

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2300675
<b>Decision Date:</b>	4/5/2023	<b>Hearing Date:</b>	03/14/2022
<b>Hearing Officer:</b>	Paul C. Moore		

**Appellant Representative:**  
Pro se (by telephone)

**MassHealth Representative:**  
Lisa Russell, R.N., clinical reviewer, Optum  
(by telephone)



*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>	Prior Authorization, Adult Foster Care Services
<b>Decision Date:</b>	4/5/2023	<b>Hearing Date:</b>	03/14/2023
<b>MassHealth Rep.:</b>	Lisa Russell, R.N.	<b>Appellant Rep.:</b>	Pro se
<b>Hearing Location:</b>	Board of Hearings (remote)		

## 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 28, 2022, MassHealth denied the appellant's prior authorization (PA) request for level I adult foster care (AFC) services because the appellant did not meet the clinical eligibility criteria for MassHealth coverage of AFC services as outlined in the Guidelines for Medical Necessity Determination for AFC, Section 2(A) and MassHealth regulation 130 CMR 408.416 (Exh. 1). The appellant filed this appeal in a timely manner on January 26, 2023 (130 CMR 610.015(B); Exh. 2). Denial of a PA request is valid grounds for appeal (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth denied the appellant's PA request for level I AFC services.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 408.401, in determining that the appellant does not meet the criteria for AFC services.

## Summary of Evidence

MassHealth was represented at hearing by a Registered Nurse with Optum, the third-party contractor that adjudicates PA requests for adult foster care services on behalf of MassHealth (“MassHealth representative”). She testified that MassHealth received a PA request for level I adult foster care (“AFC”) services on behalf of the appellant on December 22, 2022 from Caregiver Homes of Massachusetts, Inc. The relevant PA period is December 22, 2022 through December 21, 2023. The MassHealth representative testified the appellant is a [REDACTED] year-old MassHealth member who lives in the community. The appellant has medical diagnoses of fibromyalgia, osteoarthritis, depression, diabetes and morbid obesity (Testimony, Exh. 3). MassHealth denied the PA request for level I AFC services by notice to the appellant dated December 28, 2022, indicating that the appellant did not meet the clinical eligibility criteria for MassHealth coverage of AFC services as outlined in the Guidelines for Medical Necessity Determination for AFC, Section 2(A) and MassHealth regulation 130 CMR 408.416 (Exh. 1).

According to the MassHealth representative, the appellant is a patient at a pain clinic at Beth Israel Deaconess Medical Center (“Beth Israel Deaconess”), where she is seen approximately every nine weeks (Exh. 3, p. 27). In addition, the appellant attends physical therapy appointments twice per week. Per a progress note from a pain clinic appointment the appellant had on October 20, 2022, the clinician documented that the appellant drove herself to the appointment, and that she ambulated with a steady gait (Exh. 3, pp. 17, 19). The MassHealth representative testified that a Beth Israel Deaconess physician documented, in a letter to the appellant’s primary care physician dated October 7, 2022, that the appellant had been seen in June, 2022 for “bilateral greater occipital nerve blocks and trigger point injections, with good improvement” until the week prior to her appointment (Exh. 3, pp. 20-23). The physician documented in the same letter that the appellant was in Greece for three months during the summer of 2022, and was planning to return there in October, 2022 (*Id.*, p. 20).

The MassHealth representative explained that in order to qualify for level I AFC services, a member must have a medical or mental health 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 of daily living (ADLs): bathing; dressing/undressing; toileting; transferring; mobility (ambulation); and eating (MassHealth Guidelines for Medical Necessity Determination for AFC) (Exh. 3, pp. 40-45). The appellant sometimes needs occasional assistance with transfers, according to the MassHealth representative. However, the medical documentation about the appellant does not reflect that the appellant needs daily, hands-on assistance with her ADLs, nor does she need 24-hour supervision to complete her ADLs. The appellant sometimes needs occasional assistance with transfers, according to the MassHealth representative. Based on the fact that the appellant does not need daily, hands-on assistance with her ADLs, MassHealth denied the instant PA request for level I AFC services (Testimony).

