

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2513261
Decision Date:	01/06/2026	Hearing Dates:	10/17/2025 & 11/14/2025
Hearing Officer:	Christopher Jones		

Appearance for Appellant:



Appearances for MassHealth:

First Hearing - MEC Representative
- Gina Burbank

Second Hearing – LTSS Representatives

- [Redacted], RN

- [Redacted] MSW, LICSW

Interpreters:



*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:	Community Eligibility - over 65; Nursing Facility Screening
Decision Date:	01/06/2026	Hearing Dates:	10/17/2025 & 11/14/2025
MassHealth's Reps.:	Gina Burbank; [REDACTED] [REDACTED] RN; [REDACTED] [REDACTED] LICSW	Appellant's Rep.:	[REDACTED]
Hearing Location:	Telephonic	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 two notices dated August 21, 2025, MassHealth downgraded the appellant's coverage from MassHealth Standard to Family Assistance because MassHealth determined that the appellant did "not require a nursing facility level of care." (Exhibit 1; Exhibit 2; 130 CMR 505.002-.009.) The appellant's mother filed this appeal in a timely manner on June 9, 2025. (Exhibit 2; 130 CMR 610.015(B).) The Board of Hearings initially dismissed this appeal for lack of authority. (Exhibit 3.) The appellant signed a copy of the fair hearing request on June 18, 2025, and this matter was scheduled for hearing. (Exhibit 4; Exhibit 6.) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

MassHealth's Disability Evaluation Services unit did not participate in the original hearing, and this matter was reconvened to address MassHealth's clinical action.

Action Taken by MassHealth

MassHealth downgraded the appellant's coverage from MassHealth Standard to Family Assistance following a clinical determination that the appellant does not require nursing facility level of care.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 456.409(C) and Eligibility Operations Memo 25-08 (May 2025), in determining that the appellant is not eligible for enhanced coverage through the Family Assistance Long-Term-Services and Supports Pathway because she does not require a nursing facility level of care.

Summary of Evidence

At the first hearing, MassHealth's Enrollment Center (MEC) representative testified that the appellant is over the age of 65, and she became a legal permanent resident of the United States of America in [REDACTED]. Because it has not been [REDACTED] years since the appellant received her legal permanent residency, she remains a "qualified noncitizen barred." The appellant had previously been approved for MassHealth Standard, and the MEC representative confirmed that the appellant remains financially eligible for MassHealth Standard. She has assets below \$2,000 and income below the federal poverty level, but she is not categorically eligible due to her immigration status.

EOM 25-08 (May 2025) confirms that qualified noncitizens barred are ineligible for MassHealth Standard. This EOM instead provides guidance regarding MassHealth's new enhanced Family Assistance benefit that covers long-term services and supports (LTSS) for members who establish clinical eligibility, the FA LTSS Pathway. During the appellant's eligibility renewal, MassHealth performed a clinical evaluation of the appellant. MassHealth determined that the appellant was not clinically eligible for the Family Assistance LTSS Pathway because she did not require a nursing facility level of care. The MEC representative testified that the appellant would not be otherwise eligible for MassHealth Standard until she has had her permanent resident status for 5 years.

The appellant's son testified that prior to the downgrade, the appellant was eligible for personal-care attendant (PCA) services.¹ It was noted that Family Assistance benefits cover home-health aide assistance and visiting nursing services. The appellant's son had been serving as her PCA, and the appellant is seeking Family Assistance LTSS coverage so that she could continue to receive PCA services. MassHealth did not have a representative to testify regarding their clinical decision at this appeal, and the matter was reconvened to address the clinical determination.

At the reconvened hearing, a registered nurse testified regarding MassHealth's clinical review and decision. She explained that MassHealth requires a member to be clinically eligible for nursing facility level of care in order to qualify for the FA LTSS Pathway. The clinical criteria are set forth at 130 CMR 456.409, and they require either daily nursing interventions or nursing interventions 3 times per week in conjunction with assistance with activities of daily living (ADLs). It is not enough for a member to require PCA assistance with ADLs, they must also require regular nursing services.

¹ An Arabic interpreter was scheduled for both appeals, but the appellant's son testified in English.

MassHealth's representative went through the tasks that are defined as "Nursing Services" at 130 CMR 456.409(C).

The clinical representative testified that an in-person clinical assessment was conducted by a registered nurse on July 31, 2025. The appellant's medical health history included: [REDACTED] [REDACTED] The appellant had also fractured her right hand and nose due to a fall in the spring [REDACTED] This clinical assessment determined that the appellant did not require regular skilled nursing services, though the appellant was confirmed to require assistance with bathing, dressing, toileting, and mobility. (See Exhibit 11, pp. 35-37.) Because the appellant did not require regular nursing services, she did not meet the Nursing Facility Level of Care necessary to qualify for the FA LTSS Pathway.²

The appellant's son testified that the appellant requires significant assistance throughout her day. He noted that "positioning while in bed or a chair" is listed as a nursing service, as is "administration of oral or injectable medications." The appellant's son testified that he helps the appellant to physically get out of bed in the morning, and he organizes and assists her with her medications throughout the day. The appellant's son also measures her blood sugar and is generally available to care for her.

