

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2178983

**Decision Date:** 01/24/2022

**Hearing Date:** 01/12/2022

**Hearing Officer:** Patricia Mullen

**Appearance for Appellant:**



**Appearance for MassHealth:**

Krista Berube, RN, Optum



*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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Adult Foster Care
<b>Decision Date:</b>	01/24/2022	<b>Hearing Date:</b>	01/12/2022
<b>MassHealth's Rep.:</b>	Krista Berube, RN, Optum	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Quincy Harbor South	<b>Aid Pending:</b>	Yes

## 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 November 3, 2021, MassHealth modified the appellant's request for prior authorization for Level II adult foster care and instead approved Level I adult foster care 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 November 26, 2021 and received aid pending appeal. (see 130 CMR 610.015(B) and Exhibit 2). The Board of Hearings (BOH) sent a request for signature and authorization to the appellant by letter dated December 1, 2021. (Exhibit 3). On December 7, 2021, the appellant submitted a signed appeal request. (Exhibit 4). Modification of a prior authorization request is valid grounds for appeal (see 130 CMR 610.032).

## Action Taken by MassHealth

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 appellant was represented telephonically by her daughter/AFC caretaker, who she authorized over the phone to represent her at the hearing. MassHealth was represented telephonically by a registered nurse reviewer from Optum, the agent of MassHealth that makes the prior authorization determinations for Adult Foster Care (AFC).

The MassHealth representative stated that the appellant's provider agency, Nonotuck Resources, Inc., submitted a request for prior authorization for AFC Level II services on October 13, 2021. (Exhibit 11, p. 3). The provider reported that the appellant is [REDACTED] years old and has a primary diagnosis of osteoarthritis of the left knee. (Exhibit 11, p. 6). In the MassHealth Adult Foster Care Primary Care Provider (PCP) Order Form, the appellant's PCP noted that the appellant has no behaviors such as wandering, no verbal or physical abusive behaviors, no socially inappropriate or disruptive behavior, and no resisting care. (Exhibit 11, p. 10).

Medical office visit notes for physical exams dated March 20, 2021 and September 11, 2021 were included with the request for prior authorization. (Exhibit 11, pp. 17-21). In the March 20, 2021 office note, the physician wrote that the review of the appellant's systems was normal; physical exam was normal. (Exhibit 11, pp. 18-19). The physician noted the appellant had no exercise intolerance, extremity exam was normal with no weakness in the extremities; the physician discussed weightbearing activities with the appellant and encouraged regular exercise. (Exhibit 11, pp. 17-19). The MassHealth representative testified that the appellant's physician did not mention any physical or functional limitations in the March 20, 2021 office visit note. (Exhibit 11, pp. 17-19). In the September 11, 2021 office note, the appellant's physician noted the appellant walks without restrictions, review of systems was normal, the appellant was encouraged to exercise. (Exhibit 11, p. 22). The MassHealth representative pointed out that the appellant's physician did not mention physical or functional limitations, did not address pain, and did not prescribe pain medication. (Exhibit 11, pp. 21-23).

The MassHealth representative stated that the appellant's diagnoses do not correspond to the reported functional impairments. The MassHealth representative stated that MassHealth looks to physical exam signs and symptoms, and review of symptoms as support for the need for physical assistance with activities of daily living (ADLs). The MassHealth representative pointed out that there were no abnormal findings in the appellant's physical exams in March, 2021 and September, 2021; physical exams were within normal limits, and review of systems were normal. The MassHealth representative noted that the appellant's physician advised the appellant to exercise and made no mention of the need for physical assistance with ADLs.

The MassHealth representative stated that, pursuant to 130 CMR 406.416, in order to be eligible for AFC Level II services, a MassHealth member must 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 408.416(D)(2)(b)(1) through (5).

The MassHealth representative stated that medical necessity was not established for Level II AFC services. The MassHealth representative testified that the clinical documentation submitted does not support the need for hands on assistance with activities of daily living. The MassHealth representative stated that although the appellant does not meet the clinical criteria for AFC Level II services, she does require supervision and cueing due to her depression and therefore Level I AFC services were approved.

The appellant's representative stated that the appellant is depressed and has difficulty sleeping, for which she takes trazadone. The appellant's representative noted that the appellant also suffers from anxiety and post-traumatic stress disorder (PTSD) from events she experienced in the country in which she previously lived. The appellant's representative stated that the appellant finds it hard to perform daily activities and the caretaker helps with cooking, cleaning, dressing, and the bath. The appellant's representative stated that the appellant stays in bed most of the time. The appellant's representative stated that the appellant has pain in her lower back and knee for which she prefers to use herbs and tiger balm instead of medication. The appellant's representative stated that the appellant does not like to be home alone due to fear and anxiety and the representative/caretaker works from home so she can keep an eye on her. The appellant's representative stated that the appellant doesn't want to do anything because she is depressed. The appellant is in counseling for her psychiatric issues. (Testimony). The appellant's representative stated that the appellant was getting physical therapy, but it stopped once the pandemic started. The appellant's representative noted that the physical therapy was not really helping and the appellant walks slowly and uses a cane to ambulate.

