

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2409481
Decision Date:	7/26/2024	Hearing Date:	July 16, 2024
Hearing Officer:	Stanley M. Kallianidis		

Appellant Representative:



MassHealth Representatives:

Alba Beltre, Tewksbury; Eileen Cynamon, DES



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
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APPEAL DECISION

Appeal Decision:	Denied	Issue:	Kaileigh Mulligan Program
Decision Date:	7/26/2024	Hearing Date:	July 16, 2024
MassHealth Reps.:	Alba Tewksbury; Cynamon, DES	Beltre, Eileen	Appellant Rep.: [REDACTED]

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 14, 2024, MassHealth denied the appellant's application for the Kaileigh Mulligan program because MassHealth determined that the appellant did not meet the requirements of the program (see 130 CMR 519.007 and Exhibit 1). The appellant filed this appeal in a timely manner on June 17, 2024 (see 130 CMR 610.015 and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Notice of the hearing was sent to the appellant on July 16, 2024 (Exhibit 3).

Action Taken by MassHealth

MassHealth denied the appellant's application for the Kaileigh Mulligan program.

Issue

In accordance with 130 CMR 519.007(A)(3)(c) and (A)(4), was MassHealth correct in denying the appellant's application for the Kaileigh Mulligan program because she does not require the level of care equivalent to that provided in a hospital or nursing facility?

Summary of Evidence

The MassHealth representative from the Tewksbury MEC confirmed that the appellant is eligible for and receiving MassHealth CommonHealth benefits as a disabled child.

A representative from MassHealth DES stated the dispute in this appeal was only over the appellant's denial for the Kaileigh Mulligan program. She then referenced a packet of medical records that were used in the determination, and which were sent to the appellant's parents prior to the hearing (Exhibit 4).

The DES representative testified that MassHealth offers the Kaileigh Mulligan program to certain severely disabled children under the age of 18 so that they may continue to live at home and have MassHealth eligibility determined without counting the income and assets of their parents. The regulations at 130 CMR 519.007 state the eligibility requirements for the Kaileigh Mulligan program, and which were included in the appellant's packet (Exhibit 4).

On March 22, 2024, the appellant underwent a disability review. She is [REDACTED] years old with multiple health problems including cerebral palsy, bronchopulmonary dysplasia, dysphagia, mild hearing loss, and a history of preterm birth at 23 weeks gestation (Exhibit 4).

The DES representative stated that in order to be accepted into the Kaileigh Mulligan program, an applicant must meet Title XVI disability standards in accordance with the definition of permanent and total disability for children younger than 18 years old. An applicant must also require a level of care equivalent to that provided in a hospital or nursing facility in accordance with 130 CMR 519.007(A)(3) which references hospital level of care requirements, or (A)(4), which references skilled nursing facility level of care requirements.

The appellant was determined to be a disabled child under Title XVI and was next evaluated for eligibility under 130 CMR 519.007.

The DES evaluation was based upon medical documentation from Boston Children's Hospital and the appellant's pediatrician from the preceding 12 months. These medical records indicated that the appellant demonstrated skills consistent with expectations compared to other children her age and her equivalent was 27 months. The appellant's cognitive and language scores were in the average range for her chronological age, while she continues with some gross motor delay. She takes all her food orally and is using "SimplyThick," a food and beverage thickener, while she has cut down on her need for "Pediasure," a nutritional drink. With regard to her ambulation, the appellant was observed taking steps with a wide base and small steps with the help of assistive braces. She was not up on her toes when standing (Exhibit

4).

In accordance the regulations and based upon findings from these medical records, DES determined that the appellant does not meet hospital level of care requirements as she does not require ongoing use of invasive medical technology or techniques to sustain life required under 130 CMR 519.007(A)(3)(c). She also does not meet skilled nursing facility level of care requirements under 130 CMR 519.007(A)(4) as she is ambulatory with assistance and/or with use of devices. The determination therefore was that the appellant was ineligible for the Kaileigh Mulligan program.

The appellant's parents disagreed with the determination that she was ineligible for the Kaileigh Mulligan program but did not dispute any of MassHealth's findings that were based upon medical records contained in the packet. While the parents acknowledged that the appellant's condition has improved over the past year, they felt that she should be nonetheless eligible for the Kaileigh Mulligan program due to her on-going complex medical needs.

They testified that while the appellant is able to walk small steps on her own, she requires assistive braces and a gait trainer. In addition, she has various skilled nursing needs and requires daily nebulizer and inhaler. Finally, the parents stated that the appellant requires daily therapy, and her feeding requires close supervision.

The appellant's parents submitted recent medical notes which state that the appellant requires supervision when eating or drinking, receives weekly feeding therapy and physical, occupational and speech therapy. She requires use of adaptive equipment for her lower extremity spasticity. She also requires daily respiratory treatments (Exhibit 5).

Findings of Fact

Based on a preponderance of the evidence, I find:

1. The appellant is [REDACTED] years old with multiple health problems including cerebral palsy, bronchopulmonary dysplasia, dysphagia, mild hearing loss, as well as a history of preterm birth at 23 weeks gestation (Exhibit 4).
2. On March 22, 2024, the appellant underwent a disability review with MassHealth DES (Exhibit 4).
2. The appellant was determined to be a disabled child under Title XVI and accordingly, is eligible for and receiving MassHealth CommonHealth benefits (Exhibit 4 & testimony).

