Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2208261
Decision Date:	1/25/2023	**Hearing Date:**	12/7/2022
Hearing Officer:	Cynthia Kopka		

Appearance for Appellant:
[redacted]

Appearance for MassHealth:
Lisa Russell, RN, Optum
Jocelyn Alexandre, RN, Optum (observing)

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:**	Home health services
Decision Date:	1/25/2023	**Hearing Date:**	12/7/2022
MassHealth's Rep.:	Lisa Russell, RN	**Appellant's Rep.:**	[redacted]
Hearing Location:	Quincy (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

By notice dated October 28, 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 his 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. A summary of testimony and documents follows.

On October 28, 2022, Appellant's home health care agency (HHA) submitted to MassHealth a prior authorization (PA) request for 7 skilled nursing visits (SNV) per week. On October 28, 2022, MassHealth determined based on the records submitted that Appellant did not establish medical necessity of the services required. MassHealth approved 1 SNV and 6 medication administration visits (MAV) per week for dates of service October 30, 2022 through January 27, 2023. Exhibit 1. Appellant was entitled to receive his previous level of benefits pending the outcome of the hearing per 130 CMR 610.036, which was 1 SNV and 6 MAV per week, the same number and type of visits Appellant was receiving since August 2021.

Appellant's start of care date with his HHA was [redacted] 2011. Exhibit 4 at 12. Appellant is a male in his [redacted] with diagnoses including schizoaffective disorder; type 2 diabetes; hypertensive chronic kidney disease, stage 2; nicotine dependence; diabetic neuropathy; leg pain; and morbid obesity. *Id*. Per the nursing notes provided, all Appellant's vital signs have been stable and within set parameters. *Id*. at 13, 17-40. Appellant is able to self-administer insulin and test his own blood sugar. Appellant was compliant with pre-poured medications administered by a nurse via a lock box. *Id*. Appellant was free from hospitalizations and visits to the ER in the prior 60 days. On October 18, 2022, Appellant's endocrinologist increased Appellant's Tresiba (long acting insulin). *Id*. at 21. In subsequent visits, Appellant's blood sugar readings ranged from 134-226, which were a good range for Appellant. There was no documentation of decomposition and the notes indicate that Appellant's mental status is at baseline. All visits documented were 20 minutes long. The MassHealth representative testified that based on this information, Appellant's needs are being met through 1 SNV and 6 MAV per week, and there was no indication why an increase was requested. Accordingly, 1 SNV and 6 MAV are medically necessary based on the submission.

Appellant's representatives testified that Appellant has a long history and had spent seven years in a group home to stabilize. In 2011 he was seen by a skilled nurse twice per day. A lot of work was done to decrease Appellant to one visit per day to support Appellant's independence. However, Appellant is paranoid at baseline and requires daily skilled assessments.

Appellant's representatives argued that the medical necessity guidelines allow for intermittent SNV "when the member requires treatment at a level of complexity and sophistication that can only be safely and effectively performed by a Licensed Registered Nurse or a Licensed Practical Nurse working under the supervision of a Registered Nurse." *Id*. at 50. Appellant's representatives asserted that Appellant is a complex patient with a long history of disease. While there has been slow improvement, Appellant needs 26 medications and mental status assessments. Some of Appellant's psychiatric medications such as Seroquel and Haldol require different levels at different times of day or as needed. The complexity of the medications requires a more thorough assessment, teaching, and follow up with the doctor. The mental status reflected in the notes also demonstrates a documented skilled assessment.

Appellant's representative pointed to specific examples in the record of instances where a MAV went beyond the regulatory parameters, and would more appropriately be designated an SNV. On October 17, 2022, the nurse wrote that Appellant blamed his lancet holder for elevated blood sugars. *Id*. at 18. On October 18, 2022, Appellant was dismissive on diet teaching. *Id*. at 21. On October 19, 2022, Appellant objected to the change in his Tresiba, arguing that the government was putting

sugar in his lancet holder to be reimbursed for insulin. *Id*. at 24. Appellant was continuously dismissive of medication teaching regarding anxiety medication Clonodine, disagreeing with his doctor's recommendation and prescription of 10 doses per month. *Id*. at 24, 27, 30. Appellant's representative argued that these visits are not for the mere purpose of giving pills and giving insulin. Appellant's representative argued that teaching and psychological assessments are a skilled need.

