

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2178461
Decision Date:	01/12/2022	Hearing Date:	12/17/2021
Hearing Officer:	Thomas Goode		

Appearance for Appellant:
Pro se with daughter

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:	01/12/2022	Hearing Date:	12/17/2021
MassHealth's Rep.:	Krista Berube, RN	Appellant's Reps.:	Pro se with daughter
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 October 20, 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 November 5, 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 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 October 2021 Appellant's provider, Prestige Adult Foster Care, submitted a prior authorization request for AFC Level 2 services for the period October 29, 2021, through October 28, 2022. MassHealth denied the request 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 degenerative joint disease in the knees and a history of thyroid gland cancer. The MassHealth representative referenced medical records dated June 21, 2021 submitted by the provider which record that Appellant had a normal examination of the knees with only tenderness on flexion of the left knee with no swelling, normal range of motion, flexion and extension, and otherwise unremarkable findings (Exhibit 4, p. 13). Although Appellant uses a cane to walk, she has no history of previous knee surgery, and is not identified as at risk for falling (*Id.*, p. 12). Appellant underwent thyroid removal approximately two years ago, and documentation records a normal physical examination on July 21, 2021 (*Id.*, p. 14). The MassHealth representative also referenced the Minimum Data Set (MDS) assessment completed by Appellant's provider (*Id.*, pp. 16-20). The MDS indicates that Appellant needs limited assistance with bathing, transfers, locomotion in the home, dressing, personal hygiene, locomotion outside the home, toileting, and supervision with mobility in bed and eating (*Id.*, p. 18). 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's daughter testified that Appellant has had AFC services for several years. She added that Appellant had surgery to remove the thyroid gland two years ago and has not had a recurrence in cancer. Appellant's daughter stated that Appellant has had recent episodes of incontinence in bed and needs help to move around the house.

Findings of Fact

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

1. In October 2021 Appellant's provider, Prestige Adult Foster Care, submitted a prior authorization request for AFC Level 2 services for the period October 29, 2021, through October 28, 2022. MassHealth denied the request on the basis that there was insufficient evidence that Appellant meets the eligibility requirements for this level of service.

2. Appellant is a [REDACTED] year-old female with primary diagnoses of degenerative joint disease in the knees and a history of thyroid gland cancer.
3. Medical records dated June 21, 2021 submitted by the provider record that Appellant had a normal examination of the knees with only tenderness on flexion of the left knee with no swelling, normal range of motion, flexion and extension, and otherwise unremarkable findings.
4. Although Appellant uses a cane to walk, she has no history of previous knee surgery, and is not identified as at risk for falling.
5. Appellant's ability to complete ADLs is not addressed in the medical records submitted.
6. Appellant underwent thyroid removal two years ago, and documentation records a normal physical examination on July 21, 2021.
7. The Minimum Data Set (MDS) assessment completed by Appellant's provider indicates that Appellant needs limited assistance with bathing, transfers, locomotion in the home, dressing, personal hygiene, locomotion outside the home, toileting, and supervision with mobility in bed and eating.

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. 25, 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 contradicts the degree of assistance Appellant's AFC provider asserts she requires. The Minimum Data Set (MDS) assessment completed by Appellant's provider indicates that Appellant needs limited assistance with bathing, transfers, locomotion in the home, dressing, personal hygiene, locomotion outside the home, toileting, and supervision with mobility in bed and eating. However, medical records dated June 21, 2021 submitted by the provider record that Appellant had a normal examination of the knees with only tenderness on flexion of the left knee with no swelling, normal range of motion, flexion and extension, and otherwise unremarkable findings. Although Appellant uses a cane to walk, she has no history of previous knee surgery, and is not identified as at risk for falling. Further, Appellant underwent thyroid removal two years ago, and documentation records a normal physical examination on July 21, 2021. Appellant's ability to complete ADLs is not addressed in the medical records submitted, nor is incontinence identified. 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.

¹ 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