

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Numbers :	2405244 2408523
Decision Date:	8/1/2024	Hearing Dates:	5/07/2024, 6/24/2024, 7/23/2024
Hearing Officer:	Sara E. McGrath BOH Deputy Director		

Appearances for Appellant:

Via telephone



Appearances for MassHealth:

Via telephone

Nelisette Rodriguez, RN
Laura Rose, RN (7/23/2024 only)



*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:	8/1/2024	Hearing Dates:	5/07/2024, 6/24/2024, 7/23/2024
MassHealth's Rep.:	Nelisette Rodriguez Laura Rose	Appellant's Rep.:	[REDACTED]
Hearing Location:	Quincy Harbor South (Remote)	Aid Pending:	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

On February 19, 2024, MassHealth notified the appellant that it had denied her February 16th prior authorization (PA) request to increase her skilled nursing visits (SNVs) for the remainder of a PA period running from February 10 through May 10, 2024 (Exhibit 1). The appellant filed a timely appeal of this determination (Exhibit 2). A fair hearing was held on May 7, 2024 (Appeal No. 2405244). On May 20, 2024, MassHealth notified the appellant that it had approved her PA request for SNVs (1 SNV per week, plus 3 as needed SNVs) but denied her request for 6 medication administration visits (MAVs) per week, for the PA period running from May 11 through August 10, 2024 (Exhibit A). The appellant filed a timely appeal of this determination (Exhibit B). A fair hearing was held on June 24, 2024 (Appeal No. 2408523). At the conclusion of this hearing, the record was held open for a brief period to allow the parties time to resolve the disputed issue (Exhibit C).¹ Negotiations failed, and a reconvened hearing was held on July 23, 2024. Denial

¹ Because the disputed issue in each matter is the same, the parties agreed to the consolidation of the

and/or modification of a PA request is valid ground for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's PA request for increased home health services related to a PA period running from February 10 through May 10, 2024, and then modified her request for home health services for a PA period running from May 11 through August 10, 2024.

Issue

The appeal issue is whether MassHealth was correct in its denial and modification of home health services for the two PA periods at issue here.

Summary of Evidence

The record sets forth the following facts and chronology: The appellant is a female in her [REDACTED] with primary medical diagnoses that include type II diabetes with neuropathy, hypertension, asthma, major depressive disorder, generalized anxiety disorder, and attention and concentration deficit. The appellant lives with family and does not require a surrogate. The appellant has been receiving home health services since [REDACTED] and had been approved for daily nursing visits until late [REDACTED] at which time these visits were weaned to one nursing visit per week (plus 3 as needed visits). The appellant also has a MassHealth authorization in place for personal care attendant (PCA) services in the amount of 50 hours per week. The current authorization includes time for PCA assistance with medication administration, as follows: Physical assist with medications (PO, PR, GTTS, inhalers, topical), 3 minutes, 2 times per day, 7 days per week (42 minutes total per week); physical assist to administer subcutaneous injections, 3 minutes, 3 times per day, 7 days per week (63 minutes total per week); and glucometer check, 3 minutes, 3 times per day, 7 days per week (63 minutes total per week). The PCA authorization includes the following comments regarding medication administration: "VNA nurse prefills med planner, PCA administers meds, check BS and give insulin d/t unable to open meds bottle. Poor FMC r/t OA, Carpal Tunnel Syndrome" (Exhibit 7, p. 93; Exhibit C, p. 76).

On February 16, 2024, Alternative Home Health Care, LLC, the appellant's home health agency (HHA), submitted a PA request seeking an increase to the SNV authorization from 1 SNV per week to 7 SNVs per week for the remainder of a PA period running from February 10 through May 10, 2024.² On February 19, 2024, MassHealth denied the request for an increase on the basis that the

two appeals. This hearing officer therefore took over the handling of both matters. The exhibits in Appeal No. 2408523 have been remarked for clarity.

² For this PA period, the appellant had requested 1 SNV per week (plus 3 as needed SNVs), and 6

documentation submitted does not support the services requested. The home health services in place after the denial were as follows: 1 SNV per week (plus 3 as needed SNVs) for the length of the PA period.

On May 17, 2024, the appellant's HHA submitted a PA request, this time seeking 1 SNV per week (plus 3 as needed SNVs), as well as 6 MAVs per week for the PA period running from May 11 through August 10, 2024. On May 20, 2024, MassHealth approved the requested SNVs but denied the requested MAVs. The basis for the denial was that the documentation submitted indicated that there is a comparable medical service available that is less costly to the agency. The home health services in place after the modification were as follows: 1 SNV per week (plus 3 as needed SNVs) for the length of the PA period.

