

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2179073
<b>Decision Date:</b>	01/26/2022	<b>Hearing Date:</b>	01/06/2022
<b>Hearing Officer:</b>	Sara E. McGrath		

**Appearances for Appellant:**




**Appearances 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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Eligibility for Adult Foster Care
<b>Decision Date:</b>	01/26/2022	<b>Hearing Date:</b>	01/06/2022
<b>MassHealth's Rep.:</b>	Krista Berube, RN	<b>Appellant's Reps.:</b>	
<b>Hearing Location:</b>	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 November 2, 2021, MassHealth modified the appellant's request for MassHealth payment of adult foster care (AFC) Level 2 services and approved AFC Level 1 services (Exhibit 1). The appellant filed a timely appeal on November 24, 2021 (Exhibit 1). 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 AFC Level 2 services.

### Issue

The appeal issue is whether MassHealth was correct in determining that the appellant is not clinically eligible for AFC Level 2 services.

## Summary of Evidence

The MassHealth representative, a utilization management nurse, appeared at the hearing telephonically and testified that this appeal concerns MassHealth's modification of a request for AFC Level 2 services. On October 19, 2021, the appellant's provider, Nonotuck Resource Associates, Inc., submitted a prior authorization request for AFC Level 2 services for the period of November 2, 2021, through November 1, 2022 (Exhibit 3, p. 3). On November 2, 2021, MassHealth modified the request and approved AFC Level 1 services (Exhibit 1, p. 3). The MassHealth representative stated that to receive coverage for AFC Level 2 services, a member must require hands-on (physical) assistance with at least three of the designated activities of daily living (set forth in 130 CMR 408.416) or must require hands-on (physical) assistance with at least two of the designated activities of daily living and management of behaviors that require frequent caregiver intervention. Based on the prior authorization submission, MassHealth did not find that these services were medically necessary for the appellant, and it therefore modified the request and authorized AFC Level 1 services.

The MassHealth nurse testified that the appellant is a female in her late 50s with a primary diagnosis of knee pain and a secondary diagnosis of lower back pain.<sup>1</sup> The MassHealth nurse referenced medical records submitted by the provider, which included a recent office visit note from July 3, 2021, from a health center (Exhibit 3, pp. 15-20). The report from that visit includes a depression screen with a total score of 0, a pain level listed as 0 out of 10, and a report of intermittent knee pain (Exhibit 3, p. 15). The appellant also reported "on and off" knee pain, on either side (Exhibit 3, p. 16). At a telehealth appointment on September 27, 2021, the appellant reported chronic right wrist pain, bilateral knee pain, and low back pain; she indicated that she needs help dressing, preparing food, transferring, managing medications, and transportation (Exhibit 3, p. 19).

The MDS assessment indicates that the appellant requires limited physical assistance with mobility in bed, transfers, locomotion outside of the home, dressing the upper body, and dressing the lower body; and requires supervision level of assistance for locomotion inside of the home, eating, toilet use, personal hygiene, and bathing (Exhibit 3, p. 30).

The record also includes a typed summary of the appellant's diagnoses and needs, presumably prepared by the AFC provider (Exhibit 3, p. 21). The summary indicates that the appellant needs assistance with dressing, as follows:

Member requires physical assistance with dressing/undressing lower and upper body as she experiences dizziness joint pain, and difficulty bending down. Caregiver will assist to put on shirts and jackets since she has difficulty extending her arms up all the way. She needs assistance putting on socks and shoes due to lower back/hip pain. She also needs assistance with zips, buttons, and buckles due to poor vision and her right wrist pain.

---

<sup>1</sup> The appellant has other diagnoses including diabetes, asthma, PTSD, and depression (Exhibit 3, p. 12).

The summary addresses transferring and mobility, as follows:

Member needs supervision with ambulation and going up and down stairs due to fall risk from low back pain, joint pain, and knee pain. Member also suffers from impaired vision and an unsteady gait. She does not always wear her eyeglasses around the house so caregiver needs to help her around. They also live on the second floor with stairs to the front door. Member needs supervision with transferring as member has frequent headaches and dizziness. She has shortness of breath with exertion. She is easily fatigued due to fluctuating blood sugar levels throughout the day. Caregiver provides physical assistance with transferring and mobility by holding member's arms and hands when walking or getting up from sitting to standing or laying to sitting positions. On the better days, member will occasionally try to ambulate on her own with the use of a cane.

The MassHealth nurse testified that the documentation does not support the appellant's request for AFC Level 2 services. She referenced the MassHealth Adult Foster Care Primary Care Provider (PCP) Order Form, which is signed by a nurse (unsigned by the physician) and indicates that the appellant needs physical assistance with dressing, transferring, and mobility, and needs cueing and supervision with these activities and with bathing, toileting, and eating as well (Exhibit 3, p. 11). She suggested that the medical records do not support the order form findings, as there is no indication in the records to suggest that the appellant needs physical assistance with any activities on a daily basis. MassHealth therefore modified the appellant's request and authorized AFC Level 1 services.<sup>2</sup>

The appellant's son appeared at the hearing telephonically and testified that the documentation in the record appears to be inaccurate. He explained that his mother lives in the upstairs apartment of a family duplex, and he assists her on the stairs to the downstairs apartment when she wants to see other members of her family. She does not come downstairs every day. He also helps the appellant with dressing and undressing. If she is wearing a sarong, she can manage her clothes by herself, but if she wears pants, he assists her. He explained that when she is on the toilet for a long time, he sometimes has to help to get her off the toilet due to fatigue. He also assists when she gets in and out of the shower, as it is difficult for her to step over the edge of the tub. He also helps her with her medications (because she does not read English), and does laundry, shopping, and cooking for her. She takes over 10 medications, including pills for diabetes, and has a rescue inhaler for asthma as well. He drives her to all her appointments.

