

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2200165
Decision Date:	3/11/2022	Hearing Date:	02/11/2022
Hearing Officer:	Scott Bernard		

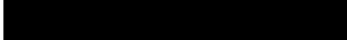
Appearance for Appellant:



Appearance for MassHealth:

Krista Berube, RN *via* telephone;
Jamie Capizzano, RN (Observing) *via* telephone

Interpreter:



*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

Appeal Decision:	Denied	Issue:	Adult Foster Care (AFC)
Decision Date:	3/11/2022	Hearing Date:	02/11/2022
MassHealth's Rep.:	Krista Berube, RN	Appellant's Rep.:	[REDACTED]
Hearing Location:	Quincy Harbor South Tower	Aid Pending:	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 November 19, 2021, MassHealth denied the appellant's prior authorization (PA) request for MassHealth AFC services because it determined that the clinical documentation submitted on the appellant's behalf did not demonstrated the need for the services. (See 130 CMR 408.416; 408.417; 450.204(A)(1); and Exhibit (Ex.) 1, pp. 3-4). The appellant filed this appeal in a timely manner on January 8, 2022. (See 130 CMR 610.015(B); Eligibility Operations Memo 20-09; and Ex. 1, p. 5). Denial of assistance is valid grounds for appeal. (See 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's PA request for AFC.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 408.416, 408.417, 408.419 and 450.204, in determining that the requested services should be denied.

Summary of Evidence

The MassHealth representative stated that the appellant is an individual who is under the age of 65 with a primary diagnosis of chronic pain syndrome and a secondary diagnosis of major depressive disorder. (Ex. 3, p. 6). On the appellant's behalf, Royal Care Inc. (the provider) submitted a PA

request for AFC, which MassHealth received on November 5, 2021. (Ex. 3, pp. 9-11). Specifically, the provider requested the level II service payment rate for AFC service from December 28, 2021 through December 27, 2022. (Ex. 3, p. 3). The PCP order submitted with the PA request states that the appellant requires hands-on assistance with bathing, dressing, toileting, and mobility. (Ex. 3, p. 9). The PCP order states that the appellant does not have behavior issues such as wandering, verbal abuse, physical abuse, socially inappropriate behavior, or resisting care. (Ex. 3, pp. 9-10). The MassHealth representative stated that MassHealth will pay the level II service payment rate for MassHealth members who require hands-on physical assistance with at least three activities of daily living (ADLs); or hands-on physical assistance with two ADLs and management of a member behavior requiring frequent caregiver intervention. (Ex. 3, pp. 24, 25, 26-27). On November 19, 2021, MassHealth sent the appellant and the provider a determination denying the PA request because the appellant did not meet clinical eligibility criteria for coverage as outlined in MassHealth's Guidelines for Medical Necessity Determination for Adult Foster Care (AFC), Section 2(A) and 130 CMR 408.416. (Ex. 1, pp. 3-4; Ex. 3, pp. 4-5, 24, 26-27).

MassHealth denied the PA request based on statements contained in the medical records submitted with the PA request. The medical records state that the appellant has discomfort caused by a herniated lumbar disc, but the discomfort had generally improved. (Ex. 3, p. 12). The appellant has chronic left knee pain, but the medical records reported that the appellant walked three to four times per week and exercised three to four times per week. (Ex. 3, pp. 12, 13). The appellant was able to perform an "Up and Go" test in less than 30 seconds, did not need help with ADLs, and was not at risk for falls. (Ex. 3, p. 13). The MassHealth representative stated that the medical records do not support the medical necessity of the requested AFC services. (Ex. 3, p. 25).

The appellant's daughter, who lives with the appellant, represented the appellant at the hearing. She stated that the appellant has problems with her back and knees. The appellant has had surgery on her knees and has been given shots to treat her knee problems. The appellant has swollen feet requiring elevation. The appellant's daughter stated that her "good" leg was becoming affected. The appellant's daughter stated that she assists the appellant with her back. The appellant is bedridden for days after getting injections. There were a few days where the appellant was not able to walk. The appellant had an appointment about her knees scheduled for the day for the hearing. The appellant's daughter stated that the appellant's primary care physician was perplexed by the denial and felt the appellant did qualify for AFC. The appellant was scheduled to have surgery on her gallbladder on March 4, 2022.

