

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2302979
<b>Decision Date:</b>	6/20/2023	<b>Hearing Date:</b>	05/16/2023
<b>Hearing Officer:</b>	Marc Tonaszuck		

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Lisa Russell, 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>	Denied	<b>Issue:</b>	Home Health Services – Skilled Nursing
<b>Decision Date:</b>	6/20/2023	<b>Hearing Date:</b>	05/16/2023
<b>MassHealth's Rep.:</b>	Lisa Russell, RN, Optum	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Quincy Harbor South	<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<sup>1</sup>

Through a notice dated 02/24/2023, MassHealth informed the appellant that it modified her prior authorization (PA) request for Home Health Services (130 CMR 450.204; Exhibit 1). A timely appeal was filed on 04/13/2023 by the appellant (130 CMR 610.015; Exhibit 2). A change in the level of assistance is valid grounds for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth modified the appellant's request for HHS<sup>2</sup> services.

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<sup>1</sup> In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
  - All appeal hearings will be telephonic; and
  - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

<sup>2</sup> MassHealth's Home Health Services (HHS) program includes, but is not limited to, skilled nursing visits (SNV), medication administration visits (MAV), and home health aides (HHA).

## Issue

Did MassHealth correctly modify appellant's prior authorization request for HHS hours due to a lack of medical necessity?

## Summary of Evidence

The MassHealth representative, a registered nurse who works for Optum, the contractor who makes the home health services decisions for MassHealth, testified that the appellant's prior authorization request was submitted by LifePod HHC (Provider) on 02/22/2023 requesting skilled nursing visits (SNV) 2 times per week from 03/04/2023 to 04/04/2023 with 3 PRN<sup>3</sup>, then 1 visit per week from 04/05/2023 to 08/04/2023. The appellant is an adult woman who lives independently in the community. She has primary diagnoses of diverticulitis, anxiety, syncope, insomnia, pre-diabetes, pain, and fatigue (Exhibit 4).

On 02/24/2023, MassHealth modified the request for SNV to 1 visit per week plus 3 PRN from 03/04/2023 to 08/04/2023. The MassHealth representative testified that SNVs are authorized only if they are medically necessary. MassHealth maintained that a SNV is a skilled need provided only by a registered or licensed nurse and requiring specialized knowledge and skills acquired from a board-approved school of nursing. MassHealth indicated that after review of the documentation included with the request, it was determined the evidence does not demonstrate medical necessity<sup>4</sup> for the requested frequency of SNVs.

The MassHealth representative testified that, according to the nurses' notes included with the PA request, the appellant is "alert and oriented X 3," she "continues to be forgetful," has "no recent hospitalizations," her "vital signs are stable," and she is "compliant with her medications" (Exhibit 4). Also, the appellant is independent with her activities of daily living (ADLs) and instrumental activities of daily living (IADLs). She has not requested, and she does not have, personal care attendant (PCA) services or home health aide (HHA) services. The SNV that was approved was for the purpose of assessing the appellant, monitoring compliance with medications. There is nothing in the appellant's clinical record to support the medical necessity for more than 1 SNV per week.

The appellant appeared at the fair hearing and testified telephonically that she needs 2 SNVs per week because of her health conditions. She stated that the nurse takes her temperature and blood pressure when she comes, she makes sure the stove is turned off, and that the appellant takes her medications. The appellant testified that because of her anxiety, her life is "not easy," and that she has been losing weight. The nurse likes to find out "what is going on in my life." The

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<sup>3</sup> PRN means "as needed."

<sup>4</sup> Prior to 03/01/2016 Home Health Services provider agencies directly billed MassHealth for HHA and SNV services and were not required to obtain prior authorization or demonstrate medical necessity.

appellant also stated that she is afraid of falling.

The MassHealth representative responded that she understands that the appellant is “happy with the nurse,” but many of the duties that the appellant receives from the nurse are for social benefits, not medical. The appellant has one visit per week and has been compliant with her medications, even on the days the nurse is not present. Since the appellant is able to take her own medications, more than 1 SNV per week is not medically necessary.

