Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Approved	**Appeal Number:**	2178958
Decision Date:	2/17/2022	**Hearing Date:**	01/07/2022
Hearing Officer:	Christine Therrien	**Record Open to:**	01/14/2022

Appearance for Appellant:

[redacted]

Appearance for MassHealth/United Healthcare:
Dr. Cheryl Ellis, Medical Director
Joanne Sullivan, Health Services Director

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171

APPEAL DECISION

Appeal Decision:	Approved	**Issue:**	Adult Foster Care
Decision Date:	2/17/2022	**Hearing Date:**	01/07/2022
MassHealth/UHC's Rep.:	Dr. Cheryl Ellis, Medical Director Joanne Sullivan, Health Services Director	**Appellant's Rep.:**	[redacted]
Hearing Location:	All parties appeared by phone		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated 11/9/21, MassHealth modified the appellant's request for prior authorization for Level II adult foster care (AFC) and instead approved Level I AFC services, because MassHealth determined that the documentation did not establish medical necessity for Level II services. (Exhibit 1; 130 CMR 408.416). The appellant filed this appeal in a timely manner on 11/22/21 (130 CMR 610.015(B) and Exhibit 2). Modification of a prior authorization request is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth/UHC

MassHealth modified the appellant's request for Level II adult foster care and approved Level I adult foster care services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 408.416, in determining that the appellant did not meet the medical necessity and clinical criteria for Level II adult foster care services.

Summary of Evidence

The United Healthcare (UHC) representative testified that the appellant had an in-home visit on 8/3/21 to see what activities of daily (ADLs) the appellant could perform himself. The UHC representative testified that the appellant was able to independently toilet by straight catherization. The UHC representative testified that due to this change the appellant qualified for Level I AFC. The UHC representative testified that the appellant required assistance with two ADLs, bathing and dressing. The UHC representative testified that Level II AFC requires assistance with three ADLs. The UHC representative testified that the appellant was being dropped from Level II AFC to Level I AFC services. The assessment comments under "ambulation" state that the appellant has "right dominant side hemiplegia following prior cerebral infarctions." Further, it states the appellant "is observed independently ambulating in home, gait is slow and can be unsteady when attempting to ambulate quickly or when fatigued." The UHC representative testified that the appellant was assessed on 12/2/21, and his needs increased such that he is eligible for Level II AFC. The appellant was determined eligible for Level I AFC from 8/27/21-12/2/21.

The appellant's representative, who is his caretaker, testified that the appellant is not independent with walking. The appellant's representative testified that the appellant has had several strokes and needs assistance to walk more than 15-20 steps. The appellant's representative testified that the appellant's condition is not getting better, but rather he is deteriorating. The appellant's representative provided the "Adult Foster Care Multi-Disciplinary Plan of Care" dated 7/11/20, notes that the appellant required assistance with toileting (intermittent catheterization), dressing, bathing, and mobility (Exhibit 2, p. 4). The notes on the "Adult Foster Care Multi-Disciplinary Plan of Care" state that the appellant needs hands on assistance with mobility outside and has left sided numbness of the lower extremity (Exhibit 2, p. 6). The appellant's representative testified that the in-home assessment on 8/3/21 was terminated because the visit became hostile. The appellant's representative testified that the nurse assessor indicated that the appellant said he could walk for 15-20 minutes, which is not true. The appellant's representative testified that the appellant has always needed assistance with walking.

Findings of Fact

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

1. The appellant had an in-home visit on 8/3/21 to see what ADLs the appellant could perform himself.

2. The assessment states that the appellant was able to independently toilet by straight catherization.

3. The assessment states that the appellant required assistance with two ADLs, bathing and dressing.

4. Level II AFC requires assistance with three ADLs.

5. The appellant is being downgraded from Level II AFC to Level I AFC services.

6. The appellant has right dominant side hemiplegia due to prior cerebral infarctions with a slow gait that can be unsteady when attempting to ambulate quickly or when fatigued.

