

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2176007
Decision Date:	10/22/2021	Hearing Date:	09/15/2021
Hearing Officer:	Rebecca Brochstein		

Appearances for Appellant:




Appearances for MassHealth/CCM:

Laura Rose, R.N.



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Home Health Services
Decision Date:	10/22/2021	Hearing Date:	09/15/2021
MassHealth's Rep.:	Laura Rose, R.N.	Appellant's Reps.:	
Hearing Location:	Board of Hearings (Remote)	Aid Pending:	No

Authority

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

Jurisdiction

Through a notice dated July 6, 2021, MassHealth/Optum modified the appellant's request for skilled nursing and home health aide services (Exhibit 1). The appellant filed a request for hearing on July 30, 2021 (130 CMR 610.015(B); Exhibit 2). The modification of a prior authorization request is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request home health services.

Issue

The appeal issue is whether the appellant has established medical necessity for home health services as requested.

Summary of Evidence

MassHealth was represented by a registered nurse from Optum, a MassHealth contractor. She testified that the appellant is a male in his 30s with diagnoses of schizoaffective disorder, bipolar disorder, and PTSD. On July 6, 2021, the appellant's home health provider submitted a prior authorization request to MassHealth for skilled nursing and home health aide services for the period of July 15 through October 15, 2021. The agency requested skilled nursing visits once per week and medication administration visits 13 times per week, as well as home health aide 28 hours per week. MassHealth approved the skilled nursing and medication administration visits as requested but denied the request for home health aide hours. In addition, MassHealth shortened the PA period to July 15 to August 13, 2021. The MassHealth representative testified that there is a new PA in place, which runs from August 13 to December 16, 2021, which did not request any home health aide hours (and which authorized the same nursing hours).

The MassHealth nurse testified that the appellant transferred to this home health agency from another agency on June 11, 2021, and at the time of the transfer did not have any home health aide hours. She stated that there were no documented hospitalizations, no acute condition changes, and no other medical necessity justification to support adding home health aide services just six days after he was transferred with no such services. The nurse pointed to the notes from the agency, which show that the appellant is able to perform grooming, toileting, and dressing tasks if the necessary items are laid out for him. She noted that he has the functional ability to walk, and it is uncertain why the agency requested assistance with transferring in and out of the shower. She stated that the record indicates that he is ambulatory and largely independent and does not show that he requires assistance with at least two activities of daily living. See Exhibit 4 at 26-28. In addition, the MassHealth nurse testified that the agency requested excessive time for a variety of tasks, including bathing (two hours per day), dressing (one hour per day), assistance for walking (one hour per day), grooming (one hour per day), and range of motion (one hour per day). In addition, under the category of toileting, for which the agency requested one hour per day, the notes state that the appellant requires time for feminine hygiene needs. See Exhibit 4 at 9-10.

The MassHealth nurse testified that the home health aide notes do not show that the HHA provided any assistance to the appellant with hygiene, meal preparation, mobility, or range of motion. While the notes do show the HHA provided assistance with bathing, dressing, and grooming, she stated that the record shows that the appellant should be able to perform these tasks independently. Further, she noted, the HHA program does not cover tasks such as cleaning, cooking, and laundry. She reiterated that a member must require hands-on assistance with at least two activities of daily living to qualify for this program, noting that supervisory or anticipatory care is not covered. She pointed to the medical necessity guidelines, which state in part that home health services are not medically necessary when there is no clinical documentation or treatment plan to support the need for the service.

The appellant appeared at the hearing telephonically along with his mother, who testified on his behalf. She testified that the appellant is currently living independently in an apartment and needs support for mental illness. She agreed that he is able to shower, groom, and dress himself, but

needs verbal reminders to do some of these things because otherwise he does not always remember. She stated that he needs to be reminded to change his clothes or take a shower two or three times and will then go do it on his own. She stated that she cooks, cleans, and shops for him. She also cuts his nails because he does not like to do so on his own.

The appellant submitted letters from two medical providers. The first one, from Dr. Allison Wehr, states in part as follows:

[Appellant] has severe mental illness and his diagnosis is schizoaffective disorder. He is on multiple psychiatric medications, including Divalproex, Fluoxetine, Bupropion, Invega Sustenna and Quetiapine. Both his mental illness and his medications affect his functioning and his ability to take care for himself independently. He needs assistance with cooking, cleaning, laundry, grocery shopping and transportation to medical appointments. In my opinion, he needs home health services in order to live independently in the community.

The second letter, from Dr. Maria Lim, states the following:

[Appellant] is a patient in our clinic. His mother requests for letter of support re: [his] need for home health services. He has schizoaffective disorder being followed by psychiatrist in PACT team. Due to the severity of his mental condition, he is not able to function independently and needs a lot of assistance on daily activities. Some of the activities he needs help are: cooking, laundry, cleaning, food shopping, and transportation to appointments. [Appellant] currently leaves [sic] alone and has a visiting nurse to help administer his medications. I believe that having a home health aide will be beneficial for [him] to maintain in the community.

