Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2304062
Decision Date:	7/25/2023	**Hearing Date:**	6/14/2023
Hearing Officer:	Patrick Grogan	**Record Open to:**	N/A

Appearance for Appellant:
[redacted]

Appearance for MassHealth:
Kathleen Sheehan, Nurse Manager
Carole Jerusik, CSSM RN
Anna Johnson, LSW, CSSM CM

Interpreter:
N/A

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
Decision Date:	7/25/2023	**Hearing Date:**	6/14/2023
MassHealth's Rep.:	Kathleen Sheehan, Nurse Manager Carole Jerusik, CSSM RN Anna Johnson, LSW, CSSM CN	**Appellant's Rep.:**	
Hearing Location:	Remote (Tel)	**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 April 28, 2023, MassHealth denied the Appellant's application for MassHealth benefits because MassHealth determined that nursing-facility services are not medically necessary and the Appellant's medical needs can be met in the community (see 130 CMR 456.409, 130 CMR 456.408 (A)(2) and Exhibit 1). The Appellant filed this appeal in a timely manner on May 17, 2023(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 denied the Appellant's application for MassHealth benefits because MassHealth determined that the Appellant is not clinically eligible because nursing-facility services are not medically necessary for the Appellant and the Appellant's medical needs can be met in the community (see 130 CMR 456.409, 130 CMR 456.408 (A)(2) and Exhibit 1).

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 456.409 and 130 CMR 456.408 (A)(2), in determining that the Appellant is not clinically eligible because nursing-facility services are not medically necessary for the Appellant and the Appellant's medical needs can be met in the community (see 130 CMR 456.409, 130 CMR 456.408 (A)(2) and Exhibit 1).

Summary of Evidence

The Appellant is a [redacted] year-old MassHealth member who was determined to be clinically ineligible for MassHealth payment of nursing-facility services. (Exhibit 1, Testimony). MassHealth was represented by individuals from Greater Springfield Senior Services, Inc. (Testimony, Exhibit 5). The Appellant appeared telephonically and had an ombudsman program supervisor with Greater Springfield Senior Services as well as a transitional advocate with her on her behalf. (Testimony). MassHealth submissions indicate the Appellant was admitted to [redacted] a skilled nursing facility, for rehabilitation services on [redacted] 2022. (Exhibit 5, pg. 24) MassHealth submissions indicate the Appellant has been diagnosed with pulmonary embolism, acute embolism and thrombosis of left and right lower extremities, blood born illness, chronic pain, muscle weakness and has demonstrated instability on her feet as well as difficulty walking. (Exhibit 5, pg. 2, Exhibit 5, pgs. 7-23, Exhibit 5, pg. 24, Exhibit 5, pg. 25) The Appellant no longer receives occupational or physical therapy. (Exhibit 5, pg. 24, Testimony) On [redacted] 2023, the Appellant was served notice[1] of discharge from the facility. (Exhibit 5, pg. 24) The Appellant has been prescribed multiple medications and has her blood pressure checked three times a day due to her medication. (Exhibit 5, pg. 2, Testimony) MassHealth testified on [redacted] 2023 an on-site assessment of the Appellant was conducted. (Testimony, Exhibit 5, pg. 3, Exhibit 5, pg. 5-7, Exhibit 5, pg. 24, Exhibit 5, pg. 25) During this on-site assessment, the Appellant reported that she is independent with all Activities of Daily Living (ADLs), occasionally requests aid with donning her socks, and wishes to reside in the community. (Exhibit 5, pg. 24, Exhibit 5, pg. 25, Testimony) The Appellant was observed ambulating on her own with the aid of a rollator. (Testimony) The Appellant is a certified nursing assistant herself and presents no current need for skilled nursing services or aid with ADLs. (Testimony)

The Appellant did not disagree with the testimony of MassHealth. (Testimony). In response to questions, the Appellant stated that she was independent, did not require help with her ADLs and would be able to monitor her blood pressure on her own within the community as long as she has the equipment to do so. (Testimony) According to the ombudsman program supervisor, the difficulty for the Appellant is housing. (Testimony) The Appellant's concern involved safe storage of her medication and blood pressure monitoring equipment were she discharged to a shelter.

[1] This notice is not a part of the instant appeal. A separate appeal was filed and scheduled with a different Hearing Officer after the date of the instant appeal.

