

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2203324

Decision Date: 7/7/2022

Hearing Date: 06/08/2022

Hearing Officer: Sara E. McGrath

Appearances for Appellant:

 Appellant
Caregiver

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:	Eligibility for Adult Foster Care
Decision Date:	7/7/2022	Hearing Date:	06/08/2022
MassHealth's Reps.:	Leslie Learned, RN	Appellant's Rep.:	Pro se
Hearing Location:	Board of Hearings (Remote)		

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 29, 2022, MassHealth notified the appellant that he is not clinically eligible for MassHealth payment of adult foster care services (Exhibit 1). The appellant filed a timely appeal on May 2, 2022 (Exhibit 1). Determination of clinical eligibility for adult foster care services is a valid basis for appeal (130 CMR 610.032). At the conclusion of the hearing, the record was held open for the appellant to submit additional documentation and for MassHealth to review and respond.

Action Taken by MassHealth

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

Issue

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

Summary of Evidence

The MassHealth representative, a utilization management nurse, appeared at the hearing telephonically and testified that this appeal concerns MassHealth's denial of a request for adult foster care (AFC) Level I services. On March 21, 2022, the appellant's provider, Mass Care Link Incorporated, submitted a prior authorization request for AFC Level I services for the period of March 21, 2022, through March 20, 2023 (Exhibit 3, p. 3). MassHealth denied the request on March 29, 2022 on the basis that there was no evidence that the appellant meets the eligibility requirements for this level of service (Exhibit 1, p. 3). The MassHealth representative stated that to receive coverage for AFC Level I services, a member must require hands-on (physical) assistance with one or two of the designated activities of daily living (set forth in 130 CMR 408.416), or must require cueing and supervision throughout one or more of those activities in order to complete that activity. Based on the prior authorization submission, MassHealth did not find that these services were medically necessary for the appellant. It therefore denied the request.

The MassHealth nurse testified that the appellant is a male in his late 40s with diagnoses of gout, type 2 diabetes, hypertension, sleep apnea, and bilateral foot pain. She referenced the MassHealth Adult Foster Care Primary Care Provider Order Form (PCP Order Form), which is signed by the appellant's physician. This form indicates that the appellant needs physical assistance with bathing and transferring (Exhibit 3, p. 9). The MDS assessment (another tool completed by the AFC provider) states that the appellant needs "limited assistance" with transfers, lower body dressing, toilet use, and bathing (Exhibit 3, p. 22). The PCP Order Form includes the following note regarding the appellant's signs and symptoms:

Tender joints, Warm in the joints, Swelling, stiffness and Joint pain, related to gout as evidenced by unsteady gait, poor balance, weakness, and assistive device use with a cane.

Fatigue, tiredness, sensory impairment, frequent urination, related to diabetes type 2 as evidenced by obesity, unstable glucose levels, hyperglycemic medication management, imbalanced nutrition, and fatigue.

Disturbed sleep, Morning headaches, impaired gas exchange and insomnia related to sleep apnea as evidenced by fatigue, irritability, and Sleepiness or lack of energy during day time.

(Exhibit 3, p. 10).

The record also includes an assessment completed by the AFC provider (Exhibit 3, pp. 17-19). That assessment indicates that the appellant needs limited assistance with transfers, lower body dressing, toileting, and bathing due to gout, bilateral extremity pain, stomach pain, weakness, and excessive fatigue (Exhibit 3, p. 18). The assessment nurse notes that the appellant uses a cane in one hand and holds the caregiver's hand to transfer 100% of the time, and uses a shower chair, with a caregiver washing him from head to toe (Exhibit 3, p. 18). The assessment includes the following summary:

Potential member was observed on the zoom link ambulating with can [sic] limping

to the couch. The potential Cg was observed sitting next to him. Member has a hx of Gout, Type 2 D.M., bilateral foot pain, and HTN. He also currently has suspected sleep apnea with residual symptoms. He ambulates with a can [sic] and states that he has pain in his back, stomach and feet. He has a history of gall bladder removable [sic]. The Cg and the potential member stated that his memory is not that great, he forgets task that need [sic] to be done and presents safety risk due to being so forgetful. He needs help wiping when he has bowel movements and has incontinence at times, however not a consistent daily need. He is overweight and gets SOB on excretion [sic] and can't stand for long periods of time. He requires physical assistance with transferring and bathing related to the symptoms he experiences from his diagnosis of obesity, sleep apnea and gout. He meets clinical criteria to be a level one with this provider.

