Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	DENIED	**Appeal Number:**	2503780
Decision Date:	6/2/2025	**Hearing Date:**	04/07/2025
Hearing Officer:	Kenneth Brodzinski		

Appearance for Appellant:

Pro se

Appearances for MassHealth:

Lisa Hood-Martin, RN and Susan Moran, RN

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:**	Frail Elder Waiver; Clinical Eligibility
Decision Date:	6/2/2025	**Hearing Date:**	04/07/2025
MassHealth's Reps.:	Lisa Hood-Martin, RN Susan Moran, RN	**Appellant's Rep.:**	Pro se
Hearing Location:	Quincy		

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 January 17, 2025, MassHealth determined that Appellant does not meet the clinical eligibility criteria for the Frail Elder Waiver Program at this time (Exhibit A). Appellant filed this appeal in a timely manner on March 7, 2025 (see 130 CMR 610.015(B) and Exhibit A). Clinical eligibility determinations constitute valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that Appellant does not meet the clinical eligibility criteria for the Frail Elder Waiver Program at this time.

Issue

The appeal issue is whether MassHealth properly applied the controlling regulation(s) to accurate facts when it determined that Appellant does not meet the clinical eligibility criteria for the Frail Elder Waiver Program at this time.

Summary of Evidence

All parties appeared by telephone. Prior to hearing, MassHealth submitted a copy of a CDS-3-RN Form (Exhibit B).

MassHealth was represented by two Registered Nurses who testified that the agency conducted an on-site assessment (OSA) at Appellant's home to make an initial assessment of her clinical eligibility for the MassHealth Frail Elder Waiver Program (FEW). One of the testifying nurses was at the OSA along with another RN, Appellant, and Appellant's husband.

The MassHealth representatives testified that Appellant is in her [redacted] and lives in a private two-story home with her husband, the home was neat and clean with clear pathways for ambulation. Appellant's support network includes her husband and children who all assist with emotional support and socialization. Appellant stated that her daughter helps her clean the home on occasion.

Appellant's primary care physician (PCP) is [redacted] who last saw Appellant sometime over the past year. Appellant anticipates calling her PCP soon to make an appointment for her 2025 physical.

The MassHealth representatives testified that, as reported by Appellant, her medical history is significant for bilateral [redacted], chronic pain, chest pain, dizziness, obesity, osteoporosis, overactive bladder, and CVD. Appellant is independent with all Activities of Daily Living (ADLs) and most Instrumental Activities of Daily Living (IADLs) although she requires assistance with housekeeping. Appellant does not require the use of any durable medical equipment (DME).

The MassHealth representatives testified that Appellant was at the pharmacy picking up her medications, as reported by her husband, when the assessing nurses arrived at Appellant's home for the OSA. When Appellant came home, she was alert and oriented times 3 and dressed in clean, weather-appropriate clothing. Appellant was able to answer the Clinical Data Set (CDS) assessment questions, but she needed to be redirected a few times to complete some answers. Appellant reported having neck and shoulder pain since an MVC that occurred in October 2024. Appellant admits to slight SOB on exertion although no respiratory distress was noted during the assessment and she was able to speak in full sentences. Appellant does not require DME to ambulate, her gait is steady, and she was observed to independently go up and

down stairs in the home. Appellant denied any GI issues. She experiences overactive bladder symptoms and is prescribed [redacted] Appellant describes her appetite as fair. She has her own teeth and uses dental care appropriately. Medications were reviewed with Appellant and she was found to manage her own medications and schedule. Appellant also reported no skin issues, no falls within the past 90 days, and no health/welfare concerns. Appellant had one hospital admission in the Fall of 2024, due to chest pain. She initially went to an urgent care center and then to [redacted] for evaluation. Currently, Appellant has a [redacted] nursing visit once every 3-4 months. There is no DMH or DDS involvement, no service plan, and no personal care attendant.

The MassHealth representatives testified that based on the findings from the OSA, as reported on the CDS-3-RN (Exhibit B) the reviewing nurses concluded that, at this time, Appellant does not meet the clinical requirements for the Masshealth Frail Elder Waiver program as set forth by MassHealth regulations. MassHealth issued the subject negative determination notice on January 17, 2025 (Exhibit A).

Appellant appeared on her own behalf and stated that she did not dispute the testimony of the MassHealth representatives. Appellant testified that she recently received some dental implants. She also noted that she recently experienced another episode of chest pain and reported that she has an [redacted] Appellant testified that she worries about the [redacted] as well as recurrent [redacted]. She stated that it is a horrible worry, but she tries to put up a good front for the benefit of her family. Appellant discussed how her concerns are causing her stress and making her depressed.

Findings of Fact

Based on a preponderance of the evidence, this record supports the following findings:

1. MassHealth conducted an on-site assessment (OSA) at Appellant's home to make an initial assessment of her clinical eligibility for the MassHealth Frail Elder Waiver Program (FEW).

