

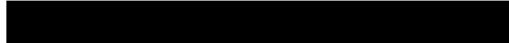
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2155180
Decision Date:	10/06/2021	Hearing Date:	08/12/2021
Hearing Officer:	Rebecca Brochstein	Record Closed:	08/13/2021

Appearances for Appellant:



Appearances for MassHealth:

Krista Berube, RN



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Eligibility for Adult Foster Care
Decision Date:	10/06/2021	Hearing Date:	08/12/2021
MassHealth's Rep.:	Krista Berube, RN	Appellant's Rep.:	
Hearing Location:	Board of Hearings (Remote)	Aid Pending:	Yes

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated June 28, 2021, MassHealth notified the appellant that she is not clinically eligible for MassHealth payment of adult foster care services (Exhibit 1). The appellant filed a timely appeal on July 7, 2021 (Exhibit 1). The record was held open after hearing for the appellant to properly authorize her representative to participate in the hearing on her behalf (Exhibit 5). Determination of clinical eligibility for adult foster care services is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant is not clinically eligible for adult foster care services.

Issue

The appeal issue is whether MassHealth was correct in determining that the appellant is not clinically eligible for adult foster care services.

Summary of Evidence

The MassHealth representative, a utilization management nurse, appeared at the hearing telephonically. She testified that this appeal concerns MassHealth's denial of a request for adult foster care (AFC) services. On May 28, 2021, the appellant's provider submitted a prior authorization request for Level 1 AFC services, for the period of June 12, 2021, through June 11, 2022. The appellant was previously approved for AFC Level 1 services and has aid pending the outcome of this appeal.

The MassHealth representative testified that the appellant, who is in her 20s, has a diagnosis of chronic pain syndrome. The PCP Order Form that was submitted with the PA request indicates that she requires daily hands-on assistance with bathing and ambulation. Under Member Signs and Symptoms, the provider wrote the following: "[C]onsumer is independent with bed mobility and transfers. Due to the levels of her pain, she requires physical assist with ambulation both in and out of the home. CG holds onto her arm to guide and steady her. Consumer also requires physical assist with bathing due to the pain she experiences when she attempts to reach her extremities." See Exhibit 4 at 10. The MDS assessment indicates that the appellant required supervision for ambulation inside and outside the home, as well as for bathing, during the relevant time period. It also indicates that she does not use any assistive devices and was independent with stair climbing. See Exhibit 4 at 12-13.

The MassHealth representative stated that to receive coverage for AFC Level 1 services, a member must require hands-on (physical) assistance with one or two of the designated activities of daily living (set forth in 130 CMR 408.416) or must require cueing and supervision throughout one or more of those activities in order to complete that activity. MassHealth was unable to determine from the provider's submission whether the appellant met this standard, so it deferred the request back to the provider for more information. The provider did not submit any additional information, so MassHealth then denied the request.

The MassHealth representative testified that there is no documentation in the record that supports the appellant's need for assistance. She noted, for example, that it is not clear what the source of the appellant's pain is. She stated that it is not unusual for members to be approved for AFC services and then to later have those services discontinued, as happened here. She also noted that AFC has only recently become subject to prior authorization requirements.

The appellant was represented at hearing by her mother, who is also her AFC caregiver. The mother testified that the appellant has been diagnosed with nerve damage and sees a pain management doctor once a month. She also has type-1 diabetes, thyroid issues, and fibromyalgia. She stated that the appellant requires assistance with showering, taking medications, and ambulating. The mother testified that the appellant has pain in her legs, is unable to walk properly, and "will collapse."

The mother indicated that the appellant was not available for the hearing because she had gone to school. She attends school from 8 a.m. to 2 p.m. most days, and 8 a.m. to 12 noon on Fridays. She

indicated that she usually drives the appellant to school (she sometimes takes the school transportation), but that once there the appellant attends classes independently. She does not receive any medical support there but does have someone looking out for her who is similar to a social worker. When asked how the appellant is able to attend school independently if she requires physical assistance at home, the mother stated that she is “just sitting down” at school but is “up and down the stairs” when she is at home.

Findings of Fact

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

1. The appellant is a female in her 20s with a primary diagnosis of chronic pain syndrome.
2. On May 28, 2021, the appellant’s provider submitted a prior authorization request for AFC Level 1 services, for the period of June 12, 2021, through June 11, 2022.
3. The appellant was previously approved for AFC Level 1 services and has aid pending the outcome of this appeal.
4. The PA request states that “[d]ue to the levels of her pain, [appellant] requires physical assist with ambulation both in and out of the home. [Caregiver] holds onto her arm to guide and steady her. Consumer also requires physical assist with bathing due to the pain she experiences when she attempts to reach her extremities.”
5. The MDS assessment indicates that the appellant required supervision for ambulation inside and outside the home, as well as for bathing, during the relevant time period. It also indicates that she does not use any assistive devices and was independent with stair climbing.
6. MassHealth was unable to determine from the provider’s submission whether the appellant met the clinical standards for AFC Level 1 services, so it deferred the request back to the provider for more information. The provider did not submit any additional information.
7. On June 28, 2021, MassHealth denied the request on the basis that there was no evidence the appellant requires AFC services.
8. On July 7, 2021, the appellant filed a timely appeal with the Board of Hearings.
9. The appellant is a student and attends school independently during the week, from 8 a.m. to either 12 noon or 2 p.m. Her caregiver usually drops her off, and she sometimes takes school transportation to get there. She does not have any medical support while she is there.