See Exhibit 5.

In response to the provider letters, the MassHealth nurse testified that the home health program is not designed to offer assistance with these tasks. She stated that the appellant might be more suited for the PCA program than the HHS program. The mother responded that the appellant previously participated in the PCA program but maintained that he is eligible for this program as well.

Findings of Fact

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

1. The appellant is a male in his 30s with diagnoses of schizoaffective disorder, bipolar disorder, and PTSD.
2. On July 6, 2021, the appellant's home health provider submitted a prior authorization request to MassHealth for skilled nursing and home health aide services for the period of July 15 through October 15, 2021. The agency requested skilled nursing visits once per week and medication administration visits 13 times per week, as well as home health aide

28 hours per week.

3. MassHealth approved the skilled nursing and medication administration visits as requested but denied the request for home health aide hours. MassHealth also shortened the PA period to July 15 to August 13, 2021.
4. There is a new prior authorization in place, which runs from August 13 to December 16, 2021. That PA did not request any home health aide hours and authorized the same nursing hours.
5. The appellant transferred to the current home health agency from another agency on July 11, 2021. He did not have any home health aide hours with the previous agency.
6. The agency requested home health aide assistance of two hours per day for bathing, one hour per day for dressing, one hour per day for walking, one hour per day for grooming, one hour per day for range of motion, and one hour per day for toileting (which the agency noted includes time for feminine hygiene needs).
7. The home health aide notes show that the aide does not provide any assistance with hygiene, meal preparation, mobility, or range of motion.
8. The appellant lives independently in an apartment. He is able to shower, groom, and dress himself with some verbal reminders.
9. The appellant needs support with his instrumental activities of daily living, which are not covered by the home health services program.

Analysis and Conclusions of Law

MassHealth will pay a provider only for services that are medically necessary. Pursuant to 130 CMR 450.204(A), as 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.

MassHealth must also abide by medical necessity guidelines that are specific to home health services. Home health services are skilled and supportive care services provided in the member's home to meet skilled care needs and associated activities of daily living to allow the member to safely stay in their home. Home Health Services incorporate a wide variety of skilled healthcare and supportive services provided by licensed and unlicensed professionals that assist people with health conditions or disabilities to carry out everyday activities. These services are designed to meet the needs of people with acute, chronic and terminal illnesses or disabilities, who without this support might otherwise require services in an acute care or residential facility. See Exhibit 4, Guidelines for Medical Necessity Determination for Home Health Services.

The regulations governing nursing services are found at 130 CMR 403.415, and provide in relevant part as follows:

(A) Conditions of Payment. Nursing services are payable only if all of the following conditions are met:

- (1) There is a clearly identifiable, specific medical need for nursing services;
- (2) The services are ordered by the physician for the member and are included in the plan of care;
- (3) The services require the skills of a registered nurse or of a licensed practical nurse under the supervision of a registered nurse, in accordance with 130 CMR 403.415(B);
- (4) The services are medically necessary to treat an illness or injury in accordance with 130 CMR 403.409(C); and
- (5) Prior authorization is obtained where required in compliance with 130 CMR 403.410.

(B) Clinical Criteria.

- (1) A nursing service is a service that must be provided by a registered nurse, or by a licensed practical nurse under the supervision of a registered nurse, to be safe and effective, considering the inherent complexity of the service, the condition of the patient, and accepted standards of medical and nursing practice.
- (2) Some services are nursing services on the basis of complexity alone (for example, intravenous and intramuscular injections, or insertion of catheters). However, in some cases, a service that is ordinarily considered unskilled may be considered a nursing service because of the patient's condition. This situation occurs when only a registered or licensed nurse can safely and effectively provide the service.
- (3) When a service can be safely and effectively performed (or self-administered) by the average nonmedical person without the direct supervision of a registered or licensed practical nurse, the service is not considered a nursing service, unless there is no one trained, able, and willing to provide it.
- (4) Nursing services for the management and evaluation of a plan of care are medically necessary when only a registered nurse or licensed practical nurse can ensure that essential care is effectively promoting the member's recovery, promoting medical safety, or avoiding deterioration.
- (5) Medical necessity of services is based on the condition of the patient at the time the services were ordered and what was, at that time, expected to be appropriate treatment

throughout the certification period, and the ongoing condition of the member throughout the course of home care.

(6) A member's need for nursing care is based solely on his or her unique condition and individual needs, whether the illness or injury is acute, chronic, terminal, stable, or expected to extend over a long period.

(7) Medication Administration Visit. A skilled nursing visit for the sole purpose of administering medication may be considered medically necessary when the member is unable to perform the task due to impaired physical, cognitive, behavioral, and/or emotional issues, no able caregiver is present, the member has a history of failed medication compliance resulting in a documented exacerbation of the member's condition, and/or the task of the administration of medication, including the route of administration, requires a licensed nurse to provide the service. A medication administration visit may include administration of oral, intramuscular, and/or subcutaneous medication or administration of medications other than oral, intramuscular and/or subcutaneous medication.