The appellant's representative submitted letters which were forwarded to the MassHealth representative prior to the hearing. (Exhibits 5-8). In a letter dated November 24, 2021, the appellant's representative/caretaker wrote that the appellant requires assistance with the ADLs of ambulation, transferring, bathing, grooming, dressing/undressing, and bladder/bowel care, as well as assistance with the instrumental activities of daily living (IADLs) of medication management, cooking, shopping, and transportation. (Exhibit 5). In letters dated November 5, 2021 and November 20, 2021, the appellant's PCP wrote that the appellant has multiple medical diagnoses, most significantly major depression disorder and chronic low back pain; the PCP noted that the appellant is being cared for by her daughter who is assisting with transportation, managing medications, and doing IADLs; the PCP noted that the appellant has insomnia for which she takes trazadone, and requires supervision and physical assistance from her caregiver due to weakness, drowsiness, and fatigue. (Exhibits 6, 8). The PCP wrote further that the appellant is mentally, emotionally, and physically stable because of the AFC program and assistance from her caregiver. (Exhibit 6). In a letter dated November 17, 2021, the appellant's mental health counselor wrote that the appellant has chronic panic attacks going places without company and cannot be alone; the appellant needs reminders to take her medications. (Exhibit 7).

## Findings of Fact

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

1. The appellant's provider agency, Nonotuck Resources, Inc., submitted a request for prior authorization for AFC Level II services on October 13, 2021.
2. The appellant is [REDACTED] years old and has a primary diagnosis of major depression disorder; the appellant also suffers from anxiety, PTSD, osteoarthritis of the left knee, and chronic low back pain.
3. The appellant has no wandering behaviors, no verbal or physical abusive behaviors, no socially inappropriate or disruptive behaviors and does not resist care.
4. Review of systems and physical exams were normal in medical office visits with the appellant's PCP on March 20, 2021 and September 11, 2021.
5. The appellant has no exercise intolerance, extremity exams were normal with no weakness in the extremities; the PCP discussed weightbearing activities with the appellant and encouraged regular exercise.
6. The appellant has difficulty sleeping, for which she takes trazadone; she stays in bed most of the time.
7. The appellant does not like to be home alone due to fear and anxiety.

## Analysis and Conclusions of Law

Adult foster care is defined 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 408.402).

### 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 408.415(A)).

## 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.

(130 CMR 408.416(A), (B)).

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.

(A) 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.
- (B) 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.)

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

(130 CMR 450.204(A), (B) ,(C)).

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.

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.

(130 CMR 406.419(D)(1), (2)).

MassHealth denied the appellant's request for Level II AFC because the documentation did not support medical necessity for Level II services. The appellant's daughter/caretaker testified that she assists with the ADLs of dressing and bathing and noted in her letter that she assists with ambulation, transferring, grooming, and bladder/bowel care, however the objective medical documentation does not support that such assistance is necessary. No signs or symptoms were set forth in the objective medical documentation to support that physical assistance with ADLs is necessary. Diagnoses of osteoarthritis and chronic low back pain, in and of themselves, do not necessarily result in the need for hands on physical assistance with ADLs. The medical reports from

the appellant's PCP visits showed review of systems within normal limits, and there were no reported signs and symptoms and associated diagnoses that support the level of care with ADLs requested. Depression, anxiety, and PTSD were mentioned throughout the appellant's representative's testimony and the appellant's PCP noted that the appellant most significantly suffers from major depression disorder. The medical documentation submitted does not support that the appellant needs hands on physical assistance with at least 3 of the listed ADLs. Further the appellant does not have any of the behaviors that require frequent caregiver intervention as described in 130 CMR 408.419(D)(2)(b)1. through 5.

MassHealth determined that the appellant meets the criteria for Level I AFC services in that she requires supervision and cueing for at least one ADL due to her depression and anxiety.

Based on the current record the appellant has failed to provide medical evidence that she meets the clinical eligibility criteria for approval of Level II adult foster care and as a result this appeal is denied.

## **Order for MassHealth**

Remove aid pending and proceed with the change to Level I Adult Foster Care services as set forth in the notice dated November 3, 2021.

## **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.

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Patricia Mullen  
Hearing Officer  
Board of Hearings

cc: MassHealth Representative: Optum MassHealth LTSS, P.O. Box 159108, Boston, MA  
02215

