

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	DENIED	<b>Appeal Number:</b>	2179652
<b>Decision Date:</b>	7/13/2022	<b>Hearing Date:</b>	05/12/2022
<b>Hearing Officer:</b>	Kenneth Brodzinski	<b>Record Open to:</b>	06/03/2022

**Appearance for Appellant:**

 (Guardian)

**Appearance for MassHealth:**

Jamie Capizzano, RN



*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>	Prior Authorization – Adult Foster Care
<b>Decision Date:</b>	7/13/2022	<b>Hearing Date:</b>	05/12/2022
<b>MassHealth's Rep.:</b>	Jamie Capizzano, RN	<b>Appellant's Rep.:</b>	Guardian
<b>Hearing Location:</b>	Quincy	<b>Aid Pending:</b>	No

## 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 December 1, 2021, MassHealth denied Appellant's request for Level II Adult Foster Care services, but approved Level I services (Exhibit A). Appellant filed this appeal in a timely manner on March 31, 2022 (see 130 CMR 610.015(B) and Exhibit A). Denial of assistance constitutes valid grounds for appeal (see 130 CMR 610.032).

## Action Taken by MassHealth

MassHealth denied Appellant's request for Level II Adult Foster Care services.

## Issue

The appeal issue is whether MassHealth properly applied the controlling regulation(s) to accurate facts when it denied Appellant's request for Level II Adult Foster Care services.

## Summary of Evidence

Both parties appeared by telephone. At the time of hearing, MassHealth submitted a copy of the PA packet (Exhibit C); Appellant made no submission. After the hearing, Appellant filed additional documentation (Exhibit D); MassHealth filed a response thereto, (Exhibit E).

The MassHealth representative testified that on October 29, 2021, the agency received a prior authorization (PA) request submitted a request by Gia Homecare Services on behalf of Appellant seeking approval for Level II Adult Foster Care (AFC). On December 1, 2021, MassHealth denied Level II AFC, but approved Level I AFC.

According to MassHealth, Appellant does not meet the Level II requirement of needing hands-on (physical) assistance with at least three of the activities of daily living or hands-on (physical) assistance with at least two of the activities of daily living (ADLs) plus management of behaviors that require frequent caregiver intervention. Because Appellant does meet the requirements for Level I in that she requires hands-on (physical) assistance with one or two of the ADLs 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 to complete the activity.

According to the written PA request, Appellant is a [REDACTED] male with a primary diagnosis of intervertebral disc degeneration, lumbar region and a secondary diagnosis of morbid obesity. In the request, the provider agency asserts Appellant requires daily hands on help with the ADLs of bathing, dressing, and toileting as well as daily supervision and cueing for the ADLs of transferring and mobility. According to the request, Appellant needs help due to signs and symptoms of: weakness, tingling, and excessive fatigue.

The MassHealth representative reviewed the clinical documentation submitted with the request to show how it does not support and is inconsistent with the provider agency's assertions regarding Appellant's condition and functional capacity.

- The AFC RN states Appellant requires assistance with ADLs such as bathing/grooming. Which constitutes only one ADL (Exhibit C, page 10).
- Physical examination (PE) dated 8/31/21, general examination: normal. gait normal, no weakness, tingling, or fatigue noted (Exhibit C, page 13).
- Review of Systems: Patient denies joint pains, denies mood changes (Exhibit C, page 15).
- Primary diagnosis of disc degeneration is not mentioned in this PE (Id).
- Office visit notes dated 7/12/ 21 and 5/27/ 21 both concur with patient denying joint pain, no mention of disc degeneration.
- Note dated 5/27/21 Appellant states Appellant lost weight intentionally and has been very active outdoors, going for walks.

- PE dated 01/12/21, Appellant stated that he only needed help with bathing and grooming. Appellant stated that he did not need help with dressing or walking (Exhibit C, page 23).
- General examination negative, no mention of disc degeneration.
- One year of office visit notes do not support Appellant needing hands-on assistance with dressing and toileting based on weakness and tingling from disc degeneration.
- The provider submitted Appellant's outpatient psychiatry notes, ranging from dates of 1/1/21 - 11/ 18/21 that support a dx schizoaffective disorder (Exhibit C, page 34-35).
- Appellant's discharge care plan from Southcoast Behavioral Health dated 11/23/21 states Appellant does not need help with bathing, dressing, using the bathroom or stairs (Exhibit C, page 37).

Lastly, the MassHealth representative testified that the agency deferred this prior authorization and requested the provider to submit further clinical documentation to support Level II on 11/10/21. The provider did not submit further documentation to support Level II and on 12/1/21 MassHealth approved Level I.

MassHealth based its actions on 130 CMR: 408.416: Clinical Eligibility Criteria for AFC; 130 CMR: 450.204: Medical Necessity; and AFC Guidelines for Medical Necessity Determination for Adult Foster Care (AFC)(4)(A).

Appellant was represented by his guardian testified that Appellant is schizophrenic and does not accurately relay information about his condition to his healthcare providers. The Guardian testified that Appellant weighs over 400 pounds. She testified that Appellant's caregiver has to clean Appellant after toileting and also has to dress him because Appellant is too large to dress himself and he gets winded easily with any sort of activity. The Guardian testified that Appellant is so large, he often wants to stay in bed all day.

In response, the MassHealth representative asserted that the medical records do not mention Appellant's weight although they do indicate that he has a BMI of 50. The MassHealth representative also testified that the clinical documentation does not support the guardian's testimony as the limitations she mentioned are not identified in Appellant's records.

The hearing record was left open to allow Appellant's guardian to obtain a letter from Appellant's treating physician that would support the guardian's testimony and the need for Level II AFC services.

