Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2402205
Decision Date:	5/8/2024	**Hearing Date:**	03/14/2024
Hearing Officer:	Kimberly Scanlon		

Appearance for Appellant:
Via telephone
[redacted]

Appearance for MassHealth:
Via telephone
Lisa Russell, R.N.

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:**	Prior Authorization-Home Health Services
Decision Date:	5/8/2024	**Hearing Date:**	03/14/2024
MassHealth's Rep.:	Lisa Russell, R.N.	**Appellant's Rep.:**	[redacted]
Hearing Location:	Quincy Harbor South 3 (Remote)	**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 February 8, 2024, MassHealth notified the appellant that his prior authorization (PA) request for 1 medication administration visit (MAV), per week, was denied (Exhibit 1). The appellant timely filed this appeal in a timely manner on February 13, 2024 (130 CMR 610.015; Exhibit 4). Denial and/or modification of assistance is valid grounds for appeal (130 CMR 610.032). Appellant was entitled to retain his previous level of benefits pending the outcome of the hearing (130 CMR 610.036).

Action Taken by MassHealth

MassHealth denied the appellant's PA request for 1 MAV per week.

Issue

The appeal issue is whether MassHealth was correct in denying the appellant's PA request for 1 MAV per week.

Summary of Evidence

The MassHealth representative, who is a registered nurse and clinical appeals reviewer, testified that the appellant is an adult male and has been receiving home health services since June of 2016. His primary medical diagnoses include schizoaffective disorder, major depression, alcohol abuse, psychoactive substance abuse, anxiety, and a history of non-compliance with the medication regimen (Testimony; Exhibit 7, p. 6). The MassHealth representative testified that [redacted] the appellant's home health care agency ("HHA") submitted a PA request to MassHealth on behalf of the appellant on February 6, 2024, seeking the following: 1 SNV per week, plus 3 PRN SNVs, and 1 MAV per week.

The MassHealth representative testified that by notice dated February 8, 2024, MassHealth modified the request to the following: 1 SNV per week, plus 3 PRN SNVs, and 0 MAVs per week. The request for 1 MAV per week was denied because MassHealth determined that the documentation submitted on behalf of the appellant does not support the services requested. (Testimony; Exhibit 1, p. 2). Specifically, the documentation submitted by the appellant's provider dated January 12, 2024, through February 2, 2024, does not indicate that the appellant is non-compliant with medication (Testimony; Exhibit 7, pp. 10-43). The appellant is reported to be alert and oriented, with no noted forgetfulness; he takes his medications twice per day and is compliant with doing so when the HHA nurse is not present. The appellant has no recently reported hospitalizations and has not been reported to have any decline. *Id*. MassHealth notified the appellant's HHA of its recommendation to attempt a weaning trial and to submit documentation to support the appellant's response and compliance to wean, including any dates of non-compliance (Testimony; Exhibit 1, p. 2). The time period for this PA request is February 7, 2024 through May 7, 2024. *Id*.

The appellant's representative appeared at the hearing telephonically. She stated that the appellant's diagnoses as testified to by MassHealth were accurate and noted that the appellant began receiving services in 2014. She explained that the appellant relocated his residence for a brief time, however, this relocation ultimately did not work out and the appellant's HHA resumed his care in 2016. The appellant was originally receiving daily SNVs, and throughout the years he was frequently hospitalized. The appellant's representative acknowledged that upon submitting a PA request, there is only a few weeks' worth of notes included therein. She opined that a few weeks of notes does not give an inclusive background of the appellant's overall medical history. In support of her position, the appellant's representative explained that last year, the appellant was admitted into a detox facility for continued alcohol abuse. The month prior, (in August), the appellant was hospitalized for intoxication. Thus, the appellant has ongoing issues with substance and alcohol abuse. Moreover, the appellant is currently taking 13 medications, including Lithium, which is now being well-managed. The appellant's representative explained that the HHA has successfully weaned the appellant down from daily SNVs to 2 times per week.

