

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2178281
Decision Date:	1/10/2022	Hearing Date:	12/10/2021
Hearing Officer:	Thomas Goode		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Leslie Learned, 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:	1/10/2022	Hearing Date:	12/10/2021
MassHealth's Rep.:	Leslie Learned, 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 September 22, 2021, MassHealth determined that Appellant is not clinically eligible for MassHealth payment of adult foster care services (Exhibit 1). Appellant filed a timely appeal on October 25, 2021 and has been receiving aid pending during the pendency of the appeal (Exhibit 2). Determination of clinical eligibility for adult foster care services is a valid basis for appeal (130 CMR 610.032). At Appellant's request, the hearing record remained open until December 17, 2021 to allow her to submit additional documentation. No documentation was received by MassHealth or the Board of Hearings.

Action Taken by MassHealth

MassHealth determined that Appellant is not clinically eligible for adult foster care services.

Issue

The appeal issue is whether MassHealth was correct in determining that 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 the appeal concerns MassHealth's denial of a request for adult foster care (AFC) Level 2 services. In September 2021 Appellant's provider, Humble Care, submitted a prior authorization request for AFC Level 2 services for the period August 22, 2021, through August 21, 2022. MassHealth denied the request on September 22, 2021 on the basis that there was insufficient evidence that Appellant meets the eligibility requirements for this level of service (Exhibit 1). The MassHealth representative explained that to qualify for AFC Level 2 services, the member must demonstrate that he or she has a medical or mental condition that requires daily hands-on, physical assistance with three activities of daily living, or daily hands-on, physical assistance with two activities of daily living and the need for frequent caregiver intervention to manage behaviors.

The MassHealth representative testified that Appellant is a [REDACTED]-year-old female with primary diagnoses of PTSD, anxiety, and left elbow contracture. The MassHealth representative referenced medical records dated September 13, 2021 submitted by the provider which record that Appellant lives with her boyfriend, mother, and 4-year-old daughter, exercises at a moderate level, and is studying psychology (Exhibit 4, p. 13). Appellant underwent left arm/elbow surgery on July 4, 2017, and experiences stiffness of the elbow, and inability to fully extend or flex the arm (*Id.*, pp. 10, 13). Musculoskeletal system is described as having normal bulk in both upper and lower extremities. No range of motion issues are identified (*Id.*, p. 14). No physical therapy or occupational therapy notes were submitted. The MassHealth nurse also referenced the provider's determination that Appellant needs physical assistance with bathing, dressing, and toileting (*Id.*, p. 9). The MassHealth representative stated that because the clinical records submitted with the request for AFC services do not corroborate the need for assistance with 3 or more ADLs, the request for Level 2 services was denied.

Appellant testified that she has had AFC services since 2018, and that her boyfriend is her care provider, and also helps her mother. Appellant testified that she lost the use of her left elbow secondary to a gunshot wound in 2017. She added that not all metal was removed from her left arm, and she is unable to lift more than 2 pounds with her left arm, and experiences muscle spasms in her right arm from overuse. She testified that she needs assistance with ADLs especially washing her feet, and she is unable to drive. Appellant stated that she lost motivation to participate in occupational therapy and could not continue with physical therapy as a result. She requested additional time to submit medical records supporting her need for assistance with ADLs. The hearing record remained open until December 17, 2021 to allow her to submit additional documentation. No documentation was received by MassHealth or the Board of Hearings (Exhibit 6).

Findings of Fact

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

1. In September 2021 Appellant's provider, Humble Care, submitted a prior authorization

request for AFC Level 2 services for the period August 22, 2021, through August 21, 2022.

2. MassHealth denied the request on September 22, 2021 on the basis that there was insufficient evidence that Appellant meets the eligibility requirements for this level of service.
3. Appellant is a ■-year-old female with primary diagnoses of PTSD, anxiety, and left elbow contracture.
4. Medical records dated September 13, 2021 submitted by the provider record that Appellant lives with her boyfriend, mother, and 4-year-old daughter, exercises at a moderate level, and is studying psychology.
5. Appellant underwent left arm/elbow surgery on July 4, 2017, and experiences stiffness of the elbow, and inability to fully extend or flex the arm secondary to a gunshot wound in 2017.
6. Musculoskeletal system is described as having normal bulk in both upper and lower extremities. No range of motion issues are identified.
7. No physical therapy or occupational therapy notes were submitted.
8. The provider determined that Appellant needs physical assistance with bathing, dressing, and toileting.
9. The hearing record remained open until December 17, 2021 to allow Appellant to submit additional documentation. No documentation was received by MassHealth or 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.

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 the 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.:
 - i. wandering: moving with no rational purpose, seemingly oblivious to needs or safety;

- ii. verbally abusive behavioral symptoms: threatening, screaming, or cursing at others;
- iii. physically abusive behavioral symptoms: hitting, shoving, or scratching;
- iv. 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
- v. resisting care.

In addition to regulatory requirements, MassHealth has 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, and indicate noncoverage if clinical documentation, including assessments and plan of care to support the need for or continuation of AFC services is missing insufficient and/or inconsistent (Exhibit 4, p. 27, Section II. B., 3). MassHealth denied the request for AFC Level 2 services on the basis that the record does not support the need for hands-on, physical assistance with three or more ADLs. The medical evidence is inconclusive regarding the degree of assistance, if any, Appellant requires. The provider states that Appellant needs assistance with showering, dressing, and toileting. However, Appellant's ability to perform ADLs is not addressed in the medical documentation submitted with the prior authorization request.¹ Musculoskeletal system is described as having normal bulk in both upper and lower extremities. No range of motion issues are identified. No physical therapy or occupational therapy notes were submitted. The hearing record remained open until December 17, 2021 to allow Appellant to submit additional documentation. No documentation was received by MassHealth or the Board of Hearings. Therefore, MassHealth correctly determined that the medical documentation does not corroborate the need for assistance with three ADLs and does not show sufficient evidence that AFC services are medically necessary. The appeal is DENIED.²

Order for MassHealth

None, other than rescind aid pending.

¹ There is also no evidence or testimony regarding the provider's assertion that Appellant engages in behaviors such as threatening, screaming, or cursing at others, or is physically abusive with symptoms such as hitting, shoving, or scratching which further erodes the veracity of the provider's statements (See Exhibit 4, p. 9).

² Appellant can resubmit a prior authorization request with complete and corroborating documentation at any time.

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.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc: Optum