

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2200060
Decision Date:	4/20/2022	Hearing Date:	03/10/2022
Hearing Officer:	Sara E. McGrath		

Appearances for Appellant:



Appearances for MassHealth:

Jamie Capizzano, RN
Leslie Learned, 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:	4/20/2022	Hearing Date:	03/10/2022
MassHealth's Reps.:	Jamie Capizzano, RN Leslie Learned, RN	Appellant's Reps.:	Pro se
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 January 3, 2022, MassHealth denied the appellant's request for MassHealth payment of adult foster care (AFC) Level II services (Exhibit 1). The appellant filed a timely appeal on January 3, 2022 (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 II services.

Issue

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

Summary of Evidence

The MassHealth representatives, utilization management nurses, appeared at the hearing telephonically and testified that this appeal concerns MassHealth's denial of a request for AFC Level II services. On December 17, 2021, the appellant's provider, Royale Care, Inc., submitted a prior authorization request for AFC Level II services for the period of December 17, 2021 through December 16, 2022 (Exhibit 3, p. 3). On January 3, 2022, MassHealth denied the request (Exhibit 1, p. 3). The MassHealth representative stated that to receive coverage for AFC Level II 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.

One of the MassHealth nurses testified that the appellant is a female in her late 50s with a primary diagnosis of polyosteoarthritis, unspecified, and a secondary diagnosis of pain in the thoracic spine. She referenced the MassHealth Adult Foster Care Primary Care Provider Order Form (PCP Order Form), which is signed by a physician and indicates that the appellant needs physical assistance with bathing, dressing, and mobility, and needs cueing supervision with toileting and transferring (Exhibit 3, p. 10).¹ She testified 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, or cueing and supervision, with any activities on a daily basis.

The MassHealth nurse referenced medical records submitted by the provider, which include a recent office visit note from December 8, 2021 (Exhibit 3, pp. 14-20). At that visit, the physician noted the appellant's diagnoses of myofascial pain syndrome, chronic midline thoracic back pain, and generalized osteoarthritis of multiple sites (Exhibit 3, p. 14). The physician stated that the appellant was planning to travel to the Dominican Republic for the holidays, and upon her return would call back to consider physical therapy and a trial of other medications such as muscle relaxers. She stated that the appellant noted no alarming symptoms at the time and felt she could control her discomfort with her current medications (Exhibit 3, p. 14). At this visit, the appellant reported acute on chronic back pain which she manages with gabapentin and Tylenol. The appellant denied radiation to her upper or lower extremities, and reported no numbness, tingling, weakness, or other neurological deficits (Exhibit 3, p. 16). Under the review of systems (musculoskeletal and neurological), the appellant was positive for back pain, myalgias, and neck pain, but was negative for numbness tingling, and weakness (Exhibit 3, p. 17). The MassHealth nurse stated that this report supports a conclusion that AFC services are not medically necessary. If the appellant is able control her discomfort, she should not need assistance to complete any of her daily activities. The AFC provider has indicated that one of the signs and symptoms of the appellant's diagnoses is weakness; this conflicts with the physical exam finding of no weakness.

¹ The MassHealth nurse also referenced the MDS assessment, which is a tool completed by the AFC provider. This assessment includes findings similar to those on the PCP Order Form (Exhibit 3, pp. 22-23).

The MassHealth nurse referenced a November 23, 2021 letter written by the appellant's physician (Exhibit 3, p. 13). The physician writes that the appellant has multiple medical conditions that require her to receive physical assistance with dressing, bathing, and ambulation. Further, she needs cueing and supervision with transfers and toilet use. She needs assistance with her instrumental activities of daily living. The MassHealth nurse stated that the statements in this letter conflict with the medical records; the recent office note includes a statement by the appellant's physician that the appellant's pain is controlled with medication.

The MassHealth nurse also referenced a narrative dated December 17, 2021 written by a nurse from the AFC provider agency. The nurse writes that the appellant requires the following:

[L]imited physical assistance with bathing (washing and drying front/back lower body with shower or bath including her chest, back, and peri-area), dressing (upper/lower body including street clothes, undergarments, and putting on shoes or socks) and ambulation (physically steadying, guiding, and assisting during ambulation) as well as cueing and supervision with transfers and toilet use due to [her] fragile health state resulting from [her] long-term polyarthrititis, pain in her thoracic spine, fibromyalgia, and hypothyroidism. She reports experiencing moderate to severe pain in her low back, joint pain, lack of energy, and weakness daily all of which interfere with her daily activities. AFC services are recommended for consumer to continue to thrive and be maintained safely in the community setting.

(Exhibit 3, p. 20).

The MassHealth nurse explained that this narrative conflicts with the recent physical exam as well. She also pointed out that the appellant does not use an assistive device, and has not tried physical therapy yet (Exhibit 3, p. 23).

The appellant appeared at hearing by telephone and explained that she has pain in her whole body that waxes and wanes. She gets dizzy when putting on her shoes or doing her hair. Her hands hurt a lot too, especially when she needs to hold up her hands to do her hair. She has a lot of back pain. She has fatigue, exacerbated by a recent Covid diagnosis. She just had a CT scan to check her lungs. She experiences severe fatigue and dizziness when dressing. She does not sleep well at all. Her physician is new to her and she is unfamiliar with her multiple conditions. She reported her pain to her new doctor, but she didn't do much about it. She stated that she hasn't tried physical therapy because of the pandemic. She also stated that she has "liquid in her knee." When she has pain, she needs someone next to her because of her balance. Even when she doesn't have pain, she needs help with her shoes and doing her hair, due to dizziness and weakness. With dressing, the appellant's daughter/caregiver helps with lower body dressing, and her shirt if she wears a shirt that goes over her head. With showering, the caregiver helps with her back, legs, feet, and hair. With ambulation, the appellant's caregiver doesn't hold her, but stays near her in case she becomes unsteady.

