

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



Appeal Decision:	Denied	Appeal Number:	2414636
Decision Date:	12/13/2024	Hearing Date:	10/22/2024
Hearing Officer:	Marc Tonaszuck		

**Appearance for Appellant:**



**Appearance for MassHealth/ASAP:**

Lori DiDomenico, RN, Springwell, 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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Nursing Facility Screening
<b>Decision Date:</b>	12/13/2024	<b>Hearing Date:</b>	10/22/2024
<b>MassHealth's Rep.:</b>	Lori DiDomenico, RN, Springwell, Inc.	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Quincy Harbor South	<b>Aid Pending:</b>	No

### Authority

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

### Jurisdiction

By a notice dated 08/27/2024, MassHealth, through Springwell, Inc. (Springwell), the Aging Services Access Point (ASAP) informed the appellant that he is not clinically eligible for MassHealth payment of nursing facility services because nursing facility services are not medically necessary (130 CMR 456.409; Exhibit 1). The appellant filed this timely appeal on 09/23/2024 (130 CMR 610.015(B); Exhibit 2). A finding of no clinical eligibility for MassHealth payment of nursing facility services is valid grounds for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth's contractor, Springwell ASAP ("the ASAP"), determined that appellant is not clinically eligible for MassHealth coverage of nursing facility services.

### Issue

The issue is whether MassHealth's ASAP correctly screened the appellant as not clinically eligible of nursing facility services.

## Summary of Evidence

MassHealth was represented at the hearing by a registered nurse from Springwell, a state-designated Aging Services Access Point (ASAP), who performed the screening. The ASAP nurse testified that the appellant is [REDACTED] male admitted to [REDACTED] from [REDACTED] with multiple fractures from motor vehicle accident on [REDACTED]. The appellant is homeless and has no income. He received short-term authorization for skilled nursing facility care for the following authorization periods: 01/17/2024 to 02/15/2024; 02/16/2024 to 04/16/2024; 04/17/2024 to 07/16/2024; and 07/17/2024 to 08/30/2024.

To be eligible for Mass Health payment of services, an applicant must be clinical eligible. To be considered medically eligible for nursing facility services, the applicant must require one skilled service listed in 130 CMR 456.09 (A) daily for the member must have medical or mental condition requiring a combination of at least three services from 130CMR 456.409 (B) and (C) including at least one of the nursing services listed in 130CMR 456.409(C).

The onsite assessment was performed on 08/27/2024. The following are the findings:

Medical Diagnoses: malignant neoplasm of lung, basal cell carcinoma of skin of scalp and shoulder. History of medical diagnoses: neck, fracture of lower end of left femur, fracture of upper left humerus, fracture of left tibia, contusion of intra-abdominal organs, fracture of left pubis, fracture of first and second lumbar vertebra, constipation, acute pain due to trauma, anemia, wedge compression fracture, skin cancer, insomnia, flail chest, laceration of liver, COVID-19, history of antineoplastic chemotherapy.

Nursing Care and Treatments: Treatment- Dressing and treatment to right temple scalp and left shoulder due to basal cell carcinoma of skin.

Pertinent Lab work/testing: No pertinent lab results.

Skin condition: temple scalp - has light drainage and left shoulder- has moderate drainage. Per nurse manager, the wounds are currently stable. The appellant unable to change dressing due to reduced flexion in bilateral upper extremities. His big toe infection has resolved.

Medications: Vitamin C 500 mg/1x day; Vitamin D3 25 mcg 1x/day; Magnesium oxide 400 mg 5x/day; Melatonin 6 mg 1x day; Methocarbamol 1000mg 4x/day and eye drop 3x/day. There is an order that appellant may self-administer Erivedge tablets 150 mg po on 2 months and

off 2 months.

Activities of Daily Living: Appellant is independent with bed mobility, dressing, hygiene, eating, toileting and transfers. The appellant spends his time walking around the facility. The appellant is coded assist with bathing. The appellant only needs setup for bathing.

Elimination: The appellant is continent of bladder and bowel.

Senses: Sight adequate. Hearing adequate. Speech clear.

Mental Status: The appellant is alert and oriented x3 and he is his own decision maker.

