Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2202323
Decision Date:	5/19/22	**Hearing Date:**	05/13/2022
Hearing Officer:	Rebecca Brochstein		

Appearances for Appellant:

[redacted]

Appearances for MassHealth:
Leslie Learned, RN

Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171

APPEAL DECISION

Appeal Decision:	Denied	**Issue:**	Adult Foster Care
Decision Date:	5/19/22	**Hearing Date:**	05/13/2022
MassHealth's Rep.:	Leslie Learned, RN	**Appellant's Rep.:**	Pro Se
Hearing Location:	Board of Hearings (Remote)	**Aid Pending:**	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated March 10, 2022, MassHealth notified the appellant that she is not clinically eligible for MassHealth payment of Level II adult foster care services (Exhibit 1). The appellant filed a timely appeal on March 28, 2022 (Exhibit 1). Determination of clinical eligibility for adult foster care services is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant is not clinically eligible for Level II adult foster care services.

Issue

The appeal issue is whether MassHealth was correct in determining that the appellant is not clinically eligible for Level II adult foster care services.

Summary of Evidence

The MassHealth representative, a utilization management nurse, appeared at the hearing telephonically. She testified that this appeal concerns MassHealth's denial of a request for adult foster care (AFC) services. On March 4, 2022, the appellant's provider submitted a prior authorization request for Level II AFC services, for the period of March 4, 2022, to March 3, 2023. MassHealth denied the request on March 10, 2022. The MassHealth representative testified that the appellant had AFC services in 2019 and 2020, before these services required prior authorization from MassHealth.

The MassHealth representative testified that the appellant is in her early 50s. The Primary Care Provider (PCP) Order Form submitted with the PA request indicates that her diagnoses include generalized anxiety disorder, post-traumatic stress disorder, GERD, type-2 diabetes mellitus, major depressive disorder, backache, dysphagia, anemia, degenerative disc disease, migraine, chronic left shoulder pain, and dyspnea upon exertion. See Exhibit 4 at 7. Her signs and symptoms are described as follows:

> Poor endurance, pain in left shoulder & lower back, difficulty ambulating, requires an assistive device, fatigue, weakness, activity intolerance, dyspnea upon exertion, frequent headaches, anxiety, depressed mood, little interest in daily activities, poor concentration, feeling of hopelessness, slowness with activities. (Exhibit 4 at 7)

The PCP Order Form states that the appellant requires daily hands-on assistance with bathing, dressing, and mobility, and supervision/cueing during the entire activity for toileting and transferring. The MDS assessment (another tool completed by the AFC provider) states that the appellant needs "limited assistance" with locomotion outside the home, dressing, personal hygiene, and bathing; "supervision" with mobility in bed, transferring, and toilet use; and "setup held only" for eating. See Exhibit 4 at 6, 28-29.

The Clinical Assessment Narrative, completed by the AFC provider, states as follows:

> Member is [female in her early 50s] who requires limited physical assistance with bathing, dressing, including putting on street clothes, undergarments, putting on shoes, socks and zippers; and mobility as well as cueing and supervision with transferring and toilet use due to long-term complications resulting from chronic low back pain, chronic left shoulder pain, chronic DOE, migraines, major depressive disorder, and generalized anxiety disorder which affects her physical and mental health. Member c/o pain in lower back & left shoulder, poor endurance, difficulty ambulating, activity intolerance, dyspnea upon exertion, frequent headaches, fatigue, weakness, depressed mood, little interest in daily activities, poor concentration, feeling of hopelessness, slowness with activities and anxiety which interferes with her ADLs and IADLs. AFC services are recommended for member to continue to thrive and be maintained safely in the community setting. (Exhibit 4 at 26).

