Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2207532
Decision Date:	12/28/2022	**Hearing Date:**	11/10/2022
Hearing Officer:	Alexis Demirjian	**Record Open to:**	12/16/2022

Appearance for Appellant:
[redacted]

Appearance for MassHealth:
Jocelyn Alexandre, RN
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	**Issue:**	Skilled Nursing
Decision Date:	12/28/2022	**Hearing Date:**	11/10/2022
MassHealth's Rep.:	Jocelyn Alexandre, RN Laura Rose, RN	**Appellant's Rep.:**	[redacted]
Hearing Location:	Quincy Harbor South 4	**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 September 29, 2022, MassHealth denied the Appellant's application for MassHealth benefits because MassHealth determined that the visits were not medically necessary and constituted a duplication of services. (see 130 CMR 450.303 and 130 CMR 450.204(A)(1) and Exhibit 3). The Appellant filed this appeal in a timely manner on October 4, 2022. (see 130 CMR 610.015(B) and Exhibit 2).[1] Denial of assistance of services is valid grounds of appeal before the Board of Hearings. (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the Appellant's request for prior authorization for skilled nursing visits.

[1] In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, and restated in MassHealth Operations Memo (EOM) 20-10 dated August 1, 2022, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends;
    - All appeal hearings will be telephonic; and
    - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

Issue

The appeal issue is whether MassHealth was correct in determining that services requested were not medically necessary.

Summary of Evidence

The Appellant is a MassHealth member over the age of 21 years old who has been diagnosed with schizoaffective disorder, generalized anxiety disorder, Asthma, Hypothyroidism, constipation, Gastro- esophageal reflux disease and urinary incontinence. Documentation provided with the prior authorization lists over 20 medications, vitamins, and supplements that the Appellant must take daily. *See Exhibit 4.* Additionally, there are a dozen medications listed with prescribing listed to be administered "as needed." *See Exhibit* 4. The Appellant's request for prior authorization was for service number T1502 (administration of oral, intramuscular, and/or subcutaneous medication by health care agency/professional per visit (RN or LPN) in the amount of 119 units and service number G0299 UD (Direct skilled nursing services of a registered nurse (RN) in the home health or hospice setting, each 15 minutes (per visit for MassHealth members) in the amount of 24 units. *See Exhibit 4.*

The Appellant resides in a group home that carries the designation of Medication Administration Program ("MAP"). MAP facilities are governed under M.G.L. c. 94 c and regulations at 105 CMR 700.00 et. Seq. MAP increases the safety and security of medication administration for individuals living in Department of Mental Health (DMH), Department of Children and Families (DCF), Massachusetts Rehabilitation Commission (MRC), or Department of Developmental Services (DDS) licensed, funded, or operated community residential programs that are their primary residences and/or participating in day programs and short-term respite programs. MAP makes it possible for direct care staff, who know the specific needs and concerns of each individual, to administer medication as a normal part of the individual's daily routine. MAP is implemented through uniform, statewide standards that undergo continuous evaluation and improvement. *See www.mass.gov/medication-administration-program-map, last viewed on December 21, 2022.*

MassHealth testified that despite the Appellant's complicated medical history the staff at the group home has the appropriate training and certifications to administer her medications, including intramuscular injections. *See Testimony*. Thus, the use requested service of skilled nursing care to administer her medication was a duplicative service. *Id.* Accordingly, MassHealth denied the prior authorization for skilled nursing. *Id.*

The Appellant's representative testified that the Appellant's unique medical history and care require the addition of a skilled nurse to administer the medications. *See Testimony*. The Appellant's representative spoke generally about medications and did not address why MAP certified personnel could not administer the Appellant's medications. *Id.* The Appellant's testified that they Appellant is

non-compliant with medical administration by individuals who work at the group home and that skilled nursing care was necessary to ensure compliance. *Id.* The Appellant's representative argued that the Appellant has had several prolonged psychiatric hospitalizations and that skilled nursing to ensure compliance with medication was medically necessary to avoid rehospitalization. *Id.*

In response to the Appellant's representative's testimony, MassHealth inquired as to the dates of the psychiatric hospitalizations. The Appellant's Representative requested a record open period to provide additional information related to the Appellant's hospitalizations and supporting the argument that that skilled nursing services were medically necessary to avoid a worsening of the Appellant's condition. This request for a record open period was granted and the Appellant's representative submitted documentation which has been incorporated into the record as Exhibit 6. The documentation included a list of psychiatric hospitalizations since the Appellant was place at her group home, the most recent occurring in May 2019. *See Exhibit 6.* The documentation also included a letter from a CRNP which stated, "Due to the complexity of [the Appellant's] care and an extensive history of hospitalizations prior to skilled nursing, I believe this patient requires the support of a qualified nurse for the purpose of maintaining in the community." *Id.*

