

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2504421
Decision Date:	5/8/2025	Hearing Date:	04/08/2025
Hearing Officer:	Thomas J. Goode		

Appearances for Appellant:



Appearances for MassHealth:


Maureen Rohan, RN, Access Care Partners
Maryann Annicelli, RN, Access Care Partners

Interpreter:
Language Line



*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:	Nursing Facility Screening
Decision Date:	5/8/2025	Hearing Date:	04/08/2025
MassHealth's Rep.:	Maureen Rohan, RN, et al.	Appellant's Rep.:	
Hearing Location:	Remote	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

Through a notice dated March 4, 2025, MassHealth informed Appellant that he is not clinically eligible for MassHealth skilled nursing facility services because his medical need is less than required for MassHealth to pay for skilled nursing facility services (130 CMR 456.408; 456.409 and Exhibit 1). Appellant filed this appeal in a timely manner on March 11, 2025 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that Appellant is not clinically eligible for MassHealth skilled nursing facility services because his medical need is less than required for MassHealth to pay for skilled nursing facility services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 456.408; 456.409, in determining that Appellant is not clinically eligible for MassHealth skilled nursing facility services

because his medical need is less than required for MassHealth to pay for skilled nursing facility services.

Summary of Evidence

MassHealth was represented by two registered nurses from the Aging Services Access Point (ASAP)¹ Access Care Partners² which contracts with MassHealth for the purpose of determining clinical eligibility for skilled nursing facility services. Appellant is [REDACTED] years old and was admitted to a skilled nursing facility on [REDACTED] for short-term rehabilitation following admission to the hospital where he was treated for a history of falls, Rhabdomyolysis, acute renal failure, insomnia, urinary tract infection and C-Difficile, all of which have resolved. Other diagnoses are Generalized Anxiety Disorder, Hypertension, Anemia/Iron Deficiency, Arthrodesis Status (joint not specified), Alcohol Abuse, Alcohol Dependence with Unspecified Alcohol Induced Disorder/Anxiety and Weakness. Appellant has been looking for housing and has been accepted for admission to an assisted living facility. The MassHealth/ASAP representatives testified that a face-to-face visit was held on February 26, 2025 at the nursing facility for a short-term assessment. The nursing facility submitted documentation on March 4, 2025. Appellant is independent with all activities of daily living (ADLs) including bathing, oral and personal hygiene, lower and upper body dressing, toileting, bed mobility, ambulation with a walker, and transfers. Appellant is considered low-risk for falls. Appellant has occasional bladder and bowel incontinence. Appellant is prescribed several medications including Lunesta for sleep, Buspar, a gel applied to the lower back, iron tablets, Lidocaine, a magnesium supplement, Melatonin, Milk of Magnesia, Narcan, and Tylenol. Appellant requires some medication management with continued teaching before discharge to ensure understanding of his medication. At the evaluation, Appellant expressed his ability to manage medications by reading labels. Appellant is alert and oriented to person, place, and time. A psychiatric assessment dated January 20, 2025 notes good insight and judgment with normal mood and affect, and recent memory is noted to be abnormal and vague at times. No behavioral problems are noted (Exhibit 4, pp. 39-40). A routine follow-up on February 21, 2025 records mild feelings of depressed mood related to family issues (Exhibit 4, pp. 45-47). The ASAP nurse reviewer met with Appellant on February 26, 2025, and found Appellant to be alert and oriented, stable with ADLs with independence in all areas. Based on the on-site assessment, review of the clinical record, follow-up consultation with nursing facility social worker, no baseline changes were found. The ASAP nurse reviewer met with Appellant again on March 24, 2025 and discussed discharge planning with Appellant who was in favor of discharge to the assisted living facility. The MassHealth representatives testified that Appellant does not meet clinical criteria for nursing

¹ See [https://www.mass.gov/info-details/aging-services-network#aging-services-access-point-\(asap\)-Aging](https://www.mass.gov/info-details/aging-services-network#aging-services-access-point-(asap)-Aging) Services Access Point (ASAP): The [24 regional ASAPs](#) throughout the Commonwealth coordinate services such as in-home assessments, care plan development, home care services, caregiver support, and provide free information and referral services. ASAPs are private, non-profit agencies contracted by the Executive Office of Aging & Independence to deliver services to residents.

