

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2200959

**Decision Date:** 5/10/2022

**Hearing Date:** 04/01/2022

**Hearing Officer:** Radha Tilva

**Record Open to:** 04/13/2022

**Appearance for Appellant:**




**Appearance for MassHealth:**

Jamie Capizzano, Optum MH Rep.



*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>	5/10/2022	<b>Hearing Date:</b>	04/01/2022
<b>MassHealth's Rep.:</b>	Jamie Capizzano	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Quincy Harbor South	<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 modified the appellant's prior authorization request for Level 2 adult foster care services to level 1 services for dates of service January 1, 2022 through December 31, 2022 (Exhibit 1). The appellant filed this appeal in a timely manner on February 4, 2022 (see 130 CMR 610.015(B) and Exhibit 2). Challenging a prior authorization request for adult foster care services is valid grounds for appeal (see 130 CMR 610.032).

A dismissal was issued on February 9, 2022 requesting a signed copy of the form authorizing the appeal representative. MassHealth received the signed fair hearing request form and a hearing was scheduled for April 1, 2022.

## Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for Level 2 adult foster care services to Level 1 services for dates of service January 1, 2022 through December 31, 2022.

## Issue

The appeal issue is whether MassHealth was correct in modifying appellant's prior authorization request for adult foster care services.

## Summary of Evidence

The appellant was represented telephonically by his friend. MassHealth was represented telephonically by a registered nurse reviewer from Optum, the agent of MassHealth that makes the prior authorization determinations for Adult Foster Care (AFC).

The MassHealth representative stated that the appellant's provider agency, Gabriel Care, Inc., submitted a request for prior authorization for AFC Level II services on December 10, 2021. MassHealth made a decision on January 11, 2022 after reviewing the submission and determined that appellant should qualify for Level I AFC services.

The provider reported that appellant is a male in his late fifties with Type II diabetes, neuropathy, nephropathy, hyperlipidemia, hypertension, low back pain, post-traumatic stress disorder, depression, anxiety, psychosis, and placement of a cardiac pacemaker (Exhibit 6, p. 10). In the MassHealth Adult Foster Care Primary Care Provider (PCP) Order Form, the appellant's PCP noted that the appellant has no behaviors such as wandering, no verbally or physically abusive behaviors, no socially inappropriate or disruptive behavior, and no resisting care. (Exhibit 6, p. 9). The PCP also noted on the form that appellant requires daily-hands-on assistance with bathing, dressing, and mobility and cueing and supervision for toileting, transferring, and eating (Exhibit 6, p. 9).

A medical office visit note for physical exam dated August 31, 2021 was included with the prior authorization request (Exhibit 6, pp. 12-18). In the August 31, 2021 office note, the physician wrote under falls risk assessment that appellant had not fallen in the past year, was steady walking (though the PCP suggests using a cane), has no trouble stepping on a curb, and is freely mobile (Exhibit 6, p. 13). Under functional status the physician noted that appellant is dependent with bathing and dressing, but independent with transferring, toileting, feeding, and transportation (Exhibit 6, p. 13).

The MassHealth representative stated that, pursuant to 130 CMR 406.416, in order to be eligible for AFC Level II services, a MassHealth member must 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 408.416(D)(2)(b)(1) through (5).

The MassHealth representative stated that medical necessity was not established for Level II AFC services as appellant's physician only documented assistance with two activities of daily living. The MassHealth representative testified that the clinical documentation submitted does not support the need for hands on assistance with activities of daily living other than bathing and dressing. The MassHealth representative stated that although the appellant does not meet the clinical criteria for AFC Level II services, he does require supervision and cueing and therefore Level 1 AFC services were approved.

The appellant's representative stated that the appellant has other medical conditions including end stage renal disease. The representative further stated that appellant was evaluated in December 2021 by his PCP, but has not seen his new kidney doctor. The representative testified that appellant requires assistance with toileting, showering, dressing, mobility and transfer. The hearing record was left open for appellant to supplement the record with updated medical documentation to corroborate the representative's testimony.

