Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2201247
Decision Date:	5/17/22	**Hearing Date:**	05/11/2022
Hearing Officer:	Sara E. McGrath		

Appearances for Appellant:
Pro se

Appearances for MassHealth:
Leslie Learned, RN

Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171

APPEAL DECISION

Appeal Decision:	Denied	**Issue:**	Eligibility for Adult Foster Care
Decision Date:	5/17/22	**Hearing Date:**	05/11/2022
MassHealth's Reps.:	Leslie Learned, RN	**Appellant's Reps.:**	Pro se
Hearing Location:	Board of Hearings (Remote)		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated January 31, 2022, MassHealth notified the appellant that he is not clinically eligible for MassHealth payment of adult foster care services (Exhibit 1). The appellant filed a timely appeal on February 18, 2022 (Exhibit 1). Determination of clinical eligibility for adult foster care services is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant is not clinically eligible for adult foster care services.

Issue

The appeal issue is whether MassHealth was correct in determining that the appellant is not clinically eligible for adult foster care services.

Summary of Evidence

The MassHealth representative, a utilization management nurse, appeared at the hearing telephonically and testified that this appeal concerns MassHealth's denial of a request for adult foster care (AFC) Level I services. On January 13, 2022, the appellant's provider, Healthier You Wellness Partners, submitted a prior authorization request for AFC Level I services for the period of January 11, 2022, through January 10, 2023 (Exhibit 3, p. 3). MassHealth denied the request on January 31, 2022 on the basis that there was no evidence that the appellant meets the eligibility requirements for this level of service (Exhibit 1, p. 3). The MassHealth representative stated that to receive coverage for AFC Level I services, a member must require hands-on (physical) assistance with one or two of the designated activities of daily living (set forth in 130 CMR 408.416), or must require cueing and supervision throughout one or more of those activities in order to complete that activity. Based on the prior authorization submission, MassHealth did not find that these services were medically necessary for the appellant. It therefore denied the request.

The MassHealth nurse testified that the appellant is a male in his early 50s with diagnoses of post-traumatic stress disorder and pain in his left shoulder. She referenced the MassHealth Adult Foster Care Primary Care Provider Order Form (PCP Order Form), which is signed by the appellant's physician. This form indicates that the appellant needs physical assistance with dressing, and needs cueing and supervision (during the entire activity) with bathing and mobility (Exhibit 3, p. 6). The form includes the following summary:

> Consumer with chronic shoulder pain resulting in needing assistance with dressing. Consumer with ongoing impaired mood resulting in needing cueing/encouragement/supervision to complete task daily such as bathing, grooming. Consumer is appropriate for AFC level 1.

(Exhibit 3, p. 7).

The record includes an initial telehealth assessment completed by the AFC provider in January. The appellant and his caregiver/son participated. That assessment provides in part as follows:

> Consumer reported having issues with his short term memory, that was seen by a neurologist and was instructed that memory issues related to his psych disorder causing him to have concentration issues. Consumer with PMH of PTSD, depression, shoulder pain, alcohol use disorder, cocaine use disorder, and AFIB. Consumer reports mood poor despite treatment, that he sees a psychiatrist and psychologist on a weekly basis at VA hospital. Consumer reports on remeron, zoloft, wellbutrin, hydroxyzine, seroquel, trazadone, prazosin with no adverse effect reported. Consumer denies SI, last episode of SI attempt was in July d/t psychotic episodes. Consumer was hospitalized from 7/11-8/29 in which also went to a detox treatment for his alcohol/cocaine use. Consumer gets naltrexone IM monthly at the clinic for management to prevent relapses. Consumer reported not used since July. Caregiver reports that consumer gets agitated and has anger at times since doesn't

like to ask for help and d/t his decline in health, however not aggressive or raises his voice. . . . Consumer reports pain to shoulders, that had cortisone injection in the past, last dose in October and also had PT session which ended last week. . . . . Consumer currently on meloxicam, naproxen, lidocaine patch and diclofenac ointment for pain management. Consumer reports pain regimen not effective and will be talking to MD about surgery. . . .

Caregiver reports that consumer needs assistance with dressing d/t pain and cueing and encouragement with bathing, grooming d/t depressed mood. Caregiver reports that he has to constantly cue and supervise consumer during bathing and grooming. Caregiver reports that consumer would prefer sitting around all day doing nothing d/t his depressed mood.

Bathing: Consumer is able to transfer self in/out of the tub with use of grab bars and supervision to assure safety. Consumer is able to wash self as long as all supplies are within reach and with cueing and encouragement to complete tasks on daily basis. . . .

Dressing: Caregiver reports that he assists consumer with dressing lower extremities, such as applying socks/shoes d/t pain to shoulders. Consumer is able to dress upper body as long as all supplies are within reach, that he takes his time applying one arm at a time until task is completed. Caregiver reports that he is nearby to supervise to ensure safety. . . .

