

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2311202
Decision Date:	1/17/2024	Hearing Date:	12/14/2023
Hearing Officer:	Patrick Grogan	Record Open to:	N/A

Appearance for Appellant:



Appearance for MassHealth:

Lisa Russell, RN


Interpreter:

N/A



*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:	Approved	Issue:	Prior Authorization, Skilled Nursing Visits
Decision Date:	1/17/2024	Hearing Date:	12/14/2023
MassHealth's Rep.:	Lisa Russell, RN	Appellant's Rep.:	
Hearing Location:	Remote (Tel)	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 November 1, 2023, MassHealth modified the Appellant's request for prior authorization for 1 skilled nursing visit per week to 1 skilled nursing visit every other week from November 19, 2023 through March 23, 2024 because MassHealth determined that clinical documentation submitted on the Appellant's behalf did not demonstrate that the Appellant required all the services/treatment requested. (130 CMR 450.204(A)(1) and Exhibit 1). The Appellant filed this appeal in a timely manner on November 8, 2023. (130 CMR 610.015(B) and Exhibit 2). Individual MassHealth Agency determinations regarding scope and amount of assistance are valid grounds for appeal (130 CMR 610.032(A)(5)).

Action Taken by MassHealth

MassHealth modified the Appellant's request for Home Health Services. Specifically, MassHealth modified the Appellant's request for prior authorization for 1 skilled nursing visit per week to 1 skilled nursing visit every other week from November 19, 2023 through March 23, 2024 because MassHealth determined that clinical documentation submitted on the Appellant's behalf did not demonstrate that the Appellant required all the services/treatment requested. (130 CMR 450.204(A)(1) and Exhibit 1).

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.204(A)(1), in modifying the Home Health Services MassHealth from 1 skilled nursing visit per week to 1 skilled nursing visit every other week from November 19, 2023 through March 23, 2024 because MassHealth determined that clinical documentation submitted on the Appellant's behalf did not demonstrate that the Appellant required all the services/treatment requested. (130 CMR 450.204(A)(1) and Exhibit 1). .

Summary of Evidence

The Appellant is a MassHealth member under the age of 65 who is currently receiving Home Health Services. The Appellant's primary diagnosis includes Schizoaffective disorder, depressive type. (Exhibit 5, pg. 6) Secondary diagnoses include Non-Hodgkin lymphoma, unspecified, heart disease, hypertension, chest pain, suicidal ideations, auditory hallucinations, tachycardia, absence of left leg above knee due to amputation, among other diagnoses. (Exhibit 5, pg. 6) The Appellant applied for Home Health Services. (Testimony). The Appellant began receiving 1 skilled nurse visit per week and was seeking preauthorization for 1 skilled nurse visit per week from November 19, 2023 through March 23, 2024. (Testimony, Exhibit 1, Exhibit 5) MassHealth sent the Appellant notification that it had modified the Home Health Services to 1 skilled nurse visit every other week. (Testimony, Exhibit 1, Exhibit 5) In addition, MassHealth provides 4 PRN (assistance with as-necessary medication) skilled nurse visits. (Testimony, Exhibit 1, Exhibit 5). The Appellant timely appealed MassHealth's modification. The Appellant's request for aid pending was approved. (Exhibit 2).

MassHealth stated that the Appellant currently exhibited stability and medication compliance. (Testimony). MassHealth explained that with the Appellant's stability, MassHealth would attempt to decrease skilled nurse visits as the Appellant exhibited stability and independence. MassHealth indicated that the Appellant received visits weekly through PACT, Program for Assertive Community Treatment. (Testimony) PACT is an intensive, team-based behavioral program. (Testimony). MassHealth stated that Appellant received support from within his community. (Testimony) MassHealth testified that the Appellant is able to dispense his own medications and is making great strides towards medication independence. (Testimony) MassHealth concluded that at this time, additional weekly skilled nurse visits were not required, and stood by the decision to conduct 1 skilled nurse visit every other week . (Testimony).

At hearing, the Appellant and his visiting nurse stated they were seeking restatement of the 1 skilled nurse visit each week. (Testimony) The Appellant stated the reason he is progressing so well is because of the weekly skilled nursing visits. (Testimony) The Appellant needs to maintain a level of medication and with the skilled nursing visits, the nurse can detect symptoms of his mania that may emerge rather than waiting two weeks between visits where issues may progress unchecked.

