Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2204282
Decision Date:	8/5/2022	**Hearing Date:**	07/08/2022
Hearing Officer:	Christine Therrien		

Appearance for Appellant:
Pro se
[redacted]

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	**Issue:**	AFC
Decision Date:	8/5/2022	**Hearing Date:**	07/08/2022
MassHealth's Rep.:	Leslie Learned RN	**Appellant's Rep.:**	[redacted]
Hearing Location:	Telephonic		

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 5/24/22, MassHealth denied the appellant's prior authorization (PA) for Adult Foster Care (AFC) because MassHealth determined that this service is not medically necessary. (130 CMR and Exhibit 1). The appellant filed this appeal in a timely manner on 6/3/22. (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's request for Level II AFC.

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 AFC services.

Summary of Evidence

The appellant appeared at the hearing with two representatives: The Division Director of AFC at Open Sky and a registered nurse from Open Sky. MassHealth was represented by a registered nurse reviewer from Optum, the agent of MassHealth that makes the prior authorization determinations for AFC. The Optum representative stated that the appellant's provider agency submitted a PA request for AFC Level II services. (Exhibit 4). The Optum representative testified that the appellant was approved for AFC level II services from September 2020 through September 2021. The Optum representative testified that at that time prior authorization was not required for AFC services. The Optum representative testified that now MassHealth requires a prior authorization for AFC services and requests are reviewed based on medical necessity. The Optum representative testified that since the time that PAs have been required the appellant has submitted 3 PA requests for AFC; 10/4/21, 11/1/22 and the current PA from May 2022; all have been denied based on medical necessity. The Optum representative testified that the appellant appealed the denial of the 11/1/22 denial and the appellant withdrew the appeal at the hearing. The Optum representative testified that the current PA dates of service are from 5/11/22 through 5/10/2023. The Optum representative testified that MassHealth will pay for AFC services if the member requires hands on physical assistance with three activities of daily living (ADLs) or two ADLs and a behavior that requires frequent caregiver intervention. The Optum representative testified that on 5/24/22 MassHealth denied the appellants level 2 AFC services PA because she did not meet the clinical eligibility criteria for MassHealth coverage under the medical necessity guidelines. The Optum representative testified that the appellant is [redacted] with a primary diagnosis is heart disease and a secondary diagnosis is fibromyalgia. The Optum representative testified that the appellant lives with her boyfriend, disabled adult son, and grandson. The Optum representative testified that the appellant's boyfriend is the AFC caretaker for the appellant's son. The Optum representative testified that the appellant is requesting hands on physical assistance with bathing, dressing, toileting, transferring, and mobility. The Optum representative testified that MassHealth requested additional information to support medical necessity. MassHealth did not receive a physical examination from the appellant's primary care physician (PCP), but instead received the Plan of Care from the AFC nurse. The Optum representative read from the documentation submitted that the appellant wakes up in the morning with a lot of stiffness and it takes her a few minutes before she can get out of bed. The Optum representative testified that this shows the appellant can transfer and ambulate without assistance. The Optum representative read from the Plan of Care submitted that the appellant "can manage safely at home for about one hour. During that time, [the appellant] will sit, choosing not to walk around the house unless absolutely necessary. [The appellant] can independently exit the home if necessary by holding on to nearby furniture and using her cane…" (Exhibit 4, p. 13). The Optum representative testified that this shows the appellant can ambulate and transfer without assistance and toilet herself as the documentation states she can possibly ambulate to the bathroom on her own. The Optum representative testified that the documentation also states the appellant is continent and can wipe herself independently. The Optum representative testified that the appellant could have a handle installed next to the toilet for additional support. The Optum representative testified the documentation submitted states the appellant needs assistance getting in and out of the bathtub; while the appellant does have a shower chair, she prefers to take baths. The Optum representative testified that it is not medically necessary to take a bath instead of a shower. The Optum representative testified that the documentation submitted states that sometimes the caregiver washs the appellant's hair over the sink which shows the appellant can bend over. The Optum representative testified that the documentation states the appellant needs assistance

with clothing that goes over the head but it is possible to wear clothes that do not go over the head. The Optum representative testified that the appellant's needs could be met with a lower level of services such as the ADL program where someone can come help getting ready for the day. The Optum representative testified that MassHealth based this denial on 130 CMR 408.416 Clinical Eligibility Criteria for AFC, 130 CMR 408.417 Prior Authorization, 130 CMR 450.204 Medical Necessity, and Guidelines for Medical Necessity Determination for Adult Foster Care.

