

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2502681
<b>Decision Date:</b>	05/06/2025	<b>Hearing Date:</b>	3/12/2025
<b>Hearing Officer:</b>	Cynthia Kopka	<b>Record Open:</b>	3/14/2025

**Appearance for Appellant:**



**Appearances for Respondent:**

Elder Services of Berkshire County:  
Carmen Morse, R.N., Nurse Manager  
Maureen Tuggey



*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 Screen
<b>Decision Date:</b>	05/06/2025	<b>Hearing Date:</b>	3/12/2025
<b>Respondent's Reps.:</b>	Carmen Morse, Maureen Tuggey	<b>Appellant's Rep.:</b>	██████████
<b>Hearing Location:</b>	Quincy (virtual)	<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 notice dated January 31, 2025, MassHealth notified Appellant that Appellant is not clinically eligible for MassHealth payment of nursing facility services. Exhibit 1. Appellant filed this appeal in a timely manner on February 13, 2025. Exhibit 2. 130 CMR 610.015(B). Challenging an eligibility determination is a valid basis for appeal. 130 CMR 610.032.

### Action Taken by MassHealth

MassHealth notified Appellant that Appellant is not clinically eligible for MassHealth payment of nursing facility services.

### Issue

The appeal issue is whether MassHealth was correct in determining that Appellant is not clinically eligible for MassHealth payment of nursing facility services.

### 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 Elder Services of Berkshire County (“the ASAP”) (collectively “the ASAP” representatives”) appeared virtually at hearing and submitted documents, Exhibits 4 and 5. Appellant’s guardian appeared virtually and submitted documents prior to and after the hearing, Exhibits 2 and 6. A summary of evidence and testimony follows.

Appellant is in her [REDACTED] with diagnoses including moderate dementia with psychotic disturbances, malnutrition, delusional disorder, hoarding disorder, generalized abdominal pain, paranoid personality disorder, dysphagia pharyngo-esophageal phase, and localized edema. Exhibit 5 at 13. On [REDACTED], Appellant was admitted to [REDACTED], a skilled nursing facility, following a hernia repair surgery. On [REDACTED] Appellant was transferred to the [REDACTED] after Highview closed. *Id.* On December 5, 2024, the ASAP received on Appellant’s behalf a request for services for short-term review. Exhibit 4 at 2.

On December 30, 2024, the ASAP nurse manager conducted an on-site assessment (OSA) with Appellant at the facility and reviewed the clinical record. The ASAP nurse manager also spoke with a social worker and director of nurses at the facility. According to the MDS, Appellant was not taking any scheduled medications but had prescriptions as needed. Exhibit 5 at 14. Appellant only required set-up assistance with bathing and could ambulate without a walker. *Id.* at 5. Appellant received one physical therapy (PT) evaluation at the facility and was not receiving services for PT, occupational therapy (OT), speech therapy, or psychiatric services. *Id.* at 14.

During the OSA, Appellant was alert and oriented and able to relay her history and why she was at the facility. Appellant was pleasant and did not exhibit any behaviors during the interview. Appellant was able to make her needs known, and expressed that her goal was to return home. Appellant scored a 15 out of 15 on the Brief Interview for Mental Status (BIMS) test. *Id.* at 13-14.

The ASAP nurse spoke to Appellant’s guardian as part of the assessment. Appellant’s guardian reported that Appellant’s home had become condemned by the town due to Appellant’s hoarding. See Exhibit 6. Appellant’s guardian reported making attempts to find Appellant suitable housing, but with each attempt, Appellant would become loud and angry, leading to denial of placement. Exhibit 4 at 13. Based on this presentation, the ASAP nurse manager approved Appellant for a short-term stay of 30 days due to the need for skilled nursing administration of medications, monitoring behaviors, skin integrity, and set-up supervision with activities of daily living (ADLs). *Id.* at 14. However, the ASAP nurse spoke to Appellant’s guardian and told her that Appellant would likely not meet the criteria at the next assessment time.

On January 30, 2025, the ASAP nurse conducted another OSA, interviewing Appellant and staff at the facility. At the time, Appellant was independent with all ADLs. Appellant had no scheduled medications. Appellant was not receiving any skilled services. During the OSA, Appellant was alert

and oriented and able to make her needs known. Appellant scored a 15 out of 15 on the BIMS test. Appellant was displeased being away from home. *Id.* at 27-28. The ASAP nurse manager also referenced a behavioral health assessment done on February 7, 2025, at which her mental health diagnoses were noted as stable. The note referenced Appellant's perseverating about going home and lists her triggers to include living in the nursing home and the severity of her illness. *Id.* at 126.

Based on Appellant's presentation, the ASAP nurse manager determined that Appellant did not meet the clinical criteria for payment of a nursing facility stay pursuant to MassHealth's regulations. *Id.* The ASAP nurse offered to refer Appellant to a community transition liaison program or MassHealth's Moving Forward Plan (MFP) Waiver. Appellant refused these services and was adamant that she return home. The ASAP nurse manager also reevaluated Appellant in the week prior to the hearing and there was no change. The ASAP nurse manager testified that she spoke to the director of nursing and a social worker at the facility. The social worker was continuing to actively assist Appellant with housing, including finding rest homes in Appellant's locality.

