in remission), hyperlipidemia, major depressive disorder, anxiety disorder, cerebellar stroke syndrome, sleep apnea, hypertension, chronic kidney disease, and failure to thrive.
3. On May 2, 2022, Tri-Valley received an initial nursing facility conversion screening request for Appellant seeking a Medicaid start date of April 2, 2022.
4. A registered nurse from Tri-valley completed an assessment screening based on a paper-review of Appellant's clinical documentation, which indicated that Appellant was dependent for medication management and pain assessments; that he required limited assistance for bathing and dressing; he was mobile and ambulated with a walker; and that he completed both PT and OT in March of 2022.
5. Based on the assessment, Appellant was approved for coverage of short-term nursing services from April 2, 2022 through June 5, 2022,
6. On June 16, 2022, a Tri-Valley nurse, Francine McCarthy, R.N., conducted an on-site review assessment and upon meeting with Appellant, noted that he was alert and oriented; expressed a need for support but felt he did not require nursing facility level of care; and indicated that he was independent with ADLs and did not use any assistive devices for ambulation.
7. Appellant's clinical documentation, including an MDS from April 27, 2022, indicates that Appellant is independent with ADLs, that he is continent, and that he had a diagnosis of multiple sclerosis which is present but not currently subject to focused treatment or monitoring.
8. Tri-Valley received another short-term care request for Appellant on June 22, 2022.
9. On June 23, 2022, a Tri-Valley nurse manager conducted an on-site assessment of Appellant., during which, nursing staff reported that Appellant was independent for bathing, dressing, toileting, transfer, mobility, and eating; that he ambulates without an

assistive device both inside and outside of the facility; and he does not receive any skilled services.

10. Appellant requires assistance with medication management, monitoring for side effects of antidepressant medications, and pain assessments; however, these services can be managed in another setting.

11. Appellant explored placement at other community alternatives, including a rest home, but declined these options.

12. Appellant's PCP noted that Appellant has chronic liver disease that is currently stable and does not require a need for skilled nursing facility care.

13. On June 29, 2022, MassHealth denied Appellant's request for nursing facility services based on its determination that Appellant did not meet clinical eligibility requirements under 130 CMR 456.409.

Analysis and Conclusions of Law

To qualify for MassHealth payment of nursing-facility services, applicants meet clinical and financial eligibility criteria as set forth in MassHealth regulations. Id. at 130 CMR § 456.403 – 456.407. In determining clinical eligibility for individuals 22 years of age or older, MassHealth or its agent must first determine that the individual meets nursing facility service requirements under 130 CMR 456.409. See 130 CMR 456.408(A)(A). The nursing facility service requirements are set forth as follows:

> To be considered medically eligible for nursing-facility services, the member or applicant must require one skilled service listed in 130 CMR 456.409(A) daily or the member must have a medical or mental condition requiring a combination of at least three services from 130 CMR 456.409(B) and (C), including at least one of the nursing services listed in 130 CMR 456.409(C).
>
> (A) Skilled Services. Skilled services must be performed by or under the supervision of a registered nurse or therapist. Skilled services consist of the following:
>
> (1) intravenous, intramuscular, or subcutaneous injection, or intravenous feeding;
> (2) nasogastric-tube, gastrostomy, or jejunostomy feeding;
> (3) nasopharyngeal aspiration and tracheostomy care, however, long-term care of a tracheotomy tube does not, in itself, indicate the need for skilled services;
> (4) treatment and/or application of dressings when the physician has prescribed irrigation, the application of medication, or sterile dressings of deep decubitus ulcers, other widespread skin disorders, or care of wounds, when the skills of a registered nurse are needed to provide safe and effective

