Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied in part; Approved in part.	**Appeal Number:**	2203949
Decision Date:	8/12/2022	**Hearing Date:**	07/01/2022
Hearing Officer:	Christopher Jones		

Appearance for Appellant:
[redacted] – Self
[redacted] – Caregiver
[redacted] – AFC Nurse

Appearance for MassHealth:
Leslie Learned, 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 in part; Approved in part.	**Issue:**	Prior Authorization – AFC Level 2
Decision Date:	8/12/2022	**Hearing Date:**	07/01/2022
MassHealth's Rep.:	Leslie Learned, RN	**Appellant's Rep.:**	Family; [redacted], RN
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 6, 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 May 25, 2022. (Exhibit 3; 130 CMR 610.015(B); EOM 21-17 (Nov. 2021).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

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

A prior authorization request for Level 2 Adult Foster Care ("AFC") services was submitted on the appellant's behalf on March 25, 2022. The requested prior authorization period ran from March 28, 2022 to March 27, 2023. The appellant is a middle-aged woman with a primary diagnosis of low back pain resulting in pain and stiffness causing decreased range of motion, imbalance, and

weakness. Additional diagnoses listed on the submitted prior authorization form include anxiety, PTSD, right arm, shoulder, and leg pain, mood disorder, intervertebral disc degeneration, and lower back pain radiating to both legs. (Exhibit 4, pp. 6, 10.) The appellant is listed as requiring daily hands-on assistance with all activities of daily living ("ADLs") except for eating. (Exhibit 4, p. 6, 9.) In the "Member Signs and Symptoms" section of the form, the appellant is identified as needing "intermittent help with transferring, showering, dressing, transportation and ambulation. During flare ups she uses a cane to help ambulate." (Exhibit 4, p. 10.)

MassHealth's representative explained that to qualify for Level 2 services, the member must require daily, hands-on assistance with at least three ADLs or two ADLs plus the management of a socially disruptive behavior. A member may qualify for Level 1 services however if they require supervision assistance. MassHealth's representative reviewed the submitted medical records in light of the fact that the appellant's request stated her need was "intermittent," and appeared to be supervisory. MassHealth's representative acknowledged that the appellant is documented as suffering pain but felt the documented physical restrictions do not line up with the amount of physical assistance the appellant requested.

The appellant submitted a pain management visit note from February 23, 2022, a primary care visit note from January 12, 2022, and a psychiatric therapy visit from November 10, 2021. She told her pain management physician that her pain was an average of six out of 10 with worsening at times to eight out of 10. She described the pain constant with intermittent worsening, and listed aggravating factors as including any activity, walking, sitting, standing, extending backward, reaching, and moving her back. She felt that medicine and physical therapy helped a little and said she needs "assistance with ambulation, transferring, and dressing" because of her pain. (Exhibit 4, p. 13.) The physical assessment noted a "mildly antalgic" gait, the appellant's back was observably tender, her range of motion was limited in her back and her right arm and wrist. (Exhibit 4, p. 15.) However, the note also indicated that her extremities had "good motor tone and strength." (Exhibit 4, p. 15.) The treatment plan noted that physical therapy for her back had helped in the past and recommended no exercise as this time. The doctor also advised the use of a right wrist brace. (Exhibit 4, p. 16.)

The appellant's annual physical included an addendum letter from February 15, 2022, which stated that the appellant requires assistance with ADLs and instrumental ADLs ("IADLs"). Particularly, she requires "caregiver assistance with dressing, bathing, supervising the patient while using the bathroom. [Her] caregiver also does the cooking, cleaning and shopping for her …." (Exhibit 4, p. 18.) The narrative history reviewed the appellant's complaints of sharp, low back pain that radiates to her lower extremities, more on the right side, and notes an x-ray had been positive for osteoarthritis. She also complained of right shoulder pain, and an MRI had shown a supraspinatus tear. The note states the appellant "is physically active. She has lost 7 lbs since last visit. Her anxiety is under control. She sleeps well, appetite is good. No other issues." (Exhibit 4, p. 19.) The note concludes by stating she "needs help intermittently with transferring, showering, dressing, transportation and ambulation. She uses a cane to walk during flareup." (Exhibit 4, p. 22.)

The therapy note reflects that the appellant continued to be anxious and depressed without energy to do anything and being so scared she cannot sleep, but it does not comment on her ability to perform ADLs. (Exhibit 4, pp. 24-25.)

