

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2200684
Decision Date:	3/31/2022	Hearing Date:	02/25/2022
Hearing Officer:	Christopher Jones		

Appearance for Appellant:



Interpreter:



Appearance for MassHealth:



Krista Berube, RN



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Prior Authorization – Adult Foster Care
Decision Date:	3/31/2022	Hearing Date:	02/25/2022
MassHealth’s Rep.:	Jamie Capizzano RN; Krista Berube, RN	Appellant’s Rep.:	
Hearing Location:	Remote	Aid Pending:	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated January 12, 2022, MassHealth modified the appellant’s prior authorization request for adult foster care services, Level 2. Exhibit 2; 130 CMR 450.303; 450.204. The appellant filed this appeal in a timely manner on January 28, 2022. Exhibit 3; 130 CMR 610.015(B). Limitations on assistance are valid grounds for appeal. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth approved adult foster care services at Level 1 instead of the requested Level 2.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 408.000, in determining that the appellant did not require enough hands-on assistance with activities of daily living to qualify for adult foster care services, Level 2.

Summary of Evidence

The appellant is a middle-aged woman with many diagnoses including bipolar disorder, osteoarthritis, major depressive disorder, asthma, fibromyalgia, and a history of malignant neoplasm. On or around December 30, 2021, Metrocare of Springfield submitted a prior

authorization request on the appellant's behalf for Level 2 Adult Foster Care ("AFC") services for the dates of services running from January 24, 2022 through January 23, 2023. This request indicated that the appellant requires hands-on physical assistance with the following activities of daily living ("ADLs"): Bathing, Dressing, Toileting, Transferring, and Mobility; and that the appellant requires cueing or supervision for the entirety of Mobility and Eating. The appellant is not identified as having behaviors that require caregiver intervention such as wandering, abusive behavior, or resisting care.

MassHealth modified the request, allowing only Level 1 services based upon the clinical documentation submitted by the appellant's medical care providers. Submitted with the appellant's prior authorization request was a primary care annual physical note from November 24, 2021. Regarding the appellant's physical diagnoses, this note reports continued "diffuse pain frequently as well as increased pain over her lower back." There was a significant reduction in pain following a diagnostic medial branch block in her lower back, but the more permanent procedure had been denied by insurance. She also reported a new ingrown toenail and was referred to a podiatrist. The appellant was encouraged to stay active to improve her fibromyalgia symptoms, but she reported difficulty remaining active due to abdominal symptoms. The note documents that there are activity and weight-lifting restrictions, but it does not specify the restrictions.

Another annual physical note was submitted, dated on August 30, 2021. At that time, the appellant had complained of increased lower back pain, which resulted in the referral for the lower back medial branch block. With her fair hearing request, the appellant submitted an updated letter from her primary care physician. This letter indicates that the appellant suffers from "fibromyalgia, right sciatic nerve pain, osteoarthritis, and lumbar spondylosis. Patient would benefit from assistance with activities of daily living (ADLs)."

MassHealth's representative explained that Level 2 services are only available when a member "Hands-on (physical) assistance with at least three of ADLs," or "at least two of the ADLs ... [and] management of behaviors that require frequent caregiver intervention" MassHealth's representative highlighted the submitted physician's notes which indicated the appellant was "encouraged to stay active," and did not otherwise indicate that the appellant could not perform her ADLs independently.

The appellant responded that she has been enrolled in the AFC program at Level 2 since 2018. She also testified that she has a lot more medical conditions and limitations than were submitted to MassHealth. She testified that she has a spinal fracture and chronic pain that affects everything she does. She testified that she needs her caregiver to cook for her and drive her to appointments. MassHealth's representative explained that there was not a prior authorization requirement in 2018, so the request was not being reviewed under the same guidelines. She also explained the appellant was denied AFC services entirely, and that this appeal arises from a reapplication, for which she was approved at Level 1. She also explained that there are always goals for members to improve, in which case it would be appropriate for her services to reduce from Level 2 to Level 1.

The appellant was asked what other assistance her caregiver provides for her, she responded that he assists her with lower body dressing every day. She also testified that sometimes he must help her

get into the shower and wash her hair, back and dry off. For toileting, if her legs get numb, he helps her transition on and off the toilet. She reiterated that she did not believe MassHealth had received all her relevant medical documentation. MassHealth's representative responded that the appellant and Metrocare of Springfield gather all relevant documentation to be submitted with the request.

The appellant's caregiver explained that he mostly helps her with mobility, but he also helps her get into the shower, brush her hair, and he helps her get dressed and undressed. He explained that she has had less pain since her procedure on her lower back, but that some days she still has a lot of pain. He explained that she could be independent for a day or two and then need help every two hours. Sometimes she can get up and walk by herself with the assistance of a cane, but she usually needs help. He explained that sometimes she has numbness in her legs, back pain, and weak hands. When she does, he needs to help her in and out of the shower or in and out of the bathroom to use the toilet. He also helps keep her calm when she is nervous.

