

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2201692
<b>Decision Date:</b>	7/12/2022	<b>Hearing Date:</b>	06/14/2022
<b>Hearing Officer:</b>	Alexandra Shube		

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Jamie Capizzano, 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>	7/12/2022	<b>Hearing Date:</b>	06/14/2022
<b>MassHealth’s Rep.:</b>		<b>Appellant’s Rep.:</b>	Pro se
<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 7, 2022, MassHealth denied the appellant's prior authorization request for Level 2 adult foster care (Exhibit 1). The appellant filed this appeal in a timely manner on March 7, 2022 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

## Action Taken by MassHealth

MassHealth denied the appellant’s request for Level 2 adult foster care.

## Issue

The appeal issue is whether MassHealth was correct in determining that the appellant did not meet the medical necessity requirements necessary for participation in adult foster care.

## Summary of Evidence

The MassHealth representative appeared via telephone and testified as follows: the appellant is an adult female with a primary diagnosis of arthritis and a secondary diagnosis of major depressive disorder. On December 22, 2021, MassHealth received a request for Level 2 adult foster care (AFC) services for the dates of service of December 22, 2021 through December 21, 2022. On January 7, 2022, MassHealth denied the request because the clinical documentation submitted did not demonstrate the need for the requested services and the appellant did not meet the clinical eligibility criteria pursuant to MassHealth regulations 130 CMR 408.416 and 130 CMR 450.204 and the Guidelines for Medical Necessity Determination for Adult Foster Care (hereinafter, “The Guidelines”) at Section 2(A). The records submitted did not support a medical necessity determination for the requested services.

The MassHealth representative noted that since the first request (the January 7, 2022 denial of which is the basis for this appeal), there were two more requests for Level 2 AFC services received on January 25, 2022 and February 3, 2022, which were both denied. On February 10, 2022, MassHealth received a request for Level 1 AFC services which was approved. The appellant is currently approved for Level 1 AFC services for dates of services of February 10, 2022 through February 9, 2023.

The MassHealth representative testified that the request indicated the appellant required hands-on physical assistance with the following activities of daily living (ADLs) due to pain, fatigue, and muscle weakness: bathing, dressing, toileting, transferring, and mobility. The request also indicated the appellant required cueing and supervision throughout the entire activity of eating. The MassHealth representative testified that the record submitted did not support the request.

MassHealth testified that the appellant had a physical examination with her primary care physician on October 18, 2021 which was completely normal. The examination notes indicate that the appellant has full range of motion. Despite the appellant’s arthritis, there was no mention of any pain or range of motion issues. She explained that the request for AFC services was inconsistent with the documentation submitted.

The appellant appeared at hearing via telephone and testified that she has had Level 2 AFC services in the past and was not sure why it would change when her symptoms have been getting worse, not better. She gets dizzy when she puts her head down and she has had falls. Her daughter, who is her caretaker, needs to be with her all the time. She has also been experiencing hearing loss. The appellant testified that this (taking care of the appellant) is her daughter’s only job. The appellant provided a letter from her primary care physician dated March 7, 2022 which was accompanied by examination notes from an appointment with an ear, nose, and throat specialist on August 27, 2021 related to her hearing loss. The primary care physician’s letter states the following in relevant part:

Patient requires a lot of hands-on assistance. Patient needs hands on assistance in all aspects such as bathing, toileting for proper hygiene, upper/lower body dressing, grooming and medication. All of this includes helping patient in and out of the

bathroom, washing and drying of upper/lower extremities, physically dressing and undressing the patient. Also needs physical assistance with toileting, cleaning after toilet use. Patient has poor endurance with standing and walking. She needs frequent rest periods and assistance of another to manage stairs and uneven pathways to prevent fall or injury inside and outside her home. Patient needs help to get to and from her appointments. And needs help to manage medication and meal preparations. Patient suffers from low back pain and she is diabetic. Patient recently was told she is losing her hearing and requires hearing aids. Patient needs more hours to get enough help throughout the day...

The MassHealth representative stated that the letter from the appellant's physician is inconsistent with the medical records submitted which showed that a review of the appellant's systems were negative and the physical examination was completely normal. She explained that the prior authorization process is fairly new for the AFC program. The review occurs annually and if the documentation does not support the request, services can be denied or modified. The documentation showed full range of motion and no mention of pain. The documentation is not consistent with the request.

The appellant explained that her daughter bathes her by scrubbing her, washing her hair, and drying her. The appellant's hands and back hurt, so she cannot bend down to wash her feet. She cannot put her head down or she falls. Because of her back pain, her daughter dresses her by putting on her pants, socks, and shoes. The appellant can sometimes do her top part because she gets shirts that she can put on herself, but her daughter has to do the buttons. When toileting, she needs help sitting down and getting back up. She also needs help getting up and down from bed and chairs. She does not need help when walking. Her daughter prepares food for her and sets it out in the table, but the appellant can feed herself. She cannot get up and cook on her own though.

