

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**

[REDACTED]

<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2201177
<b>Decision Date:</b>	3/31/2022	<b>Hearing Date:</b>	03/17/2022
<b>Hearing Officer:</b>	Paul C. Moore	<b>Record Closed:</b>	03/24/2022

**Appellant Representatives:**

[REDACTED]

**MassHealth Representative:**

Leslie Learned, R.N., clinical reviewer, Optum  
(by telephone)


**Spanish Interpreter:**

[REDACTED]



*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>	Prior Authorization, Adult Foster Care Services
<b>Decision Date:</b>	3/31/2022	<b>Hearing Date:</b>	03/17/2022
<b>MassHealth Rep.:</b>	Leslie Learned, R.N.	<b>Appellant Reps.:</b>	
<b>Hearing Location:</b>	Board of Hearings (remote)		

## 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 21, 2022, MassHealth denied the appellant's request for prior authorization (PA) for level II adult foster care services (130 CMR 408.401; Exh. 1). The appellant filed this appeal in a timely manner on February 15, 2022 (130 CMR 610.015(B); Exh. 2). Denial of a PA request is valid grounds for appeal (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth denied the appellant's PA request for level II adult foster care services.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 408.401, in determining that the appellant does not meet the criteria for level II adult foster care services.

## Summary of Evidence

MassHealth was represented at hearing by a clinical reviewer with Optum, the third-party contractor

that adjudicates PA requests for adult foster care services on behalf of MassHealth (“MassHealth representative”). She testified that the appellant is a [REDACTED] year-old MassHealth member who lives in the community and has diagnoses of right leg pain following a gunshot wound in 1994, severe opioid use disorder in sustained remission, major depressive disorder in full remission, hepatitis C, a history of assault with trauma to the brain and face, essential hypertension, non-ossified fibroma of the bone in his left ankle, and insomnia (Testimony, Exh. 5). The MassHealth representative testified that MassHealth received a PA request from Caregiver Homes of Massachusetts for level II adult foster care (“AFC”) services on behalf of the appellant on January 10, 2022, for the PA period February 5, 2022 through February 4, 2023. MassHealth notified the appellant, by written decision dated January 21, 2022, that he was ineligible for level II AFC services (Testimony, Exh. 1). The MassHealth representative testified that in order to be eligible for level II AFC services, documentation must demonstrate that the appellant needs hands-on physical assistance with at least three activities of daily living (ADLs), or hands-on physical assistance with two ADLs, together with management of behaviors that require frequent caregiver intervention, such as wandering, verbally abusive behaviors, or physically abusive behaviors (Testimony).

The MassHealth representative testified the PA request sought daily, hands-on physical assistance with the appellant’s bathing, dressing, transferring, and mobility (Testimony, Exh. 3, p. 9). In addition, the MassHealth representative testified that a physician progress note from an examination dated December 5, 2021, submitted with the PA request, reflected that the appellant had bilateral leg pain, which was at odds with a representation of right leg pain only contained in the PA request. In addition, the MassHealth representative noted that the December 5, 2021 physician progress note states, “general musculoskeletal: no tenderness or deformity, normal range of motion” (*Id.*, p. 13). The physician progress note also reflects that the appellant’s gait is normal (*Id.*). The same progress note reflects that the appellant is oriented to person, place and time, and the physician documented that she “encouraged [the appellant] to pursue moderate activity for at least 300 minutes/week” and recommended weight loss (*Id.*). The physician progress notes do not document that the appellant has back pain or hand pain, according to the MassHealth representative (Testimony).

The MassHealth representative indicated that the Minimum Data Set – Home Care (MDS-HC) completed for the appellant on January 6, 2022 reflects that he needs assistance with upper body dressing, but she added that there is no documented medical diagnosis that supports the need for such assistance (Testimony, Exh. 4, p. 21). Because the progress notes of the appellant’s physician did not corroborate some of the information contained in the PA request for level II AFC services, MassHealth denied the request (Testimony, Exh. 1).

