

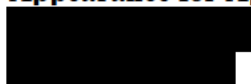
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2207670
Decision Date:	1/10/2023	Hearing Date:	11/22/2022
Hearing Officer:	Christopher Jones		

Appearance for Appellant:




Appearance for MassHealth:

Jocelyn Alexandre, RN
Jen Looney, RN – observing



*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:	1/10/2023	Hearing Date:	11/22/2022
MassHealth’s Rep.:	Jocelyn Alexandre, RN; Jen Looney, 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 September 16, 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 2; 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 “schizoaffective disorder, depressive type” and a secondary diagnosis of non-Hodgkin’s lymphoma. He is described as unable to care for himself due to

impaired thought process. He is also described as “dismissive at times to education with poor insight into disease process” (Exhibit 3, pp. 7-8.) On or around September 8, 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 September 18, 2022 through December 31, 2022. (Exhibit 3, pp. 7, 9.)

MassHealth 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. The appellant has been receiving services since 2011, following a hallucination-induced injury that resulted in one of his legs being amputated. MassHealth’s representative testified that the appellant is identified as compliant with his pre-poured medications, stable, and appropriately dressed. The appellant’s medication planner is filled once a week, and the visits are to ensure the appellant’s compliance with the pre-poured medications. MassHealth’s representatives therefore felt that at least one of these visits should be considered a MAV.

The appellant’s representatives agreed that the appellant is doing well. In fact, they allow him to fill his own medication planner during one of the weekly visits. However, they testified that the appellant has a very complex history, and at one time he was being seen twice a day. They view the submitted nursing notes as showing an incomplete picture of the appellant’s condition. They present a snapshot, not the whole picture of the appellant’s condition. They testified that the appellant is occasionally noncompliant, which can require additional work to get him back on track. For instance, if he misses three doses of Clozaril, he needs to be re-titrated, which requires an increase in lab visits. He also takes PRN Thorazine for auditory hallucinations. He was recently diagnosed with cancer, and he needs regular gastro-intestinal assessment because of one of his medications.

MassHealth responded that the appellant is self-administering medications and the visit is to assess the appellant’s response to his self-administered medications. These visits should be considered MAVs. When asked why they allow one SNV per week instead of two MAVs, MassHealth’s representative felt that could be appropriate to reduce the appellant to two MAVs, with intermittent SNVs to provide general care management. Further, he may be stable enough for one nursing visit per week, but the issue here was whether one of these visits could be considered an MAV.

The appellant’s representatives responded that they are not assessing his response to an administered medication, rather they are attempting to get a sense for whether he is being compliant with self-administered medications. That requires a comprehensive psychiatric evaluation. They further felt that it is too difficult to adequately track the appellant’s signs and symptoms in one visit per week.

Findings of Fact

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

1. The appellant has a primary diagnosis is “schizoaffective disorder, depressive type” and a secondary diagnosis of non-Hodgkin’s lymphoma. He is described as unable to care for himself due to impaired thought process and as “dismissive at times to education with poor insight into disease process” (Exhibit 3, pp. 7-8.)
2. On or around September 8, 2022, Able Home Care submitted a prior authorization request seeking two SNVs per week to provide psychiatric assessment and management for a prior authorization period running from September 18, 2022 through December 31, 2022. (Exhibit 3, pp. 7, 9.)
3. MassHealth allowed one SNV and one MAV per week with four PRN SNVs because the appellant is described as stable, compliant with pre-poured medications, and appropriately dressed during visits. (Testimony by MassHealth’s representative.)
4. The appellant fills his own medication planner during one of the nursing visits, and both visits are for comprehensive psychiatric evaluations to ensure medication compliance. (Testimony by the appellant’s representative.)

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. In July 2022, the regulations were 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 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.¹ The appellant’s representatives pointed out that the appellant pre-pours his own medications and self-administers his own medications. Therefore, medication administration is not the “purpose” of the visit. The visit is to provide a comprehensive psychiatric evaluation to determine whether the appellant remains compliant with his self-administered medications.

¹ It is worth noting that the appellant’s home health agency has a vested interest in the outcome of this appeal 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).) The rate for MAVs is lower than the rate for SNVs.

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 solely for the purpose of administering medications and assessing his response to the medications administered, in part because medications are not provided. The purpose of the visit is to ensure compliance with self-administration, not medication administration. Therefore, this appeal is APPROVED.

However, this decision does not require that MassHealth continue to approve two SNVs per week if it decides that the appellant’s care could be safely managed or monitored otherwise.

Order for MassHealth

Rescind modification notice and allow two SNVs per week for the prior authorization period of September 18, 2022 through December 31, 2022.

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.

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.”

Christopher Jones
Hearing Officer
Board of Hearings

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

