

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2200903
<b>Decision Date:</b>	4/20/2022	<b>Hearing Date:</b>	03/11/2022
<b>Hearing Officer:</b>	Susan Burgess-Cox		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Leslie Learned



*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

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Prior Authorization
<b>Decision Date:</b>	4/20/2022	<b>Hearing Date:</b>	03/11/2022
<b>MassHealth's Rep.:</b>	Leslie Learned	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	All Parties Appeared by Telephone	<b>Aid Pending:</b>	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 11, 2022, MassHealth denied the appellant's prior authorization request for adult foster care services (AFC). (130 CMR 408.416; Exhibit 1). The appellant filed this appeal in a timely manner on February 7, 2022. (130 CMR 610.015(B); Exhibit 2). Denial of assistance is valid grounds for appeal. (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth denied the appellant's prior authorization request for adult foster care services.

### Issue

Whether MassHealth was correct in denying the appellant's request for adult foster care services.

## Summary of Evidence

All parties appeared by telephone. Documents submitted by MassHealth were incorporated into the hearing record as Exhibit 4. The MassHealth representative, a registered nurse and consultant for the MassHealth Adult Foster Care (AFC) program, testified that the appellant is an adult who has a history of lung cancer along with pain in his chest, shoulders and back. (Testimony; Exhibit 4). The appellant has a diagnosis of dementia which has triggered a decline in his thinking, memory, cognitive abilities, impairs his daily life and makes him a wandering risk. (Exhibit 4).

The MassHealth representative testified that MassHealth found that the records did not clearly demonstrate that the appellant met the level of services required for adult foster care. The MassHealth representative noted that to qualify for Level II services through the adult foster care program an individual has to require hands-on assistance with at least three activities of daily living (ADLs) or 2 ADLs and behavior management. The MassHealth representative testified that the diagnoses listed in the prior authorization request were inconsistent with the notes included in the appellant's file. The records in the hearing file include notes from physicians for appointments in September 2020, January 2021 and October 2021.

An annual redetermination assessment was performed in December 2021. The assessment indicates that the appellant has: a memory problem, worsening of decision making; a period of isolation of approximately one hour each day; difficulty in performing all instrumental activities of daily living (IADLs); and an overall deterioration in self-sufficiency. Records show that the appellant's ADL status has declined. The appellant requires limited assistance with mobility, dressing, undressing, personal hygiene, and bathing. The appellant has pain in his right leg, an unsteady gait, utilizes a walker to ambulate and requires assistance in getting up and down stairs. Neither the appellant nor his caregivers believe that he is capable of increased functional capacity. The appellant's caregivers do not believe that the appellant can be left alone.

The MassHealth representative testified that notes indicate that the appellant walks daily, is generally well nourished and in no distress. (Testimony; Exhibit 4). As noted above, the appellant is enrolled in the Adult Foster Care program and requesting a continuation of services.

Records show the appellant went to an appointment with his primary care physician in October 2021 due to a rash that he had for approximately 2 months and was not being cleared up with over the counter medication. The appellant's nephew accompanied him to the appointment. The appellant was scheduled for a full physical in January 2022.

In December 2021, the appellant's primary care physician provided a letter identifying adult foster care (AFC) as an avenue of support for the appellant due to his chronic conditions. (Exhibit 4). The physician notes that AFC has significantly improved the appellant's quality of life and ability to manage bathing, medication management, coping skills, organization, and management of additional activities of daily living. (Exhibit 4). The physician notes that a denial for services under this program would negatively impact the appellant's health given its demonstrated benefits in the past. (Exhibit 4). The physician notes that the appellant would be at a significant risk of failure to manage his medical conditions given his difficulty with medication management and propensity to decompensate from a mental health perspective. (Testimony; Exhibit 4).

The appellant's nephew testified that the appellant requires assistance with bathing, dressing, undressing and personal hygiene. The appellant's nephew noted that the appellant at times can complete some of these tasks on his own but he generally requires assistance with most activities of daily living. The appellant has difficulty completing tasks due to pain and discomfort in his hands and other joints. The appellant's nephew testified that the appellant's fingers and knees often lock into place when trying to complete a task. Additionally, the appellant requires supervision if attempting to complete tasks on his own. The appellant's representative noted that the appellant requires assistance with all instrumental activities of daily living and is often unorganized and forgetful. The appellant requires reminders and assistance in taking medications. The appellant's nephew testified that the appellant has issues with his gait, limitations in functioning of his hands and has fallen at least twice in the last month.

