

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2207668
Decision Date:	1/4/2023	Hearing Date:	11/22/2022
Hearing Officer:	Christopher Jones		

Appearance for Appellant:




Appearance for MassHealth:

Jocelyn Alexandre, 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 - SNV
Decision Date:	1/4/2023	Hearing Date:	11/22/2022
MassHealth's Rep.:	Jocelyn Alexandre, RN	Appellant's Rep.:	
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 4, 2022, MassHealth modified the appellant's prior authorization request for home-health services. (Exhibit 2; 130 CMR 450.204; 450.303.) The appellant filed this appeal in a timely manner on October 13, 2022. (Exhibit 3; 130 CMR 610.015(B).) Limitations on assistance are valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth modified the appellant's request for two skilled-nursing visits per week, allowing only one skilled-nursing visit and one medication-administration visit.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 403.000, in determining that the appellant's second nursing visit per week should be paid as a medication-administration visit.

Summary of Evidence

The appellant has a primary diagnosis is schizophrenia and a secondary diagnosis of atrial fibrillation. He is described as unable to care for himself safely and independently, and he has poor

teaching retention due to long-term use of antipsychotics. (Exhibit 4, pp. 7-8.) On or around September 26, 2022, the appellant's home health agency, Able Home Care, submitted a prior authorization request seeking two skilled-nursing visits ("SNVs") per week to provide psychiatric assessment and management for a prior authorization period running from October 2, 2022 through February 18, 2023. (Exhibit 4, pp. 7, 9.)

MassHealth's representative testified that the agency modified this request, allowing one SNV and one medication-administration visit ("MAV") per week. They also allowed four as needed ("PRN") SNVs to be used throughout the course of the prior authorization period. This modification was made because the appellant is described as stable in the nursing notes. The appellant receives community support through a caseworker and his sister is also involved in his care. The nurse who visits the appellant administers medications during each visit and pre-pours medications for the appellant to self-administer in between visits. There is no evidence of the appellant's condition being exacerbated due to non-compliance in the submitted documentation.

The appellant's representatives also noted that he lives with another person with mental health issues and argued that his sister's visitations are inconsistent. The appellant's caseworker can only help him with shopping and medical appointments. The appellant is often forgetful and paranoid, and he currently requires hygiene prompting. Prior to the hearing, the appellant submitted a letter from his doctor supporting that he needed two SNVs per week to "assess his disease process to ensure he is experiencing no acute decompensation, which manifests as paranoia, and that he remains safe within the community. It is essential that the nurses assess [the appellant] each time they visit with him." (Exhibit 3, p. 2.)

There was some dispute regarding the history of the appellant's authorization for services in the past. MassHealth's representative testified that the appellant was historically seen once a week, and that the last prior authorization request before this one had been for one SNV and one MAV. The appellant's representatives clarified that the appellant has been under their care for about 10 years. He had been fairly successful at one SNV per week, but last year he was hospitalized with COVID-19. He was discharged home with a different infection, and he was receiving two visits per day for medication and evaluation. The appellant testified that since this time, the appellant's limitations became more apparent, and so they have requested to see him twice a week.

In discussing the level of care the appellant requires, MassHealth's representative acknowledged that it would be inappropriate to reduce him down to just one visit per week. She felt that the definition of MAV included an "assessment" and the administration of medications. These are done during each visit by the nurse, therefore one of these visits could be considered an MAV. The appellant's representatives argued that at both visits during the week, the nurse performs comprehensive physical and psychiatric evaluations in addition to administering medications and filling the appellant's medication planner. MassHealth's representative argued that it was not necessary to provide a psychiatric assessment at each visit. The psychiatric evaluation could be provided once a week, and then the MAV visit could be converted to a PRN visit if the nurse noticed something that warranted further evaluation.

The appellant's representatives argued that their ability to detect if further assessment is needed is also a skilled task, and that is as much the reason for their going to the appellant's home as the filling of his medication planner. Ultimately, the dispute was focused down to the definition of MAV. The appellant's representatives noted that the definition of MAV changed in July 2022, and that MassHealth was inappropriately applying the current definition of MAV to situations beyond the simple administration of medications.

