

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Approved

**Appeal Number:** 2201903

**Decision Date:** 5/10/2022

**Hearing Date:** 04/13/2022

**Hearing Officer:** Radha Tilva

**Appearance for Appellant:**

Pro se



**Appearance for MassHealth:**

Leslie Learned, Optum Rep.

**Interpreter:**

Harry, Nepalese interpreter



*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>	PA – AFC Level I
<b>Decision Date:</b>	5/10/2022	<b>Hearing Date:</b>	04/13/2022
<b>MassHealth's Rep.:</b>	Leslie Learned	<b>Appellant's Rep.:</b>	Pro se and son
<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 February 9, 2022, MassHealth denied the appellant's prior authorization request for Adult Foster Care (AFC) services because the member does not meet the clinical eligibility criteria for MassHealth coverage (Exhibit 1). The appellant filed this appeal in a timely manner on March 11, 2022 (see 130 CMR 610.015(B) and Exhibit 2). Challenging a prior authorization request is valid grounds for appeal (see 130 CMR 610.032).

## Action Taken by MassHealth

MassHealth denied appellant's prior authorization request for AFC services.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 408.416, in determining that the appellant did not meet the medical necessity and clinical criteria for adult foster care services.

## Summary of Evidence

The appellant appeared telephonically along with his son. MassHealth was represented telephonically by a registered nurse reviewer from Optum, the agent of MassHealth that makes the

prior authorization determinations for Adult Foster Care (AFC). The MassHealth representative stated that the appellant's provider agency, American Healthcare Services, LLC, submitted a request for prior authorization for Adult Foster Care Level I services on January 21, 2022. On February 9, 2022 MassHealth denied the request because the clinical documentation submitted did not demonstrate that appellant needs the services and treatment requested (Exhibit 4).

The MassHealth representative explained that appellant was previously approved on December 3, 2020 and again in 2021. The representative explained at that time there was no prior authorization request requirement, however, now all requests are reviewed and based on medical necessity criteria. The appellant requested Level I AFC services for dates of service January 14, 2022 through January 13, 2023 (Exhibit 4). The MassHealth representative explained that AFC payments made for Level I services are provided if the member requires hands on assistance with 1 or 2 activities of daily living (ADL) or requires cueing or supervision throughout one or more ADL in order for the member to complete a activity. The services were denied because clinical eligibility criteria was not met as outlined in the regulations.

The PCP order form describes appellant as a male in his mid-sixties with low back pain, pain in the right knee, mixed anxiety and depression, and right shoulder pain (Exhibit 4, p. 10). No hands-on assistance for ADL's was checked off on the PCP order form (Exhibit 4, p. 9). The appellant requires cueing and supervision for bathing, dressing, and mobility according to the form (Exhibit 4, p. 9). The PCP Order Form states that there is no socially inappropriate or disruptive behavioral symptoms and the appellant is also not resisting care (Exhibit 4, p. 10).

The MassHealth representative stated that the medical notes provided by the provider do not support medical necessity. A progress note dated February 1, 2021 states that appellant has right knee pain with mild tenderness (Exhibit 4, p. 15). The assessment and plan states that appellant is encouraged to get regular exercise which includes walking with emphasis on duration and not intensity (Exhibit 4, p. 16). The note makes no mention of shoulder pain (MassHealth testimony). The MassHealth representative explained that a service is not covered if the information is inconsistent. The doctor recommended walking long-distance which is inconsistent with a request for assistance with bathing and dressing (MassHealth representative). Further, the MassHealth representative stated that there is nothing noted in the notes for balancing issues, dizziness, or gait issues. Thus, though appellant has some pain medical necessity does not dictate need for care according to MassHealth.

An initial nursing assessment, dated January 19, 2022, was included in MassHealth's submission (Exhibit 4, p. 25). The assessment stated, in relevant part, that appellant requires assistance in the form of supervision and cueing for bathing, dressing, and walking due to his severe back pain and shoulder pain (Id.). The note further states that the family has to physically assist during bathing and dressing as the right shoulder pain has left appellant with limited range of motion (Id.). The family also assists with activities of daily

The appellant was represented by his son at hearing. The appellant's son stated that appellant has right knee and shoulder pain and is getting weaker with time. The son further testified that his father was told to exercise, but cannot do it and in his absence his father has difficulty moving around. The appellant's son assists with tasks such as bathing, laundry, transportation, and shopping (appellant

testimony). In addition, the son mentioned that appellant must have teeth taken out because of pain and needs eye surgery.

