

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	DENIED	<b>Appeal Number:</b>	2179717
<b>Decision Date:</b>	3/28/2022	<b>Hearing Date:</b>	01/28/2022
<b>Hearing Officer:</b>	Kenneth Brodzinski		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Leslie Learned, 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

<b>Appeal Decision:</b>	DENIED	<b>Issue:</b>	Skilled Nursing Visits
<b>Decision Date:</b>	3/28/2022	<b>Hearing Date:</b>	01/28/2022
<b>MassHealth's Rep.:</b>	Leslie Learned, RN	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Quincy	<b>Aid Pending:</b>	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 16, 2021, MassHealth modified Appellant's prior authorization requests for skilled nursing visits (SNV's) (Exhibit A). Appellant filed for this appeal in a timely manner on December 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 SNV's.

## Issue

The appeal issue is whether MassHealth properly applied the controlling regulation(s) to accurate facts when it modified Appellant's prior authorization requests for SNV's.

## 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.

The MassHealth representative testified that on 12/7/2021 MassHealth received a prior authorization (PA) request from Alternative Home Care submitted on behalf of Appellant for home health services. MassHealth decided on 12/16/21.

The MassHealth representative testified that according to the written request, Appellant is a ■-year-old male who is alert and oriented with primary diagnosis of bipolar disorder and depression. He has been receiving home health services since 2017.

The subject request sought to continue 2 skilled nursing visits (SNV's) per week from 12/27/21 through 2/6/22 (Exhibit B, page 7). MassHealth modified the request by approving 1 SNV per week with 3 as-needed (PRN) SNV's from 12/7/2021 to 2/6/2022. MassHealth informed the provider, Alternative Home Care, that with the next PA request, documentation should be provided to support teaching directed at transitioning Appellant toward independence in medication self-administration (specific dates), including pre-poured trials and specific method for reminders to promote compliance, along with specific reason(s) for continuing SNV's at this frequency and any barriers to discharge (Exhibit A).

As listed in the plan of care, Appellant takes 32 oral and inhaled medications due at different times of the day 7 days per week (Exhibit B, page 11). Fifteen of these medications are PRN. According to the notes, the nurse visits in the morning, administers AM medications and pre-pours the rest of the ordered medications for the rest of the day. The MassHealth representative testified there is no documentation that Appellant is non-compliant with taking his medications (nursing notes do not specifically document any non-compliance) (Exhibit B, nursing notes, pages 14-24). The nursing notes and care plan indicate that once a week a nurse assists Appellant with overseeing the setup of his weekly medication planner (Exhibit B, pages 13 and 15).

MassHealth determined that the request indicates Appellant is capable of medication self-administration in the absence of a nurse as there is currently no nurse visiting 5 days a week and there is no documented non-compliance with medications. Accordingly, MassHealth reduced the number of SNV's from two to one per week.

In support of its decision, MassHealth cited reliance on the MassHealth Medical Necessity regulation at 130 CMR 450.204 and the *MassHealth Guidelines for Medical Necessity Determination for Home Health Services*, Section II(A)(3)(c).

Appellant appeared on his own behalf accompanied by a registered nurse from his provider agency. Appellant's nurse testified that the agency has been with Appellant since 2011 not 2017 as the MassHealth representative testified. She also testified that Appellant has a total of 32 medications and agreed with the MassHealth representative that 15 of those are taken as needed. Appellant's nurse testified that Appellant needs to be monitored to ensure he is compliant with both his regular daily medications and his 15 as-needed medications. Appellant's nurse testified that Appellant cannot be managed on only two SNV's per week. She testified this would be unsafe and would jeopardize the progress that has been made over the past 11 years.

Appellant's nurse testified that Appellant has many chronic medical and psychological conditions. When he began receiving services in 2011, he was receiving two SNV's per day and experiencing multiple hospitalizations. Now Appellant requires only two SNV's per week and the number of hospitalizations has been greatly reduced. Appellant's nurse also explained that Appellant used to reside with his elderly father who recently passed away. Appellant now has no one in the home to assist with the oversight of his medication and selfcare.

In response, the MassHealth representative asserted there is nothing to indicate that Appellant is unable to manage his own medications as he does so for five days per week when he has no nursing visit. She reiterated that the nursing notes contain no documentation of noncompliance with medications. The MassHealth representative also noted that Appellant can drive and is able to go to the pharmacy on his own to pick up his medications.

Appellant's nurse testified that the nurses will often stop at the pharmacy for Appellant prior to making a visit. She testified that the nurses are also assessing Appellant's overall well-being in addition to assessing whether he is taking his medications properly. She testified that Appellant has a history of impaired judgement, lacking insight, and impaired coping skills. She reemphasized that given Appellant's multiple psychiatric and chronic conditions and what is known of his extensive past medical history, it would be unsafe to reduce nursing visits to only one time per week.

The MassHealth representative testified there is no reason why Appellant's medication compliance cannot be fully assessed in one visit per week when his planner is set-up.

