

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	DENIED	Appeal Number:	2202036
Decision Date:	6/30/2022	Hearing Date:	05/12/2022
Hearing Officer:	Kenneth Brodzinski		

Appearance for Appellant:

Appearance for MassHealth:

Pro se with [REDACTED] (daughter)

Jamie Capizzano , RN

Interpreter: Nepali



*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:	DENIED	Issue:	Adult Foster Care Services
Decision Date:	6/30/2022	Hearing Date:	05/12/2022
MassHealth's Rep.:	Jamie Capizzano, RN	Appellant's Rep.:	Daughter
Hearing Location:	Quincy		

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 2, 2022, MassHealth denied Appellant's request for Level II Adult Foster Care services (Exhibit A). Appellant filed this appeal in a timely manner on April 4, 2022 (see 130 CMR 610.015(B) and Exhibit A). Denial of assistance constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied Appellant's request for Level II Adult Foster Care services.

Issue

The appeal issue is whether MassHealth properly applied the controlling regulation(s) to accurate facts when it denied Appellant's request for Level II Adult Foster Care services.

Summary of Evidence

Both parties appeared by telephone. MassHealth submitted a packet of documents including copy of the subject prior authorization request with its supporting documentation (Exhibit B). Appellant did not file any documentation other than her fair hearing request.

MassHealth was represented by a registered nurse who testified that the agency received a request submitted by Caregiver Homes (CH) on behalf of Appellant for Level 2 Adult Foster Care (AFC) services from January 19, 2022 to January 18, 2023. The request was received on January 19, 2022; MassHealth denied the request on February 2, 2022.

The MassHealth representative explained that the agency will pay for Level II AFC services for members who require hands-on (physical) assistance with at least three activities of daily living (ADL's) or hands-on (physical) assistance with at least two ADL's along with management of behaviors that require frequent caregiver intervention. The MassHealth representative testified that Appellant does not meet either of these requirements, therefore, MassHealth denied the request. MassHealth cited reliance on MassHealth's *Guidelines for Medical Necessity Determination for Adult Foster Care*, Sections 2(A), 2(B)(3) and 4(A) and MassHealth regulations 130 CMR 408.416 and 450.204(A).

The MassHealth representative noted that Appellant was previously denied for Level II AFC services and had a fair hearing on November 15, 2021. Appellant withdrew the Appeal with the intention of filing a new request with updated clinical documentation.

The MassHealth representative testified that according to the current written PA request, Appellant is a [REDACTED] female with a primary diagnosis of Supraventricular Tachycardia who needs hands on help with bathing, dressing, transferring and mobility. According to the request, Appellant also needs supervision and cueing for toileting and eating when presenting signs and symptoms of having limited tolerance for these activities. The request asserts that bending, twisting, reaching, pulling and pushing cause intermittent palpitations with dizziness and shortness of breath with exertion which limits Appellant's range of motion in her upper and lower extremities.

The MassHealth representative testified that the description of Appellant's condition and limitations in the PA request was not supported by the clinical documentation filed with the request. The MassHealth representative reviewed the following:

A physical examination report dated September 17, 2021 indicates review of systems: cardiac, negative, no chest pain. Appellant has some leg weakness and numbness likely due to diabetic polyneuropathy. There were no changes in cardiac medication (Exhibit B, pages 11-15). According to the MassHealth representative, this exam makes no mention of the symptoms cited by the provider in Appellant's PA request. Additionally, during the examination Appellant reported that at night, she will get out of bed due to painful tingling in her legs, walk around and stretch. She will also walk around the house

or yard for 15-20 minutes each day. According to the MassHealth representative, this functional capacity conflicts with the symptoms and limitations described in the PA request.

A Letter of Medical Necessity which supports the request states Appellant has the same symptoms as cited in the PA request, however, it too is inconsistent with the clinical records as explained above. According to MassHealth, the letter conflicts with the physical examination report without identifying or explaining any changes in Appellant's conditions. The MassHealth representative also noted that the letter fails to identify any changes with Appellant's medications which would be expected if Appellant's conditions had worsened since her last physical examination.

Lastly, the MassHealth representative noted that the Minimum Data Set completed and filed by Appellant's provider, CH, states Appellant uses a cane indoors and a walker outdoors (Exhibit B, page 19). According to MassHealth, this also conflicts with physical examination report.

The MassHealth representative summarized that the clinical documentation presents information about Appellant's conditions and functional abilities that directly conflict with the representations made in the PA request. Additionally, MassHealth finds that the clinical documentation does not support findings relative to needing assistance with ADL's that are required to meet the eligibility requirements set forth in the AFC Guidelines.

Appellant appeared on her own behalf accompanied by her daughter. They were both assisted by a Nepali interpreter.

The daughter stated that they provided documentation with the current prior authorization request that MassHealth said it needed during the prior appeal hearing. According to the daughter, she was told by Appellant's physician that Appellant requires the requested assistance and urged the daughter to appeal the denial.

