

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved-in-part; Denied-in-part	Appeal Number:	2179334
Decision Date:	02/15/2022	Hearing Date:	01/20/2022
Hearing Officer:	Casey Groff		

Appearance for Appellant:




Appearance for MassHealth:

Leslie Learned, R.N., Clinical Appeals
Reviewer, 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

Appeal Decision:	Approved-in-part; Denied-in-part	Issue:	Home Health Services
Decision Date:	02/15/2022	Hearing Date:	01/20/2022
MassHealth's Rep.:	Leslie Learned, R.N.	Appellant's Rep.:	
Hearing Location:	Board of Hearings (Remote)	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 December 1, 2021, MassHealth modified Appellant's application for home health services because MassHealth determined that clinical documentation submitted on behalf of Appellant did not demonstrate medical necessity for the services requested. See 130 CMR 450.204(A)(1); Exhibit 1. Appellant filed this appeal in a timely manner on December 10, 2021. See 130 CMR 610.015(B); Exhibit 2. Denial and/or modification of a prior authorization request for home health services are valid grounds for appeal. See 130 CMR 403.411(B) and 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified Appellant's request for home health services.

Issue

The appeal issue is whether MassHealth was correct in modifying Appellant's home health services.

Summary of Evidence

At the hearing, MassHealth was represented by a registered nurse/clinical appeals reviewer. Appellant was present and represented by his mother his home health nurse. All parties appeared by telephone.

Through testimony and documentary evidence, the MassHealth R.N. representative presented the following information: Appellant is an adult MassHealth member under the age of 65 with diagnoses of schizoaffective disorder, unspecified; bipolar disorder; spinal stenosis; hypertension; and hyperlipidemia. See Exh. 4, p. 7, 11-12. He lives in a single-family home with his mother. Id. at 12. On November 23, 2021, MassHealth received a prior authorization (PA) request from Appellant's home health provider seeking skilled nursing visits (SNVs) three-times per-week for the dates of service beginning December 12, 2021 through April 16, 2022. See id. at 8-9. The provider noted in the PA request that "patient is unable to manage disease process [due to] poor retention, insight and concentration evidenced by (his history) of medical noncompliance" as well as the absence of an available caregiver to help with medications. See id. at 8.

On December 1, 2021, MassHealth modified Appellant's request for home health services by approving only one SNV per week and one Medication Administration Visit ("MAV") per week, for a total of two nursing visits per week. Additionally, MassHealth shortened the PA period to run from December 12, 2021 through March 11, 2022. See Exh. 1. MassHealth made this determination because the documentation submitted with the PA did not support the need for the amount of services requested.¹ Id.

The MassHealth representative testified that Appellant has received home health services since 2015. Documentation indicates he walks his dog two-times per-day and runs errands with his mother one-to-two times per-week. See Exh. 4 at 17. Appellant's plan of care shows that he is ordered oral medications which he is scheduled to take at different times throughout the day. See id. at 11. His nurse visits in the morning and prefills his medication that he takes for the remainder of the day. There was no specific documentation in the nursing visit notes that Appellant is noncompliant in taking medications on the four days a nurse does not visit. See id. at 15-20. The absence of such documentation indicates that he can administer medications either on his own, or with the assistance of another person, such as his mother. Accordingly, he does not meet the criteria for medication administration services as outlined in MassHealth's Guidelines for Medical Necessity Determination for Home Health Services as well as MassHealth's regulations governing medical necessity. See id. at 28.

In response, Appellant's nurse testified that in addition to the diagnoses mentioned, Appellant has significant cognitive limitations and a traumatic brain injury after having been physically

¹ The MassHealth Representative noted that Appellant qualified for "aid pending" by filing this appeal. Thus, the changes have not taken effect. Appellant is currently receiving 1 SNV and 2 MAVs as MassHealth approved for his last PA period.

attacked and beaten by a group outside his home. As a result, he has poor attention span and poor memory. Appellant's nurse referred to the plan of care which was provided to MassHealth for the PA request and included on page 12 of MassHealth's submission. A "clinical summary" from October of 2021 notes in relevant part, the following:

[Appellant] has a lengthy [history] of mental illness, non-med compliance, inability to manage disease process and healthcare needs...[He] continues to need positive reinforcement and positive coping skills to assure he does not de-compensate. He is at high risk for medication error, relapse and de-compensation resulting in hospitalization without skilled nursing services. [Appellant] continues to have intermittent confusion regarding how to manage symptoms related to physical/mental diagnosis. He continues with confusion with his medications despite ongoing education. Learning barrier includes lack of interest...[he] requires ongoing Nursing visits due to impaired cognition, limited insight, and poor judgement.

