

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2303709
Decision Date:	*07/27/2023	Hearing Date:	06/05/2023
Hearing Officer:	Marc Tonaszuck		

*This reflects the correct date of Decision.

Appearance for Appellant:



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

Appeal Decision:	Denied	Issue:	Home Health Services – Skilled Nursing Visits
Decision Date:	*07/27/2023	Hearing Date:	06/05/2023
MassHealth's Rep.:	Lisa Russell, RN, Optum	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South	Aid Pending:	Yes

*This reflects the correct date of Decision.

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 05/02/2023, MassHealth informed the appellant that it modified his prior authorization (PA) request for Home Health Services (130 CMR 450.204; Exhibit 1). A timely appeal was filed on 05/05/2023 by the appellant and his home health services are protected at the current levels pending the outcome of this appeal (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 plans to modify the appellant's request for HHS¹ services.

Issue

¹ 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).

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 Standards Home Care (Provider) requesting skilled nursing visits (SNV) 1 times per week plus medication administration visits (MAV) 3 times per week from 04/11/2023 to 07/09/2023 with 3 PRN². The appellant is an adult who lives independently in the community. He is not homebound. He has diagnoses that include diabetes mellitus, polyneuropathy, COPD, hypertension, morbid obesity, chronic pain, edema, and sleep apnea (Exhibit 4).

On 05/02/2023, MassHealth modified the request for SNV to 1 visit per week, MAV 3 times per week, plus 3 PRN from 04/18/2023 to 05/18/2023, then decrease services to 1 SNV per week, 2 MAV per week, plus 3 PRN from 05/19/2023 to 07/09/2023. 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. MAVs are nursing visits for the purpose of assisting a member to set up and administer medications. MassHealth indicated that after review of the documentation included with the request, it was determined the evidence does not demonstrate medical necessity for the requested frequency of nursing visits.

The MassHealth representative testified that, according to the documentation included with the PA request, the appellant has been provided with 43.00 hours per week of personal care attendant (PCA) assistance. The time approved for the PCA includes time for the purpose of pre-filling the medication box, assistance with administering medication, assistance with insulin and the glucometer. The appellant currently has 4 nursing visits per week (1 SNV plus 3 MAV). MassHealth argued that he is able to manage his care for the other 3 days per week with the assistance of the PCA. Ms. Russell testified that the PCA provides some of the same services that the nurses are paid to perform, but as a less costly alternative. Any duty involving the appellant's medications that cannot be performed by the PCA should be able to be performed during the 3 nursing visits, between the SNV and the MAVs. She concluded that it is appropriate for the appellant's nursing services to be weaned from 4 visits per week (1 SNV plus 3 MAV) to 3 visits (1 SNV plus 2 MAV).

The appellant appeared at the fair hearing and testified telephonically with the assistance of his nurse. The appellant testified that the nurse assists him in administering his medication,

² PRN means "as needed."

including filling his insulin. She also prefills his medications, manages his doctor visits, tests his blood sugars, teaches him when to administer insulin, she communicates with the pharmacy to order medical supplies, and assists him with his swollen legs.

The appellant's witness, a nurse, testified that she has cared for the appellant for "several years." She testified that the PCA does not "touch his medications." She concluded that 4 nursing visits per week keeps the appellant stable and is necessary to keep the appellant in his home. When asked by the MassHealth nurse about the appellant's ability to assist with his care, the appellant's nurse stated that he can check his own blood sugar.