Findings of Fact

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

1. The appellant is an individual who is under the age of 65 with a primary diagnosis of chronic pain syndrome and a secondary diagnosis of major depressive disorder. (Ex. 3, p. 6; Testimony of the MassHealth representative).
2. On November 5, 2021, the provider submitted a PA request for AFC on the appellant's behalf requesting level II service payment for AFC service from December 28, 2021 through December 27, 2022. (Ex. 3, pp. 3, 9-11).

3. The PCP order submitted with the PA request states that the appellant requires hands-on assistance with bathing, dressing, toileting, and mobility. (Ex. 3, p. 9).
4. The PCP order states that the appellant does not have behavior issues such as wandering, verbal abuse, physical abuse, socially inappropriate behavior, or resisting care. (Ex 3, pp. 9-10).
5. MassHealth will pay the level II service payment rate for MassHealth members who require hands-on physical assistance with at last three ADLs or hands-on physical assistance with two ADLs and management of a member behavior requiring frequent caregiver intervention. (Testimony of the MassHealth representative; Ex. 3, pp 24, 25, 26-27).
6. On November 19, 2021, MassHealth sent the appellant and the provider a determination denying the PA request because the appellant did not meet clinical eligibility criteria for coverage as outlined in MassHealth's Guidelines for Medical Necessity Determination for Adult Foster Care (AFC), Section 2(A) and 130 CMR 408.416. (Ex. 1, pp. 3-4; Ex. 3, pp. 4-5, 24, 26-27).
7. MassHealth denied the PA request based on the medical records submitted with the PA request. (Testimony of the MassHealth representative).
8. The medical records state that the appellant has discomfort caused by a herniated lumbar disc but that the discomfort had generally improved. (Ex. 3, p. 12).
9. The medical records indicated that the appellant has chronic knee pain but reported that the appellant walked three to four times per week and exercised three to four times per week. (Ex. 3, pp. 12, 13).
10. The medical records stated that the appellant was able to perform an "Up and Go" test in less than 30 seconds, did not need help with ADLs, and was not at risk for falls. (Ex. 3, p. 13).
11. The appellant's daughter reports that the appellant has pain in her back and knees and requires assistance with walking. (Testimony of the appellant's daughter).

Analysis and Conclusions of Law

As part of the prior authorization process, members seeking AFC must undergo a clinical assessment to assess the member's clinical status and need for AFC. (130 CMR 408.417(A)). As a prerequisite for payment of AFC, the AFC provider must obtain prior authorization from MassHealth or its designee before the first date of service delivery and annually thereafter, and upon significant change. (130 CMR 408.417(B)(1)). Prior authorization determines the medical necessity for AFC as described under 130 CMR 408.416 and in accordance with 130 CMR 450.204: Medical Necessity. (130 CMR 408.417(B)(2)). Prior authorization may specify the service level for payment for the service. (130 CMR 408.417(B)(3)). When submitting a request for prior authorization for payment of AFC to MassHealth, or its designee, the AFC provider must submit requests in the form

and format as required by MassHealth. (130 CMR 408.417(B)(5). The AFC provider must include all required information, including, but not limited to, documentation of the completed clinical assessment conducted by MassHealth or its designee; other nursing, medical or psychosocial evaluations or assessments; and any other documentation that MassHealth, or its designee, requests in order to complete the review and determination of prior authorization. (Id.).

A member must meet the following clinical eligibility criteria for receipt of AFC.

(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. (130 CMR 408.416; Guidelines Section 2(A)).

MassHealth 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 described 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. (130 CMR 408.419(D)(2)).

The record shows that the appellant has chronic pain syndrome and major depressive disorder. The appellant's PCP confirms that the appellant has discomfort caused by a herniated lumbar disc, as well as chronic knee pain. The PCP also states, however, that the appellant lumbar discomfort has generally improved and that the appellant walked and exercised three to four times per week. The PCP specifically stated that the appellant does not require assistance with ADLs, which would include assistance with bathing, dressing, toileting, transferring between positions, mobility (ambulation), or eating. Although the appellant's daughter, who represented the appellant at the hearing, reported that the appellant continues to have problems with her back and knees, and requires assistance with walking, she did not submit medical evidence supporting these assertions. Although this testimony has some weight, it is not sufficient to support overturning MassHealth's determination. Even if the appellant's daughter's statement that the appellant still required assistance with mobility was given persuasive weight, it would not be sufficient to overturn MassHealth's determination. In order to be clinically eligible for AFC, the appellant would require assistance with at least three activities and mobility is only one activity. Therefore, a preponderance of the evidence does not show that the appellant has a medical necessity for AFC services.

For the above stated reasons, 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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

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