

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



|                         |             |                       |            |
|-------------------------|-------------|-----------------------|------------|
| <b>Appeal Decision:</b> | Approved    | <b>Appeal Number:</b> | 2179234    |
| <b>Decision Date:</b>   | 3/29/2022   | <b>Hearing Date:</b>  | 01/20/2022 |
| <b>Hearing Officer:</b> | Casey Groff |                       |            |

**Appearance for Appellant:**



**Appearance for MassHealth:**

Leslie Learned, R.N., Clinical Reviewer,  
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>   | Approved                   | <b>Issue:</b>            | Adult Foster Care (AFC) services |
| <b>Decision Date:</b>     | 3/29/2022                  | <b>Hearing Date:</b>     | 01/20/2022                       |
| <b>MassHealth's Rep.:</b> | Leslie Learned, RN         | <b>Appellant's Rep.:</b> |                                  |
| <b>Hearing Location:</b>  | Board of Hearings (Remote) | <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

On December 7, 2021, the Board of Hearings (BOH) received a letter from Appellant's physician regarding Appellant's need for continued Adult Foster Care (AFC) services. See Exhibit 1. On December 10, 2021, BOH dismissed the matter for failure to submit a copy of the MassHealth notice/action giving rise to the appeal, as well as failure to provide a signature from an authorized appeal representative. See Exh. 2. On December 10, 2021, Appellant sent BOH a copy of a December 1, 2021 MassHealth denial for requested Adult Foster Care (AFC) Level II services, as well as a signed fair hearing request. See Exh. 3. Determination of clinical eligibility for AFC services is a valid basis for appeal. See 130 CMR 610.032. Accordingly, BOH vacated the dismissal and scheduled a hearing for January 20, 2022. See Exh. 4.

## Action Taken by MassHealth

MassHealth determined that Appellant is not clinically eligible for AFC Level 2 services.

## Issue

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

## Summary of Evidence

The MassHealth representative, a registered nurse/clinical reviewer, appeared at the hearing by telephone. Through testimony and documentary submissions, MassHealth provided the following evidence: Appellant is a [REDACTED]-year-old male with diagnoses including chronic lower back pain and diabetes. See Exh. 5, pp. 6. On October 22, 2021, a registered nurse from Appellant's Adult Foster Care (AFC) provider, evaluated Appellant to determine his need for continued AFC services. Id. at 6. On November 17, 2021, Appellant's AFC provider submitted a prior authorization (PA) request to MassHealth seeking approval for Level II AFC services for the period of November 30, 2021 through November 29, 2022. Id. at 3. The PA request included the AFC re-evaluation, which noted that Appellant experiences chronic pain, low endurance, fatigue, and has difficulty walking because of his numerous diagnoses. See id. at 6-7. The AFC provider concluded that Appellant requires daily hands-on physical assistance with bathing, dressing (both upper and lower body), transferring, and mobility (indoors and outdoors), as well as cueing and supervision for toileting. Id. at 6. Additionally, the PA request included notes from a recent office visit with Appellant's primary care physician (PCP) dated September 7, 2021, as well as a signed order from his PCP for the requested AFC services.

On November 1, 2021, MassHealth notified Appellant that it denied his PA request for AFC Level II services because he did not meet clinical eligibility criteria for coverage based on MassHealth regulations and guidelines. See Exh. 3. The MassHealth representative explained that MassHealth pays for Level II AFC services only when documentation supports the member's need for three or more activities of daily living (ADLs), or hands-on assistance with two ADLs and management of behavior that requires frequent intervention. MassHealth testified that according to the September 7<sup>th</sup> PCP report, Appellant was documented as having a normal review of systems (ROS) and physical examination. See Exh. 5 at 16-17. Specifically, the physical examination indicated that Appellant had no joint pain, his bilateral upper and lower extremities were strong and equal, and that he had full range of motion (ROM) in his extremities. Id. at 17. Because the PCP note contradicted the need for three or more ADLs, MassHealth denied Appellant's PA request.

