

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2177289
Decision Date:	10/29/2021	Hearing Date:	10/28/2021
Hearing Officer:	Patricia Mullen		

Appearances for Appellant:




Appearance for MassHealth:

Krista Berube, RN, Optum



*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:	Adult Foster Care
Decision Date:	10/29/2021	Hearing Date:	10/28/2021
MassHealth's Rep.:	Krista Berube, RN, Optum	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South	Aid Pending:	Yes

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 September 16, 2021, MassHealth denied the appellant's request for prior authorization for Level II adult foster care (Exhibit 1; 130 CMR 408.416). The appellant filed this appeal in a timely manner on September 22, 2021 and received aid pending appeal. (see 130 CMR 610.015(B) and Exhibit 2). Denial of a prior authorization request is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's request for Level II adult foster care.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 408.416, in determining that the appellant did not meet the medical necessity and clinical criteria for adult foster care services.

Summary of Evidence

The appellant appeared telephonically with her grandson/AFC caretaker, who is authorized to represent her at the hearing. MassHealth was represented telephonically by a registered nurse reviewer from Optum, the agent of MassHealth that makes the prior authorization determinations for Adult Foster Care (AFC). The MassHealth representative stated that the appellant's provider agency, Fortcom Health Services, submitted a request for prior authorization for Adult Foster Care Level II services on August 18, 2021. (Exhibit 5, p. 3). The provider reported that the appellant is [REDACTED] and has diagnoses of pain in the right knee, atrial fibrillation, diabetes, hypertension, and gastroesophageal reflux. (Exhibit 5, pp. 6, 10). The appellant's provider completed a Minimum Data Set (MDS) in which the evaluating nurse reported the appellant has no memory impairment and is independent with decision making, hearing, and vision; no mood or behavior issues; no falls. (Exhibit 5, pp. 18, 19, 21). The MassHealth representative stated that because the appellant's diagnoses did not correspond to the reported functional impairments, MassHealth sent the provider agency a request for information dated September 3, 2021 seeking clinical documentation, such as a physical/wellness exam, or office visit notes with a review of systems, from the appellant's primary care clinician (PCP), which identifies the signs and symptoms and associated diagnoses that support the level of care with activities of daily living (ADLs) requested. (Exhibit 5, p. 12). The MassHealth representative noted that no clinical documentation was submitted. The MassHealth representative testified that there was no objective medical information submitted to support why the appellant's knee pain results in the need for physical assistance with ADLs. The MassHealth representative testified that atrial fibrillation can be controlled by medication and the diagnosis does not in and of itself support the need for physical assistance. The MassHealth representative noted that the appellant's AFC caretaker listed an address different from the appellant's address and an AFC caretaker is required to live with the MassHealth member. (Exhibits 2, 4). The MassHealth representative stated that MassHealth would need authentication that the AFC caretaker and the appellant reside at the same address.

The MassHealth representative stated that in order to be eligible for AFC Level II services, a MassHealth member must require:

- A) Hands-on physical assistance with at least three of the activities described in 130 CMR 408.416; or
- B) Hands-on physical assistance with at least two of the activities described in 130 CMR 408.416 and management of behaviors that require frequent caregiver intervention as described in 130 CMR 408.416(D)(2)(b)(1) through (5).

The MassHealth representative stated that because the appellant does not meet the clinical criteria for AFC Level II services, the request for prior authorization was denied.

The appellant's grandson/AFC caretaker stated that he runs a business in another town and has a studio apartment as part of his business but he also lives with the appellant. The appellant's grandson/AFC caretaker noted that he works during the day but his father and aunt also assist with caring for the appellant. The appellant's grandson/AFC caretaker stated that he has a letter from the appellant's PCP stating that it is important for the appellant to continue with her adult program. The

appellant's grandson/AFC caretaker stated that the appellant had an appointment with her PCP on September 20, 2021. The appellant's grandson/AFC caretaker stated that he assists the appellant out of bed and with showering, toileting, cooking, exercising, shopping, and with her bills. When asked what diagnoses affect the appellant's functional ability, the appellant's grandson/AFC caretaker noted that the appellant has arthritis in her hands and joints. The MassHealth representative stated that there is no mention of arthritis in the documentation submitted by the AFC provider agency. The MassHealth representative advised the appellant's grandson/AFC caretaker to have the AFC provider agency resubmit the request with the medical report from the appellant's September 20, 2021 PCP appointment, and submit verification that the AFC caretaker resides with the appellant.

