

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2200180
Decision Date:	2/17/2022	Hearing Date:	02/03/2022
Hearing Officer:	Sara E. McGrath		

Appearances for Appellant:



Appearances for MassHealth:

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:	2/17/2022	Hearing Date:	02/03/2022
MassHealth's Rep.:	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 November 18, 2021, 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 10, 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 representative, a utilization management nurse, appeared at the hearing telephonically and testified that this appeal concerns MassHealth's denial of a request for AFC Level II services. On October 29, 2021, the appellant's provider, Beyond Independent Living, submitted a prior authorization request for AFC Level II services for the period of November 19, 2021, through November 18, 2022 (Exhibit 3, p. 3). On November 18, 2021, 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.

The MassHealth nurse appeared at the hearing by telephone and testified that the appellant is a female in her 40s with diagnoses including lower back pain and pain in her right foot.¹ 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 and dressing, and needs cueing supervision with transferring, mobility, and eating (Exhibit 3, p. 9).² 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 October 28, 2021, from a family health center (Exhibit 3, pp. 13-19). The report includes a physical exam that notes that the appellant is "[a]lert, normal affect, in no acute distress." Her musculoskeletal exam was notable for "no pain, good strength and tone, full range of motion." Neurologically, she has "[n]ormal speech, normal gait, normal coordination." The physician notes that the appellant has pain in her right foot (Exhibit 3, pp. 18-19). The appellant submitted a recent letter from a podiatrist that states that she is being treated for right plantar fasciitis, that it is painful for her to stand or walk for any amount of time, and that she is being treated with physical therapy, medicine, and foot orthotics (Exhibit 1, p. 2). The MassHealth nurse noted that the appellant requested a hearing because she has "a hard time completing house chores" (Exhibit 1).

The appellant appeared at the hearing by telephone and stated that her right foot really bothers her. She can't walk well, can't stand for a long time, and can't keep her balance well. She finds it difficult to complete tasks in the home. While her foot is healing, she needs temporary help in the

¹ The appellant has other diagnoses including hypertension, anemia, depression, and obesity (Exhibit 3, p. 10).

² 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. 27-29).

home. She needs help with cleaning, as this is very difficult at this time. She stated that in order to take a shower, she needs help getting over the edge of the tub. She can dress herself, but finds it difficult to put on her pants because she her heel hurts and she can't bend her foot.

The MassHealth nurse responded and stated that plantar fasciitis is not generally a chronic issue, but rather is typically an acute problem that resolves with treatment. Therefore, this condition would not alone justify the authorization of AFC services for a year.

Findings of Fact

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

1. The appellant is a female in her 40s with diagnoses including low back pain and right plantar fasciitis.
2. On October 29, 2021, the appellant's provider submitted a prior authorization request for AFC Level II services, for the period of November 18, 2021 through November 19, 2022.
3. The PCP Order Form indicates that the appellant needs physical assistance with bathing and dressing, and needs cueing supervision with transferring, mobility, and eating.
4. An office visit note from October 2021 documents right foot pain but an otherwise normal physician exam.
5. The appellant has been diagnosed with right plantar fasciitis.
6. On November 18, 2021, MassHealth denied the appellant's request for MassHealth payment of AFC Level II services.
7. On January 10, 2022, 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.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:
 - (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

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. 44-49).

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 II 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 PCP Order Form indicates that the appellant needs physical assistance with only two activities (Exhibit 3, p. 9). Further, the most current medical records submitted with the prior authorization request document the appellant's right foot pain, but her physician exam was otherwise normal (Exhibit 3, pp. 13-19). The appellant's own testimony made clear that she mostly needs help with housekeeping tasks; the need for help with these tasks is not relevant to a determination of eligibility for AFC services. The appellant did explain that she needs some limited assistance with showering, and that she can dress and undress herself independently, but has difficulty with pants due to her foot pain. As noted above, in order to qualify for AFC Level II services, the member must require physical assistance with three of the five activities listed above.⁴ None of the evidence presented suggests that the appellant requires this level of assistance. The record therefore supports MassHealth's decision here.

The appeal is denied.

Order for MassHealth

None.

⁴ A member can also qualify for AFC Level II services if they need assistance with two activities and exhibit certain behaviors; there is no evidence of any behaviors here.

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