

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



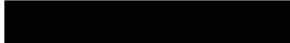
<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2201231
<b>Decision Date:</b>	5/09/2022	<b>Hearing Date:</b>	03/17/2022
<b>Hearing Officer:</b>	Christopher Jones	<b>Record Open to:</b>	

**Appearance for Appellant:**

Pro se



**Interpreter:**



**Appearance for MassHealth:**

Leslie Learned, RN



*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
<b>Decision Date:</b>	5/09/2022	<b>Hearing Date:</b>	03/17/2022
<b>MassHealth’s Rep.:</b>	Leslie Learned, RN	<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 10, 2022, MassHealth denied the appellant’s prior authorization request for Adult Foster Care services. (Exhibit 2; 130 CMR 450.303.) The appellant filed this appeal in a timely manner on February 15, 2022. (Exhibit 3; 130 CMR 610.015(B).) 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 because he did not require assistance with activities of daily living.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 408.000, in determining that the appellant was ineligible for Adult Foster Care services.

## Summary of Evidence

A prior authorization request for Level 1 Adult Foster Care services was submitted on the appellant’s behalf on December 21, 2021. The prior authorization request form identified his primary diagnosis as major depressive disorder with a secondary diagnosis of post-traumatic stress disorder. The appellant is identified as forgetful, disoriented, socially withdrawn, and lacking

motivation and concentration to complete tasks that take multiple steps. The prior authorization request identified the appellant as requiring supervision or cueing for the activities of daily living (“ADLs”) of bathing, dressing, toileting, mobility, and eating. It also identified the appellant as wandering, thus requiring further caregiver intervention. In the section labeled “Member Signs and Symptoms” the appellant is describe as needing “continual [cueing and supervision] to complete tasks of bathing, dressing, toileting to ensure the tasks are completed and completed appropriately and safely.” This paragraph further identifies the appellant as being incontinent of bowel and bladder due to a lack of awareness, and that the caregiver manages a toileting schedule. The prior authorization request is signed by a nurse from the AFC agency, and it is not signed by the appellant’s primary care physician “due to COVID 19.”

Submitted with the prior authorization request, were two office notes from the psychiatric visits, dated December 9, 2021 and January 4, 2022. The earlier visit identifies the appellant as sleeping well and his depression is controlled with no psychotic symptoms, though he continued to have continued difficulty with anxiety. The examination found “no serious mental status abnormalities” and no concerning symptoms were identified. The January 4 visit notes similarly identify the appellant’s conditions as “stable and uneventful” and no active symptoms were identified. Both notes indicate no signs of cognitive difficulty.

Attached following the two clinical notes and a pharmacy order, is an unsigned paragraph. It is a duplicate of the “Member Signs and Symptoms” section of the prior authorization request. The author is not identified.

MassHealth’s representative explained that payment for Level 1 AFC services is approved where a member requires physical assistance or supervision with at least one ADL. MassHealth denied Level 1 payment because the submitted clinical documentation did not support that the appellant could not manage his own ADLs.

The appellant’s caregiver testified that the appellant goes to his psychiatrist by himself, so they do not know what the psychiatrist is seeing in their sessions. But they argued that the appellant definitely needs assistance. They emphasized that the appellant is incontinent, and that they are the one who must manage this problem for the appellant. MassHealth noted that this would qualify the appellant for Level 1 payment, but that there is nothing in the clinical documentation that corroborates these problems.

## **Findings of Fact**

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

1. A prior authorization request for AFC Level 1 services was submitted on December 21, 2021. This request identified the appellant as requiring cueing and supervision with the ADLs of bathing, dressing, toileting, mobility, and eating. (Exhibit 4, pp. 9-10.)
2. The appellant’s primary diagnosis is major depressive disorder, and he has secondary diagnoses including anxiety and post-traumatic stress disorder. (Exhibit 4, p. 10.)

3. The submitted clinical documentation depicted the appellant's chronic mental conditions "stable and uneventful." The two psychiatric notes found "no serious mental status abnormalities" and no concerning symptoms, and no signs of cognitive difficulty. There is no mention of incontinence in either clinical note. (Exhibit 4, pp. 11-15.)

## Analysis and Conclusions of Law

MassHealth requires Adult Foster Care services be approved through prior authorization. See 130 CMR 408.417(B); 130 CMR 450.303. As part of this prior authorization process, the AFC provider "must include all required information, including, but not limited to, documentation of the completed clinical assessment conducted by the MassHealth agency or its designee; other nursing, medical or psychosocial evaluations or assessments; and any other documentation that the MassHealth agency ... requests ... ." 130 CMR 408.417(B). This documentation is reviewed to determine the clinical eligibility for AFC and their level of services payment.

### 408.416: Clinical Eligibility Criteria for AFC

(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(B) (**emphasis added**).

The level of payment is determined by the amount of assistance the member requires.

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.

130 CMR 408.419(D).

There is insufficient evidence to overturn MassHealth's denial. The appellant has very real, chronic mental health conditions. However, they appear to be well managed at this time. If his condition worsens or flares in a manner that results in it being documented in a clinical record, the appellant may reapply for AFC services. However, at this time, 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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Christopher Jones  
Hearing Officer  
Board of Hearings

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