

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2401193
Decision Date:	4/18/2024	Hearing Date:	03/01/2024
Hearing Officer:	Scott Bernard		

Appearance for Appellant:



Appearance for MassHealth:

Mary Davies, RN (Optum) *via* 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

Appeal Decision:	Denied	Issue:	Adult Foster Care; Level of Care
Decision Date:	4/18/2024	Hearing Date:	03/01/2024
MassHealth's Rep.:	Mary Davies, RN	Appellant's Rep.:	[REDACTED]
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 28, 2023, MassHealth modified the appellant's prior authorization request for Adult Foster Care (AFC) because it determined that the clinical documentation submitted on his behalf did not demonstrate that he needed all the services or treatment requested. (See 130 CMR 450.204(A); Exhibit (Ex.) 1; Ex. 5, pp. 3-4). The appellant filed this appeal in a timely manner on January 24, 2024. (See 130 CMR 610.015(B) and Ex. 2). Modification of a prior authorization request for AFC is valid grounds for appeal. (See 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for AFC.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.204(A), in modifying the appellant's prior authorization request.

Summary of Evidence

At the hearing MassHealth was represented by a nurse reviewer working for Optum, the private contractor responsible for overseeing administration of MassHealth's AFC program. The appellant represented himself and was assisted by his daughter, who also testified. All parties attended the hearing by telephone.

The MassHealth representative testified to the following. On November 20, 2023, Wecare 365 (the AFC provider) submitted an initial evaluation for Level II AFC services on the appellant's behalf. (Testimony; Ex. 5). According to the AFC provider's documentation the appellant required assistance with the following activities of daily living (ADLs): bathing, dressing (both upper and lower body dressing and undressing), transfers, and mobility (both indoors and outdoors). (Testimony; Ex. 5, pp. 5, 10-12). The appellant is under the age of [REDACTED] with primary diagnoses of osteoarthritis in the left hip, nonrheumatic mitral valve insufficiency, irregular heartbeat, shortness of breath, and issues with vision. (Testimony; Ex. 5, pp. 5, 10-12). The MassHealth nurse reviewer deferred the determination in order to obtain more information related to the appellant's needs based on his diagnoses. (Testimony).

MassHealth subsequently received progress notes from the appellant's care provider regarding the appellant's November 30, 2023 appointment. (Testimony; Ex. 5, pp. 13-23). According to this documentation, the appellant continued to be very physically active, participating in daily running, and still had great physical exercise tolerance. (Testimony; Ex. 5, pp. 13-15). The provider recommended that the appellant stay active and documented that he had a normal gait, no neurological deficits, and normal motor strength. (Testimony; Ex. 5, p. 18). This documentation indicated that the appellant may not need physical assistance with all of the ADL's noted above. (Testimony; Ex. 5, pp. 13-15). After the review, MassHealth determined that it would not approve the appellant for the requested level II service payment rate but for level I. (Testimony; Ex. 5, pp. 13-15). MassHealth took into consideration that the appellant's vision issues would result in his requiring assistance with cueing and supervision in addition to some physical assistance with one or two of the ADLs. (Testimony; Ex. 5, pp. 13-15).

The appellant's daughter testified to the following. She had been trying to assist the appellant with his AFC case and that she is his caregiver. (Testimony). The appellant felt like it has been unfair for him to only get level I because he needs level II. (Testimony). The appellant does jog and is able to do things, but he has to have someone accompany him because he can barely see in one eye. (Testimony). The appellant has some days when he needs more help than other days because some days he does not want to get up and he does not want to do certain things. (Testimony). The appellant is depressed about losing his vision and the state of his health. (Testimony). Those are the things that the appellant's family members have to handle because sometimes he does need more physical assistance and sometimes, he does not. (Testimony). Yet the appellant overall tries to stay healthy and so his family tries to get him to the gym. They try to make him run, but he's always accompanied by someone. (Testimony).

The MassHealth representative stated that what the appellant's daughter stated was understandable and acknowledged the emotions involved in the appellant's loss of vision and other issues with his health. (Testimony). The MassHealth representative stressed that MassHealth's role was to define which of the levels of care a member required. (Testimony). The MassHealth representative recognized the need for someone to accompany the appellant and acknowledged that the appellant may not always feel motivated to engage in activities. (Testimony). The MassHealth representative explained that level II AFC necessitates regular daily assistance with two or more ADLs. (Testimony). She clarified that the intermittent need for physical assistance with ADLs, supervision, and cueing fell within level I. (Testimony). The MassHealth representative stated that what the appellant's medical provider and daughter described was level I care. (Testimony). Level I is for intermittent physical assistance with ADLs, supervision, and cueing. (Testimony). The MassHealth representative emphasized that the appellant's ability to remain physically active is a good thing but also suggests that he may not require assistance with mobility. (Testimony).

The MassHealth representative felt the need to go into a little bit more detail because she thought that the appellant needed more clarity. (Testimony). Physical assistance with bathing means that when the appellant needed to have a shower or bath, someone had to physically undress him, help him into the shower, and wash areas of his body, including the chest, the back, and the bottom area, and then completely physically dry him because he's not able to do that himself. (Testimony). Dressing involved similar hands-on assistance, meaning that the caregiver had to help him put on pants, lift them up, zip them, button them, and fasten a belt. (Testimony). Transferring meant that the appellant was not able to get out of a chair or a bed himself, so someone had to physically put their hands on him, lift him up, and transfer him. (Testimony). Mobility physical assistance meant that he is not able to walk on his own, so someone needed to physically hold his arms and help him move, supporting him to prevent falls or stumbling. (Testimony). Supervision is different; it involves coaching and guidance without necessarily needing to physically assist. (Testimony). It was about coaching him through tasks like using a cane or walker and ensuring safety without necessarily touching him unless needed to prevent a fall or injury. (Testimony).

