

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2178283
Decision Date:	1/24/2022	Hearing Date:	1/13/2022
Hearing Officer:	Thomas Goode		

Appearance for Appellant:



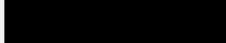
Appearance for MassHealth:

Leslie Learned, RN, Optum



*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:	1/24/2022	Hearing Date:	1/13/2022
MassHealth's Rep.:	Leslie Learned, RN, Optum	Appellant's Reps.:	
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 notified Appellant that he is not clinically eligible for MassHealth payment of adult foster care services (Exhibit 1). Appellant filed a timely appeal on October 26, 2021 and has been receiving aid pending the outcome of the appeal (Exhibit 2). A hearing was scheduled for December 10, 2021 and was rescheduled because an interpreter was not available. 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 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 Board of Hearings provided an interpreter for the hearing.

The MassHealth representative, a utilization management nurse, appeared at the hearing telephonically and testified that MassHealth denied Appellant's prior authorization request for adult foster care (AFC) Level 2 services. In September 2021 Appellant's provider, Nonotuck Resources, submitted a prior authorization request for AFC Level 2 services for the period of November 3, 2021, through November 2, 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 be eligible for AFC Level 2 services, a 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 ■-year-old male with primary diagnoses of type 2 diabetes, hypertension, and cardiovascular accident (CVA) in 2019. The MassHealth representative referenced the Minimum Data Set (MDS) assessment completed by Appellant's provider. The MDS indicates that Appellant needs limited assistance with transfers, mobility in bed, locomotion inside and outside the home, dressing, supervision with eating, and all IADLs¹ must be performed by others (Exhibit 4, pp. 27-28). The provider states that Appellant utilizes a cane and is at high risk for fall and injury due to highly impaired vision, right-sided weakness, unsteady gait, dizziness, and pain in his right lower extremity (Id., p. 23).

The MassHealth representative referenced medical records submitted by the provider which include a physical examination dated June 8, 2021 that records all systems within normal limits, stable vital signs, no acute distress, normal ambulation, good color, full range of motion of the neck without pain or tenderness, and back within normal limits with no tenderness (Id., pp. 14-15). A physical examination dated January 6, 2021 records no back pain, no arm or leg weakness, no unsteady gait, no numbness or tingling, and only occasional right knee pain (Id., pp. 21-22). The MassHealth representative stated that there is no clinical information showing right-sided weakness. A second prior authorization request for Level 2 AFC services was submitted on September 30, 2021 and was denied on October 12, 2021.² The MassHealth representative testified that the clinical records submitted with the September 30, 2021 request include an August 13, 2021 physical examination that records similar findings with no acute distress, no falls in the past year, normal ambulation, full active range of motion of the neck, and no clubbing or edema of the extremities (Exhibit 5, pp. 3-5). The MassHealth representative testified that an Optum Medical Director reviewed the prior authorization requests and concluded that the medical records submitted show that all relevant systems are within normal limits. The MassHealth representative stated that because the clinical records submitted with the request for AFC services do not corroborate the need for assistance

¹ Meal preparation, housework, managing medications, shopping, transportation, and laundry.

² The October 12, 2021 denial was not appealed.

with 3 or more ADLs, the request for Level 2 services was denied.

Appellant testified that he lives with his girlfriend who is also his caretaker. He stated that he needs help with ADLs due to right-sided weakness and blurry vision following cataract surgery. He added that he uses a shower chair to bathe, and his girlfriend turns the water on for him. She also reminds him to take medications because he forgets, helps him dress, and walks him to the bathroom and waits for him. Appellant's girlfriend testified that she has been Appellant's caretaker for 3 or 4 years, and that Appellant is disabled following a stroke, is always in pain, and can barely walk. She added that when the weather is warmer, Appellant will walk with a cane, but otherwise lays in bed most of the day.

Findings of Fact

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

1. In September 2021 Nonotuck Resources submitted a prior authorization request for AFC Level 2 services for the period of November 3, 2021, through November 2, 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 male with primary diagnoses of type 2 diabetes, hypertension, and cardiovascular accident (CVA) in 2019.
4. The MDS indicates that Appellant needs limited assistance with transfers, mobility in bed, locomotion inside and outside the home, dressing, supervision with eating, and all IADLs must be performed by others.
5. A physical examination dated June 8, 2021 records all systems within normal limits, stable vital signs, no acute distress, normal ambulation, good color, full range of motion of the neck without pain or tenderness, and back examination within normal limits with no tenderness.
6. A physical examination dated January 6, 2021 records no back pain, no arm or leg weakness, no unsteady gait, no numbness or tingling, and occasional right knee pain.
7. There is no clinical information showing right-sided weakness.
8. A second prior authorization request for Level 2 AFC services was submitted on September 30, 2021 and denied on October 12, 2021. The clinical records submitted include an August 13, 2021 physical examination that records similar findings with no acute distress, no falls in the past year, normal ambulation, full active range of motion of the neck, and no clubbing or edema of the extremities.

9. An Optum Medical Director reviewed the prior authorization requests and concluded that the medical records submitted show that all relevant systems are within normal limits.

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. 35, Section II. B., 3).

MassHealth denied the request for AFC Level 2 services on the basis that the clinical record does not support the need for hands-on, physical assistance with three or more ADLs. A review of the evidence and testimony yields contradictory conclusions regarding the degree of assistance, if any, that is medically necessary. The MDS indicates that Appellant needs limited assistance with transfers, mobility in bed, locomotion inside and outside the home, dressing, supervision with eating, and all IADLs must be performed by others. The provider also states that Appellant utilizes a cane and is at high risk for fall and injury due to highly impaired vision, right-sided weakness, unsteady gait, dizziness, and pain in his right lower extremity. However, a physical examination dated June 8, 2021 records all systems within normal limits, stable vital signs, no acute distress, normal ambulation, good color, full range of motion of the neck without pain or

tenderness, back within normal limits with no tenderness. A physical examination dated January 6, 2021 records no back pain, no arm or leg weakness, no unsteady gait, no numbness or tingling, and only occasional right knee pain. An August 13, 2021 physical examination records similar findings with no acute distress, no falls in the past year, normal ambulation, full active range of motion of the neck, and no clubbing or edema of the extremities. There is no clinical information showing right-sided weakness or that Appellant uses a cane. Further, Appellant's testimony and that of his caregiver also presents a conflicting view of Appellant's need for assistance with ADLs that is not supported by Appellant's medical records. Therefore, based on the clinical documentation submitted, MassHealth correctly determined that the medical documentation does not corroborate the need for assistance with three ADLs, and does not show sufficient evidence that Level 2 AFC services are medically necessary. The appeal is DENIED.³

Order for MassHealth

None, other than rescind aid pending.

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

³ Appellant can resubmit a prior authorization request with complete and corroborating clinical documentation at any time.