

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2407162
Decision Date:	6/11/2024	Hearing Date:	May 16, 2024
Hearing Officer:	Brook Padgett	Record Open:	May 23, 2024

Appellant Representative:

Pro se

MassHealth/MCO Representatives:

Jamie Farrell, HNE - Manager of Appeals
Rebekah DiGennaro, HNE Utilization Nurse
Dawn Martin, HNE Utilization Manager



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th floor
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APPEAL DECISION

Appeal Decision:	Denied	Issue:	130 CMR 456.409 Denial of Internal Appeal
Decision Date:	6/11/2024	Hearing Date:	May 16, 2024
MassHealth MCO Rep.:	J. Farrell R. DiGennaro Dawn Martin	Appellant Rep.:	Pro se
Hearing Location:	Springfield	Record Open to:	05/23/2024

Authority

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

Jurisdiction

The appellant received a Notice of Denial of Expedited (Fast) Internal Appeal, dated April 26, 2024 stating "Your Expedited (Fast) Internal Appeal was reviewed by a Health New England Medical Director who is board certified in Pediatric & Pulmonology Pediatrics. This healthcare professional carefully reviewed the information provided for your Internal Appeal and supports the original decision to deny the requested service(s) [Level 1 – Skilled Nursing]. The reason(s) for the denial is this request does not meet criteria. ... [A]fter review of the most recent clinical from 4/23 received from the Skilled Nursing Facility, it states you are refusing therapy and refusing to work on stairs." (Exhibit 1). The appellant appealed this action timely on May 05, 2024. (130 CMR 610.015(B); Exhibit 2). Denial of a request for prior authorization is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth MCO

Health New England has denied the appellant's prior authorization request for Level 1 Skilled Nursing Services.

Issue

Does the appellant require Level 1 Skilled Nursing Services?

Summary of Evidence

Health New England [HNE], represented by the Manager of Appeals, testified telephonically and stated the appellant's request for a continued stay at CareOne at Redstone (CareOne) was denied by the BeHealthy Partnership Medical Director as the request did not meet the HNE/MassHealth guidelines. The appellant is a [REDACTED] year old male who was involved in a motor vehicle accident and experienced a right patellar (kneecap) fracture. He had a previous tibial plateau fracture with posttraumatic arthritis. The appellant was admitted for ORIF¹ of his patella and subsequently admitted to [REDACTED] on [REDACTED] 2024. At the time of admission, the appellant was medically stable with supervision when moving into bed and was a contact guard assist when moving from one surface to another. At that time, the appellant was not walking. The appellant received occupational therapy (OT) and physical therapy (PT) . The appellant is currently Independent when moving in bed and moving from one surface to another. The representative maintained the appellant is currently refusing to walk or participate in additional therapy. After review of the medical records, HNE determined the appellant remains stable and his level of care can be managed at a lower level and he no longer meets the skilled level of care criteria. Per MassHealth regulations 130 CMR 456.409, the appellant's medical condition no longer requires daily skilled nursing care three times a week and his condition no longer requires the level of sophistication and training of a daily licensed PT so the request for additional coverage was denied. HNE submitted into evidence the appellant's case file. (Exhibit 4).

The appellant testified telephonically and responded that on April 18, 2024 he attempted to go from his wheelchair to the bathroom and lost his footing and he fell face first into a wall. The appellant stated he has been participating in OT and PT, however sometimes the therapists don't come and get him or they are late or they reschedule his appointments. The appellant argued he wants to leave the facility but he is unable to walk or climb stairs independently and he needs assistance with transfers. The appellant stated he is doing the best he can with the OT and PT but his leg is still bleeding and his range of motion is limited due to the pain. The appellant maintains that if the staff had been working with him as they should he would be able to leave the facility by now.

The record was left open until May 23, 2024 for the appellant to provide medical documentation from a treating physician detailing his current condition and the estimated time needed with PT required for discharge; and the HNE to provide medical notes detailing appellant's current

¹ ORIF - Open Reduction is where a surgeon makes an incision to access the affected bones and reset them to their proper place. Internal Fixation is where a surgeon keeps the bone in place while healing. They do this by using: plates, screws, nails, rods, wires and pins.

condition (post April 22, 2024) prognosis and participation in physical therapy. (Exhibit 5).