(Testimony) The Appellant highlighted the issue that unchecked symptoms and medication non-compliance likely would result in the more costly option of hospitalization. The Appellant stated that less visits impacts his quality of life and inferred it jeopardizes his safety. (Testimony)

The Appellant's visiting nurse concurred with his testimony. (Testimony). The Appellant's visiting nurse noted that the hearing was telephonic and the sole party that was present with the Appellant was the Appellant's visiting nurse. (Testimony) The Appellant's visiting nurse then pointed out that the Appellant was displaying heightened anxiety, displaying hand tremors, despite taking PNR Thorazine in anticipation of anxiety from the hearing. (Testimony) The Appellant's visiting nurse highlighted those symptoms of decompensation that Appellant was displaying at the Hearing. (Testimony) The Appellant's visiting nurse echoed the concerns related to decompensation and potential hospitalization that the Appellant had highlighted in his testimony. (Testimony) The Appellant's visiting nurse highlighted the "high risk" medications the Appellant takes, requiring monthly blood drawn. (Testimony) The Appellant's visiting nurse outlined concerns related to the stability of the Appellant and the medication regimen based upon the Appellant's diagnoses and difficulty in the medication regimen and mistakes the Appellant makes in self-filling the medications. (Testimony). The Appellant's visiting nurse stated that the skilled nursing visits are not solely for medication administration, but rather for observation and full assessments as well. (Testimony) The purpose of visits is also for observation for early interception of problematic behaviors and symptoms of decompensation. (Testimony)

MassHealth agreed that monitoring was appropriate, however, MassHealth stated that the Appellant's PACT contact and therapist were also able to assess and intervening if the Appellant displayed symptoms of decompensation. (Testimony) MassHealth reaffirmed its position that weekly skilled nurse visits were not medically necessary. (Testimony) The decision to decrease skilled nursing visits were in line with attempting to make the Appellant as independent as possible. (Testimony)

The Appellant's visiting nurse reiterated that those supports were not trained in the clinical aspects of the Appellant's conditions. (Testimony). The Appellant's difficulty with problem solving was highlighted. (Testimony). It was noted, should issues arise which the Appellant is not equipped to problem-solve on his own, that the Appellant would be unable to manage without weekly skilled nursing visits. (Testimony) The Appellant stated that the therapist has never taken his blood pressure before, to which MassHealth responded the Appellant could request that his blood pressure be tested. (Testimony)

Findings of Fact

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

1. The Appellant is a MassHealth member under the age of 65 who is currently receiving

Home Health Services.

2. The Appellant's primary diagnosis includes Schizoaffective disorder, depressive type. (Exhibit 5, pg. 6) Secondary diagnoses include Non-Hodgkin lymphoma, unspecified, heart disease, hypertension, chest pain, suicidal ideations, auditory hallucinations, tachycardia, absence of left leg above knee due to amputation, among other diagnoses. (Exhibit 5, pg. 6)
3. The Appellant applied for Home Health Services. (Testimony). The Appellant began receiving 1 skilled nurse visit per week, and was seeking preauthorization for 1 skilled nurse visit per week from November 19, 2023 through March 23, 2024. (Testimony, Exhibit 1, Exhibit 5) MassHealth sent the Appellant notification that it had modified the Home Health Services to 1 skilled nurse visit every other week. (Testimony, Exhibit 1, Exhibit 5) In addition, MassHealth provides 4 PRN (assistance with as-necessary medication) skilled nurse visits. (Testimony, Exhibit 1, Exhibit 5).
4. MassHealth stated that the Appellant currently exhibited stability and medication compliance. (Testimony). MassHealth explained that with the Appellant's stability, MassHealth would attempt to decrease skilled nurse visits as the Appellant exhibited stability and independence.
5. MassHealth indicated that the Appellant received visits weekly through PACT, Program for Assertive Community Treatment. (Testimony) PACT is an intensive, team-based behavioral program. (Testimony).
6. MassHealth stated that Appellant received support from within his community. (Testimony)
7. MassHealth testified that the Appellant is able to dispense his own medications and is making great strides towards medication independence. (Testimony) MassHealth concluded that at this time, additional weekly skilled nurse visits were not required, and stood by the decision to conduct 1 skilled nurse visit every other week . (Testimony).
8. At hearing, the Appellant and his visiting nurse stated they were seeking restatement of the 1 skilled nurse visit each week. (Testimony) The Appellant stated the reason he is progressing so well is because of the weekly skilled nursing visits. (Testimony)
9. The Appellant needs to maintain a level of medication and with the skilled nursing visits, the nurse can detect symptoms of his mania that may emerge rather than waiting two weeks between visits where issues may progress unchecked. (Testimony) The Appellant highlighted the issue that unchecked symptoms and medication non-compliance likely would result in the more costly option of hospitalization. The Appellant stated that less

visits impacts his quality of life and inferred it jeopardizes his safety. (Testimony)