## Findings of Fact

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

1. The appellant is an adult woman who lives independently in the community. She has primary diagnoses of diverticulitis, anxiety, syncope, insomnia, pre-diabetes, pain and fatigue (Testimony; Exhibit 4).
2. On 02/22/2023, the appellant’s prior authorization (PA) request was submitted by LifePod HHC (Provider). The PA requested skilled nursing visits (SNV) 2 times per week from 03/04/2023 to 04/04/2023 with 3 PRN, then 1 visit per week from 04/05/2023 to 08/04/2023 (Testimony; Exhibit 4).
3. On 02/24/2023, MassHealth modified the request for SNV to 1 visit per week plus 3 PRN from 03/04/2023 to 08/04/2023 (Testimony; Exhibits 1 and 4).
4. On 04/13/2023, the appellant filed a timely request for a hearing with the Board of Hearings (Exhibit 2).
5. On 05/16/2023, a fair hearing was held before the Board of Hearings (Exhibit 3).
6. According to the nurses’ notes included with the PA request, the appellant is “alert and oriented X 3,” she “continues to be forgetful,” has “no recent hospitalizations,” her “vital signs are stable,” and she is “compliant with her medications” (Exhibit 4).
7. The appellant is independent with her activities of daily living (ADLs) and instrumental activities of daily living (IADLs). She has not requested, and she does not have, personal care attendant (PCA) services or home health aide (HHA) services (Testimony; Exhibit 4).
8. MassHealth approved the SNVs for the purpose of assessing the appellant, monitoring compliance with medications. (Testimony; Exhibit 4).

9. The nurse monitors the appellant's blood pressure, temperature, and medication compliance (Testimony; Exhibit 4).
10. The appellant is compliant with her medications, even on the days the nurse does not visit (Testimony).

## **Analysis and Conclusions of Law**

Pursuant to 130 CMR 450.204 (A), MassHealth will not pay a provider for services that are not medically necessary; and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary. 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 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.

### **130 CMR 403.410: Prior-Authorization Requirements**

#### **(A) General Terms.**

- (1) Prior authorization must be obtained from the MassHealth agency or its designee as a prerequisite to receipt of home health services as described in 130 CMR 403.410(C) and 403.410(F), below. For all other home health services 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. Without such prior authorization, the MassHealth agency will not pay providers for these services.
- (2) 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.
- (3) Approvals for prior authorization specify the number of hours, visits, or units for each service that are medically necessary and payable each calendar week and the duration of

For members not enrolled in a managed care entity, prior authorization for any and all home health skilled nursing services is required whenever the services provided exceed one or more of the following PA requirements:

- (a) more than 30 intermittent skilled nursing visits in a 90 day period;
- (b) more than 240 home health aide units in a 90 day period; or
- (c) more than 30 medication administration visits in a 90 day period.

(See 130 CMR 403.410(B)(5).)

#### 130 CMR 403.416: Home Health Aide Services

(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 and are provided pursuant to skilled nursing or therapy services;
- (2) the frequency and duration of the home health aide services must be ordered by the physician 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; and
- (5) the home health aide is supervised by a registered nurse or therapist for skilled 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).

(B) Payable Home Health Aide Services. Payable home health aide 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) Nonpayable Home Health Aide Services. The MassHealth agency does not pay for homemaker, respite, or chore services provided to any MassHealth member.

(D) 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, since they are not health-related services.

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass. App. Ct. 333 , 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386 , 390 (1998).

On 02/22/2023, the appellant's PA request was submitted by LifePod HHC (Provider). The PA requested skilled nursing visits (SNV) 2 times per week from 03/04/2023 to 04/04/2023 with 3 PRN, then 1 visit per week from 04/05/2023 to 08/04/2023 (Testimony; Exhibit 4). On 02/24/2023, MassHealth modified the request for SNV to 1 visit per week plus 3 PRN from 03/04/2023 to 08/04/2023. The appellant appealed, arguing that she requires 2 SNVs per week, instead of the 1 visit approved by MassHealth.

According to the nurses' notes included with the PA request, the appellant is "alert and oriented X 3," she "continues to be forgetful," has "no recent hospitalizations," her "vital signs are stable," and she is "compliant with her medications." She is independent with her activities of daily living (ADLs) and instrumental activities of daily living (IADLs). She has not requested, and she does not have, personal care attendant (PCA) services or home health aide (HHA) services. MassHealth approved the 1 SNV per week for the purpose of assessing the appellant, monitoring compliance with medications.

The appellant asserted that she needs the nurse to take her temperature, blood pressure, to

monitor her compliance with medications and to remind her to “make sure the stove is turned off.”

There is no evidence in the hearing record to show that more than 1 SNV per week is medically necessary. The appellant is compliant with her medications, even on the days the nurse does not visit. She has not shown by the requisite burden of proof that her needs are not being met with 1 SNV per week. Accordingly, MassHealth’s modification is supported by the material facts in the hearing record and the above regulations. This appeal is therefore 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.

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Marc Tonaszuck  
Hearing Officer  
Board of Hearings

cc:

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