The "past medical history" section of the September 7<sup>th</sup> encounter note, which was over two pages long, listed Appellant's diagnoses including asthma, hypertension, bilateral primary osteoarthritis of the knee, generalized osteoarthritis, morbid obesity, chest pain, chronic airway obstruction, radiculopathy of thoracic region, cramp and spasm, diabetes, edema, kidney failure, heart failure, heart disease, history of falling, lumbago, intervertebral disc stenosis, hyperlipidemia, joint pain in multiple sites (hip, knee, hand, throat), shortness of breath, and weakness, among numerous other past and present diagnoses. Id. at 14-16.

Appellant appeared at the hearing with his daughter/caregiver. Both Appellant and his daughter testified that the September 7<sup>th</sup> encounter note did not reflect what occurred at the appointment, nor did it reflect the severity of his condition and functional limitations. They each explained that following MassHealth's denial, they returned to Appellant's PCP to address the inaccuracies in the September 7<sup>th</sup> report. His PCP acknowledged the report was not documented appropriately and attempted to rectify this by writing and signing an updated letter, dated December 7, 2021, which was submitted into evidence and states, in relevant part, the following:

[Appellant] requires daily physical assistance with activities of daily living such as: mobility, dressing, transferring and bathing due to impaired mobility and limited range of motion due to chronic pain radiculopathy of thoracic region, chronic back pain and morbid obesity. [Appellant] has multiple comorbidities: asthma, osteoarthritis of bilateral knee, [diabetes mellitus, hypertension, chronic heart failure], Hypothyroidism, major depressive disorder, and anxiety. For reasons described above, he should continue services through the Gabriel Adult Foster Care Program to avoid any complications of his chronic illnesses.

See Exh. 1, p. 1.

Appellant also submitted a letter dated December 3, 2021, which was signed by two registered nurses from his AFC provider. The letter reiterated Appellant's need for daily hands-on physical assistance with mobility, dressing, transferring, and bathing. It also noted that Appellant is at high risk for falls due to unsteady gait; has decreased strength and endurance due to congestive heart failure (CHF) and asthma requiring use of inhalers, nebulizers, and oxygen; and that he lacks motivation for self-care due to depression following the recent loss of his spouse. See Exh. 1, p. 2.

Appellant explained that it does not make sense MassHealth would end his AFC services after several years when his condition only gets worse. He sustained an injury while in the service, which left him with significant back and leg pain. He also has worsening osteoarthritis in his knees as noted in his PCP's letter. See Exh. 1. He cannot bend at the knee and this is now causing pain and weakness in his hips. Any type of movement causes pain. When he needs to get up from a seated or lying position, he his daughter must assist him into a standing position. His daughter will also bring him from one point to another, such as when he needs to go to the bathroom or to medical appointments. She assists with dressing both his upper and lower body. He can neither bend nor lift his leg. In addition to the immobility in his legs, he has tingling and pain in his arms and shoulders. He requires assistance putting on shirts and bathing, which he typically has his son assist him with. He needs physical assistance walking as he has fallen numerous times and gets winded easily.

Appellant's daughter further described the care she provides to her father, including hands-on assistance with dressing, bathing, grooming, and transferring. She brings him to medical appointments in a wheelchair. At home, Appellant typically uses a cane to ambulate; however, due to his weight and unsteady gait, he is prone to falling and therefore requires hands-on assistance when moving from one location to another. At his last weigh-in, Appellant weighed approximately 300 pounds. Their home is not handicap accessible and she physically assists him up and down the stairs. Appellant cannot independently get up from a seated position as his hips will give out. She helps him with all aspects of dressing, including socks, pants, shirts, and tying his shoes. He has poor range of motion in his shoulders which makes it difficult to get his arms into his shirt. Because of his upper body limitations, she brushes his hair and will typically have her brother assist in washing Appellant in the shower. In addition, she cooks and cleans for Appellant. Without these services he will fall and be unable to take care of himself.

In response, the MassHealth representative stated that it could not approve the requested services

because the clinical documentation did not support the services requested. She also noted that the physician electronically signed the encounter report that Appellant claimed was inaccurate. There were too many contradictions in the September 7<sup>th</sup> report to support the request for services.