Appellant is on 26 medications, including many high risk psychiatric medications and a large dose of insulin (80 units as of October 18, 2022). Appellant requires skilled oversight and assessment for the administration of as-needed (or PRN) medications. Though Appellant is noted to participate in the administration of his insulin, the plan of care states that Appellant requires skilled nursing oversight of every aspect of his blood sugar reading. *Id*. at 14. Appellant's diabetes is poorly controlled and undergoes frequent medication changes. Appellant's representatives disputed MassHealth's assessment that Appellant's blood sugars are stable. His frequent medication fluctuations stem from paranoia and schizoaffective auditory hallucinations. Appellant's visits are not targeted medication assessments and every day is a skilled day, as he requires a mental status assessment at each visit.

The MassHealth representative responded that Appellant is at his own baseline, which is paranoid. MassHealth recognizes the complexity of Appellant's diagnoses and medications, which is why 7 visits have been approved. The MassHealth representative argued that Appellant is stable, as he has not been hospitalized. 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.

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. These circumstances do not apply here. 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. The MassHealth representative cited the Guidelines for Medical Necessity regarding teaching, which provides that teaching must be provided at every visit and "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." *Id*. at 49. MassHealth also cited federal regulation 42 CFR § 409.33(a)(2)(i), which described when observation and assessment are considered a skilled nursing service: "[o]bservation and assessment constitute skilled services when the skills of a technical or professional person are required to identify and evaluate the patient's need for modification of treatment or for additional medical procedures until his or her condition is stabilized." The MassHealth representative argued that the level of care approved provides for care 7 days a week and that nurses are not administering all medications provided, such as evening or PRN medications.

Appellant's representatives responded that the duties under an MAV as cited by MassHealth need to

be done for Appellant for 26 separate medications. Appellant is paranoid at baseline but that paranoia ebbs and flows, particularly when medications are changed and when he is compliant. Appellant's representatives reiterated that the regulations do not limit visits just because a patient has a chronic condition. Appellant's representatives cited the regulations regarding medical necessity, arguing that SNV are necessary to prevent the worsening of Appellant's condition.

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 daily, contacting the doctor if blood sugar is above 400 or less than 70, and calling the doctor once daily with the nurse and as needed for signs and symptoms of hypo/hyperglycemia. *Id*. The doctor wrote that Appellant is able to dial Tresiba flex pen to correct dose with RN instruction and supervision, if only needing one pen to dial the dose. If Appellant has to use two pens to obtain a full dose, he requires assistance from the nurse to calculate the accurate amount in each pen. *Id*. at 14. The orders also state that Appellant is not home bound and leaves daily to visit his girlfriend, eat, shop, and go to appointments. "Skilled nursing needed for medication management as well as to assess and educate patient on diabetic, cardiac, respiratory and overall health and safety due to impaired mental status, history of non-compliance and history of de-compensation." *Id*. For psychosocial interventions, the doctor ordered the nurse to assess, evaluate, and instruct the patient on nutrition, hygiene, sleep, activities of daily living (ADLs), understanding of triggers that affect psychiatric disease. *Id*. at 15. Nurses are also to assess and evaluate affect, appearance, mood, functional status, judgment and insight with daily living, and mental status (orientation, memory, agitation). *Id*. Nurses are to instruct the patient on tools to use as diversion from triggers. *Id*. The orders and nursing notes show that Appellant's endocrine goal is blood sugar between 100-150. *Id*. Glucose readings for the visits provided were 163, 198, 168, 226, 157, 175, 214, 132. *Id*. at 18, 21, 24, 27, 30, 33, 36, 39.

Findings of Fact

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

1. On October 28, 2022, Appellant's HHA submitted to MassHealth a PA request for 7 SNV per week.

2. On October 28, 2022, MassHealth determined based on the records submitted that Appellant did not establish medical necessity of the services required. MassHealth approved 1 SNV and 6 MAV per week for dates of service October 30, 2022 through January 27, 2023. Exhibit 1.

3. Appellant filed a timely appeal on November 3, 2022. Exhibit 2.

4. Appellant's start of care date with his HHA was [redacted] 2011. Exhibit 4 at 12.

5. Appellant is a male in his [redacted] with diagnoses including schizoaffective disorder; type 2 diabetes; hypertensive chronic kidney disease, stage 2; nicotine dependence; diabetic neuropathy; leg pain; and morbid obesity. *Id*.