On April 6, 2022 appellant's representative submitted a medical record (Exhibit 7). The medical record was from appellant's visit with his physician on December 8, 2021 and stated that the reason for the appointment was diarrhea (Exhibit 7). The note included just the first page and did not discuss any activities of daily living (Exhibit 7). In addition, appellant's representative also included the first page of an ultrasound from March 2022 of appellant's right upper quadrant (Exhibit 7). Another email included some incomplete medical records as well, none of which discussed appellant's needs with activities of daily living (Exhibit 7). On April 12, 2022 the MassHealth representative reviewed these records and listed the records submitted by appellant (Exhibit 8). The MassHealth representative stated that after review of the new documentation, reviewer testimony and appellant's testimony MassHealth has denied the request for Level 2 AFC services, as the documentation submitted does not establish medical necessity for this level of service (Exhibit 8).

## **Findings of Fact**

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

1. Appellant's provider agency, Gabriel Care, Inc., submitted a request for prior authorization for AFC Level II services on December 10, 2021.
2. On January 11, 2022 after reviewing the submission MassHealth determined that appellant should qualify for Level I AFC services.
3. The appellant is a male in his late fifties with Type II diabetes, end stage renal disease, neuropathy, nephropathy, hyperlipidemia, hypertension, low back pain, post-traumatic stress disorder, depression, anxiety, psychosis, and placement of a cardiac pacemaker (Exhibit 6, p. 10).
4. The PCP form indicated that appellant has no behaviors such as wandering, no verbally or physically abusive behaviors, no socially inappropriate or disruptive behavior, and no resisting care.
5. In a medical office noted dated August 31, 2021, the physician wrote under falls risk assessment that appellant had not fallen in the past year, was steady walking (though the PCP suggests using a cane), has no trouble stepping on a curb, and is freely mobile
6. Under functional status the physician noted that appellant is dependent with bathing and dressing, but independent with transferring, toileting, feeding, and transportation.

7. The appellant's representative states that appellant requires assistance with toileting, showering, dressing, mobility and transfer.
8. MassHealth provides Level 2 AFC services if a member needs assistance with either three activities of daily living or hands-on physical assistance with at least two of the activities of daily living and management of behaviors that require frequent caregiver intervention.

## Analysis and Conclusions of Law

Adult foster care is defined 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). (130 CMR 408.402).

### Scope of Adult Foster Care Services

(A) Direct Care. The AFC provider must ensure the delivery of direct care to members in a qualified setting as described in 130 CMR 408.435 by a qualified AFC caregiver, as described in 130 CMR 408.434, who lives in the residence and who is selected, supervised, and paid by the AFC provider. AFC must be ordered by a PCP and delivered by a qualified AFC caregiver under the supervision of the registered nurse and the MDT in accordance with each member's written plan of care. Direct care includes 24-hour supervision, daily assistance with ADLs and IADLs as defined in 130 CMR 408.402, and other personal care as needed. (130 CMR 408.415(A)).

### 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.

(130 CMR 408.416(A), (B)).

The requested services must also be medically necessary for prior authorization to be approved. MassHealth will not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

(A) A service is “medically necessary” if:

- 1) it is reasonably calculated to prevent, diagnose, prevent 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; and
  - 2) there is no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider or identified by MassHealth pursuant to a prior authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007, or 517.007.
- (B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to MassHealth upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

(C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

(130 CMR 450.204(A), (B), (C)).

MassHealth regulation 130 CMR 408.419(D) establishes the conditions for an AFC provider to receive a level I service payment versus a level II service payment.

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.

(130 CMR 406.419(D)(1), (2)).

MassHealth denied the appellant's request for Level II AFC because the documentation did not support medical necessity for Level II services. The appellant's representative testified that appellant requires assistance with bathing, dressing, toileting, mobility, and transfers, however, the medical record the provider submitted along with the prior authorization request does not support that such assistance is necessary. The falls risk assessment does not document any history of falls or difficulty walking, the PCP notes that he is freely mobile though recommends the use of a cane (Exhibit 6, p. 13). Moreover, the functional status lists, with respect to activities of daily living, that appellant is independent with toileting, transferring and feeding and only dependent with bathing and dressing (Exhibit 6, p. 13). Thus, the PCP order form and the medical documentation submitted does not support that the appellant needs hands on physical assistance with at least 3 activities of daily living as required under the regulations. Further the appellant does not have any of the behaviors that require frequent caregiver intervention as described in 130 CMR 408.419(D)(2)(b)1 through 5.

MassHealth determined that the appellant meets the criteria for Level I AFC services in that he requires supervision and cueing for at least one ADL.

Based on the current record the appellant has failed to provide medical evidence that he meets the clinical eligibility criteria for approval of Level II adult foster care and as a result 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.

---

Radha Tilva  
Hearing Officer  
Board of Hearings

cc:

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