Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2414167
Decision Date:	1/30/2025	**Hearing Date:**	12/11/2024
Hearing Officer:	Cynthia Kopka		

Appearance for Appellant:
Pro se

Appearance for Respondent:
Donna Chesna, R.N., B.S.N., Elder Services of Worcester Area (ESWA)
Linda Brissette, R.N., ESWA

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:**	Nursing Facility Screen
Decision Date:	1/30/2025	**Hearing Date:**	12/11/2024
MassHealth's Reps.:	Donna Chesna and Linda Brissette, ESWA	**Appellant's Rep.:**	Pro se
Hearing Location:	Quincy (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

By notice dated August 9, 2024[1], MassHealth informed Appellant that Appellant was clinically eligible for MassHealth payment of nursing facility services (long-term). Exhibit 1. 130 CMR 456.409. Appellant filed this appeal in a timely manner on September 13, 2024. Exhibit 2. 130 CMR 610.015(B). Challenging a determination of medical necessity is a valid basis for appeal. 130 CMR 610.032. Appellant's request for hearing was initially dismissed by the Board of Hearings (BOH) on September 13, 2024. Exhibit 3. However, BOH reopened the appeal on November 14, 2024 and scheduled this hearing.

Action Taken by MassHealth

MassHealth informed Appellant that Appellant was clinically eligible for MassHealth payment of nursing facility services (long-term).

Issue

[1] The date at the top of the first page of the notice is August 7, 2024, which may have been a typographical error. The ASAP nurse who conducted the assessment dated the notice August 9, 2024. The ASAP's testimony was that the approval was made on August 9, 2024.

The appeal issue is whether MassHealth was correct in determining that Appellant was clinically eligible for payment of nursing facility services on a long-term, and not short-term, basis.

Summary of Evidence

MassHealth utilizes Aging Services Access Point ("ASAP") organizations to perform clinical evaluations of MassHealth members to determine members' clinical eligibility for nursing facility services. A nurse and nurse manager from [redacted] ("the ASAP representatives") appeared at hearing by phone and submitted documents in support. Exhibit 4. Appellant appeared by phone. A summary of evidence and testimony follows.

Appellant admitted to the nursing facility on [redacted] after a hospitalization due to a diabetic foot ulcer, osteomyelitis, and sepsis. Appellant's Level I screen was negative for intellectual disability (ID), developmental disability (DD), and Serious Mental Illness (SMI) and therefore did not require a Level II screen. Appellant was approved on a short-term basis through August 8, 2024.

On August 7, 2024, the ASAP performed an on-site assessment at the nursing facility. The ASAP nurse received and reviewed medical documentation and met with Appellant, a social worker, and other facility nurses. The ASAP nurse observed Appellant independently propel herself in a wheelchair, get in and out of her car, and drive. The facility representatives informed the ASAP nurse that Appellant was planning to drive herself to her outside appointment. The nursing facility representatives informed the ASAP nurse that Appellant frequently drives her car to and from the facility. The ASAP nurse spoke to Appellant about her discharge plans, and Appellant told the ASAP nurse that she wanted an apartment. Appellant was resistant to going to a rest home and had a legal barrier to public housing. The social worker reported to the ASAP nurse that Appellant had not been making efforts to resolve the public housing situation. Appellant indicated that she would refuse to pay her Social Security check to a rest home because she had a car to pay for. Exhibit 4 at 1. The ASAP nurse spoke to the social worker, who noted that Appellant is refusing a rest home and would discharge to a shelter.

The ASAP nurse contacted homeless shelters and a rest home in the area. Due to Appellant's poorly controlled diabetes and the extensive amount of monitoring and insulin administration required daily, a homeless shelter was not a viable discharge option. Additionally, Appellant was not appropriate for rest home placement because she was not yet independent with her diabetes management. The ASAP nurse considered Appellant's repeated readmissions to facilities and that there was no viable community option at the time of the assessment. The ASAP nurse also considered MassHealth's guidelines, which provide that an anticipated stay of more than 6 months is considered a long-term placement.[2] As of the time of hearing, Appellant had resided in the

[2] The Executive Office of Elder Affairs (EOEA) Program Instructions, EOEA PI – 22 – 07 dated December 27, 2022.

nursing facility for longer than 6 months.

The ASAP nurse approved Appellant for nursing facility placement on a long-term basis effective August 9, 2024, as there was no viable discharge plan or discharge date in the foreseeable future. Appellant has daily need for wound care, insulin administration multiple times per day, assistance with bathing, assistance with medication management, and behavior monitoring and intervention. Exhibit 4 at 2. The nurse noted that Appellant has had a chronic problem with diabetic foot ulcers since 2020. Appellant is not compliant with care recommendations (nutrition, weight bearing on affected foot), and her diabetes is not well controlled. She has not been successful in managing her condition in the community which has led to repeated hospitalizations and rehab stays. *Id*.

Appellant argued that she should have been considered clinically eligible for a short-term stay, not long-term. Appellant argued that she met with the ASAP representative one time and there was no discussion; the ASAP nurse told her that she would be approved for long-term care no matter what. Appellant was not allowed to offer any feedback or engage in a discussion. Appellant refused to be long-term, as she is only in her [redacted] Appellant has a car that she worked hard to buy and would be using her Social Security check to pay for the car. Appellant argued that she is happy to leave the facility after 6 months. Appellant argued that no one assisted her with finding housing and that she had to use outside resources for assistance. Appellant argued that she was actively appealing a city housing dispute. Appellant argued that she did not receive assistance from the nursing facility or [redacted] about her housing until she appealed a discharge notice from the facility. Appellant appealed her housing dispute with HUD and had a court date scheduled. Appellant was confident in her ability to prevail in her HUD dispute and get her housing record cleared, as she had evidence.