10. The Appellant's visiting nurse concurred with his testimony. (Testimony).
11. The Appellant's visiting nurse noted that the hearing was telephonic and the sole party that was present with the Appellant was the Appellant's visiting nurse. (Testimony) The Appellant's visiting nurse then pointed out that the Appellant was displaying heightened anxiety, displaying hand tremors, despite taking PNR Thorazine in anticipation of anxiety from the hearing. (Testimony) The Appellant's visiting nurse highlighted those symptoms of decompensation that Appellant was displaying at the Hearing. (Testimony)
12. The Appellant's visiting nurse echoed the concerns related to decompensation and potential hospitalization that the Appellant had highlighted in his testimony. (Testimony)
13. The Appellant's visiting nurse highlighted the "high risk" medications the Appellant takes, requiring monthly blood drawn. (Testimony) The Appellant's visiting nurse outlined concerns related to the stability of the Appellant and the medication regimen based upon the Appellant's diagnoses and difficulty in the medication regimen and mistakes the Appellant makes in self-filling the medications. (Testimony).
14. The Appellant's visiting nurse stated that the skilled nursing visits are not solely for medication administration, but rather for observation and full assessments as well. (Testimony) The purpose of visits is also for observation for early interception of problematic behaviors and symptoms of decompensation. (Testimony)
15. MassHealth agreed that monitoring was appropriate, however, MassHealth stated that the Appellant's PACT contact and therapist were also able to assess and intervening if the Appellant displayed symptoms of decompensation. (Testimony) MassHealth reaffirmed its position that weekly skilled nurse visits were not medically necessary. (Testimony) The decision to decrease skilled nursing visits were in line with attempting to make the Appellant as independent as possible. (Testimony)
16. The Appellant's visiting nurse reiterated that those supports were not trained in the clinical aspects of the Appellant's conditions. (Testimony). The Appellant highlighted the Appellant's difficulties with problem solving should issues arise which he is not equipped to problem-solve that he may be unable to manage without weekly skilled nursing visits. (Testimony)
17. The Appellant stated that the therapist has never taken his blood pressure before, to which MassHealth responded he could request that his blood pressure be tested. (Testimony)

Analysis and Conclusions of Law

The subject of the instant appeal is governed by the medical necessity determination for services as codified within 130 CMR 450.204 (Exhibit 6, p. 58):

450.204: MEDICAL NECESSITY

The MassHealth agency does 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) 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: Potential Sources of Health Care, or 517.007: Utilization of Potential Benefits.

(B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to the MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

(C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

(D) Additional requirements about the medical necessity of MassHealth services are contained in other MassHealth regulations and medical necessity and coverage guidelines.

(E) Any regulatory or contractual exclusion from payment of experimental or unproven services refers to any service for which there is insufficient authoritative evidence that

such service is reasonably calculated to have the effect described in 130 CMR 450.204(A)(1).

Pursuant to 450.204 (B) and (C), medically necessary services must meet professionally recognized standards of health care, and additional requirements and information may be found in the coverage guidelines. The Guidelines for Medical Necessity Determination for Home Health Services (Exhibit 5, p.17-28) explicitly describes the clinical information utilized by MassHealth to determine medical necessity based upon accepted standards of practice as well as governing laws, regulations and medical literature. The clinical requirements are found in Guidelines for Medical Necessity Determination for Home Health Services, Section 2(A) of the Guidelines for Medical Necessity Determination. Regarding the subject of this appeal, skilled nursing visits administration may be found in Section 2(A)(3)(b):

b. Intermittent Skilled Nursing Visits

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.

Intermittent skilled nursing services can be provided when the member requires treatment that falls within the scope of nursing practice and is required in

Massachusetts to be provided by a registered nurse, or by a licensed practical nurse under the supervision of a registered nurse; or when the member requires treatment at a level of complexity and sophistication that can only be safely and effectively performed by a Licensed Registered Nurse or a Licensed Practical Nurse working under the supervision of a Registered Nurse.

Medication administration may occur as part of an intermittent skilled nursing visit for the purpose of the administration of medications ordered by the prescribing practitioner that generally requires the skills of a licensed nurse to perform or teach a member or caregiver to perform independently.

Intravenous medication and infusion administrations will be treated as an intermittent skilled nursing visit due to the time required to complete these tasks.

At hearing, the Appellant was seeking 1 skilled nurse visit weekly. (Testimony) The Appellant's visiting nurse outlined concerns related to the stability of the Appellant and exhibited symptoms of decompensation. (Testimony). Additionally, the Appellant's visiting nurse concern sought to mitigate potential future issue related to the Appellant's mania. (Testimony). The Appellant's visiting nurse highlighted symptoms the Appellant was exhibiting during the hearing. (Testimony)

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228. See also 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). In reviewing the evidence and the testimony presented at Hearing, I find the Appellant, and his visiting nurse's testimony, compelling. Although this record demonstrates some evidence of current stability with the Appellant's medication regimen and conditions, the Appellant's visceral reaction during the hearing, as observed by the Appellant's visiting nurse, underscores the fragility of this balance. MassHealth's representative was not in a position to monitor the Appellant during the hearing. Moreover, extending the time between evaluations and observations by a skilled nurse erodes the Appellant's current stability which was observed to falter during the Hearing. This Record demonstrates the potential for decompensation exhibited by the Appellant during the Hearing. (Testimony) I find that the Appellant has met his burden, by a preponderance of evidence, to show the invalidity of MassHealth's modification based upon the specific evidence presented as well as testimony at the Hearing. Therefore, the Appellant's appeal of MassHealth's modification is APPROVED.

Order for MassHealth

APPROVE 1 skilled nursing visit per week as requested.

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.

Patrick Grogan
Hearing Officer
Board of Hearings

cc:

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