The appellant's representative stated that the appellant has numerous medical diagnoses, a lengthy history of mental disorders, alcohol abuse, substance abuse, and non-compliance of the medication regimen. The appellant was hospitalized numerous times throughout the years for

Lithium toxicity. Additionally, the appellant's representative argued that there is not enough time in 1 brief visit for the HHA nurse to manage the appellant's 13 medications and to coordinate his care, which includes detox facility admissions, contacting pharmacies, etc. The appellant's representative stated that the HHA will not manage 13 medications once per week because it is not safe nor is it fair to the appellant. The appellant's representative stated that as a registered nurse, the MassHealth representative should understand that there is a great deal of coordination that goes into MAVs. All the coordination that takes place cannot be done in 15-20 minutes per week, because it includes not only the administration of medication, but it also includes ordering, and picking up the medications. She stated that the HHA nurses are performing all this work because MassHealth does not pay for case management social workers. The appellant cannot be safely managed given that he takes 13 different medications, including high-risk medications such as Lithium, in one weekly visit. The appellant has been with the HHA for a long time, he is aging and does not leave his residence often, as a result thereof. The appellant is a high-risk patient and is being administered high-risk medications. The appellant's representative acknowledged that one visit per week would be manageable if the appellant was only prescribed 1-2 medications. However, in this case, the appellant is prescribed 13 medications, which are high-risk medications and the HHA cannot case manage a member with numerous medical complexities and numerous medications once per week.

In response, the MassHealth representative acknowledged that the appellant is prescribed 13 medications. However, she noted that notwithstanding the appellant's Lithium medication, which is high-risk, his remaining medications include, but are not limited to, aspirin, vitamins, folic acid, and omeprazole. Thus, not all the appellant's prescribed medications are high-risk. The MassHealth representative inquired whether the appellant's HHA nurse was administering all 13 medications during the visit. She explained that there was no documentation submitted on behalf of the appellant that indicates whether the HHA nurse was administering the appellant's medications. The MassHealth representative inquired whether the HHA has used any of the approved PRN visits for this process because it appeared to be more involved than the actual administration of medication.

The appellant's representative explained that the HHA nurse will look at the medications during the visit and may remind the appellant to take his medications if he has not taken them while the nurse is present. However, a great deal of time is spent by the appellant's HHA nurse ordering the appellant's medications, picking them up, and ensuring that that appellant does not run out of any of his medications. The appellant's representative also explained that the appellant will not call the HHA and tell them when his medications have run out. The MassHealth representative explained that the focus of a MAV is administering medications. Thus, the HHA nurses are supposed to administer medications at the visit and document when each medication is given.
The appellant's representative reiterated that overseeing the administration of 13 medications, which include high-risk medications, cannot be performed once per week. As to documenting the administration of the appellant's medications, the appellant's representative stated that this task was completed by the HHA nurse (See, Exhibit 7, pp. 17, 27, and 37). The MassHealth

representative stated that the pages referenced by the appellant's representative do not state that any medication was administered at the visit. Rather, the pages referenced only include a list of the appellant's prescribed medications. *Id*. The appellant's representative explained that the HHA's computer system indicates that the medication was given once entered by the HHA nurse. The MassHealth suggested that a notation be made in future records which states that the medications were administered. She explained that it would be helpful to MassHealth in reviewing subsequent PA requests. The MassHealth representative testified that the HHA is doing well in managing the appellant's medications. However, she explained that managing the appellant's medications can be performed in 1 SNV per week. She further testified that the appellant's requested MAV visit (once per week) does not appear to be medically necessary. The appellant's representative reiterated her concerns, as stated above.

Findings of Fact

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

1. On or about February 6, 2024, the appellant's HHA submitted a PA request to MassHealth for 1 SNV per week, plus 3 PRN SNVs, and 1 MAV per week.

2. On or about February 8, 2024, MassHealth modified the request as follows: MassHealth approved 1 SNV per week, plus 3 PRN SNVs, and denied 1 MAV per week, for the dates of service of February 7, 2024 through May 7, 2024.

3. The appellant's start of care with his HHA began in 2014, with a brief interruption due to relocation of his residence. The appellant resumed his care with his HHA in June of 2016.

4. The appellant is an adult male with diagnoses including schizoaffective disorder, major depression, alcohol abuse, psychoactive substance abuse, anxiety, and a history of non-compliance with the medication regimen.