The appellant testified with the assistance of a live-in caregiver and a Spanish interpreter. The appellant’s caregiver testified that he needs assistance with dressing his upper body because he has arthritis in his hands, and neuropathy in his right shoulder, and the caregiver indicated that he has been referred to a pain clinic. Also, the

caregiver testified that the appellant has been diagnosed with dementia. The MassHealth representative pointed out that none of these diagnoses are included in the progress notes of the physician sent to MassHealth, or in the PA request submitted by Caregiver Homes of Massachusetts on his behalf (Testimony).<sup>1</sup>

The appellant's caregiver testified that many years ago, the appellant was deemed disabled by a psychiatrist with the Social Security Administration (Testimony).

The appellant testified that he needs assistance to walk, dress and eat, that he cannot raise his hands, and that the joints in his shoulders, knees and elbows swell, and are painful. He uses a cane to ambulate. He was addicted to drugs for many years, and is now on Suboxone maintenance (Testimony).

The MDS-HC completed for the appellant on January 6, 2022 reflects that he needs "limited assistance" with transfers, locomotion in home, locomotion outside of home, dressing his upper and lower body, personal hygiene and bathing (Exh. 3, p. 21).<sup>2</sup> The MDS-HC also reflects that the appellant needs "setup help only" for eating and toilet use (*Id.*).<sup>3</sup> The MDS-HC also shows that the appellant has no behavioral symptoms (*Id.*, p. 20).

The MassHealth representative testified that the appellant did receive level II AFC services in the past, and added that this may have been before MassHealth reviewed such requests for medical necessity (Testimony).

At the close of the hearing, the hearing officer left the record of this appeal open for one week, or until March 24, 2022, for the appellant to submit a more current progress note from his physician, based on an office visit he had with his doctor on January 18, 2022. The hearing officer also agreed to extend the record-open period for one additional week, or until March 31, 2022, for the MassHealth representative to file a response to this additional information, including whether MassHealth would alter its decision to deny the request for level II AFC services.

The hearing officer received no additional information, and closed the hearing record on March 24, 2022.

## Findings of Fact

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<sup>1</sup> In contrast to this testimony, the MDS-HC documents that the appellant has a diagnosis of primary generalized osteoarthritis (Exh. 3, p. 21).

<sup>2</sup> "Limited assistance" is defined in the MDS-HC as follows: "client highly involved in activity; received physical help in guided maneuvering of limbs or other non-weight bearing assistance 3 or more times in the last 7 days OR combination of non-weight bearing help with more help provided only 1 or 2 times during period (for a total of 3 or more episodes of physical help)" (Exh. 3, p. 20).

<sup>3</sup> "Setup help only" is defined in the MDS-HC as "article or device provided within reach of client three or more times" (Exh. 3, p. 20).

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

1. The appellant is a [REDACTED]-old MassHealth member who lives in the community (Exh. 3).
2. The appellant's medical diagnoses include right leg pain following a gunshot wound in 1994, severe opioid use disorder in sustained remission, major depressive disorder in full remission, hepatitis C, a history of assault with trauma to the brain and face, essential hypertension, non-ossified fibroma of the bone in his left ankle, insomnia and primary generalized osteoarthritis (Testimony, Exh. 3, Exh. 5).
3. MassHealth received a PA request from Caregiver Homes of Massachusetts for level II adult foster care ("AFC") services on behalf of the appellant on January 10, 2022 (Testimony, Exh. 1).
4. MassHealth notified the appellant, by written decision dated January 21, 2022, that he was ineligible for level II AFC services (Testimony, Exh. 1).
5. The appellant filed this appeal in a timely manner on February 15, 2022 (Exh. 2).
6. In order to be eligible for level II AFC services, documentation must demonstrate that a member needs hands-on physical assistance with at least three ADLs, or hands-on physical assistance with two ADLs, together with management of behaviors that require frequent caregiver intervention, such as wandering, verbally abusive behaviors, or physically abusive behaviors (Testimony).
7. In the PA request, the appellant sought daily, hands-on physical assistance with his bathing, dressing, transferring, and mobility (Testimony, Exh. 3, p. 9).
8. A physician progress note from an examination of the appellant on December 5, 2021, submitted with the PA request, reflected that the appellant had bilateral leg pain (Exh. 3, p. 11).
9. The December 5, 2021 physician progress note states, "general musculoskeletal: no tenderness or deformity, normal range of motion" (*Id.*, p. 13).
10. The December 5, 2021 progress note reflects that the appellant is oriented to person, place and time, and the physician documented that she encouraged [the appellant] to pursue moderate activity for at least 300 minutes/week and recommended weight loss (*Id.*).