Ambulation: Consumer is able to walk with no need for a walking device. Consumer reports that able to walk in the home and manage 4 stairs to gain access to 2nd level of the home and 3 stairs to exit home with use of railing. Caregiver reports that he supervises consumer to ensure safety. . . .

Consumer is able to groom self as long as supplies are within reach and with cueing and encouragement to complete task on regular basis.

Consumer needs assistance with performing IADLs d/t pain and impaired mood.

(Exhibit 3, p. 9).

The MassHealth nurse testified that the documentation does not support the appellant's request for AFC Level I services. The record includes a physical medicine and rehabilitation consult visit from September 17, 2021 (Exhibit 3, pp. 33-37). At that visit, the appellant reported that he has had pain in the left and right shoulders for the past 5 years. He reported that the pain has been progressing in the past 2-3 months; the pain had been intermittent but is now constant (Exhibit 3, p. 33). The appellant reported that the "[p]ain is located diffusely throughout the top of shoulder and radiates down the upper arm diffusely to the elbow. Feels like a throbbing pain. At rest pain is 4/10 and gets up to a 10/10. Right arm is similar but less severe. Pain is worse when he sleeps on his side,

cannot sleep on his left side. Has difficulty raising the arm upwards. He has trouble working out. Alleviated by resting hand on head. Has more weaknesses in the arm. No numbness or tingling. Takes Motrin 600 mg. 2-3x day which helps temporarily. Tried lidocaine patches" (Exhibit 3, p. 33). The musculoskeletal physical examination showed full range of motion with flexion, extension, side-bending, and rotation. The appellant's strength was 5/5 bilaterally with shoulder abduction, elbow flexion, elbow extension, wrist extension, hand intrinsics, and grip (Exhibit 3, p. 35). The physician noted the following: "Overall etiology of pain is not entirely clear given exam findings and history of diffuse pain with any movement. Suspect labral pathology or supraspinatus/subscapularis tendinopathy. No OA on imaging. We discussed conservative treatment with ongoing therapy as he has only done one week of a home exercise program, however, he feels this pain is very disruptive to his life and would like other options. We could pursue injections in the future but at this time given the ambiguity of pain will obtain MRI of shoulder first to hep differentiate etiology" (Exhibit 3, p. 36).

The MassHealth nurse referenced a cardiology visit from October 5, 2021 (Exhibit 3, pp. 21-25). At that visit, the appellant reported recent episodes of chest pain and shortness of breath with exertion. He stated that his last episode of chest pain occurred a week prior while he was jogging on the treadmill. The physician writes that the appellant reports that he exercises twice a day going to the gym in the morning and then going to a boxing gym in the evening (Exhibit 3, p. 22).

The record also includes a physical medicine and rehabilitation consult visit from October 8, 2021 (Exhibit 3, pp. 33-37). The physician notes the following: "Saw patient 3 weeks ago for shoulder pain and recommended MRI as I had difficulty clarifying etiology of pain. Unfortunately he could not sit for MRI because of pain" (Exhibit 3, p. 16). The visit notes include the following: "He reports the left shoulder has gotten worse. H says there is swelling that looked like an 'egg' that has since gone down. He has difficulty sleeping, getting to the gym, using the left arm at all. Now right arm is worse because he has been using that more. Pain on both sides gets up to 10/10, constant 7/10. Meloxicam did not help. He is starting 2 week PTSD ICP at Home Base soon and wants to try to take care of his shoulder before then. Will bring him in this Friday for injection" (Exhibit 3, p. 16). During that visit, the physician notes that she "[a]dvised him to take it easy with arms over the next couple weeks after injection. He signed up for a boxing event in November" (Exhibit 3, p. 17).

The record also includes a psychiatry outpatient note from September 16, 2021 (Exhibit 3, pp. 36-37). At that visit, the appellant's psychiatrist noted the appellant's mood as "good now" and his affect as congruent. The appellant denied any suicidal or homicidal ideation, and his cognitive function is noted to be grossly intact. His insight/judgment is listed as "fair" (Exhibit 3, p. 37). In the review of symptoms, the appellant "[d]enies MDD, anxiety D/O, mania, psychosis, OCD, active PTSD symptoms, eating D/O (Exhibit 3, p. 37). The appellant denied "SI/HI/perceptual abnormality. Denies violence, legal problem, Denies access to guns/fire arms" (Exhibit 3, p. 37).

The MassHealth nurse stated that these records conflict with the AFC provider's request for services. Specifically, she explained that the ability to participate in a boxing event is inconsistent with requiring any type of assistance with ambulation or mobility. Further, the appellant's ability to

jog on the treadmill and go to a boxing gym conflicts with the assertion that the appellant needs physical assistance with dressing.

