

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2200747
Decision Date:	5/05/2022	Hearing Date:	03/03/2022
Hearing Officer:	Scott Bernard		

Appearance for Appellant:



Appearance for MassHealth:

Leslie Learned, RN *via* telephone

Interpreter:



*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:	Adult Foster Care (AFC)
Decision Date:	5/05/2022	Hearing Date:	03/03/2022
MassHealth's Rep.:	Leslie Learned, RN	Appellant's Rep.:	<i>Pro se</i>
Hearing Location:	Quincy Harbor South	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 6, 2022, MassHealth denied the appellant's prior authorization request for AFC services because MassHealth determined that the appellant did not meet the clinical eligibility guidelines. (See 130 CMR 408.416 and Exhibit (Ex.) 1; Ex. 4, pp. 4-5). The appellant filed this appeal in a timely manner on February 1, 2022. (See 130 CMR 610.015(B) and Ex. 2). Denial of assistance is valid grounds for appeal. (See 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's PA request for AFC services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 408.416, 408.417, and 450.204, in determining that the requested services should be denied.

Summary of Evidence

The MassHealth representative testified to the following. On December 22, 2021, MassHealth received a prior authorization request for AFC services, which the AFC provider submitted on the appellant's behalf. (Ex. 4, pp. 9-10). Specifically, the AFC provider requested level I services from January 19, 2021 through January 18, 2023. (Ex. 4, p. 6). *Per* the regulations, MassHealth will pay for level I service payment rate if to complete the activities of daily living (ADLs) listed in 130 CMR

408.416, the MassHealth member requires hands-on physical assistance with one or two of the ADLs or requires cuing or supervision throughout one or more of the ADLs. (Ex. 4, p. 37). On January 6, 2022, MassHealth issued a decision denying the prior authorization request because the appellant did not meet the clinical eligibility criteria for AFC as outlined in the regulations and the Guidelines for Medical Necessity Determination for Adult Foster Care (AFC) (Guidelines). (Ex. 1; Ex. 4, pp. 4-5, 37-44).

According to the record submitted with the prior authorization requested, the appellant is an individual under the age of 65 with a primary diagnosis of low back pain. (Ex. 4, p. 6). According to the MassHealth Adult Foster Care Primary Care Provider (PCP) Order Form (PCP form) submitted on December 22, the appellant requires hands-on assistance with bathing and dressing. (Ex. 4, p. 9). The section of the PCP form entitled “Member Signs and Symptoms” states “Lower back pain makes it difficult for Consumer to bend and reach, thus requiring physical assistance with bathing upper and lower body and dressing upper and lower body.” (Ex. 4, p. 10).

The medical records submitted with the PCP form seemed to indicate the opposite, however. A note dated January 2, 2021, indicates that while the appellant did have general complaints of fatigue, her physical exam the appellant’s neck was “Supple. Normal range of motion” and her lower extremities were “well-perfused.” (Ex. 4, p. 21). In a note from March 11, 2021, the appellant denied fatigue or fever (under General); back and leg pain (under Musculoskeletal); and weakness and dizziness (under Neurologic). (Ex. 4, p. 14). The note also indicates that the appellant lives with her two daughters, and two grandchildren. (Ex. 4, p. 13). Concerning the appellant’s back pain, the assessment and plan states that the appellant was not interested in physical therapy (PT) and will do a trial of topical lidocaine as treatment. (Ex. 4, p. 15). On September 27, 2021, the appellant underwent magnetic resonance imaging (MRI) of her lumbar spine, which indicated that her lumbar spine was normal¹. (Ex. 4, p. 29).

MassHealth made decision based on the regulations located at 130 CMR 408.416 (Clinical Eligibility Criteria), and 130 CMR 450.204 (Medical Necessity). (Ex. 4, pp. 37-38). The MassHealth representative stated that the clinical documentation and the forms submitted must provide a consistent narrative and did not do so.

The appellant stated that she did not understand why she has been denied. The appellant stated that she always has had the same symptoms and receives the same medications. The appellant stated that if anything her condition is worsening. The appellant stated that she sees her doctors every two months or so or when she is feeling very bad. The appellant stated that she recently fell and broke her leg. The MassHealth representative explained that one thing that has changed is that AFC now requires that a prior authorization be submitted. Previously, MassHealth just approved request for AFC services but presently requires that a person seeking AFC have symptoms that correspond to medical conditions reported in medical documentation. The MassHealth representative stated that the appellant

¹ In point of fact, the report states that the appellant has “[m]ild stable degenerative disc space narrowing at L5-S1” which was caused by a “[s]mall broad-based protrusion...which touches the thecal sac and S1 roots without evidence of deformity of the thecal sac or descending S1 roots. Mild posterior facet hypertrophy bilaterally. Patent left neural foramen. Moderate hypertrophic foraminal stenosis on the right which slightly effaces the traversing right L5 root. There is no evidence of lumbar canal stenosis.” (Ex. 4, pp. 29-30). The report also states that this condition is without significant change. (Ex. 4, p. 30).

does not currently have a medical need for AFC.

