

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2300008

Decision Date: 2/14/2023

Hearing Date: 02/06/2023

Hearing Officer: Patricia Mullen

Appearance for Appellant:



Appearance for MassHealth:

Lisa Russell, RN, Optum

Interpreter: Lisa



*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:	Adult Foster Care
Decision Date:	2/14/2023	Hearing Date:	02/06/2023
MassHealth's Rep.:	Lisa Russell, RN, Optum	Appellant's Rep.:	Mother; father
Hearing Location:	Quincy Harbor South	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 December 9, 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 December 30, 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 verbally authorized his mother and father to represent him at the telephonic hearing. The appellant's mother 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, WestMass Eldercare Inc., submitted a request for prior authorization for Adult Foster Care Level I services on December 5, 2022. (Exhibit 7, p. 3). The MassHealth representative noted that the appellant previously had AFC services approved in November, 2021. The MassHealth representative testified that MassHealth denied the request because the appellant does not meet clinical eligibility criteria for AFC services.

The appellant's provider agency reported that the appellant is [REDACTED] and lives with his mother, who is also his AFC caregiver, and his brother; the appellant has a primary diagnosis of low back pain and secondary diagnosis of sacroiliitis (inflammation of pelvic/spinal joints leading to low back pain). (Exhibit 7, pp. 6, 55). In a letter dated August 25, 2022, the appellant's physician noted that the appellant is being followed and treated for herniated spinal disk, status post laminectomy, ulcerative colitis, immunologic thrombocytopenic purpura (low platelet levels), bipolar disorder, and autism. (Exhibit 6). The appellant's provider reported that the appellant also has attention deficit hyperactivity disorder (ADHD). (Exhibit 7, p. 10). The appellant's provider noted that the appellant requires hands on assistance with transferring and lower body dressing due to back pain. (Exhibit 7, pp. 9, 10). The appellant's provider indicated that the appellant does not need hands on physical assistance or cueing/supervision for bathing, toileting, mobility, and eating, and he does not have wandering behaviors or verbally/physically abusive behaviors. (Exhibit 7, p. 9). The appellant reported worse pain of 6/10, alleviated with Tylenol twice a day; the appellant attends community college 2 days a week on campus. (Exhibit 7, pp. 10, 56).

A nurse from the appellant's provider agency conducted a home visit and review on October 12, 2022. (Exhibit 7, pp. 55-56). The nurse reviewer completed a MDS assessment noting that the appellant is independent with mobility in bed and locomotion inside and outside of the home, independent with upper body dressing, eating, toileting, and bathing; the appellant requires limited assistance with transfers and lower body dressing and is highly involved in the transfer and lower body dressing activities. (Exhibit 7, pp. 30, 31, 32).

The nurse reviewer from the appellant's provider agency wrote that the appellant takes one course on-line at his community college and takes a second course on campus, 2 days a week. (Exhibit 7, p. 55). The nurse reviewer noted that the appellant reported that he wakes up at 11:00 am on school days and at 1:00 pm on other days and gets out of bed independently, independently uses the bathroom, and independently returns to his room. (Exhibit 7, pp. 55-56). The appellant's mother/caregiver makes his breakfast and brings it to his room. (Exhibit 7, p. 56). The appellant reported that he has low back pain and takes Tylenol twice daily with good effect; the appellant has no vision or hearing deficits and no reported behaviors; the appellant has a grab bar which he uses to get himself out of bed independently; appellant is able to lift arms over his head and able to sit on couch with right leg bent over left leg and left leg bent over right leg; appellant is able to transfer

independently from couch; appellant was able to take his sandals on and off. (Exhibit 7, p. 56). The appellant's caregiver helped the appellant get into and out of the bathtub; the appellant has a shower chair but no grab bar and the nurse reviewer recommended that the appellant get a shower grab bar

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 attends college 2 days a week and is able to manage away from his caregiver. The MassHealth representative noted that the appellant is able to transfer independently throughout the day. (Testimony). The MassHealth representative stated that the appellant does not meet the regulatory criteria for direct care which includes 24-hour supervision, daily assistance with ADLs and IADLs as defined in 130 CMR 408.402, and other personal care as needed. The MassHealth representative stated that AFC guidelines require that a member receiving AFC services cannot manage safely alone for more than 3 hours a day. The appellant attends college and functions independently throughout the day and can manage safely alone for more than 3 hours a day. (Testimony). The MassHealth representative noted that the appellant's provider stated that the appellant requires assistance with transfers into the bathtub. The MassHealth representative stated that to meet criteria for Level I AFC services, the appellant must have 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 transferring, which requires that a member must be assisted or lifted to another position. The MassHealth representative stated that the appellant is independent with transfers for all other activities including getting into and out of bed, going to the bathroom, mobility inside and outside of the home, sitting down and getting up and off of seating. The MassHealth representative stated that the evidence supports that the appellant is independent with transfers.

