

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2178415
Decision Date:	1/10/2022	Hearing Date:	12/17/2021
Hearing Officer:	Thomas Goode		

Appearance for Appellant:



Appearance for MassHealth:

Krista Berube, 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:	12/17/2021
MassHealth's Rep.:	Krista Berube, RN	Appellant's Reps.:	[REDACTED]
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 23, 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 November 1, 2021 (Exhibit 2). 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 the appeal concerns MassHealth's denial of a request for adult foster care (AFC) Level 2 services. In September 2021 Appellant's provider, Royale Home Care, submitted a prior authorization request for AFC Level 2 services for the period of September 25, 2021, through September 26, 2022. MassHealth denied the request on September 23, 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 male in his early 50s with primary diagnoses of type 2 diabetes, asthma and single-episode depression. The MassHealth representative referenced medical records submitted by the provider which include an office note dated April 15, 2021 which records Appellant's involvement in a motor vehicle accident on March 12, 2021 and a negative review of systems with no wheezing, shortness of breath, or cough (Exhibit 4, p. 12). A physical examination is within normal parameters and records a negative straight-leg-raise test, back tenderness, and no swelling or erythema of the left knee (*Id.*, p. 13). A physical examination report dated July 16, 2020 states that Appellant needs assistance with bathing, dressing, and using the toilet, but does not need assistance preparing or eating food, or moving around from place to place (*Id.*, p. 19); negative review of systems (*Id.*, p. 18); negative depression screening (*Id.*, p. 19); and a physical examination within normal parameters (*Id.*, p. 20). No physical therapy notes, or other documentation associated with back pain were submitted. A letter of medical necessity dated September 3, 2021 signed by Appellant's physician states that due to multiple medical conditions, Appellant requires physical assistance with dressing, bathing, ambulation, and transfers, and needs cueing and supervision with toilet use, in addition to assistance with Instrumental Activities of Daily Living (IADLs) such as cleaning, cooking, laundry and transportation (*Id.*, p. 24). The MassHealth representative stated that the physician's letter contradicts the medical records.

The MassHealth representative also referenced the Minimum Data Set (MDS) assessment completed by Appellant's provider (Exhibit 4, pp. 25-29). The MDS indicates that Appellant needs extensive assistance with bathing; limited assistance with transfers, and locomotion in the home, transfers, dressing, personal hygiene, and locomotion outside the home; and supervision with mobility in bed and toileting (*Id.*, p.27). The MassHealth representative stated that because the clinical records submitted with the request for AFC services by Royale Home Care do not corroborate the need for assistance with 3 or more ADLs, the request for Level 2 services was denied. However, she added that Appellant was approved for Level 1 services in a request submitted by We Care 365 for the period May 2021 through May 2022.

Appellant testified that he has had AFC services through Royale Home Care for the past 6 years. Appellant stated that he has asthma, type 2 diabetes, sleep apnea, and back pain. He stated that he lives with his sister who completes all IADLs for him and helps him sit on a shower chair to bathe and helps him get dressed because he gets winded. He stated that he is independent with toileting. He also stated that he takes several pills each day to manage his medical conditions. Appellant's sister stated that Appellant does not see a specialist to treat his back pain and needs help with ADLs primarily because he gets winded and out of breath due to asthma.

Findings of Fact

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

1. In September 2021, Appellant's provider Royale Home Care, submitted a prior authorization request for AFC Level 2 services for the period of September 25, 2021, through September 26, 2022.
2. MassHealth denied the request on September 23, 2021 on the basis that there was insufficient evidence that Appellant meets the eligibility requirements for this level of service.
3. Appellant is a male in his early 50s with primary diagnoses of type 2 diabetes, asthma and single-episode depression.
4. Medical records include an office note dated April 15, 2021 which records Appellant's involvement in a motor vehicle accident on March 12, 2021, and a negative review of systems with no wheezing, shortness of breath, or cough. A physical examination is within normal parameters and records a negative straight-leg-raise test, back tenderness, and no swelling or erythema of the left knee.
5. A physical examination dated July 16, 2020 records that Appellant needs assistance with bathing, dressing, and using the toilet, but does not need assistance preparing or eating food, or moving around from place to place, and records a negative review of systems, negative depression screening, and a physical examination within normal parameters.
6. No physical therapy notes or other documentation associated with back pain was submitted.
7. A letter of medical necessity dated September 3, 2021 signed by Appellant's physician states that due to multiple medical conditions, Appellant requires physical assistance with dressing, bathing, ambulation, and transfers, and needs cueing and supervision with toilet use, in addition to assistance with IADLs such as cleaning, cooking, laundry and transportation.
8. The MDS indicates that Appellant needs extensive assistance with bathing; limited assistance with transfers, and locomotion in the home, transfers, dressing, personal

hygiene, and locomotion outside the home; and supervision with mobility in bed and toileting.

9. Appellant was approved for Level 1 services in a request submitted by We Care 365 for the period May 2021 through May 2022.

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. 34, 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. A review of the evidence yields contradictory conclusions regarding the degree of assistance, if any, Appellant requires. The MDS states that Appellant needs extensive assistance with bathing; limited assistance with transfers and locomotion in the home, dressing, personal hygiene, and locomotion outside the home; and supervision with mobility in bed and toileting. A letter of medical necessity dated September 3, 2021 signed by Appellant's physician states that Appellant requires physical assistance with dressing, bathing, ambulation, and transfers, and needs cueing and supervision with toilet use, in addition to assistance with IADLs such as cleaning, cooking, laundry and

transportation. However, the need for assistance with ADLs is not corroborated by medical records dated April 15, 2021 which record a negative review of systems with no wheezing, shortness of breath, or cough. A physical examination is within normal parameters and records a negative straight-leg-raise test, some back tenderness, and no swelling or erythema of the left knee. A physical examination report dated July 16, 2020 records a negative review of systems, negative depression screening, and a physical examination within normal parameters. Appellant has not been evaluated by a specialist regarding his back pain, and no physical therapy notes, or other documentation associated with back pain was submitted. 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.¹

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.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc: Optum

¹ Appellant can resubmit a prior authorization request with complete and corroborating documentation at any time. Appellant may also wish to contact We Care 365 to inquire about the status of the prior authorization request submitted on his behalf.