Informal supports: The appellant's mother visits often, and he often talks on the phone to friends and family.

Formal supports: The ASAP nurse testified she made a referral to Springwell's Community Transition Liaison Program (CTLP) on 11/30/2023 to assist the appellant in locating housing and income. She offered congregate housing or a rest home, but appellant declined. The CTLP engaged the appellant starting on 12/01/2024 as the appellant's goal is to return to the community with secured housing. CTLP engaged until the appellant declined any further support on and terminated involvement on 07/30/2024. CTLP interventions were focused on the appellant having no housing and no income. Starting immediately from the referral, CTLP researched and offered the appellant congregate housing which had openings in [REDACTED] and [REDACTED]. The appellant declined, stating he would only live in [REDACTED], and that he required a sterile bathroom for his wounds. CTLP confirmed the congregate room had a private half bathroom with a shared full bath with the other three apartment residents. CTLP, SW, and RN repeatedly advised accepting this type of housing due to long housing wait lists even as a priority, but the appellant declined. CTLP educated that there are no congregate options in [REDACTED], MA. CTLP completed the Common Housing Application for MA Programs (CHAMP) with the appellant accepting six local towns. CTLP applied to all eligible vouchers wait lists - MVHP, AVHP. CHAMP. Priority status was completed. CTLP worked to secure Core Housing Identity documents. Appellant then restricted housing only to Ashland or Framingham MA.

CTLP assisted the appellant with a Social Security Disability Application a written response from SSA that the appellant did not pay in enough quarters to qualify for SSDI. CTLP reached out to SSA, who confirmed SSI after the age of 65 if no quarterly payment but may be eligible for SSA if the appellant was married for over 10 years. The appellant confirmed no marriage and no consistent payments to SSA.

CTLP explored all housing options for appellants with no income, which ruled out Rest Home,

some voucher programs, and some Community Based Housing (CBH) voucher programs negotiated with private landlord. No CBH housing programs were presented in the appellant's desired towns. CTLP worked with the appellant to complete priority confirmation with the Town of Ashland, but no housing was available, and the appellant was placed on the wait list. CTLP worked with the [REDACTED] for the priority wait list. CTLP reached out to [REDACTED] which is one town away, who confirmed no housing openings and no time frame for possible openings. The appellant confirmed he would not live in [REDACTED]. CTLP also supported the appellant in the search for Private Subsidized Housing - [REDACTED]. The application was completed and submitted, with the appellant placed on a wait list due to no open housing.

CTLP advised and offered support for the Department of Transitional Assistance (DTA) for a cash assistance program (EAEDC cash assistance of \$400/month) for possible discharge funds as their threshold for disability is lower than SSA. The appellant declined assistance and did not follow through with calling on his own. CTLP advised DTA for SNAP food stamps and local food pantries to reduce food insecurity. CTLP offered to call local shelters and to help plan with community resources for daily bathroom access which the appellant declined.

CTLP offered a Springwell ASAP referral for discharge for HDMs and the State Home Care program. CTLP also provided information on the role of a Counsel for Aging for local transportation, transportation grants, congregate meal sites, day shelters, social programs, access to bathrooms, and SW staff.

On 07/15/2024, the CTLP supervisor, and Director of Social Service met with the appellant in his room. He spoke with the SW about the SNF losing the letter from social security as SSA will no longer allow calls due to the appellant's volume of calls to SSA. SW offered help in reaching SSA. CTLP advised opening an online account for social security, which the appellant declined. CTLP immediately met with the Activity Director to assist the appellant with computer technology, access, education and support. The appellant declined this assistance. The appellant informed this RN that his brother would help him with housing. SW confirmed that the appellant is working with his brother.

On 07/23/2024, the CTLP Supervisor, Director of Social Services and the Nursing Home Administrator held a meeting to speak with the appellant regarding his clinical eligibility, but the appellant declined to attend the meeting reporting to the SW that he did not have any questions and no longer needed Springwell's services.

Clinical Determination: During the prior on-site assessment, the appellant received a short-term authorization for Nursing Facility Care from 07/17/2024 to 08/30/2024 under Mass Health regulation 130 CMR 456.409 for skill nursing, bathing, skilled services from A, medication administration and nursing treatment.