The MassHealth representative explained that getting help up and down from the toilet is considered assistance with transfers, not toileting. Additionally, the assistance the daughter is providing with meals is considered meal preparation, not eating. The Guidelines require that a member need "constant supervision and cueing during the entire meal or needs to be physically assisted in eating (fed) for all or a portion of the meal... [m]embers needing help only with cutting up food or other set-up do not require assistance with eating." The Guidelines also state that for dressing, members must require assistance with both upper- and lower- body items of clothing. Furthermore, "[m]embers do not require support with dressing if they require support only with putting on shoes and/or socks, buttons, snaps, and zippers." The MassHealth representative emphasized that there was conflicting information between the medical records and doctor's letter and MassHealth required a consistent narrative. She explained that if there have been changes, the appellant could submit for review a "significant change" form with the appropriate supporting documentation.

## Findings of Fact

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

1. The appellant is an adult female with a primary diagnosis of arthritis and a secondary diagnosis of major depressive disorder (Testimony and Exhibit 4).
2. On December 22, 2021, MassHealth received a request for Level 2 adult foster care (AFC) services for the dates of service of December 22, 2021 through December 21, 2022 (Testimony and Exhibit 4).
3. On January 7, 2022, MassHealth denied the request because the clinical documentation submitted did not demonstrate the need for the requested services and the appellant did not meet the clinical eligibility criteria pursuant to MassHealth regulations 130 CMR 408.416 and 130 CMR 450.204 and The Guidelines for Medical Necessity Determination for Adult Foster Care (Testimony and Exhibit 1).
4. The appellant timely appealed the denial on March 7, 2022 (Exhibit 2).
5. The appellant's office visit with her physician on October 18, 2021 was completely normal. The examination notes indicate that the appellant has full range of motion. There was no mention of any pain, despite the appellant's diagnosis of arthritis. (Testimony and Exhibit 4).
6. The appellant's physician submitted a letter dated March 7, 2022 which was inconsistent with the medical records submitted (Testimony and Exhibits 2 and 4).
7. On January 25, 2022 and February 3, 2022, there were two additional requests for Level 2 AFC services which were both denied (Testimony).
8. On February 10, 2022, MassHealth received a request for Level 1 AFC services which was approved. The appellant is currently approved for Level 1 AFC services for dates of services of February 10, 2022 through February 9, 2023. (Testimony).

## Analysis and Conclusions of Law

To meet the requirements for authorization of adult foster care a member must have a medical or mental condition that requires daily hands-on assistance or cueing and supervision throughout the entire activity in order to successfully complete at least one of the following activities: bathing, dressing, toileting, transferring, mobility or eating.

### 130 CMR 408.416: Clinical Eligibility Criteria for AFC

A member must meet the following clinical eligibility criteria for receipt of AFC.

- (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.

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).

MassHealth denied the appellant's request for Level 2 AFC services because the clinical documentation submitted did not demonstrate the need for the requested services and the appellant did not meet the clinical eligibility criteria pursuant to MassHealth regulations 130 CMR 408.416 and 130 CMR 450.204 and the guidelines. The prior authorization request stated that the appellant's primary diagnosis is arthritis and her secondary diagnosis is major depressive disorder. The appellant testified to back pain and dizziness; however, it is not supported in the clinical documentation submitted with the prior authorization request. The documentation includes notes from an office visit with her physician on October 18, 2021 documenting no issues with pain or range of motion. The review of the appellant's systems was negative and the physical examination was normal, which is inconsistent with both the appellant's testimony and the March 7, 2022 letter provided by her physician.

Per the appellant's testimony, she needs assistance with bathing and transferring. She stated she can walk, toilet, and eat independently, but needs help transferring in and out of the toilet, chairs, or bed. Additionally, for dressing, she only requires assistance with lower body dressing and then buttons on her upper body. Pursuant to 130 CMR 408.416 and The Guidelines, for dressing the member must need hands-on physical assistance with both upper- and lower-body dressing, but not solely help with "shoes, socks, buttons, snaps, or zippers."

Based on the current record, the appellant has failed to provide objective medical evidence that she meets the clinical eligibility criteria for approval of Level 2 adult foster care and as a result this appeal is denied.<sup>1</sup>

## **Order for MassHealth**

None.

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<sup>1</sup> The appellant continues to be approved for Level 1 AFC services for dates of services of February 10, 2022 through February 9, 2023, pursuant to the February 10, 2022 prior authorization request, which is not under appeal. The appellant can also work with her physician and AFC provider to submit for review a "significant change" form with the appropriate supporting documentation.

## **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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Alexandra Shube  
Hearing Officer  
Board of Hearings

cc:

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