

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in part	<b>Appeal Number:</b>	2302091
<b>Decision Date:</b>	5/26/2023	<b>Hearing Date:</b>	04/10/2023
<b>Hearing Officer:</b>	Paul C. Moore		

**Appellant Representative:**  
Pro se (by telephone)

**MassHealth Representative:**  
Lisa Russell, R.N., clinical reviewer (Optum)

**Spanish Interpreter:**  
Javier, number 247585 (ITI)



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street  
Quincy, MA 02171*

## APPEAL DECISION

<b>Appeal Decision:</b>	Approved in part	<b>Issue:</b>	Prior Authorization – SNV/HHA
<b>Decision Date:</b>	5/26/2023	<b>Hearing Date:</b>	04/10/2023
<b>MassHealth Rep.:</b>	Lisa Russell, R.N.	<b>Appellant Rep.:</b>	Pro se
<b>Hearing Location:</b>	Remote	<b>Aid Pending:</b>	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 March 6, 2023, MassHealth modified the appellant's prior authorization (PA) request for the PA period January 8, 2023 through July 8, 2023 from the requested three skilled nursing visits (SNVs) per week, and three as-needed SNVs for the PA period, to one SNV per week, and two MAVs per week, and also modified the requested four hours per day of home health aide (HHA) assistance, every day, to one and one-half hours of HHA assistance, every day (Exhibit 1; 130 CMR 450.204). The appellant filed this appeal with the Board of Hearings (BOH) in a timely manner on March 15, 2023 (Exhibit 2).

MassHealth determinations regarding the scope or amount of assistance are valid grounds for appeal to BOH (130 CMR 610.032(A)).

### Action Taken by MassHealth

MassHealth modified the appellant's requested three SNVs per week for the time period at issue to one SNV and two MAVs per week, and also modified the appellant's requested 4 HHA hours per day, 7 days per week, to one hour and 15 minutes of HHA hours per day, 7 days per week.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 403.401 *et seq.* and 130 CMR 450.204(A), in modifying the appellant's PA request for HHA hours per week.

## Summary of Evidence

The MassHealth representative, a Registered Nurse consultant with Optum, testified that the appellant, who is under age 65, disabled, and lives alone, submitted an initial request for skilled nursing visits (SNVs) and home health aide (HHA) hours through Namaste Homecare ("the agency" or "Namaste") on February 23, 2023. The request was for three SNVs per week, every week and hour HHA hours per day, every day. By notice dated March 6, 2023, MassHealth modified the requested SNVs to one SNV per week, and two MAVs per week, and modified requested HHA hours to one hour, 15 minutes per day, seven days a week. The prior authorization (PA) period at issue is January 8, 2023 through July 8, 2023 (Exh. 1, Exh. 3).

According to the MassHealth representative, the appellant's primary diagnoses are type 2 diabetes, hypertension, chronic obstructive pulmonary disease (COPD), chronic kidney disease, anxiety, major depression, heart failure, hyperlipidemia, arthritis, and pre-glaucoma (Testimony, Exh. 3, p. 15). She was hospitalized in December, 2022 for exacerbation of her COPD. She was discharged home from the hospital on five liters of supplemental oxygen (Testimony, Exh. 3, p. 20). The MassHealth representative asked the appellant whether she is appealing the number of SNVs/MAVs, the allocation of HHA hours, or both; the appellant responded that she is appealing the allocation of HHA hours only (Testimony).

The MassHealth representative stated that copies of HHA visit notes for the period February 12, 2023 through February 18, 2023 were submitted by the agency to MassHealth; these reflect that the appellant was receiving assistance with showering, oral care, dressing, skin care, and medication reminders, among other activities of daily living (ADLs).<sup>1</sup> In addition, the HHA visit notes reflect that the HHA was assisting the appellant to change linens, to perform light housekeeping, and with meal set-up (Exh. 3, p. 61). The notes reflect that the HHAs generally were present in the appellant's home for four hours per day (*Id.*, pp. 55-61). The MassHealth representative asserted that under 130 CMR 403.409(C):

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.

The MassHealth representative added that MassHealth uses a "time for task" tool setting forth

---

<sup>1</sup> Pursuant to 130 CMR 403.402, activities of daily living are defined as activities related to personal care, specifically bathing, grooming, dressing, toileting/continence, transferring/ambulation, and eating.

guidelines for allocating HHA hours, according to the functional status of the member. Also, for the appellant, Namaste requested specific amounts of HHA assistance for the appellant, based on her particular needs (Testimony, Exh. 3, p. 82). For the ADL of bathing, Namaste requested 40 minutes per day, every day of assistance, to include washing and towel drying off the appellant's back and lower extremities, or 105 minutes per week. MassHealth modified requested time for this ADL to 15 minutes per day, every day. For the ADL of dressing, Namaste requested 30 minutes of HHA assistance, every day, or 210 minutes per week. MassHealth approved this portion of the request in full. For the ADL of grooming, Namaste requested 20 minutes per day of HHA assistance, and MassHealth modified this request to 10 minutes per day. Next, for the instrumental activity of daily living (IADL) of meal preparation and light housekeeping, Namaste requested 150 minutes per day, every day. MassHealth modified requested HHA assistance time in this area to zero (Testimony, Exh. 3, p. 82).

