

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2208676
Decision Date:	1/19/2023	Hearing Date:	12/22/2022
Hearing Officer:	Christopher Jones		

Appearance for Appellant:




Appearance for MassHealth:

Jocelyn Alexandre, RN



*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:	Approved	Issue:	Prior Authorization – SNV/MAV
Decision Date:	1/19/2023	Hearing Date:	12/22/2022
MassHealth’s Rep.:	Jocelyn Alexandre, RN	Appellant’s Rep.:	
Hearing Location:	Remote	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 October 28, 2022, MassHealth modified the appellant’s prior authorization request for home-health services. (Exhibit 2; 130 CMR 450.204; 450.303.) The appellant filed this appeal in a timely manner on November 18, 2022. (Exhibit 2; 130 CMR 610.015(B).) Limitations on assistance are valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth modified the appellant’s request for three skilled-nursing visits per week, allowing one skilled-nursing visit and two medication-administration visits.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 403.000, in determining that the appellant’s nursing visits should be paid as a medication-administration visits.

Summary of Evidence

The appellant is an elderly woman with a primary diagnosis of anxiety that presents, in part, as an inability to ingest solid food due to anorexia. Her anorexia is so severe as to cause her failure to thrive. A gastronomy tube was placed for feedings. On or around October 28, 2022, the appellant’s

medical care team requested three skilled nursing visits (“SNVs”) per week with four as-needed (“PRN”) SNVs over the course of the prior authorization period running from October 30, 2022 through January 28, 2023. (Exhibit 3, pp. 7-9.)

MassHealth modified this request, allowing one SNV and two medication-administration visits (“MAV”) per week. They allowed the requested four PRN SNVs. The appellant has been receiving services since February 2021. She had no emergency department visits during the reviewed timeframe, and she has a son and daughter-in-law who provide g-tube feedings and medications four days per week. The appellant also eats some food orally in the evenings. The visiting nurses are providing feedings and medications three days per week during their visits. MassHealth’s representative testified that g-tube feedings are not a skilled service, unlike injected medications. The agency modified two of the nursing services per week because the visits were simply for the administration of food and medications through a g-tube and the attendant assessment and education. Because this is not a “skilled” service, they converted two visits per week to MAVs.

The appellant’s representatives testified that the appellant’s care is more complex than a simple MAV visit. The visit is to provide a psychiatric assessment to assess her feeding and medication compliance and tolerance. The nurse must also assess bowel sounds and the integrity of the g-tube itself for leakage. They felt that what the appellant’s son does is more akin to medication management because he is not able to assess the integrity of the g-tube or the ostomy site. They felt it would be unsafe to assess the appellant only once per week; she has extreme anxiety and will often refuse to admit a nurse if they have to send a substitute she does not already know. Each assessment is needed to track the appellant’s mental wellbeing and the integrity of the g-tube site. If there is a leak at the g-tube it can become bad very quickly. Each assessment must also be thorough because she is often hypoglycemic due to refusing food.

The parties had some disagreement regarding whether the submitted notes documented that each visit must be a SNV or whether the visits could be MAVs that are converted to the PRN SNV. MassHealth’s representative argued that the documentation does not indicate significant gastrointestinal or gastro-urinary discomfort that would require consistent assessment, and it makes the appellant appear stable. The appellant’s representatives identified two nursing notes in the two weeks before the reevaluation that should have been converted to SNVs. (See Exhibit 3, pp. 17, 22.) They acknowledged that they could do a better job of utilizing PRN visits and submitting additional documentation to support their view. However, they felt that whatever the deficiencies in their practices, none of the visits to the appellant fall within the new definition of MAV that MassHealth published in July 2022.

In every visit a nurse will perform a peristomal skin assessment and check for patency of the g-tube as part of the process of administering medications and food. These visits last at least 20 minutes, and the nurse documents the appearance of the ostomy site and will follow up with either the son or the doctor if necessary. Furthermore, the appellant also requires a comprehensive psychiatric assessment due to her primary diagnosis of anxiety with anorexia.

MassHealth felt that the only reason why three visits per week were needed was because the family members could not provide feedings more often. The g-tube has been in place for a long time, and

the family is aware of it and what its warning signs are. MassHealth's representative explained that many people with g-tubes have no nursing in place. The appellant's representatives responded that the number of nursing visits was not a matter of scheduling but due to the medical needs of a complex patient.