The MassHealth nurse responded and stated that because the appellant's need for help with ambulation comes and goes, the need is considered anticipatory and is not covered by the AFC program. Similarly, because her pain comes and goes, she does not appear to need daily assistance and thus would not qualify for AFC services.

Post-hearing, the appellant submitted office notes from a March 31, 2022 visit (Exhibit 5). The physician notes, in part, the following:

She was reporting back pain that appears to be musculoskeletal in nature. Her main issues appear to be related to musculoskeletal complaints. She is having midline and bilateral lower back pain. The pain is worse with movement and bending or reaching for objects. She denies lower extremity numbness or tingling and denies symptoms of claudication. No urinary or fecal incontinence. This is chronic and acutely exacerbated over the past few weeks. She has diagnoses of myofascial syndrome and fibromyalgia. She is on gabapentin and uses OTC Tylenol for pain control. She has not tried physical therapy for her back yet.

...

She has diagnoses of depression, lumbar DDD, OA of multiple sites, myofascial syndrome and fibromyalgia. She currently requires PCA services and has required assistance or ADL's, IADL's, and medication administration given poor health literacy and depression. Specifically she receives assistance for dressing upper and lower body, bathing, toileting, transferring in and out of shower, preparing meals, getting groceries and paying bills. She does require physical assistance with these tasks.

(Exhibit 5, p. 2).

Under the review of symptoms (musculoskeletal), the physician noted that the appellant was positive for arthralgias, back pain, gait problem, knee pain, myalgias, and neck stiffness (Exhibit 5, p 3). On physical exam (musculoskeletal), the physician noted that spasms were present in the thoracic back, and that spasms and tenderness were present in the lumbar back (Exhibit 5, p. 4).

On April 5, 2022, MassHealth responded to the additional medical documentation, stating in part the following: "After review of new documentation and the appellant's testimony, MassHealth has modified this appealed Prior Authorization to reflect Level 1 AFC Services for Supervision and Cueing for Bathing, Dressing, and Transferring related to Osteoarthritis of multiple sites and Fibromyalgia" (Exhibit 6). The appellant then indicated that she feels that she meets the requirements for AFC Level II services.²

² During the record-open period, the AFC provider submitted a new PA request for AFC Level II services. Because of the pending appeal and the current PA (in effect until December 2022), MassHealth indicated that it would not act on the new PA. The appellant agreed to this plan.

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 with a primary diagnosis of polyosteoarthritis, unspecified, and a secondary diagnosis of pain in the thoracic spine.
2. On December 17, 2021, the appellant's provider submitted a prior authorization request for AFC Level II services for the period of December 17, 2021 through December 16, 2022.
3. The PCP Order Form indicates that the appellant needs physical assistance with bathing, dressing, and mobility, and needs cueing supervision with toileting and transferring.
4. The appellant experiences pain that waxes and wanes in severity.
5. The appellant experiences fatigue and dizziness on a regular basis.
6. The appellant takes pain medications including gabapentin and Tylenol.
7. Office visit notes from December 2021 and March 2022 document that the appellant has back pain that is worse with movement and bending or reaching for objects, but does not have any neurological symptoms such as weakness, numbness, or tingling.
8. The appellant's caregiver consistently assists the appellant with lower body dressing and with portions of bathing.
9. The appellant's caregiver consistently supervises the appellant with ambulation.
10. On January 3, 2022, MassHealth denied the appellant's request for MassHealth payment of AFC Level II services.
11. On January 3, 2022, the appellant filed a timely appeal with the Board of Hearings.
12. On April 5, 2022, MassHealth reviewed additional information and modified its determination to an approval of AFC Level I services.

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.³

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:

³ 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. 28-33).

- (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 II services. MassHealth modified the request to AFC Level I services 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. Instead, MassHealth determined that the appellant requires supervision and cueing with bathing, dressing, and transferring related to her diagnoses of osteoarthritis of multiple sites and fibromyalgia (Exhibit 6).

On this record, the appellant has not demonstrated the medical necessity of AFC Level II services. The PCP Order Form indicates that the appellant needs physical assistance with three activities – bathing, dressing, and mobility (Exhibit 3, p. 19). The most current medical records submitted with the prior authorization request do not support that the appellant needs this level of assistance. The appellant's physician confirms her diagnoses and pain, and references her need for physical assistance with dressing upper and lower body, bathing, toileting, and transferring in and out of shower (Exhibit 5). The appellant's testimony, however, provided more detailed information about her symptoms and her needs. She indicated that her pain levels vary and that she needs consistent physical assistance with lower body dressing, and with some portions of her shower. To be considered in need of physical assistance with dressing and bathing, the AFC Guidelines require that the member need daily hands-on assistance with the *entire* task (full-body shower and *both* upper- and lower-body dressing) (Exhibit 3, p. 29). The record does not support a determination that the appellant's needs rise to this level. Further, the appellant's testimony confirmed that her need for assistance with ambulation is intermittent and can mostly be characterized as a need for supervision and cueing. Lastly, the appellant did not indicate that she needs any assistance with toileting. Thus, there is insufficient evidence to support a finding that the appellant requires consistent assistance with at least three activities.

On this record, the appellant has not demonstrated the medical necessity of AFC Level II services.

For the foregoing reasons, this 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