

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2207752

Decision Date: 12/9/2022

Hearing Date: 11/21/2022

Hearing Officer: Paul C. Moore

Appellant Representatives:




MassHealth Representatives:

Jocelyn Alexandre, R.N., and Laura Rose, R.N.
(both clinical reviewers with Optum, and both
by telephone)



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Prior Authorization, HHS
Decision Date:	12/9/2022	Hearing Date:	11/21/2022
MassHealth Reps.:	Miles. Rose and Alexandre	Appellant Reps.:	
Hearing Location:	Remote	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 10, 2022, MassHealth modified the appellant's prior authorization (PA) request for fourteen home skilled nursing visits (SNVs) per week, and two as-needed (PRN) SNVs for the time period October 2, 2022 through December 3, 2022, to one SNV and thirteen medication administration visits (MAVs) per week for the period October 2, 2022 through December 3, 2022, plus two PRN visits for the PA period (Exh. 1). The appellant filed this appeal with the Board of Hearings (BOH) in a timely manner on October 17, 2022 (Exh. 2).¹

MassHealth determinations regarding the scope or amount of assistance are valid grounds for appeal to BOH (130 CMR 610.032(A)).

Action Taken by MassHealth

MassHealth proposed to reduce the appellant's home nursing visits to one SNV and thirteen MAVs per week.

¹ During the pendency of this appeal, the appellant has had "aid pending" in the amount of one SNV, and thirteen MAVs, per week through March 30, 2023.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 403.401 *et seq.* and 130 CMR 450.204, in modifying the appellant's PA request for home SNVs.

Summary of Evidence

The MassHealth representative, a Registered Nurse consultant with Optum, testified by telephone that the appellant, who is under age 65, lives alone in the community and has been receiving home health services since July, 2022. Able Home Care, a home health agency (hereinafter, "the agency"), submitted a PA request to MassHealth on the appellant's behalf on September 29, 2022, seeking fourteen SNVs per week, and two as-needed (PRN) SNVs, for the time period October 9, 2022 through December 3, 2022 (Exh. 3). By notice dated October 10, 2022, MassHealth modified the PA request and approved one SNV per week and thirteen MAVs per week, plus two PRN SNVs, for the PA period October 2, 2022 through December 3, 2022 (Exh. 1). The MassHealth notice explained that the clinical documentation submitted did not support the medical necessity or all of the services requested (Testimony, Exh. 1).

According to the MassHealth representative, the appellant's primary diagnoses are schizoaffective disorder, type two diabetes, bipolar disorder and chronic obstructive pulmonary disease (COPD) (Testimony, Exh. 3). She is prescribed a number of medications, including clonazepam, Invega, Mirtazapine, Lidocaine patch, lithium carbonate, Trileptal, Cogentin, Propanolol, and Seroquel every six hours as needed for agitation (Testimony, Exh. 3, p. 47). She currently receives one SNV per week and thirteen MAVs per week. Per the nurses notes submitted by the agency with this PA request, each nursing visit lasted about 20 minutes (Exh. 3, pp. 12-45). The plan of care, or "485," reflects that the appellant has not been hospitalized in the last sixty days, and remains safe in the community. At each visit, the nurse administers prescribed medications to the appellant, assesses her mental status, and typically obtains her vital signs. Some of the nurses notes also reflect that the appellant denies visual and auditory hallucinations, thought disturbances, and suicidal or homicidal ideation. According to the MassHealth representative, the appellant had an inpatient psychiatric hospitalization in June, 2022 for several weeks after experiencing auditory hallucinations and paranoia (Testimony, Exh. 5).² The MassHealth representative noted that the appellant's Invega, an antipsychotic medication, is administered by intramuscular injection once every twenty-eight (28) days (Testimony, Exh. 3).

The MassHealth representative stated that MAVs are defined in the MassHealth Guidelines for Medical Necessity Determination for Home Health Services ("guidelines") as targeted skilled nursing visits solely for the purpose of administering medications. They are considered medically

² Prior to the hearing, the agency submitted a set of medical records related to the appellant's inpatient psychiatric hospitalization at Bay Ridge Hospital (part of Beth Israel Lahey Health) in [REDACTED] from June 15, 2022 through July 22, 2022 (Exh. 5).

necessary when: no able caregiver is present; the task requires the skills of a licensed nurse; and when the member is unable to perform the task due to impaired physical or cognitive issues or behavioral and/or emotional issues; or when the member has a history of failed medication compliance, resulting in a documented exacerbation of the member's medical condition; or both (Testimony, Exh. 3, pp. 57-59). SNVs are defined in the guidelines as visits needed when intravenous (IV) or infusion medications are ordered, and when oral, aerosolized, eye, ear and topical medications are ordered, the administration of which requires the skilled observation and assessment of a licensed nurse, and/or when the member or caregiver is unable to perform the task (*Id.*). Here, according to the MassHealth representative, the appellant requires only one SNV, and thirteen MAVs, per week.

