

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2509779
Decision Date:	8/6/2025	Hearing Date:	08/01/2025
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:



Appearance for ASAP/Access Care Partners:

Via Teams Videoconference:

Maryann Annicelli, RN, Clinical Assessment &
Eligibility Nurse

Barbara Nurse-Parrish, RN, Nurse Mgr.

Heather Dion, RN, Clinical Nurse Coordinator



*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:	8/6/2025	Hearing Date:	08/01/2025
MassHealth's Rep.:	Maryann Annicelli; Barbara Nurse-Parrish; Heather Dion	Appellant's Rep.:	Pro se; Advocate/HCP
Hearing Location:	Quincy Harbor South, 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 June 25, 2025, [REDACTED] on behalf of MassHealth, determined that the appellant was not clinically eligible for nursing facility services (see 130 CMR 456.409; 130 CMR 456.408; and Exhibit 1). The appellant filed this appeal in a timely manner on June 30, 2025 (see 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 the appellant is not clinically eligible for nursing facility services because nursing facility services are not medically necessary.

Issue

The appeal issue is whether the ASAP, on behalf of MassHealth, was correct, pursuant to 130 CMR 456.409 and 130 CMR 456.408, in determining that the appellant is clinically not eligible for nursing facility services.

Summary of Evidence

All parties appeared at hearing via Teams videoconference. The nurses from [REDACTED] which is an [REDACTED] appeared at hearing on behalf of MassHealth and offered the following information through testimonial and documentary evidence: the appellant is an adult between the ages of [REDACTED] who was admitted to the facility on [REDACTED] after multiple admissions since the beginning of the year. Exhibit 5 at 40. One previous admission was due to CVA with left-sided hemiparesis where the appellant was discharged to a different rehabilitation facility before returning home. *Id.* at 40-41. Upon returning home, he was then re-admitted to the hospital due to acute chronic respiratory failure. *Id.* at 41. His diagnoses include the following: COPD, chronic respiratory failure with hypoxia, unspecified systolic congestive heart failure, paroxysmal atrial fibrillation, hypertension, history of other non-traumatic intracerebral hemorrhage, hemiplegia hemiparesis following cerebral infarction affecting left non-dominant side, atherosclerotic heart disease, mixed hyper lipidemia, chronic pain syndrome, cervicalgia, dependence on supplemental oxygen, and alcohol abuse uncomplicated. *Id.* at 41-42.

His nursing care and treatment involve the following: weekly Keppra level; oxygen management with weekly tubing change; weekly nebulizer tubing change for as needed use; oxygen 2 liters continuous via nasal cannula; vital signs every shift; heart failure evaluation once daily; behavior monitoring for self-isolation, verbal behaviors directed towards others, rejection of care, or physical behaviors; may consult speech, occupational or physical therapy for evaluation and treatment as needed; wound consult/care as needed; foam ear protectors to oxygen nasal cannula every shift; psychiatry consult as needed. *Id.* at 42. He is on multiple medications, including oxygen at 2 liters continuous.

The appellant is independent with all activities of daily living including bathing, dressing, hygiene, toileting, bed mobility, transfers, and ambulation with a cane. *Id.* at 43. He has long-term oxygen use since 2022 and is able to manage his oxygen independently. *Id.* He is independent with oral medication management, handheld nebulizers and PRN aerosol nebulizers. *Id.* He is knowledgeable of disease management and when to call his physician versus 911 per nursing staff report. *Id.* Teaching has been completed. The member is able to schedule the necessary follow-up appointments with his physicians. *Id.* The member has not experienced any falls. The member is able to use stairs. *Id.* The last documented ability was eight stairs before requiring a rest period to complete the task. *Id.* He is continent of bowel and bladder and alerted and oriented times three. *Id.*