MassHealth's clinical representative testified that in-bed positioning and medication management are only sometimes skilled nursing services. If a patient's conditions are complex, the care can be skilled. The teaching of care to a non-nurse caregiver can also allow for a nurse to provide otherwise unskilled services. Once the task is taught to a non-nurse, it ceases to be considered a skilled nursing task. For positioning, the task would be skilled if the member were so fragile that she required multiple people to stabilize her during in-bed repositioning. MassHealth's clinical representative noted that there are 2 categories of skilled tasks in the regulations. The tasks described in 130 CMR 456.409(A) are always skilled nursing services. The tasks described in 456.409(C) are only skilled nursing services when the patient's condition is complex enough to require that a nurse provides the service. Furthermore, if the task is skilled, it is not something that a PCA can be compensated for.

The appellant's son testified that the appellant is very fragile. She has low bone density, and if she falls, she will break bones. He also felt that the appellant's condition is deteriorating. The appellant does have a nurse visit every month to measure her blood pressure and check her vital signs. The appellant's son noted that it can take a month to get into see the appellant's doctor, so having the nurse visit is very helpful to avoiding emergency room visits. He testified that the appellant does not need weekly visits yet, but she does need someone to stay with her because she is a fall risk and at risk of breaking bones. The appellant is also in a lot of pain, and sometimes takes oxycontin,

² MassHealth treated the appellant as renewing her FA LTSS Pathway eligibility. MassHealth therefore waived the requirement that the appellant apply for the program from a hospital or skilled nursing facility. (See Exhibit 11, p. 33.)

which makes her dizzy. The appellant had fallen a few months ago, and she needed more nursing services after that temporarily. The appellant's son testified that she does not need more frequent nursing services any longer, but if they would make the appellant eligible for PCA services she would accept them.

MassHealth's clinical representative testified that if there were a hospitalization, the appellant could reapply for the FA LTSS Pathway. The discharge planning from the hospital would identify what services are needed.

Findings of Fact

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

- 1) The appellant is over the age of 65. She became a legal permanent resident in [REDACTED] [REDACTED]. The appellant is otherwise financially eligible for MassHealth Standard. (Testimony by MEC representative.)
- 2) The appellant had been covered by MassHealth Standard prior to this year's eligibility renewal. During the eligibility renewal, MassHealth downgraded the appellant to Family Assistance coverage. Included in this decision was a determination that the appellant did not qualify for the FA LTSS Pathway. (Testimony by MEC representative.)
- 3) The appellant requires daily assistance with her ADLs, but she does not require weekly nursing interventions. (Testimony by the appellant's son; Exhibit 11, pp. 35-37.)
- 4) The appellant is frail and has a low bone density that results in easily broken bones if she falls. She requires physical assistance repositioning in her bed and assistance with her medications, but these have been provided by her PCA. (Testimony by the appellant's son.)
- 5) The appellant does not require a nursing facility level of care. (Testimony by LTSS representative.)

Analysis and Conclusions of Law

MassHealth offers a variety of coverage types based upon an individual's circumstances and finances. To qualify for MassHealth, an individual must fit into a category of eligibility and fall below a certain financial threshold. A preliminary step in determining an individual's eligibility for MassHealth coverage is determining their nationality or immigration status. MassHealth categorizes individuals as: U.S. Citizens; "Lawfully Present Immigrants," who may be "Qualified Noncitizens," "Qualified Noncitizens Barred," or "Nonqualified Individuals Lawfully Present"; "Protected Noncitizens ... who were receiving medical assistance ... on June 30, 1997"; "Nonqualified Persons Residing under Color of Law (Nonqualified PRUCOLs)," who have a case

being tracked by the Department of Homeland Security, such as noncitizens granted Deferred Action for Childhood Arrivals; and “Other Noncitizens.” (130 CMR 518.003.)

A “Qualified Noncitizen” includes “those who are qualified regardless of when they entered the U.S. or how long they have had a qualified status,” and “noncitizens who are qualified based on having a qualified status identified at 130 CMR 518.003(A)(1)(b)1.” (130 CMR 518.003(A)(1)(a), (b).) The statuses in subparagraph (A)(1)(b)1 are: legal permanent residents (LPR) under the Immigration and Nationality Act (INA); parolees for at least one year under the INA; or those found to be victims under section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Individuals with one of these statuses must further satisfy “one of the conditions listed at 130 CMR 518.003(A)(1)(b)2,” otherwise they are “Qualified Noncitizens Barred,” under 130 CMR 518.003(A)(2). The conditions listed at 130 CMR 518.003(A)(1)(b)2 are:

- a. have had a status in 130 CMR 518.003(A)(1)(b)1. **for five or more years** (a battered noncitizen attains this status when the petition is accepted as establishing a *prima facie* case);
- b. entered the U.S. prior to August 22, 1996, regardless of status at the time of entry, and have been continuously present in the U.S., until attaining a status listed in 130 CMR 518.003(A)(1)(b)1.; for this purpose an individual is deemed continuously present who has been absent from the U.S. for no more than 30 consecutive days or 90 nonconsecutive days prior to attaining a status listed in 130 CMR 518.003(A)(1)(b)1.; or
- c. also have or had a status listed in 130 CMR 518.003(A)(1)(a).