The daughter testified that Appellant has a heart condition that often leaves her feeling dizzy. She testified that Appellant has difficulty with most activities of daily living and requires assistance with things such as dressing and bathing. The daughter described how she assists her mother in the shower. The daughter testified that Appellant has been receiving AFC for the past 11 years and she does not understand why Appellant no longer qualifies.

In response, the MassHealth representative explained that prior to 2019 AFC services did not require prior authorization. In 2019 prior authorization for AFC services commenced and since that time Appellant has never been approved for AFC services.

The daughter testified that Appellant still requires the services and that the daughter now provides them to Appellant.

Findings of Fact

By a preponderance of the evidence, this record supports the following findings:

1. MassHealth received a request submitted by Caregiver Homes (CH) on behalf of Appellant for Level 2 Adult Foster Care (AFC) services from January 19, 2022 to January 18, 2023.
2. The request was received on January 19, 2022; MassHealth decided on February 2, 2022 denying the request.
3. MassHealth conclude that Appellant does not require either hands-on (physical) assistance with at least three activities of daily living (ADL's) or hands-on (physical) assistance with at least two ADL's along with management of behaviors that require frequent caregiver intervention.
4. Appellant was previously denied for Level II AFC services and had a fair hearing on November 15, 2021. Appellant withdrew the appeal with the intention of filing a new request with updated clinical documentation.
5. According to the current written PA request, Appellant is a [REDACTED] female with a primary diagnosis of Supraventricular Tachycardia.
6. According to the current written PA request, Appellant needs hands on help with bathing, dressing, transferring and mobility.
7. According to the current written PA request, Appellant also needs supervision and cueing for toileting and eating when presenting signs and symptoms of having limited tolerance for these activities.
8. According to the current written PA request, bending, twisting, reaching, pulling and pushing cause intermittent palpitations with dizziness and shortness of breath with exertion which limits Appellant's range of motion in her upper and lower extremities.
9. The description of Appellant's condition and limitations in the PA request is not supported by the clinical documentation filed with the request.
10. A physical examination report dated September 17, 2021 indicates a review of systems: cardiac, negative, no chest pain. Appellant has some leg weakness and numbness likely due to diabetic polyneuropathy. There were no changes in cardiac medication (Exhibit B, pages 11-15).
11. The physical examination report makes no mention of the symptoms cited by the

provider CH in Appellant's PA request.

12. During the examination, Appellant reported that at night, she will get out of bed due to tingling, walk around and stretch. She will walk around the house or yard for 15-20 minutes each day; this functional capacity conflicts with the symptoms and limitations described in the PA request.
13. A Letter of Medical Necessity which supports the request states Appellant has the same symptoms as cited in the PA request.
14. The Letter of Medical Necessity conflicts with the physical examination report without identifying or explaining any changes in Appellant's conditions.
15. The Letter of Medical Necessity fails to identify any changes with Appellant's medications which would be expected if Appellant's conditions had worsened since her last physical examination.
16. The Minimum Data Set completed and filed by Appellant's provider, CH, states Appellant uses a cane indoors and a walker outdoors (Exhibit B, page 19) which conflicts with physical examination report.
17. Appellant received AFC services for 11 years.
18. Prior to 2019 AFC services did not require prior authorization.
19. In 2019 prior authorization for AFC services commenced and since that time Appellant has never been approved for AFC services.

Analysis and Conclusions of Law

"The burden of proof is on the appealing party to show that the order appealed from is invalid, and we have observed that this burden is heavy" (Massachusetts Inst. of Tech. v. Department of Pub. Utils., 425 Mass. 856, 867, 684 N.E.2d 585 (1997)).

According to section 2(B)(3) of the *MassHealth Guidelines for Medical Necessity Determinations for Adult Foster Care Services*, MassHealth does not cover AFC services nor consider AFC to be medically necessary under certain circumstances including "when the clinical documentation, including assessments and plan of care to support the need for or continuation of AFC, is missing, insufficient, and/or **inconsistent**" (emphasis supplied).

MassHealth has demonstrated how Appellant's clinical records are inconsistent with the plan of care. The plan of care calls for AFC services to assist Appellant with ADL's such as bathing, dressing and ambulation. The clinical documentation includes a physical examination report prepared near in time to the request. The report indicates normal

findings under the review of systems except for some weakness in the lower extremities. However, the same document indicates that Appellant reports walking 15-20 minutes a day and performing stretches as well as walking during the evening when her leg tingling and leg pain bothers her. Such activity is not consistent with the generalized weakness asserted in the request. There is also no mention in the report of not being able to ambulate independently. There is no mention of problems or limitations with Appellant's upper extremities. These facts support MassHealth's determination that the clinical documentation is inconsistent with the written request. Where these inconsistencies have not been explained by a medical professional, there is no basis to disturb MassHealth's determination.

At hearing, Appellant's daughter provided only her own testimony about Appellant's needs and limitations. Insofar as the daughter has not represented herself to be a medical professional and is not a disinterested party, her testimony alone is not sufficient to overcome the inconsistencies between the request and the clinical documentation filed with the request.

For the foregoing reasons, Appellant has not met her burden and the appeal is denied.

Order for MassHealth

None.

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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

cc:

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