MassHealth was represented at the hearings by a registered nurse and clinical appeals reviewer. She explained that the documentation submitted by the appellant's provider establishes that the appellant does not require the level of services requested. First, she pointed out that during the certification periods at issue, there were no documented hospitalizations, decompensations, or new medications. The appellant was consistently reported to be alert and oriented, and her vital signs were within the normal limits (Exhibit 7, p. 11). Additionally, the appellant's blood sugars were within the normal limits, except for one instance when she had a blood sugar reading of 316. The MassHealth representative explained that this visit note does not include any mention of hypoglycemia and does not include any new physician orders nor evidence of any communication with the appellant's physician. The record makes clear that the appellant is currently stable. Second, the MassHealth representative also noted that the appellant's PCA administers all her medications, as more fully described above, including her insulin. Thus, MassHealth takes the position that the request for a nursing visit to administer the appellant's insulin represents a duplication of services per 130 CMR 403.422(A)(1)(D). The MassHealth representative argued that all these facts support MassHealth's determination that the appellant does not need a nursing visit (SNV or MAV) every day, and that 1 SNV per week is sufficient to meet the appellant's medical needs.

The appellant was represented at the hearings by a registered nurse from her HHA. She explained that the appellant is unable to self-administer any of her medications, including her insulin. She stated that the appellant requires assistance for all aspects of medication administration, including her insulin injections. She explained that the appellant's physician has ordered long-acting insulin (administered via a pen where the dose is "dialed up") once every 24 hours, as well as short-acting insulin (also called "sliding scale" insulin, administered via a syringe) on an as needed basis.³ She

medication administration visits (MAVs) per week. MassHealth modified the request, approving the requested 1 SNV per week (plus 3 as needed SNVs), but denying the requested 6 MAVs per week. The appellant did not appeal this MassHealth determination.

³ The appellant's representative noted that the appellant receives sliding scale insulin approximately

testified that the administration of all insulin requires an assessment and is a skilled service. She stated that PCAs do not and should not give insulin, as it is a high-risk drug that can be deadly if administered incorrectly. She stated that in a hospital setting, protocol requires two nurses to sign-off on insulin. When the nurse is present, the nurse checks the appellant's blood sugar, does an assessment for the signs and symptoms of hypo/hyperglycemia, assesses mental status, and, if warranted, administers sliding scale insulin. She stated that the nurse comes in the morning to administer the insulin, but because the appellant sometimes sleeps late and/or will not open the door, the nurse sometimes returns around noon to perform her duties.

The appellant testified that sometimes she gets insulin three times per day.⁴ She added that sometimes her nurse administers the medication, while other times the PCA performs this task. The appellant's representative responded, stating that this testimony contradicts information she gathered from the appellant during a telephone call. During the call, the appellant told the representative that her PCAs do not help her with her medications. Further, the appellant's representative added that the appellant's testimony makes it clear that only a nurse should administer the appellant's insulin. If the appellant is truly receiving insulin three times per day, this contradicts the physician orders and highlights why an untrained PCA should not be undertaking this task. The appellant's representative stated that she believes that the appellant's PCA is not a family member; she did not have any other details regarding this individual.

In response, the MassHealth representative testified that when evaluating a request for PCA services, MassHealth relies upon the evaluation carried out by the personal care management agency. She stated that that agency assesses whether the PCA can perform tasks related to medication administration and should only request time for assistance if the PCA is able to satisfactorily carry out the task. Here, the personal care management agency requested PCA assistance for medication administration (including insulin), and MassHealth authorized the requested time. The MassHealth representative stated that without documentation that a PCA is no longer administering the appellant's medications, it cannot authorize a nursing time for this task. Both parties agreed that a diabetic with normal cognition could be trained to self-administer both short and long-acting insulin. Both parties agreed that PCA services are less costly than nursing services.

The record was held open at the conclusion of the June hearing for the parties to work toward a resolution of the disputed issue. MassHealth agreed to reconsider the appellant's request for daily nursing visits (MAVs) if the MassHealth PCA authorization showed that the time approved for medication administration had been removed. At the reconvened hearing, the MassHealth

50% of the time.

⁴ The appellant only appeared at the hearing on 06/24/2024 and testified with the assistance of a Spanish interpreter.

representative confirmed that the PCA authorization had to date not been adjusted to remove time requested for medication administration. Further, regarding backdating an approval to the date of the request for an increase (February 16, 2024), she added that MassHealth would not be able to backdate MAVs because PCA billing has already occurred. She noted that home health services (MAVs) could be approved if medically necessary once the PCA time for medication administration has been removed (Exhibit E). In response, the appellant's representative explained that she called the appellant's personal care management agency on multiple occasions and was told that the PCA authorization would be adjusted.

