

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



|                         |                                     |                       |           |
|-------------------------|-------------------------------------|-----------------------|-----------|
| <b>Appeal Decision:</b> | Approved in part;<br>denied in part | <b>Appeal Number:</b> | 2208259   |
| <b>Decision Date:</b>   | 1/25/2023                           | <b>Hearing Date:</b>  | 12/7/2022 |
| <b>Hearing Officer:</b> | Cynthia Kopka                       |                       |           |

**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

|                           |                                     |                          |                      |
|---------------------------|-------------------------------------|--------------------------|----------------------|
| <b>Appeal Decision:</b>   | Approved in part;<br>denied in part | <b>Issue:</b>            | Home health services |
| <b>Decision Date:</b>     | 1/25/2023                           | <b>Hearing Date:</b>     | 12/7/2022            |
| <b>MassHealth's Rep.:</b> | Lisa Russell, RN                    | <b>Appellant's Rep.:</b> | [REDACTED]           |
| <b>Hearing Location:</b>  | Quincy (remote)                     | <b>Aid Pending:</b>      | Yes                  |

## Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

## Jurisdiction

By notice dated October 25, 2022, MassHealth modified Appellant's request for prior approval of home health services. Exhibit 1. Appellant filed this appeal in a timely manner on November 3, 2022. Exhibit 2. 130 CMR 610.015(B), 130 CMR 403.411(B). Denial and/or modification of assistance are valid bases for appeal. 130 CMR 610.032. Appellant was entitled to retain her previous level of benefits pending the outcome of the hearing. 130 CMR 610.036.

## Action Taken by MassHealth

MassHealth modified Appellant's request for prior approval of home health services.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 403.415-416 and 450.204, in modifying Appellant's prior authorization request for home health services.

## Summary of Evidence

A registered nurse and clinical appeals reviewer represented MassHealth at hearing by phone and submitted records in support. Exhibit 4. Appellant's representatives appeared by phone and submitted a doctor's letter in support. Exhibit 5. A summary of testimony and documents follows.

On October 25, 2022, Appellant's home health care agency (HHA) submitted to MassHealth a prior authorization (PA) request for 11 skilled nursing visits (SNV) per week. On October 25, 2022, MassHealth determined based on the records submitted that Appellant did not establish medical necessity of the services required. MassHealth approved 1 SNV and 10 medication administration visits (MAV) per week for dates of service October 27, 2022 through December 31, 2022. Exhibit 1. Appellant was entitled to receive her previous level of benefits pending the outcome of the hearing per 130 CMR 610.036, which was 5 SNV and 6 MAV per week, until April 27, 2023. MassHealth noted that this was the result of an approved increase from 1 SNV and 10 MAV after a change in several of Appellant's medications.

Appellant's start of care date with her HHA was [REDACTED] 2021. Exhibit 4 at 12. Appellant is a female in her [REDACTED] with diagnoses including general anxiety disorder, major depressive disorder, type 2 diabetes, hypertension, heart disease, asthma, vitamin B12 deficiency, foot pain, dry skin, human immunodeficiency virus (HIV) disease, gastroesophageal reflux disease (GERD), migraines, and insomnia. Appellant also has nicotine and cannabis use, longtime use of hypoglycemic medication and inhaled steroids, a history of medication noncompliance, and a history of falls. *Id.* Per nursing notes dated October 12-18, 2022, all Appellant's vital signs have been stable and within set parameters. *Id.* at 13, 17-47. Appellant's doctor gave an oral order to start Trulicity to improve elevated blood sugar readings on October 10, 2022. *Id.* at 63. The MassHealth representative testified that Appellant's blood sugar was improved after starting Trulicity. Appellant had no decompensation, such as visits to hospital ER or urgent care. On October 12, 2022, Appellant missed medications but did not have adverse effects. Appellant's mental status was at baseline. All visits were completed in 20 minutes.

