

Office of Medicaid BOARD OF HEARINGS


Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2202931
Decision Date:	8/1/2022	Hearing Date:	05/18/2022
Hearing Officer:	Christopher Jones	Record Open to:	06/08/2022

Appearance for Appellant:

Pro se

 – Son/Caregiver

Appearance for MassHealth:

Jamie Capizzano, RN

Laura Rose, RN

Interpreter:

ITI # 363317



*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:	Dismissed in part; Denied in part	Issue:	Prior Authorization – Adult Foster Care
Decision Date:	8/1/2022	Hearing Date:	05/18/2022
MassHealth's Rep.:	Jamie Capizzano, RN; Laura Rose, RN	Appellant's Rep.:	Pro se; Son
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 April 4, 2022, MassHealth denied the appellant's prior authorization request for Level 2 Adult Foster Care services. (Exhibit 2; 130 CMR 450.303.) The appellant filed this appeal in a timely manner on February 27, 2022. (Exhibit 2; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

The appellant requested that the record be left open until June 8, 2022 to submit additional medical records.

Action Taken by MassHealth

MassHealth denied the appellant's request for Level 2 Adult Foster Care services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.303 and 408.000, in determining that the appellant did not qualify for Adult Foster Care services.

Summary of Evidence

On or around March 16, 2022, the appellant's Adult Foster Care ("AFC") provider, Diligent Personal Care, Inc., submitted a prior authorization request on the appellant's behalf seeking Level 2 AFC services. The requested prior authorization period ran from April 4, 2022 through April 3, 2023. The request identifies the appellant as requiring hands-on, daily assistance with bathing, dressing, and mobility, and supervision assistance with toileting and transferring. The appellant is a middle-aged woman with a primary diagnosis of anemia. The listed symptoms related to her anemia are "generalized weakness, lack of energy, easily fatigued, dizziness, poor appetite, difficulty sleeping, risk of falls."

MassHealth found the clinical documentation submitted with the prior authorization request to conflict with the request for services. The only medical records submitted with the appellant's request were the plan of care for AFC services from November 2021, a February 20, 2022 nursing progress note, and a February 28, 2022 letter from the appellant's primary care physician. The plan of care identifies the appellant's functional limitations as bilateral knee pain, weakness, general fatigue, and dizziness. (Exhibit 3, p. 14.) The only medical equipment she is listed as owning are reading glasses. (Exhibit 3, p. 16.) For activities of daily living ("ADLs"), the notes reflect that she requires supervision with transferring between surfaces to ensure she changes positions slowly. She requires supervision with walking indoors to ensure pathways are clear and to avoid rushing. She requires supervision for upper body dressing, grooming and personal hygiene, and toileting, though no additional instructions or information are written out. She requires hands-on, physical assistance for bathing, walking outdoors to avoid rushing, and lower body dressing including undergarments, socks, and shoes. The additional instructions are that she should avoid clutter, keep pathways clear, change position slowly, use assistive devices, and avoid rushing. (Exhibit 3, p. 17.)

The monthly nursing note from February again notes she only has reading glasses for assistive equipment. The appellant continued to report "weakness, and fatigue, [d]izziness occasionally" and "pain from multiple sites, such as lower back, and knees occasionally." (Exhibit 3, pp. 20-21.) The entirety of the physician's letter states that the appellant "is a patient in my office that suffers from hypertension, renal transplant, hemoglobin-E disease, hyperlipidemia, anemia, and depression. Due to this she still requires the help of a caretaker for cooking, cleaning, bathing, dressing, and transportation to and from appointments." (Exhibit 3, p. 24.)