5. The appellant is currently prescribed 13 medications.

6. The nursing records submitted on behalf of the appellant indicate that the appellant is compliant with his medication regimen, even when the HHA nurse is not present. Said records further indicate that the appellant is alert and oriented, with no noted forgetfulness, and no recently reported hospitalizations.

7. The appellant timely appealed this MassHealth action.

Analysis and Conclusions of Law

MassHealth pays for home health services for eligible members, subject to the restrictions and limitations described in 130 CMR 450.105: *Coverage Types* which specifically states, for each MassHealth coverage type, which services are covered and which members are eligible to receive those services 130 CMR 403.404(A)). Prior authorization for any and all home health skilled nursing and medication administration visits is required whenever the services provided exceed more than 30 intermittent skilled nursing and/or medication administration visits in a calendar year (130 CMR 403.410(B)(4)). To qualify for home health services, a member must be able to be safely maintained in the community (130 CMR 403.409(F).

MassHealth agency pays for only those home health services that are medically necessary. 130 CMR 403.409(C) provides as follows:

> 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.

Pursuant to 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, as follows, with 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)).

A medication administration visit is defined as:

> 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 the oral, intramuscular, and/or subcutaneous medication but does not include intravenous administration.

(130 CMR 403.402).

MassHealth's Guidelines for Medical Necessity Determination for Home Health Services ("Guidelines") as provided in MassHealth's submission, are based on review of the medical literature and current practices. (See, Exhibit 7, pp. 52-63). With respect to MAVs, the Guidelines state, in pertinent part, as follows:

> A medication administration visit is a skilled nursing visit solely for the purpose of administrating 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 54-55.

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 53-54.

At issue in this appeal is whether MassHealth was correct in determining that the appellant's PA request for 1 MAV visit per week was not medically necessary. In support of its position, MassHealth pointed to the fact that the documentation submitted on behalf of the appellant indicates that he is alert and oriented, medically stable, and has not been recently hospitalized. Further, the appellant's clinical record does not note any issues with medication non-compliance. Finally, MassHealth stated that the focus of a MAV is the administration of medication and documenting that this medication was given. Here, it is unclear whether the appellant's medication is actually administered and documented by the HHA nurse.[1]

The appellant's representative disputed this, arguing that the appellant was admitted into a detox facility for alcohol abuse last year, and has a history of non-compliance with the medication regimen. However, none of this was documented in the records submitted on behalf of the appellant. The appellant's representative further argued that the appellant's SNV cannot be performed safely once per week, as the appellant currently takes 13 high-risk medications,

[1] There was some confusing testimony regarding the computer system used by the HHA in documenting the administration of medication. Notably, the record does not document that the appellant's medication is administered by the HHA nurse.

including Lithium. MassHealth agreed that Lithium is a high-risk medication, however, also persuasively argued that the appellant's remaining medications - including aspirin, vitamins, folic acid, and omeprazole, amongst others, are not high-risk. Additionally, the appellant's representative argued that the coordination of the appellant's care, including the filling and picking up the appellant's medications cannot be managed once per week. As MassHealth persuasively pointed out, however, the purpose of a MAV is to administer medication, not to coordinate care. As set forth in the applicable guidelines cited above, a medication administration visit is a skilled nursing visit *solely* for the purpose of administrating medications (emphasis added). Further, as the MassHealth representative noted, the appellant was approved for additional SNV PRN visits, which could assist with this process.

In this case, the record reflects that appellant has been stable with no decompensation or hospitalizations with the visits as approved by MassHealth. The record also reflects that the appellant has been compliant with taking his medications, even when the HHA nurse is not present. Moreover, the appellant's representative testified that the HHA successfully weaned the appellant's visits from daily to twice per week, notwithstanding his complicated medical diagnoses and 13 prescribed medications. Thus, I find that the appellant has not met his burden of demonstrating that 1 MAV is medically necessary or that his care cannot be managed with the approved 1 SNV and 3 PRN SNVs per week. On this record, this appeal is denied.[2]

Order for MassHealth

None, except to remove aid pending.

[2] This denial does not preclude the appellant, or his HHA, from submitting a new PA request, including all supporting documentation, showing the request for MAV is medically necessary.

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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

cc:
MassHealth Representative: Optum MassHealth LTSS, P.O. Box 159108, Boston, MA 02215
[redacted]