Findings of Fact

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

1. The appellant is a female in her [REDACTED] with diagnoses including type II diabetes with neuropathy, hypertension, asthma, major depressive disorder, generalized anxiety disorder, and attention and concentration deficit.
2. The appellant has been receiving home health services since [REDACTED] and had been approved for daily nursing visits until late [REDACTED] at which time they were weaned to one nursing visit per week (plus 3 as needed visits).
3. The appellant also has a MassHealth authorization in place for personal care attendant (PCA) services in the amount of 50 hours per week. The current authorization includes time for PCA assistance with medication administration, as follows: Physical assist with medications (PO, PR, GTTS, inhalers, topical), 3 minutes, 2 times per day, 7 days per week (42 minutes total per week); physical assist to administer subcutaneous injections, 3 minutes, 3 times per day, 7 days per week (63 minutes total per week); and glucometer check, 3 minutes, 3 times per day, 7 days per week (63 minutes total per week).
4. The record does not include any information regarding the appellant's PCA.
5. PCA services are less costly than nursing services.
6. On February 16, 2024, the appellant's HHA submitted a PA request seeking an increase to the SNV authorization from 1 SNV per week to 7 SNVs per week for the remainder of a PA period PA running from February 10 through May 10, 2024.
8. On February 19, 2024, MassHealth denied this PA request on the basis that the documentation submitted does not support the services requested.

9. The appellant timely appealed this MassHealth determination, and a fair hearing was held on May 7, 2024 (Appeal No. 2405244).
10. On May 17, 2024, the appellant's HHA submitted another PA request, this time seeking 1 SNV per week (plus 3 as needed SNVs), as well as 6 MAVs per week for the PA period running from May 11 through August 10, 2024.
11. On May 20, 2024, MassHealth approved the requested SNVs but denied the requested MAVs. The basis for the denial was that the documentation submitted indicates that there is a comparable medical service available that is less costly to the agency.
12. The appellant timely appealed this MassHealth determination, and a fair hearing was held on June 24, 2024 (Appeal No. 2408523).
13. Appeal Nos. 2405244 and 2408523 were consolidated and each record was held open to allow the parties time to resolve the disputed issue.
14. Negotiations failed and a reconvened hearing was held on July 23, 2024.
15. The clinical summary included with the second PA request states in part as follows: "Pt continues to require SNV for insulin administration, medication and disease process management, assessment and teaching. She is unable to effectively or safely manage her insulin and medications independently. She has knowledge deficit, impaired judgment and a hx of noncompliance" (Exhibit C. p. 15).

Analysis and Conclusions of Law

MassHealth pays for medically necessary home health services for eligible members, subject to the restrictions and limitations described in 130 CMR 450.105 (130 CMR 403.404(A); 403.409(C)). Prior authorization for 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)).

In this case, the appellant has requested daily nursing visits (7 SNVs per week for most of the first PA period under appeal, and 1 SNV and 6 MAVs for the second PA period under appeal). The basis of the appellant's request is that the administration of insulin requires a skilled assessment, and thus it must be performed by a nurse. MassHealth disagrees with this position, arguing that because MassHealth has authorized time for PCA assistance with medication administration, the

appellant's request for a daily nursing visit is duplicative.

Nursing services are described in 130 CMR 403.415, as follows:

(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.

Additionally, the MassHealth agency pays for home health agency services only when services are no more costly than the least costly form of comparable care available in the community (130 CMR 403.409(E)). Further, 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 (130 CMR 403.409(D)).

130 CMR 403.422(A) describes member discharge planning and provides that a member shall be discharged by the home health agency if the member selects another MassHealth service that is duplicative of the home health the member is receiving, including MassHealth services that provide assistance with personal care (130 CMR 403.422(A)(1)(d)).

The appellant argues that the administration of insulin is a skilled task that should be performed by a nurse and not an untrained PCA. This record, however, does not include any information about the appellant's PCA and whether he or she has been trained to administer the appellant's insulin.⁵ The record *does* include documentation confirming that a personal care management agency evaluated the appellant's needs and determined that PCA assistance with medication administration, including insulin administration, is necessary. On that basis, MassHealth authorized a significant amount of time for a PCA to assist the appellant with all her medication

⁵ The appellant's representative cited the appellant's testimony that her PCA sometimes administers insulin more than once per day (which is contrary to the physician's orders) as evidence that the PCA is untrained. However, the appellant's representative also recounted a telephone conversation she had with the appellant in which the appellant denied that her PCA helps with medications. These inconsistent statements shed little light on whether the PCA is or is not trained to administer the appellant's insulin.

administration needs (Exhibit 7, p. 93; Exhibit C, p. 76). The appellant has conceded that a diabetic with normal cognition can be trained to self-administer both short and long-acting insulin. It follows, then, that a PCA can be trained to perform these tasks.

The appellant's HHA has demonstrated that the appellant needs assistance with medication administration. The HHA has also documented that during the certification periods at issue, a nurse has visited the appellant daily and administered her insulin.⁶ However, because the appellant currently has another caregiver providing these services, she has not demonstrated that it is medically necessary for the home health agency to provide such services (130 CMR 403.409(D)).

On this record, the appeal is denied.

Order for MassHealth

None.

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.

Sara E. McGrath
Deputy Director
Board of Hearings

cc: 

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

⁶ As pointed out by MassHealth, the HHA was only authorized for 1 SNV per week during these time periods and will therefore not be paid for any additional services provided during this time frame.