

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2207556
Decision Date:	1/11/2023	Hearing Date:	11/10/2022
Hearing Officer:	Alexis Demirjian	Record Open to:	11/28/2022

Appearance for Appellant:



Appearance for MassHealth:

Jocelyn Alexandre, RN
Lisa 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:	Approved	Issue:	Prior Authorization – Skilled Nursing
Decision Date:	1/11/2023	Hearing Date:	11/10/2022
MassHealth's Rep.:	Jocelyn Alexandre Laura Rose	Appellant's Rep.:	[REDACTED]
Hearing Location:	Remote	Aid Pending:	No

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 5, 2022, MassHealth denied the appellant's prior authorization request for Home Health Services/RN 15-minute visits in the amount of three times per week or the unit amount of 59. (see 130 CMR 450.204 (A)(1) and Exhibit 1). The Appellant filed this appeal in a timely manner on October 7, 2022 (see 130 CMR 610.015(B) and Exhibit 2).¹ Denial of a prior authorization request is valid grounds for appeal before the Board of Hearings. (see 130 CMR 610.032).

Action Taken by MassHealth

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

Issue

¹ The original Request for Fair Hearing form was filled out by the Appellant. During the hearing, the Appellant reps testified that the Appellant lacked the cognitive capacity to sign the form and a record open period was allowed for the Appellant's Power of Attorney to sign the Request for Fair Hearing. The amended Fair Hearing Request was submitted, along with supporting documentation and incorporated into the record.

The appeal issue is whether MassHealth was correct in denying the prior authorization request for skilled nursing services because there was no documented skilled need requiring the intervention of a nurse.

Summary of Evidence

The Appellant is a MassHealth member over the age of 65 who suffers from peripheral vascular disease, cerebral amyloid angiopathy, vascular dementia without behavioral disturbance, other recurrent depressive disorders, essential (primary) hypertension, visual deficits and spatial neglect following cerebral infarction. On or about October 7, 2022, the Appellant's provider submitted a request for skilled nursing services three times per week. (See Exhibit 6, p. 11) The form submitted with the prior authorization request states:

[e]lderly patient with vascular dementia unable to self-assess cardiac or neurological disease. Pt. with no appropriate caregiver to assess medical disease process treatments. SN assess cardiac and cognitive status at each visit through [vital signs] and observing patient for signs and symptoms indicative of problems with disease progression or decompensation.

[Due to] vascular dementia the Patient is unable to recall information in less than one minute. Patient unable to be educated on changes or disease process [due to] inability to process information in under one minute. Caregivers are educated at the time of visit; they are unable to assess medically.

Patient has episodes of agitation and increased confusion, expected with progression of vascular depression.

Patient has med minder machine that is filled by SN at time of visits, the machine alarms to remind patient. If patient does not respond PC/HM will remind the patient of the machine.

Goals: no new symptoms of disease process through SN intervention.

Barriers: Memory recall under one minute, progression of vascular dementia with aggressive behaviors intermittently.

Interventions: assessment and treatment of medical co-morbidities; Coordination of care with CG's and prescribers, initiating changes to POC.

Diagnosis: Peripheral vascular disease without behavioral disturbance; Cerebral amyloid angiopathy; Vascular dementia without behavioral disturbance; recurrent depressive disorders; hypertension, [Visuospatial deficit and spatial neglect] following cerebral infarctions.

(Exhibit 6, p.7)

Additionally, a confirmation of doctors' orders were included with the prior authorization form and stated the following:

Skilled nursing visits indicated for mental status, [Central Venous Pressure], GI, Assess and Medication Management. Teaching regarding disease processes, [signs and symptoms] decompensation, medication regime. Patient with cognitive deficit, forgetfulness, and poor judgement due to dementia.

(See Exhibit 6, p. 19)

The confirmation of medical orders goes on to state:

Skilled Nursing 3 times per week, for 9 weeks to monitor for changes in status and decompensation of cardio, respiratory, GI, Neuro, Psychiatric and/or medication changes. (Exhibit 6, p. 19, 20)

The documentation provided with the prior authorization request includes several skilled visiting nursing notes from 8/9/22, 9/19/22, 9/20/22, 9/21/22 authored during a certified period from August 9, 2022 – October 7, 2022. (Exhibit, p. 10 – 17). Those notes document that skilled nursing duties and goals include the skilled nursing duty of performing patient/caregiver education on signs and symptom management, resource utilization and medication management to reduce unplanned hospital or emergency department visits. (Id.)

