

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2402664
<b>Decision Date:</b>	4/29/2024	<b>Hearing Date:</b>	03/11/2024
<b>Hearing Officer:</b>	Christine Therrien		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Mary Davies, Optum



*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>	AFC
<b>Decision Date:</b>	4/29/2024	<b>Hearing Date:</b>	03/11/2024
<b>MassHealth's Rep.:</b>	Mary Davies	<b>Appellant's Rep.:</b>	Son
<b>Hearing Location:</b>	Quincy Harbor South - Telephonic		

## 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 1/31/24, MassHealth denied the appellant's request for prior authorization for Level II adult foster care. (Exhibit 1 and 130 CMR 408.416). The appellant filed this appeal in a timely manner on 2/22/24. (130 CMR 610.015(B) and Exhibit 2). Denial of a prior authorization request is valid grounds for appeal. (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth denied the appellant's request for Level II 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 level II adult foster care services.

## Summary of Evidence

The MassHealth representative stated that the appellant's provider agency, [REDACTED] submitted a prior authorization (PA) re-evaluation request for Adult Foster Care (AFC) Level II services on 1/17/2024. The MassHealth representative testified that for Activities of Daily Living (ADLs), [REDACTED] documented the appellant needs physical assistance with bathing, dressing, and mobility. The MassHealth representative testified that the appellant is [REDACTED] with a primary diagnosis of left shoulder joint disorder and foot pain with unknown cause. (Exhibit 5).

The MassHealth representative testified that the request was deferred for more information related to the appellant's ADL needs and diagnoses, because there was not a documented diagnosis for the cause of the appellant's foot pain. The MassHealth representative testified that a physician's report dated 1/30/2024 was received with a notation from the physical examination, in which the physician documented that the member has a normal range of motion; there was no mention of pain or the use of assistive devices. (Exhibit 5). The MassHealth representative testified that this would indicate that the member may not need physical assistance with mobility. The MassHealth representative testified that the AFC nurse from [REDACTED] also documented that the member has not had any falls in the last 3 months and does not use assistive devices. The MassHealth representative testified that the documentation states that pain is present but no medication for pain is taken. The MassHealth representative testified that after the review of documentation, a modification was made to the authorization from level II to level I because the appellant did not require physical assistance with at least three ADLs. (Exhibit 5). The MassHealth representative stated that to be eligible for AFC Level II services, a MassHealth member must require hands-on physical assistance with at least three of the ADLs, or hands-on physical assistance with at least two of the ADLs and management of behaviors that require frequent caregiver intervention.

The appellant's representative, her son, testified that he takes care of the appellant. The appellant testified that the appellant needs assistance with dressing, undressing, and bathing.

## Findings of Fact

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

1. On 1/17/2024, the appellant's provider agency, [REDACTED] submitted a PA re-evaluation request for prior authorization for AFC Level II services.
2. [REDACTED] documented the ADLs the appellant needs assistance with as bathing, dressing, and mobility.
3. The appellant is [REDACTED], with a primary diagnosis of left shoulder joint disorder and foot pain with unknown cause.

4. The PA request was deferred for more information related to the ADL needs and diagnoses, because there was not a documented diagnosis for the cause of the appellant's foot pain.
5. A physician's report dated 1/30/2024 was received with a notation from the physical examination, in which the physician documented that the member has a normal range of motion and there was no mention of pain or the use of assistive devices.
6. The member may not need physical assistance with mobility.
7. The AFC nurse from [REDACTED] documented that the member has not had any falls in the last 3 months and does not use assistive devices.
8. The documentation states that pain is present, but the appellant takes no pain medication.
9. By written notice dated 1/31/24, MassHealth modified the authorization from level II to level I AFC because the appellant did not require physical assistance with at least three ADLs.
10. To be eligible for AFC Level II services, a MassHealth member must require hands-on physical assistance with at least three ADLs, or hands-on physical assistance with at least two ADLs and management of behaviors that require frequent caregiver intervention.

## **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).

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 multidisciplinary team (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)).

To meet the requirements for authorization of AFC 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<sup>1</sup>, toileting, transferring, mobility or eating.

#### 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.

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<sup>1</sup> Dressing includes getting dressed and undressed.

- (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)).

MassHealth denied the appellant's request for Level II AFC because the documentation did not support medical necessity for Level II services. The appellant's son/caretaker testified that she assistance with the ADLs of dressing and bathing. No signs or symptoms were set forth in the objective medical documentation to support that physical assistance with mobility is necessary. The medical reports from the appellant's physician showed the appellant's range of motion to be within normal limits, and there was no reported use of, or need for, an assistive device for mobility. The medical documentation submitted does not support that the appellant needs hands-on physical assistance with at least 3 of the listed ADLs. Further, the appellant does not have any of the behaviors that require frequent caregiver intervention as described in 130 CMR 408.419(D)(2)(b)1 through 5.

MassHealth determined that the appellant meets the criteria for Level I AFC services in that she requires supervision and cueing for at least one ADL.

Based on the current record the appellant has failed to provide medical evidence that she meets the clinical eligibility criteria for approval of Level II adult foster care and as a result, this appeal is denied.

## **Order for MassHealth**

Authorize the appellant for level I AFC services, if MassHealth has not already done so.

## **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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Christine Therrien  
Hearing Officer  
Board of Hearings

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