

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied in Part;  
Approved in Part

**Appeal Number:** 2201447

**Decision Date:** 5/17/22

**Hearing Date:** 04/08/2022

**Hearing Officer:** Christopher Jones

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Leslie Learned, RN

**Interpreter:**  
Casia – ITI# 252517



*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 in Part; Approved in Part	<b>Issue:</b>	Prior Authorization – Adult Foster Care
<b>Decision Date:</b>	5/17/22	<b>Hearing Date:</b>	04/08/2022
<b>MassHealth’s Rep.:</b>	Leslie Learned, RN	<b>Appellant’s Rep.:</b>	Pro se
<b>Hearing Location:</b>	Remote	<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 February 14, 2022, MassHealth denied the appellant’s prior authorization request for Level 2 Adult Foster Care services. (Exhibit 2; 130 CMR 450.303.) The appellant filed this appeal in a timely manner on February 27, 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 for Level 2 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

On or around February 2, 2022, the appellant’s Adult Foster Care (“AFC”) provider, Caregiver Homes of MA, submitted a prior authorization request on the appellant’s behalf seeking Level 2 payment for AFC services. The requested prior authorization period ran from February 24, 2022 through February 23, 2023. The request identifies the appellant as requiring hands-on, daily assistance with bathing, dressing, transferring, and mobility.

Submitted with the request was a clinical note from June 7, 2021, describing the appellant as a middle-aged woman with a history of “Back failed syndrome” who presented due to persistent pain in her right elbow and pain in her right trigger finger. The problem list also included right-knee arthritis, asthma, carpal tunnel syndrome, and chronic low back pain with sciatica. The treatment plan from this visit was a referral to an orthopedic surgeon for further evaluation.

MassHealth’s representative explained that the appellant had previously been approved for AFC services in 2020 and 2021. At that time, MassHealth was still implementing its prior authorization processes, therefore many cases were approved without being fully reviewed. Regarding this request, she testified that the appellant’s medical record does not indicate any ongoing treatment plan and did not reflect significant pain or disability from the appellant’s conditions. The clinical note indicated that her right leg pain had improved, and she was prescribed an anti-inflammatory for arthritis and a cream for muscle pain. MassHealth’s representative noted that the appellant had submitted a subsequent prior authorization request that referenced a medical appointment from February 2022, but that it was not submitted into the record.

The primary care physician visit record from February 2022 was submitted with the appellant’s fair hearing request. This letter further identifies that the appellant has a history of HIV and that she contracted COVID 19 in January 2022. She has been suffering from forgetfulness, dizziness, and body aches ever since her COVID infection. The note also documents that the appellant has a history of depression, which has required support with activities of daily living (“ADLs”) in the past. The appellant’s physician recommends that she continue with her same “PCA” services, and notes that the appellant reported worsening back and joint pain, necessitating assistance with dressing. The appellant also fears falling so she often leans on others for support during ambulation and she requires monitoring during bathing.

The appellant testified that she had a hard time following what was being discussed due to her memory issues. When asked to review what assistance she required, she testified that her knee is swollen, and she feels she cannot walk. She went to an orthopedist who says her knee is okay, but she does not feel stable. She testified that some days are better than others, and some days she’s able to get up by herself and get to the bathroom. In the shower, she uses a bath seat and she can wash herself, but she often requires assistance to get into the bath. The most assistance she requires is with lower body dressing. She needs to sit down, and someone needs to help her pull up her pants and put on socks. She also cannot put on a bra by herself because of her elbow. Regarding transferring and mobility, she testified that she needs help, but that she can often get by with just her cane for assistance. However, she sometimes needs more help with transferring and mobility, especially with stairs. The problem is that she does not know when she will need help. Some days she is fine, and others she needs a lot of help.

## **Findings of Fact**

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

1. On or around February 2, 2022, a prior authorization request for AFC Level 2 payment was submitted on the appellant's behalf. The requested prior authorization period ran from February 24, 2022 through February 23, 2023. (Exhibit 3, pp. 6-10.)
2. The appellant requires daily, hands-on assistance with dressing. She is independent with toileting and eating, and she can usually bathe herself. She often requires assistance with transferring and mobility, but there are many days when she can move about her home with the assistance of her cane. (Testimony by the appellant.)
3. The appellant has chronic pain in her right elbow and trigger finger, right knee arthritis, carpal tunnel syndrome, and chronic low back pain with sciatica, amongst other diagnoses. (Exhibit 3, p. 11; Exhibit 2, pp. 2-3.)

## 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.

(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 408.419(D)(1)-(2) **emphasis added**.)

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:

...

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. 24 (**emphasis added**).)

This appeal must be DENIED in part with regard to Level 2 payment. At most, the appellant requires daily assistance with dressing and transferring, and her testimony was that there are often days when she is able to transfer independently using her cane. However, the clinical record supports the appellant's testimony that her chronic pain renders her incapable of dressing herself independently. The threshold for 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. Therefore, this appeal is APPROVED in part, in so far as the appellant is eligible for Level 1 payment.

## Order for MassHealth

Allow payment for Level 1 AFC services for this prior authorization period, starting February 24, 2022.

## 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.

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Christopher Jones  
Hearing Officer  
Board of Hearings

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