Analysis and Conclusions of Law

AFC is a community-based service, provided in the member's home by an AFC provider, which is designed to meet a member's need for assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs). Assistance with ADLs and IADLs is provided by an AFC caregiver, with nursing oversight and care management of the AFC caregiver's provision of assistance provided by the AFC provider's professional staff. Members receiving AFC must live with their AFC caregiver.

The regulatory requirements to establish clinical eligibility for adult foster care program services are set forth in MassHealth regulations at 130 CMR 408.416. To obtain clinical authorization for MassHealth payment of AFC, all of the following clinical criteria must be met:

(A) AFC must be ordered by the member's PCP.

(B) The member has a medical or mental condition that requires daily hands-on (physical) assistance or cueing and supervision throughout the entire activity in order for the member to successfully complete at least one of the following activities:

- (1) Bathing a full-body bath or shower or a sponge (partial) bath that may include washing and drying of face, chest, axillae (underarms), arms, hands, abdomen, back and peri-area plus personal hygiene that may include the following: combing or brushing of hair, oral care (including denture care and brushing of teeth), shaving, and, when applicable, applying make-up;
- (2) Dressing upper and lower body, including street clothes and undergarments, but not solely help with shoes, socks, buttons, snaps, or zippers;
- (3) Toileting member is incontinent (bladder or bowel) or requires assistance or routine catheter or colostomy care;
- (4) Transferring member must be assisted or lifted to another position;
- (5) Mobility (ambulation) member must be physically steadied, assisted, or guided during ambulation, or is unable to self propel a wheelchair appropriately without the assistance of another person; and
- (6) Eating if the member requires constant supervision and cueing during the entire meal, or physical assistance with a portion or all of the meal.¹

Under 130 CMR 408.419(D), AFC payments are made at two rates:

¹ MassHealth has also promulgated Guidelines for Medical Necessity Determination for Adult Foster Care. Among other things, these guidelines set forth the clinical requirements for each of the ADLs described in the regulation above in greater detail (Exhibit 2, p. 18).

- (1) Level I Service Payment: The MassHealth agency will pay the level I service payment rate if a member requires hands-on (physical) assistance with one or two of the activities described in 130 CMR 408.416 or requires cueing and supervision throughout one or more of the activities listed in 130 CMR 408.416 in order for the member to complete the activity.
- (2) Level II Service Payment: The MassHealth agency will pay the level II service payment rate for members who require:
- (a) hands-on (physical) assistance with at least three of activities described in 130 CMR 408.416; or
 - (b) hands-on (physical) assistance with at least two of the activities listed in 130 CMR 408.416 and management of behaviors that require frequent caregiver intervention as described in 130 CMR 408.419(D)(2)(b)1. through 5.:
 - 1. wandering: moving with no rational purpose, seemingly oblivious to needs or safety;
 - 2. verbally abusive behavioral symptoms: threatening, screaming, or cursing at others;
 - 3. physically abusive behavioral symptoms: hitting, shoving, or scratching;
 - 4. socially inappropriate or disruptive behavioral symptoms: disruptive sounds, noisiness, screaming, self-abusive acts, disrobing in public, smearing or throwing food or feces, rummaging, repetitive behavior, or causing general disruption; or
 - 5. resisting care.

This case concerns MassHealth's denial of the appellant's prior authorization request for AFC Level 1 services. MassHealth denied the request because it found no evidence that the appellant needs hands-on, physical assistance with one or two of activities set forth at 130 CMR 408.416 or cueing and supervision throughout one or more of those activities.

The record supports this determination. The information submitted with the prior authorization request is sparse, consisting of no supporting medical documentation, and the provider did not submit any additional information after the PA request was deferred. At hearing, the appellant's mother testified that the appellant requires hands-on assistance with ambulation and bathing, echoing the original assertion. However, this claim is belied by the fact that the appellant attends school independently during the week, with no physical assistance. Even if she sits for the duration of her classes, as the mother pointed out, it is fair to assume that she must still, at a minimum, ambulate in, out, and through academic buildings to get to and from the classrooms on her own. This suggests a level of functioning that is greater than that described in the PA request. Without more detailed information to support the PA request (which the provider failed to provide upon deferral), MassHealth was correct in determining that the appellant does not meet the clinical standards for AFC Level 1 services. This appeal is therefore denied.

Order for MassHealth

Remove aid pending protection.

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.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Optum