(Testimony) Without a secure place for housing upon discharge, storage of the Appellant's medication and the ability to monitor her blood pressure would be more difficult. (Testimony) The Appellant, along with the ombudsman program supervisor and representatives from Greater Springfield Senior Services have been actively searching for housing. (Testimony) When asked what the Appellant was specifically appealing, the ombudsman program supervisor indicated that the intention was to pursue every avenue for the Appellant. (Testimony)

Findings of Fact

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

1. The Appellant is a [redacted] year-old MassHealth member who was determined to be clinically ineligible for MassHealth payment of nursing-facility services. (Exhibit 1, Testimony).

2. MassHealth submissions indicate the Appellant was admitted to [redacted], a skilled nursing facility, for rehabilitation services on [redacted] 2022. (Exhibit 5, pg. 24)

3. The Appellant has been diagnosed with pulmonary embolism, acute embolism and thrombosis of left and right lower extremities, blood born illness, chronic pain, muscle weakness and has demonstrated instability on her feet as well as difficulty walking. (Exhibit 5, pg. 2, Exhibit 5, pgs. 7-23, Exhibit 5, pg. 24, Exhibit 5, pg. 25)

4. The Appellant has been prescribed multiple medications and has her blood pressure checked three times a day due to her medication. (Exhibit 5, pg. 2, Testimony)

5. The Appellant no longer receives occupational or physical therapy. (Exhibit 5, pg. 24, Testimony)

6. The Appellant reported that she is independent with all Activities of Daily Living (ADLs), occasionally requests aid with donning her socks, and wishes to reside in the community. (Exhibit 5, pg. 24, Exhibit 5, pg. 25, Testimony)

Analysis and Conclusions of Law

In order to qualify for MassHealth to cover the cost of nursing-facility services, specific conditions must be met as delineated in 130 CMR 456.408:

> 456.408: Conditions for Payment
> (A) The MassHealth agency pays for nursing-facility services if all of the following conditions are met.

(1) The MassHealth agency or its agent has determined that individuals aged 22 and older meet the nursing-facility services requirements of 130 CMR 456.409 or that the medical review team coordinated by the Department of Public Health has determined that individuals aged 21 or younger meet the criteria of 130 CMR 519.006(A)(4).

(2) The MassHealth agency or its agent has determined that community care is either not available or not appropriate to meet the individual's needs.

(3) The requirements for preadmission screening at 130 CMR 456.410 have been met.

In the instant appeal, MassHealth's medical review team has determined that the Appellant's individual needs may be met in the community (130 CMR 456.408 (A)(2)) and that the Appellant does not meet the nursing-facility services requirements as enumerated in 130 CMR 456.409 (see 130 CMR 456.408 (A)(1)).

In order to qualify for medically eligible services within a nursing-facility, an Appellant must require either an enumerated skill service, or must have a condition that requires a combination of services related to assistance with Activities of Daily Living or nursing services as codified within 130 CMR 456.409:

456.409: Services Requirement for Medical Eligibility
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) nasogastrictube, 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.

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228. See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); 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). The evidence in this case is not in dispute. The Appellant is capable of dispensing her own medication and checking her own blood pressure within the community. (Testimony) The Appellant is independent with all Activities of Daily Living (ADLs), occasionally requests aid with donning her socks, and wishes to reside in the community. (Testimony Exhibit 5, pg. 24, Exhibit 5, pg. 25, Testimony) MassHealth has determined that the Appellant can reside safely within the community. (Testimony, see 130 CMR 456.408(1)(B)) Without a secure place for housing upon discharge, storage of the Appellant's medication and the ability to monitor her blood pressure would be more difficult, however, still possible for the Appellant. Additionally, the Appellant does not require the services delineated in 130 CMR 456.409. (Testimony, see 130 CMR 456.408(1)(A)) The Appellant requires none of the skilled services enumerated at 130 CMR 456. 409(A)(1-12). The Appellant requires no aid with her Activities of Daily Living enumerated at 130 CMR 409(B)(1-6) The Appellant requires none of the nursing services enumerated at 130 CMR 456.409(C)(1-8). In order to be deemed clinically eligible for MassHealth payment of nursing-facility services, the Appellant must require one skilled service pursuant to 130 CMR 456.409(A) each day or has a condition requiring a combination of at least three services enumerated in 130 CMR 456.409(B) and 130 CMR 456.409 (C). The Appellant requires none of these enumerated services, nor disputes the accuracy of MassHealth's determination. Therefore, the Appellant has not met her

burden to show the invalidity of MassHealth determination that she is not clinically eligible for MassHealth payment of nursing-facility services. Therefore, 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.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Patrick Grogan
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