

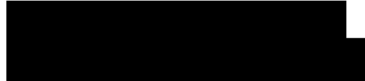
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in Part	Appeal Number:	2200352
Decision Date:	4/05/2022	Hearing Date:	02/16/2022
Hearing Officer:	Rebecca Brochstein		

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	Issue:	Adult Foster Care
Decision Date:	4/05/2022	Hearing Date:	02/16/2022
MassHealth's Rep.:	Leslie Learned, RN	Appellant's Rep.:	
Hearing Location:	Board of Hearings (Remote)	Aid Pending:	Yes

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 January 4, 2022, MassHealth notified the appellant that he is not clinically eligible for MassHealth payment of Level II adult foster care services (Exhibit 1). The appellant filed a timely appeal on January 14, 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 Level II adult foster care services.

Issue

The appeal issue is whether MassHealth was correct in determining that the appellant is not clinically eligible for Level II 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. The appellant was previously approved for AFC services and has aid pending the appeal. On December 20, 2021, the appellant's provider submitted a prior authorization request for Level II AFC services, for the period of December 20, 2021, through December 19, 2022. MassHealth denied the request on January 4, 2022.

The MassHealth representative testified that the appellant is in his mid- to late 60s. He has diagnoses that include osteoarthritis of the hip and low back pain, with symptoms of neck and joint pain, lack of energy, poor endurance, unsteady gait, and impaired mobility. See Exhibit 4 at 6. 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 assistance with at least two of those activities of daily living and management of behaviors that require frequent caregiver intervention (e.g., wandering, verbally abusive behavioral symptoms, physically abusive behavioral symptoms, socially inappropriate or disruptive behavioral symptoms, or resistance to care).

The MassHealth representative testified that according to the PA request, the appellant requires hands-on assistance with bathing, dressing, toileting, transfers, and mobility.¹ The narrative by an AFC provider nurse states as follows:

Consumer . . . is a [male in his mid to late 60s] requiring physical assistance with bathing (washing and drying front/back lower body with shower or bath including his chest, back, and peri-area), dressing (upper/lower body including street clothes, undergarments, and putting on shoes and or socks), ambulation (physically assisting steadying, guiding, and assisting during ambulation), transfers (bed to standing position), and toilet use (to prevent incontinence) due to his fragile physical and mental health state resulting from long-term osteoarthritis of hip/knee, low back pain, and MDD. He reports experiencing moderate to severe pain to his low back, neck, joint pain, fatigue, and depressed mood daily all of which interfere with his daily activities. AFC services are recommended for consumer to continue to thrive and be maintained safely in the community setting. (Exhibit 4 at 26)

In evaluating the request, MassHealth also looked to medical records from the appellant's visits with his primary care physician. The most recent records², from a visit dated October 29, 2021, includes the following notes:

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. See Exhibit 4 at 27 et seq.

² Notes from the other two visits, which were in November 2020 and February 2021, indicate that the visits were telehealth appointments.

- History of present illness: Past medical history significant for hypertension, hyperlipidemia, osteoarthritis, chronic insomnia, depression, acid reflux, recent hernia surgery. He 4 months ago he had bilateral inguinal hernia repair, healing properly. He did not have his colonoscopy scheduled yet. No other complaints regarding his hernia. He has longstanding history of acid reflux, he takes pantoprazole for that, he gets acid reflux at night. He is a chronic smoker, complaining about some weight loss recently. Denied having any nausea, vomiting. He takes medication for hypertension and hyperlipidemia. He has history of chronic back pain, neck pain, osteoarthritis, he takes tramadol for that. However his pain sometimes . . . gets so overwhelming that he cannot sleep at night. He takes amitriptyline 20 mg at night, sometimes it helps with his sleep. He has history of depression, takes Zoloft 100 mg daily. Denied having any suicidal or homicidal ideation. Denied having any change in his appetite. However he feels depressed on and off. Symptoms are not very well controlled. Denied having any hallucinations.
- Review of Symptoms: Musculoskeletal exam positive for back pain; psychiatric/behavioral positive for decreased concentration, dysphoric mood and sleep disturbance. (Exhibit 4 at 18-25)

The MassHealth representative noted that the records from this visit note the appellant's pain but do not speak to reduced range of motion, and also do not suggest any treatment or interventions such as physical therapy or injections. She indicated that the same is true of the records for two earlier office visits, in November 2020 and February 2021. She testified that pain alone is not enough to meet the criteria for AFC services.

