

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2201160

Decision Date: 5/19/22

Hearing Date: 04/13/2022

Hearing Officer: Radha Tilva

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Leslie Learned, Optum Representative

Interpreter: Claudia, Spanish 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:	PA – AFC – Level II
Decision Date:	5/19/22	Hearing Date:	04/13/2022
MassHealth's Rep.:	Leslie Learned	Appellant's Rep.:	Pro se
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 31, 2022, MassHealth denied appellant's prior authorization request for Adult Foster Care (AFC) services from January 18, 2022 to January 17, 2023 because the clinical documentation submitted does not demonstrate that the appellant needs the services and treatment requested (Exhibit 1). The appellant filed this appeal in a timely manner on February 14, 2022 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

On March 9, 2022 the Board of Hearings informed the appellant that the matter would be dismissed for failure to complete the fair hearing request form appropriately (Exhibit 3). On March 17, 2022 the appellant submitted a fair hearing request form with her signature and a hearing notice was then issued the following day on March 18, 2022 scheduling a hearing for April 13, 2022 (Exhibit 4).

Action Taken by MassHealth

MassHealth denied appellant's prior authorization request for AFC services from January 18, 2022 to January 17, 2023.

Issue

The appeal issue is whether MassHealth was correct in denying appellant's AFC request?

Summary of Evidence

MassHealth was represented by a registered nurse from Optum, the company which administers MassHealth's prior authorization request for adult foster care. The Optum nurse stated that appellant was previously approved on November 5, 2020 for adult foster care services, however, MassHealth had no requirement for prior authorization then. MassHealth explained that appellant applied for Adult Foster Care services a total of five times commencing November 23, 2021. The prior authorization request that this appeal was based off was a request dated January 18, 2022. MassHealth denied this request on January 21, 2022.

The appellant is a female in her forties with post-partum depression, anxiety, and vertigo (Exhibit 4, p 11). The appellant is requesting daily hands on assistance with bathing, dressing, toileting and transferring and cueing and supervision for mobility and eating (Exhibit 4, p. 10). The MassHealth representative explained that the request was denied after reviewing the three office notices and physician letter which accompanied the request. A visit note dated January 26, 2021 states under review of systems that the appellant is negative in all areas aside from hematological where she is positive for adenopathy, but negative for all psychiatric and behavioral issues (Exhibit 4, p. 23). A visit note dated April 26, 2021 states she is positive for fatigue and weakness, but negative in all other systems reviewed, including psychiatric (Exhibit 4, p. 18). A note from a registered nurse practitioner, dated November 24, 2021, states that appellant has a history of GERD and proton pump inhibitor since 2012 and requires moderate assistance with ADLs and IADLs due to altered mood and decreased ability to complete self-care tasks (Exhibit 4, p. 28). She complains of headaches, depression, anxiety, poor balance, unsteady gait, and generalized muscle weakness (Exhibit 4, p. 28). The MassHealth representative testified that the November 24, 2021 note is inconsistent with the other notes submitted.

The MassHealth representative further testified that all four prior authorization requests were reviewed by the physician who after the fourth request reviewed all documents provided and determined that the medical necessity for adult foster care was not supported by the medical documentation provided. The analysis and decision was determined based on 130 CMR 450.204 and 130 CMR 408.416. The representative further stated that Level I AFC services require cueing and supervision for at least one activity of daily living daily which the appellant does not require.

The appellant appeared by telephone at hearing. The appellant testified to the following: she is disabled since 2013/2014 from post-traumatic stress disorder. The appellant was receiving nursing visits and Level II services before for two years due to the pain to assist her with bathing, dressing, and getting out of bed. The visiting nurse came to her first home in Chelsea, but now that she has moved has had nursing services discontinued. The appellant's son was her caregiver. Since moving she has been having panic attacks, anxiety, and has been getting lost for long periods of time. The appellant further stated that it is hard for her to move out of bed and she feels like she has

a lot of bruises and scratches from falling. She has no strength in her hand and cannot hold a bottle of milk. She has suicidal thoughts and she finds it humiliating to be asking for help, but feels that it is necessary for someone to help her. She cannot clean herself properly and has incontinence issues.

Along with her fair hearing request was a progress note dated December 7, 2021 which states that appellant's entire body is trembling, her legs shake all night, she is very depressed, bruising all over her legs, chronic headaches, and she is drinking 1 liter of vodka a day, 4 times a week (Exhibit 2). In addition, the review of systems indicates she is positive for fatigue, tremors, weakness, numbness and headaches, but all other systems are negative (Exhibit 2). The plan and assessment was suggestive of neuromuscular disorder and checking for metabolic issues and vitamin deficiencies including anemia, thyroid disorder, or a biomarker for a neuromuscular disorder (Exhibit 2). A note from October 29, 2021 was also included where the appellant sought medical care following abdominal cramping including nausea, diarrhea, and vomiting and was sent to Boston Medical Center for further evaluation (Exhibit 2).

Findings of Fact

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

1. MassHealth explained that appellant applied for Adult Foster Care services a total of five times commencing November 23, 2021.
2. The prior authorization request that this appeal was based off was a request dated January 18, 2022.
3. MassHealth denied this request on January 21, 2022.
4. The appellant is a female in her forties with post-partum depression, anxiety, and vertigo.
5. The appellant is requesting daily hands on assistance with bathing, dressing, toileting and transferring and cueing and supervision for mobility and eating.
6. The appellant's medical notes support that she is positive for fatigue, headaches, weakness, and tremors.

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)) (Emphasis added).

MassHealth denied the appellant's request for Level II AFC services because the documentation did not support medical necessity. MassHealth felt that the note dated November 24, 2021 which stated that appellant required medical assistance for ADLs and IADLs due to altered mood and decreased ability to complete self-care was inconsistent with the other medical and progress notes submitted with the prior authorization request. As noted in the regulations above, Level II AFC services are authorized when a patient requires hands-on physical assistance with three activities of daily living or two activities of daily living including management of a behavior that requires caregiver intervention. The PCP order form and November 24, 2021 both support the need for assistance with ADLs, however, MassHealth is correct in concluding that the notes conflict with the other medical progress notes provided with the prior authorization request. Though some of the progress notes support that appellant has both fatigue and weakness, the notes fail to corroborate problems or symptoms with any of appellant's other systems including musculoskeletal, which would otherwise support requiring assistance with hands-on care. Moreover, the progress notes did not state that appellant feels those symptoms consistently. Had the note dated November 24, 2021 been signed by a physician or listed other medical conditions aside from GERD to support the need for "moderate assistance," perhaps more weight could be placed upon it. Based on the above analysis 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