

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2409824
Decision Date:	9/13/2024	Hearing Date:	07/25/2024
Hearing Officer:	Thomas Doyle	Record Open to:	

Appearance for Appellant:



Appearance for MassHealth:

Nelisette Rodriguez, RN

Interpreter:



*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:	Skilled Nursing Visits, Medication Administration Visits
Decision Date:	9/13/2024	Hearing Date:	07/25/2024
MassHealth's Rep.:	Nelisette Rodriguez, RN	Appellant's Rep.:	[REDACTED]
Hearing Location:	Remote (phone)	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 June 18, 2024, MassHealth modified appellant's request for 6 medication administration visits to 5 visits because MassHealth determined that clinical documentation submitted on the appellant's behalf did not demonstrate that appellant required all the services/treatment requested. (130 CMR 450.204(A)(1) and Ex. 1). Appellant filed this appeal in a timely manner on June 24, 2024. (Ex. 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 appellant's PA request for 6 MAV's per week to 5 MAV's a week.

¹ Appellant appointed Ms. [REDACTED] as his appeal representative and at hearing Ms. [REDACTED] verbally appointed Ms. [REDACTED] as co-appeal representative.

Issue

The appeal issue is whether MassHealth was correct in modifying appellant's PA request from 6 MAV's per week to 5 MAV's a week.

Summary of Evidence

MassHealth was represented by a Registered Nurse. Appellant was represented by the Director and Assistant Director of Nursing Services for Alternative Health Care (Director and Assistant Director). All parties appeared by phone, were sworn and documents marked as evidence. The MassHealth representative testified appellant is a male in his late 60's with a primary diagnosis of Type II diabetes and is alert and oriented. During the current certification period, appellant has not had any documented hospital visits, emergency room visits or medication changes. She stated appellant has a history of noncompliance but this is not evident in the nursing notes on pages 13-46 in Exhibit 4. The MassHealth nurse quoted a note that said "Administered morning medications at the time of visit, medications prepped through the next visit for patient self-administer, compliance reinforced. Lock box secured for safety and medication management." (Ex. 4, p. 17). The MassHealth nurse stated the notes do not indicate noncompliance or decompensation. She stated appellant appears to be stable and at baseline at this point, with no exacerbation of his diagnosis. She stated, typically, when a member presents in this manner, MassHealth will attempt to wean the member towards fewer visits to promote continued independence. She stated the provider still has PRN (as needed) visits available to them and can expedite a prior authorization request to increase MAV's if appellant shows noncompliance or decompensation. The MassHealth nurse then cited part of the Guidelines for Medical Necessity Determination for Home Health Services at Exhibit 4, pp. 56-57, under Medication Administration Skilled Nursing Visits.

The Director primarily testified for appellant. She stated that appellant has a history of medication noncompliance per the MassHealth Guidelines. She stated that appellant was admitted to Alternative Home Health Care, LLC in 2012. The Director stated that MassHealth had decreased appellant's visits in the past. She appealed and lost. She stated that, within 28 days, appellant was in the ICU for a month then went to rehab for 4 months. She also stated that the rehab made a comment that appellant would not be able to care for himself at home. She stated that appellant left rehab against medical advice. The Director said in November 2019, she did the new start of care of appellant and there was a lot of coordination of care. Appellant then fired his doctor. As a counter argument to MassHealth's assertion appellant is doing well, the Director stated appellant is doing well because he is well managed. She stated that appellant does not have a caregiver.

Findings of Fact

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

1. On or about June 14, 2024, appellant's HHA submitted a PA request to MassHealth for 1 SNV per week, plus 3 PRN SNVs and 6 MAV per week. (Testimony).
2. On or about June 18, 2024, MassHealth modified the request as follows: MassHealth approved 1 SNV per week, plus 3 PRN SNVs, and modified to 5 MAV per week. (Testimony; Ex. 1).
3. Appellant is a male in his mid-60's with a primary diagnosis of Type II diabetes who is alert and oriented. (Testimony).
4. During the current certification period, appellant has not had any documented hospital visits, emergency room visits or medication changes. (Testimony).
5. Appellant has a history of noncompliance with medications. (Testimony; Ex. 5).

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)). MassHealth agency pays for only those home health services that are medically necessary (130 CMR 403.409(C)). 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)). Additionally, 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 (Ex. 4, pp. 54-65), are based on review of the medical literature and current practices. 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 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. ... (Ex. 4, p. 56-57).

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. (Ex. 4, p. 55-56).

At issue in this appeal is whether MassHealth was correct in modifying appellant's PA request from 6 MAV's to 5 MAV's due to lack of medical necessity. In support of its position, MassHealth pointed to the fact that the documentation submitted on behalf of 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 recent medication non-compliance. Finally, MassHealth stated that the focus of a MAV is the administration of medication and documenting that this medication was given. The MassHealth nurse stated the notes do not indicate noncompliance or decompensation. She stated appellant appears to be stable and at baseline at this point, with no exacerbation of his diagnosis. After a review of the record before me, I agree. The record reflects medications are pre-poured for appellant through the next visit for appellant to self-administer and compliance is reinforced. (Ex. 4, pp. 13, 21, 32, 36, 40 and 43; Ex. 5, pp. 14, 18, 22 and 26). The MassHealth nurse stated, typically, when a member presents in this manner, MassHealth will attempt to wean the member towards fewer visits to promote continued independence. Here, the attempt to wean is shown by decreasing the MAV's by one visit. I find this to be reasonable. MassHealth is clear that "teaching must be provided in order to foster independence." (Ex. 4, p. 55). I understand that appellant has a history of noncompliance with medication but the record before me indicates he is doing well and with the need to foster appellant's independence, the reduction in MAV's by one visit is not unreasonable. Additionally, the provider still has PRN (as needed) visits available to them and can expedite a prior authorization request to increase MAV's if appellant shows noncompliance or decompensation.

Appellant has not met his burden and 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.

Thomas Doyle
Hearing Officer
Board of Hearings

CC:

[REDACTED]

[REDACTED]

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