

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

[REDACTED]

Appeal Decision:	Denied	Appeal Number:	2178952
Decision Date:	02/02/2022	Hearing Date:	01/07/2022
Hearing Officer:	Rebecca Brochstein	Record Open Date:	01/31/2022

Appearances for Appellant:

[REDACTED]

[REDACTED]


Appearances for MassHealth:

Leslie Learned, R.N.



*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:	02/02/2022	Hearing Date:	01/07/2022
MassHealth's Rep.:	Leslie Learned, R.N.	Appellant's Rep.:	
Hearing Location:	Board of Hearings (Remote)	Aid Pending:	No

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 November 1, 2021, MassHealth notified the appellant that she is not clinically eligible for MassHealth payment of adult foster care services (Exhibit 1). The appellant filed a timely appeal on November 22, 2021 (Exhibit 1). The record was held open after hearing for the appellant to submit additional information and for the MassHealth representative to review it (Exhibits 6, 7). 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 the appellant is not clinically eligible for adult foster care services.

Issue

The appeal issue is whether MassHealth was correct in determining that the 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. She testified that this appeal concerns MassHealth's denial of a request for adult foster care (AFC) services. On September 30, 2021, the appellant's provider submitted a prior authorization request for Level I AFC services, for the period of October 22, 2021, through October 21, 2022. MassHealth denied the request on October 1, 2021.¹

The MassHealth representative stated that to receive coverage for AFC Level I services, a member must require hands-on (physical) assistance with one or two of the designated activities of daily living (set forth in 130 CMR 408.416), or must require cueing and supervision throughout one or more of those activities in order to complete that activity. 130 CMR 408.419(D).

The MassHealth representative testified that the appellant, who is in her 60s, has a diagnosis of major depressive disorder, with a secondary diagnosis of lower back pain. She testified that the PCP Order Form indicates the appellant requires cueing and supervision for bathing, dressing, toileting, and transferring, and hands-on physical assistance for mobility. In addition, the physician checked "yes" to indicate that the appellant engages in "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." See Exhibit 5 at 9.

The MassHealth representative testified that the PA request included a provider letter (from a nurse practitioner) which echoes the information in the PCP Order Form. The letter, dated August 25, 2021, states that the appellant needs to continue receiving AFC services because "she requires physical assistance with ambulation as well as cueing/supervision with transfers, bathing, dressing, and toileting." The MassHealth representative stated that the Minimum Data Set (MDS) form echoes the information in the PCP Order Form and the provider's letter; it indicates the appellant requires supervision for transfers, locomotion in the home, dressing, toileting, and bathing, and limited assistance for locomotion outside the home and personal hygiene. See Exhibit 5 at 14, 18-19.

On October 19, 2021, MassHealth sent the appellant a deferral notice, stating that the PA request did not include all the information needed to make a decision. It indicated that MassHealth had contacted the provider to request supporting documentation to establish medical necessity, adding the following comment:

MassHealth has deferred this PA. Please submit additional documentation (including a Physical Exam) from the PCP that includes the members [sic] signs and symptoms and diagnosis's [sic] as they relate to the ADLs that require hands on assist by the caregiver.

¹ The MassHealth representative testified that the appellant received adult foster care services in the past, before the program was subject to prior authorization requirements.

Please refer to the MassHealth Guidelines for Medical Necessity Determination for Adult Foster Care (AFC) section 4(A).

The MassHealth representative added that MassHealth called the provider's office to seek this information, and that the provider indicated that the office notes were not supportive of the PA request so they would not be sent. On November 1, 2021, MassHealth notified the appellant that the PA request was denied because she does not meet the clinical criteria for the AFC program. See Exhibit 1.

The appellant appeared at the hearing telephonically along with her daughter-in-law. The daughter-in-law testified that they submitted documentation to the Board of Hearings that addresses the appellant's need for AFC services. She stated that the appellant needs a lot of help in daily life, as there are many things she cannot do for herself. She added that she helps the appellant with her day-to-day activities.

The record was held open for MassHealth to review the records that had been submitted to the Board of Hearings pending the appeal. The records, which are from an office visit on November 16, 2021, include the following:

- History of Present Illness:
 - Asthma: Patient has a history of asthma, currently using ProAir inhaler with good benefit. Today patient reports chest pain with difficulty breathing. Denies wheezing or difficulty sleeping.
 - Back pain: Severity level is 6. Location of pain is upper back, middle back and lower back. Pain is radiated to the back. The patient describes the pain as diffuse, discomforting, sharp, shooting and throbbing. Context: blow from behind, lifting a heavy object, sitting and twisting movement. Symptoms are aggravated by bending, changing positions, daily activities and lifting. Today patient complains of mid upper back pain x3 weeks. Describes the back pain as sharp and burning and rates pain as 6/10. States pain is getting worse now. Denies LE weakness, numbness, or tingling.
 - Anxiety: Patient has a history of GAD and is currently on Sertraline 100 mg p.o. daily and Lorazepam 1 mg p.o. daily prn. States has been doing well, no other concerns today. Denies feeling weak or tired, restlessness.
- Patient Health Questionnaire: Answered "not at all" in response to question: "Over the last 2 weeks, how often have you been bothered by any of the following problems? 1. Little interest or pleasure in doing things. 2. Feeling down, depressed or hopeless."
- Review of Systems: Positive for fatigue; back pain, muscle weakness; and menopausal. Otherwise negative.
- Physical Exam:
 - Musculoskeletal: Gait- antalgic, unstable. Thoracic spine – muscle spasm, range of motion: moderately reduced ROM. Lumbar spine- tenderness, range of motion: moderate pain w/motion. Knee- left: weak knee muscles.
 - Psychiatric: Inappropriate mood and affect. Poor insight. Anxious.

