

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: APPROVED

Appeal Number: 2205060

Decision Date: 8/18/2022

Hearing Date: 08/12/2022

Hearing Officer: Christopher Taffe

Appearance for Appellant:

Appellant, with [REDACTED] (Appeal Representative) and [REDACTED] (all by phone)


Appearance for MassHealth:

Leslie Learned, RN, Clinical Reviewer, MassHealth/OPTUM (by phone)



*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:	APPROVED	Issue:	PA – AFC termination
Decision Date:	8/18/2022	Hearing Date:	08/12/2022
MassHealth's Rep.:	L. Learned	Appellant's Rep.:	
Hearing Location:	HarborSouth Tower, Quincy	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 28, 2022, MassHealth denied Appellant's request for Adult Foster Care Services (AFC) because the agency determined that Appellant "*did not meet the clinical eligibility criteria for MassHealth coverage of AFC as outlined in the Guidelines for Medical Necessity Determination for Adults Foster Care Section 2 (A) and MassHealth Regulation 130 CMR 408.416.*" See Exhibit 1. Appellant filed this appeal with the Board of Hearings in a timely manner¹ on July 7, 2022. See 130 CMR 610.015(B) and Exhibit 1. Challenging a MassHealth determination to deny a request for assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied Appellant's request for continued AFC services.

¹ Although 130 CMR 610.015 typically requires Fair Hearing requests to be filed within 30 days of the date of receipt of appealable action, the 30-day time period has been extended to 120 days for the duration of the current federal COVID-19 emergency. Thus, this appeal is considered timely. See MassHealth Eligibility Operations Memo 20-14 (dated September 2021) (confirming 120-day period for timely request of hearings will continue to be extended until the federal state of emergency ends).

Issue

Based on the evidence and current regulations, should this Appellant be denied her request for continued AFC services or is she clinically eligible for such services?

Summary of Evidence

Appellant is a [REDACTED] MassHealth member who lives in the community and who appeared at hearing by phone along with an individual from her AFC provider and JK, a friend of the family who was described at hearing as a caregiver. As Appellant does not currently have AFC services, there is no current caregiver, but it was indicated that JK would be the proposed caregiver who would live at the residence of Appellant. MassHealth was represented by a nurse who is a clinical reviewer, and who also appeared by phone.²

Appellant's medical diagnoses and history supporting the claim for AFC services include, but are not limited to, the following: spinal stenosis in the lumbar region without neurogenic classification, with reports of back pain radiating to the buttocks and thighs, and general arthritic symptoms. Testimony and documentation in Exhibit 3, page 7 indicate that Appellant reports pain in her neck and left shoulder area that worsens when twisting and turning.

MassHealth explained that Appellant previously received AFC services benefits during the calendar years of 2020 and 2021, but that such benefits were awarded without a Prior Authorization (or PA) process. At the time of Appellant's request here in February 2022, the PA process had been implemented. Appellant's AFC provider made a request on February 9, 2022 and this request was denied in early April of 2022. A second request or resubmission was made on April 22nd of the current year and this was denied on April 28th of the current year, leading to the appeal notice at issue. The current PA request is seeking approval from MassHealth of Level I AFC services from April 22, 2022 through April 21, 2023.³

MassHealth denied the request on the grounds of medical necessity. MassHealth testified that the guidelines required an AFC beneficiary to need assistance with at least one Activity of Daily Living (ADL) or cueing and supervision through an ADL to get a Level I benefit. MassHealth testified that Appellant's medical records revealed arthritis and great pain or discomfort with the left hip, and that Appellant had been prescribed some physical therapy for that hip. It was stated that this problem may not be permanent and could be something that could be treated or at least partially cared for over time as the Appellant continued to age, but that the medical record, most notably the comprehensive physical exam of March 11, 2022 (found at Exhibit 3, pages 12 to 29) did not reveal issues such as the shoulder pain.

[It is noted that Exhibit 3, page 22 does state that "*Patient Reports she has had constant pain in her*

² The MassHealth Representative Ms. Learned was also joined at hearing by phone by Ms. Lisa Russell; Ms. Russell was present for observational purposes.

³ Although not revealed in the record, it is assumed that the AFC service benefits that Appellant received in the previous two calendar years were Level I.

*left hip for the past four months. Pain is worse with movement and palpation. There is no associated numbness or tingling. ... **She also has chronic neck pain for which she is followed by physiatry.**”]*
(**Bolded** emphasis added.)

Appellant and those with her at hearing described Appellant as someone that used to be so proud to be independent, but that she needed more physical assistance now. Due to her hip and shoulder pain, she can’t stand for more than 10 minutes at a time unassisted. She cannot dress herself, and this goes beyond socks and shoes, in that she needs help with lower garments/pants, and her left shoulder prevents her from dressing herself in shirts as she has limited range of motion and great pain with that left arm which prevents her from doing one arm of the upper garment. Appellant testified that she needs help with toileting care, especially with cleaning after a bowel movement, and the parties for Appellant testified that while she uses a shower chair, she needs assistance in and out of the shower, and lacks the capacity in her arms to do a complete wash. She also states that with regard to toileting, she most needs assistance from others with cleaning after a bowel movement.

