

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2407136
Decision Date:	7/31/2024	Hearing Date:	06/04/2024
Hearing Officer:	Casey Groff, Esq.		

Appearance for Appellant:



Appearance for MassHealth:

Nelisette Rodriguez, R.N., 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:	Approved	Issue:	Home Health Services
Decision Date:	7/31/2024	Hearing Date:	06/04/2024
MassHealth's Rep.:	Nelisette Rodriguez, RN	Appellant's Rep.:	Pro se; Advocate
Hearing Location:	Board of Hearings, 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 4/29/24, MassHealth modified Appellant's application for home health services because it determined that clinical documentation submitted on behalf of Appellant did not demonstrate medical necessity for the services requested. See 130 CMR 450.204(A)(1); Exhibit 1, pp. 3-5. Appellant filed this appeal in a timely manner on 5/3/24. See 130 CMR 610.015(B); Exhibit 1. Denial and/or modification of a prior authorization request for home health services are valid grounds for appeal. See 130 CMR 403.411(B) and 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified Appellant's request for home health services.

Issue

The appeal issue is whether MassHealth was correct in modifying Appellant's PA request for home health services.

Summary of Evidence

At the hearing, MassHealth was represented by a registered nurse/clinical appeals reviewer. Appellant appeared *pro se* and was accompanied by an advocate from her home health agency, [REDACTED]. All parties appeared by telephone.

Through testimony and documentary evidence, the MassHealth R.N. representative presented the following information: Appellant is an adult MassHealth member under the age of [REDACTED] and a recipient of home health services. On 4/25/24, MassHealth received a prior authorization (PA) request from Appellant's home health agency, [REDACTED] seeking authorization of 4 skilled nursing visits per-week, broken down as 1 direct skilled nursing visit (SNV) and three nursing medication administration visits (MAVs), with PRN visits for acute changes, for the certification period of 5/12/24 through 9/7/24. See Exh. 4. The PA request included a signed physician order for the proposed plan of care. Id. at 10. According to AHC's PA request, Appellant has multiple medical and psychiatric co-morbidities, including schizoaffective disorder, bipolar type; heart disease; hypertension; myocardial infarction in 2019; chronic obstructive pulmonary disease, among other diagnoses. Id. at 6-10. In support of the request, AHC noted the following:

Pt unable to self-assess or manage independently disease process or treatment r/t impaired judgment and thought process. Unsafe to self-manage treatment independently as evidenced by history of medication mismanagement including overuse. Patient has episodes of non-compliance r/t forgetfulness. Pt becomes anxious when she forgets w/difficulty following through with tasks d/t anxiety. Pt w/ complicated family dynamic, [including history] of restraining order and daughter..., son passed from [overdose]. She visits with her sister, who assists with med reminders on weekends only. [History] of hospitalization for delirium and fall d/t metabolic encephalopathy r/t non-compliance with treatments. Pt would not be safe if left alone to manage needs and medications.... Barriers: impaired judgment, thought process and follow through r/t schizoaffective d/o. Pt has poor recall on SN education at time of visit.

Id. at 7.

The PA request further notes, under a section pertaining to the member's ability to perform self-care, that "Patient is unable to safely/independently care for self as evidenced by recent history of hospitalization with metabolic encephalopathy r/t misuse of prescribed treatments." Id.

On 4/29/24, MassHealth modified Appellant's PA request by authorizing 1 SNV and 2 MAVs per-week, for a total of three nursing visits per-week, with the requested PRN visits. See Exh. 1. The MassHealth representative reviewed skilled nurse visit notes from the prior certification period, specifically between the dates of 4/18/24 through 4/23/24. Id. at 20-27. MassHealth testified

that the clinical documentation therein reported no hospitalizations or emergency room visits; there was no indication of non-compliance with medications or decompensation; there were no reports of missed doses on the non-nursing days during which Appellant takes pre-poured medications; her vitals appeared within normal parameters; she is not home bound and works 2-3 days per-week. Id. The MassHealth representative testified that when a patient appears stable, it is not uncommon for MassHealth to wean down services, as it seeks to do here. Because of the wean, MassHealth authorized the requested PRN visits which are available to the provider if it becomes necessary to use additional visits. Because Appellant is dually insured, she can apply for a medication dispenser for pre-packaged and dispensed medications.

In support of its modification, MassHealth cited its Guidelines for Medical Necessity Determination for Home Health Services, a copy of which was submitted into the record. See Exh. 4, pp. 33-43. Specifically, the guidelines state that a skilled nursing visit solely for the purpose of administering non-intravenous medications may be medically necessary when certain criteria are met, including when “the member has a history of failed medication compliance resulting in a documented exacerbation of the member’s condition.” Id. at 35. MassHealth made this determination because the clinical documentation did not support the medical necessity of the requested number of nursing visits.

