

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2207980

**Decision Date:** 1/11/2023

**Hearing Date:** 12/06/2022

**Hearing Officer:** Patrick Grogan

**Record Open to:** N/A

**Appearance for Appellant:**



**Appearance for MassHealth:**

Jocelyn Alexandre, R.N

**Interpreter:**

N/A



*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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Preapproval - Skilled Nursing Visits, Medication Administration Visits
<b>Decision Date:</b>	1/11/2023	<b>Hearing Date:</b>	12/06/2022
<b>MassHealth's Rep.:</b>	Jocelyn Alexandre	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Remote (Tel)	<b>Aid Pending:</b>	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 5, 2022, MassHealth modified the appellant's application for MassHealth benefits because MassHealth determined that clinical documentation submitted on the Appellant's behalf did not demonstrate that the Appellant required all the services/treatment requested. (130 CMR 450.204(A)(1) and Exhibit 1, p. 2). The Appellant filed this appeal in a timely manner on October 25, 2022. (130 CMR 610.015(B) and Exhibit 2). Individual MassHealth Agency determinations regarding scope and amount of assistance are valid grounds for appeal (130 CMR 610.032(A)(5)).

## Action Taken by MassHealth

MassHealth modified the Appellant's request for Home Health Services. Specifically, MassHealth modified the Appellant's request to 1 skilled nurse visit per week, 13 medication administration visits per week with 3 PRN (assistance with as-necessary medication) skilled nurse visits.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.204(A)(1), in modifying the Home Health Services to 1 skilled nurse visit per week, 13 medication administration visits per week with 3 PRN (assistance with as-necessary medication) skilled nurse visits.

## Summary of Evidence

The Appellant is a MassHealth member who is currently receiving Home Health Services. The Appellant's primary diagnoses include Type 2 Diabetes with diabetic chronic kidney disease (Ex. 6, p. 12). Other significant diagnoses include hypertensive chronic kidney disease, heart failure, major depressive disorder, anxiety disorder, fibromyalgia as well as other diagnoses. (Ex. 6, p. 12). The Appellant applied for Home Health Services in July of 2022. (Testimony). The Appellant began receiving 7 skilled nurse visits and 7 medication administration visits per week from August 11, 2022, through October 1, 2022. On October 5, 2022, MassHealth sent the Appellant notification that it had modified her Home Health Services to 1 skilled nurse visit and 13 medication administration visits per week. (Testimony, Exhibit 1) In addition, MassHealth provides 3 PRN (assistance with as-necessary medication) skilled nurse visits. (Testimony, Exhibit 1). The Appellant timely appealed MassHealth's modification. The Appellant's request for aid pending was denied on account of the request being submitted beyond the time frames required by the Regulations. (Exhibit 5).

MassHealth stated that the modification was in conjunction with practice standards as outlined in the Regulations and the Guidelines. (Testimony) Additionally, the MassHealth representative stated that the Appellant currently exhibited stability and medication compliance, including stable blood sugar levels. (Testimony). MassHealth explained this was supported in the evidence presented throughout the Skilled Nurse Visit Notes, including a Telehealth visit in September of this year. (Testimony, Exhibit 6, p.17-52, 31-33) MassHealth concluded that at this time, additional skilled nurse visits were not required in place of the medication administration visits. (Testimony).

At hearing, the Appellant's Authorized Representative stated they were seeking restatement of the initial 7 skilled nurse visits as well as 7 medication administration visits. (Testimony) The Appellant's Authorized Representative outlined concerns related to the stability of the Appellant and her medication regimen based upon her multiple mental health and physical diagnoses. (Testimony). Additionally, the Appellant's Authorized Representative highlighted that although the Appellant was trying, she often exhibited signs of confusion and impaired judgment. (Testimony, Exhibit 6, 17-52). The Appellant's Authorized Representative's concern sought to mitigate potential future issues related to any progression of the Appellant's disease. (Testimony). This concern included adverse reactions to the medication regimen demonstrated by any psychical/psychological changes that may be observed during skilled nurse visits and may be missed with medication administration visits. (Testimony)

MassHealth further testified that MassHealth does not allocate anticipatory services. (Testimony). MassHealth stated that that as required by the Guidelines, a medication administration

visit requires not only medication administration of the medication but additional documentation of that administration, observing for medication effects both therapeutic and adverse, and reporting adverse effects to the ordering practitioner. (Testimony, Exhibit 6, p. 62).

## **Findings of Fact**

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

1. The Appellant is a MassHealth member who has had her request for Home Health Services modified. (Exhibit 1)
2. The Appellant's primary diagnoses include Type 2 Diabetes with diabetic chronic kidney disease (Ex. 6, p. 12).
3. Other significant diagnoses include hypertensive chronic kidney disease, heart failure, major depressive disorder, anxiety disorder, fibromyalgia as well as other diagnoses. (Ex. 6, p. 12).
4. The Appellant applied for Home Health Services in July of 2022. (Testimony).
5. On October 5, 2022, MassHealth sent the Appellant notification that it had modified her Home Health Services. (Testimony, Exhibit 1)
6. The modification reduced visits to the Appellant to 1 skilled nurse visit and 13 medication administration visits per week as well as 3 PRN (assistance with as-necessary medication) skilled nurse visits. (Exhibit 1)
7. The modification reduced visits to the Appellant to 1 skilled nurse visit and 13 medication administration visits per week as well as 3 PRN (assistance with as-necessary medication) skilled nurse visits. (Exhibit 1)
8. The Appellant timely appealed on October 25, 2022. (Exhibit 2)
9. Aid Pending was denied. (Exhibit 5)
10. MassHealth testified that the MassHealth decision is based upon the Regulations and the Guidelines. (Testimony)
11. The Appellant's Authorized Representative testified of the concerns how the Appellant's disease process may impact her current stability and medication compliance. (Testimony)
12. The Appellant has been receiving 1 skilled nurse visit, and 13 medication administration visits per week since October, 2022. (Testimony)