- Assessment/Plan:
 - Generalized anxiety disorder: Well-controlled on Sertraline 100 mg p.o. daily and Lorazepam 1 mg p.o. daily prn. Continue plan in place. Follow up in one month.
 - Gastritis: Well-controlled on Famotidine 40 mg daily. Continue plan in place. Reiterated trigger foods and the need to avoid them. Follow up in one month.
 - Asthma exacerbation: Refilled ProAir inhaler today. Requisition given for chest x-ray for evaluation. Will follow up once chest x-ray is done.
 - Back pain: Patient presents today with concerns of back pain x3 weeks. May use Tylenol prn for pain. Apply ice/heat for pain relief. Advised gentle exercise as tolerated. Follow up in one month for reevaluation. (Exhibit 3)

After reviewing the office note, the MassHealth representative responded as follows:

MassHealth received medical documentation, office note dated November 16, 2021. After review of new documentation and the appellants testimony, the appeals nurse representative has denied the request. Per clinical notes submitted:

Page 1- member reports back pain that started 3 weeks ago. Denies lower extremity weakness, numbness or tingling. Denies feeling weak or tired, restlessness. Doing well no other concerns.

Page 5- Assessment /Provider plan for back pain. Tylenol as needed, apply ice/heat as needed. MD advised gentle exercise as tolerated. Follow up in one month for reevaluation.

Member's condition is acute and is likely to resolve with treatment. Regulations states AFC program eligibility criteria is daily assistance, usually long term and is a yearly approval. Member may benefit from other MassHealth programs such as the Home Health Aid program which assists members in their homes with activities of daily living. (Exhibit 7)

Findings of Fact

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

1. The appellant is a female in her 60s with a primary diagnosis of major depressive disorder. She has a secondary diagnosis of low back pain.
2. On September 30, 2021, the appellant's provider submitted a prior authorization request for AFC Level I services, for the period of October 22, 2021, through October 21, 2022.
3. The PCP Order Form that was part of the PA request indicates that the appellant requires cueing and supervision for bathing, dressing, toileting, and transferring, and hands-on physical assistance for mobility. The physician checked "yes" to indicate that the appellant

engages in “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.”

4. The MDS form completed by the AFC agency indicates that the appellant requires supervision for transfers, locomotion in the home, dressing, toileting, and bathing, and limited assistance for locomotion outside the home and personal hygiene.
5. On October 19, 2021, MassHealth notified the appellant that it was deferring a decision on the PA request because there was insufficient information to determine medical necessity. MassHealth requested additional documentation from the PCP that included the appellant’s signs, symptoms, and diagnoses as they relate to the ADLs that require hands-on assistance by the caregiver. The provider did not send any additional information, instead conveying to MassHealth that the notes on file were not supportive of the request for AFC services.
6. On November 1, 2021, MassHealth denied the PA request.
7. On November 16, 2021, the appellant had an office visit with her medical provider.
 - a. The appellant complained of three weeks of back pain. She denied lower extremity weakness, numbness, or tingling. The physical exam noted antalgic and unstable gait, tenderness, and moderately reduced range of motion in the thoracic and lumbar spine. The plan was for Tylenol as needed, application of ice and heat, and gentle exercise as tolerated.
 - b. The appellant’s anxiety was noted to be well-controlled on medication. She reported no instances in the preceding two weeks of feeling little interest or pleasure in doing things, or in feeling down, depressed, or hopeless.
 - c. The appellant was noted to be using an inhaler to treat her asthma, with “good benefit.” The provider ordered a chest X-ray due to complaints of chest pain with difficulty breathing.
8. On November 22, 2021, the appellant filed an appeal of MassHealth’s denial of the PA request.

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.²

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:

² MassHealth has also 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 (Exhibit 5).

- (a) hands-on (physical) assistance with at least three of 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.:
 - 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.

This case concerns MassHealth's denial of the appellant's prior authorization request for AFC Level I services. MassHealth denied the request because it found insufficient evidence that the appellant needs hands-on, physical assistance with one or two of activities set forth at 130 CMR 408.416, or cueing and supervision throughout one or more of those activities.

The record supports this determination. Though the PA paperwork alleges the appellant needs supervision-level assistance for several ADLs and hands-on assistance with one other, the November 2021 office note that the appellant submitted from her physician – which is the only objective physical assessment in the record – does not reflect the same level of need. As MassHealth pointed out, the record portrays the complaint of back pain as more of an acute injury than a chronic issue. The recommended interventions were relatively mild: Tylenol as needed, and the application of ice or heat; the physician even advised gentle exercise as tolerated. The record does not suggest the pain is debilitating or that it will significantly interfere with the appellant's activities of daily living, for the duration of the PA period. To the extent the AFC request is based on the appellant's history of depression and/or anxiety, the November note indicates the appellant's mental status is stable with medication; there is no information that suggests it has any impact on her ability to function and to complete her ADLs.³

Based on the current record, MassHealth was correct in determining that the appellant does not meet the clinical standards for AFC Level I services. This appeal is therefore denied.

³ There is also no objective evidence in the record to suggest, as the PCP Order Form indicates, that the appellant engages in "socially inappropriate or disruptive behavior." Regardless, this language relates to the eligibility requirements for Level II adult foster care services, not the Level I services that the appellant has requested. See 130 CMR 408.419(D)(2)(b).

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.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Optum