

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2201408
Decision Date:	5/09/2022	Hearing Date:	04/01/2022
Hearing Officer:	Christopher Jones		

Appearance for Appellant:

Pro se




Appearance for MassHealth:

Jamie Capizzano, RN – Optum



*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:	Approved	Issue:	Prior Authorization – AFC Denial
Decision Date:	5/09/2022	Hearing Date:	04/01/2022
MassHealth’s Rep.:	Jamie Capizzano, RN	Appellant’s Rep.:	
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 February 3, 2022, MassHealth denied the appellant’s prior authorization request for Level 1 Adult Foster Care services. (Exhibit 2; 130 CMR 450.303.) The appellant filed this appeal in a timely manner on February 22, 2022. (Exhibit 2; 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 request to continue Level 1 Adult Foster Care services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.303 and 408.000, in determining that the appellant did not qualify for Adult Foster Care services.

Summary of Evidence

The appellant is a middle-aged man with a primary diagnosis of lower back pain with secondary left lower extremity pain. He has multiple other diagnoses, including anal fissures, asthma, sleep apnea, chronic TMJ pain, and depression with anxiety. A prior authorization request for Level 1 Adult Foster Care (“AFC”) services was submitted on January 25, 2022, seeking services from January

27, 2022 through January 26, 2023. This request identified the appellant as requiring daily, hands-on assistance with bathing, dressing, toileting, transferring, and mobility, and requiring cueing and supervision for eating. The submitted with the prior authorization request were the following clinical notes: an October 26, 2021 urgent care orthopedic surgery consult; a November 9, 2021 primary care visit; and a November 13, 2021 MRI report.

At the orthopedic urgent care consult, the appellant was complaining of lower back pain, which he described as developing recently without a precipitating event. The appellant reported bulging disks at L4-L5 and L5-S1 were found in 2009, and that he responded well to physical therapy. At this time, the pain was right-sided and radiating down to his right foot, and occasional foot numbness. He denied lower extremity weakness and found over-the-counter medication to be unhelpful. The examination describes the appellant as “well appearing and in no apparent distress” with a symmetric gait, though tenderness was “present in the right paraspinal region” and his range of motion was “slightly decreased secondary to discomfort.” X-rays revealed “degenerative disc disease and spondylolisthesis L4-L5,” but no “evidence for acute fracture or lesion.” The plan was to try a Medrol Dosepak and prescribed physical therapy. If his symptoms did not improve, they would send him for an MRI.

The visit to his primary care physician documented that he was in too much pain to sit up on the exam table. At this point, the appellant had two weeks of right radicular pain which was “perhaps triggered by lifting his mother.” It notes the Medrol pack had no effect and that he was awaiting an MRI and physical therapy. The appellant reported taking ibuprofen three times per day with a little relief; it brought the pain from 10 out of 10 down to five to six out of 10. They also reviewed in anal fissure, and that he had been prescribed an ointment by the colorectal team. He described the ointment as “magic when I use it.” He was hesitant to pursue a surgery to correct the problem due to worries about surgical complications. The physical exam described the appellant as “in mild distress due to pain lying on the exam table.” In the assessment and plan, the appellant’s lower back pain is listed as “acute right radiculopathy.” The impression from the MRI included “right subarticular extrusion with inferior migration resulting in compression of the traversing right S1 nerve root.” However, no subsequent orthopedic records were submitted regarding what the outcome of physical therapy or plans for further treatment.

MassHealth’s representative reviewed the appellant’s prior authorization request and attached medical records. According to MassHealth, the submitted medical records reflect “acute” back pain and radiculopathy that appears to be managed effectively by medication. They testified that the AFC program is intended for chronic conditions. MassHealth argues the clinical documentation does not use especially serious language in describing the appellant’s conditions. The medical records reflect that the appellant is regularly referred for additional treatment, which would indicate that the conditions may resolve with appropriate care. Therefore, MassHealth felt that the appellant’s conditions appeared both temporary and manageable enough for there to be no reason the appellant cannot complete his own activities of daily living (“ADLs”).