## **Findings of Fact**

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

1. The appellant is an adult who has a history of lung cancer which causes pain in his chest, shoulders and back.
2. The pain creates a need for assistance with dressing and bathing.
3. In December 2021, the appellant underwent a reevaluation for participation in the Adult Foster Care (AFC) program.
4. The appellant lives with his nephew.
5. The appellant has pain in his right leg and an unsteady gait.

6. The appellant uses a walker.
7. The appellant requires assistance in getting up and down stairs.
8. The appellant has experienced several falls in the months prior to the hearing.
9. The appellant has been diagnosed with dementia which has triggered a decline in his thinking, memory, cognitive abilities and makes him a wandering risk.
10. The appellant is unorganized and forgetful.
11. The appellant has experienced an overall deterioration in self-sufficiency.
12. The appellant requires assistance with mobility, bathing, grooming dressing, and undressing.
13. The appellant requires assistance with medication management.
14. The appellant requires assistance with all instrumental activities of daily living (IADLs).
15. The appellant's participation in the AFC program has improved his quality of life.

## **Analysis and Conclusions of Law**

Adult Foster Care (AFC) is a service ordered by a primary care provider delivered to a member in a qualified setting as described in 130 CMR 408.435 by a multidisciplinary team (MDT) and qualified AFC caregiver, that includes assistance with ADLs, IADLs, other personal care as needed, nursing oversight, and AFC care management, as described in 130 CMR 408.415(C). (130 CMR 408.402).

Activities of Daily Living (ADLs) include fundamental personal-care tasks performed daily as part of an individual's routine of self-care. ADLs include, but are not limited to, eating, toileting, dressing, bathing, transferring, and mobility/ambulation. (130 CMR 408.402). Instrumental Activities of Daily Living (IADLs) include – activities related to independent living that are incidental to the care of the member and that include, but are not limited to, household-management tasks, laundry, shopping, housekeeping, meal preparation and cleanup, transportation (accompanying the member to medical providers and

other appointments), care and maintenance of wheelchairs and adaptive devices, medication management and any paperwork required for receiving prescribed medications within the AFC setting, or any other medical need determined by the AFC provider as being instrumental to the health care and general well-being of the member. (130 CMR 408.402).

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 makeup;
  - (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).

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)). A new clinical assessment is required annually and upon significant change. (130 CMR 408.417(A)).

As a prerequisite for payment of AFC, the AFC provider must obtain prior authorization from the MassHealth agency 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)). Prior authorization does not establish or waive any other prerequisites for payment such as the member's financial eligibility described in 130 CMR 503.007: Potential Sources of Health Care and 517.008: Potential Sources of Health Care. (130 CMR 408.417(B)(4)).

The regulations for MassHealth define a service as "medically necessary" if it is reasonably calculated to prevent, diagnose, prevent the worsening of, alleviate correct, or cure conditions in the member that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity. (130 CMR 450.204(A)). Medically necessary services must be substantiated by records including evidence of such medical necessity and quality. (130 CMR 450.204(B)). A provider must make those records available to MassHealth upon request. (130 CMR 450.204(B)).

MassHealth will pay at a Level I service 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)).

MassHealth pays at a Level II service 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.:
  - 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

Testimony and evidence presented at the hearing demonstrate that the appellant has a medical and mental condition that requires daily hands-on (physical) assistance as well as cueing and supervision throughout any ADL. At a minimum, the appellant qualifies for Level I service payments. However, records indicate that the appellant was approved for Level II service payments in the past and requested a continuation of that coverage. Testimony and evidence show that the appellant requires assistance with at least three activities of daily living, bathing, dressing and mobility as well as management of behaviors such as wandering. Therefore, the appellant should be approved for Level II service payments.

The decision made by MassHealth was not correct.

This appeal is approved.

## **Order for MassHealth**

Determine the appellant eligible for Level II service payments for the Adult Foster Care program as of December 22, 2021.

## **Implementation of this Decision**

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. 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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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

cc:

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