The appellant's nurse from the AFC agency testified that nothing has changed in her condition since she had been approved last year; if anything, her condition has worsened. She cannot lift her right arm past 90 degrees, which drastically inhibits her ability to perform upper body ADLs. Because of her back pain, she cannot bend over, and she needs hands-on assistance with 70 to 80 percent of her activities. Also, because of her depression and anxiety, she requires encouragement and supervision to even get out of bed. The appellant had shoulder surgery about two years ago, and the appellant's representatives feel that her function in her right arm has only decreased since then.

The appellant's caregiver testified that the primary care note is not representative of the appellant's condition because her PCP would not discuss her pain, since it is managed by another doctor. Whenever the appellant attempted to describe her pain, he would not let her finish. She testified that the appellant had shoulder surgery, but that she still has pain and limited range of motion. Regarding ADLs, the appellant needs help bathing because she cannot stand for long without getting dizzy. Her caregiver has to help her get in, wash quickly, and get out. She washes her back because the appellant cannot reach it with her right arm, and sometimes she needs to help wash her hair. The appellant complains that she is dizzy when she gets out of the shower, so she needs help to dry and then help getting to a seat. The appellant would be more independent with a shower chair, but the one she has does not fit in her shower, which is very narrow.

For dressing, she requires assistance mostly with upper body dressing because she cannot twist or lift her right arm. She cannot bend over either, so she needs help pulling up her lower body clothing to her knees and she also requires assistance with shoes. The appellant is able to use the toilet by herself but, as a Muslim, she uses running water to cleanse herself. Her caregiver testified that the appellant could use the toilet by herself, but that she needs someone to fill a water pitcher for her and wait by outside in case she needs help. This testimony was contradicted slightly by the appellant's nurse who argued that the appellant needs much more physical assistance using the toilet. MassHealth's representative objected to the AFC nurse's testimony on the grounds that she visits once per month and does not actually assist in the task.

Finally, there was mixed testimony regarding the appellant's ability to ambulate and transfer. For instance, all her medical records and the request for services indicate that the appellant uses a cane during flare ups, but the appellant's caregiver testified that she did not have a cane. The appellant's caregiver agreed she can walk but she holds onto household objects like the table to get around. The appellant's caregiver testified that she could get up from a seated position by herself, but that she cannot get up off the ground by herself, which is necessary for prayer. She also needs assistance if she has been sitting for a long time, as her right leg gets numb. They testified she wears a hand brace, and she cannot put pressure on her right arm. However, the appellant's AFC nurse testified that the appellant would need assistance getting onto and up from the toilet every time she uses it.

The appellant's representatives were asked if she could get up or move around more independently if she had a walker or some other device to hold onto with her left arm, and why the appellant could

not use her left arm for cleansing herself. The response from the appellant's caregivers was that she is right-arm dominant and it is just too difficult to use her left arm because it is not as strong. Also, she does not have a walker or other medical equipment that might make her more independent.

The appellant saw her orthopedic surgeon in May 2022 for a shoulder injection; the appellant had a copy of the office notes from this visit, but they were not submitted into the record. The appellant's AFC nurse read the narrative portions of the visit notes, which documented significant issues with stiffness after surgery. The note indicated that the appellant's initial occupational therapy post-surgery had been too aggressive, but she completed therapy with a different therapist with little relief. She had received an injection in the shoulder but continued to take daily NSAIDs. The examination of the shoulder demonstrated normal strength, but pain at the terminal extensions of all ranges of motion. She was instructed to avoid strenuous activity for the next 48 hours due to the injection. In May 2021, she had been doing "quite well," which made the surgeon concerned she may have retorn her rotator cuff. It was recommended she avoid any overhead lifting or lifting away from her body.

She also saw her pain doctor in late May. This note included similar complaints to the note in the record, regarding continued right shoulder and elbow pain that is worse if she sleeps on that side or lifts her arm overhead. She also reported low back pain that radiated over the buttocks but did not result in numbness. Prolonged sitting produced numbness in her feet. Her pain intensity was chronically at five, though raised to an eight out of 10 when aggravated. It mentioned that the appellant reported requiring assistance with bathing, dressing, and transferring.

MassHealth's representative felt that it sounded like the appellant qualified for Level 1 AFC services, as she requires a lot of supervision, but she only requires hands-on assistance intermittently.

Findings of Fact

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

1. The appellant is a middle-aged woman with a primary diagnosis of low back pain resulting in pain and stiffness causing decreased range of motion, imbalance, and weakness. Additional diagnoses include: anxiety, PTSD, right arm, shoulder, and leg pain, mood disorder, intervertebral disc degeneration, and lower back pain radiating to both legs. (Exhibit 4, pp. 6, 10.)