2. One of MassHealth's testifying nurses was at the OSA along with another RN, Appellant, and Appellant's husband.

3. Appellant is in her [redacted] and lives in a private two-story home with her husband.

4. Appellant's home was neat and clean with clear pathways for ambulation.

5. Appellant's support network includes her husband and children who all assist with emotional support and socialization.

6. Appellant's daughter helps her clean the home on occasion.

7. Appellant's primary care physician (PCP) is [redacted] who last saw Appellant sometime over the past year.

8. Appellant's medical history is significant for [redacted] and [redacted] chronic pain, chest pain, dizziness, obesity, osteoporosis, overactive bladder, and CVD.

9. Appellant is independent with all Activities of Daily Living (ADLs) and most Instrumental Activities of Daily Living (IADLs) although she requires assistance with housekeeping.

10. Appellant does not require the use of any durable medical equipment (DME).

11. Appellant was at the pharmacy picking up her medications, as reported by her husband, when the assessing nurses arrived at Appellant's home for the OSA.

12. When Appellant came home, she was found to be alert and oriented times 3 and dressed in clean, weather-appropriate clothing.

13. Appellant was able to answer the Clinical Data Set (CDS) assessment questions, but she needed to be redirected a few times to complete some answers.

14. Appellant has had neck and shoulder pain since an MVC that occurred in October 2024.

15. Appellant admitted to slight SOB on exertion although no respiratory distress was noted during the assessment and she was able to speak in full sentences.

16. Appellant does not require DME to ambulate, her gait is steady, and she was observed to independently go up and down stairs in the home.

17. Appellant denied any GI issues although she experiences overactive bladder symptoms and is prescribed Gemtesa.

18. Appellant appetite is "fair," and she has her own teeth and uses dental care appropriately.

19. Medications were reviewed with Appellant, and she was found to manage her own medications and schedule.

20. Appellant reported no skin issues, no falls within the past 90 days, and no health/welfare concerns.

21. Appellant had one hospital admission in the Fall of 2024, due to chest pain - she initially went to an urgent care center and then to [redacted] for evaluation.

22. Currently, Appellant has a [redacted] nursing visit once every 3-4 months.

23. There is no DMH or DDS involvement, no service plan, and no personal care attendant.

24. Based on the findings from the OSA, as reported on the CDS-3-RN (Exhibit B), MassHealth's reviewing nurses concluded that, at this time, Appellant does not meet the clinical requirements for the Masshealth Frail Elder Waiver program as set forth by MassHealth regulations.

25. MassHealth issued the subject negative determination notice on January 17, 2025 (Exhibit A).

26. Appellant recently received some dental implants.

27. Appellant has an [redacted]

28. Appellant worries about the [redacted] as well as recurrent [redacted]

29. Appellant's health concerns are causing her stress and making her depressed.

Analysis and Conclusions of Law

The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity (*Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989). On this record, Appellant has failed to meet her burden.

Appellant did not dispute the testimony or findings made by the MassHealth reviewers during the OSA. Appellant was credible and described her current conditions and limitations which were consistent with the findings reported by MassHealth. The clinical requirements for the MassHealth Frail Elder Waiver program are governed by regulations which are set forth below. As stated therein, Appellant needed to demonstrate that she meets the specific requirements needed to determine that she is clinically eligible for nursing facility services. Appellant put forth no evidence that she meets any of the needed requirements. There is no evidence that she has ever been determined to be permanently and totally disabled in accordance with Title XVI standards or that she requires any assistance with ADL's, skilled services, or nursing services as required by regulation.

MassHealth Regulations governing the Frail Elder Waiver Program, in pertinent parts, state as follows (emphasis supplied):

130 CMR 519.007

(B) Home- and Community-based Services Waiver–frail Elder.

(1) Clinical and Age Requirements. The Home- and Community-based Services Waiver allows an applicant or member who is certified by the MassHealth agency or its agent ***to be in need of nursing-facility services*** *to receive certain waiver services at home if they*

(a) are 60 years of age or older and, if younger than 65 years old, is permanently and totally disabled in accordance with Title XVI standards; and

(b) would be institutionalized in a nursing facility, unless he or she receives one or more of the services administered by the Executive Office of Elder Affairs under the Home and Community-based Services Waiver-frail Elder authorized under § 1915(c) of the Social Security Act.

130 CMR 456.409 - Clinical Eligibility Criteria

***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). Additionally, to be considered clinically eligible for nursing facility services, a member or MassHealth applicant younger than 22 years old must also meet criteria as determined by the multi-disciplinary medical review team coordinated by the Department of Public Health.*

(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.

On this record, there is no reasonable basis in law and/or fact to disturb MassHealth's action. Accordingly, the appeal is DENIED.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

cc:

[redacted]

MassHealth Representative: Desiree Kelley, RN, BSN, Massachusetts Executive Office of Elder Affairs, 1 Ashburton Pl., 3rd Floor, Boston, MA 02108, 617-222-7410