Findings of Fact

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

1. The appellant is an adult who lives independently in the community. He is not homebound. He has diagnoses that include diabetes mellitus, polyneuropathy, COPD, hypertension, morbid obesity, chronic pain, edema, and sleep apnea (Testimony; Exhibit 4).
2. The appellant's prior authorization (PA) request, submitted by Standards Home Care (Provider), requested skilled nursing visits (SNV) 1 times per week and medications administration visits (MAV) 3 times per week, plus 3 PRN from 04/11/2023 to 07/09/2023 (Testimony; Exhibit 4).
3. On 05/02/2023, MassHealth modified the request to SNV to 1 visit per week, MAV 3 visits per week plus 3 PRN from 04/18/2023 to 05/18/2023, then decrease services to SNV 1 visit per week, MAV 2 visits per week, plus 3 PRN from 05/19/2023 to 07/09/2023 (Testimony; Exhibits 1 and 4).
4. On 05/05/2023, the appellant filed a timely request for a hearing with the Board of Hearings (Exhibit 2).
5. The appellant's home health services are protected at SNV 1 visit per week, MAV 3 visits per week, plus 3 PRN pending this appeal (Exhibits 2 and 4).
6. On 06/05/2023, a fair hearing was held before the Board of Hearings (Exhibit 3).
7. The MAV visits are for the purpose of assisting the appellant with setting up and administering his medications (Testimony; Exhibit 4).
8. The appellant has been provided with 43.00 hours per week of personal care attendant (PCA) assistance. The time approved for the PCA includes time requested for the purpose

of pre-filling the medication box, assistance with administering medication, assistance with insulin and the glucometer (Testimony; Exhibit 4).

9. The appellant is able to monitor his blood sugar levels independently (Testimony; Exhibit 4).
10. PCA services are a less costly alternative to nursing visits (Testimony).
11. The appellant is able to manage his care with the assistance of the PCA on the 3 days per week that the nurses do not visit (Testimony; Exhibit 4).

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.

Regulations at 130 CMR 403.410 address 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.

Regulations at 130 CMR 403.402 define the following terms:

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.

403.409 Clinical Eligibility Criteria for Home Health Services

Regulations at 130 CMR 403.409 address clinical eligibility criteria for home health services, as follows:

(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.

(E) Least Costly Form of Care. The MassHealth agency 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.

Clinical criteria is set out in regulations at 130 CMR 403.415, as follows:

(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.

(Emphasis added.)

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).

The appellant's home health services provider submitted a request to MassHealth for 1 SNV per week, 3 MAV per week and 3 PRN for the dates of service from 04/18/2023 to 07/09/2023. MassHealth modified the request to 1 SNV, 3 MAV per week plus 3 PRN from 04/18/2023 to 05/18/2023, then decrease to 1 SNV, 2 MAV per week plus 3 PRN from 05/19/2023 to 07/09/2023. At issue is the decrease in MAV from 3 per week to 2 per week.

MassHealth cited to the appellant's records which indicate that has been provided with 43.00 hours per week of personal care attendant (PCA) assistance. The time approved for the PCA includes time requested for the purpose of pre-filling the medication box, assistance with administering medication, assistance with insulin and the glucometer. MassHealth argued that the PCA time is a less costly alternative to the MAVs and the duties are duplicative. Thus, the requested time was not medically necessary, pursuant to MassHealth's regulations.

The appellant and his nurse testified that 4 nursing visits per week are necessary so that the appellant may be safely served in the community. The appellant's nurse testified credibly that the nurses provide care beyond the duties of the PCA; however, her testimony did not explain why 3 MAV per week are medically necessary, except to say that the current level of nursing visits are keeping the appellant "stable."

MassHealth argued that the appellant currently receives 4 nursing visits per week (1 SNV plus 3 MAV), so he has 3 days a week without nursing visits. Since he is able to check his own blood sugar levels, presumably, he is able to administer his medications when no nurse is present. Because the PCA has been approved to assist the appellant with his medications, and he is able to administer his own medications on the days there is no nursing visit, the appellant has not met his burden of showing that 3 MAV per week are medically necessary. Pursuant to the facts in the hearing record, MassHealth's modification of the home health services is supported by the above regulations. This appeal is therefore denied.

Order for MassHealth

Release aid pending. Proceed with modification.

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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

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