

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2179107
Decision Date:	01/24/2022	Hearing Date:	01/06/2022
Hearing Officer:	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

Appeal Decision:	Denied	Issue:	Eligibility for Adult Foster Care
Decision Date:	01/24/2022	Hearing Date:	01/06/2022
MassHealth's Rep.:	Krista Berube, RN	Appellant's Reps.:	
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 November 19, 2021, MassHealth denied the appellant's request for MassHealth payment of adult foster care (AFC) Level 2 services (Exhibit 1). The appellant filed a timely appeal on December 1, 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 November 10, 2021, the appellant's provider, Anodyne Homemaker Services Corp., submitted a prior authorization request for AFC Level 2 services for the period of November 10, 2021, through November 9, 2022 (Exhibit 3, p. 3). On November 19, 2021, MassHealth denied the request (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 denied the request.

The MassHealth nurse testified that the appellant is a female in her late 60s with a primary diagnosis of pain in the thoracic spine and a secondary diagnosis of hypertension.¹ The MassHealth nurse referenced medical records submitted by the provider, which included a recent office visit note from October 13, 2021, at a health center (Exhibit 3, pp. 14-22). The report from that visit includes the diagnosis of chronic pain, with the following note: "Hx of Spondylolisthesis grade 1 s/p spinal fusion of L4-L5, L5-S1; Some relief with gabapentin and Tylenol; But said that she has not been going to physical therapy. Locations are too far from her and has no one available to take her to her appt" (Exhibit 3, p. 14). The MassHealth nurse explained that "grade 1" pain is the least severe level of pain. The physical exam at that visit revealed a normal spine, normal extremities, and, neurologically, intact cranial nerves, normal deep tendon reflexes, intact sensation, and normal station gait (Exhibit 3, p. 17). The physician described the appellant as an "alert" and "well appearing" female in "no acute distress." The physician advised the appellant to "[g]et at least 30 minutes of exercise on most days of the week," noting that walking is a good choice (Exhibit 3, p. 18). The physician also encouraged the appellant to go to physical therapy (Exhibit 3, p. 19). The MassHealth nurse stated that a diagnosis of hypertension does not generally affect one's ability to perform activities of daily living.

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 practitioner, indicates that the appellant needs physical assistance with bathing, dressing, toileting, transferring, and mobility, and needs cueing and supervision with these activities and with eating as well (Exhibit 3, p. 9). She stated 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 denied the appellant's request.

¹ The appellant has other diagnoses including neuralgia, prediabetes, mitral stenosis, GERD, heart murmur, hypercholesterolemia, and presbyopia (Exhibit 3, p. 10).

The MDS assessment, completed by the AFC provider, indicates that the appellant requires extensive physical assistance with mobility, transfers, locomotion outside of the home, dressing the lower body, toilet use, and bathing; requires limited physical assistance with dressing the upper body and personal hygiene; and requires supervision level of assistance for locomotion inside of the home and eating (Exhibit 3, pp. 30-31).

The appellant and her caregiver appeared at the hearing telephonically. The caregiver testified that the appellant has been receiving AFC services for over six years. She stated that the appellant's physician does not understand why the services were denied this year. The appellant has gotten worse, not better. She stated that the appellant has received physical therapy in the past and is in fact receiving physical therapy now. The appellant had back surgery (spinal fusion as L4-L5 and L5-S1) and has not been the same since. She is weak and needs help with ambulating, bathing, toileting, and mobility. She has neuropathy and has trouble standing for even 10 minutes; her gait is not at all steady. She recently needed an injection in her left leg.

The MassHealth nurse responded and stated that in the past, prior authorization was not required for AFC services. Now that prior authorization is required, each submission is evaluated for medical necessity. She stated that the recent denial could be related to the medical necessity requirement.

Findings of Fact

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

1. The appellant is a female in her late 60s with a primary diagnosis of pain in the thoracic spine and a secondary diagnosis of hypertension.
2. On November 10, 2021, the appellant's provider submitted a prior authorization request for AFC Level 2 services, for the period of November 10, 2021, through November 9, 2022.
3. Medical records from October 2021 document an essentially normal physical exam, grade 1 pain (with relief from gabapentin and Tylenol), and a recommendation for daily walking and physical therapy.
4. The appellant's caregiver states that she assists the appellant with activities of daily living.
5. The MDS assessment, completed by the AFC provider, indicates that the appellant requires extensive physical assistance with mobility, transfers, locomotion outside of the home, dressing the lower body, toilet use, and bathing; requires limited physical assistance with dressing the upper body and personal hygiene; and requires supervision level of assistance for locomotion inside of the home, and eating.
6. The MDS assessment and the PCP Order Form contain findings that are inconsistent with the medical records.

7. On November 19, 2021, MassHealth denied the appellant's request for MassHealth payment of AFC Level 2 services.
8. On December 1, 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 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

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

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 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 2 services. MassHealth denied 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 do not document any complaints or any reports of significant pain (Exhibit 3, pp. 14-19). Rather, at that time, the appellant's physical exam was essentially normal. Further, the appellant's physician recommended both physical therapy and daily walking exercises. The records do not support a conclusion that the appellant requires physical assistance, cueing, or supervision with any of her activities of daily living.

Both the contents of the MDS assessment, completed by the AFC provider, and the testimony of the appellant's caregiver, suggest that the appellant may need some level of physical assistance with some

described in the regulation above in greater detail (Exhibit 3, pp. 45-50).

of her activities. This evidence, however, is inconsistent with the records from the appellant's own provider. The provider's records describe an individual who is well appearing, not in distress, and has pain that is controlled with medication. Further, the physician prescribes a daily walking exercise regimen. These records do not describe an individual who needs assistance to complete any activity. The objective documentation from the appellant's own provider is more persuasive than the testimony or the MDS assessment.³

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

³ The provider who conducted the appellant's normal exam in October is the same provider who indicated that the appellant needs physical assistance on the PCP Order Form. The office notes were created before the AFC services request, suggesting that they are more objective because they were unrelated to a request for services. The office notes are therefore more credible than the contents of the PCP Order Form.