MassHealth reviewed the supplementary documentation and submitted a written response affirming their denial of the services which has been incorporated into the record as Exhibit 7. MassHealth noted in its written response that the list of hospitalizations last occurred in 2019 and there is not sufficient evidence to support the finding that the service of skilled nursing is medically necessary to prevent a worsening of the Appellant's condition, however they indicated they were agreeable to the services continuing for another thirty (30) days after the date of the letter to allow for transition of services.

Findings of Fact

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

1. The Appellant is a MassHealth member over the age of 21 years old. *See Exhibit 4, Testimony.*

2. The Appellant has several diagnoses including: schizoaffective disorder, generalized anxiety disorder, Asthma, Hypothyroidism, constipation, Gastro- esophageal reflux disease and urinary incontinence. *See Exhibit 4, Testimony*.

3. The Appellant resides in a group home that carries the designation of Medication Administration Program ("MAP").

4. MAP increases the safety and security of medication administration for individuals living in Department of Mental Health (DMH), Department of Children and Families (DCF), Massachusetts Rehabilitation Commission (MRC), or Department of Developmental Services (DDS) licensed, funded, or operated community residential programs that are their primary residences and/or participating in day programs and short-term respite programs.

5. MAP makes it possible for direct care staff, who know the specific needs and concerns of each individual, to administer medication as a normal part of the individual's daily routine.

6. MAP makes it possible for direct care staff, who know the specific needs and concerns of each individual, to administer medication as a normal part of the individual's daily routine. MAP is implemented through uniform, statewide standards that undergo continuous evaluation and improvement.

7. The Appellant was last admitted for a psychiatric hospitalization of 2019. *See Exhibit 6.*

8. The prior authorization was for 119 units of skilled nursing care to administer intramuscular injections and 24 units of HHS/Hospice RN for 15 minutes each visit. *See Exhibit 4.*

Analysis and Conclusions of Law

Pursuant to 130 CMR 450.204(A), a service is considered 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, or 517.007.

MassHealth must also adhere to 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 chronic 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, MassHealth Guidelines for Medical Necessity Determination for Home Health Services).

MassHealth regulations at 130 CMR 403.409 address "Clinical Eligibility Criteria for Home Health Services," as follows:

(A) Member Must Be under the Care of a Physician or Ordering Non-physician Practitioner. The MassHealth agency pays for home health services only if the member's physician or ordering non-physician practitioner certifies the medical necessity for such services and establishes an individual plan of care in accordance with 130 CMR 403.420. A member may receive home health services only if he or she is under the care of a physician or ordering non-physician practitioner. (A podiatrist may be considered a physician for the purposes of meeting 130 CMR 403.409(A).) The physician or ordering non-physician practitioner providing the certification of medical necessity and submitting the plan of care for home health services must not be a physician or ordering non-physician practitioner on the staff of, or under contract with, the home health agency.
(B) Limitations on Covered Services. The MassHealth agency pays for home health services to a member who resides in a non-institutional setting, which may include, without limitation, a homeless shelter or other temporary residence or a community setting. In accordance with 42 CFR 440.70(c), the MassHealth agency does not pay for home health services provided in a hospital, nursing facility, intermediate care facility for the intellectually or developmentally disabled, or any other institutional facility providing medical, nursing, rehabilitative, or related care.
(C) Medical Necessity Requirement. In accordance with 130 CMR 450.204: Medical Necessity, and MassHealth Guidelines for Medical Necessity Determination for Home Health Services, the MassHealth agency pays for only those home health services that are medically necessary. Home health services are not to be used for homemaker, respite, or heavy cleaning or household repair.
(D) Availability of Other Caregivers. When a family member or other caregiver is providing services, including nursing services, that adequately meet the member's needs, it is not medically necessary for the home health agency to provide such services.
(E) Least Costly Form of Care. The MassHealth agency pays for home health agency services only when services are no more costly than medically comparable care in an appropriate institution and the least costly form of comparable care available in the community.
(F) Safe Maintenance in the Community. The member's physician or ordering non physician practitioner and home health agency must determine that the member can be maintained safely in the community.
(G) Prior Authorization. Home health services require prior authorization. See 130 CMR 403.413 for requirements.

(Emphasis added.) …

Next, MassHealth regulation 130 CMR 403.415 regarding "Nursing Services" provides 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 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.