An agency nurse, who is the appellant's designated appeal representative, testified by telephone that the appellant lived in group home for many years, and abused street drugs. She has been on service with the agency since 2014. Despite her mental illness, she has been able to live independently in her own apartment with home SNVs. She attempted suicide in 1992. She is allergic to eleven different medications. In [REDACTED], she was hospitalized on a psychiatric unit with lithium toxicity and drug-induced dyskinesia (Testimony, Exh. 5). Following her psychiatric hospitalization discharge, she requested from MassHealth, and received, an adjustment to her SNVs, in the amount of seven per week. A second MassHealth representative consultant with Optum, also a Registered Nurse, testified that this period of more frequent SNVs was limited to the time frame 7/22/2022 through 8/20/2022 (Testimony).

The first MassHealth representative noted that the appellant's "high risk" medications, such as lithium carbonate, are prescribed at her bedtime. The MassHealth representative asked if these medications are pre-poured for the appellant, since there is no nurse at her home at bedtime.³ In response, the agency nurse stated that the bedtime medications are not prepoured, and that they are administered when the appellant goes to bed between 5 pm and 6 pm daily. The MassHealth representative stated that the agency nurse would need a physician's order to administer bedtime medications at 5 pm (Testimony).

The MassHealth representative stated that a MAV consists of a nurse observing a member take her or his prescribed medications, and reporting back to the prescriber the observed therapeutic effects of these medications, along with any observed adverse effects (Testimony).

The second MassHealth representative testified that a SNV is a targeted nursing visit, typically involving wound care, administration of an IV medication, care of a gastrostomy tube, or educating a patient who has just been released from the hospital on any new medications, such as insulin (Testimony).

The nursing notes submitted with this PA request reflect that the nurses, at each visit, assessed the

³ The plan of care reflects that in addition to lithium carbonate, the following medications are prescribed for the appellant at bedtime: clonazepam; Mirtazapine; and Trileptal (Exh. 3, p. 47).

appellant's emotional status/mood, affect, medication compliance and thought process (Exh. 3, pp. 12-45). Many of the nurses notes reflect that the appellant is forgetful (*Id.*).

The clinical director of the agency testified that the appellant's Invega, injected every 28 days, needs to reach a "therapeutic" level, or the appellant may have a recurrence of her psychotic symptoms. She asserted that the nurses always assess her at every visit for such a recurrence. The clinical director noted that the appellant can quickly decompensate, which is often preceded by a lack of attention to her personal hygiene. She noted that per the MassHealth guidelines, intermittent SNVs are based on a member's needs, and may be appropriate whether the illness or injury is acute, chronic, terminal, or expected to extend over a period of time. She asserted that here, the appellant's mental illness is chronic, and she requires at least one SNV per day. She added that the appellant often refuses to allow her vital signs to be measured by the nurse (Testimony).

The second MassHealth representative testified that if a visiting nurse believes that the appellant is decompensating at a visit, he or she can convert the MAV to a SNV, if needed, as PRN SNV visits were approved for the appellant (Testimony).

Within Exhibit 5, an undated letter from Urrooj Rehman, M.D, a psychiatrist at Bay Ridge Hospital, states as follows:

[The appellant] was hospitalized from [REDACTED]. She should have visiting nursing 14 times per week to ensure her medication compliance.

(Exh. 5, p. 14)

A copy of a plan of care ("485") for the appellant submitted with the instant PA request, for the certification period September 20, 2022 through November 18, 2022, states that the appellant shall receive 14 "SN" per week "for mental, cardiac, respiratory, endocrine status, and/or treatment changes" (Exh. 3, pp. 49-52).⁴

Findings of Fact

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

1. The appellant is under age 65, and lives alone in the community (Testimony).
2. The appellant's primary diagnoses are schizoaffective disorder, type two diabetes, bipolar disorder and COPD (Testimony, Exh. 3).

⁴ Although this plan of care was electronically signed by a Registered Nurse, it does not bear the signature (electronic or otherwise) of the physician (Exh. 3, p. 49).