## Findings of Fact

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

1. Appellant is a [REDACTED] year-old male with numerous diagnoses including chronic lower back pain, diabetes, congestive heart failure, hypertension, asthma, morbid obesity, radiculopathy of thoracic region, and kidney failure. (Testimony; Exh. 5, p. 3, 6, 11, 14-16).
2. Appellant experiences chronic pain, low endurance, fatigue, and has difficulty walking. (Testimony; Exh. 5, p. 6-7).
3. Appellant is at high risk for falls due to unsteady gait; has decreased strength and endurance due to CHF and asthma requiring use of inhalers, nebulizers, and oxygen; and that he lacks motivation for self-care due to depression following the recent loss of his spouse. (Exh. 1, Exh. 5; Testimony).
4. On October 22, 2021, Appellant's AFC provider performed an AFC re-evaluation of Appellant and concluded that he required daily hands-on physical assistance with bathing, dressing (both upper and lower body), transferring, and mobility (indoors and outdoors), as well as supervision and cueing with toileting. (Testimony; Exh. 5, p. 6).
5. On November 17, 2021, Appellant's AFC provider submitted a PA request to MassHealth seeking approval for Level II AFC services for the period of November 30, 2021 through November 29, 2022. (Testimony; Exh. 5, p. 3).
6. The PA request included a copy of the AFC re-evaluation, a signed order from Appellant's PCP for services requested, and PCP notes from a September 7, 2021 medical appointment. (Exh. 5).
7. In contrast to the AFC re-evaluation and physician order, the September 7<sup>th</sup> PCP report indicated that Appellant had a normal ROS and physical examination, no joint pain, his bilateral upper and lower extremities were strong and equal, and that he had full ROM in his extremities. (Testimony; Exh. 5).
8. The September 7<sup>th</sup> report also included Appellant's "past medical history" which listed two-pages of diagnoses including asthma, bilateral primary osteoarthritis of the knee, morbid obesity, chest pain, chronic airway obstruction, cramp and spasm, diabetes, edema, heart disease, history of falling, lumbago, intervertebral disc stenosis, hyperlipidemia, joint pain in multiple sites (hip, knee, hand, throat), shortness of breath,

and weakness, among numerous other diagnoses. (Exh. 5, pp. 14-16).

9. On November 1, 2021, MassHealth notified Appellant that it denied his PA request because he did not meet clinical eligibility criteria for AFC Level II coverage; specifically Appellant did not demonstrate a need for assistance with three or more ADLs. (Testimony; Exh, 3).
10. Because the September 7<sup>th</sup> PCP report did not accurately reflect Appellant's functional limitations, Appellant's PCP wrote and signed an updated letter dated December 7<sup>th</sup>, 2021, which stated in relevant part, the following: *"[Appellant] requires daily physical assistance with activities of daily living such as: mobility, dressing, transferring and bathing due to impaired mobility and limited range of motion due to chronic pain radiculopathy of thoracic region, chronic back pain and morbid obesity. [Appellant] has multiple comorbidities: asthma, osteoarthritis of bilateral knee, DM, HTN, CHF, Hypothyroidism, major depressive disorder, and anxiety. For reasons described above, he should continue services through the Gabriel Adult Foster Care Program to avoid any complications of his chronic illnesses."* (Exh. 1, p. 1; Testimony).
11. Appellant requires physical assistance with bathing, hair brushing, and dressing (both upper and lower body) due to pain and poor range of motion in his leg (knee) and arms and shoulders. (Testimony; Exhibit 1; Exhibit 5, pp. 6-7).
12. Appellant requires physical assistance transferring from a sitting/lying position into a standing position due to pain and weakness in Appellant's hips and knees. (Testimony; Exhibit 1; Exhibit 5, pp. 6-7).
13. Appellant requires physical assistance with mobility, including going from one room to another (i.e. bathroom), walking up and down the stairs, and going to medical appointments.

## **Analysis and Conclusions of Law**

MassHealth's Adult Foster Care (AFC) program is a community-based program, which allows members to receive personal care assistance and homemaking services in their home from a qualified live-in caregiver. AFC services are designed to meet the member's need for assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs). The AFC provider must ensure the delivery of direct care to the member by a qualified AFC caregiver under the supervision of a registered nurse and a qualified AFC care manager. See 130 CMR 408.415. Direct care includes 24-hour supervision, daily assistance with ADLs and IADLs, and other personal care as needed. Id.

