

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2207748
Decision Date:	12/7/2022	Hearing Date:	11/22/2022
Hearing Officer:	Thomas J. Goode		

Appearance for Appellant:



Appearance for MassHealth:

Lisa Russell, RN, Optum
Laura Rose, RN, Optum



*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:	Nursing Services
Decision Date:	12/7/2022	Hearing Date:	11/22/2022
MassHealth's Rep.:	Lisa Russell, RN, Laura Rose, RN	Appellant's Rep.:	Pro se with Sister et. al.
Hearing Location:	Quincy Harbor South	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 October 12, 2022, MassHealth modified Appellant's prior authorization request for skilled nursing services (Exhibit 1 and 130 CMR 450.204, 130 CMR 403.415). Appellant timely appealed on October 17, 2022 (Exhibit 2 and 130 CMR 610.015(B)). A MassHealth determination regarding the scope of nursing services is a valid ground for appeal (130 CMR 610.032).

Action Taken by MassHealth

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

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.204, 403.415, in modifying Appellant's prior authorization request for skilled nursing services.

Summary of Evidence

The MassHealth representative testified that Appellant is ■ years old and lives alone in the community. Appellant's primary diagnosis is schizophrenia, with additional diagnoses of depression, obesity, constipation, GERD, and mild intellectual disability. On October 12, 2022 a prior authorization request for 4 skilled nursing visits (SNVs) was submitted on Appellant's behalf and on October 12, 2022 was modified by MassHealth to 1 SNV with 3 medication administration visits (MAVs). The MassHealth representative testified that Appellant has been receiving skilled nursing services since August 2019, and documentation submitted with the request shows that 4 SNVs are not medically necessary as defined at 130 CMR 450.204. The MassHealth representative cited nursing notes from 9/29/2022-10/4/2022 which show that nurses administered medications via lockbox, pre-poured medications, and that Appellant was stable with vital signs within normal range. A nursing visit note dated 10/3/2022 records that Appellant made a medication error over a weekend when the nurse was not there with no adverse reactions after taking morning medications twice (Exhibit 4, pp. 19-21). She added that per the Guidelines for Medical Necessity for nursing services, a MAV is a skilled visit for the purpose of administering medications and includes documentation of the medication administered, observing for medication effects both therapeutic and adverse, and reporting adverse effects to the ordering practitioner (Id., p. 37). The MassHealth representative pointed to a letter from a psychiatric nurse practitioner that orders skilled nursing assessments 4 times per week and noted that Appellant would not be assessed on the other 3 days of the week when a nurse did not visit her. Appellant is prescribed Clozaril which is considered a high-risk medication but is taken by Appellant at bedtime when a nurse is not present to do an assessment. MassHealth stated that Appellant has been authorized for 1 SNV and 3 MAVs since November 2021 with no changes in medications, physician orders, ER or hospital visits, or decompensation in Appellant's condition documented. Therefore, the request was modified. She added that Appellant also has 3 SNVs PRN (as needed) throughout the prior authorization period ending April 13, 2023.

Appellant's representatives from Able Home Care testified that although MassHealth did not approve 4 SNVs, the company provides 4 SNVs per week to assess Appellant's psychological condition because 4 SNVs were ordered by the physician. She stated that Appellant has a lot of support from her family, especially her sister who helps with medication administration, sometimes over the phone by calling Appellant and reminding her to take her medications. Appellant has shown that she can be compliant taking her medications, and the SNVs are intended to give her a better-quality visit than an MAV which would not capture a full assessment of Appellant's mental health and competency while the nurses are there. She added that nurses visit Appellant on Monday, Tuesday, Thursday, and Friday. She stated that a SNV is required to assess Appellant's thoughts, perceptions, and whether hallucinations or obsessions require additional intervention. Appellant is obsessed with bowel care and the nurses make sure she is compliant. She added that Appellant was receiving 5 nursing visits which were reduced to 4 visits in conjunction with Appellant's sister, who is not a medical professional, agreeing to help the other 3 days per week. Appellant's representatives testified that SNVs are necessary to make a more detailed assessment of how Appellant is doing overall. Appellant's representatives testified that Appellant continues to do well because Able Home Care has continued to do SNVs 4 times per week.

MassHealth stated that like SNVs, MAVs include an assessment of a patient's condition and require that any change in condition, non-compliance, or adverse reactions to medication are reported to the physician. MassHealth concluded that based on the documentation submitted with the request which shows Appellant's condition has been stable, 4 SNVs per week are not medically necessary.

