

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2203460
<b>Decision Date:</b>	6/14/2022	<b>Hearing Date:</b>	06/08/2022
<b>Hearing Officer:</b>	Patricia Mullen		

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Leslie Learned, RN, Optum

**Interpreter:** Diane, 351425



*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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Adult Foster Care
<b>Decision Date:</b>	6/14/2022	<b>Hearing Date:</b>	06/08/2022
<b>MassHealth's Rep.:</b>	Leslie Learned, RN, Optum	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Quincy Harbor South	<b>Aid Pending:</b>	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 5, 2022, MassHealth denied the appellant's request for prior authorization for Level I adult foster care (Exhibit 1; 130 CMR 408.416). The appellant filed this appeal in a timely manner on May 4, 2022. (see 130 CMR 610.015(B) and Exhibit 2). Denial of a prior authorization request is valid grounds for appeal (see 130 CMR 610.032).

## Action Taken by MassHealth

MassHealth denied the appellant's request for Level I adult foster care.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 408.416, in determining that the appellant did not meet the medical necessity and clinical criteria for adult foster care services.

## Summary of Evidence

The appellant appeared telephonically and testified through an interpreter. MassHealth was represented telephonically by a registered nurse reviewer from Optum, the agent of MassHealth that makes the prior authorization determinations for Adult Foster Care (AFC). The MassHealth representative stated that the appellant's provider agency, Vitra Healthcare Inc., submitted a request for prior authorization for Adult Foster Care Level I services on March 25, 2022. (Exhibit 4, p. 3). The MassHealth representative noted that the appellant previously had AFC services in 2020, at which time MassHealth did not require prior authorization and did not review such requests. The MassHealth representative testified that the appellant's requests for AFC services have been denied 4 times since MassHealth started the prior authorization process to review these requests for medical necessity.

The provider reported that the appellant is [REDACTED] and has a primary diagnosis of chronic fatigue syndrome and secondary diagnosis of fibromyalgia. (Exhibit 4, pp. 6-7).

The appellant's provider submitted medical documentation from the appellant's Social Worker and Nurse Practitioner (NP). (Exhibit 4, ppl 13-37). For a visit dated January 28, 2022, the Social Worker reported that the appellant was cooperative and engaged, with linear and logical thought process; appellant noted that her 3 year old was in day care so she had more time; appellant went for a walk and felt good about it; appellant was going to go to the YMCA to enroll in yoga. (Exhibit 4, p. 14). In an office note dated January 28, 2022, the appellant's NP noted that the appellant complained of dizziness and fatigue; the appellant tries to work out but feels dizzy and tired; no focal or neuro deficits were noted or expressed; appellant had normal mood and affect; previous blood work was unremarkable. (Exhibit 4, pp. 16-17). Imaging of knee and hips done in January, 2021 were unremarkable. (Exhibit 4, pp. 35-37).

The MassHealth representative testified that there was no objective medical information submitted to support why the appellant's diagnoses result in the need for physical assistance with ADLs. The MassHealth representative stated that in order to be eligible for AFC Level I services, a MassHealth member must require hands-on (physical) assistance with one or two of the activities described in 130 CMR 408.416 or require 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. The activities described in 130 CMR 408.416 are bathing, dressing, toileting, transferring, mobility, and eating. (Testimony, exhibit 4, p. 44).

The MassHealth representative stated that based on the objective clinical documentation submitted, the appellant does not meet the clinical criteria for AFC Level I services. The MassHealth representative pointed out that the appellant's physical examinations were normal, and the appellant is able to go for walks and to the YMCA for yoga. The MassHealth representative stated that there is no clinical documentation of limited range of motion, limited functioning, or physical limitations. The MassHealth representative stated that the request for AFC services did not meet medical necessity criteria and the request for prior authorization was denied. The MassHealth representative noted that the appellant submitted a subsequent request for prior authorization for AFC services and

included a letter from her NP which focused on the need for assistance with cleaning, cooking and laundry. The MassHealth representative stated that these tasks are not activities of daily living. (ADLs). The MassHealth representative noted that the appellant's NP stated that the appellant's flare ups are not constant, but rather are unpredictable.

The MassHealth representative asked the appellant who cares for her 3 year old child at night and the appellant replied that she did. The MassHealth representative noted that it defies logic that the appellant can care for a young child, but cannot care for herself.

The appellant testified that she lives with her 11 year old autistic child and her 3 year old child. The appellant stated that the caregiver who used to live with her has moved out since her AFC services were denied. The appellant stated that her aunt and neighbor help her with the children. The appellant stated that she does not understand why her AFC services were taken away. The MassHealth representative explained that when the appellant initially got approved for AFC services, MassHealth was not reviewing for medical necessity. The MassHealth representative noted that MassHealth now requires prior authorization and medical necessity reviews for requests for AFC services. The appellant stated that the AFC caregiver used to help her put on her shoes, take her to medical appointments, do the laundry, and sometimes cook. The appellant stated that her NP sent a letter to her AFC provider agency which states that the appellant has a chronic condition and needs to have AFC services for help with ADLs and personal care.

