

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved in part
 Denied in part

Appeal Number: 2200186

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:	Approved in part Denied in part	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.:	██████████
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 December 7, 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 November 24, 2021, the appellant's provider, Nonotuck Resource Associates, Inc., submitted a prior authorization request for AFC Level II services for the period of January 20, 2022, through January 19, 2023 (Exhibit 3, p. 3). On December 7, 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 70s with diagnoses including knee pain, arthralgia (unspecified joint), depression, chronic fatigue, and vertigo (Exhibit 3, p. 10). 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, transferring, and mobility, and needs cueing and supervision with toileting and eating (Exhibit 3, p. 9).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 October 15, 2021, from a medical center (Exhibit 3, pp. 16-18). At that visit, the appellant complained of back/neck pain. She reported a one-year history of low back pain for which she was treating with Salonpas patches with good effect. She reported that the pain radiated to her left toes, with "tingling/numbness." The report includes a physical exam that notes that the appellant is "[a]lert without distress" with a gait that is "slow but steady." Her back exam was notable for "normal ROM of spine, no tenderness. No increased pain with forward flexion or straight leg raise." Neurologically, she had "CN's II-XII grossly intact, DTRs 2+ bilaterally and symmetric." The physician notes that the appellant has "[b]ack pain of the lumbar region with sciatica" and recommends lidocaine topical patches (Exhibit 3, pp. 16-18). Another office visit note from October 22, 2021, when the appellant was seen due to concerns about diabetes and blurry vision, contains similar findings and treatment recommendations (Exhibit 3, pp. 19-22). The record also contains a recent letter from a nurse practitioner at the medical center that lists the appellant's diagnoses, as follows: "Dyslipidemia, chronic fatigue, Vertigo, Osteopenia, chronic back pain with sciatica, GERD, Right knee pain" (Exhibit 3, p. 15).

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. 24-25).

The appellant submitted a recent letter with her appeal that states in part as follows:

I am appealing this decision because I feel that my condition is getting worse. I need the assistance of my caregiver to help me with my essential daily tasks such as bathing, dressing, ambulation, transferring, toileting and eating. I have knee pain, depression, chronic fatigue, vertigo, history of Lyme Disease, history of cataract surgery in my left eye and my right eye is setting worse and cloudy.

(Exhibit 1).

The appellant also submitted two other documents created by the AFC provider (Exhibit 1). One is a letter that states in relevant part:

She complains of pain in her hips, lower back, and leg and due to her pain, she cannot sit or walk very long without pain. She also has pain in both her knees. . . . She is on multiple pain medications such as Meloxicam, Cyclobenzaprine, Tylenol, and Naproxen to help with her pain. Her pain, poor vision, depression, chronic fatigue and vertigo affects her motivation and interest in performing her ADLs safely and properly without supervision and physical assistance from her caregiver; her son and daughter who she lives with.

[The appellant's] conditions are of such [sic] that it has impacted her daily living skills and her ability to independently care for herself. She benefits greatly and is safe under the care of her caregiver; her son and daughter in this Adult Foster Care Program and [sic] takes care of member in her needed ADLs throughout the day such as the physical assistance in bathing, dressing, transferring, and ambulation. The caregiver takes care of the member's IADLs as well as manages her medications; she is emotionally and physically stable because of the Adult Foster Care Program.

The other document is a summary that includes the information noted above, with the following additional details:

Bathing: Member needs assistance with washing her upper and lower body due to joint pain from Arthralgia. Member needs assistance with washing her lower body due to difficulty bending and reaching related to her bilat. knee pain. Member lacks motivation to do activities due to her depression, fatigue, and vertigo.

Dressing: Member needs assistance with dressing and undressing her upper and lower body due to pain from Arthralgia, pain in both knees, depression, chronic fatigue, and vertigo. Member requires assistance to put on and take off her shirt and pants due to pain and stiffness in her joints and hands. Member also has difficulty bending down to put on pants due to bilateral knee pain. Caregiver has to assist member to put her pants on.

Ambulation: Member has poor vision, knee pain, fatigue, and vertigo and in need of assistance with ambulation for safety.