Findings of Fact

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

1. Appellant is ■ years old and lives alone in the community. Appellant's primary diagnosis is schizophrenia, with additional diagnoses of depression, obesity, constipation, GERD, and mild intellectual disability.
2. On October 12, 2022, a prior authorization request for 4 skilled nursing visits (SNVs) was submitted on Appellant's behalf and on October 12, 2022, was modified by MassHealth to 1 SNV with 3 medication administration visits (MAVs).
3. Appellant has been receiving skilled nursing services since August 2019. Appellant has been receiving 1 SNV and 3 MAVs since November 2021.
4. Nursing notes from 9/29/2022-10/4/2022 indicate that nurses administered medications via lockbox, and pre-poured medications. Appellant was stable with vital signs within normal range.
5. A nursing note dated 10/3/2022 records that Appellant made a medication error over a weekend when the nurse was not there with no adverse reactions after taking morning medications twice.
6. Appellant has been stable while authorized for 1 SNV and 3 MAV visits per week with no changes in medications, physician orders, ER or hospital visits, or decompensation in Appellant's condition documented.
7. A psychiatric nurse practitioner ordered skilled nursing assessments 4 times per week and noted that Appellant would not be assessed on the other 3 days of the week when a nurse did not visit her.
8. Appellant is prescribed Clozaril which is considered a high-risk medication; Appellant takes the medication at bedtime when a nurse is not present to do an assessment.
9. Appellant is authorized for 3 SNVs PRN (as needed) available throughout the prior authorization period ending April 13, 2023.
10. Appellant has a lot of support from her family, especially her sister, who is not a medical professional, who helps with medication administration sometimes over the phone by

calling Appellant and reminding her to take her medications.

11. Appellant has shown that she can be compliant taking her medications.

12. Nurses visit Appellant on Monday, Tuesday, Thursday, and Friday.

Analysis and Conclusions of Law

Prior authorization requirements for intermittent skilled nursing services and home health aide services are found at 130 CMR 403.413. Only medically necessary skilled nursing services and related home health aide services will be approved. Medical necessity is defined as the most conservative and least costly treatment that is available to a member to prevent, diagnose, alleviate, correct, or cure conditions in the member (130 CMR 450.204(A)).

Nursing Services are outlined at 130 CMR 403.415 Nursing Services:

(A) Conditions of Payment. Nursing services are payable only if all 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.

Guidelines for Medical Necessity Determination for Home Health Services

Section II. Clinical Guidelines

A. Clinical Coverage

MassHealth bases its determination of medical necessity for Home Health Services on clinical data including, but not limited to, data that would reflect relative risks and benefits of the provision of these services in the patient's home.

1. Any Home Health Service must meet all of the following:
 - a. Determination by the member's physician or podiatrist ("designated provider") that the member has a medical condition including, but not limited to, recovering from an acute illness, injury, or surgical procedure, a chronic health condition, a terminal illness, or a disability that requires skilled intervention or treatment from a licensed nurse, physical therapist/physical therapy assistant, occupational therapist/certified occupational therapy assistant, or speech/language therapist in the home.
 - b. Establishment of the designated provider's plan of care or clinical notes setting forth the designated provider's evaluation of the member's medical condition and

proposed treatment and services related to the member's medical need for home health services.

- c. Completion of a comprehensive evaluation of the member by the home health agency's relevant service professional through which the member's current medical status, disability, level of functioning, health, and psychosocial status is determined and confirms the presence of a condition requiring the need for specific services as designated under the criteria for the specific home health service as described in (3), below.
- d. Confirmation that the designated provider for the service is certified by DPH as a provider of Medicare home health services and enrolled with MassHealth as a provider of home health services.

2. Coverage of particular services will be based on the following:

- a. The type of professional services covered will be based on the degree of skill required for the tasks related to the member's medical need.
- b. The plan of care demonstrates that it will significantly improve/stabilize the member's condition within a reasonable period of time, and/or maintain, prevent, or slow the worsening of function as a result of the condition in (1).
- c. The amount, frequency, and duration of services are appropriate based upon professionally recognized standards of practice and the length of time required to perform the needed tasks related to the member's condition in (1).
- d. Demonstration that services are provided under the care of a licensed practitioner with a written treatment plan that has been developed in consultation with the relevant professional(s).

3. Home Health Service Criteria

- a. **Teaching Requirements for All Home Health Services**
Teaching must be provided to the member, member's family, or caregiver at every visit by the nurse or therapist in order to foster independence. Teaching may include how to manage the member's treatment regimen, any ongoing teaching required due to a change in the procedure or the member's condition, and the response to the teaching. If continued teaching is not reasonable, that must be supported by sufficient documentation indicating that teaching was unsuccessful or unnecessary and why further teaching is not reasonable.
- b. **Intermittent Skilled Nursing Visits**
Intermittent skilled nursing refers to direct skilled nursing services that are needed to provide a targeted skilled nursing assessment for a specific medical need, and/or discrete procedures and/or treatments to treat the medical need. Intermittent skilled nursing visits are typically less than two consecutive hours, are limited to the time required to perform the designated procedures/treatments, and are based on the member's needs, whether the illness or injury is acute, chronic, terminal, or expected to extend over a period of time.