6. The nurses' notes submitted with the request showed that Appellant is able to self-administer insulin and test his own blood sugar. There was no documentation of decomposition and no hospitalizations in the prior 60 days. All visits documented were 20 minutes long. *Id*. at 17-40.

7. On October 18, 2022, Appellant's endocrinologist increased Appellant's Tresiba (long acting insulin). *Id*. at 21.

8. In subsequent visits, Appellant's blood sugar readings ranged from 134-226. The goal range was 100-150. *Id*. at 15, 18-39.

9. Doctor'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 daily, contacting the doctor if blood sugar is above 400 or less than 70, and calling the doctor once daily with the nurse and as needed for signs and symptoms of hypo/hyperglycemia. *Id*. at 13.

10. The doctor wrote that Appellant is able to dial Tresiba flex pen to correct dose with RN instruction and supervision, if only needing one pen to dial the dose. If Appellant has to use two pens to obtain a full dose, he requires assistance from the nurse to calculate the accurate amount in each pen. *Id*. at 14.

11. Appellant is not home bound and leaves daily to visit his girlfriend, eat, shop, and go to appointments. *Id*.

12. The physician orders provide that "[s]killed nursing needed for medication management as well as to assess and educate patient on diabetic, cardiac, respiratory and overall health and safety due to impaired mental status, history of non-compliance and history of de-compensation." *Id*.

13. For psychosocial interventions, the doctor ordered the nurse to assess, evaluate, and instruct the patient on nutrition, hygiene, sleep, ADLs, and understanding of triggers that affect psychiatric disease. Nurses are also to assess and evaluate affect, appearance, mood, functional status, judgment and insight with daily living, and mental status (orientation, memory, agitation). Nurses are to instruct the patient on tools to use as diversion from triggers. *Id*. at 15.

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 48-59, 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 59. 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.

Exhibit 4 at 50. Regarding MAV, relevant parts of the Guidelines provide

> A medication administration visit is a skilled nursing visit solely for the purpose of administrating 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 50-51. 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 49.

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 7 SNV weekly was not medically necessary, and Appellant's medical needs could be met with 1 SNV and 6 MAV per week. MassHealth pointed to the fact that Appellant has been receiving this level of care for over a year and has been stable with no hospitalizations. This shows that 1 SNV and 6 MAV is a less costly alternative to Appellant's requested 7 SNV per week. Appellant's representatives disputed this, arguing that each visit with Appellant is a skilled visit due to the complexity of Appellant's medications, the instability of his diabetes, and his need for mental status assessments. Appellant's representatives pointed to the change in definition of an MAV, which is stricter and less inclusive than the previous regulatory language. Appellant's representatives asserted that the visits to Appellant are not for the sole purpose of medication administration because the medications are numerous, complicated, and risky and because Appellant requires mental status assessments. Appellant's representatives argued that Appellant's blood sugars are not stable and that Appellant may not be complying with his prescription for Clonodine. Appellant exhibits paranoia as documented in the nursing notes.

Appellant's argument that the number of medications would change the visit from MAV to SNV is not compelling, as this would impact the length of time of the visit but not the level of care. Regarding Appellant's compliance with Clonodine and need for assistance with insulin, these tasks fall under the purview of 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 …").

Regarding Appellant's mental status, the examples of mental status assessments and teaching of the patient provided in the notes are tied to medical administration and patient response to medications. Appellant's paranoia as documented in the provided notes is related to his blood sugar readings and insulin or the reasons why his doctor will not prescribe more Clonidine. The teachings documented in the notes are tied to medication administration.

There is overlap in the Guidelines as to what tasks constitute an SNV versus an MAV, as both reference teaching and assessment, and therefore Appellant's argument that these are skilled needs as defined in the Guidelines is reasonable. However, the facts show that Appellant has been stable with no decompensation or hospitalizations with the visits as approved by MassHealth. Appellant has not met his burden of demonstrating that 7 SNV are medically necessary or that his care cannot be managed with the approved 1 SNV and 6 MAV per week. Accordingly, 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.

Cynthia Kopka
Hearing Officer
Board of Hearings

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

[redacted]