The total amount of HHA assistance MassHealth authorized for the appellant, every day, is 50 minutes; MassHealth apparently rounded up this requested time to one hour, fifteen minutes of HHA assistance, every day (Testimony, Exh. 3).<sup>2</sup>

The MassHealth representative testified that the appellant may benefit from the assistance of a personal care attendant (PCA). A PCA is paid by MassHealth to do additional tasks, beyond assistance with ADLs, including assistance with housekeeping, shopping, and laundry. The MassHealth representative gave the appellant a telephone number for an aging services agency in north central Massachusetts, through which she may begin the process of getting PCA services.

Through a Spanish interpreter, the appellant testified that she needs assistance with bathing and/or showering, every day; the HHA spends 35 minutes per day washing the appellant, shampooing her hair, and towel-drying her. The appellant testified that she also needs assistance with grooming (including brushing her hair, brushing her teeth, and trimming her nails); the appellant's HHA spends about 20 minutes per day, every day, on this task, on average.

The appellant is not contesting the allocation of SNVs and MAVs authorized by MassHealth.

According to clinical records submitted to MassHealth by Namaste, the appellant uses a walker to ambulate, has poor balance, is at a high risk for falls, and at the time the PA request was submitted, had been hospitalized two or more times in the past six months (Exh. 3). She uses a shower chair (*Id.*, p. 59). The clinical records also reflect that the appellant needs set-up assistance for grooming, needs hands-on assistance to put on undergarments and shoes, and is able to bathe in the shower or tub with the intermittent assistance of another person, and/or needs assistance with washing difficult-to-reach body areas (Exh. 3, p. 27).

---

<sup>2</sup> The MassHealth representative testified that she did not know why MassHealth rounded up the daily HHA assistance time; she speculated that a small amount of time was added for incidental assistance with the appellant's IADLs.

## Findings of Fact

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

1. The appellant is under age 65, disabled and lives alone in the community (Testimony).
2. The appellant's diagnoses are type 2 diabetes, hypertension, chronic obstructive pulmonary disease (COPD), chronic kidney disease, anxiety, major depression, heart failure, hyperlipidemia, arthritis, and pre-glaucoma (Testimony, Exh. 3, p. 15).
3. The appellant submitted an initial PA request for skilled nursing visits (SNVs) and home health aide (HHA) hours through Namaste Homecare ("the agency" or "Namaste") on February 23, 2023 (Testimony).
4. The PA request sought three skilled nursing visits (SNVs) per week, and three as-needed SNVs, for the PA period January 8, 2023 through July 8, 2023, as well as four HHA hours of assistance daily, seven days a week (Exh. 1, Exh. 3).
5. By notice dated March 6, 2023, MassHealth modified the requested SNVs to one SNV per week, and two MAVs per week, and modified requested HHA hours to one hour, 15 minutes per day, seven days a week (Exh. 1).
6. The appellant filed a timely appeal of this notice with the BOH on March 15, 2023 (Exh. 2).
7. The appellant is not appealing the MassHealth allocation of SNVs/MAVs (Testimony).
8. The appellant uses a walker to ambulate, has poor balance, is at a high risk for falls, and uses a shower chair (Exh. 3).
9. At the time of the PA request submitted on the appellant's behalf, the appellant had been hospitalized at least twice in the previous six months (Exh. 3).
10. The appellant needs set-up assistance for grooming, needs hands-on assistance to put on undergarments and shoes, and is able to bathe in the shower or tub with the intermittent assistance of another person, and/or needs assistance with washing difficult-to-reach body areas (Exh. 3, p. 27).
11. For the ADL of bathing, Namaste requested 40 minutes per day, every day of assistance, to include washing and towel drying off the appellant's back and lower extremities, or 105 minutes per week (Exh. 3, p. 82).
12. MassHealth authorized MassHealth modified requested time for this ADL to 15 minutes per day, every day of HHA assistance (Testimony).