The appellant appeared at hearing telephonically and stated that the medical records are inaccurate. He has not been able to go to the gym at all since last Fall, and he never boxed. He underwent a right shoulder replacement last week, and will have his left shoulder replaced in September. The cortisone injections he had did not help much at all. He explained that the Veterans Affairs office recently updated his disability findings to include many other psychological conditions. He explained that his wife's son helps with many tasks, including dressing. He needs help putting on his shirt and socks. He also explained that he sometimes gets dizzy when he walks, and he has fallen a few times.

The MassHealth nurse and stated that the appellant's recovery from surgery is an acute issue that will resolve and will hopefully address his shoulder pain. Because it is an acute issue, the AFC program is not an appropriate option. The appellant may want to consider the home health services. The nurse from the AFC provider added that although she did not perform the appellant's assessment, she feels that his shoulder pain is a chronic problem and that the appellant could benefit from AFC services.

Findings of Fact

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

1. The appellant is a male in his early 50s with diagnoses of post-traumatic stress disorder and pain in his left shoulder.

2. On January 13, 2022, the appellant's provider submitted a prior authorization request for AFC Level I services, for the period of January 11, 2022 through January 10, 2023.

3. The appellant's physician included with the request a form that states that the appellant needs physical assistance with dressing, and needs cueing and supervision (during the entire activity) with bathing and mobility.

4. The appellant has had pain in his shoulder for many years, and recently underwent a right shoulder replacement; a left shoulder replacement is scheduled for September.

5. The appellant currently uses meloxicam, naproxen, lidocaine patch and diclofenac ointment for pain management.

6. A psychiatry outpatient note from September 16, 2021indicates that the appellant is stable, with his mood noted to be "good now," his affect congruent, and his insight/judgment "fair." At that time, the appellant denied any suicidal or homicidal ideation.

7. On January 31, 2022, MassHealth denied the request on the basis that there was no evidence

the appellant requires this level of service.

8. On February 18, 2022, the appellant filed a timely appeal with the Board of Hearings.

Analysis and Conclusions of Law

AFC is a community-based service, provided in the member's home by an AFC provider, which is designed to meet a member's need for assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs). Assistance with ADLs and IADLs is provided by an AFC caregiver, with nursing oversight and care management of the AFC caregiver's provision of assistance provided by the AFC provider's professional staff. Members receiving AFC must live with their AFC caregiver.

The regulatory requirements to establish clinical eligibility for adult foster care program services are set forth in MassHealth regulations at 130 CMR 408.416. To obtain clinical authorization for MassHealth payment of AFC, all of the following clinical criteria must be met:

> (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.[1]

[1] MassHealth has also promulgated Guidelines for Medical Necessity Determination for Adult Foster Care. Among other things, these guidelines set forth the clinical requirements for each of the ADLs described in the regulation above in greater detail (Exhibit 3, pp. 54-59).

Under 130 CMR 408.419(D), AFC payments are made at two rates:

(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 activities described in 130 CMR 408.416; or

   (b) hands-on (physical) assistance with at least two of the activities listed 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.

This case concerns MassHealth's denial of the appellant's prior authorization request for AFC Level I services. MassHealth denied the request because it found no evidence that the appellant needs hands-on, physical assistance with one or two of activities set forth at 130 CMR 408.416, or cueing and supervision throughout one or more of those activities.

On this record, the appellant has not demonstrated that AFC Level I services are medically necessary. The PCP Order Form indicates that the appellant needs physical assistance with dressing. To be considered in need of physical assistance with dressing, the AFC Guidelines require that the member need daily hands-on assistance with the *entire* task (*both* upper- and lower-body dressing) (Exhibit 3, p. 55). The record does not support a determination that the appellant's needs rise to this level. At his initial assessment, the appellant reported that he needs assistance with lower body dressing only (Exhibit 3, p. 9).[2]

[2] The appellant reported at hearing that he currently needs help putting on his shirt as well. Because the appellant is recovering from surgery, his current short-term needs do not necessarily reflect his baseline

The PCP Order Form also indicates that the appellant requires cueing and supervision to complete the tasks of bathing and mobility due to his depressed mood. The record does not provide a comprehensive picture of the appellant's current psychological status and possible related functional limitations (Exhibit 3). However, at a psychiatry outpatient visit last September, the appellant was stable, with a good mood, congruent affect, and fair insight/judgment (Exhibit 3, pp. 36-37). These findings conflict with the caregiver's comments regarding the need to cue the appellant to bathe and groom (Exhibit 3, p. 9). The appellant did not help to reconcile these inconsistences, as his testimony was limited to his need for physical assistance rather than any need for cueing and/or supervision. Without more, the appellant has not demonstrated that he requires cueing and supervision throughout the *entirety* of any activity. MassHealth was correct in determining that the appellant does not meet the clinical standards for AFC Level I services.

This appeal is therefore 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.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc: Optum

status.