Transferring: Member needs assistance with transferring for safety measures due to fall risks from vertigo, knee pain, and poor vision.

Toilet: Member needs supervision when toileting if she feels fatigue or has vertigo.

Eating: Member has a history of GERD and digestion issues so she needs a specialized diet and supervision during meals. Member cannot eat a lot of food and she is on a strict diet due to her fatty liver condition getting worse. She can only eat small portions, no rice, soft food only, no red meat, no spicy food, or she would have abdominal pain.

The appellant was represented at hearing by her daughter/caregiver who appeared by telephone. She confirmed the information referenced above. She stated that her mother's overall condition is getting worse. Her strength has decreased and her vision is deteriorating. She is constantly in pain and is always depressed. Sometimes she stays in bed for the entire day, due to a combination of pain and depression. She does not want to leave house and she is unhappy. She was tortured in Cambodia and her left eye was permanently damaged. Her right eye is now cloudy and is getting worse. She has constant vertigo, and if left to walk on her own, must hold onto the wall for support.

The appellant's daughter explained that her mother's long-time doctor recently retired. The new staff does not know her well. Her mother also does not speak any English, and even with the use of an interpreter, she believes that the extent of her mother's issues is not sometimes well communicated. She feels that the recent office notes are incomplete and do not accurately capture the nature or extent of her mother's issues and need for assistance. She stated that she assists her mother with dressing and undressing often because she is light-headed and dizzy all the time. In the shower, she helps her mother with the sprayer, and with washing all of her body, with the exception of her private parts.

Findings of Fact

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

1. The appellant is a female in her 70s with diagnoses including bilateral knee pain, low back pain with sciatica, arthralgia (unspecified joint), depression, chronic fatigue, and vertigo.
2. On November 24, 2021, the appellant's provider submitted a prior authorization request for AFC Level II services, for the period of January 20, 2022 through January 19, 2023.
3. The PCP Order Form indicates that the appellant needs physical assistance with bathing, dressing, transferring, and mobility, and needs cueing supervision with toileting and eating.

4. The appellant's physician has confirmed that the appellant suffers from dyslipidemia, chronic fatigue, vertigo, osteopenia, chronic back pain with sciatica, GERD, and right knee pain.
5. The appellant takes multiple pain medications such as Meloxicam, Cyclobenzaprine, Tylenol, and Naproxen.
6. Office visit notes from October 2021 document that the appellant has back pain in the lumbar region with sciatica.
7. The appellant experiences light-headedness and dizziness on a daily basis.
8. The appellant's caregiver assists the appellant with ambulation, dressing, and bathing.
9. On December 7, 2021, MassHealth denied the appellant's request for MassHealth payment of AFC Level II services.
10. 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.²

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 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

² 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. 30-35).

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.

On this record, the appellant has not demonstrated the medical necessity of AFC Level II services, but has sufficiently documented the need for AFC Level I services. The PCP Order Form indicates that the appellant needs physical assistance with four activities – bathing, dressing, transferring, and mobility (Exhibit 3, p. 9). The most current medical records submitted with the prior authorization request do not support that the appellant needs this level of assistance; the report confirms the diagnosis of back pain with sciatica, but also includes a relatively normal back exam. Missing from the report are findings related to the appellant's knee pain, chronic fatigue, and vertigo - all diagnoses that her physician has confirmed (Exhibit 3, p. 15). Despite these gaps in the medical records, the appellant's daughter/caregiver provided credible testimony about the appellant's symptoms and need for assistance. She indicated that the appellant is often light-headed and dizzy and requires assistance with tasks so that she doesn't fall. Further, she has significant pain that is not completely alleviated with medication. Thus, while the medical records alone do not support a finding that the appellant requires consistent assistance with at least three of the above-listed activities, there is enough evidence to support the conclusion that she consistently needs cueing and supervision throughout one or more of these activities. The record supports the authorization of AFC Level I services.

The appeal is approved in part.

Order for MassHealth

Rescind denial and instead modify the request and approve for AFC Level I services for the dates of service at issue.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact Optum. 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.

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