The request also included records from an office visit in February 2022. Notes from this visit reflect

normal findings in the constitutional, eye, respiratory, cardiovascular, and psychiatric examinations. The Assessment/Plan portion of the office note indicates as follows for each identified problem:

> Major depressive disorder: Recently re-established connection with mental health provider; will follow-up with that provider as scheduled.
>
> Type 2 diabetes mellitus without complications: Most recent A1C 6.7; stable on metformin 500 mg BID, discussed importance of lifestyle mgmt., regular exercise, healthy diet, weight mgmt. DM labs UTD w/ NL BMP, neg MAI, lipids at goal, labs due 07/2022. F/u 3 months, repeat A1C at that time.
>
> Palpitations: [Early 50's] diabetic w/well controlled A1C, non-smoker, and hx anxiety/depression both currently poorly controlled w/ c/o daily palpitations. Describes as sensation of heart skipping beat then speeding up. Denies assoc CP/SOB. Often occurs at rest when trying to initiate sleep. Hx COVID-19 infection 05/2020 w/decreased exercise tolerance since; PFTs neg, ETT w/o evidence of ischemia but poor exercise tolerance for age. NL TSH/CBC. I have referred to cardiology for further evaluation and she reports initial visit just recently last week. Unable to access Epic for review but she reports she had a cardiac CT and has f/u next week, f/u as scheduled.
>
> Dyspnea on exertion: S/p COVID-19 infection, resolves w/ albuterol neb tx which she has been purchasing from PR, notes ever since infected w/ covid last May, she has less exercise capacity. S/p NL cardiac evaluation in ED which included NL EKG and troponin ng x2. PFTS 6/28/21 w/neg methacholine challenge. ETT 6/11/21- Asymptomatic maximal exercise stress test with no ECG evidence of exercise-induced myocardial ischemia. Poor exercise tolerance for age and gender. Echo pending; referred to cardiology whom she saw last week; no epic access d/t global IT issue but she reports f/u next month, f/u as scheduled.
>
> Chronic epigastric pain: History of GERD and about 20 years of epigastric pain. Followed by GI; last visit 11/2021, question of functional pain v. gastroparesis component, amitriptyline was started which [she] reports mild improvement with and GES was ordered. She has f/u with GI 02/2022. She also notes reflux today so I refilled her omeprazole. F/u with GI as scheduled.
>
> Migraine: Hx chronic migraines previously followed by neuro last in 2019 lost to f/u in setting of pandemic, previously w/ good control on preventative meds but ran out and now w/ increased frequency. No changes to nature of migraines. Refill Verapamil today and refer back to neuro.
>
> Chronic vaginitis: At end of visit, [appellant] notes chronic vaginal itch w/o discharge or odor. Was told it was d/t her DM in past. Unable to perform pelvic today d/t time constraints, will treat for yeast given risk factors and send self swab Nuswab today. If no improvement, RTC for pelvic exam.

> Back pain: Chronic low back pain not discussed at length today, responds well to lidocaine patch which I refilled. F/u 2-3 months for focused visit for low back pain. (Exhibit 4 at 22-24)[1]

The MassHealth representative emphasized that testing showed no evidence of asthma or ischemia, that the appellant's back pain responds well to the lidocaine patch, and that her dyspnea on exertion resolves with albuterol. She testified that there is nothing in the record that indicates the appellant requires hands-on assistance with her activities of daily living. She noted that the appellant's companion cooks and cleans for her, but that this does not constitute hands-on care.

The appellant appeared at the hearing telephonically and testified on her own behalf through a Spanish interpreter. She testified that she has been a "mental health patient" for 25 years and has memory issues; she stated that she sometimes forgets things on the stove and needs reminders to take her medications. The appellant stated that she has "chronic arthritis" and terrible pain, and has gone to a chiropractor for injections. She added that she is alone at home and needs someone to help with activities such as bathing. In addition, the appellant stated, she needs someone with her at night because she is concerned her blood sugar will drop. She also complained of shortness of breath and possible sleep apnea, for which she wants to be evaluated. She testified that her companion continues to care for her even though he is not being paid, adding that her children are grown and do not come visit her. The appellant stated that she does not feel capable of being by herself and is afraid she'll "be found dead" at home.

Findings of Fact

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

1. The appellant is a female in her early 50s with diagnoses that include generalized anxiety disorder, post-traumatic stress disorder, GERD, type-2 diabetes, major depressive disorder, backache, dysphagia, anemia, degenerative disc disease, migraine, chronic left shoulder pain, and dyspnea upon exertion.

2. On March 4, 2022, the appellant's provider submitted a prior authorization request for AFC Level II services. The dates of service are March 4, 2022, to March 3, 2023.