Findings of Fact

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

1. On December 22, 2021, MassHealth received a prior authorization request for AFC services, which the AFC provider submitted on the appellant's behalf. (Ex. 4, pp. 9-10).
2. Specifically, the AFC provider requested level I services from January 19, 2021 through January 18, 2023. (Ex. 4, p. 6).
3. *Per* the regulations, MassHealth will pay for level I service payment rate if in order to complete the activities of daily living (ADLs) listed in 130 CMR 408.416, the MassHealth member requires hands-on physical assistance with one or two of the ADLs or requires cuing or supervision throughout one or more of the ADLs. (Ex. 4, p. 37; Testimony of the MassHealth representative).
4. On January 6, 2022, MassHealth issued a decision denying the prior authorization request because the appellant did not meet the clinical eligibility criteria for AFC as outlined in the regulations and the Guidelines. (Ex. 1; Ex. 4, pp. 4-5, 37-44).
5. According to the record submitted with the prior authorization requested, the appellant is an individual under the age of 65 with a primary diagnosis of low back pain. (Ex. 4, p. 6).
6. According to the PCP form submitted on December 22, the appellant requires hands-on assistance with bathing and dressing. (Ex. 4, p. 9).
7. The section of the PCP form entitled "Member Signs and Symptoms" states "Lower back pain makes it difficult for Consumer to bend and reach, thus requiring physical assistance with bathing upper and lower body and dressing upper and lower body." (Ex. 4, p. 10).
8. A note dated January 2, 2021, indicates that while the appellant did have general complaints of fatigue, her physical exam the appellant's neck was "Supple. Normal range of motion" and her lower extremities were "well-perfused." (Ex. 4, p. 21).
9. In a note from March 11, 2021, the appellant denied fatigue or fever (under General); back and leg pain (under Musculoskeletal); and weakness and dizziness (under Neurologic). (Ex. 4, p. 14).
10. The note also indicates that the appellant lives with her two daughters, and two grandchildren. (Ex. 4, p. 13).
11. Concerning the appellant's back pain, the assessment and plan states that the appellant was not interested in PT and will do a trial of topical lidocaine as treatment. (Ex. 4, p. 15).
12. On September 27, 2021, the appellant underwent an MRI of her lumbar spine, which

indicated that her lumbar spine was normal. (Ex. 4, p. 29).

13. MassHealth made its decision based on the regulations located at 130 CMR 408.416 (Clinical Eligibility Criteria), and 130 CMR 450.204 (Medical Necessity). (Ex. 4, pp. 37-38).

Analysis and Conclusions of Law

As part of the prior authorization process, members seeking AFC must undergo a clinical assessment to assess the member's clinical status and need for AFC. (130 CMR 408.417(A). As a prerequisite for payment of AFC, the AFC provider must obtain prior authorization from MassHealth or its designee before the first date of service delivery and annually thereafter, and upon significant change. (130 CMR 408.417(B)(1)). Prior authorization determines the medical necessity for AFC as described under 130 CMR 408.416 and in accordance with 130 CMR 450.204: Medical Necessity. (130 CMR 408.417(B)(2)). Prior authorization may specify the service level for payment for the service. (130 CMR 408.417(B)(3)). When submitting a request for prior authorization for payment of AFC to MassHealth, or its designee, the AFC provider must submit requests in the form and format as required by MassHealth. (130 CMR 408.417(B)(5). The AFC provider must include all required information, including, but not limited to, documentation of the completed clinical assessment conducted by MassHealth or its designee; other nursing, medical or psychosocial evaluations or assessments; and any other documentation that MassHealth, or its designee, requests in order to complete the review and determination of prior authorization. (Id.).

MassHealth 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. (130 CMR 408.419(D)(1)). 130 CMR 408.416 states the following:

A member must meet the following clinical eligibility criteria for receipt of AFC.

(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.

The record does not demonstrate by a preponderance of the evidence that the appellant has a medical need for AFC services at this time. The PCP form the provider submitted states the appellant requires hands-on assistance with bathing and dressing and has lower back pain, which makes it difficult for her to bend and reach, thus requiring physical assistance with bathing upper and lower body and dressing upper and lower body. The medical notes submitted in support of the PCP indicate that while the appellant did have general complaints of fatigue, her physical showed that exam the appellant's neck was supple with normal range of motion and her lower extremities were "well-perfused. The notes further state that the appellant denied having fatigue or fever, back and leg pain, and weakness and dizziness. The appellant has undergone a MRI, which showed that her lumbar spine was normal. The record therefore does not support the request for AFC services.

For the above stated reasons the 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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

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