Exh. 4, p. 12-13.

Appellant's nurse testified that during her visits, she helps administer Appellant's daily oral medications, and a monthly injectable medication; she implements various interventions to help Appellant's compliance when no nurse is present, such as pre-filling medication boxes, maintaining a calendar of scheduled medication days and times and doctors appointments, and placing sticky notes in helpful locations as another prompt to take a scheduled medication .

Appellant's nurse referred to nursing note dated November 22, 2021, which states that Appellant experiences paranoid delusions secondary to his schizoaffective disorder and has a history of traumatic head injury with multiple hospitalizations prior to medication management. See id. at p. 20. Additionally, the note indicates that Appellant does not manage his medications well when left for self-administering; he verbalizes he would not be compliant with medications if not seen by nurse for accountability; he decompensates quickly; he shows brain changes from symptoms of chronic use of psychiatric medication to include depression and anxiety, which inhibit his ability to think coherently; and that he often requires cuing education for medication compliance. See id.

Appellant's mother testified that as she ages, she is becoming less able to help Appellant pick-up and take his medications. Recently, her health has severely declined, and she is becoming more frail. Appellant requires more medication management support than she can provide. In the past, attempts to decrease weekly nursing services have been detrimental as he becomes non-compliant with medications, extremely depressed, and lethargic. Previously, he went through a two-and-a-half-year period of going in and out of psychiatric wards due to suicidal ideations. It is only because of the accountability and conditions which are put in place by the frequency of nursing visits that enable him to self-administer medications when the nurse is not there. Appellant's mother explained that she is distraught by the MassHealth decision because nursing visits are the only thing that have helped stabilize her son and she does not want to see him get worse as he has in the past.

Documentation shows that Appellant is prescribed approximately twelve different medications including nine oral medications, most of which are taken once or more per day; daily inhalers and nasal sprays; and a monthly intramuscular injectable medication. See id. at 11.

Findings of Fact

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

1. Appellant is an adult MassHealth member under the age of 65 with diagnoses of schizoaffective disorder, unspecified; bipolar disorder; spinal stenosis; hypertension; and hyperlipidemia.
2. Appellant has cognitive limitations, including poor attention span and memory, due to a brain injury he sustained during a physical assault.
3. Appellant is prescribed approximately twelve different medications including nine oral medications, most of which are taken once or more per day; daily inhalers and nasal sprays; and a monthly intramuscular injectable medication.
4. Appellant has received home health nursing services since 2015, which includes assistance managing and taking medications.
5. Prior to receiving home health services, Appellant had a history of multiple psychiatric hospitalizations.
6. He currently lives in a single-family home with his mother.
7. On November 23, 2021, MassHealth received a prior authorization (PA) request from Appellant's home health provider seeking skilled nursing visits (SNVs) three-times per-week for the dates of service beginning December 12, 2021 through April 16, 2022.
8. On December 1, 2021, MassHealth modified Appellant's request for home health services by approving only one SNV per week and one Medication Administration Visit ("MAV") per week, for a total of two nursing visits per week and shortened the PA period to run from December 12, 2021 through March 11, 2022.
9. Nursing visits consist of assisting Appellant administer medications, pre-filling a medication box for him to self-administer for the remaining time between visits, maintaining a calendar of scheduled medication times and doctors' appointments, and placing sticky notes in helpful locations as another prompt to take a scheduled medication .
10. Appellant has not had any recently documented episodes of medication non-compliance

within the past six-months.

11. A “clinical summary” from Appellant’s plan of care, dated October of 2021, notes in relevant part, the following:

[Appellant] has a lengthy [history] of mental illness, non-med compliance, inability to manage disease process and healthcare needs...[He] continues to need positive reinforcement and positive coping skills to assure he does not de-compensate. He is at high risk for medication error, relapse and de-compensation resulting in hospitalization without skilled nursing services. [Appellant] continues to have intermittent confusion regarding how to manage symptoms related to physical/mental diagnosis. He continues with confusion with his medications despite ongoing education. Learning barrier includes lack of interest...[he] requires ongoing Nursing visits due to impaired cognition, limited insight, and poor judgement. See. Exh. 4, p. 12-13.