The ASAP nurse most recently met with the appellant on June 23, 2025, followed by a meeting with the facility's clinical staff on June 25, 2025. *Id.* at 44. Clinical staff at the facility report that the appellant remains alert and oriented times three and has been medically stable. *Id.* He has received re-teaching regarding medication management, disease management, and oxygen safety. *Id.* The appellant remains at his baseline physical level since his discharge from physical and occupational therapy in [REDACTED] *Id.* Progress notes from May indicate that the appellant could walk 150 feet and do eight stairs. The facility's clinical staff verified that the appellant has no skilled nursing needs. *Id.* The appellant is medically stable and without changes to his baseline status. *Id.*

The ASAP nurses explained that the appellant does not meet the clinical eligibility criteria in regulation 130 CMR 456.409. *Id.* at 9-12. To meet the criteria for nursing facility services to be medically necessary, a member 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). *Id.* He doesn't require any skilled services list under (A); he is independent with all ADLs listed under (B); and the only nursing service he needs under (C) is observation. *Id.* 28-41. He would need at least three services from (B) and (C) to be eligible, but based on available documentation, he only needs one. *Id.*

The appellant testified that while he is able to manage his own oxygen, it requires a home setting to do so. He will be homeless when discharged from the facility. He can't manage his oxygen from a homeless shelter because he must leave the shelter during the day. The apartment he was at prior to his admission belongs to his HCP. It is subsidized housing and he is no longer on the lease which means he can't live there. Previously, he was brought in and allowed to live there as a personal aide, but he can't do that any more because of his health issues. He feels that the evaluation overly exaggerated his abilities. If he is asked to do something, he will do it, even if he can only do it that one time. He is a proud man, so he does his ADLs himself, even if it is difficult for him. He has to do ADLs such as dressing and bathing from a sitting position. Walking is painful for him and he can only go short distances. He only had PT at the facility for a short time and he feels he was discharged from PT prematurely. He has become deconditioned while at the facility. He is a veteran and has anxiety, PTSD, and depression. These sorts of events cause him increased anxiety and depression, as well as a reduced appetite. He emphasized that his homelessness and need for oxygen are a barrier to discharge.

Findings of Fact

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

1. The appellant is an adult between the ages of [REDACTED] who was admitted to the facility on [REDACTED]

2. On June 25, 2025, the ASAP, on behalf of MassHealth, determined that the appellant was not clinically eligible for nursing facility services.
3. On June 30, 2025, the appellant timely appealed the notice.
4. The appellant's diagnoses include the following: COPD, chronic respiratory failure with hypoxia, unspecified systolic congestive heart failure, paroxysmal atrial fibrillation, hypertension, history of other non-traumatic intracerebral hemorrhage, hemiplegia hemiparesis following cerebral infarction affecting left non-dominant side, atherosclerotic heart disease, mixed hyper lipidemia, chronic pain syndrome, cervicalgia, dependence on supplemental oxygen, and alcohol abuse uncomplicated.
5. The appellant is independent with all ADLs and with managing his medications, including oxygen 2 liters continuous.
6. The appellant is medically stable and the facility is not providing any skilled nursing services.
7. The appellant does not have housing at this time and will be discharged to a homeless shelter.

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 [REDACTED] 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 [REDACTED] 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.

(B) The MassHealth agency pays for nursing-facility services beginning with the date of financial eligibility provided that the member shows that he or she was medically eligible for these services as of the date of financial eligibility. If the member was not medically eligible for nursing-facility services as of the first date of financial eligibility, the MassHealth agency will pay for these services

beginning on the first date the member is medically eligible, provided that this date is after the first date of financial eligibility. A person may request a determination of medical eligibility at or after application for MassHealth.

Furthermore, 130 CMR 456.409 describes the services requirement for medical eligibility as follows:

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.

Based on the testimony and documentation provided, the appellant does not meet the criteria described in 130 CMR 456.409 to be medically eligible for nursing facility services. The appellant is independent with all ADLs and can manage his own medication and oxygen. He does not require any skilled services. The only nursing service he requires at this time is observation. While the appellant is struggling to find housing, nursing facility services are not medically necessary and his lack of housing is not an acceptable reason for MassHealth to continue to pay for nursing facility services. The appellant's medical needs can be met in the community. For these reasons, the MassHealth decision was correct and 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.

Alexandra Shube
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