## Findings of Fact

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

1. Appellant's provider agency, American Healthcare Services, LLC, submitted a request for prior authorization for Adult Foster Care Level I services on January 21, 2022.
  - a. Dates of service for the request are January 14, 2022 through January 13, 2023.
  - b. Appellant received AFC services in 2021.
2. On February 9, 2022 MassHealth denied the request because the clinical documentation submitted did not demonstrate that appellant needs the services and treatment requested.
3. Appellant is a male in his mid-sixties with low back pain, pain in the right knee, mixed anxiety and depression, and right shoulder pain.
4. The PCP order form states that appellant requires no hands-on assistance and has no socially inappropriate or disruptive behavioral symptoms.
5. The PCP order form states that appellant requires cueing and supervision for bathing, dressing, and mobility.
6. A medical note dated February 1, 2021 makes no mention of right shoulder pain, but states that appellant has right knee pain with mild tenderness; the plan encourages appellant to get regular exercise which includes walking with emphasis on duration and not intensity.
7. MassHealth finds the February 1, 2021 medical note conflicting with the PCP Order form as it encourages him to walk long distance.

## Analysis and Conclusions of Law

Adult foster care is defined as: a service ordered by a primary care provider delivered to a member in a qualified setting as described in 130 CMR 408.435 by a multidisciplinary team (MDT) and qualified AFC caregiver, that includes assistance with ADLs, IADLs, other personal care as needed, nursing oversight, and AFC care management, as described in 130 CMR 408.415(C). (130 CMR 408.402).

### Scope of Adult Foster Care Services

(A) Direct Care. The AFC provider must ensure the delivery of direct care to members in a qualified setting as described in 130 CMR 408.435 by a qualified AFC caregiver, as described in 130 CMR

408.434, who lives in the residence and who is selected, supervised, and paid by the AFC provider. AFC must be ordered by a PCP and delivered by a qualified AFC caregiver under the supervision of the registered nurse and the MDT in accordance with each member's written plan of care. Direct care includes 24-hour supervision, daily assistance with ADLs and IADLs as defined in 130 CMR 408.402, and other personal care as needed. (130 CMR 408.415(A)).

#### 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.

(130 CMR 408.416(A), (B)).

The requested services must also be medically necessary for prior authorization to be approved. MassHealth will not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

(A) A service is "medically necessary" if:

- 1) it is reasonably calculated to prevent, diagnose, prevent worsening of, alleviate, correct, or cure conditions in the member that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity; and
- 2) there is no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to

MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider or identified by MassHealth pursuant to a prior authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007, or 517.007.

- (B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to MassHealth upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

- (C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

(130 CMR 450.204(A), (B), (C)).

MassHealth regulation 130 CMR 408.419(D) establishes the conditions for an AFC provider to receive a level I service payment versus a level II service payment.

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 406.419(D)(1), (2)) (Emphasis added).

MassHealth denied the appellant's request for Level I AFC because the documentation did not support medical necessity for Level I services. MassHealth felt that the progress note from February

1, 2021, which stated that appellant should walk for long periods of time, conflicted with the PCP Order form which stated that he required cueing and supervision for bathing, dressing, and mobility. A doctor's recommendation for a patient to walk, however, does not support MassHealth's argument that appellant therefore does not require assistance with bathing, dressing, and mobility.

The appellant's son testified that his father needs assistance with ADLs as well as IADLS including bathing, dressing, mobility, laundry and shopping. Appellant's testimony is persuasive and supported by the PCP Order form which is signed and attested to by a physician assistant (Exhibit 4, p. 11). In addition, the nursing assessment also corroborates appellant's testimony. Based on this analysis AFC Level I services should be **APPROVED** as the appellant has demonstrated the medical necessity of requiring cueing or supervision of at least one ADL.

## Order for MassHealth

Rescind notice dated February 9, 2022 and approve AFC Level I services for dates of service January 14, 2022 to January 13, 2023.

## 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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Radha Tilva  
Hearing Officer  
Board of Hearings

cc:

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

Appellant Representative: [REDACTED]