(Exhibit 3, p. 19).

The MassHealth nurse testified that other documentation in the record is inconsistent with the above assessment and does not support the appellant's request for AFC Level I services. The record includes a report from a wellness office visit from March 10, 2021 (Exhibit 3, pp. 12-16). The appellant presented for a physical and reported excessive fatigue and snoring. The appellant's physician noted that he suspected sleep apnea and recommended a sleep study for further evaluation (Exhibit 3, p. 12). The physical examination was normal, including a motor exam where the appellant's tone, gait, and stance were all normal (Exhibit 3, pp. 14-15). The review of symptoms was normal except for a report of bilateral foot pain (Exhibit 3, p. 15). The physician increased the appellant's metformin dosage to better control his diabetes, noted that his hypertension was controlled, and recommended a follow up with podiatry to address the bilateral foot pain due to flat feet (Exhibit 3, p. 13).

The MassHealth nurse stated that the record does not support the AFC provider's request for services. She explained that gout is an episodic condition that occasionally flares; the appellant takes both preventative medication and medication to treat this condition when it flares. She also noted that flat feet do not typically cause pain, and conservative treatment options include arch supports, stretching, and/or a structurally supportive shoe. Additionally, she testified that the records from March of last year included a normal physical exam and the reported symptom of bilateral foot pain. There is no evidence that the appellant consulted a podiatrist or trialed any of the available conservative treatment options. She noted that with treatment, foot pain should not prevent the appellant from independently completing his activities of daily living.

The appellant and his caregiver appeared at the hearing telephonically. The caregiver stated that the medical records from March are old and do not reflect that the appellant's situation has gotten worse. The appellant's pain has increased over 80%; his flat feet are very painful and he cannot walk because of this issue. She assists the appellant getting in and out of the shower. He needs a shower chair but does not have one at this time. The appellant explained that he bought inserts to help with his foot pain but they still burn all the time. It takes a long time just to walk to the bathroom, and sometimes he doesn't even make it. He broke his tibia three years ago, which

required surgery. Residual issues from the broken tibia, along with his flat feet and gout, have left him almost housebound. He also does not sleep because of his sleep apnea, which causes him to be tired all the time.

The appellant stated he was seen by podiatrist last summer, and has a scheduled appointment with his primary care physician. The hearing officer left the record open for the appellant to submit documentation from the podiatrist and the primary care physician. The appellant did not submit documentation from a podiatrist. He submitted a letter from his physician dated June 17, 2022 (Exhibit 5, p. 1).¹ The letter provides in relevant part as follows:

[Appellant] has significantly deteriorated in health since he was last seen by me in March 2021.

I am requesting a referral to Pain Management Clinic.

I am also requesting for [sic] a home health aide/in home care adult foster care service immediately.²

The MassHealth nurse responded by letter that states, in relevant part, as follows:

There was a referral for podiatrist in MD notes from March 2021. At the hearing MassHealth requested notes from members [sic] podiatrist as he states his pain is from gout and flat feet. [Appellant] did not provide any podiatry notes.

The condition of gout presents as flare ups not constant, chronic pain. [Appellant], who is [REDACTED] is on gout medication to prevent these flare ups.

In the 6/17/22 additional notes submitted there was no Physical Exam or Review of Systems included.

Included was a letter from the doctor dated June 17, 2022. Letter stated [appellant] has “significantly deteriorated” in health since he was last seen in March of 2021. MD gave no details in the letter whatsoever. If [appellant’s] health had significantly deteriorated, we would expect to have seen visits to his doctor in between March 2021 and June 2022. MD finishes the letter by stating [appellant] needs Home Health Aid/Adult Foster Care in the home. These are distinctly different levels of care with different eligibility requirements.

AFC nurses notes document incontinence, stomach pain, weakness not mentioned

¹ The appellant also submitted some additional documents, including an appointment card (without any provider identification), and other documents that appear to be from the July 17th appointment (demographic information, immunization history, medications etc.) (Exhibit 5). These documents are not relevant to an assessment of the appellant’s functional abilities.

² The appellant also subsequently submitted two pages of the report from the June 17th office visit; these pages do not include a physical exam or a review of symptoms (Exhibit 6).

anywhere in MD notes from 2021 or 2022. Information is inconsistent.

