

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** DENIED

**Appeal Number:** 2200957

**Decision Date:** 5/17/22

**Hearing Date:** 03/18/2022

**Hearing Officer:** Christopher Taffe

**Appearances for Appellant:**



**Appearance for MassHealth:**

Leslie Learned, RN, Clinical Nurse  
Reviewer (on behalf of Optum) (by phone)

**Interpreter:**

Arabic ("Akram" - #223184) of Interpreters  
and Translators, Inc. (by phone)



*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>	DENIED	<b>Issue:</b>	PA – Adult Foster Care
<b>Decision Date:</b>	5/17/22	<b>Hearing Date:</b>	03/18/2022
<b>MassHealth’s Rep.:</b>	L. Learned, RN	<b>Appellant’s Rep.:</b>	Son
<b>Hearing Location:</b>	HarborSouth Tower, Quincy	<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 February 4, 2022, MassHealth denied Appellant’s Prior Authorization (PA) request for approval of Level II Adult Foster Care (“AFC”) Services because Appellant did not meet the clinical eligibility criteria for AFC benefits. See Exhibit 1; 130 CMR 450.204(A)(1) and 130 CMR 408.416. An appeal request seeking a Fair Hearing was filed on Appellant’s behalf by her son by phone with the MassHealth agency on February 4, 2022. See Exhibit 1; 130 CMR 610.015(B). On February 9, 2022, the Board of Hearings dismissed this appeal without prejudice indicating a need for Appellant to verify authority for the appeal request. See 130 CMR 610.035; Exhibit 3. On February 16, 2022, Appellant filed a timely and proper request to vacate the dismissal which verified the authority and desire to proceed with the appeal. See 130 CMR 610.035(B) and 130 CMR 610.048; Exhibit 4. Challenging a MassHealth denial of a request for assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032.

## Action Taken by MassHealth

MassHealth denied Appellant’s request for Level II Adult Foster Care Services.

## Issue

Is the MassHealth decision to deny the requested Adult Foster Care services consistent with the clinical information and/or other evidence available at hearing.

## Summary of Evidence

Appellant is a MassHealth member who appeared at hearing by phone along with her son. MassHealth was represented by a nurse who is a clinical reviewer, and who also appeared by phone. Per the Appellant's request, an Arabic-speaking interpreter was provided by the Board of Hearings at hearing.

Appellant is a [REDACTED] female whose medical diagnoses and history supporting the claim for AFC services include, but are not limited to: Iron deficiency, hypertension, hyperlipidemia, anxiety, depression, PTSD, low back pain, left shoulder pain, and obesity.

MassHealth testified that on January 25, 2022, the agency received a PA request from Appellant's AFC provider (VieCare Corp.) which sought Level II AFC services. To receive Level II services, a member must generally require "hands-on assistance" with three Activities of Daily Living (ADLs). MassHealth testified that the request indicated that the Appellant needed help in the form of "Daily Hands-on (Physical)" assistance with the ADLs of Bathing, Dressing, Toileting, Transferring, and Mobility (Ambulation), and the request was also marked in a way stating that such needs were more than just cueing and supervising. See Exhibit 5, page 9.<sup>1</sup>

MassHealth stated that what the clinical record indicated did not rise to the level of consistent or constant hands-on help needed to qualify, and that appellant just generally needed more "intermittent" help. For example, the medical record in Exhibit 5, page 21 states that for bathing the Appellant gets help sitting on a shower chair, but she *"takes the shower by herself"*; it also states that Appellant needs *"help with dressing intermittently"* and that while her son helps her get on the commode for toileting, she is able clean herself after toileting. As to transferring, the record says she *"needs help with transfers intermittently especially getting into the car or walking long distances"* but that she uses a cane to walk. See Exhibit 5, pages 21, which is also consistent with the description on page 10 of Exhibit 5 filled out by the AFC provider and the Minimum Data Set answers on page 14 of Exhibit 5.

The MassHealth Representative also explained that the supporting clinical documentation must support the medical necessity and appropriateness for the service requested and that, for this level of service, a more consistent need with ADLs had to be evidenced, and that was not the case in this

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<sup>1</sup> There is also an option to be eligible for the Requested Level II benefit with less ADLs if there is a separate need for behavior management involving the individual being susceptible to either wandering, being verbally or physically abusive, socially inappropriate, or resistant. See Exhibit 5, pages 31-32; see also 130 CMR 408.419(D)(2)(b). However, neither the PA submission (page 9 of Exhibit 5), the medical records within Exhibit 5, nor testimony at hearing indicated any such behavior management issues exist for this member, so this aspect will not be further discussed or analyzed.

matter. It is also noted that while Level 1 allows for cueing and supervision to be used to qualify and count certain ADLs for eligibility, the greater requirements for Level II's higher payment do not allow for such cueing and supervision to be the level of assistance needed, and indicate a more constant and complete level of assistance.

Appellant testified to having lower back pain that was inaccurately described by her doctors as it was more of a curvature. She testified that she needs help getting into and out of the bathroom for toileting and showering, but that she can do the cleaning-related portion of those tasks independently, but that she also needs help cooking and with other household tasks. As to her ability to walk independently, Appellant testified that the doctor made her walk independently during her visit to the provider and that she was only able to do so with the help of a cane and leaning on the wall, but it was stressful and at times made her dizzy.