The MassHealth representative testified that an SNV is necessary to provide a targeted skilled nursing assessment for a specific medical need nor discrete procedure or treatment. SNV are meant to be short term at occurring at irregular intervals, not continuous or steady. The MassHealth representative provided examples of a targeted skill assessment contemplated by the regulations, including intravenous (IV) infusion, wound care, evaluations at the start of care or resumption of care, and signs and symptoms of an initial phase of a new treatment regimen. The standards of care for an MAV dictate that a nurse must ensure that medications are safe (e.g. not expired, stored at the correct temperature, and are not on the allergy list); assess and speak to the patient to ensure there were no adverse effects from previous medications; take vital signs or blood sugars if applicable; ensure the correct medication is administered per written doctor's orders, including correct dose and time of day; report any issues that arise to the doctor; and perform teaching of the medication.

Appellant's representatives testified that Appellant is very sick and requires 26 medications. A doctor's note dated November 3, 2022 requested 14 visits per week for "med compliance." Exhibit 5. Appellant's representatives testified that Appellant requires a complete assessment at each visit that goes beyond the definition of an MAV. At each visit, nurses assess every system including heart, lungs, gastrointestinal tract, urinary pain, and mental status.

On October 12, 2022, Appellant forgot to take a pre-poured medication because she did not have an SNV. Exhibit 4 at 18. On October 13, 2022, Appellant's blood sugar was 266 when her goal is

between 80-150. *Id.* at 21. The note reads that Appellant verbalized understanding but continued to make poor food choices, and was dismissive of teaching on taking Zofran for nausea. *Id.* Assessments from the afternoon visit on October 13, 2022 showed that Appellant had nausea, was lethargic, confused, forgetful, depressed, labile, and anxious. *Id.* at 23. Appellant also had thought processes that were disorganized, confused, with impaired concentration and impaired judgment. *Id.* Appellant's representatives pointed to nursing notes showing that Appellant is noncompliant with diet and has instable blood sugars. *Id.* at 30, 35, 51, 54. Appellant was also dismissive of medical teaching including addressing thumb pain, Trulicity, and Covid testing. *Id.* at 40, 48. Appellants' representatives emphasized the time and effort the nurses put into the assessments of the patient and teaching done at each visit, which is a skill.

The MassHealth representative agreed that Appellant has a complicated history, but argued that an SNV is not medically necessary at every visit. MAVs include assessment and teaching at each visit. Intermittent SNV is a higher level visit for a head-to-toe assessment. Appellant gets one such SNV per week. A nurse is not present for all medications, and changing the visits to SNV will not result in compliance in the patient. The MassHealth representative argued that Appellant is not decompensating and that she is stable with no hospitalizations. If issues were to arise, Appellant has PRN visits that can be utilized, and there are mechanisms where the HHA may request an increase based on changed circumstances.

Appellant's representatives pointed to the doctor's note requesting an increase to 14 visits per week to support its argument at hearing that Appellant requires 11 SNV per week. Appellant's representative testified that Appellant's complexity and issues with compliance support the need for 11 SNV per week as requested. Appellant has been stable because the HHA nurses have not been performing a 5 minute medication administration visit, but continue to perform skilled assessments despite the reimbursement change. Appellant has over 26 medications including antivirals, high risk psychiatric medications, and endocrine medications. The complexity of Appellant's care exceeds the scope of an MAV.

Appellant's representatives argued that even though the visits are 20 minutes, this does not include case management of the patients which is provided externally. This time does not reflect communication with physicians, care coordination, and care of the patient in community external sources. Appellant's representative noted that MassHealth does not request interdisciplinary reports with the PA request, but that the HHA has started including those in PA because these efforts are not being recognized. Appellant's representatives argued that Appellant's need for 11 SNV is due to the complexity of her assessment, which is a higher level than giving a medication and checking for adverse reactions.