7. The appellant's "Adult Foster Care Multi-Disciplinary Plan of Care" dated 7/11/20, notes that he required assistance with toileting (intermittent catheterization), dressing, bathing, and mobility (Exhibit 2, p. 4).

8. The care plan state that the appellant needs hands on assistance with mobility outside and has left sided numbness of the lower extremity (Exhibit 2, p. 6).

9. The appellant was assessed on 12/2/21, and his needs increased such that he is eligible for Level II AFC.

10. The appellant was determined eligible for Level I AFC from 8/27/21-12/2/21.

Analysis and Conclusions of Law

The MassHealth regulations, under 130 CMR 130 CMR 408.402 defines Adult foster care as: a service ordered by a primary care provider delivered to a member in a qualified setting as described in 130 CMR 408.435 by a multidisciplinary team (MDT) and qualified AFC caregiver, that includes assistance with ADLs, IADLs, other personal care as needed, nursing oversight, and AFC care management, as described in 130 CMR 408.415(C).

130 CMR 408.415 Scope of Adult Foster Care Services

(A) Direct Care. The AFC provider must ensure the delivery of direct care to members in a qualified setting as described in 130 CMR 408.435 by a qualified AFC caregiver, as described in 130 CMR 408.434, who lives in the residence and who is selected, supervised, and paid by the AFC provider. AFC must be ordered by a PCP and delivered by a qualified AFC caregiver under the supervision of the registered nurse and the MDT in accordance with each member's written plan of care. Direct care includes 24-hour supervision, daily assistance with ADLs and IADLs as defined in 130 CMR 408.402, and other personal care as needed.

130 CMR 408.416 Clinical Eligibility Criteria for AFC

A member must meet the following clinical eligibility criteria for receipt of AFC.

(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.

The requested services must also be medically necessary for prior authorization to be approved. MassHealth will not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

130 CMR 450.204 states a service is "medically necessary" if:

(1) it is reasonably calculated to prevent, diagnose, prevent worsening of, alleviate, correct, or cure conditions in the member that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity; and

(2) there is no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider or identified by MassHealth pursuant to a prior authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007, or 517.007.

(3) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to MassHealth upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

(4) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

MassHealth regulation 130 CMR 408.419(D) establishes the conditions for an AFC provider to receive a level I service payment versus a level II service payment.

(130 CMR 406.419(D) AFC payments are made as follows:

(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 described 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.

The appellant was evaluated for the AFC program in 2020 and determined to qualify for Level II services based on requiring assistance with 3 or more ADLs.[1] The appellant was evaluated again in August 2021 and the evaluator determined the appellant was now independent with toileting via straight catheterization and therefore no longer required assistance with 3 ADLs. The appellant was re-evaluated in December 2021 and was determined to qualify for Level II AFC services because he required assistance with 3 or more ADLs. The appellant suffered several cerebral infarctions leaving him paralyzed on one side. The appellant's hemiplegia caused the appellant to require assistance with mobility, dressing, and bathing as indicated in the "Adult Foster Care Multi-Disciplinary Plan of Care" dated 7/11/20 (Exhibit 2, p. 4). Due to the unlikelihood that the appellant's hemiplegia resolved itself from August through December 2021 it appears the appellant did not receive a thorough evaluation at the August 2021 in-home assessment. For this reason, the appeal is approved.

Order for MassHealth/UHC

Approve appellant for Level II AFC beginning 8/27/21.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this

[1] A copy of the 2020 evaluation was not provided so there is no documentation for the hearing file to show with which ADLs the appellant required assistance.

decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Christine Therrien
Hearing Officer
Board of Hearings

cc:
MassHealth Representative: United Healthcare SCO, Attn: Cheryl A. Ellis, M.D., LTC Medical Director, 950 Winter St., Ste. 3800, Waltham, MA 02451