

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision: Approved in part,
 Denied in part

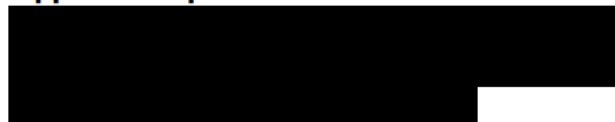
Appeal Number: 2207760

Decision Date: 12/5/2022

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:	Approved in part, Denied in part	Issue:	Prior Authorization, HHS
Decision Date:	12/5/2022	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 7, 2022, MassHealth modified the appellant's prior authorization (PA) request for five home skilled nursing visits (SNVs) per week, and four as-needed (PRN) SNVs for the time period October 9, 2022 through February 18, 2023, to one SNV and three medication administration visits (MAVs) per week for the period October 9, 2022 through January 18, 2023 (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 three MAVs per week.

¹ During the pendency of this appeal, the appellant has had "aid pending" in the amount of one SNV, and four MAVs, per week through April 6, 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 August, 2020. Able Home Care, a home health agency (hereinafter, "the agency"), submitted a PA request to MassHealth on the appellant's behalf on September 28, 2022, seeking five SNVs per week, and four as-needed (PRN) SNVs, for the time period October 9, 2022 through February 18, 2023 (Exh. 3). By notice dated October 7, 2022, MassHealth modified the PA request and approved one SNV per week, and three MAVs per week, plus four PRN SNVs for the PA period October 9, 2022 through January 18, 2023 (Exh. 1).² 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 bipolar disorder, adjustment disorder, suicidal ideation, a history of self-injurious behavior, asthma, post-traumatic stress disorder (PTSD), a history of opioid abuse, gastroesophageal reflux disease (GERD), and a history of migraines (Testimony, Exh. 3). She is prescribed a number of medications, including Celexa, Gabapentin, Nuvigil, Klonopin (both scheduled and PRN), Albuterol inhalers, and Protonix. She attends meetings of Narcotics Anonymous (NA) and Alcoholics Anonymous (AA). She currently receives one SNV per week and four MAVs per week; each nursing visit lasts about 20 minutes, and usually occurs in the morning. Nurses notes reflect that the appellant has been compliant in taking her prescribed medications, except on one recent occasion, when she missed a nighttime medication. According to the MassHealth representative, there was no documented exacerbation of the appellant's medical condition as a result of this omission. At times, the appellant has refused to have her vital signs taken by the nurse. The visiting nurse does not see the appellant on weekends, and pre-pours the appellant's weekend medications and places them in a medication lockbox on Fridays (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 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

² It is not clear why MassHealth modified the requested end date of the PA request.

(Testimony, Exh. 3, pp. 41-42). SNVs are defined in the guidelines as visits needed when 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 three MAVs, per week.

The agency's nurse educator testified by telephone, and pointed out that the guidelines state that SNVs (as opposed to MAVs) are indicated when an evaluation of nursing care needs is needed, regardless of whether the member's condition is acute, chronic, terminal or expected to extend over a period of time. Here, according to the nurse educator, the appellant has chronic mental health conditions, and the visiting nurse does more than administer the appellant's medications at each visit. She testified that the nurse does a mental health assessment of the appellant at each visit, including whether the appellant is more depressed or disheveled, and whether the appellant has engaged in self-injurious behavior. The nurse also assesses the appellant's response to her psychotropic medications. In addition, the nurse advises the appellant on possible side effects of her ordered medications (Testimony).

The nurse educator testified that MassHealth had authorized all SNVs for the appellant until the end of 2021, and added that the appellant had an inpatient psychiatric hospitalization in the summer of 2021. She has not had any psychiatric or medical inpatient hospital admissions since the summer of 2021. In the summer of 2022, the appellant had a number of medication changes, including an increase in her dosage of Celexa, and a new order for her weight to be measured each week; however, the hearing officer pointed out that these new orders should have been included with the documentation submitted with the current PA request in September, 2022 (Testimony).

The nurse educator testified that although MassHealth has not authorized the requested five SNVs per week for the appellant, the agency has continued to provide those in order to keep the appellant stable. As such, the agency would like to be reimbursed for those SNVs. She pointed out that in the physician plan of care dated August 4, 2022 (Exh. 3, pp. 30-33), the physician ordered five SNVs, and not five MAVs, per week (Testimony).

The plan of care submitted by the agency with this request ("485") signed by the appellant's physician notes that the appellant is "forgetful, [has] impaired judgment, and [has] poor insight" (Exh. 3, p. 13).

The nurses notes submitted by the agency reflect assessments made by the nurse of the appellant's emotional status, affect, behavior, and thought processes (Exh. 3, pp. 16-22).

A second MassHealth representative, also a Registered Nurse consultant with Optum, testified that many MassHealth members have chronic mental health conditions, but this does not mean that all of their bodily systems need to be assessed at each nursing visit. Also, MAVs by definition include assessing a member's response to her or his prescribed medications, as well as patient-teaching regarding medication side effects (Testimony).