MassHealth's representative acknowledged that the appellant is the recipient of a kidney transplant and has a past medical history that includes end-stage renal failure. However, she is not currently on dialysis, and the only listed diagnosis as giving rise to her need for AFC services is anemia. In reviewing the submitted medical records, the appellant is not receiving physical therapy and she has no assistive devices such as a cane or walker. She did not appear to be on any supplements, medications, or transfusions for her anemia. MassHealth's representative testified that these are the first line of support for anemia. Typically, vitamin D and iron supplements would be prescribed for mild symptoms related to anemia, and the appellant does not take even these. The absence of any treatment for the appellant's anemia would therefore conflict with the severity of the symptoms the appellant and the AFC provider attribute to the appellant's anemia.

MassHealth's representative testified that the agency sought additional medical records from the provider and the appellant before it denied coverage, and the physician's letter was all that was submitted. Further, the prior authorization request states that the appellant needs hands-on assistance with mobility, bathing, and dressing, and the letter from the physician states she only requires ADL assistance with bathing and dressing.

The appellant testified that she appealed because she hopes that her children will be able to continue being paid to keep watch on her. She testified that she can barely do anything on her own. She needs help with cooking, using the toilet, and getting to doctor's appointments because she cannot drive. She testified that she gets tired and lightheaded from her blood pressure going up and down, and sometimes she has difficulty breathing.

When asked to describe what assistance she needs, she testified that she needs someone to wash all her body for her. She is scared of falling in the shower because she gets lightheaded due to her blood problems. However, she does not have a shower chair to allow her to safely sit in the shower. She testified that she could use the toilet by herself and clean herself, but she needs someone available to help her get up. She is described as independent with standing up and with mobility inside her house, however she testified that she sometimes uses a wheelchair after the shower and her caregivers dry her and dress her. She also testified that her children bought her a cane and she uses a cart inside the house to get around. She testified that she cannot walk very far on her own because she gets lightheaded, so she will walk with the cart and then call one of her children if she feels dizzy. She did not tell her visiting nurse or doctors about the cane, wheelchair, or cart she uses. She lives on the second floor and requires assistance to get down the stairs, therefore she does not go outside very often. She goes for short walks for exercise, only a block, and she holds someone's hand the whole time in case she gets dizzy.

She was asked if she has discussed with her doctors the fact that her anemia is having such an impact on her ADLs. She responded that she went to her nephrologist two days before the hearing, and they had told her to expect to be tired. They told her she could not take iron supplements because her iron is too high, which is bad for her replacement kidney, so she only takes vitamins. The appellant requested the opportunity to submit medical records from this visit to substantiate their symptoms. The submitted records support that she takes vitamin D3 and folic acid, but the submitted records did not otherwise address her symptoms or physical limitations.

Based on the testimony and post-hearing correspondence from the appellant, MassHealth agreed to authorize Level 1 AFC services, but their representative continued to feel that the appellant did not require hands-on assistance with at least three ADLs every day.

Findings of Fact

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

1. On or around March 16, 2022, the appellant's AFC provider submitted a prior authorization request on the appellant's behalf seeking Level 2 AFC services from April 4, 2022 through April 3, 2023. (Exhibit 3, pp. 6-30.)
2. The appellant is a middle-aged woman with a primary diagnosis of anemia. The listed symptoms related to her anemia are "generalized weakness, lack of energy, easily fatigued, dizziness, poor appetite, difficulty sleeping, risk of falls." She requested hands-on assistance with bathing, dressing, and outdoor mobility. (Exhibit 3, pp. 8, 10, 17.)
3. The appellant is repeatedly identified as using no assistive equipment other than reading glasses and identified as being able to transfer and ambulate in the home independently. (Exhibit 3, pp. 16-17, 20-22.)
4. The appellant's need for assistance comes mostly from her occasional dizziness and fear of falling. She also suffers from knee and low-back pain that makes movement difficult. She is physically able to manage most ADLs by herself if she moves slowly, but she requires standby assistance in case she becomes dizzy or fatigued. (Testimony by the appellant.)
5. MassHealth agreed to authorize Level 1 AFC services as the agency agrees she requires supervision. (Exhibit 7.)