(Emphases added)

Regulation 130 CMR 403.402 defines "skilled nursing visit" as:

A nursing visit that is necessary to provide targeted skilled nursing assessment for a specific member medical need, and/or discrete procedures and/or treatments, typically for less than two consecutive hours, and limited to the time required to perform those duties.

Additionally, MassHealth has promulgated Guidelines for Medical Necessity Determination (Guidelines) which identify the clinical information that MassHealth uses to determine medical necessity for Home Health Services. These Guidelines are based on generally accepted standards of practice, review of medical literature, and federal and state policies and laws applicable to Medicaid programs.

In reviewing this matter, I conclude that MassHealth has laid out a consistent and detailed standard regarding the medical necessity for this service which it applied here to Appellant's submission before reviewing and ultimately denying this request

In this instant case, the Appellant, through her representative, has argued that the Appellant's direct care workers who are certified and trained to administer medications under the MAP program cannot handle the complexity of administering the Appellant's medications. The purpose of MAP is to make it possible for direct care staff, who know the specific needs and concerns of each individual, to administer medication as a normal part of the individual's daily routine. MAP is implemented through uniform, statewide standards that undergo continuous evaluation and improvement.

Documentation submitted with the prior authorization at issue in this case lists a significant number of medications, supplements and vitamins prescribed for the Appellant. Upon closer scrutiny, a good number of the prescriptions are to be administered "as needed" and are not necessarily administered routinely, if at all. The documentation submitted with this prior authorization claims repeatedly that the Appellant does not have a "caregiver" to help with her medications and that is the rationale for requesting the skilled nursing services.[2] The fact that the Appellant lives in a group home that is MAP approved and has direct care workers trained in the administration of medications undercuts the assertion made by the Appellant's provider and undermines the rationale for needing skilled nursing services.

The Appellant failed to provide any documentary evidence explaining why MAP certified direct care providers cannot administer the Appellant's medication protocol beyond claiming it is too complicated. The Appellant did submit a letter on November 17, 2022 which stated, "Due to the complexity of [the Appellant's] care and an extensive history of hospitalizations prior to skilled nursing, I believe this patient requires the support of a qualified nurse for the purpose of maintaining in the community." *Id.* This statement does not give any examples or provide satisfactory evidence to differentiate how the requested skilled nursing services would not be duplicative of the services provided by the MAP certified direct care workers.

[2] It should also be noted that care plan/order submitted by the Appellant's physician is unsigned.

The Appellant's representative argued that skilled nursing visits to administer medication were necessary to prevent a worsening of the Appellant's condition and prevent future psychiatric hospitalizations, thus the services were a medical necessity. While this is a compelling argument, the documentary evidence is insufficient to support this conclusion. There was no evidence introduced during the hearing or record open period that support the contention that skilled nursing care to administer and monitor the Appellant's medication is medically necessary to avoid a psychiatric hospitalization. The evidence proffered by the Appellant's representative demonstrates that the Appellant has not experienced a psychiatric hospitalization in the past three years. The argument that skilled nursing care to administer medications is medically necessary to avoid a psychiatric hospitalization in the future is speculative and unsupported by the facts and testimony offered in this proceeding.

The testimony from the Appellant's representative focused solely on the administration of medication. The regulations are clear that skilled nursing services to administer medication are only medically necessary when the member is unable to perform the services, there is no able care giver, or the member's condition or medication regiment requires the observation and assessment of a licensed nurse to safely perform. The record is void of any evidence that the services requested meet these requirements.

MassHealth denied the Appellant's prior authorization request for skilled nursing services because the documentation provided did not include sufficient information for MassHealth to determine medical necessity and the services were deemed to be duplicative. A review of the evidence in this matter supports MassHealth's denial, there is insufficient evidence to make a finding that skilled nursing services are a medically necessity at this time.

It should be noted that in correspondence to the hearing officer on December 1, 2022, MassHealth authorized an additional thirty (30) days of transitional care to make sure that MAP certified direct care workers were able to transition management of the Appellant's medication management. *See Exhibit 7.*

Accordingly, there is no error in MassHealth's decision, and this appeal is DENIED.

Order for MassHealth

MassHealth shall allow the aid pending to remain in place for an additional thirty (30) days following the issuance of this decision, consistent with the letter submitted from MassHealth to the Board of Hearings on December 1, 2022. After thirty (30) days from the date of the decision, the aid pending shall be lifted.

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.

Alexis Demirjian
Hearing Officer
Board of Hearings

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

[redacted]