Appellant's guardian submitted additional documentation in a timely manner (Exhibit D). The MassHealth representative filed a written response noting that Appellant's post-hearing submission did not contain a letter from Appellant's treating physician. The

submission consisted of only a copy of a single progress note from January 12, 2021 which had already been submitted and considered with the subject PA request; therefore, it provided no additional information or basis to alter MassHealth's determination (Exhibit D).

## Findings of Fact

By a preponderance of the evidence, this record supports the following findings:

1. On October 29, 2021, MassHealth received a prior authorization (PA) request submitted a request by Gia Homecare Services on behalf of Appellant seeking approval for Level II Adult Foster Care (AFC).
2. On December 1, 2021, MassHealth denied Level II AFC, but approved Level I AFC.
3. Appellant does not hands-on (physical) assistance with at least three of the activities of daily living or hands-on (physical) assistance with at least two of the activities of daily living (ADLs) plus management of behaviors that require frequent caregiver intervention.
4. Appellant requires hands-on (physical) assistance with one or two of the ADLs 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 to complete the activity.
5. According to the PA request, Appellant is a [REDACTED] male with a primary diagnosis of intervertebral disc degeneration, lumbar region and a secondary diagnosis of morbid obesity.
6. According to the PA request, Appellant requires daily hands on help with the ADLs of bathing, dressing, and toileting as well as daily supervision and cueing for the ADLs of transferring and mobility due to signs and symptoms of: weakness, tingling, and excessive fatigue.
7. The AFC RN wrote in Appellant's records that Appellant requires assistance with ADLs such as bathing/grooming. Which constitutes only one ADL (Exhibit C, page 10).
8. Physical examination (PE) dated 8/31/21, general examination: normal. gait normal, no weakness, tingling, or fatigue noted (Exhibit C, page 13).
9. Review of Systems: Patient denies joint pains, denies mood changes (Exhibit C, page 15).

10. Primary diagnosis of disc degeneration is not mentioned in this PE (Id).
11. Office visit notes dated 7/12/ 21 and 5/27/ 21 both concur with patient denying joint pain, no mention of disc degeneration.
12. Progress note dated 5/27/21 Appellant states Appellant lost weight intentionally and has been very active outdoors, going for walks.
13. PE dated 01/12/21, Appellant stated that he only needed help with bathing/grooming. Appellant stated that he did not need help with dressing or walking (Exhibit C, page 23).
14. General examination negative, no mention of disc degeneration (Id).
15. One year of office visit notes do not indicate that Appellant needs hands-on assistance with dressing and toileting based on weakness and tingling from disc degeneration.
16. Appellant's outpatient psychiatry notes, ranging from dates of 1/1/21 - 11/ 18/21 indicate a diagnosis schizoaffective disorder (Exhibit C, page 34-35).
17. Appellant's discharge care plan from Southcoast Behavioral Health dated 11/23/21 states Appellant does not need help with bathing, dressing, using the bathroom, or stairs (Exhibit C, page 37).
18. Upon initial review of the PA request, MassHealth deferred a decision and requested the provider to submit further clinical documentation to support Level II.
19. The provider did not submit further documentation to support Level II and MassHealth approved Level I.
20. MassHealth based its actions on 130 CMR: 408.416: Clinical Eligibility Criteria for AFC; 130 CMR: 450.204: Medical Necessity; and AFC Guidelines for Medical Necessity Determination for Adult Foster Care (AFC)(4)(A)
21. The hearing record was left open to allow Appellant's guardian to obtain a letter from Appellant's treating physician that would support the guardian's testimony and the need for Level II AFC services.
22. Appellant's guardian submitted additional documentation in a timely manner (Exhibit D).
23. Appellant's post-hearing submission did not contain a letter from Appellant's treating physician.

24. Appellant's post-hearing submission consisted of only a copy of a single progress note from January 12, 2021 which had already been submitted and considered with the subject PA request (Exhibit D).

25. MassHealth did not alter its determination based on the guardian's testimony and post-hearing submission (Exhibit D).

## Analysis and Conclusions of Law

*"The burden of proof is on the appealing party to show that the order appealed from is invalid, and we have observed that this burden is heavy" (Massachusetts Inst. of Tech. v. Department of Pub. Utils., 425 Mass. 856, 867, 684 N.E.2d 585 (1997)).*

According to section 2(B)(3) of the *MassHealth Guidelines for Medical Necessity Determinations for Adult Foster Care Services*, MassHealth does not cover AFC services nor consider AFC to be medically necessary under certain circumstances including *"when the clinical documentation, including assessments and plan of care to support the need for or continuation of AFC, is missing, insufficient, and/or **inconsistent**"* (emphasis supplied).

MassHealth has demonstrated how Appellant's clinical records are inconsistent with the plan of care which seeks Level II AFC services. Appellant's clinical records clearly document the need for hands-on assistance with only bathing/grooming which constitutes one ADL (130 CMR 408.416(B)(1)). Accordingly, the medical necessity for Level II AFC, which requires the need for hands-on assistance with at least two ADL's, has not been met (130 CMR 408.419(D)(2)). MassHealth did, however, ignore the inconsistency upon finding grounds in the clinical records and the PA request to support Level I AFC services.

At hearing, Appellant's guardian offered testimony that was consistent with the PA request, but inconsistent with Appellant's clinical documentation. The guardian accepted an opportunity to obtain a letter from Appellant's treating physician to help verify her testimony. The guardian submitted no such letter and instead opted to file a copy of a progress note that had already been reviewed and considered by MassHealth. This progress note did not support the guardian's testimony.

On this record, Appellant has not met her burden and 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.

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Kenneth Brodzinski  
Hearing Officer  
Board of Hearings

cc:

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