Intermittent skilled nursing services may be considered medically necessary when the member's medical condition requires one or more of the following:

- i. evaluation of nursing care needs;
- ii. development and implementation of a nursing care plan and provision of services that require the following specialized skills of a nurse:
 - a) **skilled assessment and observation of signs and symptoms;**
 - b) **performing skilled nursing interventions including administering skilled treatments ordered by the prescribing practitioner;**
 - c) **assessing patient response to treatment and medications;**
 - d) **communicating changes in medical status to the prescribing practitioner; and**
 - e) **educating the member and caregiver.**

Intermittent skilled nursing services can be provided when the member requires treatment that falls within the scope of nursing practice and required in Massachusetts to be provided by a registered nurse, or by a licensed practical nurse under the supervision of a registered nurse; or when the member requires treatment at a level of complexity and sophistication that can only be safely and effectively performed by a licensed Registered Nurse or a Licensed Practical Nurse working under the supervision of a Registered Nurse.

Medication administration may occur as part of an intermittent skilled nursing visit for the purpose of the administration of medications ordered by the prescribing practitioner that generally require the skills of a licensed nurse to perform or teach a member or caregiver to perform independently. Intravenous medication and infusion administrations will be treated as an intermittent skilled nursing visit due to the time required to complete these tasks.

c. Medication Administration Skilled Nursing Visits

A medication administration visit is a skilled nursing visit solely for the purpose of administering 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 apply:
 - 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.
- ii. **Medication administration of the medication, documentation of that administration, observing for medication effects both therapeutic**

and adverse, and reporting adverse effects to the ordering practitioner. Intramuscular, subcutaneous, and other injectable medication administrations are considered skilled nursing tasks and will be treated as medication administration visits. Visits for medication administration via routes other than intravenous, intramuscular and/or subcutaneous medication including inhalers, nebulized medications, eye drops or topical medications will be considered as a medication administration visit only when the conditions below in 3.c.iii are met.

- 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:
 - a) administration of oral, aerosolized, eye, ear and topical medication, which requires the skills of a licensed nurse only when the complexity of the condition(s) and/or nature of the medication(s) require the skilled observation and assessment of a licensed nurse and/or the member/caregiver is unable to perform the task
 - 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.
- iv. Members receiving medication administration visits should be provided, at a minimum, one skilled nursing visit every 60 days to assess the plan of care and the member's ongoing need for medication administration visits. Home health providers must request any additional skilled nursing visits along with their request for medication administration visits. The authorized number of skilled nursing visits will be determined based on medical necessity and submitted supporting documentation.
- v. **Documentation of Medication Administration for Intermittent Skilled Nursing Visits and Medication Administration visits: Documentation requirements include the time of the visit; drug identification, dose, and route/or reference to the member's medication profile as ordered by the physician; teaching as applicable; documentation indicating that teaching was unsuccessful or unnecessary and why further teaching is not reasonable; the member's response to the medication/s and the signature of the licensed nurse administering the medication. Documentation of skilled procedures performed in addition to medication administration during an intermittent skilled nursing visit should also occur.**

(Exhibit 4, pp. 35-37, emphasis in bold)

Appellant's psychiatric nurse practitioner ordered skilled nursing assessments 4 times per week; however, approval by MassHealth is not automatic and is subject to prior authorization review for medical necessity as outlined above. The prior authorization request was modified by MassHealth to 1 SNV with 3 MAVs and 3 PRN SNVs throughout the prior authorization period. Nursing visits occur on Monday, Tuesday, Thursday, and Friday, with Appellant's sister or other family members, who are not medical professionals, reminding Appellant sometimes by phone to take her medications. While Appellant's home care provider opines that SNVs are necessary 4 times per week to assess Appellant due to a diagnosis of schizophrenia, MAVs include **administration of the medication, documentation of that administration, observing for medication effects both therapeutic and adverse, and reporting adverse effects to the ordering practitioner.** Appellant has been receiving skilled nursing services since August 2019 and has been authorized for 1 SNV and 3 MAVs since November 2021 with no changes in medications, physician orders, ER or hospital visits, or decompensation in Appellant's condition documented. It is unclear what other skilled assessments or nursing interventions are being delivered for up to 2 consecutive hours that are medically necessary and warrant 4 SNVs per week, particularly when those assessments are inherently unnecessary 3 days per week when Appellant's sister or other family members remind Appellant to take her medications without a skilled assessment. Appellant's home health provider would prefer to be reimbursed at the higher rate for providing services that amount to MAVs; however, Appellant and her representatives have not carried the burden of demonstrating medical necessity for SNVs 4 times per week.¹

The appeal is DENIED.

Order for MassHealth

None, other than rescind aid pending and continue 1 SNV and 3 MAVs with 3 SNVs PRN throughout the prior authorization period.

¹ The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity. Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds, 27 Mass. App. Ct. 470, 474 (1989).

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.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc:

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

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