

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2208007
Decision Date:	3/1/2023	Hearing Date:	02/15/2023
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:



Appearance for MassHealth:

Lisa Russell



*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:	Prior Authorization
Decision Date:	3/1/2023	Hearing Date:	02/15/2023
MassHealth's Rep.:	Lisa Russell	Appellant's Rep.:	[REDACTED]
Hearing Location:	All Parties Appeared by Telephone	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 27, 2022, MassHealth modified the appellant's prior authorization request for Home Health Services. (Exhibit 1; 130 CMR 450.204; 130 CMR 403.410). The appellant filed this appeal in a timely manner on October 25, 2022. (130 CMR 610.015(B); Exhibit 2).

Through a notice dated November 9, 2022, the Board of Hearings scheduled a hearing for December 9, 2022. (Exhibit 3). At hearing, it was noted that the appellant contacted Health Law Advocates to obtain legal representation in late November 2022. Prior to the December 2022 hearing date, the appellant contacted the Board of Hearings with a request to reschedule due to the possibility of obtaining legal representation. The Director of the Board of Hearings determined the appellant demonstrated good cause to reschedule the hearing. On December 13, 2022, the Board of Hearings issued a notice scheduling a hearing for January 13, 2023. (Exhibit 4). On January 9, 2023, the Board of Hearings received correspondence from counsel present at hearing seeking good cause to reschedule the hearing for a second time. (Exhibit 5).

In this second request to reschedule, counsel noted that they had good cause to reschedule based on factors noted in 130 CMR 610.048(D)(2). The regulations at 130 CMR 610.048 (D)(2) state:

In evaluating a party's good cause claim, the hearing officer shall consider the following factors:

- a. the amount of time during which the party had advance notice of the hearing;
- b. the party's ability to anticipate the circumstances that resulted in his or her inability to appear for the hearing;
- c. the party's ability to reschedule the conflicting event;
- d. delay by the party in notifying BOH of his or her inability to attend the hearing; and
- e. previous rescheduling requests or failure to appear for scheduled hearings that indicate a pattern of noncompliance with the fair hearing rules. (130 CMR 610.048(D)(2)).

The Director reviewed request to reschedule and determined that a good cause hearing was necessary. (Exhibit 6).

At the good cause hearing, the appellant's attorney stated that despite the organization receiving an inquiry regarding a request for representation in November 2022, they did not take action to move forward with representing the appellant until January 2023. Counsel for the appellant noted that they did not have an attorney to assign to the case at the time of the initial contact. It appears that this was not communicated to the appellant in a manner that would allow her to seek other representation. As the appellant had notice of the hearing and took appropriate action, she could not have anticipated that the organization who considered representation would not take swift or appropriate action. The appellant should not be penalized for the inaction of the organization. Therefore, the appellant demonstrated good cause to reschedule the hearing.

The organization should be aware of the possible consequences their client could have suffered due to their inaction. If the organization did not have resources available to assist the appellant at the time of the request, as stated at hearing, they should have effectively communicated this with the appellant and provided her with appropriate guidance toward getting other representation in a timely manner. Delaying this action for more than one month does not seem fair or appropriate for the member.

As the appellant demonstrated good cause to reschedule, the hearing moved to the merits. A decision regarding the scope or amount of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for Home Health Services.

Issue

Whether MassHealth was correct in modifying the appellant's prior authorization request for Home Health Services.

Summary of Evidence

All parties appeared by telephone. Documents presented by MassHealth were incorporated into the hearing record as Exhibit 7. Documents presented by the appellant were incorporated into the hearing record as Exhibit 8. The appellant has a primary diagnosis of major depressive disorder and secondary diagnoses of chronic osteomyelitis, anxiety, insomnia, chronic pain, iron deficiency and viral Hepatitis C.

The appellant's Home Health Service provider, Home Care VNA, LLC, submitted a prior authorization request for seven Skilled Nursing Visits (SNV) each week and three SNV as needed. MassHealth modified this request and approved one SNV each week, three Medication Administration Visits (MAV) each week and three skilled nursing visits as needed. (Testimony; Exhibit 7). The appellant has received nursing visits since [REDACTED] 2021. On [REDACTED] 2022, the appellant was discharged from nursing services as she left on a trip to Puerto Rico. The appellant was away from [REDACTED] 2022 to [REDACTED] 2022. Prior to the trip to Puerto Rico, a nurse dispensed medication for the appellant to take on the trip. The appellant did not receive nursing services during her stay in Puerto Rico. Upon her return to Massachusetts in [REDACTED] 2022, the appellant submitted a prior authorization request for nursing services. (Testimony; Exhibit 7).

The MassHealth representative testified that the records presented do not show a history of noncompliance in taking pre-poured medications, no records of decompensation, hospitalizations or acute changes. MassHealth made the modifications due to the appellant's compliance in taking pre-poured medications and a positive medical history. (Testimony; Exhibit 5). The MassHealth representative testified that the appellant is authorized 3 SNV as needed (PRN)

during the authorization period which can be utilized if the appellant begins to show decompensation or noncompliance.