Findings of Fact

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

1. The appellant's provider agency, Fortcom Health Services, submitted a request for prior authorization for Adult Foster Care Level II services on August 18, 2021.
2. The appellant is [REDACTED] years old and has diagnoses of pain in the right knee, atrial fibrillation, diabetes, hypertension, and gastroesophageal reflux.
3. The appellant has no memory impairment and is independent with decision making, hearing, and vision; no mood or behavior issues; no falls.
4. MassHealth sent the AFC provider agency a request for information dated September 3, 2021 seeking clinical documentation, such as a physical/wellness exam, or office visit notes with a review of systems, from the appellant's PCP, which identifies the signs and symptoms and associated diagnoses that support the level of care with ADLs requested; the appellant's provider agency did not respond to the request.
5. The appellant's AFC caretaker listed an address different from the appellant's address.
6. The appellant's AFC caretaker runs a business in another town and has a studio apartment as part of his business; the appellant's AFC caretaker works during the day but his father and aunt also assist with caring for the appellant.
7. The appellant had an appointment with her PCP on September 20, 2021.

Analysis and Conclusions of Law

Adult foster care is defined as: a service ordered by a primary care provider delivered to a member in a qualified setting as described in 130 CMR 408.435 by a multidisciplinary team (MDT) and qualified AFC caregiver, that includes assistance with ADLs, IADLs, other personal care as needed, nursing oversight, and AFC care management, as described in 130 CMR 408.415(C). (130 CMR

408.402).

Scope of Adult Foster Care Services

(A) Direct Care. The AFC provider must ensure the delivery of direct care to members in a qualified setting as described in 130 CMR 408.435 by a qualified AFC caregiver, as described in 130 CMR 408.434, who lives in the residence and who is selected, supervised, and paid by the AFC provider. AFC must be ordered by a PCP and delivered by a qualified AFC caregiver under the supervision of the registered nurse and the MDT in accordance with each member's written plan of care. Direct care includes 24-hour supervision, daily assistance with ADLs and IADLs as defined in 130 CMR 408.402, and other personal care as needed. (130 CMR 408.415(A)).

To meet the requirements for authorization of adult foster care a member must have a medical or mental condition that requires daily hands-on assistance or cueing and supervision throughout the entire activity in order to successfully complete at least one of the following activities: bathing, dressing, toileting, transferring, mobility or eating.

Clinical Eligibility Criteria for AFC

A member must meet the following clinical eligibility criteria for receipt of AFC.

(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.

(130 CMR 408.416(A), (B)).

MassHealth regulation 130 CMR 408.419(D) establishes the conditions for a AFC provider to receive a level I service payment versus a level II service payment.

AFC payments are made as follows:

(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 the activities described in 130 CMR 408.416; or

(b) hands-on (physical) assistance with at least two of the activities described 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.

(130 CMR 406.419(D)(1), (2)).

MassHealth denied the appellant's request for adult foster care because it could not determine medical necessity based on the documentation submitted. While it appears from testimony that the appellant requires the assistance with her ADLs due to arthritis, there is nothing in the medical documentation to support that. The prior authorization request stated that the appellant's primary diagnosis was knee pain and her secondary diagnosis is atrial fibrillation. Neither of these diagnoses in and of themselves necessarily results in the need for hands on physical assistance with ADLs. The appellant's provider did not respond to a request for clinical documentation from the appellant's PCP identifying signs and symptoms and associated diagnoses that support the level of care with ADLs requested.

Further, the appellant's AFC caretaker listed an address different from the appellant's and testified that he works during the day and has a studio apartment at his place of work. MassHealth regulations require that the AFC caretaker live in the residence and provide direct care including 24 hour supervision, and daily assistance with ADLs and IADLs.

Based on the current record the appellant has failed to provide medical evidence that she meets the clinical eligibility criteria for approval of adult foster care and as a result this appeal is denied.¹

¹ The appellant can work with her PCP and AFC provider to resubmit her request with the appropriate documentation. Appropriate documentation verifying the AFC caretaker's residence should also be submitted with the request.

Order for MassHealth

Rescind aid pending and proceed with the action set forth in the notice dated September 16, 2021.

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.

Patricia Mullen
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Optum MassHealth LTSS, P.O. Box 159108, Boston, MA
02215

