

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2408697
Decision Date:	7/8/2024	Hearing Date:	07/03/2024
Hearing Officer:	David Jacobs		

Appearance for Appellant:



Appearance for MassHealth:

Nelisette Rodriguez, Optum Representative



*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:	PA – MAV
Decision Date:	7/8/2024	Hearing Date:	07/03/2024
MassHealth's Rep.:	Nelisette Rodriguez	Appellant's Rep.:	
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 May 30, 2024, MassHealth approved appellant's prior authorization request for skilled nursing visit once a week with 3 PRN, and denied the appellant's request for prior authorization for medication administration visits for the period May 28, 2024 through August 28, 2024 (Exhibit 1). The appellant filed this appeal in a timely manner on May 31, 2024 and received aid pending appeal. (see 130 CMR 610.015(B) and Exhibit 2). Challenging a denial of a prior authorization request is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's prior authorization request for medication administration visits for the prior authorization period of May 28, 2024 through August 28, 2024.

Issue

The appeal issue is whether MassHealth was correct in denying the appellant's prior authorization request for medication administration visits.

Summary of Evidence

A registered nurse and clinical appeals reviewer represented MassHealth at hearing by phone and submitted records in support of MassHealth's determination. A registered nurse appeared on behalf of the appellant by phone. A summary of testimony and documents follows.

On May 29, 2024, appellant's home health agency (HHA) submitted to MassHealth a prior authorization request for one skilled nursing visit (SNV) and one medication administration visit (MAV) per week for the prior authorization period of May 28, 2024 through August 28, 2024. On May 30, 2024, MassHealth approved the requested SNV visit and denied the MAV visit (Exhibit 1). The reason stated is because the "clinical documentation submitted on your behalf does not demonstrate that you need the services/treatment requested" (Exhibit 1, pg. 3). Appellant is a male in his [REDACTED] with a primary diagnosis of paranoid schizophrenic disorder which is treated in part through medication (Exhibit 5, pgs. 6 and 11). The MassHealth representative explained that the nursing notes submitted with the prior authorization state that the appellant is compliant with taking his own medication (Exhibit 5, pg. 15). Therefore, the appellant does not meet the medical necessity standard for nursing care in assistance with taking medication.

A registered nurse appeared on behalf of the appellant and conceded to the facts laid out by MassHealth. However, she added that although the appellant is compliant with taking medications now, there was a lot of case work for him when he first started receiving care. She explained that appellant was part of a homeless program which housed and cared for individuals in a hotel setting in [REDACTED]. The appellant had trouble adapting to this lifestyle and there were several difficult situations where the appellant refused care. Housing has been found for the appellant and he has greatly improved, but the nurse worries that due to his past history of difficulties, the appellant needs medication administration visits to ensure he is consistently taking his medication. The nurse testified that she is worried because usually nursing staff do not realize a patient has not been taking their medication until they need to be hospitalized. However, she conceded that the nursing notes on the record are accurate, and the appellant is currently compliant with taking his medications. The clinical record shows that the appellant has had difficulty with properly managing medication and improving this has been part of his treatment plan (Exhibit 5, pg. 11).

The hearing officer asked the MassHealth representative if the appellant's past behavior is considered when making the determination of medical necessity. The representative responded that MassHealth considers both the past behavior and current needs of the appellant when making its decision. However, here the appellant's nurse's concerns are anticipatory as the current notes show that the appellant's behavior has improved, and he is compliant with taking his medication. Furthermore, no specific documentation was submitted that shows the non-compliance with care that the appellant representative was alluding to. In response, the appellant representative conceded that there are no notes from the time when the appellant was difficult to care for because it was during a time when he was one of around 200 people being cared for

simultaneously at the homeless program. The most she could offer potentially were call logs that show how often nurses were called due to his needs. The hearing officer declined to accept the call logs into the record due to them lacking specificity.

Findings of Fact

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

1. On May 29, 2024, appellant's HHA submitted to MassHealth a prior authorization request for one SNV and one MAV per week for the prior authorization period of May 28, 2024 through August 28, 2024.
2. On May 30, 2024, MassHealth approved the one SNV and denied the one MAV per week because the documentation submitted did not support the request for one MAV per week.
4. Appellant is a male in his [REDACTED] with a primary diagnosis of paranoid schizophrenic disorder.
5. The appellant has a care plan that includes educating him on how to properly take his medication.
6. Per the nursing notes, the appellant is compliant with taking his own medication.

Analysis and Conclusions of Law

MassHealth requires prior authorization for the provision of skilled nursing services and home health aide services provided pursuant to skilled nursing services if the number of visits or hours exceed limits set forth by regulation (130 CMR 403.410). MassHealth only pays for home health services on an intermittent or part-time basis (130 CMR 403.424). In order to qualify for home health services, a member must be able to be safely maintained in the community (130 CMR 403.409(F)). According to 130 CMR 403.409(C),

(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.

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.

See also 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 (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).

Prior to July 1, 2022, when MassHealth changed its regulation, a Medication Administration Visit was defined as:

Medication Administration Visit — a skilled nursing visit for the purpose of

administration of medications 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. ...

130 CMR 403.402 (2017) (emphasis added).

MassHealth's Guidelines for Medical Necessity Determination for Home Health Services ("Guidelines") as provided in MassHealth's submission, Exhibit 5 at 28-34, are based on review of the medical literature and current practices. MassHealth prepared the Guidelines for medical professionals to assist them in submitting supporting documentation. According to the Guidelines:

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.

Regarding MAV, relevant parts of the Guidelines provide,

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.

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. ...

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.

The Guidelines were prepared and were effective as of October 23, 2017. Therefore, the Guidelines may not help interpret the change in definition of an MAV effective July 1, 2022.

MassHealth determined that appellant's request for one MAV weekly was not medically necessary as the notes submitted show that the appellant is compliant with taking his own medication. It is found that MassHealth did not err in its determination.

130 CMR 403.415(B)(7) provides that a MAV "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..." Here, the member is able to perform the task of taking his own medication. Although his representative argues that he has a history of failed medication compliance, the only documentation on record is the appellant's treatment plan to improve his medication compliance (Exhibit 5, pg. 11). The nursing notes on record show that the treatment plan has been effective, and the appellant is currently compliant with taking his medications (Exhibit 5, pg. 15). The documentation does not support the representative's concerns of a risk of future non-compliance. If such behavior does arise, it should be documented, and the appellant may submit a new prior authorization for MAV services.

This appeal is DENIED.

Order for MassHealth

Rescind aid pending and proceed with the action set forth in the notice dated May 30, 2024.

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.

David Jacobs
Hearing Officer
Board of Hearings

cc:

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