

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2200187
Decision Date:	02/10/2022	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:	02/10/2022	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 20, 2021, MassHealth notified the appellant that he is not clinically eligible for MassHealth payment of adult foster care 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 adult foster care services.

Issue

The appeal issue is whether MassHealth was correct in determining that the appellant is not clinically eligible for adult foster care 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 adult foster care (AFC) Level I services. On December 7, 2021, the appellant's provider, Adult Foster Care, N.S, submitted a prior authorization request for AFC Level I services for the period of January 20, 2022, through January 19, 2023 (Exhibit 3, pp. 3, 7). MassHealth denied the request on December 20, 2021 on the basis that there was no evidence that the appellant meets the eligibility requirements for this level of service (Exhibit 1, p. 3). The MassHealth representative stated that to receive coverage for AFC Level I services, a member must require hands-on (physical) assistance with one or two of the designated activities of daily living (set forth in 130 CMR 408.416), or must require cueing and supervision throughout one or more of those activities in order to complete that activity. Based on the prior authorization submission, MassHealth did not find that these services were medically necessary for the appellant. It therefore denied the request.

The MassHealth nurse testified that the appellant is a male in his 30s with diagnoses including developmental delay, pervasive developmental disorder, and unspecified intellectual disabilities. The MassHealth nurse referenced the MassHealth Adult Foster Care Primary Care Provider Order Form (PCP Order Form), which is signed by the appellant's physician. This form indicates that the appellant does *not* need physical assistance, or cueing and supervision (during the entire activity), with bathing, dressing, toileting, transferring, mobility, or eating (Exhibit 3, p. 10). The PCP Order Form indicates that the appellant exhibits 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 (Exhibit 3, pp. 9-10). The form also includes the following summary:

Due to his diagnosis of PDD [the appellant] has been able to learn routines that he can accomplish with limited supervision. He is able to shower himself. He has a set routine to shower every other day and needs reminding and coaching if there is a need for more frequent showering. He is able to dress himself and his caregiver makes sure he is wearing weather appropriate clothing. He is able to toilet himself. Due to his intellectual disability he is not able to make many complex decisions. He is able to ambulate independently in the home but when he goes outside he needs supervision to watch for cars in the street. He is not able to gauge an unsafe situation. A couple of months ago there was a carbon monoxide leak in the basement. The parents called 911 and it was difficult to get [the appellant] out of the home as he did not recognize the dangerousness of the situation. He also needs supervision exiting the home during fire drill as he cannot process anything other than a normal situation. He is rarely ever left alone for this reason. This writer observed caregiver supervise and coach client to follow a direction and complete a task as he would perseverate and continue the behavior with no end. He is part of DDS and has jobs through Bridgewell and Opportunity Works.

(Exhibit 3, p. 11).

The MassHealth nurse testified that the documentation does not support the appellant's request for AFC Level I services. The physician who signed the required order form indicated that the appellant does not need any physical assistance, or cueing and supervision, throughout any of the specified activities. The behaviors noted by the physician would relate to a request for AFC Level II services, not the request for AFC Level I services that is at issue here.

The appellant's mother appeared at hearing telephonically and stated that her son does not have much safety awareness. She feels that he does need supervision to complete some activities, and she is unclear with his physician noted otherwise. Further, she does not understand why he was previously approved for services but is being denied now.

Findings of Fact

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

1. The appellant is a male in his 30s with diagnoses including developmental delay, pervasive developmental disorder, and unspecified intellectual disabilities.
2. On December 7, 2021, the appellant's provider submitted a prior authorization request for AFC Level I services, for the period of January 20, 2022 through January 19, 2023.
3. The appellant's physician included with the request a form that states that the appellant does *not* need physical assistance, or cueing and supervision (during the entire activity), with bathing, dressing, toileting, transferring, mobility, or eating. The appellant's physician also noted that the appellant exhibits 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.
4. On December 30, 2021, MassHealth denied the request on the basis that there was no evidence the appellant requires this level of service.
5. 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.¹

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

¹ 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. 21-26).

(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 denial of the appellant's prior authorization request for AFC Level I services. MassHealth denied the request because it found no evidence that the appellant needs hands-on, physical assistance with one or two of activities set forth at 130 CMR 408.416, or cueing and supervision throughout one or more of those activities.

The record supports this determination. The PCP Order Form, which is signed by the appellant's physician and is submitted in support of the request for services, indicates that the appellant does *not* need any type of assistance with any of the specified activities (Exhibit 3, p. 9). The summary included on the form makes reference to the appellant's need for "limited supervision," but does not specify which tasks are involved, nor the extent of the supervision required. As noted above, AFC Level I services can be authorized for members who need cueing and supervision *throughout* at least one of the five activities listed above. Without more, the record does not support a conclusion that the appellant requires this level of assistance.

Without more detailed information to support the request, MassHealth was correct in determining that the appellant does not meet the clinical standards for AFC Level I services. This appeal is therefore 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