² Formerly WestMass Elder Care, Inc.

facility placement outlined at 130 CMR 456.408, 456.409. Appellant will continue to be tracked by the ASAP for 90 days from the time of the clinical denial, and another screening request can be submitted if Appellant's condition changes significantly.

Appellant appeared telephonically with the Director of Social Services, Director of Nursing, and a Social Services Assistant. Appellant and his representatives testified that the information presented by the ASAP is accurate, and that he does not have skilled nursing needs, and does not need skilled nursing facility level of care. Appellant testified that he needs to stay at the facility a little longer to arrange alternative housing. Appellant's representatives stated that Appellant has been accepted to an assisted living facility. Appellant continues to be monitored for behavior due to alcohol dependency but does not have skilled needs and is independent with all ADLs.

Findings of Fact

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

1. Appellant is [REDACTED] years old and was admitted to a skilled nursing facility on [REDACTED] [REDACTED] for short-term rehabilitation following admission to the hospital where he was treated for a fall, Rhabdomyolysis, acute renal failure, insomnia, urinary tract infection and C-Difficile, all of which have resolved. Other diagnoses are Generalized Anxiety Disorder, Hypertension, Anemia/Iron Deficiency, Arthrodesis Status (joint not specified), Alcohol Abuse, Alcohol Dependence with Unspecified Alcohol Induced Disorder/Anxiety and Weakness.
2. Appellant has been looking for housing and has been accepted for admission to an assisted living facility.
3. A face-to-face visit was held on February 26, 2025 at the nursing facility for a short-term assessment.
4. Appellant is independent with all activities of daily living (ADLs) including bathing, oral and personal hygiene, lower and upper body dressing, toileting, bed mobility, ambulation with a walker, and transfers.
5. Appellant is considered low-risk for falls.
6. Appellant has occasional bladder and bowel incontinence.
7. Appellant is prescribed several medications including Lunesta for sleep, Buspar, a gel applied to the lower back, iron tablets, Lidocaine, a magnesium supplement, Melatonin, Milk of Magnesia, Narcan, and Tylenol. Appellant requires some medication management

with continued teaching before discharge to ensure understanding of his medication. At the face-to-face evaluation, Appellant expressed his ability to manage medications by reading labels.

8. Appellant is alert and oriented to person, place, and time. A psychiatric assessment dated January 20, 2025 notes good insight and judgment with normal mood and affect, and recent memory is noted to be abnormal and vague at times. No behavioral problems are noted (Exhibit 4, pp. 39-40).
9. A routine follow-up on February 21, 2025 records mild feelings of depressed mood related to family issues (Exhibit 4, pp. 45-47).
10. The ASAP nurse met with Appellant on February 26, 2025, and found Appellant to be alert and oriented, stable with ADLs with independence in all areas.
11. Based on the on-site assessment, review of the clinical record, follow-up consultation with nursing facility social worker, no baseline changes were found.
12. The ASAP nurse met with Appellant again on March 24, 2025, discussed discharge planning with Appellant who was in favor of discharge to the assisted living facility.

Analysis and Conclusions of Law

130 CMR 456.408: Conditions for Payment

(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 ■ 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 ■ 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.

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 ■ years of age 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 the 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.

The testimony from the ASAP representatives is credible and consistent with the clinical evidence in the hearing record and shows that Appellant does not meet clinical eligibility criteria for nursing facility services. Appellant bears the burden of proof in demonstrating that the ASAP determination is incorrect, and that he is clinically eligible for nursing facility services.³ Appellant appeared at hearing with representatives from the nursing facility who are familiar with his medical conditions and agreed that he does not meet clinical criteria for nursing facility services outlined at 130 CMR 456.408, 456.409. Therefore, Appellant has not carried the burden of proof in showing that the March 4, 2025 denial of clinical eligibility for nursing facility services is incorrect. 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

³ See Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333 , 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386 , 390 (1998).

receipt of this decision.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc:

[REDACTED]

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