

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2202052
Decision Date:	5/25/2022	Hearing Date:	04/27/2022
Hearing Officer:	Christopher Jones		

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

Appeal Decision:	Denied	Issue:	Prior Authorization – AFC
Decision Date:	5/25/2022	Hearing Date:	04/27/2022
MassHealth’s Rep.:	Jamie Capizzano, RN	Appellant’s Rep.:	Pro se; Caregiver
Hearing Location:	Remote	Aid Pending:	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 March 4, 2022, MassHealth modified the appellant’s prior authorization request for Adult Foster Care services, authorizing Level 1 payment. (Exhibit 2; 130 CMR 450.303.) The appellant filed this appeal in a timely manner on March 17, 2022. (Exhibit 3; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth modified the appellant’s prior authorization request for Level 2 Adult Foster Care services, allowing only Level 1 payment.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 408.000, in determining that the appellant was ineligible for Level 2 Adult Foster Care services.

Summary of Evidence

A prior authorization request for Level 2 Adult Foster Care (“AFC”) services was submitted on the appellant’s behalf on February 28, 2021. The prior authorization request form identified the appellant’s primary diagnosis as osteoarthritis with a secondary diagnosis of post-traumatic stress disorder. The appellant is listed as requiring daily hands-on assistance with bathing and dressing.

She is also listed as requiring cueing and supervision assistance with toileting, transferring, and mobility, and as having multiple “behaviors” that require caretaker intervention: wandering, verbally abusive, socially inappropriate, and resistive to care.

Submitted with the prior authorization request was a brief office visit note with her PCP, indicating that she had a COVID vaccine the day before, for which her arm was sore. It noted she “needs follow up of joint pain for which she is unable to do ADLs.” The review of her musculoskeletal system was “[p]ositive for arthralgias, back problem, gait problem, joint swelling, knee pain, myalgias and neck pain.” The plan of care noted that she could use lidocaine for her injection site pain, and she has “osteoarthritis of multiple sites-will benefit from Adult foster care.” A letter from the physician was also attached from November 2, stating that she needs “assistance at home with bathing and dressing in her home. Her home care needs are beneficial to her wellbeing. My patient will benefit from adult foster care.”

The appellant attached her own letter, in which she explained that she has lived with her caregiver for the past four-and-a-half years, and that without AFC services she would be homeless or in a nursing facility. She states that she lives in constant pain and fatigue, and that her mental health is being negatively impacted by the threat of losing AFC services. A letter from the AFC agency also notes the appellant’s mental health as in jeopardy and requires “constant supervision from caregiver.” The letter states that she requires “hands on assistance with bathing and dressing” Finally, a lengthy mental health assessment and history is attached.

MassHealth’s representative explained that the appellant has been denied twice before for AFC services based upon different documentation. This prior authorization request was modified to Level 1 payment based upon the documented need for assistance with bathing and dressing. However, when a member requires daily hands-on assistance with only two activities of daily living (“ADLs”), they must also have a behavior that requires caregiver intervention to qualify for Level 2 payment. MassHealth’s representative started to review the behaviors and explain why they were not supported by documentation when the appellant interjected that she did not have any of the listed behaviors.

The appellant explained that she has serious mental health concerns including PTSD, depression, and anxiety, but that she also has physical disabilities. She became distressed because her housing situation with her caregiver was dependent upon her caregiver’s receiving payment for AFC services. She was concerned her caregiver would no longer be able to support her that at Level 1 payment, or worse that she would need to find alternate housing and would wind up homeless, which is where she was before moving in with her caregiver.

The appellant’s caregiver also appeared and confirmed that the appellant did not have any behaviors that required caregiver intervention. She testified that the appellant has degenerative disc disease and she can have difficulty walking. She described helping the appellant with bathing and dressing, but otherwise she described instrumental ADLs, such as cooking and cleaning. She also helps the appellant with getting to doctors’ appointments and managing medications. She testified that the appellant sometimes needs physical assistance with mobility, transferring, or toileting, but that these are not daily issues. She testified that she would need to find employment outside of the home if the

Level 1 payment remained in effect, and both she and the appellant were concerned about how this would affect the appellant's wellbeing.

Findings of Fact

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

1. A prior authorization request for Level 2 AFC services was submitted on the appellant's behalf on February 28, 2021. The appellant is identified as requiring daily hands-on assistance with bathing and dressing, and as having multiple "behaviors" that require caretaker intervention: wandering, verbally abusive, socially inappropriate, and resistive to care. (Exhibit 4, pp. 6-11.)
2. MassHealth modified this request on March 4, 2022, allowing only Level 1 AFC services. (Exhibit 2.)
3. The appellant requires daily hands-on assistance with bathing and dressing. She requires supervision and intermittent hands-on assistance with other ADLs. She does not have any behavioral issues that require caretaker intervention. (Testimony by the appellant and her caretaker.)

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).)

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**).)

The appellant requires daily hands-on assistance with bathing and dressing. The prior authorization request does not identify any other ADLs as requiring daily hands-on assistance, and the appellant and her caretaker confirmed that the appellant's need for assistance with other ADLs is intermittent. They also testified that the appellant does not have any of the behaviors as described in 130 CMR 408.419(D)(2)(b). MassHealth correctly modified the appellant's prior authorization request to be for Level 1 services, and this 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.

Christopher Jones
Hearing Officer
Board of Hearings

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