13. The HHA spends 35 minutes per day washing the appellant, shampooing her hair, and towel-drying her (Testimony).
14. For the ADL of dressing, Namaste requested 30 minutes of HHA assistance, every day, or 210 minutes per week, which MassHealth authorized in full (Testimony).
15. For the ADL of grooming, Namaste requested 20 minutes per day of HHA assistance for the appellant (Exh. 3).
16. MassHealth authorized 10 minutes per day of HHA assistance for the appellant's grooming (Exh. 1).
17. The HHA spends about 20 minutes per day, every day, assisting the appellant with grooming, including combing her hair, brushing her teeth, and trimming her nails (Testimony).
18. For the instrumental activity of daily living (IADL) of meal preparation and light housekeeping, Namaste requested 150 minutes per day, every day of HHA assistance for the appellant (Exh. 3, p. 82).
19. The HHA visit notes reflect that the HHA was assisting the appellant to change linens, to perform light housekeeping, and with meal set-up (Exh. 3, p. 61)
20. MassHealth did not authorize any HHA assistance time for meal preparation and light housekeeping (Testimony, Exh. 3).

## **Analysis and Conclusions of Law**

MassHealth will pay a provider only for those services that are medically necessary. Pursuant to 130 CMR 450.204(A), as 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 MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider, or identified by MassHealth 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.

MassHealth must also adhere to medical necessity guidelines that are specific to home health

services. Home health services are skilled and supportive care services provided in the member's home to meet skilled care needs and associated activities of daily living to allow the member to safely stay in their home. Home Health Services incorporate a wide variety of skilled healthcare and supportive services provided by licensed and unlicensed professionals that assist people with chronic health conditions or disabilities to carry out everyday activities. These services are designed to meet the needs of people with acute, chronic and terminal illnesses or disabilities who without this support might otherwise require services in an acute care or residential facility (See, MassHealth Guidelines for Medical Necessity Determination for Home Health Services, Exh. 3, p. 68).

Moreover, MassHealth regulations at 130 CMR 403.409, addressing "Home Health Conditions of Coverage," require the following:

(A) Member Must Be under the Care of a Physician or Ordering Non-physician Practitioner. The MassHealth agency pays for home health services only if the member's physician or ordering non-physician practitioner certifies the medical necessity for such services and establishes an individual plan of care in accordance with 130 CMR 403.420. A member may receive home health services only if he or she is under the care of a physician or ordering non-physician practitioner. (A podiatrist may be considered a physician for the purposes of meeting 130 CMR 403.409(A).) The physician or ordering non-physician practitioner providing the certification of medical necessity and submitting the plan of care for home health services must not be a physician or ordering non-physician practitioner on the staff of, or under contract with, the home health agency.

(B) Limitations on Covered Services. The MassHealth agency pays for home health services to a member who resides in a non-institutional setting, which may include, without limitation, a homeless shelter or other temporary residence or a community setting. In accordance with 42 CFR 440.70(c), the MassHealth agency does not pay for home health services provided in a hospital, nursing facility, intermediate care facility for the intellectually or developmentally disabled, or any other institutional facility providing medical, nursing, rehabilitative, or related care.

(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.**

(D) Availability of Other Caregivers. When a family member or other caregiver is providing services, including nursing services, that adequately meet the member's needs, it is not medically necessary for the home health agency to provide such services.

...

(Emphasis added)

MassHealth regulations pertaining to home health aide services are found at 130 CMR 403.416, as follows:

(A) Conditions of Payment. Home health aide services are payable only if all of the following conditions are met:

(1) home health aide services are medically necessary to

(a) directly support curative, rehabilitative, or preventative aspects of nursing or therapy services provided by the home health agency; and/or

(b) provide hands-on assistance throughout the task or until completion, with at least two activities of daily living (ADLs) defined as: bathing, grooming, dressing, toileting/ continence, transferring/ambulation, and eating.

(2) the frequency and duration of the home health aide services must be ordered by the physician or ordering non-physician practitioner and must be included in the plan of care for the member;

(3) the services are medically necessary to provide personal care to the member, to maintain the member's health, or to facilitate treatment of the member's injury or illness;

(4) prior authorization, where applicable, has been obtained where required in compliance with 130 CMR 403.410;

(5) the home health aide is supervised by a registered nurse or therapist for nursing services or therapy services, respectively, employed or contracted by the same home health agency as the home health aide. In the event that the home health agency contracts for, rather than directly employs, home health aides, such aides must be supervised in accordance with 42 CFR § 484.80(h), and 130 CMR 403.419(C);

(6) all services provided by the home health aide must be delivered at the direction of the registered nurse or therapist supervising the home health aide. The individualized patient care instructions must be included in the member's plan of care or attached to the member's plan of care; and

(7) the home health aide has completed a training and competency evaluation program as specified in 42 CFR 484.80(a)(b)(c) and the servicing home health agency has documented the home health aide's competency in all subject areas as described in 42 CFR 484.80(b)(3) within the last 12 months.

