

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2201484
<b>Decision Date:</b>	5/19/22	<b>Hearing Date:</b>	04/07/2022
<b>Hearing Officer:</b>	Christopher Jones		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Lesley 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>	Approved	<b>Issue:</b>	Prior Authorization – AFC
<b>Decision Date:</b>	5/19/22	<b>Hearing Date:</b>	04/07/2022
<b>MassHealth's Rep.:</b>	Leslie Learned	<b>Appellant's Rep.:</b>	Daughter
<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 January 18, 2022, MassHealth denied the appellant's request for Adult Foster Care Services, Level 2, because it did not receive a completed prior authorization request.<sup>1</sup> Exhibit 2; 130 CMR 450.303. The appellant filed this appeal in a timely manner on February 24, 2022. Exhibit 3; 130 CMR 610.015(B). The Board of Hearings dismissed this appeal for lack of authority, and the appellant supplied the authorization to pursue the appeal on March 7, 2022. Denial of assistance is valid grounds for appeal. 130 CMR 610.032.

## Action Taken by MassHealth

MassHealth denied the appellant's request for Adult Foster Care Services, Level 2, because a completed prior authorization request was not submitted and because the appellant did not require assistance with any activities of daily living.

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<sup>1</sup> The appellant submitted a completed prior authorization request shortly after this denial. This request was substantively denied on January 31, 2022. MassHealth did not include a copy of this denial in its exhibit packet. The appellant should have had her benefits continue pending this appeal ("Aid Pending") because she filed an appeal prior to the end of her last prior authorization period. This Aid Pending protection may have been missed because the appellant's original denial was for failing to submit a completed prior authorization request (see 130 CMR 610.036(E)), but the appellant did submit a timely and complete prior request, and she appealed the denial of that complete request before her last prior authorization period terminated.

## 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

The appellant is an elderly woman who was previously approved for Level 2 Adult Foster Care (AFC) services. On January 4, 2022, a prior authorization request was faxed in to MassHealth, seeking to continue the appellant's Level 2 services for the prior authorization period of February 25, 2022 through February 24, 2023. MassHealth denied this request on January 18, 2022 because it was incomplete, not all pages of the fax came through. MassHealth received a completed prior authorization request and the agency denied it substantively on January 31, finding the appellant did not clinically qualify for the AFC program. MassHealth's representative confirmed that the last prior authorization period ran through February 24, 2022. MassHealth did not offer the completed prior authorization request into evidence, but MassHealth's representative confirmed that it identified the appellant as requiring daily, physical assistance with all activities of daily living ("ADLs") except eating, for which supervision was requested.

With the incomplete prior authorization request, MassHealth received clinical notes from an annual physical on November 8, 2021. The active problem list from this note includes psoriasis, history of breast cancer, hyperthyroidism, hypercholesterolemia, recurrent depressive disorder, urge incontinence of urine, risk for falling, chronic right knee pain, and hip joint pain, amongst others. The note documents that her "[f]unctional capacity at home/ADLs: Mildly limited by psoriasis of her hands." It also states, "Fall risk screen: No falls, no balance issues." The review also recommends daily exercise. The assessment of the appellant's hip pain reviews that her prescribed medication is "helping nicely," despite "the dose [being] very low." Her depression is described as "the best she has felt for years" and there is currently no evidence of breast cancer and she is receiving no treatment. The appellant's psoriasis is "now just on palms but very severe." She is also described as still in physical therapy for her right knee and finding it helpful.

The appellant also submitted a letter from their physician dated February 16, 2022, which states that she "has become progressively more frail and at increased risk of falling." It notes she has an unsteady gait and difficulty going up and down stairs. The letter notes the "distance that she can walk is reduced to only a matter of blocks, not miles. She uses a cane even within her home."

MassHealth's representative testified that this clinical documentation indicates that the appellant is independent. She is recommended to exercise daily, her joint pain is well managed with medication, she is undergoing physical therapy, and she is listed as being only mildly limited in her functional capacity due to psoriasis. Even the updated documentation confirms that she is independent for ambulation, being able to walk for blocks and ambulate in her home with a cane. MassHealth felt that where the documentation was contradictory, the statements indicating independence should be believed. For instance, the appellant's diagnoses included "risk for falling," but her "fall risk screen" identified no falls and "no balance issues."

The appellant's daughter testified that she has had two major falls in the past five years, one requiring stitches on her head. She also testified that her mother could walk for blocks, but she requires assistance to do so. The only walking the appellant can do is from the couch to the bathroom, but she often requires assistance to stand up from the couch and there is always someone nearby to supervise and assist her if she becomes unstable.

