

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	DENIED	<b>Appeal Number:</b>	2503784
<b>Decision Date:</b>	6/2/2025	<b>Hearing Date:</b>	04/07/2025
<b>Hearing Officer:</b>	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

<b>Appeal Decision:</b>	DENIED	<b>Issue:</b>	Frail Elder Waiver Clinical Eligibility
<b>Decision Date:</b>	6/2/2025	<b>Hearing Date:</b>	04/07/2025
<b>MassHealth's Reps.:</b>	Lisa Hood-Martin, RN Susan Moran, RN	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	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 re-assess his 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 wife.

The MassHealth representatives testified that Appellant is in his mid-seventies and lives in a private two-story home with his wife and adult son. The home was found to be neat and clean with clear pathways for ambulation. Appellant's support network includes his wife and children who all assist with emotional support and socialization. Appellant's Primary Care physician is currently [REDACTED] and he last saw Appellant for an appointment in January 2025.

The MassHealth representatives testified that Appellant's medical history, as reported by Appellant, is significant for back and shoulder issues, elevated cholesterol, left leg numbness, herniated disc, skin cancer, vision impairment, and recent headaches. Appellant is independent with all Activities of Daily Living (ADLs) and most Instrumental Activities of Daily Living (IADLs) although he requires assistance with housekeeping. Appellant does not require the use of any durable medical equipment (DME).

The MassHealth representatives testified that when the RN's arrived for the OSA, Appellant was outside walking with his wife. He was observed to be alert and oriented time 3. Appellant was dressed in clean, weather-appropriate clothing. He was able to answer Clinical Data Set (CDS) assessment question appropriately.

The MassHealth representatives found that Appellant continues with lower back discomforts with radiation into his left leg causing leg numbness. He denies chest pain/SOB, no BLE edema was noted. Appellant does not use DME for ambulation, his gait was noted to be steady. Since the last home visit on January 13, 2025. Appellant stated he had experienced daily headaches, sneezing and a decrease in appetite. He was evaluated and prescribed Zyrtec; Appellant stated the headaches are now better. Appellant recently had a head CT in addition to his yearly low-dose chest CT. Appellant stated he is pending dental implants; the hardware has been installed. Appellant's wife stated he experienced bleeding from the site for two days after the procedure. Appellant reported that the only change to his medications was the addition of daily Zyrtec. Appellant manages his own medications and can complete daily ADLs. Appellant reported having no falls since his last home visit, no health and welfare concerns, no community partner or formal supports, no DMH or DDS involvement, no proposed or current service plan, and no personal care attendant. Appellant reported only one urgent care visit over the past year, and

this was for an evaluation of his daily headaches.

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 his own behalf and was aided in translation by his wife. Relative to his frequent headaches, Appellant testified that he had a recent CT scan of his head, but he does not have the results yet. Appellant believes there is something wrong with his brain. Appellant also reported having pain in the middle of the night in his shoulders, back, neck and legs for which he takes Advil and Tylenol. Appellant stated that he can do everything around the home by himself, but sometimes he gets some help from his wife. Appellant reported receiving dental implants recently and noted that there was a lot of bleeding for two months around the implants. Lastly, Appellant reported feeling worried about the forthcoming results of his head CT scan.

## 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 re-assess his 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 wife.
3. Appellant is in his mid-seventies and lives in a private two-story home with his wife and adult son.
4. Appellant's home was found to be neat and clean with clear pathways for ambulation.
5. Appellant's support network includes his wife and children who all assist with emotional support and socialization.
6. Appellant's Primary Care physician is currently [REDACTED] and he last saw Appellant for an appointment in January 2025.
7. Appellant's medical history, as reported by Appellant, is significant for back and shoulder issues, elevated cholesterol, left leg numbness, herniated disc, skin cancer,

vision impairment, and recent headaches.

8. Appellant is independent with all Activities of Daily Living (ADLs) and most Instrumental Activities of Daily Living (IADLs) although he requires assistance with housekeeping.
9. Appellant does not require the use of any durable medical equipment (DME).
10. When the RN's arrived for the OSA, Appellant was outside walking with his wife.
11. Appellant was observed to be alert and oriented time 3, was dressed in clean, weather-appropriate clothing, and he was able to answer Clinical Data Set (CDS) assessment question appropriately.
12. Appellant continues with lower back discomforts with radiation into his left leg causing leg numbness; he denies chest pain/SOB and no BLE edema was noted.
13. Appellant does not use DME for ambulation; his gait was noted to be steady.
14. Since the last home visit on January 13, 2025, Appellant has been experiencing daily headaches, sneezing and a decrease in appetite.
15. Appellant was evaluated and prescribed Zyrtec.
16. Appellant recently had a head CT in addition to his yearly low-dose chest CT.
17. The only change to Appellant's medications was the addition of daily Zyrtec.
18. Appellant manages his own medications and can complete daily ADLs.
19. Appellant has had no falls since his last home visit, no health and welfare concerns, no community partner or formal supports, no DMH or DDS involvement, no proposed or current service plan, and no personal care attendant.
20. Appellant had one urgent care visit over the past year for an evaluation of his daily headaches.
21. Appellant currently experiences pain in the middle of the night in his shoulders, back, neck and legs for which he takes Advil and Tylenol.
22. Appellant recently received dental implants and experienced bleeding for two months around the implants.
23. Appellant is worried about the forthcoming results of his head CT scan.

## 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 his burden.

Appellant did not dispute the testimony or findings made by the MassHealth reviewers during the OSA. Appellant was credible and described his 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 he meets the specific requirements needed to determine that he is clinically eligible for nursing facility services. Appellant put forth no evidence that he meets any of the needed requirements. There is no evidence that he has ever been determined to be permanently and totally disabled in accordance with Title XVI standards or that he requires any assistance with ADLs, 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.

## **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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Kenneth Brodzinski  
Hearing Officer  
Board of Hearings

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