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

(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(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).)

There is additional guidance in the Guidelines for Medical Necessity Determination for Adult Foster Care (AFC) [[AFC Guidelines](#)], included in MassHealth's exhibit packet.¹ This guidance highlights that assistance with dressing or bathing need not encompass the entirety of the activity, especially to qualify for Level 1 payment:

2. 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 ADLs:

- a. Bathing. A full-body (front-, back-, upper-, and lower-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. In addition, the AFC caregiver may support a member with 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 makeup. A member's need for support with a full-body bath or shower or a partial (sponge) bath alone meets the clinical eligibility for AFC. A member's need for support with personal hygiene alone does not meet the clinical eligibility for AFC.
- b. Dressing. Both upper- and lower-body items of clothing, including street clothes and undergarments. Members do not require support with dressing if they require support only with putting on shoes and/or socks, buttons, snaps, and zippers. Members will be deemed to need Level II support with dressing if they require hands-on physical assistance with lower-body dressing, and cueing and supervision throughout the entire activity for upper-body dressing, or vice versa.
- c. Toileting. The member is incontinent (bladder and/or bowel), or requires routine catheter or colostomy/urostomy care, or needs cueing and supervision or physical assistance with toileting and cleansing after

¹ Also available at <https://www.mass.gov/doc/guidelines-for-medical-necessity-determination-for-adult-foster-care-afc/download> (last visited July 27, 2022).

elimination. Additionally, members will be deemed to require support with toileting if they require support with scheduled toileting care to prevent incontinence. Members do not require support with toileting if they require support only with transferring on and off the commode. If the member requires support solely with transferring on and off the commode, then the member would require support with transferring only, and not toileting

d. Transferring. The member must be assisted or lifted to move from one position to another. For example, the member requires assistance to move from a wheelchair to the commode.

e. Mobility (ambulation). The 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 in all environments (indoors and outdoors). Members will be deemed to need Level II support with mobility if they require hands-on physical assistance with ambulation outdoors, and cueing and supervision throughout the entire activity indoors, or vice versa

(AFC Guidelines, p. 2; Exhibit 3, p. 34.)

The appellant undoubtedly requires supervisory assistance with most of her ADLs. MassHealth already reinstated Level 1 services as of the start of the prior authorization period. This appeal is DISMISSED in part with regards to this appeal to the extent that it requests Level 1 services.

This appeal must be DENIED in part with regard to Level 2 payment. MassHealth raised legitimate concerns regarding the discrepancy between the medical records submitted and the severity of the condition described by the appellant. I cannot credit the appellant's testimony that she requires near total assistance with all ADLs in the face of the documented discrepancies identified by MassHealth. I also find the prior authorization request itself to be unhelpful in its description of the appellant's needs. It identified bathing as requiring hands-on assistance but did not describe what tasks must be assisted. The appellant's own testimony was that she fears falling in the shower, but that she does not use a shower chair.² It is possible that the appellant is unaware of her right to access supportive devices that may make her more independent, such as a shower chair or a rolling walker with a seat attached. She can ask her medical providers to help her identify useful therapies and assistive equipment that may be covered by MassHealth, as well as more carefully document her symptoms and restrictions in their clinical notes. The record was left open for additional medical evidence to be submitted supporting her physical limitations, but the submitted note failed to do so. The appellant should ensure that corroborative documentation is gathered before she submits for re-authorization next year.

² It must also be noted that the Minimum Data Set submitted by the appellant's provider states that the appellant receives seven hours of home-health aide services per week. (Exhibit 3, p. 29.) This may be a typographic error, but it is also a basis for non-coverage of AFC services. (See Exhibit 3, p. 35; 130 CMR 408.437.)

Order for MassHealth

Approve Level 1 AFC services as of April 4, 2022, if not already done.

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.

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.

Christopher Jones
Hearing Officer
Board of Hearings

cc:

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