(B) Payable Home Health Aide Services Provided Pursuant to Nursing or Therapy Services. **Payable home health aide services when home health aide services are provided pursuant to nursing or therapy services include, but are not limited to,**

**(1) personal-care services; such as bathing, dressing, grooming, caring for hair, nail, and oral hygiene, which are needed to facilitate treatment or to prevent deterioration of the member's health, changing the bed linen, shaving, deodorant application, skin care with lotions and/or powder, foot care, ear care, feeding, assistance with elimination, routine catheter care, and routine colostomy care;**

**(2) simple dressing changes that do not require the skills of a registered or licensed nurse;**



(3) medication reminders for medications that are ordinarily self-administered and that do not require the skills of a registered or licensed nurse;  
(4) assistance with activities that are directly supportive of skilled therapy services; and (5) routine care of prosthetic and orthotic devices.

(C) Payable Home Health Aide Services for ADL Supports Only. Home health aide services for ADL supports are only reimbursable if the member has two or more ADL needs that require hands-on assistance. This service requires a non-skilled nursing visit for assessment of the member and assessment and supervision of the home health aide care plan once every 60 days. **Payable home health aide services for ADL supports only include:**

**(1) hands-on assistance with ADLs as described in 130 CMR 403.402;**

**(2) IADL support services provided incidental to hands-on ADL assistance;**

(3) monitoring or supervision provided incidental to or concurrently with hands-on ADL support;

(4) personal care services as described in 130 CMR 403.416(B)(1) if provided in addition to hands-on ADL support as described in 130 CMR 403.402.

(D) Nonpayable Home Health Aide Services. The MassHealth agency does not pay for homemaker, respite, or chore services provided to any MassHealth member in the absence of ADL needs. It is not permissible for home health agencies to bill MassHealth for home health aide services for the primary purpose of providing nonpayable home health aide services, or incidental services as described in 130 CMR 403.416(E). Additionally, home health aide services are nonpayable for monitoring of anticipatory and unpredictable services.

**(E) Incidental Services. When a home health aide visits a member to provide a health-related service, the home health aide may also perform some incidental services that do not meet the definition of a home health aide service (for example, light cleaning, preparing a meal, removing trash). However, the purpose of a home health aide visit must not be to provide these incidental services and home health aide visits are not reimbursable if used to primarily conduct incidental services, since they are not health-related services.**

(Emphases added)

In this appeal, the appellant is not appealing the allocation of SNVs or MAVS. Instead, she is appealing the number of HHA hours of assistance MassHealth authorized for her.

While the agency requested four hours per day of HHA assistance for the appellant, MassHealth has authorized one hour and fifteen minutes for this purpose.

The evidence shows that the appellant is disabled, has difficulty washing hard-to-reach areas of her body, and uses a shower chair for safety. She is at a high risk for falls. The appellant credibly testified that her HHA assists her with bathing/showering for 35 minutes per day; the agency requested forty minutes per day.

I conclude that it is medically necessary for the appellant to receive 35 minutes per day of HHA assistance for bathing/showering; thus, this portion of the appeal is APPROVED IN PART.

The evidence also shows that the appellant needs at least set-up assistance for grooming (including brushing her hair, brushing her teeth, and trimming her nails). The appellant cannot reach certain areas of her lower body (including toenails). The agency requested 20 minutes per day of HHA assistance for the appellant with grooming. MassHealth allocated 10 minutes for this purpose.

The appellant credibly testified that the HHA spends about 20 minutes per day, every day, assisting the appellant with grooming, including combing her hair, brushing her teeth, and trimming her nails. I conclude it is medically necessary for the appellant to receive 20 minutes per day of HHA assistance with grooming activities. This portion of the appeal is also APPROVED IN PART.

Finally, the agency requested 150 minutes per day of HHA assistance, every day, for the appellant's meal preparation and light housekeeping. MassHealth allocated no time for these tasks, since they are not health-related services.

130 CMR 403.416(B)(1), above, contemplates some HHA assistance with changing bed linens; also, 130 CMR 403.416(E) allows a member to receive some HHA assistance with household chores if the latter are *incidental* to the hands-on assistance provided to a member with his or her ADLs.

I conclude that it is medically necessary for the appellant to receive 10 minutes daily of HHA assistance with tasks incidental to her hands-on ADL care; these tasks could include changing her linens, preparing a light meal for her, or taking out her trash. This portion of the appeal is also APPROVED IN PART.

If the appellant needs more assistance with IADLs such as transportation to medical appointments, housekeeping and shopping, for example, she should consider applying for the services of a PCA under 130 CMR 422.401 *et seq.*

## **Order for MassHealth**

Send notice to the appellant authorizing her to receive one hour and forty-five minutes per day of HHA assistance, seven days per week for the PA period January 8, 2023 through July 8, 2023.

Send notice of implementation only; do not include appeal rights.

## **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.

---

Paul C. Moore  
Hearing Officer  
Board of Hearings

cc: Optum Appeals Coordinator