11. The appellant asserts he needs assistance to walk, dress and eat, that he cannot raise his hands, and that the joints in his shoulders, knees and elbows swell, and are painful (Testimony).
12. The appellant uses a cane to ambulate (Testimony, Exh. 3, p. 21).
13. The appellant claims to have a diagnosis of dementia (Testimony).
14. The MDS-HC completed for the appellant on January 6, 2022 reflects that he needs “limited assistance” with transfers, locomotion in home, locomotion outside of home, dressing his upper and lower body, personal hygiene and bathing (Exh. 3, p. 21).
15. The MDS-HC also reflects that the appellant needs “setup help only” for eating and toilet use (*Id.*).
16. The MDS-HC also shows that the appellant has no behavioral symptoms (*Id.*, p. 20).
17. The hearing record was left open for the appellant to submit additional medical documentation, and specifically, a more current progress note from his physician, based on an office visit he had with his doctor on January 18, 2022.
18. Nothing was received.

## **Analysis and Conclusions of Law**

According to MassHealth regulation 130 CMR 408.402, 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).

MassHealth regulation 130 CMR 408.416 states in relevant part:

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.

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, 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.

Here, the appellant requested level II AFC services. The appellant received AFC services in the past. The appellant clearly has functional limitations and pain due to a past gunshot wound, and primary generalized osteoarthritis. He ambulates with a cane. He requested hands-on daily assistance with his bathing, dressing, transferring, and mobility.

To be eligible for a level II AFC payment, the evidence must show that the appellant needs daily hands-on assistance with at least three of his ADLs, or daily hands-on assistance with two of his ADLs, management of behaviors that require frequent caregiver intervention, such as wandering, verbal abuse, physical abuse, socially inappropriate or disruptive behaviors, or resisting care. The appellant demonstrates no behaviors that require frequent caregiver intervention. Despite the appellant's testimony to the contrary, there is no documented diagnosis of dementia.

The documentary evidence submitted by Caregiver Homes of Massachusetts (MDS-HC) reflects that he needs "limited assistance" with transfers, locomotion in home, locomotion outside of home, dressing his upper and lower body, personal hygiene and bathing. Limited assistance is not daily, hands-on physical assistance. "Limited assistance" means the appellant received physical help in guided maneuvering of limbs or other non-weight bearing assistance 3 or more times in the 7 days preceding completion of the MDS-HC.

The appellant was provided an opportunity to provide additional and more recent evidence about his medical conditions following the hearing, but did not do so.

In an appeal of agency decision, the appellant bears the burden of demonstrating that the agency's action is invalid or incorrect (Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds, 27 Mass. App. Ct. 470, 474 (1989)).

The appellant has not shown by a preponderance of the evidence that he needs hands-on assistance with at least three of his ADLs, or hands-on assistance with two of his ADLs, together with management of behaviors that require frequent caregiver intervention, such as wandering, verbal abuse, physical abuse, socially inappropriate or disruptive behaviors, or resisting care. MassHealth's decision to deny level II AFC services for the appellant was correct.

For these 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.

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Paul C. Moore  
Hearing Officer  
Board of Hearings

cc: Optum appeals coordinator, P.O. Box 159108, Boston, MA 02215