On 08/28/2024, an on-site assessment was performed. The appellant was alert and oriented x3. The appellant was well groomed and did not have a gauze dressing to the right temporal scalp. The appellant is independent with all activities of daily living except bathing. The appellant was coded assist with bathing. No bladder or bowel incontinence. Per nursing note, wound of right temple scalp – wound progress: improved. Wound of the left anterior shoulder-wound progress: improved. The appellant was seen by podiatrist. The podiatrist ordered the appellant's left great toenail removal. The appellant refused to have podiatrist remove toenail. The appellant toe infection has resolved.

Appellant meets clinical eligibility guidelines under nursing regulations: 130 CMR 456.409 B1, C8 - bathing and nursing treatment, but no additional criteria is met. Therefore, the ASAP representative concluded that Springwell is unable to continue certification of eligibility.

The appellant testified at the fair hearing with the assistance of an appeal representative and a registered nurse from the skilled nursing facility. The nurse testified that the appellant is not able to care for his wounds. She testified that the wound has deteriorated in the last three months. The appellant does not have 100% range of motion in his left shoulder, which hinders his ability to change the wound on his head. The wound impedes on his right eye, so the appellant requires set up in the shower and close supervision. His wound requires collagen sheets to be applied daily, which is a level of care only available in a skilled nursing facility, according to Ms. Eastham. She explained that the appellant's wound care cannot be provided in the community setting.

The ASAP nurse testified that the dressing on the appellant's head wound was not there when she observed him. She also explained that the appellant should be able to receive daily nursing visits in the community. She concluded that the appellant is "at goal," as reported by the physical therapists and occupational therapists.

## Findings of Fact

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

1. The appellant, a [REDACTED] MassHealth member, was admitted to [REDACTED] on [REDACTED] from [REDACTED] with multiple fractures from motor vehicle accident on 7/25/23.
2. The appellant is homeless and has no income.
3. The appellant received short-term authorization for skilled nursing facility care for the following authorization periods: 01/17/2024 to 02/15/2024; 02/16/2024 to 04/16/2024; 04/17/2024 to 07/16/2024; and 07/17/2024 to 08/30/2024 (NF).

4. The appellant requires Nursing Care and Treatments; specifically, treatment- Dressing and treatment to right temple scalp and left shoulder due to basal cell carcinoma of skin.
5. The appellant is independent with bed mobility, dressing, hygiene, eating, toileting and transfers. The appellant spends his time walking around the facility. The appellant is coded assist with bathing. The appellant only needs setup for bathing.
6. By a notice dated 08/27/2024, MassHealth, through Springwell, the ASAP informed the appellant that he is not clinically eligible for MassHealth payment of nursing facility services because nursing facility services are not medically necessary.
7. The appellant filed this timely appeal on 09/23/2024.
8. A fair hearing was held before the Board of Hearings on 10/22/2024. All parties attended telephonically.

## Analysis and Conclusions of Law

MassHealth pays for nursing-facility services if all of the following conditions are met:

- (1) MassHealth 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) MassHealth 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.

See 130 CMR 456.408(A).

### 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) 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.

Springwell ASAP, on behalf of MassHealth, conducted an assessment on 08/28/2024 and correctly determined that appellant is not clinically eligible for nursing home level of care, as outlined in 130 CMR 456.409(A). The record contains the medical documentation that the ASAP relied upon in making this determination. The appellant did not present any documentation to show that a different result is warranted.

Further, the appellant did not dispute that at the time of the assessment, he required only assistance with the ADL of bathing set forth in 130 CMR 456.409(B). Additionally, the ASAP determined he still requires treatment for his wounds; however, Springwell, on behalf of MassHealth, correctly determined that the appellant does not satisfy the additional clinical criteria for nursing facility services set forth at 130 CMR 456.409.

The evidence supports the MassHealth screening, as noticed on 08/27/2024. Accordingly, 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.

---

Marc Tonaszuck  
Hearing Officer  
Board of Hearings

cc:

[REDACTED]

[REDACTED]

MassHealth Representative: Desiree Kelley, RN, BSN, Massachusetts Executive Office of Elder Affairs, 1 Ashburton Pl., 3rd Floor, Boston, MA 02108