## **Analysis and Conclusions of Law**

The subject of the instant appeal is governed by the medical necessity determination for services as codified within 130 CMR 450.204 (Exhibit 6, p. 58):

**450.204: MEDICAL NECESSITY**

The MassHealth agency does not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

- (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 the MassHealth agency. Services that are less costly to the MassHealth agency include, but are not limited to, health care reasonably known by the provider, or identified by the MassHealth agency pursuant to a prior-authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007: Potential Sources of Health Care, or 517.007: Utilization of Potential Benefits.
- (B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to the MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)
- (C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.
- (D) Additional requirements about the medical necessity of MassHealth services are contained in other MassHealth regulations and medical necessity and coverage guidelines.
- (E) Any regulatory or contractual exclusion from payment of experimental or unproven services refers to any service for which there is insufficient authoritative evidence that such service is reasonably calculated to have the effect described in 130 CMR 450.204(A)(1).

Pursuant to 450.204 (B) and (C), medically necessary services must meet professionally recognized standards of health care, and additional requirements and information may be found in the coverage guidelines. The Guidelines for Medical Necessity Determination for Home Health Services (Exhibit 6, p.59-70) explicitly describes the clinical information utilized by MassHealth to determine medical necessity based upon accepted standards of practice as well as governing laws,

regulations and medical literature. The clinical guidelines are found in Section 2(A) of the Guidelines for Medical Necessity Determination. Regarding the subject of this appeal, medication administration may be found in Section 2(A)(3)(c):

**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 applies:

- 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 regimen 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.

At hearing, the Appellant's Authorized Representative stated they were seeking 7 skilled nurse visits as well as 7 medication administration visits. (Testimony) The Appellant's Authorized Representative outlined concerns related to the stability of the Appellant in regards to her multiple mental health and physical diagnoses. (Testimony). Additionally, the Appellant's Authorized Representative highlighted that although the Appellant was trying, she often exhibited signs of confusion and impaired judgment. (Testimony, Exhibit 6, 17-52). The Appellant's Authorized Representative's concern sought to mitigate potential future issues related to the Appellant's disease process. (Testimony). This concern included adverse reactions to the medication regimen with any psychical/psychological changes that may be observed during skilled nurse visits and may be missed with medication administration visits. (Testimony)

The MassHealth representative stated that MassHealth does not approve services for anticipatory care, and that an expedited hearing for modification may always be sought if a change occurs which meets the criteria outlined in the regulations and the guidelines. (Testimony). The MassHealth representative stated that as required by the Guidelines, a medication administration visit requires not only medication administration of the medication but additional documentation of that administration, observing for medication effects both therapeutic and adverse, and reporting adverse effects to the ordering practitioner. (Testimony, Guidelines for Medical Necessity Determination 2(A)(3)(c)(ii)). Additionally, the MassHealth representative stated that medication compliance, including stable blood sugar levels, was supported in the evidence presented throughout the Skilled Nurse Visit Notes, including a Telehealth visit in September of this year. (Testimony, Exhibit 6, p.17-52, 31-33) MassHealth concluded that at this time, additional skilled nurse visits were not required in place of the medication administration visits. (Testimony).

The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228. See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998). In reviewing the evidence and the testimony presented at hearing, I find MassHealth's testimony convincing. The Regulations, in conjunction with the Guidelines for Medical Necessity Determination do not allocate resources for anticipatory care. This record contains evidence of demonstrated current stability with the Appellant's medication regimen, and the Guidelines require a medication administration visit to include observation and report of reactions, both positive and

negative, to the Appellant's practitioner. (Guidelines for Medical Necessity Determination 2(A)(3)(c)(ii)). Additionally, the Guidelines require a member receiving medication administration visits to also receive at a minimum, at least 1 skilled nurse visit every 60 days. (Guidelines for Medical Necessity Determination 2(A)(3)(c)(iii)) Here, the Appellant currently receives 1 skilled nurse visit each week. Moreover, the Appellant received 7 skilled nurse visits and 7 medication administration visits from August 11, 2022, through October 1, 2022. (Testimony) Since October 1, 2022, the Appellant has received 1 skilled nurse visit per week, 13 medication administration visits per week with 3 PRN (assistance with as-necessary medication) skilled nurse visits available. (Testimony). This record demonstrates compliance and stability with the current Home Health Service throughout October, November, and the beginning of December when this record closed. (Testimony of MassHealth, Exhibit 6, p.17-52, 31-33) This evidence of current stability, coupled with analysis of the MassHealth Regulations and the Guidelines for Medical Necessity Determination for Home Health Services support MassHealth's modification determination. The Appellant has not met her burden, by a preponderance of evidence, that MassHealth's modification was in error. Therefore, the Appellant's appeal of MassHealth's modification is DENIED.

## **Order for MassHealth**

None.

## **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 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.



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Patrick Grogan  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Jocelyn Alexandre, R.N., Optum MassHealth LTSS, P.O. Box 159108, Boston, MA 02215

[REDACTED]