Appellant used to have a caregiver in the house but that caregiver left after the MassHealth program denied the AFC services in April 2022. The male individual present at hearing stated that the plan was for him to live with the Appellant and fulfill the role of caregiver, perhaps with assistance from his mother who may be of greater help with bathing and cleaning, due to Appellant’s religion. The male individual present at hearing stated that he and his mother were family friends of the Appellant.

The Medical Data Sheet (MDS) in Exhibit 3, page 39 and 40, list Appellant’s ability to self-perform certain ADLs. Regarding the activity of dressing the upper body and the lower body, Appellant was listed as having a “3” indicating a need for “*Limited Assistance*”.⁴

Findings of Fact

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

1. Appellant is a [REDACTED] MassHealth member who lives in the community and who previously received AFC services from the MassHealth agency in calendar year 2020 and 2021. (Testimony and Exhibit 3)
2. During this calendar year, Appellant twice submitted a PA request for Level I services. The most recent denial led to the current appeal. (Testimony and Exhibits 1 and 3)
3. Appellant’s medical diagnoses and history supporting the claim for AFC services include, but are not limited to, the following: spinal stenosis in the lumbar region without neurogenic classification, with reports of back pain radiating to the buttocks and thighs, and general arthritic

⁴ In this section, a score of “2” is for those who just needs “Supervision” while scores of 4, 5, and 6 are identified with, respectively, “Extensive Assistance”, “Maximal Assistance” and “Total Dependence”.

symptoms. (Testimony and Exhibit 3)

4. Appellant has neck and shoulder pain which hinders her ability to do certain activities of daily living independently, including but not limited to dressing. (Testimony and Exhibit 3)
5. There is no evidence indicating that Appellant is in improved physical health or has greater physical abilities this year when compared to the prior two calendar years. (Testimony and Exhibit 3)

Analysis and Conclusions of Law

Adult Foster Care is a MassHealth benefit offered to eligible members who typically need some sort of long-term support to remain safely in the community. The MassHealth Adult Foster Care regulatory manual is found at 130 CMR 408. AFC is defined in its regulations 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).*” See 130 CMR 408.402.

Pursuant to 130 CMR 408.416 (reprinted in relevant part below), 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.

130 CMR 408.416 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.
(**Bolded** emphasis added.)

The MassHealth regulation at 130 CMR 408.419(D) establishes the conditions for when an AFC PA request may be approved for both a level I AFC service payment and a level II AFC service payment. Level II services require a higher level of need as they result in a greater monetary benefit. In this matter, Appellant is only seeking a Level I approval.

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.

(**Bolded** emphasis added.)

As a rule, the MassHealth agency and its programs (including the AFC program) generally pays only for medically necessary services to eligible MassHealth members and may require that such medical necessity be established through a prior authorization process. See 130 CMR 450.204; 130 CMR 408.417(B). Per the medical necessity regulation that applies to all providers at 130 CMR 450.204, additional requirements about the medical necessity of MassHealth services may be contained in other MassHealth publications, including written medical necessity and coverage guidelines. See 130 CMR 450.204(D). Such additional AFC guidelines were submitted into the record as part of Exhibit 3. See Exhibit 3, pages 45-50. These standards, including Section 2.A, which were referred to in the denial notice in Exhibit 1, reflect and are substantively consistent

with much of 130 CMR 408.416.

With the above in mind, in analyzing this dispute, I find that Appellant has demonstrated enough evidence of need to justify the request under the AFC program. First of all, the Appellant was eligible for this program the last two years and there is no evidence showing improved health. Second, the record demonstrates that Appellant suffers from both back, neck and left shoulder pain, which limits her functional ability of her upper left extremity. MassHealth, in trying to argue that there was no medical necessity need evidence by her medical condition, tried to focus its argument on the fact that neck pain was not discussed like the hip pain in the medical records. As to this, there are hints of the neck pain issue. See Exhibit 3, page 22. More importantly, there is nothing in the medical record which would suggest that the neck and shoulder pain doesn't exist. The medical record doesn't cover every single body part, or indicate Appellant has strong shoulder or arm muscles, and perfect range of motion. Further, there is credible testimony given from Appellant and her witnesses as to her condition about her left shoulder and how it limits her with basic activities. In addition, the MDS talks about how Appellant is not fully independent with multiple ADLs, but the testimony and evidence about Dressing was the most clear evidence given at hearing. Appellant needs help with changing pants, and the testimony about the arm and shoulder limitations and struggle with upper garments is credible.

The totality of the evidence shows that Appellant needs help with the ADL of dressing of both the upper body and lower body, and that the need goes beyond socks, shoes, footwear, zippers and buttons, and the need is thus more extensive and meets the standard for the requested Level I AFC service in 130 CMR 408.416(B)(2) and the Clinical Guidelines at Exhibit 3, page 46. Appellant may arguably have demonstrated a need for help with some of the other ADLs, but the legal standards only requires that assistance with one ADL to be required and further discussion or analysis of related issues is unnecessary. This appeal for Level I AFC services is APPROVED.

Order for MassHealth/OPTUM

Rescind the denial notice for this Prior Authorization request. Send Appellant and her AFC provider an approval notice for Level I AFC services as soon as possible and within 30 days of the date 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 OPTUM through either the MassHealth Prior Authorization Unit (1-800-862-8341) or general MassHealth Customer Service (1-800-841-2900). 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 Taffe
Hearing Officer
Board of Hearings

cc:



Appeals Coordinator @ OPTUM/MassHealth OLTSS