## **Findings of Fact**

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

1. The appellant's provider agency, Vitra Healthcare Inc., submitted a request for prior authorization for Adult Foster Care Level I services on March 25, 2022.
2. The appellant previously had AFC services in 2020, at which time MassHealth did not require prior authorization and did not review such requests; since the time that MassHealth began to review AFC requests for medical necessity, the appellant's requests for AFC services have been denied 4 times.
3. The appellant is [REDACTED] and lives at home with her 11 year old autistic child and her 3 years old child; she has a primary diagnosis of chronic fatigue syndrome and secondary diagnosis of fibromyalgia.
4. In an office note dated January 28, 2022, the appellant's Social Worker reported that the appellant was cooperative and engaged, with linear and logical thought process; her 3 year old was in day care so she had more time; she went for a walk and felt good about it; she was going to go to the YMCA to enroll in yoga.
5. In an office note dated January 28, 2022, the appellant's NP noted that the appellant complained of dizziness and fatigue; the appellant tried to work out but felt dizzy and tired; no

focal or neuro deficits were noted or expressed; appellant had normal mood and affect; previous blood work was unremarkable; imaging of knee and hips done in January, 2021 were unremarkable.

## Analysis and Conclusions of Law

Adult foster care is defined as: a service ordered by a primary care provider delivered to a member in a qualified setting as described in 130 CMR 408.435 by a multidisciplinary team (MDT) and qualified AFC caregiver, that includes assistance with ADLs, IADLs, other personal care as needed, nursing oversight, and AFC care management, as described in 130 CMR 408.415(C). (130 CMR 408.402).

### Scope of Adult Foster Care Services

(A) Direct Care. The AFC provider must ensure the delivery of direct care to members in a qualified setting as described in 130 CMR 408.435 by a qualified AFC caregiver, as described in 130 CMR 408.434, who lives in the residence and who is selected, supervised, and paid by the AFC provider. AFC must be ordered by a PCP and delivered by a qualified AFC caregiver under the supervision of the registered nurse and the MDT in accordance with each member's written plan of care. Direct care includes 24-hour supervision, daily assistance with ADLs and IADLs as defined in 130 CMR 408.402, and other personal care as needed. (130 CMR 408.415(A)).

### Clinical Eligibility Criteria for AFC

A member must meet the following clinical eligibility criteria for receipt of AFC.

(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.

(130 CMR 408.416(A), (B)).

MassHealth regulation 130 CMR 408.419(D) establishes the conditions for a AFC provider to receive a level I service payment versus a level II service payment.

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 406.419(D)(1), (2)).

As set forth in Adult Foster Care Bulletin 13, dated January, 2018, a member receiving AFC services cannot be left alone for more than 3 hours a day, and, in accordance with 130 CMR 408.430(C)(2)(b), the AFC provider must note in the plan of care that a member can manage safely alone in the AFC qualified setting up to but not exceeding three hours per day. (Exhibit 6).

To meet the requirements for authorization of adult foster care a member must have a medical or mental condition that requires daily hands-on assistance or cueing and supervision throughout the entire activity in order to successfully complete at least one of the following activities: bathing, dressing, toileting, transferring, mobility or eating.

MassHealth denied the appellant's request for adult foster care because the clinical documentation did not support that the appellant has a medical or mental condition that requires daily hands on assistance or cueing/supervision through the entire activity in order to successfully complete bathing, dressing, toileting, transferring, mobility, or eating. There was no clinical documentation

that the appellant has functional limitations requiring assistance with the 6 listed activities of daily living (ADLs). The appellant goes to the YMCA for yoga and goes for walks. The prior authorization request states that the appellant's primary diagnosis is chronic fatigue syndrome and her secondary diagnosis is fibromyalgia. None of the appellant's medical or psychiatric diagnoses, in and of themselves, necessarily result in the need for hands on physical assistance with ADLs. The appellant testified that she needs the AFC caregiver to help put on shoes, take her to medical appointments, do the laundry and sometimes cook. Medical appointments, laundry, and cooking are not one of the listed ADLs. Assistance with dressing is defined as assistance with upper and lower body dressing, including street clothes and undergarments, but not solely help with shoes, socks, buttons, snaps, or zippers. (130 CMR 408.416(B)(2)).

Further, AFC guidelines require that a member receiving AFC services cannot manage safely alone for more than 3 hours a day. The appellant cares for her autistic child and her 3 years old child and thus it follows that she can safely be left alone for more than 3 hours a day.

Based on the current record, the appellant has failed to provide objective medical evidence to support that she needs physical hands on assistance or supervision with the 6 listed ADLs. The appellant does not meet the clinical eligibility criteria for approval of adult foster care and as a result 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.

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Patricia Mullen  
Hearing Officer  
Board of Hearings

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