The appellant's representative testified that the appellant requires skilled nursing visits 7 days each week for medication management. Medical records presented by counsel for the appellant were duplicative of those presented by MassHealth. (Exhibit 7; Exhibit 8). Counsel presented an affidavit from the appellant and one from a care coordinator from a private organization that provides services to elders and individuals with disabilities. The appellant's affidavit states that she is unable to manage and administer medications on her own. The appellant states that she is unable to remember what medications to take and when she should take them. The appellant states that she is unable to learn how to administer medications on her own. The appellant acknowledges receipt of PCA services but does not believe that the PCA can assist with the medications because there is a fear of giving the appellant an incorrect dosage. The appellant states that language barriers also prevent her from dispensing medications correctly. The appellant states that if she does not receive skilled nursing services, she will be unsafe and very anxious.

The affidavit from the representative from the private organization states that she has been working with the appellant since 2017. The individual assists the appellant in coordinating health care, housing and transportation. The individual accompanies the appellant to appointments and communicates with multiple providers to coordinate care. The individual states that the appellant has multiple, significant, chronic physical and emotional problems and deals with a variety of difficult family, financial and social issues daily. The individual notes that the appellant has many medications and without daily medication management visits from a nurse, the appellant is in danger of taking medications incorrectly and risking trouble ranging from ineffective results to overdose. The individual states that the nurse provides valuable monitoring of the appellant's day to day health both formally and informally.

At hearing, counsel for the appellant acknowledged that the appellant went to Puerto Rico and did not receive assistance from a nurse in taking medications during that period. Medications were prepared by a nurse prior to the appellant's departure and the appellant was able to take the medications without the assistance of a nurse. The appellant did mention a hospitalization due to medication mismanagement but could not recall the date of that and acknowledged that it occurred prior to the trip to Puerto Rico and there were not hospitalizations or issues with medication management on the trip. It was noted at hearing that the appellant has been receiving 1 skilled nursing visit and 3 medication administration visits each week since her return from Puerto Rico in

██████████ 2022. The appellant has not had any decline in her condition or hospitalizations during that time. The appellant testified that she receives additional services as needed and her personal care attendant reminds her when to take the medications and provides some assistance in taking the medications.

Findings of Fact

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

1. The appellant has a primary diagnosis of major depressive disorder and secondary diagnoses of chronic osteomyelitis, anxiety, insomnia, chronic pain, iron deficiency and viral Hepatitis C.
2. Home Care VNA, LLC, submitted a prior authorization request for seven Skilled Nursing Visits (SNV) each week and three SNV as needed.
3. MassHealth approved one SNV each week, three Medication Administration Visits (MAV) each week and three skilled nursing visits as needed.
4. The appellant has a personal care attendant.
5. The appellant has received nursing visits since ██████████ 2021.
6. On ██████████ 2022, the appellant was discharged from nursing services as she left on a trip to Puerto Rico.
7. The appellant was in Puerto Rico from ██████████ 2022 to ██████████ 2022.
8. Prior to the trip to Puerto Rico, a nurse prepared medications for the appellant to take on the trip.
9. While in Puerto Rico, the appellant was able to take medications without the assistance of a nurse.
10. During the period in Puerto Rico and upon return, the appellant did not show signs of decompensation, acute changes, a history of noncompliance or hospitalization.

Analysis and Conclusions of Law

MassHealth pays for the following Home Health Services for eligible members, subject to the restrictions and limitations described in 130 CMR 403.000 and 450.000:

- (A) Nursing;
- (B) Home Health Aide; and
- (C) Physical, Occupational, and Speech/Language Therapy.

Without prior authorization, MassHealth will not pay providers for certain Home Health Services. (130 CMR 403.410(A)(1)). Prior authorization determines only the medical necessity of the authorized service. (130 CMR 403.410(A)(2)). Prior authorization for any and all home health skilled nursing services is required whenever the services provided exceed one or more of the following PA requirements:

- (a) more than 30 intermittent skilled nursing visits in a 90 day period;
- (b) more than 240 home health aide units in a 90 day period; or
- (c) more than 30 medication administration visits in a 90 day period

The appellant's request for more than 30 medication administration visits in a 90 period required prior authorization. (130 CMR 403.410(B)(5)).

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.

The need for nursing services also has to meet the following 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.

The parties did not dispute the need or overall necessity for nursing services, only the number of Skilled Nursing Visits.

The regulations governing MassHealth define a service as "medically necessary" if 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. (130 CMR 450.204(A)). Medically necessary services must be substantiated by records including evidence of such medical necessity and quality. (130 CMR 450.204(B)). A provider must make those records available to MassHealth upon request. (130 CMR 450.204(B)).

While the records presented by both parties demonstrate that the appellant requires nursing services, neither party presented records clearly indicating that skilled nursing services are necessary 7 days each week. The physician orders state that the appellant requires nursing and home health services but does not clearly indicate the number or type of visits. The records and testimony presented by both parties demonstrate that most visits meet the definition of a medication administration visit as they are primarily to administer and pre-pour medications for the appellant. While the appellant's ability to travel without direct nursing interventions does not demonstrate that she does not require nursing services, it does demonstrate that the appellant is able to take medications at times without a skilled nursing intervention.

The decision made by MassHealth was correct.

This appeal 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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

cc:

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

A large black rectangular redaction box covering the contact information for the MassHealth Representative.