The records contain the physician's orders, which include weekly diabetic foot checks and daily vital signs with orders to call the doctor if the vitals are outside set parameters. *Id.* at 13. Regarding blood glucose, the orders include checking once daily in the morning and contacting the doctor if blood sugar is above 300 or less than 60. *Id.* Appellant is not homebound and leaves the house daily for shopping and social activities. *Id.* at 12. The physician noted that with the reduction to 11 visits per week, Appellant has missed medications. *Id.* at 14. Appellant has an order for personal care attendant (PCA) assistance but does not have a PCA yet due to staffing shortages. Appellant is non-

compliant with her diet and refuses to take insulin for her diabetes. *Id.* Appellant takes all of her morning and afternoon medications in front of the nurse, and noontime and bedtime medications are pre-poured. *Id.* Appellant requires continued education due to impaired insight and poor memory and judgment. *Id.* The nurses' orders for psychosocial intervention include assessment and education for injurious behaviors and thoughts of harm to others, level of anxiety, substance use, depression. *Id.* at 15. Nursing notes from visits dated October 14, 2022, October 15, 2022, October 16, 2022 documented teaching of medication to Appellant and did not indicate that Appellant was dismissive of education. *Id.* at 27, 30, 33, 37.

## Findings of Fact

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

1. On October 25, 2022, Appellant's HHA submitted to MassHealth a PA request for 11 SNV per week.
2. On October 25, 2022, MassHealth determined based on the records submitted that Appellant did not establish medical necessity of the services required. MassHealth approved 1 SNV and 10 MAV per week for dates of service October 27, 2022 through December 31, 2022. Exhibit 1.
3. Appellant filed a timely appeal on November 3, 2022. Exhibit 2.
4. Appellant's start of care date with the HHA was [REDACTED], 2021. Exhibit 4 at 12.
5. Appellant is a female in her [REDACTED] with diagnoses including general anxiety disorder, major depressive disorder, type 2 diabetes, hypertension, heart disease, asthma, vitamin B12 deficiency, foot pain, dry skin, HIV disease, GERD, migraines, and insomnia. Appellant also has nicotine and cannabis use, longtime use of hypoglycemic medication and inhaled steroids, a history of medication noncompliance, and a history of falls. *Id.*
6. A doctor's note dated [REDACTED] 2022 requested 14 visits per week for "med compliance." Exhibit 5.
7. Physician's orders include weekly diabetic foot checks and daily vital signs with orders to call the doctor if the vitals are outside set parameters. Regarding blood glucose, the orders include checking once daily in the morning and contacting the doctor if blood sugar is above 300 or less than 60. *Id.*
8. Appellant is not homebound and leaves the house daily for shopping and social activities. *Id.* at 12.
9. The physician noted that with the reduction to 11 visits per week, Appellant has missed medications. Appellant is non-compliant with her diet and refuses to take insulin for her diabetes. *Id.* at 14.

10. Appellant takes all of her morning and afternoon medications in front of the nurse, and noontime and bedtime medications are pre-poured. *Id.*
11. Appellant requires continued education due to impaired insight and poor memory and judgment. *Id.*
12. The nurses' orders for psychosocial intervention include assessment and education for injurious behaviors and thoughts of harm to others, level of anxiety, substance use, depression. *Id.* at 15.
13. On October 12, 2022, a nursing note stated that Appellant forgot to take a pre-poured medication because she did not have an SNV. *Id.* at 18.
14. On October 13, 2022, Appellant's blood sugar was 266 when her goal is between 80-150. The note stated that Appellant verbalized understanding but continues to make poor food choices, and was dismissive of teaching on taking Zofran for nausea. *Id.* at 21.
15. The mental status assessment from the afternoon visit on October 13, 2022 showed checkboxes indicating that Appellant had nausea, was lethargic, confused, forgetful, depressed, labile, and anxious. Appellant also had thought processes that were disorganized, confused, with impaired concentration and impaired judgment. *Id.* at 23.
16. Other nursing notes showed that Appellant is noncompliant with diet and has instable blood sugars. *Id.* at 30, 35, 51, 54.
17. Appellant has been dismissive of medical teaching including addressing thumb pain, Trulicity, and Covid testing. *Id.* at 40, 48.
18. Nursing notes from visits dated [REDACTED] 2022, [REDACTED], 2022, [REDACTED], 2022 documented medication teaching to Appellant and did not indicate that Appellant was dismissive of this education. *Id.* at 27, 30, 33, 37.