12. Appellant’s mother is unable to provide the medication management support that Appellant requires.

Analysis and Conclusions of Law

At issue on this appeal, is whether MassHealth was correct in modifying Appellant’s PA request for home health skilled nursing services. MassHealth will pay for only home health services that are medically necessary. See 130 CMR 403.409(C). A 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, 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.

See 130 CMR 450.204(A).

In addition to general medical necessity requirements, MassHealth home health regulations limit coverage of home health skilled nursing services unless the following conditions and clinical criteria are met:

- (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 member, 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 nurse or licensed practical 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 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 member at the time the services were ordered, 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.

See 130 CMR 403.415 (emphasis added).

Additionally, MassHealth's Guidelines for Medical Necessity Determination for Home Health Services list the following considerations when determining a member's need for a skilled nurse to perform a medication administration visits (MAV)"

c. Medication Administration Skilled Nursing Visits

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.*

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- iii. Certain medication administration tasks are not considered skilled nursing tasks unless the complexity of the member's condition or medication regimen requires the observation and assessment of a licensed nurse to safely perform. Such conditions include:

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- b. filling of weekly/monthly medication box organizers, which requires the skills of a licensed nurse only when the member/caregiver is unable to perform the task.

See Exh. 4 at 28-29 (emphasis added).

In the present case, Appellant requested three skilled nursing visits (SNV) per-week. MassHealth modified the request by approving one SNV per-week and one medication administration visit (MAV) per-week, for a total of two nursing visits per-week. Therefore, this appeal addresses MassHealth's modification to both the *frequency* of nursing visits per-week (three versus two visits) and the *type* of nursing visit (SNV versus MAV).²

² At hearing, Appellant and his representatives did not expressly dispute MassHealth's conversion of the requested SNV to a MAV as they were primarily concerned with the reduced frequency of weekly nursing visits. However, for purposes of completeness, this Decision addresses the modification to both the frequency and type of services requested.

Based on the evidence in the record, Appellant successfully demonstrated that he requires three nursing visits per-week to provide psychiatric management and assistance in administering medications. The documentation included in the PA request, as well as testimony provided at hearing, demonstrates the Appellant has psychiatric diagnoses and cognitive impairments that significantly limit his ability to self-administer his medications on a consistent basis without the assistance of frequent nursing visits. Appellant is prescribed numerous daily medications that are in the form of oral medications, nasal sprays, and inhalers, as well as a monthly injection. Nursing visits consist of administering Appellant's medications when present, and organizing and managing medications to facilitate Appellant's compliance in between visits (i.e. pre-filling medication box, maintaining calendar of scheduled medication times, reminders, etc.). Although Appellant's mother lives with Appellant, she is becoming increasingly unable to provide him with the level of medication management he requires due to her declining health. While there is no documentation that Appellant has had a recent episode of medication non-compliance, his representatives testified that this improvement is a direct result of the nursing visits that - for the last several years - have been approved at least three-times per-week. Because Appellant is unable to consistently administer medications due to "impaired physical, cognitive, behavioral and/or emotional issues" and because "no able caregiver is present" the request for three nursing visits per-week is appropriate. See 130 CMR 403.415(B)(7).

However, the evidence indicates that two of the three weekly nursing visits are for the sole purpose of administering medications and ensuring medication compliance. See id. For these reasons, MassHealth did not err by converting one of the requested SNV to a MAV.

Based on the foregoing, the appeal is APPROVED-in-part insofar as the regulatory authority supports Appellant's request for three nursing visits per-week for the requested PA period of December 12, 2021 through April 16, 2022. The appeal is DENIED-in-part insofar as two of the requested SNVs may be converted to MAVs. Therefore, MassHealth should implement one SNV per-week (as already approved) and two MAV's per-week, for a total of three nursing visits per week.

Order for MassHealth

Remove aid pending. For the PA period from December 12, 2021 through April 16, 2022 approve one SNV per-week and two MAVs per-week.

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.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Casey Groff
Hearing Officer
Board of Hearings

cc:

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

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