The first MassHealth representative testified that if the appellant has an acute change in her condition, the agency is free to request an increase in her weekly SNVs from MassHealth on a short-term basis. In addition, MassHealth has authorized 4 PRN SNVs over the relevant PA period if the appellant needs them (Testimony).

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 bipolar disorder, adjustment disorder, suicidal ideation, a history of self-injurious behavior, asthma, PTSD, a history of opioid abuse, GERD, and a history of migraines (Testimony, Exh. 3).
3. Able Home Care, a home health agency, submitted a PA request to MassHealth on the appellant's behalf on September 28, 2022, seeking five SNVs per week, and four as-needed (PRN) SNVs, for the time period October 9, 2022 through February 18, 2023 (Exh. 3).
4. By notice dated October 7, 2022, MassHealth modified the PA request and approved one SNV per week, and three MAVs per week, plus four PRN SNVs for the PA period October 9, 2022 through January 18, 2023 (Exh. 1).
5. The appellant filed a timely appeal of this decision with the BOH on October 17, 2022 (Exh. 2).
6. The appellant has been receiving home health services since August, 2020 (Testimony).
7. During the pendency of this appeal, the appellant has been receiving one SNV per week and four MAVs per week; each nursing visit lasts about 20 minutes (Testimony, Exh. 3).
8. The nurses notes submitted by the agency reflect assessments made by the nurse of the appellant's emotional status, affect, behavior, and thought processes (Exh. 3, pp. 16-22).
9. The appellant is prescribed a number of medications, including Celexa, Gabapentin, Nuvigil, Klonopin (both scheduled and PRN), Albuterol inhalers, and Protonix (*Id.*).
10. Although the agency has not been authorized by MassHealth to provide five SNVs per week to the appellant, it has been doing so continuously since 2020 (Testimony).
11. Nurses notes reflect that the appellant has been compliant in taking her prescribed medications, except on one recent occasion, when she missed a nighttime medication (Testimony, Exh. 3).

12. There was no documentation of an exacerbation of the appellant's condition as a result of her missing her nighttime medication on one occasion (Testimony).
13. The plan of care submitted by the agency with this request ("485") signed by the appellant's physician notes that the appellant is "forgetful, [has] impaired judgment, and [has] poor insight" (Exh. 3, p. 13).
14. The visiting nurse does not see the appellant on weekends, and pre-pours the appellant's weekend medications and places them in a medication lockbox on Fridays (Testimony, Exh. 3).
15. At each visit, the agency nurse does a mental health assessment of the appellant, including whether the appellant is more depressed or disheveled, and whether the appellant has engaged in self-injurious behavior (Testimony).
16. At each visit, the agency nurse teaches the appellant about the possible side effects of her medications (Testimony).
17. At each visit, the agency nurse also assesses the appellant's response to her psychotropic medications (Testimony).
18. On some occasions, the appellant refuses to allow the nurse to measure her vital signs (Testimony).
19. In the physician plan of care dated August 4, 2022 the physician ordered five SNVs per week (Exh. 3, pp. 30-33).
20. The appellant has not had any inpatient hospitalizations for medical or psychiatric conditions since the summer of 2021 (Testimony).

Analysis and Conclusions of Law

MassHealth will pay a provider only for those 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 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.

Here, the appellant has received home visits from an agency nurse since 2020. At issue in this appeal is the allocation of SNVs and MAVs for the appellant for the time frame October 9, 2022 through January 18, 2022. The agency noted that it has continued to provide five SNVs per week to the appellant, although MassHealth has authorized only one SNV per week and three MAVs per week. MassHealth also authorized four as-needed SNVs for the appellant during the prior authorization period.

The agency argues that the appellant’s physician has ordered the appellant to receive five SNVs per

week, per the August, 2022 plan of care. This is true; 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 mental health conditions, is forgetful and has impaired judgment and poor insight. In view of these facts, home nursing visits are medically necessary for her. The question is whether she requires five SNVs per week, or fewer visits, to include MAVs rather than SNVs.

Based on the fact that a representative sample of nurses notes submitted with the instant PA request reflect that all visits with the appellant were 20 minutes in length, I conclude that four MAVs per week for the appellant are medically necessary to assess her medication compliance, mental status, and response to her prescribed medications. 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 four PRN SNVs over the PA period at issue.

To the extent that MassHealth has authorized only three MAVs per week, rather than four, this appeal is APPROVED IN PART.

To the extent that the appellant seeks MassHealth authorization for five SNVs per week, this appeal is DENIED IN PART.

Order for MassHealth

Rescind notice of October 7, 2022. Discontinue aid pending. Effective October 9, 2022 through January 18, 2023, authorize the appellant for one SNV per week, four MAVs per week, and four 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.

Implementation of this Decision

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.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Optum appeals coordinator