# Office of Medicaid
# BOARD OF HEARINGS

**Appellant Name and Address:**

[redacted]

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| **Appeal Decision:** | DENIED | **Appeal Number:** | 2203470 |
| **Decision Date:** | 8/1/2022 | **Hearing Date:** | 06/24/2022 |
| **Hearing Officer:** | Christopher Taffe | | |

**Appearance for Appellant:**
[redacted], RN (Appeal Representative) (by phone)

**Appearance for MassHealth:**
Leslie Learned, RN, Clinical Reviewer from OPTUM (by phone)

*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

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| **Appeal Decision:** | DENIED | **Issue:** | PA – Home Health Services – Medication Administration Visits |
| **Decision Date:** | 8/1/2022 | **Hearing Date:** | 06/24/2022 |
| **MassHealth's Rep.:** | L. Learned | **Appellant's Rep.:** | [redacted] |
| **Hearing Location:** | HarborSouth Tower, 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 April 26, 2022, MassHealth modified Appellant's application for prior approval of certain home health services (HHS) for the time period between April 22, 2022 and August 21, 2022 because MassHealth determined that the clinical documentation submitted on behalf of Appellant did not demonstrate medical necessity for the services required. See 130 CMR 450.204(A)(1) and Exhibit 1. Specifically, on April 26, 2022, MassHealth approved 1 SNV per week, and 3 PRN visits for the time period in question. See id. Appellant filed this request for a hearing in a timely manner on May 5, 2022. See Exhibit 1; 130 CMR 610.015(B). Challenging a denial or modification of a request for assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032.

Because Appellant appealed in a sufficiently timely manner, he is and remains entitled to Aid Pending of his prior services during the appeal process. See Exhibit 1; 130 CMR 610.036. Discussion at hearing revealed that the prior Aid Pending was 1 Skilled Nursing Visit (SNV) per week, and 1 Medication Administration Visit (MAV) per week with 3 as needed (PRN) visits for the relevant PA period.

# Action Taken by MassHealth

MassHealth modified Appellant's request for certain home health services, resulting in the elimination of Medical Assistance Visits.

# Issue

The appeal issue is whether MassHealth's decision to modify the request is supported by the relevant clinical record, evidence, and regulations.

# Summary of Evidence

MassHealth was represented at hearing via telephone by a registered nurse consultant who testified as follows: MassHealth received a Prior Authorization (PA) request from the Appellant's home health agency, Alternative Home Health Care, LLC, in April of 2022 and made a determination on April 26, 2022. The documentation shows that the Appellant is a [redacted] male with a primary diagnosis of major depressive disorder and Type 2 diabetes.

As part of the PA history, the home health agency on Appellant's behalf requested 1 SNV per week and one MAV per week for the dates of service of April 22, 2022 to August 21, 2022. On April 26, 2022 MassHealth approved the 1 SNV per week, but denied the 1 MAV per week; MassHealth also approved the three PRN (as needed) visits for the PA period.

The denial notice from MassHealth says in part, "*Provider, with next PA submission, Please provide documentation of members tolerance to decrease in frequency and compliance with port medications. If Member non compliant please provide clear documentation of missed medication doses including which medications dates and times missed any adverse reactions and communication with physician if member able to maintain compliance with poured meds and or does not experience adverse reactions from intermittent missed medication doses please provide documentation of further attempts to decrease visit frequency and members response*."

At the time of the submission, the member was living in a group home, but the Appeal Representative indicated Appellant had moved out of the group home since then and in the month of June 2022 to an apartment setting. Appellant still has a case manager, but there is no staff in the apartment. MassHealth indicated that this was a sign of improvement and greater independence, and further reinforced the decision to eliminate the MAV. MassHealth testified that there were no signs of missed medication or decompensation related to medication administration in the record in Exhibit 3. Appellant has 11 medications and MassHealth noted that six of these medications (including tums, tussin, melatonin, Ativan, and pain relievers) were to be taken on PRN or "as needed" basis, which indicated that Appellant had to have some independent ability to properly self-medicate. Of the 5 "other" medications, they are not all taken at the same point of the day so that's another reason why MassHealth thought it was appropriate to wean the number of visits down, and

that this appeared to be a time to trial the absence of medication visits.[1] MassHealth indicated that the "Mental Status" notes show Appellant was reporting no problems and that Appellant was compliant, and that certain medications were prepoured until the next SNV. MassHealth also stated that the group home was not MAP-certified, which meant that group home, while it could provide greater hours, was not certified for delivering medications.

Appellant's representative did not like how the administrative visits were just considered giving medications, and they felt like the people had been abandoned for two years during the COVID-19 period, and they though the one approved visit for 15 minutes, wasn't appropriate, when the nurses were practically spending one hour there. They thought two visits a week were appropriate (however they are categorized and thus the request for one SNV and one MAV was requested); the appeal representative also suggested that if this or other members go down to one visit, it's not worth it for the providers and it's impossible to deliver the services needed to the member, and Alternative Home Health Care will just discharge and not service members with only one approved visit, (like other HHS providers, allegedly) and the member and everyone including the agency will be worse off and it's not quality care. She talked about ordering medications and going to the pharmacy, and that this sequence requires two visits. She also talked about how the current plan was working for this member, who got referred for HHS services in the first place due to a need, and that disrupting it made no logical sense.