3. The DES evaluation was based upon medical documentation from Boston Children's Hospital and the appellant's pediatrician from the preceding 12 months (Exhibit 4).
4. The appellant has skills consistent with expectations compared to other children her age and her equivalent was 27 months. The appellant's cognitive and language scores were in the average range for her chronologic age, while she continues with some gross motor delay (Exhibit 4).
5. The appellant takes all her food orally and is using "SimplyThick," a food and beverage thickener, while she has cut down on her need for "Pediasure," a nutritional drink (Exhibit 4).
6. With regard to her ambulation, the appellant was observed taking steps with a wide base and small steps with the help of assistive braces. She was not up on her toes when standing (Exhibit 4).
7. The appellant requires supervision when eating or drinking, receives weekly feeding therapy and physical, occupational and speech therapy. She requires use of adaptive equipment for her lower extremity spasticity. She also requires daily respiratory treatments (Exhibit 5 and testimony).

Analysis and Conclusions of Law

In accordance with 130 CMR 519.007(A)(3) and (4), eligibility for the Kaleigh Mulligan program requires a level of care equivalent to that provided in a hospital or nursing facility.

(A)(3). Level of Care That Must Be Required in a Hospital. To require the level of care provided in a hospital, the child must have a medical need for the following:

(a) direct administration of at least two discrete skilled-nursing services (as defined in 130 CMR 515.001: Definition of Terms) on a daily basis, each of which requires complex nursing procedures, such as administration of intravenous hyperalimentation, changing tracheotomy tubes, assessment or monitoring related to an uncontrolled seizure disorder, assessment or monitoring related to an unstable cardiopulmonary status, or other unstable medical condition;

(b) direct management of the child's medical care by a physician or provided directly by someone who is under the supervision of a physician on at least a weekly basis;

(c) ongoing use of invasive medical technologies or techniques to sustain life (such as ventilation, hyperalimentation, gastrostomy tube feeding), or dialysis, or both; and

(d) at least one of the following:

1. assistance in one or more activities of daily living (ADLs), as defined in 130 CMR 515.001: Definition of Terms, beyond what is required at an age-appropriate activity level; or
2. one or more skilled therapeutic services (occupational therapy, physical therapy, or speech and language therapy), provided directly by or under the supervision of a licensed therapist at least five times a week.

(A)(4) Level of Care That must Be Required in a Skilled-nursing Facility. To require the level of care provided in a skilled nursing facility, the child must be non-ambulatory and meet the following requirements.

(a) A child 12 months of age or older must have global developmental skills (as defined in 130 CMR 515.001: Definition of Terms) not exceeding those of a 12-month-old child as indicated by a developmental assessment performed by the child's physician or by another certified professional. In addition, the child's developmental skills level must not be expected to improve.

(b) A child younger than 12 months old must have global developmental skills significantly below an age-appropriate level and such skills must not be expected to progress at an age-appropriate rate as indicated by a developmental assessment performed by the child's physician or by another certified professional.

(c) Regardless of age, the child must also require all of the following:

1. direct administration of at least two discrete skilled nursing services on a daily basis, each of which requires complex nursing procedures as described at 130 CMR 519.007(A)(3);
2. direct management of the child's medical care by a physician or provided directly by someone who is under the supervision of a physician on a monthly basis;
3. assistance in one or more ADLs beyond what is required at an age-appropriate activity level; and
4. any combination of skilled therapeutic services (physical therapy, occupational therapy, speech and language therapy) provided directly by or under the supervision of a licensed therapist at least five times a week.

The appellant in this case is [REDACTED] years old with multiple health problems including cerebral palsy, bronchopulmonary dysplasia, dysphagia, mild hearing loss, as well as a history of preterm birth at 23 weeks gestation.

On March 22, 2024, her disability review with MassHealth DES resulted in a determination that she is a disabled child under Title XVI. I have further found that she is eligible for and receiving MassHealth CommonHealth benefits as a disabled child.

The sole issue in this appeal is the appellant's denial for the Kaileigh Mulligan program which is offered to severely disabled children under the age of 18 so that they may continue to live at home.

The appellant's medical records as well as testimony from both parties reveal that while the appellant has serious medical issues, her condition has improved over the past year and that she has no need of invasive medical techniques such as a G-tube for feeding or ventilation for breathing. Thus, the appellant does not require ongoing use of invasive medical technology or techniques to sustain life in accordance with 130 CMR 519.007(A)(3), which references hospital level of care requirements. Also, while she uses assistive devices for walking, she is able to ambulate on her own and is not confined to a bed or wheelchair. Therefore, the appellant does not meet the skilled nursing facility level of care requirements in accordance with 130 CMR 519.007(A)(4).

In accordance with 130 CMR 519.007(A)(3) and (4), she is therefore ineligible for the Kaileigh Mulligan program.

The appeal is therefore 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.

Stanley M. Kallianidis
Hearing Officer
Board of Hearings

cc:Tewksbury MEC

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