March 2021 ROS and PE document normal gait and stance. As stated, we received no Physical Exam or Review of Systems from the MD office visit June 17, 2022.

MDS form, PCP form AFC nurses notes all document independence with ambulation. In and out of the home.

Per the above assistance for bathing and transferring is not supported by documentation submitted.

MassHealth does not find that [appellant] meets the clinical eligibility criteria for MassHealth coverage of AFC as outlined in the Guidelines for Medical Necessity Determination for Adult Foster Care, Section 2 (A) and MassHealth Regulation 130 CMR 408.416C.

(Exhibit 7).

Findings of Fact

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

1. The appellant is a male who is now in his early 50s with diagnoses including gout, type 2 diabetes, hypertension, sleep apnea, and bilateral foot pain.
2. On March 21, 2022, the appellant's provider submitted an initial prior authorization request for AFC Level I services, for the period of March 21, 2022 through March 20, 2023.
3. The appellant's physician included with the request a form that states that the appellant needs physical assistance with bathing and transferring.
4. The appellant has complaints of bilateral foot pain and fatigue.
5. The appellant currently uses insulin and metformin for diabetes, as well as meloxicam, allopurinol, and indomethacin for gout and its signs and symptoms.
6. At a wellness office visit from March 10, 2021, the appellant reported excessive fatigue and snoring; the physician suspected sleep apnea and recommended a sleep study. At that same visit, the appellant's physical examination was normal (including a motor exam where the appellant tone, gait, and stance were all normal), and a review of symptoms was normal except for a report of bilateral foot pain.
7. On March 29, 2022, MassHealth denied the request on the basis that there was no evidence

the appellant requires this level of service.

8. On May 2, 2022, the appellant filed a timely appeal with the Board of Hearings.
9. At an office visit on July 17, 2022, the appellant reported acute bilateral foot pain and was referred to a pain clinic; this physician noted generally that the appellant's health had significantly deteriorated.

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.³

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;
 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 I services. MassHealth denied the request because it found no evidence that the appellant needs hands-on, physical assistance with one or two of activities set forth at 130 CMR 408.416, or cueing and supervision throughout one or more of those activities. The appellant contends that he meets the regulatory requirements.

In the PA request, the AFC provider contends that the appellant needs "limited assistance" with the activities of bathing and transferring due to gout, bilateral extremity pain, stomach pain, weakness,

³ 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 3, pp. 27-32).

and excessive fatigue. The appellant's medical records – which offer an objective view into the appellant's condition – do not support this view. The records, which include a completely normal physical exam, describe that the appellant has bilateral foot pain, as well as some other chronic conditions (diabetes, hypertension, suspected sleep apnea), but do not present these conditions as having a substantial impact on the appellant's ability to function and complete any of his activities of daily living. Specifically, the medical records do not identify any specific impairment that would impact the appellant's capacity to transfer without assistance or bathe himself.

As pointed out by MassHealth, the AFC provider has indicated throughout the record that the appellant is independent with ambulation, both in and outside the home.⁴ Independence with this activity suggests that the appellant's foot pain would not preclude independence with other activities. As noted above, the medical record includes a normal physical exam, including a motor exam where the appellant's tone, gait, and stance were all normal. These findings are not consistent with an individual who needs physical assistance with any task due to foot pain. Despite the opportunity to do so, the appellant did not submit any medical records from a podiatrist. The records could have shed more light on the nature and extent of the appellant's foot pain, as well as any impact on his functional abilities.⁵

The primary care physician's recent letter includes a general statement that the appellant's health has deteriorated, and indicates that he has referred the appellant to a pain clinic (Exhibit 5). While relevant, this information does not provide any specific detail about how the appellant's symptoms (foot pain and/or other symptoms) affect his ability to bathe or transfer. As noted by MassHealth, the updated medical records do not include a physical exam or a review of symptoms (Exhibit 6).

On this record, the appellant has not provided adequate evidence that he meets the criteria for AFC Level I services.

Accordingly, this appeal is denied.

Order for MassHealth

None.

⁴ The AFC provider has indicated this on the PCP Order Form, in the MDS assessment, and in its initial assessment (Exhibit 3).

⁵ The appellant testified that he has trouble standing for long periods due to pain and fatigue, which is why he needs assistance in the shower. He also noted that to date, he has not used a shower chair. A shower chair could potentially promote independence with this activity.

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.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc: Optum