MassHealth explained that the definition of assistance with ADLs is slightly different than may appear in other MassHealth programs. For instance, bathing requires the member be assisted with full body bathing, not just partial bathing. The appellant's caregiver then said he washes her front and back every day. He changed his testimony to say that he needs to help her walk all the time. Even when she is using a cane, he needs to hold her other arm to make sure she does not fall. The appellant testified that she has multiple medical appointments coming up and her caregiver helps her get to those and she needs his help every day. She was also concerned that he would not be able to continue assisting her if his income were reduced. She argued that the medical records submitted were incomplete and were missing many diagnoses.

Findings of Fact

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

1. The appellant is a middle-aged woman with many diagnoses including bipolar disorder, osteoarthritis, major depressive disorder, asthma, fibromyalgia, and a history of malignant neoplasm. Exhibit 3; pp. 11, 15-16.
2. On or around December 30, 2021, Metrocare of Springfield submitted a prior authorization request on the appellant's behalf for Level 2 AFC services for the dates of services running from January 24, 2022 through January 23, 2023. Exhibit 3, pp. 3, 9-43.
3. This request indicated that the appellant requires hands-on physical assistance with Bathing, Dressing, Toileting, Transferring, and Mobility; and cueing or supervision for the entirety of Mobility and Eating. No behaviors are identified that require caregiver intervention such as wandering, abusive behavior, or resisting care. Exhibit 3, p. 10.
4. The appellant's lower back pain was treated with a diagnostic lumbar medial branch block, which reduced her pain but did not cure it. She continues to require daily assistance with lower body dressing and intermittent assistance with getting up from a seated position,

safely transferring into the bathroom, and washing her hair and back, and drying off after a shower. Exhibit 3, p. 15; testimony by the appellant and her caregiver.

5. A medical note from November 24, 2021 reported “diffuse pain frequently as well as increased pain over her lower back,” but that there was “a significant improvement in chronic pain” following a diagnostic medial branch block in her lower back. The appellant was encouraged to stay active to improve her Fibromyalgia symptoms, but she reported difficulty remaining active due to abdominal symptoms. The note documents that there are activity and weight-lifting restrictions, but it does not specify what those restrictions are. Exhibit 3, pp. 15, 21-22.
6. The appellant’s physician wrote a note for the appeal stating the appellant suffers from “fibromyalgia, right sciatic nerve pain, osteoarthritis, and lumbar spondylosis. Patient would benefit from assistance with activities of daily living (ADLs).” Exhibit 3, p. 5.

Analysis and Conclusions of Law

MassHealth requires Adult Foster Care services be approved through prior authorization. See 130 CMR 408.417(B); 130 CMR 450.303. As part of this prior authorization process, the AFC provider “must include all required information, including, but not limited to, documentation of the completed clinical assessment conducted by the MassHealth agency or its designee; other nursing, medical or psychosocial evaluations or assessments; and any other documentation that the MassHealth agency ... requests” 130 CMR 408.417(B). This documentation is reviewed to determine the clinical eligibility for AFC and their level of services payment.

408.416: Clinical Eligibility Criteria for AFC

(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.

130 CMR 408.416(B) (**emphasis added**).

The level of payment is determined by the amount of assistance the member requires.

408.419: Conditions for Payment

(D) AFC Payments are made as follows.

(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 the activities** described in 130 CMR 408.416; **or**

(b) hands-on (physical) assistance with at **least two of the activities** described 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.

130 CMR 408.419(D) (**emphasis added**).

The appellant undoubtedly requires daily assistance with a variety of ADLs. The difficulty the appellant faces is whether the type and extent of assistance corresponds to the terms defined in the regulations. The assistance the appellant receives with bathing and dressing, for instance, does not reach the level of assistance required by the regulation to qualify. For bathing, the appellant's assistance is intermittent and only involves her back and hair at most. For dressing, the appellant requires assistance more consistently, but only requires assistance with lower body dressing. Therefore, it does not satisfy the requirement that there be both upper and lower body dressing. The appellant was not identified as incontinent or otherwise requiring assistance with toileting other than the assistance with transferring onto or off the toilet. Nor was there any evidence regarding what assistance or supervision the appellant required for eating, other than she required assistance in cooking meals.

Based upon testimony, the appellant requires the most consistent assistance with transferring and intermittent assistance with mobility. It is clear she requires assistance with at least one ADL, transferring, as defined by the AFC regulations. As MassHealth's representative explained, it is possible that the appellant's condition could change, requiring more physical assistance or supervision. These changes will need to be documented by her care team, including what physical restriction she may have. It is insufficient to simply state that she would benefit from assistance with ADLs. Furthermore, the appellant would not qualify for Level 2 services unless she required **daily** assistance with the **entirety of** at least **three ADLs**, or two ADLs and the management of behavioral conditions such as: wandering, abusive behaviors, socially inappropriate behavior, or resisting care. At this time, the evidence supports MassHealth's determination of Level 1 payment, and 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.

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Christopher Jones
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Optum MassHealth LTSS, P.O. Box 159108, Boston, MA 02215