Findings of Fact

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

1. The appellant has a primary diagnosis is schizophrenia and a secondary diagnosis of atrial fibrillation. He is described as unable to care for himself safely and independently, and he has poor teaching retention. (Exhibit 4, pp. 7-8.)
2. On or around September 26, 2022, Able Home Care submitted a prior authorization request seeking two SNVs per week to provide psychiatric assessment and management for the prior authorization period of October 2, 2022 through February 18, 2023. (Exhibit 4, pp. 7, 9.)
3. MassHealth modified the request to one SNV and one MAV per week with four PRN SNVs to be used throughout the prior authorization period. (Exhibit 2.)
4. MassHealth agrees that the appellant requires two nursing visits per week, but they argued that one of them could be an MAV because he was described as stable in the submitted documentation. Each visit involves administering medication and assessing the appellant, which MassHealth argued falls within the definition of a MAV. (Testimony by MassHealth.)
5. The appellant's medical care team believes he requires comprehensive assessment each nursing visit and the appellant believes such comprehensive assessments are outside the current definition of MAV. (Testimony by the appellant's representatives; Exhibit 3.)
6. The appellant is described as stable in nursing notes, but he requires basic hygiene prompting. (Testimony by MassHealth's representative; Exhibit 4, 13.)

Analysis and Conclusions of Law

MassHealth pays for home health services for eligible members, including nursing, home health aide, and home therapy services. (130 CMR 403.000.) Home health services must be prescribed and provided in accordance with a plan of care that certifies the medical necessity of the services requested. (130 CMR 403.409(A).) Often, prior authorization is required. (130 CMR 403.410.)

This appeal largely comes down to the distinction between skilled nursing visits and medication administration visits.¹ In July 2022, the regulations were substantially overhauled. The current regulations include the following relevant definitions:

Medication Administration Visit – a nursing visit **for the sole purpose of administration of medications where the targeted nursing assessment is medication administration and patient response only**, and 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 including the route of administration of medication 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, but does not include intravenous administration.

...

Nursing Services – the assessment, planning, intervention, and evaluation of goal-oriented nursing care that requires specialized knowledge and skills acquired under the established curriculum of a school of nursing approved by a board of registration in nursing. Such services include only those services that require the skills of a nurse.

...

Skilled Nursing Visit – 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.

(130 CMR 403.402 (emphasis added).)

The regulation specifically governing nursing services largely repeats this distinction between “skilled nursing visits” and “medication administration visits.”

(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

¹ It is worth noting that the appellant’s home health agency is concerned about this distinction because MassHealth “pays a separate rate for nursing visits conducted for the purpose of medication administration, as defined in 130 CMR 403.402.” (130 CMR 403.423(G).)

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[.]

(130 CMR 403.415(B)(7) (emphasis added).)

“Medication Administration Visits must include teaching on medication management to maximize independence, as applicable, documentation as specified in 130 CMR 403.419(C)(3)(b)9., and assessment of the member response to medication.” (130 CMR 403.423(G).)

The appellant argues that the emphasized language in these regulations makes clear that the services the appellant requires should not be considered MAVs. The appellant is provided medications during each visit, but that is not “the sole purpose” of the visit. The appellant’s representatives argue that they must provide a comprehensive psychiatric evaluation to determine whether the appellant’s mental and physical status are decompensating. This is, in part an assessment of the “patient’s response” to medications, but it is not a “patient response only” assessment. The appellant urges that a nursing visit that provides services beyond “administering medication [with a] targeted nursing assessment [regarding the] patient response only” to the medications administered, must be considered a full SNV.

To further support this interpretation, the old definition of “Medication Administration Visit” was

Medication Administration Visit — **a skilled nursing visit for the purpose of** administration of medications 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 including the route of administration of medication requires a licensed nurse to provide the service. ...

(130 CMR 403.402 (2017) (emphasis added).)²

I am convinced by the appellant’s interpretation of the regulations. MassHealth’s position is that, because MAVs require an assessment and teaching be provided, any teaching and assessments provided may be included in a MAV. This ignores the emphasis that a MAV assessment is meant to be targeted to the patient’s response of the medications administered at that visit. Ultimately, I am persuaded that neither of the nursing visits the appellant receives each week can be considered as

² In 2017, 130 CMR 403.415(B)(7) defined the MAV as 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 [impairment]” The 2017 regulation at 130 CMR 403.423(H) is identical to the current 403.423(G) except that it refers the “nursing visit” as “skilled.”

solely for the purpose of administering medications and assessing his response to the medications administered, in part because the purpose of the visit is to ensure compliance with self-administration. Therefore, this appeal is APPROVED.

Order for MassHealth


Rescind the modification notice and allow two SNVs per week for the prior authorization period of October 2, 2022 through February 18, 2023.

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.

Christopher Jones
Hearing Officer
Board of Hearings

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

A large black rectangular redaction box covering several lines of text.