The appellant’s testimony also described his conditions in transitory language. He described debilitating pain “when it is bad,” or being unable to move around when his asthma “flares.” However, he testified that these conditions are chronic at a baseline of pain or impairment, and that

it is their flares that make them truly debilitating. He particularly focused on three conditions from which he suffers debilitating bouts: back pain, asthma, and anal fissures. Although the assistance he requires may differ depending on which condition is worst at that moment, he testified that between these three conditions he requires daily assistance, particularly with lower body activities. Regarding bathing, he described his bathing routine as using a bucket and a cup or scoop to pour water over his body. He finds this task to be particularly difficult due to his chronic back pain. He also testified that he usually needs assistance with lower body dressing, especially shoes, and he usually requires assistance when transferring from or to a seated position.

The appellant also clarified the note about lifting his mother. He testified that he was sitting next to her on the couch and she tried to stand. She was unstable and he thought she was about to fall, so he reached across the couch to help her. He did not physically lift her; rather this quick movement to help stabilize her was a likely cause of that exacerbation his chronic back condition. The appellant's nurse from the AFC agency also appeared at the hearing. She supported the appellant's description of his conditions as chronic, and she testified that over the year she has cared for him his range of motion and ability to move has only worsened.

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 January 25, 2022, seeking services from January 27, 2022 through January 26, 2023. This request identified the appellant as requiring physical, hands-on assistance with the ADLs of bathing, dressing, toileting, transferring, and mobility, and cueing and supervision for eating. (Exhibit 3, pp. 9-10.)
2. The appellant is a middle-aged man with a primary diagnosis of lower back pain with secondary left lower extremity pain. He has other diagnoses including anal fissures, asthma, depression, and anxiety. (Exhibit 3, pp. 6, 12-14, 22-26; Testimony by MassHealth representative.)
3. Due to chronic pain, the appellant requires daily hands-on assistance with lower body dressing and bathing, and intermittent assistance with transferring. He often requires additional assistance with other activities of daily living. (Testimony by the appellant and appellant's representative.)

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 additional guidance in the Guidelines for Medical Necessity Determination for Adult Foster Care (AFC), included in MassHealth's exhibit packet. This guidance highlights that assistance with dressing or bathing need not encompass the entirety of the activity, especially to qualify for Level 1 payment:

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 ADLs:

- a. Bathing. A full-body (front-, back-, upper-, and lower-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. In addition, the AFC caregiver may support a member with 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 makeup. **A member's need for support with a full-body bath or shower or a partial (sponge) bath alone meets the clinical eligibility for AFC.** A member's need for support with personal hygiene alone does not meet the clinical eligibility for AFC.
- b. Dressing. Both upper- and lower-body items of clothing, including street clothes and undergarments. Members do not require support with dressing if they require support only with putting on shoes and/or socks, buttons, snaps, and zippers. **Members will be deemed to need Level II support with dressing if they require hands-on physical assistance with lower-body dressing,** and cueing and supervision throughout the entire activity for upper-body dressing, or vice versa.

(Exhibit 3, p. 35 (**emphasis added**).)

MassHealth's doubts regarding this care are understandable. The appellant's clinical record reflects real pain, but also that he has pursued limited intervention to remediate this pain. He has responded well to physical therapy in the past, and it is possible that he would benefit from surgical intervention regarding both his back pain and anal fissure. The appellant's most serious symptoms are the result of acute flare-ups, but these are all based in underlying chronic conditions. Much of the medical evidence focuses on the acute flareups, and it is therefore difficult to discern the baseline chronic need for assistance. That said, the threshold for AFC Level 1 payment is assistance with a single ADL. The appellant testified credibly to his need for hands-on assistance with lower body dressing daily due to his lower back pain. This is sufficient to qualify for Level 1 AFC services. This appeal is APPROVED.

Order for MassHealth

Allow payment for Level 1 AFC services for this prior authorization period, starting January 27, 2022 through January 26, 2023.

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.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Christopher Jones
Hearing Officer
Board of Hearings

cc:

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