

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	DENIED (with order to MassHealth)	Appeal Number:	2178272
Decision Date:	1/24/2022	Hearing Date:	12/10/2021
Hearing Officer:	Kenneth Brodzinski		

Appearance for Appellant:



Appearance for MassHealth:

Laura Rose, RN



*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 (with order to MassHealth)	Issue:	Prior Authorization – Nursing Visits
Decision Date:	1/24/2022	Hearing Date:	12/10/2021
MassHealth's Rep.:	Laura Rose, RN	Appellant's Rep.:	[REDACTED]
Hearing Location:	Quincy	Aid Pending:	Yes

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 October 19, 2021, MassHealth modified Appellant's prior authorization requests for nursing visits (Exhibit A). Appellant filed for this appeal in a timely manner on October 27, 2021 (see 130 CMR 610.015(B) and Exhibit A). Modifying a prior authorization request constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified Appellant's prior authorization requests for nursing visits.

Issue

The appeal issue is whether MassHealth properly applied the controlling regulations to accurate facts when it modified Appellant's prior authorization requests for nursing visits.

Summary of Evidence

Both parties appeared by telephone. MassHealth submitted a copy of its prior authorization packet (Exhibit B). Appellant submitted no documentation other than the fair hearing request.

MassHealth was represented by a registered nurse who testified to the following: Appellant is a [REDACTED] year-old male with a primary diagnosis of major depressive disorder with a secondary diagnosis of asthma. Alternative Home Health Care submitted a request on Appellant's behalf for prior authorization for one skilled nursing (SNV) visit per week and one medication administration visit (MAV) per week. MassHealth modified the request and approved one skilled nursing visit per week and denied the medication administration visit. MassHealth also provider 3 PRN (as needed) visits.

The denial notice also advised Alternative Home Health Care to provide detailed documentation of member's response and compliance to wean including dates of noncompliance to wean. Also, with next PA submission, to provide documentation to support teaching directed at transitioning member toward independence in medication self-administration (specific dates) including pre-poured trials and specific method for reminders to promote compliance and specific reason for continuing Skilled Nursing visits at the current frequency.

The MassHealth representative stated that Nursing Notes (Exhibit B, pages 12-29) do not show any signs or symptoms of decomposition, no hospitalizations and no acute condition changes. Blood sugars are within parameters set by Appellant's MD on page 10 which state: "Call Physician for BS below 60 or above 400" (Appellant's blood sugars range from 217-364). The MassHealth representative testified that Appellant has remained asymptomatic and has had no exacerbation of his condition. Lastly, the Nursing Notes do not show that a nurse is administering medications to Appellant.

Appellant was represented by a nurse from Alternative Home Health Care who testified that Appellant was referred to her agency in 2011 and has no caregiver in the home. With regard to Appellant's medication needs, the nurse testified that a nurse from her agency collects Appellant's medications from the pharmacy, fills his weekly planner and assists Appellant with medication management. Appellant's representative asserted that it is "not financially sound" for her agency to only make one visit per week to a person's home. She also asserted that making only one visit per week does not meet "quality of care". She testified that people are being discharged from her agency and other similar agencies due to these issues.

In response, the MassHealth representative testified that pharmacies can pre-package Appellant's medications and deliver them for free. The MassHealth representative testified that the case notes indicate that Appellant self-administers his insulin and there is nothing to indicate that prepackage medications should not be tried.

Appellant's representative testified that pharmacies prepackage and ship by the month and someone like Appellant who is cognitively impaired cannot be relied on to manage a month's worth of his medications at a time. She also explained that Appellant needs at least two nursing visits per week in order to make sure he is taking his medications properly and consistently.

Findings of Fact

By a preponderance of the evidence, this record supports the following findings:

1. Appellant is a ■-year-old male with a primary diagnosis of major depressive disorder with a secondary diagnosis of asthma.
2. Alternative Home Health Care submitted a request on Appellant's behalf for prior authorization for one skilled nursing (SNV) visit per week and one medication administration visit (MAV) per week.
3. Appellant was first referred to Alternative Home Health Care in 2011 and has no caregiver in the home.
4. MassHealth modified the request and approved one skilled nursing visit per week and denied the medication administration visit.
5. MassHealth also provider 3 PRN (as needed) visits.
6. Nursing Notes filed with the request do not show signs or symptoms of decomposition, no hospitalizations and no acute condition changes. Blood sugars are within parameters set by Appellant's MD on page 10 which state: "Call Physician for BS below 60 or above 400" (Appellant's blood sugars range from 217-364) (Exhibit B, pages 10-29).
7. Nursing Notes do not show that a nurse is administering medications to Appellant.
8. Appellant currently self-administers insulin and takes his oral medications independently.
9. Appellant has remained asymptomatic and has had no exacerbation of his condition.
10. Currently a nurse from Alternative Home Health Care collects Appellant's medications from the pharmacy, fills his weekly planner and assists Appellant with medication management by reminding him to take his medications

11. Pharmacies can pre-package Appellant's medications and deliver them for free.

Analysis and Conclusions of Law

The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity (*Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989)).

The MassHealth *Guidelines for Medical Necessity Determination for Home Health Services* section A.3.c. states:

A medication administration visit is a skilled nursing visit solely for the purpose of administering medications (other than intravenous medication or infusion administrations) ordered by the prescribing practitioner.

i. Medication administration services may be considered medically necessary when medication administration is prescribed to treat a medical condition; no able caregiver is present; the task requires the skills of a licensed nurse; and at least one of the following conditions applies:

a) the member is unable to perform the task due to impaired physical or cognitive issues, or behavioral and/or emotional issues;

b) the member has a history of failed medication compliance resulting in a documented exacerbation of the member's condition.

(Exhibit B, pages 38-39)

The clinical notes prepared by the provider, Alternative Home Health Care, that were submitted with the prior authorization request repeatedly document under "Mental Status" that Appellant reported no problems and being compliant with previous medications (Exhibit B, pages 12, 15, 18, 21, and 24). Just as frequently is a comment in the narrative sections that Appellant has a long history of noncompliance with medications. At hearing, Appellant's representative maintained that the nurse was needed to fill Appellant's weekly medication planner and serve as a second weekly reminder (behind the skilled nursing visit) for Appellant to take his medications. Missing, however, is documentation of any such non-compliance. While the record does mention that Appellant has some degree of cognitive impairment, it has not been documented that it interferes with Appellant's ability to take his own medications. This documentation would be necessary to conclude that Guideline A.3.c.i.a has been met.

The MassHealth medical necessity regulation states that medical necessity for an item or service will not exist when a less-costly, comparable alternative exists that can meet the member's needs (130 CMR 450.204(A)(2)). MassHealth has shown that such an alternative exists with pre-packaged medication prepared and shipped for free by the pharmacy. This needs to be tried and should it prove to be inadequate for some reason, the details of such a trial need to be documented along with any failure by Appellant to comply with taking his medications due to cognitive issues.

On this record, Appellant has not met his burden of demonstrating the invalidity of MassHealth's determination. For the foregoing reasons, the appeal is denied.

Order for MassHealth

Remove AID PENDING and proceed with subject determination; however, MassHealth may wish to consider, either under this PA or the next PA, affording a period of time for Appellant to trial the prepackaged pharmacy.

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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

cc:

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

[REDACTED]