

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2414183
Decision Date:	12/6/2024	Hearing Date:	10/22/2024
Hearing Officer:	Marc Tonaszuck		

Appearance for Appellant:



Appearance for MassHealth:


Lisa Russell, RN, Optum

Interpreter:



*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 – Level 1 Adult Foster Care
<b>Decision Date:</b>	12/6/2024	<b>Hearing Date:</b>	10/22/2024
<b>MassHealth's Rep.:</b>	Lisa Russell, RN, Optum	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Quincy Harbor South	<b>Aid Pending:</b>	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 08/29/2024, MassHealth denied the appellant's prior authorization ("PA") request for Level 1 adult foster care ("AFC") services that was submitted on her behalf by her provider, Viecare, Corp. ("provider") (see 130 CMR 408.416 and Exhibit 1). The appellant filed this appeal in a timely manner on 09/13/2024 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

### Action Taken by MassHealth

MassHealth denied a prior authorization request submitted on the appellant's behalf for Level 1 AFC.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 408.416, in determining that the appellant is not eligible for Level 1 AFC services.

## Summary of Evidence

MassHealth was represented in this matter by Lisa Russell, RN, from Optum, the MassHealth contractor that makes AFC decisions for MassHealth. Ms. Russell appeared telephonically. The appellant appeared pro se telephonically. She was assisted by an Arabic language interpreter and a nurse from her AFC provider. Exhibits 1-4 were admitted into evidence.

Ms. Russell testified that the appellant's provider submitted a PA request for Level 1 AFC services on 08/26/2024. The appellant is an adult who lives in the community with her children and a friend. She has diagnoses that include irritable bowel syndrome, hypothyroidism, post-traumatic stress disorder, migraine, depression, anxiety, and vitamin D deficiency. According to the PA request, the appellant requires hands-on assistance with bathing, dressing, transfers, ambulation and cuing/supervision for toileting. She uses a cane to ambulate.

Ms. Russell cited to the PA request and testified that according to an office visit note from the appellant's physician, she is "alert and oriented to person, place and time," she has "normal range of motion," and "mood and affect are normal" (Exhibit 4, p. 18). A narrative from the appellant's primary care physician states she is a "single mother" who is having a "hard time supporting herself and her children" (Exhibit 4, p. 9). In the letter of medical necessity attached to the PA, it is noted that the appellant is "able to perform tasks like dishwashing and bed-making, but she needs assistance with heavier tasks." She is "able to shop independently for small purchases." The appellant is able to take her medications independently if they are prepared in advance and she can "travel – she drives her own car and takes public transportation" (Exhibit 4, p. 11).

Ms. Russell testified that the information contained in the PA conflicts with the report that she needs hands-on assistance with bathing, grooming, and dressing. Other documentation shows she is independent with shopping, traveling, she can leave home alone, and does not require supervision. On 08/29/2024, the request for Level 1 AFC was denied, as the clinical documentation was inconsistent and there is evidence that the appellant does not have a medical need for AFC services.

The appellant appeared at the fair hearing and testified with the assistance of a Registered Nurse from the AFC provider. The appellant testified that she has a teen-age daughter and a friend who help her care for her other children. The nurse explained that the appellant "does not spend any time alone at home," and she "does not travel." The appellant explained that she is "dizzy" if she stands for a long period of time, she has a "racing heartbeat," and "fatigue to the point of limping." The appellant testified that she has "leg pain," she has "a hard time walking and standing," and she has "pain at night to the point she loses sleep." She uses a cane to ambulate to the bathroom and a chair to transfer to the toilet.

Ms. Russell responded that the appellant's provider should re-submit the PA for AFC services with the correct paperwork attached.

## Findings of Fact

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

1. A prior authorization request for AFC Level 1 services was submitted on 08/26/2024 on the appellant's behalf by her provider, Viicare, Corp.
2. The appellant is an adult who lives in the community with her children and a friend. She has diagnoses that include irritable bowel syndrome, hypothyroidism, post-traumatic stress disorder, migraine, depression, anxiety, and vitamin D deficiency.
3. According to the PA request, the appellant requires hands-on assistance with bathing dressing, transfers, ambulation and cuing/supervision for toileting. She uses a cane to ambulate.
4. Other documentation the PA request states the appellant is "alert and oriented to person, place and time," she has "normal range of motion," and "mood and affect are normal" (Exhibit 4, p. 18).
5. A narrative from the appellant's primary care physician included in the PA request states she is a "single mother" who is having a "hard time supporting herself and her children" (Exhibit 4, p. 9).
6. In the letter of medical necessity attached to the PA, it is noted that the appellant is "able to perform tasks like dishwashing and bed-making, but she needs assistance with heavier tasks." She is "able to shop independently for small purchases" (Exhibit 4, p. 11). The appellant is able to take her medications independently if they are prepared in advance and she can "travel – she drives her own car and takes public transportation" (Exhibit 4, p. 10.)
7. On 08/29/2024, MassHealth denied the appellant's PA request for Level 1 AFC services

## Analysis and Conclusions of Law

MassHealth requires Adult Foster Care services be approved through prior authorization. See 130 CMR 408.417(B); 130 CMR 450.303. As part of this prior authorization process, the AFC provider "must include all required information, including, but not limited to, documentation of the completed clinical assessment conducted by the MassHealth agency or its designee; other nursing, medical or psychosocial evaluations or assessments; and any other documentation that the MassHealth agency ... requests ... ." 130 CMR 408.417(B). This documentation is reviewed to determine the clinical eligibility for AFC and their level of services payment.

408.416: Clinical Eligibility Criteria for AFC

(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(B) (**emphasis added**).

The level of payment is determined by the amount of assistance the member requires.

408.419: Conditions for Payment

(D) 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.

130 CMR 408.419(D).

MassHealth Guidelines for Medical Necessity - Determination for Adult Foster Care (AFC), state, in part:

**B. Noncoverage**

***MassHealth does not cover AFC services nor consider AFC to be medically necessary under certain circumstances. Examples of circumstances include, but are not limited to, the following:***

1. The member does not meet the clinical eligibility criteria for MassHealth coverage of AFC described in A. above.
2. When the member is receiving any home health aide services provided by a home health agency under 130 CMR 403.000, or any other personal care services, including, but not limited to, personal care services under 130 CMR 422.000.
3. ***Clinical documentation, including assessments and plan of care to support the need for or continuation of AFC, is missing, insufficient, and/or inconsistent.***

***(Emphasis added.)***

There is insufficient evidence to overturn MassHealth's denial. The documentation included with the PA is inconsistent as to her needs for assistance with her activities of daily living. Although part of the PA request states the appellant needs hands-on assistance with some ADL's, other documentation clearly states she is able to travel, shop, and ambulate on her own, without supervision. It is not clear from the documentation what assistance, if any, the appellant requires. As such, MassHealth correctly denied the request for Level 1 AFC. This appeal is therefore 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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Marc Tonaszuck  
Hearing Officer  
Board of Hearings

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