

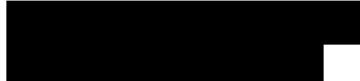
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2200351
Decision Date:	4/14/2022	Hearing Date:	02/16/2022
Hearing Officer:	Rebecca Brochstein	Record Closed:	03/30/2022

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:	Adult Foster Care
Decision Date:	4/14/2022	Hearing Date:	02/16/2022
MassHealth's Rep.:	Leslie Learned, RN	Appellant's Rep.:	
Hearing Location:	Board of Hearings (Remote)	Aid Pending:	No

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 9, 2021, MassHealth notified the appellant that he is not clinically eligible for MassHealth payment of Level I adult foster care services (Exhibit 1). The appellant filed a timely appeal on January 12, 2022 (Exhibit 1). After hearing on February 16, 2022, the record was held open until March 30, 2022, for additional evidence (Exhibits 5-8). 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 Level I adult foster care services.

Issue

The appeal issue is whether MassHealth was correct in determining that the appellant is not clinically eligible for Level I adult foster care services.

Summary of Evidence

The MassHealth representative, a utilization management nurse, appeared at the hearing telephonically. She testified that this appeal concerns MassHealth's denial of a request for adult foster care (AFC) services. On November 29, 2021, the appellant's provider submitted a prior authorization request for Level I AFC services, for the period of November 29, 2021, through November 28, 2022. MassHealth denied the request on December 9, 2021.

The MassHealth representative testified that the appellant is in his early 40s. The PA request indicates that his primary diagnosis is inflammatory polyarthropathy, resulting in pain, swelling, and reduced range of motion; and his secondary diagnosis is knee pain. See Exhibit 4 at 6. The Primary Care Physician (PCP) form that accompanied the PA request provides a wider range of information, stating the following under "Member Diagnosis":

Inflammatory arthritis Closed fracture of fifth toe of left foot with delayed healing Probable cirrhosis of liver without ascites (HCC) Chronic tension-type headache, not intractable Routine adult health maintenance Neuropathy Bilateral carpal tunnel syndrome Temporal mandibular joint disorder Finger pain, left, fifth finger Blood in stool, frank Benzodiazepine abuse (HCC-CMS) Puncture wound of chest Laceration of left wrist Abnormal echocardiogram Closed avulsion fracture of right ankle with routine healing Posttraumatic stress disorder Laceration of left foot without foreign body Numerous skin moles Complex care coordination Cardiomyopathy (HCC-CMS) Fatigue Inadequate housing Hemorrhoids • Hepatitis C virus infection cured after antiviral drug therapy • Elevated liver enzymes • Uncomplicated opioid dependence (HCC-CMS) • Alcohol dependence in remission (HCC-CMS) • Major depressive disorder, recurrent episode, moderate (HCC-CMS) • Dysthymia • Tobacco dependence • Right bundle branch block • Splenomegaly • Chronic nausea • Chronic pain of both knees • Class 2 severe obesity due to excess calories with serious comorbidity and body mass index (BMI) of 36.0 to 36.9 in adult (HCC-CMS)

The PCP form states that the appellant's signs and symptoms include pain, weakness, dizziness, reduce[d] range of motion, chest pain, and reduce[d] mobility. See Exhibit 4 at 10. The request also included records from an office visit in June 2021. The physical exam from that visit resulted in the following findings:

Eyes:

General: Lids are normal.

Right eye: No discharge.

Left eye: No discharge.

Conjunctiva/sclera: Conjunctivae normal.

Pupils: Pupils are equal, round, and reactive to light.

Lymphadenopathy:

Cervical: No cervical adenopathy.

Skin:

General: Skin is warm and dry.
Coloration: Skin is not pale.
Findings: No abrasion, erythema or rash.

HENT:

Head: Normocephalic and atraumatic.
Right Ear: Tympanic membrane, ear canal and external ear normal.
Left Ear: Tympanic membrane, ear canal and external ear normal.
Nose: Nose normal.
Mouth/Throat:
Pharynx: Uvula midline. No oropharyngeal exudate.

Neck:

Thyroid: No thyroid mass or thyromegaly.
Trachea: Trachea normal. No tracheal deviation.

Cardiovascular:

Rate and Rhythm: Normal rate and regular rhythm.
Chest Wall: PMI is not displaced.
Pulses: Normal pulses.
Heart sounds: Normal heart sounds, S1 normal and S2 normal. No murmur heard.
No friction rub. No gallop.

Musculoskeletal:

General: No tenderness or deformity. Normal range of motion.
Cervical back: Normal range of motion and neck supple. No erythema or rigidity.
Right lower leg: No edema.
Left lower leg: No edema.

Abdominal:

General: Bowel sounds are normal. There is no distension.
Palpations: Abdomen is soft. There is no hepatomegaly, splenomegaly or mass.
Tenderness: There is no abdominal tenderness. There is no guarding or rebound.

Constitutional:

General: He is not in acute distress.
Appearance: Normal appearance. He is well-developed. He is not ill-appearing or diaphoretic.

Pulmonary:

Effort: Pulmonary effort is normal. No respiratory distress.
Breath sounds: Normal breath sounds. No decreased breath sounds, wheezing, rhonchi or rales.

Psychiatric:

Speech: Speech normal.

Behavior: Behavior normal.

Comments: depressed

Neurological:

Mental Status: He is alert and oriented to person, place, and time.

Motor: No tremor, atrophy, abnormal muscle tone or seizure activity.