HNE responded within the time limits and submitted clinical information received from the skilled nursing facility [REDACTED] Ambulation Notes [REDACTED] 2024 state that [the appellant] is now ambulating and transferring independently, self-propels in wheelchair. [The appellant] left the nursing facility independently without his wheelchair to walk down the road with a family member. [REDACTED] clinical PT note dated [REDACTED] 2024, indicates [the appellant] is able to complete bed mobility independently, stand up and transfer to chair with stand by assist or contact guard assist (100% his own effort with someone standing nearby or providing touching assistance for steadying), and able to wheel 150 feet independently in wheelchair. [REDACTED] Clinical Orders [REDACTED] 2024, regarding treatment to right knee incision: Mupirocin ointment 2% (antibiotic ointment) to right knee after cleansing with normal saline, cover with gauze, ABD pad and ace bandage wrap, frequency: once daily. HNE submitted into evidence a Summary of the additional medical notes (Exhibit 6), Admission Notes (Exhibit 6A), PT and OT Notes (Exhibit 6B), Progress Notes (Exhibit 6C), Ambulation Notes (Exhibit 6D).

The appellant submitted within the required time limits a physician note stating the appellant is healing well, will require OT and PT, and transfer training. The appellant requires a knee immobilizer and no motion with knee and WBAT (weight bearing as tolerated). (Exhibit 7).

The hearing officer requested HNE review the appellant's submission to determine if the additional information would change their determination. HNE responded that after review of the additional medical notes the decision that the appellant does not require Level 1 Skilled Nursing Care remains unchanged. (Exhibit 8).

Findings of Fact

Based on a preponderance of the evidence, I find:

1. The appellant is [REDACTED] years old and was admitted to [REDACTED] on [REDACTED] 2024 after experiencing a right patellar fracture from a motor vehicle accident.
2. At the time of admission, the appellant was not walking, but was medically stable with supervision when moving into bed and contact guard assist when moving from one surface to another. (Exhibit 4 and testimony).
3. On April 18, 2024, the appellant lost his footing and fell into a wall when he attempted to go from his wheelchair to the bathroom. (Testimony).
4. The appellant maintains he is unable to walk or climb stairs independently but he needs assistance with transfers. The appellant stated he is doing the best he can with the OT and PT

but his leg is still bleeding and his range of motion is limited due to the pain. (Testimony).

5. [REDACTED] Ambulation notes dated [REDACTED] 2024 state the appellant is ambulating and transferring independently, self-propels in wheelchair. The appellant left the nursing facility independently without his wheelchair to walk down the road with a family member. (Exhibit 6).
6. [REDACTED] Clinical PT notes dated [REDACTED] 2024 state the appellant is able to complete bed mobility independently, stand up and transfer to chair with stand by assist or contact guard assist and able to wheel 150 feet independently in wheelchair. (Exhibit 6).
7. [REDACTED] Clinical Orders dated [REDACTED] 2024 state treatment to right knee incision includes antibiotic ointment to right knee after cleansing with normal saline, cover with gauze, ABD pad and ace bandage wrap, frequency: once daily. (Exhibit 6).
8. The appellant's physician note states the appellant is healing well, will require OT and PT, and transfer training, knee immobilizer and no motion with knee with weight bearing as tolerated. (Exhibit 7).

Analysis and Conclusions of Law

MassHealth or its agent will pay for nursing-facility services only when it has determined that the individual meets nursing-facility services requirements (130 CMR 456.409).

130 CMR 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).²

² **(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 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

The appellant provided a physician note which states the appellant is healing well, will require OT and PT, and transfer training, knee immobilizer and no motion with knee with weight bearing as tolerated. The facility submitted current clinical information (██████ 2024) that indicates the appellant is ambulating and transferring independently and self-propels in wheelchair and that he left the nursing facility independently without his wheelchair to walk down the road with a

only a registered nurse can ensure that essential unskilled care is achieving its purpose. The complexity of the unskilled services are a necessary part of the medical treatment must require the involvement of skilled nursing personnel to promote 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.** (*Emphasis added*).

family member. Further he is able to complete bed mobility independently, stand up and transfer to chair with stand by assist or contact guard assist. The appellant's treatment consists of antibiotic ointment to right knee after cleansing with normal saline, cover with gauze, and ace bandage wrap once daily.

I find there is nothing in the medical record which indicates the appellant's current medical condition requires skilled nursing services or his condition meets a level of complexity that requires the training of a daily licensed nurse or PT of at least three times per week. The appellant is ambulating and transferring independently at this time and has left the nursing facility independently without his wheelchair. He is able to get out of bed independently, stand up and transfer to chair with stand by assist or contact guard assist and his wound treatment is minimal. The appellant's physician has noted the appellant is healing well, and will require OT and PT, and transfer training, however there is no instruction that the appellant requires skilled nursing care.

There is no medical evidence that the appellant meets any of the criteria at 130 CMR 456.409(A) or (B) and therefore appellant's request for payment of continuous Level 1 – Skilled Nursing is denied.

Order for MassHealth MCO

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.

Brook Padgett
Hearing Officer
Board of Hearings

cc: Jamie Farrell, Complaints & Appeals Manager, Health New England, One Monarch Place, Suite 1500 Springfield, MA 01144

