

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2300136
Decision Date:	2/7/2023	Hearing Date:	01/23/2023
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:



Appearance for MassHealth:

Lisa Russell, 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:	Denied	Issue:	Prior Authorization
Decision Date:	2/7/2023	Hearing Date:	01/23/2023
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 October 20, 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 November 8, 2022. (130 CMR 610.015(B); Exhibit 2). 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 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. MassHealth presented documents that were incorporated into the hearing record as Exhibit 4. The appellant has been receiving nursing services since 2011. (Testimony; Exhibit 4). The appellant has a primary diagnosis of schizoaffective disorder. (Testimony; Exhibit 4). Secondary diagnoses include: obsessive compulsive disorder, dyslipidemia, nicotine dependence, neoplasm related pain, malignant neoplasm of a unspecified part of the left bronchus, secondary malignant neoplasm of the right adrenal gland, hypothyroidism. (Testimony; Exhibit 4). The appellant has a history of noncompliance with medical treatment and regimen. (Testimony; Exhibit 4).

The appellant lives in congregate housing with two other roommates. (Testimony; Exhibit 4). The home does not have staff present to monitor the housing arrangements. (Testimony; Exhibit 4). The appellant attends a day program Monday – Friday. (Testimony; Exhibit 4). The appellant walks to stores to retrieve groceries and run errands. (Testimony; Exhibit 4). The records presented by MassHealth state that the appellant is unable to manage medications independently due to poor insight, forgetfulness, a history of noncompliance and impaired decision making. (Testimony; Exhibit 4). The records state that the appellant needs nursing visits to manage care, administer medication, assess and teach disease process. (Testimony; Exhibit 4).

At the time of the decision, the appellant was receiving 3 medication administration visits and 1 skilled nursing visit each week with 3 skilled nursing visits as needed. The prior authorization request at issue would modify the level of services to 4 skilled nursing visits each week. Nursing notes provided by MassHealth indicate that medications are pre-poured at the time of the nursing visit and the nurse is to continue to monitor the appellant related to her disease process and inability to self-manage medications. (Testimony; Exhibit 4). The medications are stored in a lockbox that is secured at the beginning and end of each visit. (Testimony; Exhibit 4). Records indicate reports of compliance by the appellant and assumed ingestion by the skilled nurse. (Testimony; Exhibit 4). The MassHealth representative noted that if records indicate any decompensation by the appellant, MassHealth would consider a request to increase the number and type of nursing visits. However, MassHealth did not see any signs of decompensation resulting in a need for more intensive services than those being currently provided.

The individuals at hearing work for the agency that provides nursing services to the appellant. The appellant's representative noted that the appellant requires at

least 4 skilled nursing visits each week as the visits are direct services for a targeted skilled need. The appellant's representative cited notes to assessments performed during the visits and reports to physicians as needed as part of the targeted skilled need. The representatives at hearing acknowledged that there were no changes in the quality of visits provided to the appellant but felt that the current visits involve skills and tasks beyond those that would be provided in a medication administration visit. The representatives at hearing testified that the appellant was diagnosed with lung cancer and started treatment in May 2022. The representatives at hearing did not specifically note any decompensation or change in nursing services related to the appellant's cancer diagnosis or treatment. The appellant's representative at hearing noted that the appellant is a complex patient due to needs associated with psychiatric care as well as the diagnosis of cancer.

The MassHealth representative responded that there are no notes on services provided beyond those that were provided in the past under an approval for 1 skilled nursing visit and 3 medication administration visits. Notes of teaching, reporting issues to doctors, taking vital signs and providing education to the member are all tasks that MassHealth considers as part of a medication administration visit. The MassHealth representative testified that the notes provided do not indicate any in-depth services provided to the appellant.

Findings of Fact

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

1. The appellant has been receiving nursing services since 2011.
2. At the time of the decision on appeal, the appellant was receiving 1 skilled nursing visit and 3 medication administration visits each week.
3. The appellant submitted a request for authorization of 4 skilled nursing visits each week.
4. The appellant has a primary diagnosis of schizoaffective disorder.
5. Secondary diagnoses include: obsessive compulsive disorder, dyslipidemia, nicotine dependence, neoplasm related pain, malignant neoplasm of a unspecified part of the left bronchus, secondary malignant neoplasm of the right adrenal gland, hypothyroidism.
6. The appellant has a history of noncompliance with medical treatment and regimen.

7. The appellant lives in congregate housing with two other roommates.
8. The home does not have staff present to monitor the housing arrangements.
9. The appellant attends a day program Monday – Friday.
10. The appellant walks to stores to retrieve groceries and run errands.
11. The appellant is unable to manage medications independently due to poor insight, forgetfulness, a history of noncompliance and impaired decision making.
12. The appellant receives nursing visits to manage care, administer medication, assess and teach disease process.
13. Medications are pre-poured at the time of the nursing visit and the nurse is to continue to monitor the appellant related to her disease process and inability to self-manage medications.
14. The medications are stored in a lockbox that is secured at the beginning and end of each visit.
15. Records show reports of the appellant's compliance in taking the medications and assumed ingestion by the skilled nurse.
16. The appellant was diagnosed with lung cancer and began treatment in May 2022.
17. Records do not indicate a change in nursing services associated with that diagnosis and treatment.

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.

Prior authorization must be obtained from the MassHealth agency or its designee as a prerequisite to payment after certain limits are reached, as described in 130 CMR 403.410. (130 CMR 403.410(A)(1)). Without such prior authorization, the MassHealth agency will not pay providers for these services. (130 CMR 403.410(A)(1)). Prior authorization determines only the medical necessity of the authorized service and does not establish or waive any other prerequisites for payment such as member eligibility or resort to health insurance payment. (130 CMR 403.410(A)(2)). Prior authorization for any and all home health skilled nursing and medication administration visits is required whenever the services provided exceed more than 30 intermittent skilled nursing and/or medication administration visits in a calendar year. (130 CMR 403.410(B)(4)).

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.

Nursing services must 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 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.

The appellant requested time for nursing services. The testimony of the MassHealth representative, the appellant's representative and the records show that most of the nursing visits for the appellant are medication administration visits (MAV) as the appellant is unable to perform the task due to impaired cognitive, behavioral and/or emotional issues. The appellant's representative failed to demonstrate the need for skilled nursing services more than one time each week. In making the argument that the appellant receives "targeted skilled nursing assessments", the representative failed to clearly demonstrate the targeted assessments that are beyond those associated with a MAV visit.

The guidelines cited by both parties note that medication administration requires documentation of that administration, observing for medication effects both therapeutic and adverse, and reporting such effects to the ordering practitioner. These requirements appear consistent with the documentation of services provided to the appellant in the visits noted by both parties. They also state that documentation of such visits should include teaching, as applicable, and the member's response to medications. The testimony presented by the appellant's representatives involve the need to observe effects, reporting effects to the practitioner and teaching which is also consistent with the guidelines for medication administration 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)). The records presented by MassHealth demonstrate that the type of services requested by the appellant were not medically necessary. (Testimony; Exhibit 4). This is supported by the fact that the appellant has been approved for the same type of services and the records do not show signs of an increase in the services provided.

Should the appellant's condition change, she can submit a new prior authorization request for current or future services.

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

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