The appellant wanted the MassHealth representative and hearing officer to consider the evidence and take action quickly. (Testimony). The appellant expressed frustration with the process, recounting how his need for AFC was initially classified as level II by a nurse, then downgraded to level I, and subsequent attempts to reclassify it as level II were rejected. (Testimony). The appellant emphasized the challenges he faced due to his impaired vision, which has severely limited his ability to work and navigate daily life without assistance. (Testimony). The appellant expressed reliance on his daughter for support but acknowledged the difficulty of their situation. (Testimony). Despite his frustration, he deferred to MassHealth's judgment and decision-making regarding his qualifications for assistance. (Testimony).

Findings of Fact

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

1. On November 20, 2023, the AFC provider submitted an initial evaluation for level II AFC services on the appellant's behalf. (Testimony; Ex. 5).
2. According to the AFC provider's documentation the appellant required assistance with the following ADLs: bathing, dressing (both upper and lower body dressing and undressing), transfers, and mobility (both indoors and outdoors). (Testimony; Ex. 5, pp. 5, 10-12).
3. The appellant is under the age of [REDACTED] with primary diagnoses of osteoarthritis in the left hip, nonrheumatic mitral valve insufficiency, irregular heartbeat, shortness of breath, and issues with vision. (Testimony; Ex. 5, pp. 5, 10-12).
4. The MassHealth nurse reviewer deferred the determination in order to obtain more information related to the appellant's needs based on his diagnoses. (Testimony).
5. MassHealth subsequently received progress notes from the appellant's care provider regarding the appellant's November 30, 2023 appointment. (Testimony; Ex. 5, pp. 13-23).
6. According to this documentation, the appellant continued to be very physically active, participating in daily running, and still had great physical exercise tolerance. (Testimony; Ex. 5, pp. 13-15).
7. The provider recommended that the appellant stay active and documented that he had a normal gait, no neurological deficits, and normal motor strength. (Testimony; Ex. 5, p. 18).
8. This documentation indicated that the appellant may not need physical assistance with all of the ADL's noted above. (Testimony; Ex. 5, pp. 13-15).
9. The appellant does require that someone accompany him when he is physically active because of his vision issues. (Testimony).
10. The appellant also requires that someone help motivate him to perform activities and did occasionally require physical assistance with ADLs. (Testimony).
11. After the review, MassHealth determined that it would not approve the appellant for the requested level II service payment rate but for level I. (Testimony; Ex. 5, pp. 13-15).
12. MassHealth took into consideration the fact that the appellant's vision issues would result in his requiring assistance with cueing and supervision in addition to some physical assistance with one or two of the ADLs. (Testimony; Ex. 5, pp. 13-15).

Analysis and Conclusions of Law

As part of the prior authorization process, members seeking AFC must undergo a clinical assessment to assess the member's clinical status and need for AFC. (130 CMR 408.417(A). As a prerequisite for payment of AFC, the AFC provider must obtain prior authorization from MassHealth or its designee before the first date of service delivery and annually thereafter, and upon significant change. (130 CMR 408.417(B)(1)). Prior authorization determines the medical necessity for AFC as described under 130 CMR 408.416 and in accordance with 130 CMR 450.204: Medical Necessity. (130 CMR 408.417(B)(2)). Prior authorization may specify the service level for payment for the service. (130 CMR 408.417(B)(3)). When submitting a request for prior authorization for payment of AFC to MassHealth, or its designee, the AFC provider must submit requests in the form and format as required by MassHealth. (130 CMR 408.417(B)(5)). The AFC provider must include all required information, including, but not limited to, documentation of the completed clinical assessment conducted by MassHealth or its designee; other nursing, medical or psychosocial evaluations or assessments; and any other documentation that MassHealth, or its designee, requests in order to complete the review and determination of prior authorization. (Id.).

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; Guidelines Section 2(A)).

MassHealth 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. (130 CMR 408.419(D)(1)).

MassHealth 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 408.419(D)(2)).

A preponderance of the evidence does not demonstrate that the appellant requires level II service payment rate at this time. The AFC provider asserted the appellant required assistance with the following ADLs: bathing, dressing (both upper and lower body dressing and undressing), transfers, and mobility (both indoors and outdoors). According to documentation from the appellant's medical provider, however, the appellant continued to be very physically active, participating in daily running, and still had great physical exercise tolerance. The documentation further stated that he had a normal gait, no neurological deficits, and normal motor strength. The appellant's daughter stated that the appellant required someone to accompany him in physical activities because of his vision issues and that he requires motivation at times to do physical activities. Additionally, she indicated that there were times when he required hands-on physical assistance but that this was not every day. This strongly indicates that the appellant actually requires level I service payment rate. The appellant has not shown that he daily requires hands-on physical assistance with two or more ADLs but does require occasional assistance with ADLs as well as coaching, cueing, and supervision. MassHealth correctly determined that the appellant should receive level I services.

For the above 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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

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