The appellant appeared at the hearing telephonically along with his caretaker, who testified on his behalf. She stated that the doctor who saw him in October 2021 (who was new to him) did not suggest any specific interventions to treat his pain; she emphasized that the appellant has not refused to engage in treatment. She further testified that because of his back pain, she has to help him shower and to dress (particularly pants and socks). He can sometimes manage in the bathroom by himself but calls if he needs assistance. She stated that the appellant has a standing recliner as well as a cane; she added that she leaves canes "around the house" in case she is not with him.

The caretaker stated that the appellant is able to do "a little" by himself but she helps with the rest; she stated that most of the time he requires assistance, but has a good day "every now and then." She testified that the amount of help he requires depends on his level of pain on a given day. She described his pain as "intense" and stated that his legs tend to give out. The appellant previously had a prescription for tramadol to help with his pain, but had trouble refilling it because of his change in primary care doctor. The caretaker added that she gives the appellant his medicine, makes sure he eats, and does his shopping.

The MassHealth representative responded that the caretaker's testimony indicates that the appellant's need for assistance is not consistent. She stated that to qualify for AFC services, the appellant must need daily, hands-on assistance from the beginning to the end of each of the relevant ADLs.

Findings of Fact

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

1. The appellant is a male in his mid- to late 60s with diagnoses that include osteoarthritis of the hip and low back pain, with symptoms of neck and joint pain, lack of energy, poor endurance, unsteady gait, and impaired mobility.
2. The appellant was previously approved for adult foster care (AFC) services and has aid pending this appeal.
3. On December 20, 2021, the appellant's provider submitted a prior authorization request for continuing AFC Level II services. The dates of service are December 20, 2021, through December 19, 2022.
4. The PA request indicates that the appellant requires physical assistance with bathing (washing and drying front/back lower body with shower or bath including his chest, back, and peri-area), dressing (upper/lower body including street clothes, undergarments, and putting on shoes and or socks), ambulation (physically assisting steadying, guiding, and assisting during ambulation), transfers (bed to standing position), and toilet use (to prevent incontinence) due to his fragile physical and mental health state resulting from long-term osteoarthritis of hip/knee, low back pain, and major depressive disorder.
5. The most recent medical records, from October 29, 2021, state that the appellant has a history of chronic back pain, neck pain, and osteoarthritis. He reported that his pain is sometimes so overwhelming that it interrupts his sleep.
6. On January 4, 2022, MassHealth denied the prior authorization request on the basis that he does not meet the clinical criteria for Level II AFC services.
7. On January 14, 2022, the appellant filed a timely appeal with the Board of Hearings.
8. The appellant sometimes needs help with transfers and ambulation in his home environment, but at other times he is able to manage independently with the use of a cane.
9. The appellant can manage toileting tasks independently but calls his caretaker when he needs help.
10. The appellant requires physical assistance with bathing and lower-body 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.³

Under 130 CMR 408.419(D), AFC payments are made at two rates:

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 4).

- (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 II services. MassHealth denied the request because it found insufficient evidence that the appellant requires hands-on, physical assistance with at least three of the activities set forth at 130 CMR 408.416.⁴

The record supports MassHealth denial of Level II services, as it does not show the appellant consistently requires physical assistance with at least three of those activities. However, there is sufficient evidence that he meets the less-stringent criteria for Level I services.

The medical records do not include an assessment of the appellant's functional capacity relative to his ability to complete ADLs; they indicate only that the appellant has chronic back pain, neck pain, and osteoarthritis, with no objective information about his ADLs. The appellant's caretaker provided more elucidating details in her testimony at hearing, however. She testified credibly that the appellant needs regular help with bathing and lower-body dressing due to chronic back pain. But as

⁴ There is no allegation that the appellant exhibits the behaviors listed at 130 CMR 408.419(D)(2)(b).

to mobility and transfers, she indicated that while he sometimes needs help getting around the house, at other times he can transfer and ambulate independently with use of a cane.⁵ Similarly, her testimony suggests the appellant is largely able to perform toileting activities on his own but “calls for help” if he needs it. On this record, there is sufficient evidence that the appellant requires physical assistance with no more than two of his ADLs. Accordingly, he meets the criteria for Level I rather than Level II AFC services.

This appeal is approved in part.

Order for MassHealth

Remove aid pending protection. Approve the appellant for AFC Level I services for the remainder of the PA period, which ends on December 19, 2022.

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

⁵ Similarly, the MDS assessment indicates that the appellant needs only supervision-level assistance with locomotion inside the home. See Exhibit 4 at 28-29.