(130 CMR 518.003(A)(1)(b)2. (emphasis added).)

The appellant is a qualified noncitizen barred, as she has not had her LPR status for more than 5 years, and she does not satisfy the other criteria listed in 130 CMR 518.003(A)(1)(b)2. Qualified noncitizens barred over the age of 65 are only eligible for MassHealth Family Assistance.³ (130 CMR 518.006(B).)

Family Assistance covers most community-based health care services, including home-health services such as visiting nurses and home health aides. (See 130 CMR 450.105(G)(3).) There are several services that are only covered by MassHealth Standard, including: adult day health services; adult foster care services; day habilitation services; independent nurse (private duty nursing) services; nursing facility services; personal care services; and transportation services. (See 130 CMR 450.105(A)(1)(c), (d), (p), (x), (aa), (ee), and (pp); 450.105(G)(3).)

³ Qualified noncitizens barred under 21 years of age or pregnant may be eligible for MassHealth Standard if they require a nursing facility level of care. (130 CMR 518.006(B)(3).)

These services are generally referred to as long-term services and supports. “Members covered by Family Assistance who require a chronic disease and rehabilitation hospital (CDRH) or nursing facility (NF) stay or require LTSS in the community may be eligible for expanded services through the FA LTSS Pathway.” (EOM 25-08 (May 2025).) “Members eligible for the FA LTSS Pathway will be able to use the covered LTSS as referenced in 130 CMR 450.105(A) and (E).” (EOM 25-08, p. 4.)

This EOM sets forth the following requirements for LTSS coverage:

- Meet the requirements for Family Assistance as defined at 130 CMR 505.013 and 130 CMR 519.013
- Be clinically assessed to require NF level of care as defined in 130 CMR 456.409, using the Nursing Facility Level of Care Supplemental Form and accompanying clinical evaluation tool
- At the time of application, be admitted to an acute inpatient hospital, acute psychiatric hospital, or CDRH

(EOM 25-08, p. 3-4.)

MassHealth will also conduct periodic reviews to confirm that members still require a nursing facility level of care. “For members currently enrolled in the FA LTSS Pathway and residing in the community on the date that this EOM is published, MassHealth will conduct an initial one-time medical review following the same process.” (EOM 25-08, p. 4.)

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 ... ;
- (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, . . . ;

(5) administration of oxygen on a regular and continuing basis when the member's medical condition warrants skilled observation . . . ;

(6) skilled nursing observation and evaluation . . . ;

(7) skilled nursing for management and evaluation ... when underlying conditions or complications require that only a registered nurse can ensure that essential unskilled care is achieving its purpose. . . . ;

(8) insertion, sterile irrigation, and replacement of catheters, care of a suprapubic catheter, or, in selected residents, a urethral catheter

(9) gait evaluation and training administered or supervised by a registered physical therapist at least five days a week . . . ;

(10) certain range-of-motion exercises may constitute skilled physical therapy only if they are part of an active treatment plan . . . ;

(11) hot pack, hydrocollator, paraffin bath, or whirlpool treatment . . . ;
and

(12) physical, speech/language, occupational, or other therapy

(B) Assistance with Activities of Daily Living. Assistance with activities of daily living . . .

. . .

(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 ... 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 [wounds] . . . , or routine changing of dressings that require nursing care and monitoring.

(130 CMR 456.409.)

The appellant is not clinically eligible for nursing facility services; therefore, she is not eligible for the FA LTSS Pathway. The appellant's son identified several forms of assistance that he provides that are listed in 130 CMR 456.409(C), such as positioning and assistance with medications. However, the appellant's son is not a nurse, and there is no documentation to support that the assistance provided requires the skills of a nurse. Therefore, the assistance provided does not qualify as a nursing service. Without FA LTSS Pathway eligibility, the appellant is only eligible for services covered by Family Assistance benefits as described at 130 CMR 450.105(G)(3). As the only dispute on appeal is whether the appellant is eligible for PCA service, 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.

Christopher Jones
Hearing Officer
Board of Hearings

cc:

[REDACTED]
MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780

MassHealth Representative: UMASS Medical FALTSS Appeals, P.O. Box 2795 Worcester, MA 01613-9938