Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2418583
Decision Date:	2/21/2025	**Hearing Date:**	01/10/2025
Hearing Officer:	Emily Sabo		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Ellen Parkinson, R.N., HESSCO Elder Services

APPEAL DECISION

Appeal Decision:	Denied	**Issue:**	Nursing Facility Screening
Decision Date:	2/21/2025	**Hearing Date:**	01/10/2025
MassHealth's Rep.:	Ellen Parkinson, R.N.	**Appellant's Rep.:**	Pro se
Hearing Location:	Quincy Harbor South (Telephone)	**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 November 26, 2024, MassHealth informed the Appellant that he was ineligible for MassHealth payment of nursing facility services because such services are not medically necessary. 130 CMR 456.409 and Exhibit 1. The Appellant filed this appeal in a timely manner on December 5, 2024. 130 CMR 610.015(B) and Exhibit 2. Challenging a determination of medical necessity is a valid basis for appeal. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth determined that Appellant was ineligible for MassHealth payment of nursing facility services because such services are not medically necessary.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 456.409, in determining that Appellant is not clinically eligible for MassHealth to pay for nursing facility services.

Summary of Evidence

MassHealth uses Aging Services Access Point (ASAP) organizations to perform clinical evaluations of MassHealth members to determine members' clinical eligibility for nursing facility services. A nurse from HESSCO Elder Services appeared at the hearing by phone and submitted documents in support. Exhibits 5-7. A summary of evidence and testimony follows.

The Appellant is [redacted] years old and his primary diagnoses include urinary retention, Gastric Esophageal Reflux Disease, kidney injury, atrial flutter, Type 2 Diabetes, Hypertension, hyperlipidemia, and benign prostatic hyperplasia. The ASAP nurse testified that the Appellant has received three screens since August 2024, and that he was initially receiving daily antibiotics by IV and was granted a short-term approval for two months.

On [redacted], the ASAP nurse returned to the nursing facility and the Appellant had completed his IV antibiotic treatment. Facility nursing staff confirmed that the Appellant was independent for all activities of daily living and was leaving the facility for large stretches of the day for 10-12 hours. The ASAP nurse noted that there was no documentation that the Appellant had received a glucometer or teaching on how to manage his diabetes. The ASAP nurse also discussed with the facility staff that the Appellant would need a primary care physician in the community to order the Appellant's prescriptions. On [redacted], the ASAP nurse returned to the facility and met with the Appellant, and a 30-day short term approval was given. The ASAP nurse shared that the Appellant would likely not be found clinically eligible at the next screen.

The ASAP nurse testified that when she returned on [redacted], for the follow-up screening, the Appellant had left the facility for the day and that documentation showed that he was checking his own blood sugar. The ASAP nurse returned the following day to meet with the Appellant. A notice by the ASAP was issued to the Appellant on November 26, 2024, stating that he was not clinically eligible for nursing facility services because nursing facility services were not medically necessary as required by MassHealth regulations at 130 CMR 456.408(A)(2) and 130 CMR 456.409.

On [redacted], the Appellant left the facility to live with a friend. The ASAP nurse stated that the Appellant had declined visiting nurse assistance services. The ASAP nurse said that the Appellant could receive visiting nurse assistance services in the future, if they were requested by the Appellant's physician.

The Appellant verified his identity and testified that while he is still staying with a friend, he does not have his own housing and is stressed about it. The Appellant testified that he did not understand how to manage his diabetes, and that he was stressed when he was given instructions at the facility and so has not retained that information. The Appellant also stated that if he is unhoused, he is unsure about where he will store his diabetes-management tools. The Appellant testified that he no longer wanted to be in the facility, and wanted a fresh start for the new year. The Appellant testified that he does have a new primary care physician in the community. The

Appellant stated that he is looking for a job. The Appellant stated that he is concerned about his health as he has a pacemaker and his blood sugar is not going down. The Appellant testified that he needs medical attention, and that he additionally has high blood pressure and prostate problems.

Findings of Fact

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

1. On November 26, 2024, MassHealth informed the Appellant that he was ineligible for MassHealth payment of nursing facility services because such services are not medically necessary. Exhibit 1.

2. The Appellant filed this appeal in a timely manner on December 5, 2024. Exhibit 2.

3. The Appellant is [redacted] and his primary diagnoses are Type 2 Diabetes, urinary retention, kidney injury, Hypertension, Gastric Esophageal Reflux Disease, atrial flutter, hyperlipidemia, and benign prostatic hyperplasia. Testimony, Exhibits 5-7.

4. The Appellant was admitted to the nursing facility in [redacted] and was initially receiving antibiotics via an IV. The Appellant was approved for a short-term, two-month placement. Testimony, Exhibit 7.

5. In [redacted], the ASAP nurse found that the Appellant was independent for all activities of daily living and was leaving the facility on a regular basis for 10-12 hour stretches. Testimony, Exhibit 7.

6. In [redacted], the Appellant was approved for a short-term, 30-day extension for placement in order to receive a glucometer and training on managing his diabetes. The ASAP nurse told the Appellant that he likely would not be found clinical eligible for continued placement. Testimony, Exhibit 7.

7. On [redacted], the Appellant left the facility. Testimony, Exhibit 7.

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 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.

In this case, for the Appellant to be eligible for MassHealth to pay for his stay in the nursing facility, he must either: 1) have one skilled nursing need described above in 130 CMR 456.409(A); or 2) require assistance with at least three services described in 130 CMR

456.409(B) and (C), one of which must be from 130 CMR 456.409(C). Here, MassHealth determined that the Appellant was not eligible for MassHealth to pay for nursing facility services because the Appellant's needs do not meet the necessary criteria. The Appellant argued that he continued to require nursing facility services due to his medical needs.

Though the Appellant has several diagnoses, including diabetes, he did not demonstrate that he had a skilled need identified in 130 CMR 456.409(A). Using his glucometer and monitoring his blood sugar are tasks that he can undertake in the community, and are tasks that he apparently managed successfully when he would leave the facility for 10-12 hours per day. The Appellant has not demonstrated that his needs rise to the level of skilled services outlined in 130 CMR 456.409(A). Additionally, the Appellant did not dispute that he is independent with the activities of daily living listed under 130 CMR 456.409(B). Finally, the Appellant did not identify any need under 130 CMR 456.409(C). I am sympathetic to the Appellant's situation and his stress about his lack of housing, and am hopeful that he can continue to work with his community transition liaison to find a solution.

Nonetheless, as the Appellant does not meet the criteria set forth in 130 CMR 456.409(A), (B) or (C), 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.

Emily Sabo
Hearing Officer
Board of Hearings

cc: Respondent Representative: Ellen Parkinson, R.N., HESSCO Elder Services, 545 South Street, Suite 300, Walpole, MA 02081

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