

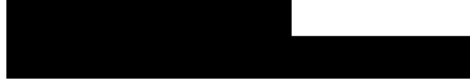
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2155181
Decision Date:	10//13/2021	Hearing Date:	08/12/2021
Hearing Officer:	Rebecca Brochstein	Record Closed:	09/03/2021

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:	10/13/2021	Hearing Date:	08/12/2021
MassHealth's Rep.:	Krista Berube, RN	Appellant's Rep.:	
Hearing Location:	Board of Hearings (Remote)		

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 29, 2021, MassHealth notified the appellant that he 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 submit additional information and for the MassHealth representative to review it (Exhibits 6-8). 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 June 21, 2021, the appellant's provider submitted an initial prior authorization request for Level 1 AFC services, for the period of June 21, 2021, through June 20, 2022. MassHealth denied the request on June 29, 2021.

The MassHealth representative testified that the appellant, who is in his 50s, has a diagnosis of major depressive disorder, single episode, moderate, with a secondary diagnosis of anxiety disorder. She testified that records from a visit with his primary care physician, which were submitted with the prior authorization request, state that his "depression symptoms seem to be well controlled," that his score on the PHQ-2 (a questionnaire which looks for recent depression symptoms) was zero, and that a review of physical symptoms was completely normal. In addition, the office notes state that the appellant has no difficulty performing his activities of daily living with the exception of managing his medications. See Exhibit 4 at 11-14.

The MDS assessment indicates that the appellant requires supervision level of assistance for transfers, locomotion outside of the home, dressing the upper and lower body, and bathing; and that he requires setup help for eating. See Exhibit 4 at 22.

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. Based on the prior authorization submission, MassHealth did not find that these services were medically necessary for the appellant. It therefore denied the request.

The appellant appeared at the hearing telephonically along with his brother, who testified on his behalf. The brother testified that the appellant has a complicated mental condition, including an anxiety disorder and memory problems. He stated that the appellant is forgetful and often makes mistakes, which is why they requested AFC services. He testified that the appellant once almost started a fire when he was preparing food. The brother manages the appellant's medications because he cannot keep track of what he has taken and will also not let the appellant use the stove.

The brother testified that the appellant also has pain in his lower back, and sometimes cannot get out of bed. He stated that at the appellant's next appointment he would tell the doctor about this problem and ask for testing. He stated that the appellant needs help with bathing, dressing, food preparation, transportation, and recreation. The brother stated that the appellant's psychiatrist referred him to social services because he is unable to live by himself. He testified that he sometimes answers that he is okay but in reality he is not.

The record was held open after hearing for the appellant to submit supplemental documentation as to the appellant's need for AFC services. The appellant submitted the following provider letters:

- Letter from Shanise Perez, N.P.: “Patient has a diagnosis of generalized anxiety disorder and major depressive disorder. Patient may benefit from adult foster [care] services due to his brother saying he cannot leave patient alone. He shared there was an incident 3 years ago where he left food unattended on the stove and almost caused his apartment to catch on fire. He also explained that [appellant] is very forgetful and needs help with his medications. He states [appellant] needs help with day to day tasks such as reminders to shower and help picking out his clothes.”
- Letter from Ronald B. Cruz, M.D.: “This is to certify that [appellant] is a patient in our office. He has diagnoses of major depression, anxiety, hypothyroidism, and hypercholesterolemia. He needs a AFC for medication management, providing ride to doctors’ appointments, and assisting him in [h]is activities of daily living like cleaning the house, doing groceries and preparing food.” (Exhibit 6)

In response to these letters, the MassHealth representative wrote the following:

After review, of new documentation and the appellants [sic] testimony, the appeals nurse representative has denied this appeal for the following:

- The Letter of Medical Necessity was written by Shanise Perez conveys subjected [sic] verbiage from brother and did not provide objective information.
- The Letter of Medical Necessity was written by Ronald Cruz States member needs assistance with cleaning the house, grocery shopping and food preparation, which are not activities included in Adult Foster Care Regulations and Guidelines. (Exhibit 7)¹

Findings of Fact

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

1. The appellant is a male in his 50s with a primary diagnosis of major depressive disorder, single episode, moderate. He has a secondary diagnosis of anxiety disorder.
2. On June 21, 2021, the appellant’s provider submitted an initial prior authorization request for AFC Level 1 services, for the period of June 21, 2021, through June 20, 2022.

¹ The appellant submitted an additional provider letter (as well as a duplicate copy of the letter from Shanise Perez) after the MassHealth representative had responded to the initial submission. The third provider letter is from a therapist, Johanna Almestica, and states in relevant part as follows: “[Appellant] has been participating in therapy with this writer since 10/19/2016. Patient also receives psychiatric services at this agency. . . . [He] is very responsible and consistent with attendance to therapy appointments. He has presented to therapy as open, cooperative, engaged, and willing to participate in treatment services and to implement change.” (Exhibit 8).

3. The PA request included records from a visit with the appellant's primary care physician, which state that his "depression symptoms seem to be well controlled," that his score on the PHQ-2 (a questionnaire which looks for recent depression symptoms) was zero, and that a review of physical symptoms was completely normal. In addition, the office notes state that the appellant has no difficulty performing his activities of daily living with the exception of managing his medications.
4. The MDS assessment indicates that the appellant requires supervision level of assistance for transfers, locomotion outside of the home, dressing the upper and lower body, and bathing; and that he requires setup help for eating.
5. On June 29, 2021, MassHealth denied the prior authorization request on the basis that there was no evidence the appellant requires AFC services.
6. On July 7, 2021, the appellant filed a timely appeal with the Board of Hearings.

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.²

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

- (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

² 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 4).

supervision throughout one or more of those activities.

The record supports this determination. The medical records submitted with the prior authorization request stated that the appellant has no current symptoms of depression, and, with the exception of medication management, requires no assistance with any of his activities of daily living.³ Although the record was held open for the appellant to submit supplemental information from his providers as to his need for adult foster care services, none of the letters provides the necessary justification. The letter from the nurse practitioner does nothing more than repeat information relayed to her by the appellant's brother. The letter from the physician states only that the appellant requires assistance with his *instrumental* activities of daily living but says nothing about his need for help with any activities of daily living. Finally, the letter from the therapist speaks only to the appellant's positive participation in therapy, and does not describe his functional ability or his need for care at home.

The only documentation in evidence that arguably supports the appellant's request is the MDS assessment, which states that the appellant needs supervision-level assistance with the tasks of transfers, locomotion outside of the home, dressing the upper and lower body, and bathing. However, this assessment conflicts with the records from the appellant's primary care physician that state he has no current symptoms and does not require any assistance with these activities of daily living. Further, none of the provider letters submitted after hearing make any statement regarding his need for assistance with any ADLs. The documentation from the appellant's own providers is more persuasive than the MDS assessment.

Without more detailed information to support the PA request, 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

None.

³ Medication management is not listed as an activity of daily living under 130 CMR 408.416(B).

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