

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2303167
Decision Date:	7/7/2023	Hearing Date:	05/17/2023
Hearing Officer:	Radha Tilva		

Appearance for Appellant:

Pro se



Appearance for MassHealth:

Lisa Russell, Optum Representative



*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:	PA – SNV and MAV
Decision Date:	7/7/2023	Hearing Date:	05/17/2023
MassHealth’s Rep.:	Lisa Russell	Appellant’s Rep.:	Pro se and Case Manager
Hearing Location:	Tewksbury MassHealth Enrollment Center	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

Through a notice dated April 11, 2023, MassHealth modified appellant’s prior authorization request for skilled nursing and medication assistance visits from April 23, 2023 through October 19, 2023 (Exhibit 1). The appellant filed this appeal in a timely manner on April 18, 2023 (see 130 CMR 610.015(B) and Exhibit 2). Challenging a modification of a prior authorization request is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified appellant’s prior authorization request for skilled nursing and medication assistance visits for the prior authorization period of April 23, 2023 through October 19, 2023.

Issue

The appeal issue is whether MassHealth was correct in modifying appellant’s prior authorization request for skilled nursing and medication assistance visits.

Summary of Evidence

A registered nurse and clinical appeals reviewer represented MassHealth at hearing by phone and submitted records in support of MassHealth's modifications. Appellant and her case manager appeared by phone. A summary of testimony and documents follows.

On April 6, 2023, appellant's home health agency (HHA) submitted to MassHealth a prior authorization (PA) request for 1 skilled nursing visit (SNV) and 4 medication assistance visits (MAV) per week for the prior authorization period of April 23, 2023 to June 21, 2023. On April 11, 2023, MassHealth determined based on the records submitted that it would modify appellant's request to 1 SNV and 3 MAV per week and 2 as needed visits from [REDACTED] 2023 through [REDACTED] 2023. Appellant was entitled to receive her previous level of benefits pending the outcome of the hearing per 130 CMR 610.036, which was 1 SNV and 4 MAV per week.

Appellant is a female in her sixties with asthma, chest pain, hypertension, bipolar disorder, anxiety, type II diabetes, urinary incontinence, epilepsy, and malignant neoplasm of the adrenal gland (Exhibit 5, p. 11). Per the nursing notes, appellant is noted to be alert and oriented, taking her evening medications alone, and has had no visits to the emergency room or hospital (Exhibit 5, pp. 16-23). The appellant is also noted to be able to check blood sugar on her own (Exhibit 5, p. 17). The appellant has a personal care attendant that can do a reminder of medications. In addition, the ultimate goal of the home health aide program is to promote independence. With the PCA and nursing services, MassHealth is providing a good amount of services to appellant and the medical documentation supports that she does need the frequency of visits requested. The appellant's PCA comes 6 days a week, but for a short period of time. The appellant needs a nurse to check her vitals and blood sugar.

Appellant and her representative appeared by telephone and testified that appellant has had a nurse for 10 years who used to come 7 days a week. Appellant is not able to wean services and do what MassHealth wants her to do as she continues to have seizures and tremors. When a pill is handed to her it goes all over the place. Her therapist does not want her to administer her own medications as she is a fall risk. The appellant takes pills independently at nights, but she has not had any instances of non-compliance because she has had the appropriate level of services. The PCA comes 6 days a week, but only for a short period of time. She needs the someone to check her vital signs and blood sugars.

The appellant submitted two letters from her physician, dated [REDACTED] and [REDACTED] 2023, which state that appellant's diagnoses requires a nurse to ensure appellant's vitals and blood sugar levels are closely monitored, provide assistance with her medications, and have her lungs and feet checked (Exhibit 6). Appellant is a fall risk and has had seizures in the past, she has been found unconscious on the floor by her nurse multiple times (*Id.*). In addition, due to her tremors she is unable to open her medication bottles, use a medication organizer, and manage her medications safely on her own (*Id.*). Her psychiatrist does not think that she can safely manage her medications due to her tremors and past instances of filling a medication organizer incorrectly (*Id.*). It is of utmost

importance she continues to have VNA services 5 days a week to keep her safe (*Id.*).

Findings of Fact

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

1. On April 6, 2023, appellant's home health agency (HHA) submitted to MassHealth a prior authorization (PA) request for 1 skilled nursing visit (SNV) and 4 medication assistance visits (MAV) per week for the prior authorization period of April 23, 2023 to June 21, 2023.
2. On April 11, 2023, MassHealth determined based on the records submitted that it would modify appellant's request to 1 SNV and 3 MAV per week and 2 as needed visits from [REDACTED] 2023 through [REDACTED] 2023.
3. The appellant presently has aid pending which means that her benefits remain at 1 SNV and 4 MAV per week.
4. Appellant is a female in her sixties with asthma, chest pain, hypertension, bipolar disorder, anxiety, type II diabetes, urinary incontinence, epilepsy, and malignant neoplasm of the adrenal gland.
5. Per the nursing notes, appellant is noted to be alert and oriented, taking her evening medications alone, and has had no visits to the emergency room or hospital.
6. The nursing notes reflect appellant can check her blood sugar independently.
7. The appellant also receives roughly 6 days a week of PCA services.

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 5 at 28-34, 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. 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 5 at 30. Regarding MAV, relevant parts of the Guidelines provide,

A medication administration visit is a skilled nursing visit solely for the purpose of administering 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 30-31. 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 30.

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 1 SNV and 4 MAV weekly was not medically necessary, and appellant's medical needs could be met with 1 SNV and 3 MAV per week. MassHealth pointed to the fact that appellant has been noted to be compliant with medications and has had no visits to the ED or hospital, according to the documentation submitted. Though appellant argued that she is a fall risk and needs assistance with blood sugar monitoring, the medical documentation does not support that. In fact, the nursing notes specifically states that she is able to check her blood sugar on her own (Exhibit 5, p. 17). Moreover, the nursing notes do not support that she is unable to take her own medications either. Presently, appellant receives 1 SNV and 4 MAV per week, leaving 2 days where she is independent. The documentation provided does not support that she fails to take her medications on the 2 independent days.

Further, MassHealth argued that appellant is receiving PCA services which can also help with

medication reminders.¹ Thus, MassHealth is providing a service that is comparable in effect and plausibly a less costly alternative. Therefore, the medical necessity criteria under 130 CMR 405.204(A)(2) is not met.

Based on review of the case and the documentation submitted from the agency, a reduction of services is appropriate and MassHealth was correct in reducing the MAV visits from 4 to 3 per week. If the documentation, in the future, demonstrates that appellant is noncompliant, then the home health agency may ask for an increase. Based on the above analysis, this appeal is DENIED.

Order for MassHealth

Stop aid pending and decrease to 1 SNV and 3 MAV per week plus two as needed SNV visits through the prior authorization period.

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.

Radha Tilva
Hearing Officer
Board of Hearings

cc:

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

¹ Appellant can have her PCA agency request a modification of time if medication assistance is not already accounted for in the allotted hours.