In conjunction with these regulatory provisions, MassHealth's Guidelines for Medical Necessity Determination for Home Health Services detail the clinical criteria for each type of home health service. These include "intermittent" skilled nursing visits, which are defined as follows:

Intermittent skilled nursing refers to direct skilled nursing services that are needed to provide targeted skilled nursing assessment for a specific medical need, and/or discrete procedures and/or treatments to treat the medical need. Intermittent skilled nursing visits are typically less than two consecutive hours, are limited to the time required to perform the designated procedures/treatments, and are based on the member's needs, whether the illness or injury is acute, chronic, terminal, or expected to extend over a period of time.

Intermittent skilled nursing services may be considered medically necessary when the member's medical condition requires one or more of the following:

- i. evaluation of nursing care needs;
- ii. development and implementation of a nursing care plan and provision of services that require the following specialized skills of a nurse:
 - a) skilled assessment and observation of signs and symptoms;
 - b) performing skilled nursing interventions including administering skilled treatment ordered by the prescribing practitioner;
 - c) assessing patient response to treatment and medications;
 - d) communicating changes in medical status to the prescribing practitioner;
 - and
 - e) educating the member and caregiver

Intermittent skilled nursing services can be provided when the member requires treatment that falls within the scope of nursing practice and is required in Massachusetts to be provided by a registered nurse, or by a licensed practical nurse under the supervision of a registered nurse; or when the member requires treatment at a level of complexity and

sophistication that can only be safely and effectively performed by a Licensed Registered Nurse or a Licensed Practical Nurse working under the supervision of a Registered Nurse.

Medication administration may occur as part of an intermittent skilled nursing visit for the purpose of the administration of medications ordered by the prescribing practitioner that generally requires the skills of a licensed nurse to perform or teach a member or caregiver to perform independently.

“Medication Administration Skilled Nursing Visits” are defined in the guidelines as skilled nursing visit solely for the purpose of administering medications (other than intravenous medication or infusion administrations) ordered by the prescribing practitioner.

Home Health Services may also include the services of home-health aides, which are described in the Guidelines as follows:

Home-health aides (HHAs) are trained personnel who provide health-related personal care and/or assist members following an established plan of care ordered by the prescribing practitioner. HHAs provide health-related personal care in the home when the member has a concurrent specific skilled need for which the home health agency registered nursing or physical, occupational or speech-language therapist is treating the member, and there is a subsequent need for assistance with personal care.

Home health aide services may be considered medically necessary when the member’s medical condition requires assistance with:

- i. Health-related personal care, such as bathing, dressing, grooming, caring for hair, nail, and oral hygiene, which are needed to facilitate treatment or to prevent deterioration of the member’s health, changing the bed linen, shaving, deodorant application, skin care with lotions and/or powder, foot care, ear care, feeding, assistance with elimination, routine catheter care, and routine colostomy care;
- ii. Assistance with activities that are directly supportive of skilled nursing, physical, occupational or speech-language therapy as identified in the plan of care;
- iii. Medication reminders for medications that are ordinarily self-administered and do not require the skills of a registered or licensed nurse;
- iv. Simple dressing changes that do not require the skills of a nurse; and
- v. Routine care of prosthetic or orthotic devices.

The MassHealth agency does not pay for homemaker, respite, or chore services. Accordingly, services incidental to the delivery of health-related personal care, such as light cleaning, preparing a meal, or removing trash, do not meet the definition of a home-health aide service.

Home-health aide services are provided services are provided pursuant to a member’s need for intermittent skilled nursing services and/or therapy services. In situations where the

health-related personal care needs of the member are met through the member's receipt of intermittent skilled nursing services and/or therapy services, such as when a member is receiving intermittent skilled nursing services solely for purpose of medication administration, home-health aide services may not be considered medically necessary.

The tasks performed by a home-health aide for the member must not require treatment of a level of complexity and sophistication that can only be safely and effectively performed by a licensed professional.

See Exhibit 4.

At issue in this case is a prior authorization request from the appellant's home health agency. MassHealth approved the skilled nursing and medication administration visits as requested; the dispute is over the denial of the agency's request of 28 home health aide hours per week. The record supports MassHealth's denial of this aspect of the prior authorization request. The evidence indicates that the appellant has no functional limitations with his mobility or his ability to independently bathe, dress, or groom himself. The record does not indicate that he requires any hands-on assistance with his activities of daily living. Rather, as his mother testified, he is able to complete these tasks independently with only verbal reminders. The larger issue appears to be his need for support around his instrumental activities of daily living, including cooking, cleaning, laundry, grocery shopping and transportation to medical appointments. Both medical providers who submitted letters of support spoke only to his need for assistance with IADLs, not ADLs. However, these are not tasks that are covered under the home health services program.

For the foregoing reasons, MassHealth correctly denied the appellant's request for home health aide hours. 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.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Optum/MassHealth Prior Authorization Unit