Appellant and her advocate testified that they opposed the reduction in services given the complexities of her condition. Appellant’s advocate testified that she currently is authorized for a total of 4 scheduled nursing visits per-week, leaving her with one day during the week where she has no oversight. Her sister is able to assist her on weekends, but otherwise not available during the week due to distance and other commitments. Appellant’s advocate from AHC, who oversees her care, testified that she believed continued visits have been necessary to help Appellant stay compliant with medications, noting that Appellant does have a history of depression and overtaking medications, and that these are documented in the nursing notes. The advocate mentioned that most weeks Appellant’s presents as fearful and exhibits extreme episodes of sadness over the loss of her son. One of the reasons they have maintained visits is because of her depression and thoughts of hurting herself. Additionally, it is because they have maintained the frequency of nursing visits that she has done well. The advocate noted that Appellant has periodically forgotten to take her nighttime medications, and, on occasion, there have been instances where a medication sleeve is returned with remaining medications, indicating Appellant did not take them.

Appellant testified that she does not think she could administer medications by herself, even when pre-poured. She testified that she has a learning disability and does not feel safe taking medications in absence of her nurse or family members. During these visits, the nurse will also check her blood pressure and vitals. They identify things that she would not otherwise understand. For example, she had pneumonia last month, which was only discovered because her nurse reviewed her symptoms and was able to get her to a hospital. Appellant testified that she has high anxiety and becomes emotional and overwhelmed very easily. Her

medication helps her, and the nurses allow her to stay on track by taking them. Several years ago, she was prescribed medication and she ended up overdosing. Appellant testified that her part-time job at a grocery store is good for her mental health. Normally, she “can’t get out of bed in the morning” due to her depression, but knowing she has to go to work has helped. When asked about the medications, Appellant stated that she “doesn’t even know the names of the medications” she takes, but that she takes 12 medications in the morning and 10 at night. She does not feel confident at all managing these medications on her own.

A review of the PA request shows that Appellant is prescribed a total of 20 different medications, of which 2 are inhaled, 1 is topical, and the remaining medications are taken orally between once and several times per-day. Id. at 16, 28. Nursing visit notes report that Appellant has a “poor” response to teaching and that she has “cognitive and memory deficits [and] requires ongoing reinforcement of education.” Id. at 21. Nursing observations and assessments also indicate that Appellant “requires SNV due to cognitive deficits which requires nursing to ensure client is compliant with medications and taking medications per MD orders.” Id. at 23. A nursing note visit from 4/22/24 states that Appellant “is very forgetful, takes her several minutes to locate one of her medication sleeves from over the weekend. SN reminded to place medication sleeves in the same place to avoid losing them.” Id. at 25.

Findings of Fact

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

1. Appellant is an adult MassHealth member under the age of [REDACTED] and a recipient of home health services.
2. Appellant has multiple medical and psychiatric co-morbidities, including schizoaffective disorder, bipolar type; heart disease; hypertension; myocardial infarction in 2019; chronic obstructive pulmonary disease, among other diagnoses.
3. Appellant is prescribed a total of 20 different medications, of which 2 are inhaled, 1 is topical, and the remaining medications are taken orally between once and several times per-day.
4. On 4/25/24, MassHealth received a PA request from Appellant’s home health agency seeking authorization of 4 skilled nursing visits per-week, broken down as 1 direct SNV and 3 MAVs per-week, with PRN visits for acute changes, for the certification period of 5/12/24 through 9/7/24.
5. On 4/29/24, MassHealth modified Appellant’s PA request by authorizing 1 SNV and 2 MAVs per-week, for a total of three nursing visits per-week, with the requested PRN

visits.

6. Appellant is unable to self-assess or manage independently her disease process or treatment related to her impaired judgment and thought process.
7. Appellant has a past history of medication mismanagement and overuse, one instance of which resulted in a hospitalization for delirium and fall due to metabolic encephalopathy, triggered by her non-compliance with treatments, which was documented in the PA request.
8. Appellant becomes anxious when she forgets and has difficulty following through with tasks due to anxiety.
9. Appellant has a “poor” response to teaching and that she has cognitive and memory deficits and requires ongoing reinforcement of education.
10. Appellant’s only available caregiver is her sister who can only assist Appellant on the weekends.
11. Skilled nurse visit notes between the dates of 4/18/24 through 4/23/24 did not reflect that Appellant had any hospitalizations or emergency room visits, episodes of medication non-compliance, or decompensation within the past certification period; her vitals were within normal parameters, and she did not appear to miss medication doses on non-nursing days.
12. A nursing note visit from 4/22/24 states that Appellant “is very forgetful, takes her several minutes to locate one of her medication sleeves from over the weekend. SN reminded to place medication sleeves in the same place to avoid losing them.”