services (including, but not limited to, ulcers, burns, open surgical sites, fistulas, tube sites, and tumor erosions);
(5) administration of oxygen on a regular and continuing basis when the member's medical condition warrants skilled observation (for example, when the member has chronic obstructive pulmonary disease or pulmonary edema);
(6) skilled-nursing observation and evaluation of an unstable medical condition (observation must, however, be needed at frequent intervals throughout the 24 hours; for example, for arteriosclerotic heart disease with congestive heart failure);
(7) skilled nursing for management and evaluation of the member's care plan when underlying conditions or complications require that only a registered nurse can ensure that essential unskilled care is achieving its purpose. The complexity of the unskilled services that are a necessary part of the medical treatment must require the involvement of skilled nursing personnel to promote the member's recovery and safety;
(8) insertion, sterile irrigation, and replacement of catheters, care of a suprapubic catheter, or, in selected residents, a urethral catheter (a urethral catheter, particularly one placed for convenience or for control of incontinence, does not justify a need for skilled-nursing care).However, the insertion and maintenance of a urethral catheter as an adjunct to the active treatment of disease of the urinary tract may justify a need for skilled-nursing care. In such instances, the need for a urethral catheter must be documented and justified in the member's medical record (for example, cancer of the bladder or a resistant bladder infection);
(9) gait evaluation and training administered or supervised by a registered physical therapist at least five days a week for members whose ability to walk has recently been impaired by a neurological, muscular, or skeletal abnormality following an acute condition (for example, fracture or stroke). The plan must be designed to achieve specific goals within a specific time frame. The member must require these services in an institutional setting;
(10) certain range-of-motion exercises may constitute skilled physical therapy only if they are part of an active treatment plan for a specific state of a disease that has resulted in restriction of mobility (physical-therapy notes showing the degree of motion lost and the degree to be restored must be documented in the member's medical record);
(11) hot pack, hydrocollator, paraffin bath, or whirlpool treatment will be considered skilled services only when the member's condition is complicated by a circulatory deficiency, areas of desensitization, open wounds, fractures, or other complications; and
(12) physical, speech/language, occupational, or other therapy that is provided as part of a planned program that is designed, established, and directed by a qualified therapist. The findings of an initial evaluation and periodic reassessments must be documented in the member's medical record. Skilled therapeutic services must be ordered by a physician and be designed

to achieve specific goals within a given time frame.

(B) Assistance with Activities of Daily Living. Assistance with activities of daily living includes the following services:

(1) bathing when the member requires either direct care or attendance or constant supervision during the entire activity;
(2) dressing when the member requires either direct care or attendance or constant supervision during the entire activity;
(3) toileting, bladder or bowel, when the member is incontinent of bladder or bowel function day and night, or requires scheduled assistance or routine catheter or colostomy care;
(4) transfers when the member must be assisted or lifted to another position;
(5) mobility/ambulation when the member must be physically steadied, assisted, or guided in ambulation, or be unable to propel a wheelchair alone or appropriately and requires the assistance of another person; and
(6) eating when the member requires constant intervention, individual supervision, or direct physical assistance.

(C) Nursing Services. Nursing services, including any of the following procedures performed at least three times a week, may be counted in the determination of medical eligibility:

(1) any physician-ordered skilled service specified in 130 CMR 456.409(A);
(2) positioning while in bed or a chair as part of the written care plan;
(3) measurement of intake or output based on medical necessity;
(4) administration of oral or injectable medications that require a registered nurse to monitor the dosage, frequency, or adverse reactions;
(5) staff intervention required for selected types of behavior that are generally considered dependent or disruptive, such as disrobing, screaming, or being physically abusive to oneself or others; getting lost or wandering into inappropriate places; being unable to avoid simple dangers; or requiring a consistent staff one-to-one ratio for reality orientation when it relates to a specific diagnosis or behavior as determined by a mental-health professional;
(6) physician-ordered occupational, physical, speech/language therapy or some combination of the three (time-limited with patient-specific goals);
(7) physician-ordered licensed registered nursing observation and/or vital-signs monitoring, specifically related to the written care plan and the need for medical or nursing intervention; and
(8) treatments involving prescription medications for uninfected postoperative or chronic conditions according to physician orders, or routine changing of dressings that require nursing care and monitoring.

See 130 CMR 456.409.

In this case, MassHealth through its agent Tri-Valley, Inc., determined that Appellant did not meet

the above clinical eligibility requirements to qualify for coverage of nursing facility services. This determination is supported by the evidence in the record. According to Appellant's clinical record, nursing facility staff, and the Tri-Valley nurses' that assessed Appellant's case, Appellant is independent with ADLs and does not have a skilled nursing need. Appellant also acknowledges that he is independent with ADLs and does not rely on nursing staff for most of his care. Notably, Appellant's desire to remain at the facility is primarily based on the structure and support it offers and which he lacks in the community. Notwithstanding MassHealth's denial, Appellant may still seek alternative housing placements within the community that provide the desired structure and supports to help maintain Appellant's clinical stability.

Based on the foregoing, 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.

Casey Groff, Esq.
Hearing Officer
Board of Hearings

cc:
MassHealth Representative: Desiree Kelley, RN, BSN, Massachusetts Executive Office of Elder Affairs, 1 Ashburton Pl., 5th Flr., Boston, MA 02108, 617-222-7410

Respondent Representative: [redacted]

Appellant Representative: [redacted]