The appellant testified by telephone that she drove herself to the Beth Israel Deaconess pain clinic on only one occasion. She occasionally drives herself to see her parents, but they live only around

the corner from her. She went to Greece in the summer of 2022, but it was to testify in court on behalf of an aunt. Her husband went with her to Greece, and drove her everywhere. She testified that her daughters assist her to dress and undress, to bathe, and to brush her hair. For the last three years the appellant's daughters have cooked most of her meals. Her daughters also help her transfer from the sofa to the bed, and from the bed to the bathroom. The appellant testified that she can feed herself. The right side of her body is more affected by fibromyalgia and osteoarthritis than her left side. She goes to massage therapy, and also sees a chiropractor. She uses a cane to ambulate, but she has had three falls in her living room in the past year (Testimony).

The appellant also testified that she has several cardiac conditions. She is scheduled for an ablation procedure. She has bursitis in her right hip. She lives with her husband and three adult children. If approved for AFC services, her oldest daughter would be her AFC provider. She worked for the city of Boston for 25 years, but took early retirement due to her pain (Testimony)

The MassHealth representative stated that according to the Minimum Data Set – Home Care (MDS-HC) tool completed by Caregiver Homes of Massachusetts, Inc. on December 15, 2022, the appellant needs limited assistance with transfers, locomotion outside the home, dressing her lower body, and personal hygiene (including combing hair, brushing teeth, shaving, applying makeup, and washing and drying her face and hands) (Exh. 3, pp. 28-35).<sup>1</sup> Per the MDS-HC, the appellant has occasional incontinence (*Id.*, p. 30).

Prior to the hearing, the appellant submitted a letter dated December 16, 2022 from Vasileios Kyattaris, M.D., with the Beth Israel Deaconess Division of Rheumatology and Clinical Immunology, which states in relevant part:

[The appellant] is a patient of mine whom I am treating for fibromyalgia, knee and hip osteoarthritis and shoulder periarthritis. These conditions need chronic treatment with prescription analgesics and are characterized by acute flares and periods of clinical quiescence. Moreover, she needs joint and bursa injections relatively frequently. During the disease flares she needs assistance with ADLs including transfers from sitting to standing position and occasionally with driving. She would benefit from enrolling in the MassHealth Caregiver Program.

(Exh. 5)

## Findings of Fact

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

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<sup>1</sup> Per the MDS-HC tool, “limited assistance” is defined as “client highly involved in activity; received physical help in guided maneuvering of limbs or other non-weight bearing assistance 3 or more times [during the last three days] OR, combination on non-weight bearing help with more help provided only 1 or 2 times during period (for a total of 3 or more episodes of physical help)” (Exh. 3, p. 29).

1. The appellant is a [REDACTED] year-old MassHealth member who lives in the community with her husband and three daughters (Testimony, Exh. 3).
2. MassHealth received a PA request for level I adult foster care (“AFC”) services on behalf of the appellant on December 22, 2022 from Caregiver Homes of Massachusetts, Inc. The relevant PA period is December 22, 2022 through December 21, 2023 (Exh. 3)
3. MassHealth notified the appellant, by written decision dated December 28, 2022, that it denied the appellant's PA request for level I AFC services because the appellant did not meet the clinical eligibility criteria for MassHealth coverage of AFC services as outlined in the Guidelines for Medical Necessity Determination for AFC, Section 2(A) and MassHealth regulation 130 CMR 408.416 (Exh. 1)
4. The appellant filed this appeal in a timely manner on January 26, 2023 (Exh. 2).
5. The appellant’s medical diagnoses include fibromyalgia, osteoarthritis, bursitis, depression, diabetes, and morbid obesity (Testimony, Exh. 3, Exh. 5).
6. In order to qualify for level I AFC services, a member must have a medical or mental health 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 of daily living (ADLs): bathing; dressing/undressing; toileting; transferring; mobility (ambulation); and eating (MassHealth Guidelines for Medical Necessity Determination for AFC) (Exh. 3, pp. 40-45).
7. The appellant is a patient at a pain clinic at Beth Israel Deaconess, where she is seen approximately every nine weeks (Exh. 3, p. 27).
8. In addition, the appellant attends physical therapy appointments twice per week (Testimony).
9. Per a progress note from a pain clinic appointment the appellant had on October 20, 2022, the clinician documented that the appellant drove herself to the appointment, and that she ambulated with a steady gait (Exh. 3, pp. 17, 19).
10. The appellant was treated at the Beth Israel Deaconess pain clinic with bilateral greater occipital nerve blocks and trigger point injections, with good improvement, in June, 2022 (Exh. 3, p. 20).
11. The appellant went to Greece to assist a family member for three months in the summer of 2022 (Testimony).
12. The appellant’s daughters assist her to dress and undress, to bathe, and to brush her hair. For the last three years the appellant’s daughters have cooked most of her meals. Her

