

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2177310
Decision Date:	12/02/2021	Hearing Date:	10/28/2021
Hearing Officer:	Patricia Mullen		

Appearance 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:	12/02/2021	Hearing Date:	10/28/2021
MassHealth's Rep.:	Krista Berube, RN, Optum	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South	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 a notice dated September 3, 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. (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 was represented telephonically by his daughter/AFC caretaker, who he authorized to represent him at the hearing. (Exhibit 2). 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, Massachusetts Mentor LLC, submitted a request for prior authorization for Adult Foster Care Level II services on August 23, 2021. (Exhibit 5, p. 3). The provider reported that the appellant is ■ years old and has a primary diagnosis of Meniere's disease, with symptoms including hearing loss and dizziness, and a secondary diagnosis of low back pain. (Exhibit 5, pp. 6, 7). In the MassHealth Adult Foster Care Primary Care Provider (PCP) Order Form, the appellant's PCP noted that the appellant also has obesity, hypertension, hyperlipidemia, colon adenoma, seasonal allergies, and tobacco dependence. (Exhibit 5, p. 10). The MassHealth representative explained that Meniere's disease is an inner ear disorder that can cause dizziness and is typically treated with medication. A medical office visit note for a physical exam dated June 8, 2021 was included with the request for prior authorization. (Exhibit 5, p. 12). The physician noted that the appellant had recent surgical repair for hemorrhoid; review of systems was normal; physical exam was normal; examination of back revealed no pain to palpation and good flexion and extension; the physician's impression was general adult medical exam without abnormal findings. (Exhibit 5, pp. 12-16).

The appellant's provider nurse completed a Minimum Data Set (MDS) for the appellant and noted that the appellant had the behavioral symptom of socially inappropriate behavior, easily altered. (Exhibit 5, p. 22).

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 MassHealth representative stated that the appellant's diagnoses do not correspond to the reported functional impairments. The MassHealth representative stated that MassHealth looks to physical exam signs and symptoms, and review of symptoms as support for the need for physical assistance with activities of daily living (ADLs). The MassHealth representative pointed out that there were no abnormal findings in the appellant's physical in June, 2021; physical exam was within normal limits, and Review of Systems showed normal musculoskeletal exam with no joint pain, back pain, or muscle pain. (Exhibit 5, p. 12). The appellant's physician advised the appellant to pursue at least 30 minutes of exercise most days of the week, and made no mention of the need for physical assistance

with ADLs. (Exhibit 5, p. 16). The MassHealth representative stated that the documentation does not support the need for physical assist with ADLs. The MassHealth representative noted that the symptom of low back pain usually has an underlying diagnosis to go with it, but none was noted here. The MassHealth representative testified that there would need to be documentation in the Review of Systems to support the need for help with ADLs, but the Review of Systems was within normal limits. (Exhibit 5, p. 12). The MassHealth representative stated that people with hearing loss can function and there was no objective medical information submitted to support why the appellant's Meniere's disease and report of low back pain results in the need for physical assistance with ADLs.

The appellant's daughter stated that she is the AFC caretaker for both her father and her mother and they live together with her adult sibling. The appellant's daughter noted that the appellant's physical exam was not with his usual physician and the daughter was not allowed to join in and help with communication. The appellant's daughter stated that the appellant has macular degeneration and does not drive anymore and she has to take him to all his appointments. The appellant's daughter stated that the appellant uses a cane and she needs to guide him at times. The appellant's daughter stated that she helps the appellant with washing, shaving, and putting shoes and socks on. The appellant's daughter stated that the appellant's Meniere's disease causes bouts of dizziness and they never know when he'll have an attack. There are grab bars throughout the house. (Testimony). The appellant's daughter stated further that the appellant's low back pain is caused by osteopenia, or bone loss. The MassHealth representative stated that osteopenia, in and of itself, usually does not cause pain. The appellant's daughter stated that sometimes the appellant's tinnitus is so strong, he can't do anything. The appellant's daughter stated that she's home all day with the appellant, making sure he's safe and comfortable and she makes the meals for the family.

The appellant's daughter submitted medical reports from the appellant's various physician visits from 2020 and 2021. (Exhibit 2). The appellant had elevated blood uric acid level, elbow pain, skin growth, and hemorrhoids. (Exhibit 2). The appellant's daughter also submitted copies of reports from the appellant's physical in February, 2020 and an eye exam from September 28, 2021. (Exhibit 6). The appellant suffers from macular degeneration and hypertensive retinopathy. (Exhibit 6). The additional medical information was noted in the record at hearing and forwarded to the MassHealth representative. The MassHealth representative reported that the documentation did not change MassHealth's determination. (Exhibit 7).

Findings of Fact

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

1. The appellant's provider agency, Massachusetts Mentor LLC, submitted a request for prior authorization for Adult Foster Care Level II services on August 23, 2021.
2. The appellant is [REDACTED] years old and has a primary diagnosis of Meniere's disease, with symptoms including hearing loss and dizziness, and a secondary diagnosis of low back pain; the appellant also has macular degeneration, hypertensive retinopathy, obesity, hypertension, hyperlipidemia,

colon adenoma, seasonal allergies, and tobacco dependence.

3. Meniere's disease is an inner ear disorder that can cause dizziness and is typically treated with medication.
4. The appellant had a physical exam on June 8, 2021, review of systems was normal; physical exam was normal; back had no pain to palpation and good flexion and extension; the physician's impression was general adult medical exam without abnormal findings; appellant's physician advised the appellant to pursue at least 30 minutes of exercise most days of the week
5. The appellant's provider nurse completed a MDS for the appellant and noted that the appellant had the behavioral symptom of socially inappropriate behavior, easily altered.

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)).

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 an 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 the documentation did not support medical necessity. While it appears from testimony that the appellant requires the assistance with his ADLs due to dizziness, tinnitus, pain, and vision impairment, there is nothing in the medical documentation to support that. The prior authorization request stated that the appellant's primary diagnosis is Meniere's disease and his secondary diagnosis is low back pain. Neither of these diagnoses in and of themselves necessarily results in the need for hands on physical assistance

with ADLs. The medical reports from the appellant's physician visits showed review of systems within normal limits, and there were no reported signs and symptoms and associated diagnoses that support the level of care with ADLs requested. Further, the MDS listed one behavior, socially inappropriate behavior, but noted that it was easily altered and did not require frequent caregiver intervention.

Based on the current record the appellant has failed to provide medical evidence that he meets the clinical eligibility criteria for approval of Level II adult foster care and as a result 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.

Patricia Mullen
Hearing Officer
Board of Hearings

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