Findings of Fact

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

1. The appellant is an elderly woman with a primary diagnosis of anxiety with severe anorexia. A gastrostomy tube is in place for feedings and medication administration. (Exhibit 3, pp. 7-8.)
2. On or around October 28, 2022, a prior authorization request was submitted for three SNVs per week to provide g-tube medications and physical and psychiatric assessments for a prior authorization period running from October 30, 2022 through January 28, 2023. (Exhibit 3, pp. 7, 9.)
3. MassHealth allowed one SNV and two MAVs per week with four PRN SNVs because the appellant is described as stable and had because g-tube feedings and medication administration is not a skilled task. (Testimony by MassHealth's representative.)
4. The appellant is a complex patient with severe anxiety. During their visits, nurses assess the appellant's mental state, the skin integrity around the ostomy site, bowel sounds, and the patency of the g-tube itself. (Testimony by the appellant's representative.)

Analysis and Conclusions of Law

MassHealth pays for home health services for eligible members, including nursing, home health aide, and home therapy services. (130 CMR 403.000.) Home health services must be prescribed and provided in accordance with a plan of care that certifies the medical necessity of the services requested. (130 CMR 403.409(A).) Often, prior authorization is required. (130 CMR 403.410.)

This appeal largely comes down to the distinction between skilled nursing visits and medication administration visits. In July 2022, the regulations were overhauled. The current regulations include the following relevant definitions:

Medication Administration Visit – a nursing visit **for the sole purpose of administration of medications where the targeted nursing assessment is medication administration and patient response only**, and 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. 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, but does not include intravenous administration.

...

Nursing Services – the assessment, planning, intervention, and evaluation of goal-oriented nursing care that requires specialized knowledge and skills acquired under the established curriculum of a school of nursing approved by a board of registration in nursing. Such services include only those services that require the skills of a nurse.

...

Skilled Nursing Visit – a nursing visit that is necessary to provide targeted skilled nursing assessment for a specific member medical need, and/or discrete procedures and/or treatments, typically for less than two consecutive hours, and limited to the time required to perform those duties.

(130 CMR 403.402 (emphasis added).)

The regulation specifically governing nursing services largely repeats this distinction between “skilled nursing visits” and “medication administration visits.”

(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[.]

(130 CMR 403.415(B)(7) (emphasis added).)

“Medication Administration Visits 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).)

The appellant argues that the emphasized language in these regulations makes clear that the services the appellant requires should not be considered MAVs.¹ The appellant requires comprehensive psychiatric assessment for her primary diagnosis of anxiety with anorexia. Further, each time a nurse performs a g-tube feeding they must assess the appellant's g-tube site for skin integrity and the g-tube itself. The appellant feels that these tasks should not be considered part of a MAV.

To further support this interpretation, the old definition of "Medication Administration Visit" was

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).)²

I am convinced by the appellant's interpretation of the regulations. MassHealth's position is that, because MAVs require an assessment and teaching be provided, any teaching and assessments provided may be included in a MAV. This ignores the emphasis that a MAV assessment is meant to be targeted to the patient's response of the medications administered at that visit. There is some weight to MassHealth's argument that administering medications through a g-tube is not a skilled task. However, for a nurse to provide g-tube medications they must implicitly provide a skilled assessment of the patient's g-tube and ostomy site. This cannot be considered as a "targeted nursing assessment [of the] medication administration and patient response only" Furthermore, this is not the only nursing service being provided during the visits to the appellant. She also receives a comprehensive psychiatric and GI assessment, which are clearly outside the scope of a MAV.

Finally, if the additional visits are due to scheduling difficulty with the appellant's children, unskilled services could be provided by a personal care attendant or a home-health aide. If MassHealth agrees that a nurse is appropriate three days per week, those visits must be reimbursed as SNVs because they are not solely for the purpose of administering medications and assessing the appellant's response to the medications administered. Therefore, this appeal is APPROVED.

¹ It is worth noting that the appellant's home health agency has a vested interest in the outcome of this appeal because MassHealth "pays a separate rate for nursing visits conducted for the purpose of medication administration, as defined in 130 CMR 403.402." (130 CMR 403.423(G).) The rate for MAVs is lower than the rate for SNVs.

² In 2017, 130 CMR 403.415(B)(7) defined the MAV as 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 [impairment]" The 2017 regulation at 130 CMR 403.423(H) is identical to the current 403.423(G) except that it refers the "nursing visit" as "skilled."

This decision does not require that MassHealth continue to approve three SNVs per week if it decides that the appellant's care could be safely managed or monitored otherwise.

Order for MassHealth

Rescind modification notice and allow three SNVs per week for the prior authorization period of October 30, 2022 through January 28, 2023.

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.

Christopher Jones
Hearing Officer
Board of Hearings

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

Appellant's Representative: [REDACTED]