# Findings of Fact

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

1. Appellant, through the HHS provider, requested 1 SNV per week and one MAV per week for the dates of service of April 22, 2022 to August 21, 2022. (Testimony and Exhibit 3)

    a. Prior to the PA request at issue, Appellant had been receiving 1 SNV per week and one MAV per week (along with 3 PRN visits to be used as needed during the relevant PA time period). (Testimony)

2. On April 26, 2022, MassHealth approved 1 SNV per week, and 3 PRN visits for the time period between April 22, 2022 and August 21, 2022. The MAV was denied. (Testimony and Exhibit 3)

3. Appellant is a is a [redacted] male with a primary diagnosis of major depressive disorder and Type 2 diabetes. (Testimony and Exhibit 3)

4. At the time of the request, Appellant lived in a group home setting but in the month of June, 2022, Appellant moved to a more independent setting in the form of an apartment. (Testimony and Exhibit 3)

[1] Per MassHealth, Appellant used to have 3 visits a week in total, but was decreased to 2 total visits prior to the PA.

5. There is no evidence in the record showing that Appellant has not been compliant with medications and there are no notable changes in his medical condition or status in the clinical notes and mental health assessments in the appeal records. (Testimony and Exhibit 3)

6. Appellant currently takes 11 different medications. (Testimony and Exhibit 3)

   a. Six of these 11 medications are taken on an as needed or PRN basis. (Testimony and Exhibit 3)

   b. Of the other five medications, some need to be taken at different parts of the day. (Testimony and Exhibit 3)

7. The appealable action notice asks Appellant and provider to note how this trial of decreased services (with no MAV) goes, and to properly note or document any non-compliance with this proposed amount of service plan. (Exhibits 1 and 3)

8. The proposed service plan did not go into effect due to the appeal and the Aid Pending status. (Testimony)

# Analysis and Conclusions of Law

At issue in this appeal is whether MassHealth was correct in modifying Appellant's PA request for home health skilled nursing services. MassHealth can only pay for home health services that are medically necessary. See 130 CMR 403.409(C); 130 CMR 450.204. By state Medicaid regulation (related to all MassHealth providers), 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). 130 CMR 450.204(D) also mentions how the agency may put additional requirements in certain guidelines, as discussed in further part below.

In addition to these general medical necessity requirements, MassHealth Home Health Agency regulations limit coverage of home health skilled nursing services unless the following conditions and clinical criteria are met. See 130 CMR 403.015, which reads as follows:

*403.415: Nursing Service*

*(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 member's physician or ordering non-physician practitioner 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 nursing visit for the sole purpose of administering medication and where the targeted nursing assessment is medication administration and patient response only 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.***

Additionally, MassHealth's Guidelines for Medical Necessity Determination for Home Health Services, included within Exhibit 3 and supported by 130 CMR 450.204(D), list the following as considerations when determining a member's need for a skilled nurse to perform a MAV.

*c. Medication Administration Skilled Nursing Visits*

*A medication administration visit is a skilled nursing visit solely for the purpose of administrating 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.*

*....*

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

*.....*

*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 Exhibit 3, particularly pages 33-35.

In the present case, MassHealth made a modification indicating that it may be time to trial Appellant at a lesser frequency with the one visit per week. This decision is supported by the record, and there were no persuasive arguments to the contrary. As testified to by both parties, the clinical note records suggest that Appellant has been having no problems of late, as there is no sign of deterioration or not following through the plan. There is also nothing indicating that this Appellant is physically or mentally incapable of self-administering most of his medications at this time. Moveover, MassHealth's written decision in the denial notice includes language suggesting, somewhat wisely, that this is not necessarily a permanent adjustment, but a trial for someone who is showing some greater signs of independence. While Appellant's representative somewhat understandably raises the point[2] that there is a risk that his progress may be in jeopardy, one of the points of community-based services is to foster independence for

[2] In contrast, less compelling is the reason stated by the appeal representative, who also works for the HHS provider, suggesting that the HHS provider may stop servicing this member, suggesting that it's not worth it. This is not a provider appeal, and the financial aspects of the provider are not at issue here, and I will note that the Appeal Representative in a Fair Hearing is supposed to be representing, and focused on, the needs of the individual. This is not a forum for the provider to the vent the displeasure of the corporate entity.

MassHealth members, and this decision seems reasoned and supported by the record. Appellant's representative also did not offer anything more or Appellant-specific in terms of evidence that spoke to the medical condition, capability, or medication challenges of this Appellant. The Appeal Representative attempted to make an argument that, by moving out of the group home, Appellant was going to a place that was less supported and no longer had MAP, or some sort of support approved to distribute medications; MassHealth however pointed out that the prior living establishment did not have such MAP supports either, so that argument is not as persuasive. Thus, after reviewing all the evidence and argument, I find no error or sufficient evidence to conclude that the MassHealth decision is improper or in conflict with the regulations, and I will not overrule the MassHealth determination. This appeal is therefore DENIED.

As stated in the April 26, 2022 denial notice in Exhibit 1 and if in accordance with state law and procedure, once this determination is implemented, the Appellant and his provider may update the agency if a change in circumstances warrant it, and the Appellant may submit a new PA or adjustment request at a appropriate time.

# Order for MassHealth/OPTUM

Remove the Aid Pending. Implement the decision by adjusting and allowing for the modified amount of time (one SAV/week, with 3 PRN visits) for a future four-month period of time, akin to the four-month PA period at issue in the appealable action.

As this implementation will result in a decrease in the number of visits per week, Appellant and his HHS provider should be sent advance notice of the effective week that the number of visits will decrease and such notice should be sent at least one week prior to the effective date. The advance notice should not be an action with separate appeal rights, and it may instead be a written notice of implementation.

# 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 OPTUM through either the MassHealth Prior Authorization Unit (1-800-862-8341) or general MassHealth Customer Service (1-800-841-2900). 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.

Christopher Taffe
Hearing Officer
Board of Hearings

cc: Appeals Coordinator @ OPTUM

Appeal Representative
[redacted]