Appellant was residing at the nursing facility at the time of hearing but testified that she would have to leave by the first of the month. Appellant testified that she planned to live in her vehicle upon leaving the facility. Appellant argued that giving up her Social Security check was giving up her freedom.

Findings of Fact

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

1. Appellant admitted to the nursing facility on [redacted] after a hospitalization due to a diabetic foot ulcer, osteomyelitis, and sepsis.

2. Appellant's Level I screen was negative for ID/DD and SMI and therefore did not require a Level II screen. Appellant was approved on a short-term basis through August 8, 2024.

Exhibit 4 at 5-19.

3. On August 7, 2024, the ASAP performed an on-site assessment at the nursing facility. The ASAP nurse received and reviewed medical documentation and met with Appellant, a social worker, and other facility nurses.

4. At the time of assessment and at the time of hearing, Appellant was in an unresolved legal dispute impacting her ability to receive public housing.

5. At the time of assessment, the ASAP nurse determined that a homeless shelter or rest home would not be clinically appropriate options for discharge as Appellant has poorly controlled diabetes requiring extensive amount of monitoring and insulin administration required daily. Appellant is not independent with diabetes management.

6. Appellant refuses to use her Social Security income to pay for a stay in a rest home or the nursing facility.

7. On August 9, 2024, MassHealth informed Appellant that Appellant was clinically eligible for MassHealth payment of nursing facility services on a long-term, not short-term, basis. Exhibit 1.

8. Appellant filed this appeal in a timely manner on September 13, 2024. Exhibit 2.

Analysis and Conclusions of Law

Pursuant to 130 CMR 456.408,

> (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.

Further, under 130 CMR 456.409,

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 or PCP 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 or PCP 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- or PCP-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- or PCP-ordered occupational, physical, speech/language therapy or some combination of the three (time-limited with patient-specific goals);
(7) physician- or PCP-ordered 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 or PCP orders, or routine changing of dressings that require nursing care and monitoring.

The regulations contain no clinical distinction between eligibility for MassHealth payment of nursing facility services on a short-term basis or on a long-term basis. According to EOEA PI-22-07, a short term approval (STA) is defined as a "clinical determination for an approval issued by an ASAP RN when a MassHealth Member/applicant meets the clinical criteria for MassHealth payment of Nursing Facility services **and requires time in a Nursing Facility to rehabilitate or recuperate.**" EOEA PI-22-07 (December 27, 2022). Exhibit 4 at 8 (emphasis added). An STA is issued with a specific end date, and the maximum length for which an STA can be issued is six months. *Id*. at 16. Alternatively, a long-term approval is issued "when the MassHealth Member/applicant meets the clinical criteria for MassHealth payment of Nursing Facility services **for an indefinite length of stay after all attempts to overcome identified barriers to discharge have ended**." *Id*. (emphasis added).

Individuals who are approved for MassHealth coverage of a nursing facility stay must contribute to the cost of care with a patient-paid amount (PPA) owed to the facility. 130 CMR 515.001. MassHealth calculates the PPA based on the member's countable income less certain deductions as set forth in 130 CMR 520.009. Included in these deductions is a home-maintenance allowance, an amount tied to the federal poverty level and available to members who are certified likely to return home within six months after the month of admission. 130 CMR 520.026(D). Eligibility Operations Memo (EOM) 23-16 prohibits applicants or nursing facilities from requesting that a screening nurse change the nursing facility clinical approval of a level of care conversion screening so that the applicant can get a home maintenance needs allowance.

The parties do not dispute whether Appellant meets the clinical criteria for a nursing facility stay. The parties only dispute whether Appellant was appropriately approved for long-term care as opposed to a short-term stay. The practical effect of Appellant's long-term care approval is that she would not be eligible for a home maintenance needs allowance pursuant to 130 CMR 520.026(D), meaning she would have to pay, out of her Social Security income, a monthly PPA to the facility.

According to EOEA PI-22-07, whether Appellant should have been screened short- versus long-term hinges on whether Appellant could discharge by a specific date or required an indefinite length of stay. A factor in determining this is whether all attempts to overcome identified barriers to discharge had ended. Appellant argued that she was, and is, still attempting to resolve her issue with the housing authority. However, as of the time of hearing (four months after the August 7, 2024 evaluation), Appellant had still not resolved the housing issue. The ASAP nurse offered credible testimony that on August 7, 2024, Appellant was not making efforts to overcome barriers to discharge, as she was refusing to consider other residential options. Appellant had not changed her tune at the time of hearing. The fact that Appellant's stay at the nursing facility has been longer than 6 months, while hindsight, is illustrative.

Appellant has not met her burden of establishing that the ASAP's determination to approve her for long-term care benefits was made in error. Accordingly, this appeal is denied.

Order for Respondent

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc: Respondent Representative: Linda Brissette, R.N., Elder Services Worcester Area, Inc., 67 Millbrook Street, Worcester, MA 01606

cc: MassHealth Representative: Desiree Kelley, R.N., B.S.N., Massachusetts Executive Office of Elder Affairs, 1 Ashburton Pl., 3rd Floor, Boston, MA 02108

cc: [redacted]