daughters also help her transfer from the sofa to the bed, and from the bed to the bathroom (Testimony).

13. The right side of the appellant's body is more affected by fibromyalgia and osteoarthritis than her left side. She goes to massage therapy, and also sees a chiropractor. She uses a cane to ambulate, but she has had three falls in her living room in the past year (Testimony).
14. The appellant can feed herself (Testimony).
15. The appellant is scheduled for a cardiac ablation procedure in April, 2023 (Testimony).
16. According to the MDS-HC tool completed by Caregiver Homes of Massachusetts, Inc. on December 15, 2022, the appellant needs limited assistance with transfers, locomotion outside the home, dressing her lower body, and personal hygiene (including combing hair, brushing teeth, shaving, applying makeup, and washing and drying her face and hands) (Exh. 3, pp. 28-35).
17. A letter dated December 16, 2022 from Vasileios Kyattaris, M.D., with the Beth Israel Deaconess Division of Rheumatology and Clinical Immunology, states in relevant part: "[The appellant] is a patient of mine whom I am treating for fibromyalgia, knee and hip osteoarthritis and shoulder periarthritis. These conditions need chronic treatment with prescription analgesics and are characterized by acute flares and periods of clinical quiescence. Moreover, she needs joint and bursa injections relatively frequently. During the disease flares she needs assistance with ADLs including transfers from sitting to standing position and occasionally with driving. She would benefit from enrolling in the MassHealth Caregiver Program" (Exh. 5).

## **Analysis and Conclusions of Law**

According to MassHealth regulation 130 CMR 408.402, 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).

MassHealth regulation 130 CMR 408.416 states in relevant part:

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.

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, 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.

(Emphasis added)

MassHealth will pay a provider only for those services that are medically necessary. Pursuant to 130 CMR 450.204(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 MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider, or identified by MassHealth 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.

Here, the appellant requested PA for level I AFC services. There is no dispute that the appellant has diagnoses of fibromyalgia, osteoarthritis, and bursitis, all of which cause her severe pain, particularly on the right side of her body. She receives nerve block and trigger point injections, which provide temporary relief. She is no longer able to work due to her pain.

However, it is not clear that the appellant requires daily, hands-on assistance with at least one of her ADLs, or that she needs supervision and cueing throughout the entire activity in order to complete it. According to a letter from the appellant's rheumatologist, she has "acute flares and periods of clinical quiescence" with these conditions. During flares, the appellant clearly needs assistance with transfers within her home, and perhaps with other ADLs (such as dressing) also. However, there is little evidence in the record as to how frequently these flares occur.

The appellant, on at least one occasion, drove herself to a pain clinic, and was able to travel to Greece in the summer of 2022 (albeit for business reasons). These facts do not support that the appellant needs daily, hands-on assistance with at least one of her ADLs, *each and every day*, as required at 130 CMR 408.416(B), above, to support level I AFC services.

In an appeal of agency decision, the appellant bears the burden of demonstrating that the agency's action is invalid or incorrect (Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds, 27 Mass. App. Ct. 470, 474 (1989)).

Here, the appellant has not shown by a preponderance of the evidence that she needs daily, hands-on assistance with at least one of her ADLs, or requires cueing and supervision throughout one or more of these ADLs, in order to complete them.

MassHealth's decision to deny level I AFC services for the appellant was correct. At this time, level I AFC services are not medically necessary for the appellant under 130 CMR 450.204(A), above.



For these reasons, the 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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Paul C. Moore  
Hearing Officer  
Board of Hearings

cc: Optum appeals coordinator