The appellant's registered nurse representative testified that in case of an emergency, if the house were on fire, it would be very difficult for the appellant to get out of the home without assistance. The appellant's representative testified that she did not think it was necessary to restate through-out the Plan of Care that a "caregiver provides physical assistance with getting her out of bed, chair or car," because it was stated at the beginning of the document. (Exhibit 4, p. 12). The appellant's representative testified that she stated in the documentation that the appellant requires assistance getting in and out of the shower and requires assistance washing areas she is unable to reach, "[the appellant] needs physical assistance to get into and out of the tub. She does have a shower chair, but she prefers baths over showers for fear of falling. Caregiver will physically wash Joanne in hard-to-reach areas." (Exhibit 4, p. 12) The appellant's representative stated that this shows the appellant needs assistance. The appellant's representative testified that she indicated the appellant is independent with toileting because while she is continent, she does need assistance with transfers to the toilet and transfers is a different section. The appellant's representative stated that she does understand that one could wear clothing that does not go over the head. The appellant's representative stated she thought that the appellant has had AFC services for several years and would like to keep the AFC and this is why she has not applied for the Personal Care Attendant (PCA) program. The appellant testified that she was told applying for the PCA program was an option, but she would rather continue with her current services with Open Sky. The appellant stated that she did not understand why if she qualified for one program [PCA] why wouldn't she qualify for this [AFC]? The Optum representative testified that they are two different programs with different qualifications and the appellant is not eligible for the AFC program. The Optum representative testified that the appellant was only eligible the one time because at the time MassHealth was not reviewing PA requests for medical necessity.

The appellant testified that at her prior appeal hearing the hearing officer told her that since she was going in for open heart surgery she would get approved for AFC with Open Sky. The appellant testified that she does not know what happened because that surgery was supposed to qualify her for level II AFC. The appellant's representative testified that the appellant understood that since her conditioned worsened due to her heart surgery the appellant thought she would be approved. The appellant's representative testified that was basically the information they received from the last hearing. The Optum representative testified that after surgery the appellant could possibly get temporary services while she recovers through the Home Health Aide program.

At the appeal hearing that took place on 1/12/22, the hearing officer informed the appellant that MassHealth requires specific information to make a determination for clinical eligibility for AFC services. The hearing officer informed the appellant that she needs to have an objective examination from her PCP to accompany a new AFC PA. The hearing officer wrote on the withdraw form that the PCP's examination should give a clear explanation of the appellant's functional limitations. The

appellant and her representative were both sent a copy of the withdraw containing what MassHealth required if a new PA for AFC was submitted. [1]

The appellant testified that her concern is that her boyfriend has been taking care of her all along, and that everything that was requested of her was given. The appellant testified that she just does not understand why she does not qualify now when she did before. The appellant's representative testified that she submitted the heart surgeon's post-op notes.

The Optum representative reiterated that the rules for the program have changed and are now based on medical necessity.

The appellant testified that her boyfriend does all the shopping and all the cooking. The appellant testified that Open Sky has been with her so long that she wants to stay with Open Sky.

The Optum representative testified that there is a difference between the appellant's boyfriend doing things for her and doing things that are medically necessary. Anticipatory care is not medically necessary care. The Optum representative testified that "in the case of a house fire" is anticipated care.

Findings of Fact

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

1. The appellant appeared at the hearing with two representatives: The Division Director of AFC at Open Sky and a registered nurse from Open Sky.

2. MassHealth was represented by a registered nurse reviewer from Optum, the agent of MassHealth that makes the prior authorization determinations for AFC.

3. The appellant's provider agency submitted a PA request for AFC Level II services. (Exhibit 4).

4. The appellant was approved for AFC level II services from September 2020 through September 2021.

5. At that time of the appellant's AFC approval, PAs were not reviewed for medical necessity.

6. Now MassHealth requires PAs for AFC services be reviewed based on medical necessity.

7. Since the time that Pas began being reviewed for medical necessity the appellant has submitted 3 PA requests for AFC; 10/4/21, 11/1/22 and the current PA from May 2022; all have been denied based on medical necessity.

[1] Appeal number 2179397 at minute 33.

8. The appellant appealed the denial of the 11/1/22 PA and the appellant withdrew the appeal at the 1/12/22 hearing.

9. At the appeal hearing on 1/12/22, the hearing officer informed the appellant MassHealth requires specific information to make a determination for clinical eligibility for AFC services. The hearing officer informed the appellant that she needs to have an objective examination from her PCP to accompany a new AFC PA. The hearing officer wrote on the withdraw form that the PCP's examination should give a clear explanation of the appellant's functional limitations.

10. The appellant and her nurse representative both received copies of the withdrawal form from the prior appeal hearing.

11. The current PA dates of service are from 5/11/22 through 5/10/23.

12. MassHealth will pay for AFC services if the member requires hands on physical assistance with three ADLs or two ADLs and a behavior that requires frequent caregiver intervention.

13. On 5/24/22 MassHealth denied the appellants level 2 AFC services PA because the appellant did not meet the clinical eligibility criteria for MassHealth coverage under the medical necessity guidelines.

14. The appellant is [redacted] with a primary diagnosis is heart disease and a secondary diagnosis is fibromyalgia.

15. The appellant lives with her boyfriend, disabled adult son, and grandson. The appellant's boyfriend is the AFC caretaker for the appellant's son.

16. The appellant is requesting hands on physical assistance with bathing, personal hygiene, dressing, transferring, and mobility. (Exhibit 4, p.12).

