

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2177386
Decision Date:	11/05/2021	Hearing Date:	10/28/2021
Hearing Officer:	Patricia Mullen		

Appearance for Appellant:
Pro se

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:	11/05/2021	Hearing Date:	10/28/2021
MassHealth's Rep.:	Krista Berube, RN, Optum	Appellant's Rep.:	Pro se
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 15, 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 24, 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. 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, Prestige Adult Foster Care, submitted a request for prior authorization for Adult Foster Care Level II services on September 3, 2021. (Exhibit 5, p. 3).

The provider reported that the appellant is [REDACTED] and has a primary diagnosis of generalized muscle weakness and secondary diagnosis of seizures. (Exhibit 5, pp. 6, 7). The appellant submitted a copy of a medical report from Dr. Dunn for date of service August 3, 2021 regarding a hernia repair performed in February, 2021. (Exhibit 4). Dr. Dunn reported that a comprehensive review of systems was negative. (Exhibit 4, p. 2). Dr. Dunn noted that the appellant was alert, oriented, and appeared well; he had pleasant mood and affect; his abdomen was completely intact with all incisions well healed, and no evidence of any problems with the abdominal wall. (Exhibit 4, p. 4). In a medical report from the appellant's primary care physician (PCP) Dr. Veridiano for date of service May 17, 2021, Dr. Veridiano reported that the appellant was doing well but still had abdominal pain. (Exhibit 5, p. 14). Dr. Veridiano noted that the appellant had lost 80 pounds and was going to the gym, but not doing anything that would increase abdominal wall pressure; appellant has a history of seizures with last seizure in January, 2020. (Exhibit 5, p. 15). Dr. Veridiano noted that it was unclear whether the appellant needed to be on dual anticonvulsants and a neurology consult, an EEG, and possible weaning of anticonvulsants was considered. (Exhibit 5, p. 15). Physical exam was normal, with no guarding on abdominal exam; visit diagnoses included abdominal pain and chronic pain syndrome. (Exhibit 5, pp. 18, 19, 21). Dr. Veridiano noted that she was working on weaning down the appellant's chronic use of oxycodone. (Exhibit 5, pp. 14, 15). At an August 17, 2021 visit with Dr. Veridiano, the appellant reported that he goes to the gym 5 days a week; he has a PCA who stays overnight; he has abdominal pain controlled with oxycodone; Dr. Veridiano continued the discussion about tapering oxycodone use; appellant's EEG was normal and a neurology consult was scheduled for September 21, 2021; physical exam and review of systems was normal; abdominal exam had no guarding, tenderness or rebound; motor examination was normal and gait was normal and stable with no device; appellant reported abdominal pain. (Exhibit 5, pp. 22, 24, 23, 27).

The MassHealth representative testified that there was no objective medical information submitted to support why the appellant's reported pain results in the need for physical assistance with ADLs. 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 based on the objective clinical documentation submitted, the appellant does not meet the clinical criteria for AFC Level II services. The MassHealth

representative pointed out that the appellant's physical examinations were normal, but for reported abdominal pain due to recent hernia surgery, review of systems were all normal, and the appellant is able to go to the gym and exercise. The MassHealth representative noted further that MassHealth clarified its AFC regulations in Adult Foster Care Bulletin 13, dated January, 2018, in which MassHealth noted that the AFC caregiver must note in the plan of care that the member cannot manage safely alone for more than 3 hours a day. (Exhibit 7, p. 7). The MassHealth representative stated that based on the clinical documentation, there is no reason the appellant could not manage safely alone for more than 3 hours a day. The MassHealth representative noted that the appellant's PCP stated that the AFC caregiver was an overnight PCA. The MassHealth representative testified that there is no medical support for any functional limitations requiring the services of an AFC caregiver. The MassHealth representative stated that the request for AFC services did not meet medical necessity criteria and the request for prior authorization was denied.

The appellant stated that he needs his AFC caregiver with him overnight due to seizures. The appellant stated that he only needs her overnight. The appellant stated that his physician recommended going to the gym and he only walks on the treadmill. The appellant noted that he does not go to the gym 5 days a week. The appellant stated that he goes to the gym on the mornings when he's feeling good and he uses the treadmill or bike with the supervision of his AFC caregiver. The appellant stated that he still has pain from his hernia surgery and his physician told him it could take a year to recover from the surgery. In the request for the appeal, the appellant's AFC caregiver wrote that she assists the appellant with physical therapy and light gym exercise such as treadmill and bike riding. (Exhibit 2, p. 2). The AFC caregiver wrote that she stays with the appellant especially due to his seizures, noting that the appellant has seizures and she must supervise and be there when he needs her. (Exhibit 2, p. 2).

Findings of Fact

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

1. The appellant's provider agency, Prestige Adult Foster Care, submitted a request for prior authorization for Adult Foster Care Level II services on September 3, 2021.
2. The appellant is [REDACTED] and has a primary diagnosis of generalized muscle weakness and secondary diagnosis of seizures.
3. The appellant had hernia repair surgery in February, 2021.
4. In 3 separate medical reports from May, 2021 and August, 2021, the comprehensive reviews of the appellant's systems were negative and physical exams were normal with no guarding, tenderness, or rebound on abdominal exams; motor examinations were normal and gait was normal and stable with no device; the appellant was alert, oriented, and appeared well; he had pleasant mood and affect; his abdomen was completely intact with all incisions well healed, and no evidence of any problems with the abdominal wall; the appellant goes to the gym and uses the treadmill and bike; appellant has a history of seizures with last seizure in January, 2020;

EEG was normal; neurology consultation was pending; appellant reported he has a PCA who stays overnight; the appellant has abdominal pain controlled with oxycodone.

5. The appellant's PCP is working to wean the appellant down from oxycodone use.
6. The appellant testified that he needs his AFC caregiver with him overnight due to seizures.

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)).

As set forth in Adult Foster Care Bulletin 13, dated January, 2018, a member receiving AFC services cannot be left alone for more than 3 hours a day, and, in accordance with 130 CMR 408.430(C)(2)(b), the AFC provider must note in the plan of care that a member can manage safely alone in the AFC qualified setting up to but not exceeding three hours per day.

MassHealth denied the appellant's request for adult foster care because the clinical documentation

did not support any functional limitations requiring assistance with the listed activities of daily living (ADLs). The prior authorization request stated that the appellant's primary diagnosis is weakness and his secondary diagnosis is seizures. The appellant testified that he needs the AFC caregiver overnight because of his seizures. The appellant has not had a seizure in almost 2 years and his EEG was normal. Further, AFC guidelines require that a member receiving AFC services cannot manage safely alone for more than 3 hours a day. If the appellant only requires the AFC caregiver to be present overnight, then he can safely be left alone for more than 3 hours a day.

The appellant reported that he has pain, although clinical documentation notes that the pain is controlled with pain medication. None of the appellant's diagnoses, in and of themselves, necessarily result in the need for hands on physical assistance with ADLs. The comprehensive reviews of the appellant's systems were negative and physical exams were normal with no guarding, tenderness, or rebound on abdominal exams; motor examinations were normal and gait was normal and stable with no device. The appellant goes to the gym and is able to use the treadmill and bike.

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

Order for MassHealth

Rescind aid pending and proceed with the action set forth in the notice dated September 15, 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