MassHealth regulations set forth the following clinical eligibility criteria for members to qualify for AFC services:

(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.

See 130 CMR 408.416

If all clinical eligibility criteria and program conditions are met, MassHealth will pay for AFC services at one of the following two established pay-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 the 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.:

- i. wandering: moving with no rational purpose, seemingly oblivious to needs or safety;
- ii. verbally abusive behavioral symptoms: threatening, screaming, or cursing at others;
- iii. physically abusive behavioral symptoms: hitting, shoving, or scratching;
- iv. 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
- v. resisting care.

See 130 CMR 408.419(D).

In addition to regulatory requirements, MassHealth has promulgated “Guidelines for Medical Necessity Determination for Adult Foster Care” (“the Guidelines”). Among other things, these Guidelines set forth the clinical requirements for each ADL, described in the regulation above, in greater detail. Additionally, the Guidelines list the required documentation that must be submitted with the prior authorization request form, including the MassHealth Designated Clinical Assessment Form, PCP order, and “clinical documentation, evaluations, or assessments that support the signs and symptoms pertinent to the chronic or post-acute medical, cognitive, or mental health condition(s) identified by the member's PCP that require active monitoring, treatment, or intervention and ongoing observation and assessment by a nurse, without which the member's quality of life will likely not be maintained; and that describe the member's condition and support the member's need for AFC.” See Exh. 5, p. 30, § IV(A). MassHealth will not cover AFC services if clinical documentation is missing insufficient and/or inconsistent. See Exhibit 5, p. 28, § II. B. 3).

In this case, MassHealth denied Appellant’s request for AFC Level II services based on its determination that the medical documentation did not support the need for physical assistance with three or more ADLs. In support of its request for services, Appellant’s AFC provider submitted a copy of an AFC re-evaluation dated October 22<sup>nd</sup>, notes from Appellant’s last PCP encounter, and a signed PCP order for AFC Level II services citing Appellant’s need for hands-on assistance with bathing, dressing, transferring, and mobility, as well as supervision with toileting.

As MassHealth noted at hearing, the September 7<sup>th</sup> PCP encounter notes indicated that Appellant had a normal physical examination with full range of motion in the extremities and no reports of pain. While the contents of this report indeed contradict the need for requested services, the totality of evidence supports Appellant’s contention that the ROS and physical examination did not reflect what actually occurred at the appointment, nor reflected the true extent of his functional limitations. Interestingly, the September 7<sup>th</sup> encounter included a “past medical history” section, which spanned two-pages long and listed diagnoses of asthma, bilateral primary osteoarthritis of the knee, generalized osteoarthritis, morbid obesity, chest pain, chronic airway obstruction, cramp and spasm, diabetes, edema, heart disease, history of falling, lumbago, intervertebral disc stenosis, hyperlipidemia, joint pain in multiple sites (hip, knee, hand, throat), shortness of breath, and



weakness, among numerous other diagnoses. Despite his significant and lengthy medical history, the encounter documented - without explanation - that Appellant had an unremarkable examination with no functional limitations. In attempts to clarify the conflicting information, Appellant's PCP signed and submitted an updated note, dated December 7<sup>th</sup> which confirmed and further detailed Appellant's need for hands-on assistance with multiple ADLs due to his significant comorbidities, as explained above. See Exh. 1. This submission sufficiently remedied the contradictions posed by the September 7<sup>th</sup> PCP note. Additionally, the testimony provided by Appellant and his daughter/caregiver at hearing further corroborated, in significant detail, the specific hands-on assistance Appellant receives with respect to bathing, mobility, transfers, and bathing. In consideration of the testimony at hearing, the updated December 7<sup>th</sup> PCP letter, and the PA request/re-evaluation documents, Appellant successfully demonstrated that his request for AFC Level II services is medically necessary.

Based on the foregoing, this appeal is APPROVED.

## **Order for MassHealth**

Approve AFC Level II services for dates of service starting November 30, 2021 through November 29, 2022, as requested in Appellant's prior authorization request dated November 17, 2021.

## **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 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.

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Casey Groff  
Hearing Officer  
Board of Hearings

cc:

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