2. On or around March 25, 2022, a prior authorization request for AFC Level 2 services was submitted on the appellant's behalf stating she required daily hands-on assistance with bathing, dressing, toileting, mobility, and transferring. (Exhibit 4, p. 6, 9.)

3. The prior authorization request states the appellant needs "intermittent help with transferring, showering, dressing, transportation and ambulation. During flare ups she uses a cane to help ambulate." (Exhibit 4, p. 10.)

4. The appellant's PCP documented that the appellant "needs help intermittently with transferring, showering, dressing, transportation and ambulation. She uses a cane to walk during flareup." A later letter indicated she needed "caregiver assistance with dressing, bathing, supervising the patient while using the bathroom. [Her] caregiver also does the cooking, cleaning and shopping for her …." (Exhibit 4, pp. 18, 22.)

5. The appellant's pain management physician noted that the appellant said she needs "assistance with ambulation, transferring, and dressing" because of her pain. Her pain was reported as an average of six out of 10 with worsening at times to eight out of 10. (Exhibit 4, p. 13.)

6. The physical assessment noted a "mildly antalgic" gait, the appellant's back was observably tender, her range of motion was limited in her back and her right arm and wrist. The appellant's extremities had "good motor tone and strength." (Exhibit 4, p. 15.)

7. The appellant suffers debilitating fear and anxiety that limits her ability to complete tasks without supervision. (Exhibit 4, pp. 24-25; testimony by the appellant's representatives.)

8. The appellant suffers debilitating pain in her back and right extremities. She can ambulate independently, though often relies on objects for stabilization. She becomes dizzy when standing for too long. She relies on assistance in the shower because she is afraid of falling. She is independent with toileting, except for set up assistance with filling a pitcher or bottle for cleansing herself. She sometimes requires assistance getting up from a seated position, including the toilet, but she needs assistance transferring to the floor for prayer. (Testimony by the appellant's representatives.)

9. She is right-hand dominant and finds it difficult to use her left hand to manage tasks. She does not have any assistive equipment that works for her in her home, such as a shower chair that fits in her shower, a cane, or grab bars that she could use with her left hand. (Testimony by the appellant's representatives.)

10. In May 2022, the appellant had another injection in her shoulder. Her surgeon is concerned that the rotator cuff may be torn again, and it was recommended that she avoid overhead lifting and lifting away from her body. She reported slightly improved baseline pain of five out of 10 to her pain management doctor, and that she requires assistance with bathing, dressing, and transferring. (Testimony by AFC nurse.)

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) (*emphasis added in italics*.)

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]

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

[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).

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 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 (*emphasis added in italics*).)

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. The submitted documentation alternately identifies the appellant's need for assistance as intermittent, or with different activities. For instance, her PCP initially documented her as requiring intermittent assistance and using a cane during flareups for ambulation but provided an updated letter to confirm that assistance is needed with dressing and bathing, but only supervisory assistance is needed for toileting. Furthermore, it is unclear how much assistance is due to the appellant's actual restrictions and how much is due to the lack of medical equipment that would function in her life.

I find that the appellant requires daily, hands-on assistance with upper body dressing and most of her lower body dressing as well. However, the assistance required appears intermittent at most for the remaining ADLs identified. For bathing, the appellant's largest hurdle is her fear of falling and dizziness in the shower. The appellant's caregiver testified that she washes the appellant's back, and sometimes her hair. This is not "a full body … bath or shower, or a sponge … bath" as

contemplated by the AFC Guidelines. Similarly, the appellant's assistance with toileting does not require support throughout the activity. The appellant's representatives provided conflicting testimony regarding the extent of assistance required, but the caregiver's description corresponded more clearly with the description provided by the PCP of "supervisory assistance."[2] Finally, transferring assistance is a closer issue. The appellant can usually stand from a seated position independently but requires assistance to get onto and off the floor for prayer. This evidences a greater independence with transferring than is typically contemplated as qualifying. Ultimately, the issue is moot, as even if she required assistance with two ADLs, this is insufficient to qualify for Level 2 payment.

The appellant undoubtedly requires supervisory assistance with most of her ADLs. MassHealth agreed that she qualified for Level 1 payment, and therefore this appeal is APPROVED in part to the extent that MassHealth has not already authorized Level 1 payment.

Order for MassHealth

Approve Level 1 AFC services as of March 28, 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

[2] This may also be an area in which the appellant would benefit from seeking functional medical equipment, such as a bidet wand.