The appellant's mother stated that she drives the appellant to college and waits in the parking lot for him to finish his class. The appellant's mother stated that she prepares a special diet for the appellant due to his ulcerative colitis and she takes him to medical appointments. The appellant's mother noted that the appellant needs reminders due to his autism. The appellant stated that she has to go to the appellant's room and ask him what he wants to eat or else he will not eat. The appellant's mother stated that the nurse reviewer from the provider agency did not review medical documentation from the appellant's primary care provider.

Findings of Fact

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

1. The appellant's provider agency, WestMass Eldercare Inc., submitted a request for prior authorization for Adult Foster Care Level I services on December 5, 2022.
2. The appellant previously had AFC services approved in November, 2021.
3. The appellant is [REDACTED] and lives with his mother, who is also his AFC caregiver, and his brother.
4. The appellant has a primary diagnosis of low back pain and secondary diagnosis of sacroiliitis (inflammation of pelvic/spinal joints leading to low back pain); the appellant also has a herniated spinal disk, ulcerative colitis, immunologic thrombocytopenic purpura (low platelet levels), bipolar disorder, ADHD, autism, and is status post a laminectomy.
5. The appellant reported worse pain of 6/10, alleviated with Tylenol twice a day.
6. A nurse from the appellant's provider agency conducted a home visit and review on October 12, 2022.
7. The appellant is independent with mobility in bed and locomotion inside and outside of the home, independent with upper body dressing, eating, toileting, and bathing; the appellant requires limited assistance with transfers into the bathtub and lower body dressing and is highly involved in the transfers and lower body dressing activities.
8. The appellant takes one course on-line at his community college and takes a second course on campus, 2 days a week.
9. The appellant has no vision or hearing deficits and no reported behaviors; the appellant has a grab bar which he uses to get himself out of bed independently; appellant is able to lift arms over his head and able to sit on couch with right leg bent over left leg and left leg bent over right leg; appellant is able to transfer independently from couch; appellant was able to take his sandals on and off.
10. The appellant has a shower chair but no grab bar in the shower; the nurse reviewer recommended that the appellant get a shower grab bar

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 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)).

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 9, p. 7).

The appellant's provider noted that the appellant requires assistance with transfers into the bathtub. The regulations require that the appellant have 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 the task of transferring in that the appellant must be assisted or lifted to another position. The appellant's provider wrote that the appellant is independent in all areas of transfers, except getting into and out of the tub. The nurse reviewer from the provider agency recommended grab bars for the appellant's showers, which will no doubt ease his transfers into and out of the tub.

The appellant has a primary diagnosis of low back pain with worse pain of 6/10, alleviated with Tylenol twice a day. The appellant is independent with mobility in bed and locomotion inside and outside of the home, and independent with upper body dressing, eating, toileting, and bathing. The nurse reviewer from the appellant's provider agency wrote that the appellant requires limited assistance with transfers and lower body dressing and is highly involved in the transfer and lower body dressing activities. The appellant has no vision or hearing deficits and no reported behaviors; the appellant has a grab bar which he uses to get himself out of bed independently. The appellant is able to lift arms over his head and is able to sit on couch with right leg bent over left leg and left leg bent over right leg. The appellant is able to transfer independently from the couch and is able to take his sandals on and off. While there may be times when the appellant's pain is bad that he might require some assistance into and out of the tub, he does not require daily hands-on physical

assistance or cueing and supervision throughout the entire activity of in order to successfully complete the task of transferring. Furthermore, grab bars would provide any needed assistance with this activity.

Further, AFC guidelines require that a member receiving AFC services cannot manage safely alone for more than 3 hours a day. The appellant attends college 2 days a week and there was no evidence to support that he cannot manage safely alone for more than 3 hours a day.

MassHealth denied the appellant's request for adult foster care because the clinical documentation does 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 transfers. Based on the current record, the appellant has failed to provide objective medical evidence to support that he needs physical hands on assistance or supervision with one of 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.

Patricia Mullen
Hearing Officer
Board of Hearings

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