

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2155496
Decision Date:	12/08/2021	Hearing Date:	11/24/2021
Hearing Officer:	Sara E. McGrath		

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:	12/08/2021	Hearing Date:	11/24/2021
MassHealth's Rep.:	Krista Berube, RN	Appellant's Reps.:	Pro se
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 14, 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 16, 2021 (Exhibit 1). On July 22, 2021, the Board of Hearings dismissed the appeal because the appellant had not signed the request for hearing (Exhibit 4). The appellant thereafter signed the request for hearing, and the Board vacated the dismissal and scheduled a hearing on the merits (Exhibits 2 and 4). 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 and testified that this appeal concerns MassHealth's denial of a request for adult foster care (AFC) Level 1 services. On June 3, 2021, the appellant's provider, Prestige Adult Foster care, LLC, submitted a prior authorization request for AFC Level 1 services for the period of June 4, 2021, through June 3, 2022 (Exhibit 3, pp. 3, 7). MassHealth denied the request on June 14, 2021 on the basis that there was no evidence that the appellant meets the eligibility requirements for this level of service (Exhibit 1, p. 3). 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 MassHealth nurse testified that the appellant is a male in his late 60s with a primary diagnosis of major depressive disorder and a secondary diagnosis of chronic pain. The MassHealth nurse referenced medical records submitted by the provider, which included a recent office visit note from March 19, 2021 at a family health center (Exhibit 3, pp. 11-18). The report from that visit includes the following relevant notes:

HPI: [Appellant] with a past medical history of hypertension, depression and dyslipidemia, presents for continuation of primary care, but offers no complaints. The only new medical history that he has is a cholecystectomy and hernia repair both done at UMASS Memorial in 2020. Both surgeries had no associated complications.

Hypertension: Taking amlodipine, hydrochlorothiazide and lisinopril. Denies any chest pain, palpitations, lightheadedness or headaches.

Depression: He is on Paroxetine and Seroquel for depression, but denies any suicidal ideations, feelings of hopelessness or decreased interest at this time.

Dyslipidemia: Patient is taking atorvastatin and offers no complaints.

Social: Retired and lives alone in an apartment. Has 3 children and 3 grandchildren who live nearby. He sees or talks to them every day. Enjoys going on long walks for exercise.

Patient is not at risk for fall.

(Exhibit 3, pp. 12-13).

The MassHealth nurse also noted that the physical exam at this visit was normal; the appellant's

memory was found to be normal, and his mood and affect were noted as appropriate (Exhibit 3, p. 16). The physician indicated that the appellant is not at risk for a fall, his depression is stable, and his pain is 0/10 (Exhibit 3, pp. 16-17).¹

The MDS assessment indicates that the appellant requires limited physical assistance with dressing the lower body, supervision level of assistance for mobility, transfers, locomotion inside and outside of the home, dressing the upper body, toilet use, personal hygiene, and bathing; and that he requires setup help for eating (Exhibit 3, p. 27).

The MassHealth nurse testified that the documentation does not support the appellant's request for AFC Level 1 services. The appellant's most recent exam was essentially normal, and paints a picture of an independent individual who does not require physical assistance, or cueing and supervision, with any activities of daily living. She referenced the MassHealth Adult Foster Care Primary Care Provider (PCP) Order Form, which is signed by a nurse practitioner and indicates that the appellant needs cueing and supervision with bathing, dressing, toileting, transferring, and mobility (Exhibit 3, p. 9). She testified that the medical records do not support the order form findings, as there is no indication in the records to suggest that the appellant needs any cueing and/or supervision. MassHealth therefore denied the appellant's request for AFC Level 1 services.

The appellant appeared at the hearing telephonically and testified with the assistance of a Spanish interpreter. He explained that he never told anyone he lives alone. He lives with his daughter and grandchildren. He takes medication from hypertension, high cholesterol, pain, and depression. He does not currently have a psychiatrist because that provider left the medical practice he attends, and he is looking for a new one. He stated that physicians come and go at the medical practice, which may explain why the recent report contains inaccuracies.

The appellant explained that used to be independent, but now his daughter needs to help him with many tasks. He has been having issues lately; sometimes he does not even know where he is. He has arthritis in his knees which causes a lot of pain. He needs help dressing because of pain, and sometimes needs help getting out of a chair. There are times when he needs help getting out of bed at night if he needs to use the bathroom. The appellant noted that he has an appointment with his doctor in late December; he will go over all of his issues again at that time.

The MassHealth nurse responded and stated that the documentation on record simply does not support the appellant's testimony. She recommended that the appellant look into MassHealth's personal care attendant or home health services programs.

¹ The MassHealth nurse also referenced an older office visit note from 2019 (Exhibit 3, pp. 19-24). She noted that the appellant's physical exam was normal at that time (Exhibit, pp. 21-22).

Findings of Fact

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

1. The appellant is a male in his late 60s with a primary diagnosis of major depressive disorder and a secondary diagnosis of chronic pain.
2. On June 3, 2021, the appellant's provider submitted a prior authorization request for AFC Level 1 services, for the period of June 4, 2021 through June 3, 2022.
3. Medical records from March 2021, the only recent records, document that the appellant reported no complaints and no pain, and concluded that he was not a fall risk and that his memory, mood and affect were all normal and appropriate.
4. The MDS assessment indicates that the appellant requires limited physical assistance with dressing the lower body, supervision level of assistance for mobility, transfers, locomotion inside and outside of the home, dressing the upper body, toilet use, personal hygiene, and bathing; and that he requires setup help for eating.
5. The MDS assessment and the PCP Order Form contain findings that are inconsistent with the medical records.
6. On June 14, 2021, MassHealth denied the request on the basis that there was no evidence the appellant requires this level of service.
7. On July 16, 2021, the appellant filed a timely appeal with the Board of Hearings.
8. On July 22, 2021, the Board of Hearings dismissed the appeal because the appellant had not signed the request for hearing.
9. The appellant thereafter signed the request for hearing, and the Board vacated the dismissal and scheduled a hearing on the merits.

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

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 3, pp. 32-37).

(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 most current medical records submitted with the prior authorization request do not document any complaints or any reports of pain. Further, the records indicate that the appellant's depression is stable, with normal memory, mood and affect, and no suicidal ideations, feelings of hopelessness, or decreased interest. The records do not support a conclusion that the appellant requires physical assistance, cueing, or supervision with any of his activities of daily living.

The only documentation in evidence that arguably supports the appellant's request is the MDS assessment, which states that the appellant needs limited physical assistance with lower-body dressing, and supervision-level assistance with the tasks of mobility, transfers, locomotion inside and outside of the home, dressing the upper body, toilet use, personal hygiene, and bathing.³ However, this assessment conflicts with the records from the appellant's own provider that state he has no current complaints, that his pain level is 0/10, and that he lives independently. These records do not describe an individual who needs supervision or cueing to complete any activity. The documentation from the appellant's own provider is more persuasive than the MDS assessment or the PCP Order Form.⁴

³ Similar findings are indicated on the MassHealth Adult Foster Care PCP Order Form (Exhibit 3, pp. 9-10).

⁴ The provider who conducted the appellant's normal exam in March is the same provider who indicated that the appellant needs cueing and supervision on the PCP Order Form. The office notes were created months before the AFC services request, suggesting that they are more objective because they were unrelated to a request for services. The office notes are therefore more credible than the contents of the PCP Order Form.

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.⁵

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.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc: Optum

⁵ The record indicates that appellant lives alone, which contradicts the appellant's testimony that he lives with his daughter. If the appellant does in fact live alone, this may jeopardize any future AFC eligibility (130 CMR 408.435).