

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2200503
<b>Decision Date:</b>	3/29/2022	<b>Hearing Date:</b>	03/10/2022
<b>Hearing Officer:</b>	Sara E. McGrath		

**Appearances for Appellant:**



**Appearances for MassHealth:**

Jamie Capizzano, RN  
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

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Eligibility for Adult Foster Care
<b>Decision Date:</b>	3/29/2022	<b>Hearing Date:</b>	03/10/2022
<b>MassHealth's Reps.:</b>	Jamie Capizzano, RN Leslie Learned, RN	<b>Appellant's Reps.:</b>	
<b>Hearing Location:</b>	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 January 13, 2022, MassHealth notified the appellant that she is not clinically eligible for MassHealth payment of adult foster care services (Exhibit 1). The appellant filed a timely appeal on January 20, 2022 (Exhibit 1). On January 27, 2022, the Board of Hearings dismissed the request for hearing because the appellant did not submit a copy of the notice on appeal (Exhibit 1, pp. 3-4). The appellant submitted a copy of the notice and the Board then vacated the dismissal and scheduled a hearing (Exhibit 2). 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 representatives, utilization management nurses, 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 10, 2021, the appellant's provider, Gabriel Care LLC, submitted a prior authorization request for AFC Level I services for the period of January 1, 2022, through December 31, 2022 (Exhibit 3, pp. 3, 7). MassHealth denied the request on January 13, 2022 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.

One of the MassHealth nurses testified that the appellant is a female in her 60s with a primary diagnosis of fibromyalgia and a secondary diagnosis of asthma. 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 needs physical assistance with mobility, and needs cueing and supervision (during the entire activity) with bathing, dressing, toileting, and transferring (Exhibit 3, p. 10). The form includes the following summary:

[Appellant] requires supervision with her ADLs due to chronic pain which affects her ability to perform daily tasks and also affects her mobility, as has unsteady gait, requiring assistance with ambulation for safety. [Appellant] rates her pain affecting multiple sites as a 7 (0-10 pain scale) and takes pain medications with some effect and injections. She also has depression and alteration in mood can affect her mood. She requires daily supervision to safely and successfully accomplish her daily needs.

(Exhibit 3, p. 11).

The MassHealth nurse testified that the documentation does not support the appellant's request for AFC Level I services. She referenced a telemedicine visit from October 6, 2021 (Exhibit 3, pp. 13-25). In the review of respiratory symptoms, the appellant did not report any coughing, wheezing, or shortness of breath. Further, no medication changes were ordered (Exhibit 3, pp. 17, 23). The MassHealth nurse stated that these findings indicate that the appellant's asthma is controlled with medication and does not interfere with her activities of daily living. In the review of her musculoskeletal system, the appellant reported muscle aches and joint pain, but no motor weakness or sensory symptoms (Exhibit 3, p. 17). MassHealth noted that the absence of neurological symptoms indicates that while the appellant has pain, she has full range of motion. X-rays of the lumbar spine and sacroiliac joints revealed mild multilevel degenerative disc disease (Exhibit 3, pp. 19-20). The appellant's physician described that the appellant "did not sound to be in any acute distress" (Exhibit 3, p. 17). Further, the physician did not order any pain medication changes, and she did not recommend physical therapy. The appellant does not use any assistive devices. The

MassHealth nurse stated that these findings suggest that the appellant can function independently and would also not need cueing or supervision to complete any tasks.

The appellant's daughter/caregiver appeared at hearing telephonically and stated that her mother has good days and bad days. The appellant has tried physical therapy and has used a cane, both with limited success. When the appellant's asthma is flaring, she does get short of breath. She has constant muscular pain due to fibromyalgia; the pain is increased with extreme weather (both hot and cold). She has a rotator cuff injury and cannot fully lift her left arm. She goes to the pain clinic and gets regular Botox injections. Because of her pain and shoulder injury, she needs help with donning pants and socks, and needs help washing her hair and back. On really bad days, she needs help sitting up in bed. On good days, the appellant participates more with tasks such as dressing, but she still needs help. Regarding mobility/ambulation, the appellant's daughter stated that on bad days, she has to provide hands-on assistance to help the appellant initiate the task. For example, she assists the appellant out of her chair and helps her start to walk. On good days, she might only have to supervise the appellant's walking.

### **Findings of Fact**

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

1. The appellant is a female in her 60s with a primary diagnosis of fibromyalgia and a secondary diagnosis of asthma.
2. On December 10, 2021, the appellant's provider submitted a prior authorization request for AFC Level I services, for the period of January 1, 2022 through December 31, 2022.
3. The appellant's physician included with the request a form that states that the appellant needs physical assistance with mobility, and needs cueing and supervision (during the entire activity) with bathing, dressing, toileting, and transferring.
4. The appellant is prescribed pain medication (gabapentin and oxycodone), and receives regular Botox injections as well.
5. The appellant needs constant supervision when she walks, as well as with the tasks of dressing and bathing.
6. On January 13, 2022, MassHealth denied the request on the basis that there was no evidence the appellant requires this level of service.
7. On January 20, 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.<sup>1</sup>

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<sup>1</sup> 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. 34-39).

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 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 appellant has demonstrated that AFC Level I services are medically necessary. 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 needs physical assistance with mobility, as well as cueing and supervision to complete various activities, including bathing, dressing, toileting, and transferring. The full record, however, does not support a conclusion that the appellant requires physical assistance with mobility; the appellant's daughter's testimony clarified that the appellant only needs help to initiate the activity, and sometimes (on good days) does not require physical assistance at all. Nonetheless, the record *does* support a conclusion that the appellant requires cueing and supervision to complete the task of ambulation. The office visit note confirmed the appellant's diagnoses of fibromyalgia and degenerative disc disease (Exhibit 3, pp. 17-25). Further, the visit note also made

note of the appellant's muscle and joint pain, as well as her prescribed pain medications (gabapentin and oxycodone). These facts, coupled with the daughter's testimony regarding ambulation, establish that the appellant needs supervision here. Additionally, the daughter's testimony provides support for the appellant's claim that she needs cueing and supervision with other tasks, particularly the tasks of dressing and bathing. Taken as a whole, the record supports the appellant's request for AFC Level I services.

This appeal is therefore approved.

### **Order for MassHealth**

Rescind notice and approve for AFC Level I services for this prior authorization period.

### **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.

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Sara E. McGrath  
Hearing Officer  
Board of Hearings

cc: Optum