Gait: Gait normal. (Exhibit 4 at 16-17)

The MassHealth representative testified that the records are not entirely consistent, as the appellant has indicated that his need for services is tied to injuries he suffered in a car accident, but his medical records do not mention this. She added that the signs and symptoms listed in the records are not consistent with a diagnosis of polyarthritis. For instance, in the review of systems, the provider reported no musculoskeletal or neurological findings, noting normal range of motion, no edema in the lower extremities, and normal gait and motor function. She pointed out that this conflicts with the information provided on the PCP form submitted with the PA request. In addition, the MassHealth representative noted that the doctor's office categorizes opioid dependence and chronic nausea as the highest priority issue, followed by chronic tension-type headache (medium priority); inflammatory arthritis is listed as a "low" priority problem. See Exhibit 4 at 14.

The MassHealth representative testified that according to the PA request, the appellant requires hands-on assistance with transferring and dressing.¹ She stated there is no indication why the appellant would not be able to dress himself. In addition, she questioned how the appellant is able to drive if he is unable to transfer or dress himself independently.

The appellant and his mother appeared at the hearing telephonically. They testified that the appellant was hit by a car in October 2021, and that the June records would not include that information. He was in the ICU for a period of time and was discharged home in mid-November. Since this incident the appellant has had many surgeries on his left leg and also has a "ghastly" open wound that needs care. They stated that he also has arthritic pain in his left shoulder, and that his head has a "tilt" to it, making it difficult to manage his clothing. The appellant testified that his "whole body hurts." He noted his opioid dependence, stating that it began after he was in a car accident at the age of 18.

The record was held open for the appellant to submit more recent medical records from his provider. The appellant submitted the following letter from his nurse practitioner:

[Appellant] is seen by me for primary care at [community health center]. [He] was seen here . . . on 3/16/2022 for an additional medical evaluation. He is currently in the long

¹ The MassHealth records also include an MDS assessment, which is a tool completed by the AFC provider. This assessment states that the appellant needs "limited assistance" with dressing and transferring. See Exhibit 4 at 21.

process of recovering from polytrauma after a serious motor vehicle incident 10/2021.

Among his multiple injuries, [appellant] suffered a 3 part mandible fracture with left TMJ dislocation, multiple broken teeth. He has had multiple evaluations and surgeries from OMFS with the recommendation that he have further oral surgery to help correct the pain and discomfort he endures when talking and eating. Prior to the accident, [appellant] was already suffering from regular migraines, chronic pain, and major depression. These conditions have all been exacerbated by his current oral facial pain and irregularities from the accident. I would expect that his insurer would not want to see his mental and physical health decline due to such a necessary procedure being declined by his insurer. Please keep this in consideration. (Exhibit 7)

After reviewing the updated documentation, the MassHealth representative responded as follows:

At the Appeal Hearing on February 16, 2022 for [appellant], the record was left open to allow the appellant time to provide updated medical documentation.

MassHealth received a letter from [appellant's] doctor dated March 16, 2022. The letter refers mainly to injuries of the face and mouth and does not support the request for assistance with transferring and dressing.

After review of new documentation, reviewer testimony and the appellants [sic] testimony MassHealth has denied this request for Adult Foster Care. (Exhibit 8)

Findings of Fact

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

1. The appellant is a male in his early 40s with diagnoses that include inflammatory arthritis, chronic tension-type headache, opioid dependence, depression, and chronic nausea. He also has injuries related to an automobile accident in October 2021.
2. On November 29, 2021, the appellant's provider submitted a prior authorization request for AFC Level I services. The dates of service are November 29, 2021, through November 28, 2022.
3. On December 9, 2021, MassHealth denied the request on the basis that the appellant does not meet the criteria for AFC services.
4. On January 12, 2022, the appellant filed a timely appeal of the denial.
5. The PA request states that the appellant qualifies for AFC services because he requires physical assistance with transferring and dressing.

6. Notes from a physical exam in June 2021 indicate the appellant was within normal limits in all areas, though he was noted to be depressed. He had normal range of motion, normal gait and motor function, and was alert and oriented. These notes precede the appellant's October 2021 accident.
7. More recent provider notes detail the appellant's injuries from the October 2021 incident. He was noted to be suffering from a mandible fracture, TMJ dislocation, and multiple broken teeth. The provider indicated that the appellant's pre-existing migraines, chronic pain, and depression have all been exacerbated by his oral facial pain and irregularities from the accident.
8. There is no medical documentation of the appellant's need for physical assistance with transferring and dressing.

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
 - 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 insufficient evidence that the appellant requires hands-on (physical) assistance with one or two of the activities described in 130 CMR

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 4).

408.416 or requires cueing and supervision throughout one or more of these activities in order for the member to complete the activity. The appellant contends that he meets the regulatory requirements.

MassHealth's original denial was based on the information provided with the PA request. The provider office note that accompanied the request sets forth a variety of diagnoses, but reflects very little in the way of functional limitations. The appellant's physical exam at that visit was largely normal; he is noted to have normal range of motion, normal gait, normal motor function, and no edema in his lower extremities. He was observed to be depressed, but there is no indication of the specific impact of his mental health on his ability to complete ADLs.

The appellant submitted new documentation to show his status since the October 2021 car accident, but the letter submitted by his provider does not shed any meaningful light on his ability (or inability) to complete his activities of daily living. As MassHealth points out, the letter focuses on injuries to the appellant's face and mouth, neither of which would seem to have a significant impact on his capacity to transfer and dress himself independently. Though the appellant may have more substantial injuries that have not been fully documented by his provider, the record as it stands does not support the contention that he needs regular assistance with his ADLs. As such, there is insufficient evidence that the appellant meets the requirements for AFC services at this time.

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.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Optum