The focus of MassHealth's testimony was on the administration of the Appellant's medications. The MassHealth representative testified that the Appellant's medications are placed in a locked medical dispenser. (Testimony and Exhibit 6, p. 12). MassHealth further testified that the Appellant has a 24-care giver who can help the Appellant remember to take her medications. (Testimony and Exhibit 6, p. 13, 14, 18) MassHealth further testified that the Appellant's medications were all administered in the evening and the requested visits would not occur during medication administration time. (Testimony) Accordingly, MassHealth affirmed their denial holding that skilled nursing visits were not medically necessary because the Appellant's has a 24-hour care giver and the Appellant's medications were in a med-minder therefore a skilled nurse was not necessary to administer medications. MassHealth did not dispute the Appellant's cognitive state nor medical diagnoses.

The Appellant's representatives argued that despite the presence of the 24-hour care giver, the care giver is not able to make medical assessments of the Appellant's condition, nor can she administer medication. Accordingly, they argued and that skilled nursing visits were necessary to ensure the Appellant's compliance with medication and prevent deterioration of her symptoms. (Testimony)

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 65 years old. (Testimony and Exhibit 6)
2. The Appellant has the diagnosis of peripheral vascular disease, cerebral amyloid angiopathy, vascular dementia without behavioral disturbance, other recurrent depressive disorders, essential (primary) hypertension, visual deficits and spatial neglect following cerebral infarction. (Exhibit 6, pg.7, 19)
4. The patient unable to recall information in less than one minute. (Exhibit6, p. 7)
5. The patient has a 24-hour care giver who is unable to make medical assessments. (Exhibit 6)
6. Due the patient's cognitive deficits she is unable self-assess cardiac or neurological disease. (Exhibit 6)
7. The request for prior authorization for skilled nursing visits were in the amount of 3 visits per week, during the period 10/7/2022 through 2/11/2023.
8. The request prior authorization stated the skilled nursing visits were necessary to assess mental status, [Cardiovascular/Cardiopulmonary] symptoms, GI symptoms, assess and medication management, monitor signs and symptoms of decompensation, and evaluation of medication regimen. (Exhibit 6, pg. 7, 11)
9. The Appellant had received skilled nursing visits under a prior certification for the period of August 9, 2022 – October 7, 2022. (Exhibit 6, pgs. 10 -17)
10. The documentation submitted is sufficient to demonstrate that skilled nursing services are medically necessary.

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.

...

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 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 the following, the evidence presented in this case is sufficient to establish the medical necessity of the services requested in the prior authorization request. MassHealth erroneously relied on the fact that a 24-hour care giver was present in the home to determine that skilled nursing services were not medically necessary. While it is true that MassHealth will not pay for skilled nursing services when a family member or other caregiver is providing services, including nursing services, that adequately meet the member's needs. The record in this matter does not support the conclusion that the 24-hour care giver is in fact providing those services or even capable of doing so.

As noted, much of MassHealth’s testimony focused on administration of medication and did not address the monitoring of medical signs and symptoms of disease progression included in the prior authorization request documented in the nursing notes from the prior certification. MassHealth did not dispute the significant cognitive impairments of the Appellant, nor the fact that the Appellant is unable to participate in monitoring her signs, symptoms, or disease progression. The record in this matter supports the conclusion that a skilled nurse is medically necessary to manage and

evaluate the Appellant's plan of care to ensure that essential care is utilized in promoting the member's recovery, promoting medical safety, and/or avoiding deterioration. Given the Appellant's significant impairment and inability to participate in her own care and the documented need for the skilled nursing duty of performing of caregiver education on signs and symptom management, resource utilization and medication management to reduce unplanned hospital or emergency department visits. The Appellant has demonstrated that the services requested in the prior medical authorization are necessary.

For those reasons, the Appeal is **APPROVED**.

Order for MassHealth

Rescind notice of October 5, 2022. Effective October 7, 2022, through February 11, 2023, authorize the appellant for three skilled nursing visits per week for the prior authorization period.

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.

Alexis Demirjian
Hearing Officer
Board of Hearings

cc:

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