## Analysis and Conclusions of Law

MassHealth requires prior authorization for the provision of skilled nursing services and home health aide services provided pursuant to skilled nursing services if the number of visits or hours exceed limits set forth by regulation. 130 CMR 403.410. MassHealth only pays for home health services on an intermittent or part-time basis. 130 CMR 403.424. In order to qualify for home health services, a member must be able to be safely maintained in the community. 130 CMR 403.409(F). According to 130 CMR 403.409(C),

(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.

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 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, or 517.007.

*See also* 130 CMR 403.409(E) (MassHealth “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”).

The regulations regarding nursing services are set forth in 130 CMR 403.415 (emphasis added):

(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 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.

MassHealth pays a separate rate for MAVs. These visits, by regulation, “must include teaching on medication management to maximize independence, as applicable, documentation as specified in 130 CMR 403.419(C)(3)(b)9, and assessment of the member response to medication.” 130 CMR 403.423(G).

Prior to July 1, 2022, when MassHealth changed its regulation, a Medication Administration Visit was defined as:

Medication Administration Visit — **a skilled nursing visit for the purpose of administration of medications 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 including the route of administration of medication requires a licensed nurse to provide the service. ...

130 CMR 403.402 (2017) (emphasis added).

MassHealth's Guidelines for Medical Necessity Determination for Home Health Services ("Guidelines") as provided in MassHealth's submission, Exhibit 4 at 71-82, are based on review of the medical literature and current practices. MassHealth prepared the Guidelines for medical professionals to assist them in submitting supporting documentation. Exhibit 4 at 82. According to the Guidelines,

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.

*Id.* at 73. Regarding MAV, relevant parts of the Guidelines provide

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. ...

*Id.* at 73-74. The Guidelines provide that 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 assertion must be supported by sufficient documentation indicating that teaching was unsuccessful or unnecessary and why further teaching is not reasonable.

*Id.* at 72-73.

Notably, the Guidelines were prepared and were effective as of October 23, 2017. Therefore, the Guidelines may not help interpret the change definition of an MAV effective July 1, 2022.

MassHealth determined that Appellant's request for 11 SNV weekly was not medically necessary, and Appellant's medical needs could be met with 1 SNV and 10 MAV per week. MassHealth pointed to the fact that Appellant was receiving this level of care and was stable with no hospitalizations. MassHealth approved 5 SNV and 6 MAV to assist in a change to some of Appellant's medications and argued that Appellant is now stable on the new regimen.

Appellant disputed MassHealth's claims, pointing to several times in the record where Appellant has not complied with her medications and has been dismissive of teaching. The nursing notes indicate that Appellant needs continued reminders to follow a proper diet or take medications. The physician requested an increase to 14 visits per week. However, noncompliance with medications itself may be addressed by an MAV as defined by 130 CMR 403.415(B)(7) (an MAV "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 ...").

The records demonstrated that Appellant needed frequent teachings regarding diet, disease management in general, and substance use. The frequency of these teachings, which do not occur at every visit, would support a need for 5 SNV and 6 MAV. This is also the level of care that Appellant has had without decompensation or hospitalization. This appeal is approved in part to approve 5 SNV and 6 MAV, the level of care Appellant had received during aid pending. To the extent Appellant seeks 11 SNV, this appeal is denied. However, the records and doctor's note support a need for an increase in visits (either SNV or MAV), which Appellant should request in the next PA period.

## **Order for MassHealth**

Revise the October 25, 2022 modification notice to approve 5 SNV and 6 MAV for the for dates of service October 27, 2022 through December 31, 2022.

## **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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Cynthia Kopka  
Hearing Officer  
Board of Hearings

cc:

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

[REDACTED]

General Counsel's Office –Sharon Boyle