17. MassHealth requested additional information to support medical necessity. MassHealth did not receive a physical examination from the appellant's PCP, but instead received post-operative notes from the appellant's heart surgeon. (Exhibit 4, p.24).

18. The documentation submitted states the appellant wakes up in the morning with a lot of stiffness and it takes her a few minutes before she can get out of bed.

19. The Plan of Care submitted states that the appellant "can manage safely at home for about one hour. During that time, [the appellant] will sit, choosing not to walk around the house unless absolutely necessary. [The appellant] can independently exit the home, if necessary, by holding on to nearby furniture and using her cane…" (Exhibit 4, p. 13).

20. The documentation states the appellant is continent and can wipe herself independently.

21. The documentation submitted states the appellant needs assistance getting in and out of the bathtub; while the appellant does have a shower chair, she prefers to take baths.

22. The documentation submitted states that sometimes the caregiver washes the appellant's hair over the sink.

23. The documentation states the appellant needs assistance with clothing that goes over the head.

24. Anticipatory care is not medically necessary care.

Analysis and Conclusions of Law

Pursuant to 130 CMR 450.204, MassHealth will not pay a provider for services that are not medically necessary; and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

(A) A service is "medically necessary" if:

(1) it is reasonably calculated to prevent, diagnose, prevent the worsening of, alleviate, correct, or cure conditions in the member that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity; and

(2) **there is no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to the Division.** Services that are less costly to the Division include, but are not limited to, health care reasonably known by the provider, or identified by the Division pursuant to a prior authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007, or 517.007.

(emphasis added)

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, Instrumental Activities of Daily Living (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)).

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 three of the following activities: bathing, dressing, toileting, transferring, mobility or eating.

Clinical Eligibility Criteria for AFC[2]

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

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[2] The Guidelines for Medical Necessity Determination for Adult Foster Care (AFC) provides more details regarding what type of hands on assistance is required for each ADL.

SECTION II. CLINICAL GUIDELINES

A. CLINICAL ELIGIBILITY CRITERIA

To be clinically eligible for MassHealth coverage of AFC, a member must meet medical necessity criteria based on an assessment of clinical data, including, but not limited to, indicators that would affect the relative risks and benefits of the service for the member and needs identified through clinical assessment completed and interpreted by a registered nurse using a MassHealth-specified clinical assessment tool.

The MassHealth agency considers a member clinically eligible for MassHealth coverage of AFC when the member meets the following clinical eligibility criteria:

1. The member's Primary Care Provider (PCP) ordered AFC; and

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.

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.

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 an 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)).

Additionally, MassHealth requires specific documentation with each PA. The appellant failed to follow through with the request from MassHealth for documentation from the appellant's PCP as described in the Guidelines for Medical Necessity Determination for Adult Foster Care (AFC).[3]

[3] 130 CMR 408.417 (B)(5) states that "[w]hen submitting a request for prior authorization for payment of AFC to the MassHealth agency, or its designee, the AFC provider must submit requests in the form and format as required by the

SECTION IV. SUBMITTING FOR PA
A. DOCUMENTATION
Requests for PA for AFC must be in the form and format as specified by the MassHealth agency and be submitted electronically by the AFC provider using the Provider Portal. Each submission must be accompanied by all necessary clinical documentation needed to support the medical necessity of this service. Documentation of medical necessity for AFC must include, at a minimum, the completed Adult Foster Care Prior Authorization Request form (available in the Provider Portal), as well as:
• The MassHealth Designated Clinical Assessment Form; AND
• PCP order; AND
• Clinical documentation, evaluations, or assessments that support the signs and symptoms pertinent to the chronic or post-acute medical, cognitive, or mental health condition(s) **identified by the member's PCP** that require active monitoring, treatment, or intervention and ongoing observation and assessment by a nurse, without which the member's quality of life will likely not be maintained; and that describe the member's condition and support the member's need for AFC.
(emphasis added)

MassHealth denied the appellant's request for adult foster care because the clinical documentation submitted did not support functional limitations requiring assistance with the listed ADLs. MassHealth requested a physical examination from the appellant's PCP that outlined the appellant's functional ability and limitations, which was not received. The appellant testified that she likes the AFC program in which her boyfriend is her caregiver and does not want to consider another program. Based on the documentation submitted the appellant does not meet the clinical eligibility guidelines because she is able to ambulate when she is alone if necessary, if the appellant can be left alone and can ambulate if necessary this also means she is able to transfer from a sitting to standing position, and the appellant does not require hands on assistance with bathing her full body. MassHealth does not consider anticipatory care, such as, exiting a burning home or some days having arthritis flare ups, medically necessary care. The AFC program is intended for member who require 24-hour supervision which is not supported by the documentation submitted with the PA. Per MassHealth medical necessity regulations the appellant's needs can be met through a less costly program such as PCA services.

Order for MassHealth

None.

MassHealth agency. 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, or its designee, requests in order to complete the review and determination of prior authorization."

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.

Christine Therrien
Hearing Officer
Board of Hearings

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