## Findings of Fact

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

1. Appellant is a [REDACTED] female whose medical diagnoses include: Iron deficiency, hypertension, hyperlipidemia, anxiety, depression, PTSD, low back pain, left shoulder pain, and obesity. (Testimony and Exhibit 5)
2. Appellant's AFC provider submitted a PA request for Level II Adult Foster Care Services. This request was denied and timely appealed to the Board of Hearings. (Testimony and Exhibits 1 and 5)
  - a. The PA request indicated that the Appellant needed help in the form of "Daily Hands-on (Physical)" assistance with the ADLs of Bathing, Dressing, Toileting, Transferring, and Mobility (Ambulation), and that such level of assistance required more than just cueing and supervising. (Testimony and Exhibit 5)
3. The medical documentation and records submitted with the PA request, including her doctor's note and the Medical Data Set assessment, are not consistent with the claims that she needs a high level of hands-on assistance with certain ADLs. (Testimony and Exhibit 5)
  - a. Specifically, Appellant is able to ambulate on her own with a cane and walking device for most non-long distances. (Testimony and Exhibit 5)
  - b. Appellant is able to bathe in the shower and clean herself independently during bathing and after toileting, although she receives some assistance in the form of being transferred to and from her shower chair and/or commode during these activities. (Testimony and Exhibit 5)
  - c. Appellant is intermittently able to dress herself independently. (Testimony and Exhibit 5)

## Analysis and Conclusions of Law

Adult Foster Care is a MassHealth benefit offered to eligible members who typically need some sort of long-term support to remain safely in the community. The MassHealth Adult Foster Care regulatory manual is found at 130 CMR 408. AFC is defined in its regulations as “*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).*” See 130 CMR 408.402.

Pursuant to 130 CMR 408.416 (reprinted in relevant part below), to meet the requirements for authorization of Adult Foster Care, a member must have a medical or mental condition that requires daily hands-on assistance or cueing and supervision throughout the entire activity in order to successfully complete at least one of the following activities: bathing, dressing, toileting, transferring, mobility or eating.

### 408.416 Clinical Eligibility Criteria for AFC

*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.*
- (Bolded emphasis added.)**

The MassHealth regulation at 130 CMR 408.419(D) establishes the conditions for when an AFC PA request may be approved for both a level I AFC service payment and a level II AFC service payment. Level II services require a higher level of need as they result in a greater monetary benefit.

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.:

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.

(**Bolded** emphasis added.)

As a rule, the MassHealth agency and its programs (including the AFC program) generally pays only for medically necessary services to eligible MassHealth members and may require that such medical necessity be established through a prior authorization process. See 130 CMR 450.204; 130 CMR 408.417(B). Per the medical necessity regulation that applies to all providers at 130 CMR 450.204, additional requirements about the medical necessity of MassHealth services may be contained in other MassHealth publications, including written medical necessity and coverage guidelines. See 130 CMR 450.204(D). Such additional AFC guidelines were submitted into the record as part of Exhibit 5. See pages 29-34.

With those regulations in mind, I conclude that the MassHealth decision to deny this Appellant the benefit of this requested **Level II** service was appropriate. The clinical record submitted indicates that Appellant has some level of independence with all the claimed ADLs at issue and does not need constant support throughout any of the activities. The record and testimony states Appellant is able to dress herself at times, and that she is able to do parts of the bathing and toileting activity independently. While she needs some higher level of assistance with mobility and ambulating, it does not appear to rise to the level of constant guidance. The guidelines, particularly on page 30 of Exhibit 5, describe each of the activities and indicate what rises to assistance throughout the activity. For example, the guidelines state that for the activity of

toileting to qualify, it requires more than just transferring on and off the commode, which seems consistent with what Appellant needs so she cannot count that activity to qualify. Similarly, for Bathing to qualify, it requires assistance in the form of active cleaning, which Appellant does not need as she testified she cleans herself during bathing as well as toileting. Appellant is able to dress herself independently at times as well, so that ADL can not be used to qualify Appellant.

It is also noted that Appellant asked for Level II services, which does not allow supervision or cueing to be used to qualify for any of these activities. Compare 130 CMR 408.419(D)(2)(a) with (D)(1). In summary, I find there is not enough evidence to indicate that Appellant needs constant hands on assistance with arguably two ADLs, let alone the higher number of three ADLs that are required for approval. The strongest evidence in Appellant's favor is for assistance with Transferring, with the next closest one arguably being for the activity of Mobility, but it is a close call as she is able to work certain distances on her own with proper medical equipment. Regardless, for a Level II request, the record does not show that the standard for constant physical assistance applies to any of Bathing, Dressing, or Toileting, so finding three qualifying ADLs is not supported by this record.<sup>2</sup>

For these reasons, I conclude that there is no basis to rescind or overrule the MassHealth decision. This appeal is DENIED.

## Order for MassHealth

None.

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<sup>2</sup> Appellant can talk to her provider about Level I AFC services if those parties feel it is appropriate, as the standard for qualifying for that benefit is a bit lower. As the denial notice in Exhibit 1 and 5 states, *"Your provider or any other MassHealth provider you choose can submit a new request at any time. You may want MassHealth to review a new request if your medical condition has changed or information was not included with the original request."*

## 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 Taffe  
Hearing Officer  
Board of Hearings

cc: Optum/MassHealth LTSS