The MassHealth nurse responded and stated that a diabetes diagnosis does not generally affect an individual's ability to complete activities of daily living. She suggested that because the appellant's son seems to assist mostly with instrumental activities of daily living, the appellant may want to

---

<sup>2</sup> The MassHealth nurse stated that in her opinion, the appellant has not demonstrated the need for any AFC services. Nevertheless, MassHealth has authorized AFC Level 1 services for this authorization period.

apply for MassHealth's personal care attendant (PCA) program. She asked why the appellant cannot independently complete all of her activities of daily living; the son responded that fatigue, wrist pain, knee pain, back pain, and depression all contribute to her inability to function independently. The appellant's son also stated that due to her error in her immigration paperwork, her age is misrepresented; she is actually in her early 60s, not late 50s.

### **Findings of Fact**

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

1. The appellant is a female in her late 50s or early 60s with a primary diagnosis of bilateral knee pain and a secondary diagnosis of lower back pain.
2. On October 19, 2021, the appellant's provider submitted a prior authorization request for AFC Level 2 services, for the period of November 2, 2021 through November 1, 2022.
3. Medical records from July and September 2021 document that the appellant reported no depression and no pain, and that she needs help with the activities of dressing and transferring.
4. The appellant's son/caregiver assists the appellant with stair mobility, but not on a daily basis; assists the appellant with toilet transfers, but not on a daily basis; assists the appellant with dressing when she wears pants; and assists the appellant with shower transfers on a daily basis.
5. The MDS assessment indicates that the appellant requires limited physical assistance with mobility in bed, transfers, locomotion outside of the home, dressing the upper body, and dressing the lower body; and requires supervision level of assistance for locomotion inside of the home, eating, toilet use, personal hygiene, and bathing.
6. The MDS assessment and the PCP Order Form contain findings that are inconsistent with the medical records and caregiver's testimony.
7. On November 2, 2021, MassHealth modified the appellant's request for MassHealth payment of AFC Level 2 services and approved AFC Level 1 services.
8. On November 24, 2021, the appellant filed a timely appeal with the Board of Hearings.

### **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 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.<sup>3</sup>

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.

---

<sup>3</sup> 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 3, pp. 35-40).

(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 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 modification of the appellant's prior authorization request for AFC Level 2 services. MassHealth modified the request because it found no evidence that the appellant needs hands-on, physical assistance with at least three of the activities set forth at 130 CMR 408.416 and found no evidence of behaviors requiring caregiver intervention.

The record supports this determination. The most current medical records submitted with the prior authorization request document that the appellant reports needing help with dressing and transferring (Exhibit 3, pp. 15-19). The son's testimony supports the appellant's report, but also clarifies that the only daily assistance she requires is assistance with transfers in and out of the shower.<sup>4</sup> Further, the son indicated that the appellant does not always need assistance with dressing.<sup>5</sup> All other assistance provided by the son occurs even more intermittently, such as when the appellant wants to visit the downstairs apartment, or occasionally becomes fatigued on the toilet.

The MDS assessment states that the appellant needs limited physical assistance with bed mobility,

---

<sup>4</sup> The AFC guidelines defines assistance with transferring as follows: "The member must be assisted or lifted from one position to another. For example, the member requires assistance to move from a wheelchair to the commode." The appellant's limited need for assistance with shower transfers only may fall short of requiring assistance with "transferring." Further, the son/caregiver's testimony did not describe the level of assistance with mobility or transfers as set forth in the typewritten summary referenced above (Exhibit 3, p. 21).

<sup>5</sup> The son/caregiver's testimony regarding assistance with dressing and undressing did not describe the level of assistance provided in the typewritten summary referenced above (Exhibit 3, p. 21).

transfers, locomotion outside of the home, and dressing.<sup>6</sup> However, as clarified by the appellant's son/caregiver, the appellant does not require daily assistance with all these activities. The AFC clinical eligibility criteria require that an individual need *daily* assistance with activities, and the appellant has at best documented the need for assistance with only two activities (transferring and dressing) (Exhibit 3, p. 36; 130 CMR 408.419(D)(2)). The record therefore supports MassHealth's modification of the appellant's request and its authorization of AFC Level 1 services.

The appeal is denied.

### **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.

---

Sara E. McGrath  
Hearing Officer  
Board of Hearings

cc: Optum

---

<sup>6</sup> Similar findings are indicated on the MassHealth Adult Foster Care PCP Order Form (Exhibit 3, pp. 11-13).