Going through each of the ADLs, the appellant's daughter testified that the appellant needs help getting into the shower. There are grab bars and a shower chair in the shower. Once she is in, she can wash herself, but the appellant's daughter testified that someone stays in the bathroom while she showers to make sure she is safe. She is also not supposed to sit in the shower for long because it can lead to urinary tract infections, which she gets frequently. The appellant often requires help washing her back and hair and combing her hair due to shoulder pain. She also requires assistance with clipping toenails and other grooming tasks. Regarding dressing, the appellant cannot pull a shirt on over her head, though she can button a shirt after being helped into the arms. She also requires assistance pulling up lower body clothing.

The appellant can use the toilet by herself, though she often requires assistance getting up. However, she has urinary incontinence, especially at night. The appellant wears adult diapers day and night, but at least four nights per week they need to change her bedding. Regarding transferring, the appellant's daughter testified that she could get up with just her cane, but it is safer if a person is there to steady her. Similarly, with walking, the appellant's daughter testified that the appellant is able to walk slowly for a few blocks, but when she is walking outside, she holds onto someone in addition to using her cane. Inside the house she is often able to move about without physical assistance, but someone is always on hand to supervise or assist if she begins to lose her balance.

## **Findings of Fact**

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

1. The appellant is an elderly woman with psoriasis, urge incontinence of urine, risk for falling, chronic right knee pain, and hip joint pain, amongst others diagnoses. (Exhibit 5, p. 15.)
2. On January 4, 2022, an incomplete prior authorization request was submitted; MassHealth denied this request on January 18, 2022 because it was incomplete. MassHealth received a completed prior authorization request, and the agency denied it substantively on or around January 31, 2022. The prior authorization period for the requests were February 25, 2022 through February 24, 2023. (Exhibit 5, pp. ; Testimony by MassHealth's representative.)
3. The appellant timely appealed both denials on February 24, 2022. (Exhibit 3.)
4. The appellant has an unsteady gait and requires supervision with mobility around the house, and she requires a steadying hand while ambulating outside. She is incontinent and requires assistance with toileting to help manage her incontinence. She requires daily physical assistance with aspects of both upper and lower body dressing. She also requires supervision

in the shower and often requires assistance with transferring. (Testimony by the appellant's representative; see also Exhibit 3, p. 2; Exhibit 5, 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

...

(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, 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.**

c. Toileting. **The member is incontinent (bladder and/or bowel)**, or requires routine catheter or colostomy/urostomy care, or needs cueing and supervision or physical assistance with toileting and cleansing after elimination. Additionally, members will be deemed to require support with toileting if they require support with scheduled toileting care to prevent incontinence. **Members do not require support with toileting if they require support only with transferring on and off the commode.** If the member requires support solely with transferring on and off the commode, then the member would require support with transferring only, and not toileting.

d. Transferring. The member must be assisted or lifted to move from one position to another. For example, the member requires assistance to move from a wheelchair to the commode.

e. Mobility (ambulation). The 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 in all environments (indoors and outdoors). **Members will be deemed to need Level II support with mobility if they require hands-on physical assistance with ambulation outdoors, and cueing and supervision throughout the entire activity indoors, or vice versa.**

...

(Exhibit 3, p. 33 (**emphasis added**).)

The appellant requires daily, physical hands-on assistance with dressing, toileting, and mobility. Of these, dressing is the most debatable. The appellant's daughter testified that the appellant requires hands on assistance only getting her arms into shirts and with pulling up her pants. She is able to button her clothing independently, and she is cognitively able to arrange her clothing without assistance. However, the regulatory language indicates only that assistance must be required with "upper and lower body" dressing. Nothing in the Guidelines contradicts this interpretation. If

anything, a minimal need for physical assistance with either upper or lower body dressing would convert to Level 2 support if the member also required supervision. Therefore, the fact that there is minimal physical assistance with both is sufficient to qualify as Level 2 support.

Similarly, the appellant may be largely independent with the management of her toileting, but she is incontinent. She requires physical assistance due to this incontinence. The regulation regarding assistance with toileting indicates Level 2 payment is appropriate where the “member is incontinent.” Again, nothing in the Guidelines contradicts this broad qualification. All further clarification follows a disjunctive “or.” Nor does any of the additional clarification cut against the fact that the appellant is incontinent. Finally, the appellant “must be physically steadied” while ambulating outdoors. MassHealth highlighted the fact that the updated doctor’s note states the appellant can walk for blocks, but nothing about that statement contradicts the appellant’s daughter’s testimony that she is physically steadied for the entirety of her outdoor ambulation. The appellant’s unstable gait and high fall risk is well documented. She may be able to ambulate independently indoors, but she is supervised while doing so. The Guidelines indicate that this level of assistance qualifies as Level 2 support. Therefore, this appeal is APPROVED.

The appellant also requires assistance with transferring and bathing. However, the assistance provided in these categories falls into a Level 1 support at this time.

## **Order for MassHealth**

Continue to allow payment for Level 2 AFC services for this prior authorization period.

## **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 02215



Exhibit 5. 20220407  
Towfigh\_Appeal 2201