Appellant spoke on his own behalf testifying that before Christmas he had to go to the emergency room due to severe back pain. There they discovered his spinal compression was worsening and informed him that he would need extensive physical therapy. He also recently discovered that he is suffering from hardening of his coronary arteries. Appellant further testified that he has been diagnosed with sepsis twice and last year had a gallbladder attack which was detected during a nursing visit. Appellant testified that he is constantly experiencing medical issues in addition to his mental health issues and stated his belief that he needs to see a nurse twice a week to

help assess his overall well-being and to make sure that he is taking all his many medications as directed.

Upon questioning by the hearing officer, Appellant testified that he sees a therapist one time per week and that he has been seeing the same therapist for the past 15 to 20 years. He testified he visits his therapist every Thursday from 2:00 p.m. to 3:00 p.m. and discusses his medication compliance with the therapist. Upon further questioning, Appellant also stated that the nurses visit on Tuesday and Thursday in the evening. Lastly, Appellant noted that he uses a sleep apnea machine.

## Findings of Fact

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

1. On 12/7/2021 MassHealth received a prior authorization (PA) request from Alternative Home Care submitted on behalf of Appellant for home health services.
2. Alternative Home Care has been providing services to Appellant since 2011.
3. According to the written request, Appellant is a [REDACTED]-year-old male with primary diagnosis of bipolar disorder and depression who is alert and oriented.
4. When Appellant began receiving services in 2011, he was receiving two SNV's per day and experiencing multiple hospitalizations.
5. Appellant currently receives two SNV's per week and the number of hospitalizations has been greatly reduced.
6. Appellant has a history of impaired judgement, lacking insight, and impaired coping skills.
7. Appellant used to reside with his elderly father who recently passed away.
8. Appellant now has no one in the home to assist with the oversight of his medication and selfcare.
9. The subject request sought 2 skilled nursing visits (SNV's) per week from 12/27/21 through 2/6/22 (Exhibit B, page7).
10. On 12/16/21 MassHealth modified the request by approving 1 SNV per week with 3 as-needed (PRN) SNV's from 12/7/2021 to 2/6/2022 (Exhibit A).
11. Appellant is ordered oral and inhaled medications due at different times of the

day 7 days per week (Exhibit B, page 11).

12. Fifteen of Appellant's thirty-two medications are PRN.
13. According to the nursing notes, the nurse visits in the morning, administers AM medications and pre-pours the rest of the ordered medications for the rest of the day.
14. According to Appellant, the nurses currently arrive in the evening on Tuesdays and Thursdays.
15. Appellant has been seeing the same therapist for the past 15 to 20 years.
16. Appellant visits his therapist every Thursday from 2:00 p.m. to 3:00 p.m. and discusses his medication compliance with his therapist.
17. The PA request contains no documentation that Appellant is non-compliant with taking his medications (nursing notes do not specifically document any non-compliance) (Exhibit B, nursing notes pages 14-24).
18. The nursing notes and care plan indicate that once a week a nurse assists Appellant with overseeing the setup of his weekly medication planner (Exhibit B, pages 13 and 15).
19. Appellant's medication compliance can be assessed in one visit per week when his planner is set-up.
20. MassHealth concluded that Appellant is capable of medication self-administration in the absence of a nurse as there is currently no nurse visiting 5 days a week and there is no documented non-compliance with medications.
21. MassHealth relied on the MassHealth Medical Necessity regulation at 130 CMR 450.204 and the MassHealth Guidelines for Medical Necessity Determination for Home Health Services, Section II(A)(3)(c).

## 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, page 32)

130 CMR 450.204: Medical Necessity:

*The MassHealth agency does not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.*

*(A) 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, and suitable for the member requesting the service, that is more conservative or less costly to the MassHealth agency. Services that are less costly to the MassHealth agency include, but*

*are not limited to, health care reasonably known by the provider, or identified by the MassHealth agency pursuant to a prior-authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007: Potential Sources of Health Care, or 517.007: Utilization of Potential Benefits.*

This record supports MassHealth's determination. Given Appellant's diagnoses, past medical history and current limitations, one SNV is clearly needed to assist Appellant with preparing his weekly medication planner and to assess whether Appellant is taking his medications properly. Appellant has failed to demonstrate the need for a second SNV especially where the record shows that one of Appellant's current two SNV's occurs on the same day (Thursday) as his weekly hour-long therapy session where Appellant's status and medication compliance are also addressed. This together with the fact that Appellant is currently administering his own medications successfully (in the absence of any evidence to the contrary) on the five days when he is not in contact with either a nurse or his therapist, support the reduction from two to one SNV per week. Assuming that the one SNV per week will not fall on the same day as the therapy session, MassHealth's action leaves Appellant's medication compliance and overall status being assessed two days per week as it is now.

On this record, Appellant has failed to meet his burden of demonstrating the invalidity of MassHealth's action. For the foregoing reasons, the appeal is denied.

## **Order for MassHealth**

Remove AID PENDING and proceed with subject determination.

## **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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Kenneth Brodzinski  
Hearing Officer  
Board of Hearings

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