

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



**Appeal Decision:**      Approved

**Appeal Number:**      2303234

**Decision Date:**      6/9/2023

**Hearing Date:**      May 22, 2023

**Hearing Officer:**      Stanley M. Kallianidis

**Appellant Representatives:**



**MassHealth Representatives:**

Lisa Russell, RN; Mary Davies



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, 6<sup>th</sup> Floor  
Quincy, MA 02171*

## APPEAL DECISION

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Level 1 Adult Foster Care
<b>Decision Date:</b>	6/9/2023	<b>Hearing Date:</b>	May 22, 2023
<b>MassHealth Reps.:</b>	Lisa Russell, RN; Mary Davies	<b>Appellant Reps:</b>	[REDACTED]

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

On April 17, 2023, MassHealth denied the appellant's prior authorization request for Level 1 Adult Foster Care (AFC) services because it determined that the request did not meet the Guidelines for Medical Necessity Determination for Adult Foster Care Section 2A nor the requirements of 130 CMR 408.416 (Exhibit 1). The appellant filed this appeal in a timely manner on April 24, 2023 (see 130 CMR 610.015 and Exhibit 2). The denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

MassHealth determined that the appellant was entitled to a continuation of his current Level 1 AFC services pending the outcome of the appeal (Exhibit 3).

### Action Taken by MassHealth

MassHealth denied the appellant's prior authorization request for Level 1 AFC services.

### Issue

Was MassHealth correct, pursuant to 130 CMR 408.415 and 130 CMR 416 in determining that the appellant's request did not satisfy the requirements for Level 1 AFC services?

## Summary of Evidence

The MassHealth representatives testified that the appellant, an adult male under 65 years of age, diagnosed with diabetes mellitus and peripheral neuropathy, morbid obesity, cognitive delay, and hypertension, requested a continuation of his Level 1 AFC services on March 28, 2023. He was entitled to a continuation of his current Level 1 AFC services pending the outcome of the appeal.

The request was deferred on March 30, 2023 because according to the appellant's application for services, he is left alone for long periods of time and because he is independent with transportation (Exhibit 4). The appellant's AFC program addressed these concerns in a letter dated April 14, 2023. According to the AFC provider, the appellant is not left alone for long periods of time. His caregiver or her son is always with him when he is at home. Also, the appellant is not independent with transportation, as he requires others to drive him places. The exception to this is that the appellant drives to his church and to a supermarket once per week. These locations are both approximately one mile from his home (Exhibit 4). Also submitted was information from his physician that he has a cognitive disability and needs cueing and supervision for bathing (Exhibit 5).

The MassHealth representatives explained that, notwithstanding the explanation that the AFC program provided after the deferral, the appellant is not eligible for continued AFC services because he is able to drive independently. She cited 130 CMR 408.415 which states as follows: 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 paid by the AFC provider. Direct care includes 24-hour supervision, and daily assistance with ADLs and IADLs.

The appellant's representatives testified that the appellant should be entitled to retain his Level 1 AFC services due to his cognitive delay which necessitates his need for supervision and cueing with his bathing. Moreover, the appellant needs to have special attention with the bathing of his feet due to his diabetes and the associated risk of skin breakdown. The appellant's representatives testified that the appellant is not able to live independently due to his cognitive delay. He lives with his caregiver and only drives by himself to two specific places: his church and the supermarket, once per week to each location. They also testified that he is not independent with his transportation as he relies on his caregiver to drive him to all other places.

## Findings of Fact

Based on a preponderance of the evidence, I find:

1. The appellant, an adult male under 65 years of age, diagnosed with diabetes mellitus and peripheral neuropathy, morbid obesity, cognitive delay, and hypertension, requested a continuation of his Level 1 AFC services on March 28, 2023 (Exhibit 4).

2. The request was deferred on March 30, 2023 then denied on April 17, 2023 because according to the appellant's application for services, he is left alone for long periods of time and because he is independent with transportation (Exhibit 4).
3. The appellant was entitled to a continuation of his current Level 1 AFC services pending the outcome of the appeal (Exhibit 3).
4. The appellant's caregiver or her son is always with him when he is at home. He is not independent with transportation. The exception to this is that the appellant drives to his church and to a supermarket once per week. These locations are both approximately one mile from his home (Exhibit 4).
5. According to the appellant's physician, he has a cognitive disability and needs cueing and supervision for bathing (Exhibit 5).
6. The appellant needs to have special attention with the bathing of his feet due to his diabetes and the associated risk of skin breakdown (Exhibit 4 & testimony).

## **Analysis and Conclusions of Law**

130 CMR 408.415 states as follows: 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 paid by the AFC provider. AFC must be ordered by a PCP and delivered by a qualified AFC caregiver under the oversight of the registered nurse and the MDT in accordance with each member's written plan of care. Direct care includes 24-hour supervision, and daily assistance with ADLs and IADLs as defined in 130 CMR 408.402.

The Guidelines for Medical Necessity Determination for Adult Foster Care Section 2A lists the AFC clinical criteria. These criteria are mirrored in 130 CMR 408.416: Clinical Eligibility Criteria for AFC.

130 CMR 408.416 states that: 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 that may include personal hygiene such as: 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 indoors and outdoors, 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 consuming a portion or all of the meal.

Pursuant to 130 CMR 408.419 (D) AFC Payments are made as follows. (1) AFC 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.

In the instant case, the appellant, an adult male under 65 years of age, diagnosed with diabetes mellitus and peripheral neuropathy, morbid obesity, cognitive delay, and hypertension, requested a continuation of his Level 1 AFC services. The request was originally deferred and then denied for the reason that the appellant is independent in transportation as the appellant drives to his church and to a supermarket once per week. However, according to the record, these locations are relatively close to his home and the appellant is dependent on his caregiver to drive him anywhere else he needs. I therefore conclude that the appellant cannot be considered as being independent with regard to his transportation needs. Moreover, the appellant cannot and does not live independently. He is never alone at home as he is always with his caregiver or her son.

Most important, I have found that the appellant has a cognitive disability and needs cueing and supervision for bathing. This was documented by his physician and not disputed. It was also explained that the appellant needs to have special attention with the bathing of his feet due to his diabetes and the associated risk of skin breakdown.

Based upon the above findings, I conclude that the appellant meets the requirements of 130 CMR 408.419 (D) as he 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."

The appeal is therefore approved.

## **Order for MassHealth**

Approve the appellant's continued request for Level 1 AFC services.

## Implementation of this Decision

If this decision is not implemented within 30 days after the date of this notice, you should contact your local office. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, MassHealth, at the address on the first page of this decision.

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Stanley M. Kallianidis  
Hearing Officer  
Board of Hearings

cc:

Lisa Russell RN, Optum

[REDACTED]

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