3. The appellant had AFC services in 2019 and 2020, before these services required prior authorization from MassHealth.

4. On March 10, 2022, MassHealth denied the request on the basis that the appellant does not

[1] The submission also includes records from an office visit in August 2021, which generally reflects similar complaints and findings. In addition, the appellant answered "not at all" when asked how often, in the preceding two weeks, she had felt "little interest or pleasure in doing things," or had been feeling "down, depressed or hopeless."

meet the criteria for Level II AFC services.

5. On March 28, 2022, the appellant filed a timely appeal of the denial.

6. The PA request states that the appellant requires limited physical assistance with bathing, dressing, and mobility, as well as cueing and supervision with transferring and toilet use, due to low back pain, left shoulder pain, dyspnea on exertion, migraines, depression, and anxiety.

7. At a provider office visit in August 2021, the appellant answered "not at all" when asked how often, in the preceding two weeks, she had felt "little interest or pleasure in doing things," or had been feeling "down, depressed or hopeless."

8. At a provider office visit in February 2022, the appellant was found to have well-controlled diabetes; decreased exercise tolerance since a May 2020 COVID-19 infection; dyspnea on exertion that resolves with albuterol nebulizer; a history of negative pulmonary function tests and an asymptomatic maximal exercise stress test with no evidence of ischemia; complaints of epigastric pain and migraine (for which omeprazole and Verapamil were prescribed, respectively); and back pain that responds well to the lidocaine patch.

Analysis and Conclusions of Law

AFC is a community-based service, provided in the member's home by an AFC provider, which is designed to meet a member's need for assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs). Assistance with ADLs and IADLs is provided by an AFC caregiver, with nursing oversight and care management of the AFC caregiver's provision of assistance provided by the AFC provider's professional staff. Members receiving AFC must live with their AFC caregiver.

The regulatory requirements to establish clinical eligibility for adult foster care program services are set forth in MassHealth regulations at 130 CMR 408.416. To obtain clinical authorization for MassHealth payment of AFC, all of the following clinical criteria must be met:

(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.[2]

Under 130 CMR 408.419(D), AFC payments are made at two rates:

(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 activities described in 130 CMR 408.416; or

(b) hands-on (physical) assistance with at least two of the activities listed 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;

[2] MassHealth has also promulgated Guidelines for Medical Necessity Determination for Adult Foster Care. Among other things, these guidelines set forth the clinical requirements for each of the ADLs described in the regulation above in greater detail (Exhibit 4).

> 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.

This case concerns MassHealth's denial of the appellant's prior authorization request for AFC Level II services. MassHealth denied the request because it found insufficient evidence that the appellant requires hands-on (physical) assistance with at least three of the activities described in 130 CMR 408.416.[3] The appellant contends that she meets the regulatory requirements.

In the PA request, the AFC provider contends that the appellant needs "limited assistance" with the activities of bathing, dressing, and mobility (as well as cueing and supervision of toileting and transfers), due to back and shoulder pain, dyspnea on exertion, migraines, depression, and anxiety. The appellant's medical records – which offer the most objective view into the appellant's condition – do not support this view. The records describe a range of chronic ailments, but do not present these conditions as having a substantial impact on the appellant's ability to function and complete her activities of daily living. For example, as MassHealth pointed out, the records indicate that the appellant's back pain "responds well" to lidocaine patches, and that her dyspnea with exertion "resolves" with the use of albuterol. Though she is noted to have poor exercise tolerance, there is nothing in the records that suggests she is unable to ambulate in her home environment. Additionally, the medical records do not reflect any specific unresolved impairments that would impact her capacity to dress or bathe herself. Notably, though the AFC provider pointed to shoulder pain as one of the conditions that justifies AFC services, this complaint does not appear among the problems identified by the treating provider.

The appellant has not provided adequate evidence that she meets the criteria for Level II AFC services.[4] Accordingly, this appeal is denied.

Order for MassHealth

None.

[3] There is neither allegation nor evidence of behaviors that require frequent caregiver intervention, per 130 CMR 408.419(D)(2)(b).

[4] There is also insufficient evidence that she meets the criteria for Level I services. See 130 CMR 408.419(D)(1).

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.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Optum