3. Able Home Care, a home health agency, submitted a PA request to MassHealth on the appellant's behalf on September 29, 2022, seeking fourteen SNVs per week, and two PRN SNVs, for the period October 2, 2022 through December 3, 2022 (*Id.*).
4. By notice dated October 10, 2022, MassHealth modified the PA request and approved one SNV per week and thirteen MAVs per week, plus two PRN SNVs, for the PA period October 2, 2022 through December 3, 2022 (Exh. 1).
5. The appellant filed a timely appeal of this decision with the BOH on October 17, 2022 (Exh. 2).
6. During the pendency of this appeal, the appellant has been receiving one SNV per week and thirteen MAVs per week, slated to continue through March 30, 2023 (Testimony).
7. The appellant is prescribed a number of medications, including clonazepam, Invega, Mirtazapine, Lidocaine patch, lithium carbonate, Trileptal, Cogentin, Propanolol, and Seroquel every six hours as needed for agitation (Testimony, Exh. 3, p. 47).
8. The appellant's Invega, an antipsychotic medication, is administered by intramuscular injection once every twenty-eight (28) days (Testimony, Exh. 3).
9. Per the nurses notes submitted by the agency with this PA request, each nursing visit lasted about 20 minutes (Exh. 3, pp. 12-45).
10. Some of the nurses notes also reflect that the appellant denies visual and auditory hallucinations, thought disturbances, and suicidal or homicidal ideation (*Id.*).
11. In [REDACTED] the appellant was hospitalized on a psychiatric unit with lithium toxicity and drug-induced dyskinesia (Testimony, Exh. 5).
12. Following her psychiatric hospitalization discharge, the appellant requested from MassHealth, and received, an adjustment to her SNVs, in the amount of seven per week; the temporary increase in her SNVs was effective from 7/22/2022 through 8/20/2022 (Testimony).
13. The agency nurse administers the appellant's bedtime medications to the appellant between 5 pm and 6 pm each day (Testimony).
14. The nursing notes submitted with this PA request reflect that the nurses, at each visit, assessed the appellant's emotional status/mood, affect, medication compliance and thought process (Exh. 3, pp. 12-45).
15. Many of the nurses notes submitted by the agency reflect that the appellant is forgetful (*Id.*).

16. The appellant can quickly decompensate, which is often preceded by a lack of attention to her personal hygiene (Testimony).
17. A copy of a plan of care (“485”) for the appellant submitted with the instant PA request, for the certification period September 20, 2022 through November 18, 2022, states that the appellant shall receive 14 “SN” per week “for mental, cardiac, respiratory, endocrine status, and/or treatment changes” (Exh. 3, pp. 49-52).
18. An undated letter from Urrooj Rehman, M.D, a psychiatrist at Bay Ridge Hospital, states as follows: “[The appellant] was hospitalized from [REDACTED]. She should have visiting nursing 14 times per week to ensure her medication compliance” (Exh. 5, p. 14).

Analysis and Conclusions of Law

MassHealth will pay a provider only for those for services that are medically necessary. Pursuant to 130 CMR 450.204(A), a service is 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 MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider, or identified by MassHealth 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 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 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.

At issue in this appeal is the allocation of SNVs and MAVs for the appellant for the time frame October 9, 2022 through December 3, 2022. The agency requested 14 SNVs, or twice-daily visits, on the appellant’s behalf. MassHealth instead authorized one SNV and thirteen MAVs per week.

The agency argues that the appellant’s physician ordered the appellant to receive fourteen “SNs” per week, per the plan of care for the period September 20, 2022 through November 18, 2022. However, the MassHealth Guidelines for Medical Necessity Determination for Home Health Services reflect the following at Section 2(3)(c):

A medication administration visit is a skilled nursing visit solely for the purpose of administering (*sic*) medications (other than intravenous medication or infusion administrations). . . .

Therefore, I conclude that a MAV is a type of skilled nursing visit.

There is no dispute that the appellant has chronic and serious mental health conditions. These require her to strictly comply with her ordered medication regimen. There is also no dispute that she is forgetful, decompensates quickly, and is at risk for hospitalization.

Based on the fact that a representative sample of nurses notes submitted with the instant PA request reflect that nearly all visits with the appellant were 20 minutes in length, I conclude that thirteen MAVs per week for the appellant are medically necessary to assess her medication compliance, mental status, and to note any signs of decompensation. In addition, MAVs may include time spent educating the appellant about the possible side effects of her medications, and of the consequences of skipping any doses of her medications.

In addition, I conclude that one SNV per week is medically necessary for the appellant, as well as two PRN SNVs for the relevant time period.

Should the appellant's condition deteriorate, or should new medications be prescribed by her physician and/or psychiatrist, the agency may, on the appellant's behalf, request an increase in weekly SNVs for the appellant from MassHealth.

For all of these reasons, this appeal is DENIED.

Order for MassHealth

Discontinue aid pending. For the PA period October 2, 2022 through December 3, 2022, authorize the appellant to receive thirteen MAVs and one SNV per week, and two PRN SNVs for the PA 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.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Optum appeals coordinator