Appellant's guardian testified that she cannot refute the ASAP's testimony. Appellant's guardian, conservator, and lawyer are all in agreement that Appellant does not belong in a skilled nursing facility, as she has no skilled needs. However, Appellant's home was condemned by the town after EMTs entered the house to bring Appellant to the hospital for medical attention. Appellant has no family and would be homeless upon discharge from the facility. Appellant's guardian has called 12 places in the past year trying to find temporary housing for Appellant while her home is being repaired. During interviews for these placements, anytime anyone mentioned Appellant living somewhere besides her home, even on a temporary basis, Appellant would begin screaming and yelling. This resulted in Appellant being declined placement.

Appellant's guardian testified that she took Appellant on a tour of [REDACTED], where people live independently and can come and go as they please. Appellant screamed and was belligerent the entire ride to and from and during the tour. Appellant's guardian provided an email that references a denial from another facility which would have been a suitable temporary placement for Appellant. Exhibit 2 at 2. The facility declined to take Appellant due to the level of anger Appellant exhibited about moving anywhere that was not her house, even temporarily. *Id.* Appellant's guardian is continuing to work with local rest homes to find a placement for Appellant. Appellant is not able to grasp the condition of her home, which has been gutted and has no heat. Appellant would be homeless, but for being a resident of the skilled nursing facility.

Appellant's guardian testified that Appellant's conservator has been working hard to repair Appellant's home and clean it out. The contractors are beginning work to replace pipes and water damage. Appellant's conservator told Appellant's guardian that she is projecting that Appellant could return to her home in 4-6 weeks. Appellant's guardian testified that she suspects Appellant has undiagnosed underlying mental health issues, but refuses to participate in any evaluation and would refuse to take any medication that was prescribed. Appellant's guardian testified that

Appellant will very likely end up back in the system without further intervention, but there is nothing more that can be done. Appellant has fired her attorneys and wishes to fire her guardian and conservator.

Appellant's guardian provided a copy of the medical certificate submitted as part of the petition for guardianship. Exhibit 6. The note goes into detail about Appellant's hospitalization and her home being condemned. The note also goes into detail about Appellant's paranoia, impaired cognitive abilities, lack of insight, and poor decision making. *Id.*

## Findings of Fact

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

1. On January 31, 2025, MassHealth informed Appellant that Appellant is not clinically eligible for MassHealth payment of nursing facility services. Exhibit 1.
2. Appellant filed this appeal in a timely manner on February 13, 2025. Exhibit 2.
3. Appellant is in her seventies with diagnoses including moderate dementia with psychotic disturbances, malnutrition, delusional disorder, hoarding disorder, generalized abdominal pain, paranoid personality disorder, dysphagia pharyngo-esophageal phase, and localized edema. Exhibit 5 at 13.
4. On [REDACTED] Appellant was admitted to [REDACTED] a skilled nursing facility, following a hernia repair surgery. On [REDACTED] Appellant was transferred to the [REDACTED] after [REDACTED] facility closed. *Id.*
5. On December 5, 2024, the ASAP received on Appellant's behalf a request for services for short-term review. Exhibit 4 at 2.
6. As of the first OSA on December 30, 2024, Appellant was not taking any scheduled medications but had prescriptions as needed. Appellant only required set-up assistance with bathing and could ambulate without a walker. Appellant was not receiving services for PT, OT, speech therapy, or psychiatric services. Appellant was alert and oriented and able to relay her history and why she was at the facility. Appellant was pleasant and did not exhibit any behaviors during the interview. Appellant was able to make her needs known and expressed that her goal was to return home. Appellant scored a 15 out of 15 on the BIMS test. Exhibit 5 at 14.
7. As of the next OSA on January 30, 2025, Appellant was independent with all ADLs. Appellant had no scheduled medications. Appellant was not receiving any skilled services.

During the OSA, Appellant was alert and oriented and able to make her needs known. Appellant scored a 15 out of 15 on the BIMS test. Appellant was displeased being away from home. *Id.* at 27-28.

8. According to a behavioral health assessment done on February 7, 2025, the appellant's mental health diagnoses were noted as stable. The note referenced Appellant's perseverating about going home and lists living in the nursing home and severity of illness as her triggers. *Id.* at 126.

## Analysis and Conclusions of Law

At issue in this appeal is whether Appellant is eligible for MassHealth payment of her nursing facility stay. 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 designee has determined that individuals 22 years of age or older meet the nursing facility services requirements of 130 CMR 456.409 or the multi-disciplinary medical review team coordinated by the Department of Public Health has determined that individuals 21 years of age or younger meet the criteria of 130 CMR 519.006(A): *Eligibility Requirements*.

(2) The MassHealth agency or its designee has determined that community care is either not available or not appropriate to meet the individual's needs.

(3) The requirements for the pre-admission screening and resident review (PASRR) process in 130 CMR 456.410 and as required by sub-regulatory guidance have been met. Failure to follow applicable PASRR rules will result in denial of MassHealth payments to the nursing facility for MassHealth members during the period of noncompliance pursuant to 42 CFR 483.122.

Further, under 130 CMR 456.409:

To be considered clinically eligible for nursing facility services, a member or MassHealth 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.

In this case, in order for Appellant to be eligible for MassHealth to pay for her stay in the nursing facility, she 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 Appellant was not eligible for MassHealth to pay for nursing facility services because Appellant's needs do not meet the necessary criteria. Appellant's guardian did not dispute this determination, acknowledging that Appellant does not require skilled care.

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.

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Cynthia Kopka  
Hearing Officer  
Board of Hearings

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