Analysis and Conclusions of Law

At issue on this appeal, is whether MassHealth was correct in modifying Appellant’s PA request for home health skilled nursing services. MassHealth will pay for only home health services that are medically necessary. See 130 CMR 403.409(C). 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, 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.

See 130 CMR 450.204(A).

In addition to general medical necessity requirements, MassHealth home health regulations limit coverage of home health skilled nursing services unless the following conditions and clinical criteria are met:

(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 physician for the member 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 skilled nursing visit for the sole purpose of administering medication 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.*

See 130 CMR 403.415 (emphasis added).

Additionally, MassHealth's Guidelines for Medical Necessity Determination for Home Health Services list the following considerations when determining a member's need for a skilled nurse, solely for the purpose of administering medication.

c. Medication Administration Skilled Nursing Visits

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.***

...

- iii. Certain medication administration tasks are not considered skilled nursing tasks *unless the complexity of the member's condition or medication regiment requires the observation and assessment of a licensed nurse to safely perform*. Such conditions include:
 - ...
 - b. filling of weekly/monthly medication box organizers, which requires the skills of a licensed nurse only when the member/caregiver is unable to perform the task.

See Exh. 4 at 34-35 (emphasis added).

In the present case, Appellant requested a total of four skilled nursing visits per-week, broken down as 1 SNV and 3 MAVs per-week. MassHealth modified the request by approving one SNV per-week and two MAVs per-week, for a total of three nursing visits per-week.

Based on the evidence in the record, and in consideration of the applicable program regulations and guidelines, Appellant successfully demonstrated that she requires three MAVs and one SNV per-week, for a total of 4 nursing visits per-week. The documentation shows that the visits were requested, pursuant to a physician order, for the purpose of conducting nursing assessments, psychiatric management, and assistance in administering medications. The documentation included in the PA request, as well as testimony provided at hearing, demonstrates the Appellant has psychiatric diagnoses and cognitive impairments that significantly limit her ability to self-administer her prescribed medications on a consistent basis without the assistance of frequent nursing visits. Nursing notes from the preceding certification period reflect that Appellant has a “poor” response to teaching, as well as “cognitive and memory deficits [which require] ongoing reinforcement of education,” and nursing visits to ensure Appellant is compliant with taking medications as prescribed by her doctor. See Exh. 4. at 21-25. The evidence further shows that Appellant is prescribed 20 daily medications which are taken either orally, inhaled, or topically. See id. at 16, 28. Even with services such as a pre-filled medication planner, Appellant testified that she becomes overwhelmed and confused when left to taking medications on her own. With the exception of her home health provider, Appellant’s only available community support is from her family, particularly her sister, who is only available to assist Appellant on weekends. Because Appellant is unable to consistently administer medications due to “impaired physical, cognitive, behavioral and/or emotional issues” and because “no able caregiver is present,” the request for 1 SNV and 3 MAVs per-week is appropriate. See 130 CMR 403.415(B)(7) and HHS Guidelines for Medical Necessity, § 2(A)(3)(c)(i)(a).

It is also noted that although Appellant did not have any documented episodes of medication non-compliance or hospitalizations *during* the preceding certification period, she did have a documented “history of failed medication compliance resulting in a documented exacerbation” of her condition within the nursing notes. See HHS Guidelines for Medical Necessity, § 2(A)(3)(c)(i)(b). For example, the PA request included reference to a “recent history of

hospitalization with metabolic encephalopathy [related to] misuse of prescribed treatments,” which AHC noted was indicative of her inability to safely and independently care for herself. Id. at 7. At the time of hearing, Appellant’s home health services had been weaned down to 4 nursing visits per-week, leaving her with one weekday where she had no caregiver oversight. Both Appellant and her advocate expressed concern that a further reduction would increase the likelihood she would resort to past medication misuse. Further, Appellant and her advocate testified that the improvement and stability Appellant has been able to maintain has been a direct result of the frequent oversight provided by her caregivers.

As the regulatory authority supports Appellant’s request for three MAVs and 1 SNV per week, this appeal is APPROVED. See 130 CMR 403.415(B)(7).

Order for MassHealth

Remove aid pending. Approve Appellant’s PA request for certification period 5/12/24 through 9/7/24 at one SNV and 3 MAVs per-week as requested.

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.

Casey Groff, Esq.
Hearing Officer
Board of Hearings

cc:

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

[REDACTED]