

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2410994
Decision Date:	11/26/2024	Hearing Date:	08/12/2024
Hearing Officer:	Christopher Jones	Record Open to:	10/04/2024

Appearance for Appellant:



Appearance for MassHealth:

Nelisette Rodriguez, RN



*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; Duplication
Decision Date:	11/26/2024	Hearing Date:	08/12/2024
MassHealth's Rep.:	Nelisette Rodriguez, RN	Appellant's Rep.:	
Hearing Location:	Telephonic	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 July 3, 2024, MassHealth approved the appellant's request for weekly skilled nursing visits and denied the requested medication administration visits. (Exhibit 1; 130 CMR 450.204(A)(2).) The appellant filed this appeal in a timely manner on July 15, 2024; and his services are protected pending the outcome of this appeal. (130 CMR 610.015(B), 610.036; Exhibit 2.) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

Following the hearing, the record was left open until October 4, 2024, for the appellant to submit an adjustment request through his personal care management agency to stop receiving assistance with medications from his personal care attendant.

Action Taken by MassHealth

MassHealth denied the requested medication administration visits because the appellant was approved for personal care attendant services to provide medication assistance.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 403.409(D), 403.422, in

determining that the appellant had other caregivers available to provide the requested service.

Summary of Evidence

The appellant is a man over age 65 with a primary diagnosis of malignant neoplasm of the upper lobe. Other pertinent diagnoses include congestive heart failure, major depressive disorder, alcohol abuse with cirrhosis of the liver, and other diagnoses. On or around June 27, 2025, the appellant's home health agency, Alternative Home Health Care, LLC, requested one skilled nursing visit ("SNV") per week and four medication administration visits ("MAVs") per week with three as-needed ("PRN") SNVs over the course of the prior authorization period running from July 3, 2024, through October 3, 2024.¹ (Exhibit 5, pp. 2, 6-13.)

The appellant is approved for nursing services through the home health program, and he is also approved for personal care attendant ("PCA") services. Included in the appellant's approved PCA time is three minutes, twice per day for medication assistance by the PCA. MassHealth's representative testified that they have warned the appellant that this PCA time is duplicative of his requested nursing services for the past two prior authorization cycles of nursing services. Because the appellant continues to have coverage for a PCA to assist with his medications, MassHealth denied the appellant's request for continued MAVs.

The home health agency argued that the nurse needs to come every day, Monday through Friday, to administer the appellant's medications. The appellant has family available on weekends to help with medications, which is why the nursing visits are only for weekdays. The appellant's representative testified that the nurse is needed to provide premedication assessment of the patient for morning medications and generally provide care coordination. The appellant's representative also testified that the nurse picks up the appellant's prescriptions. All of this care could not be provided in the time allowed for just one nursing visit per week. The appellant takes 10 medications every day. Most are in the morning, but two are taken at night. The visiting nurse only deals with the morning medications.

The appellant's representative testified that there is a nursing note dated July 12, 2024, that indicates the appellant will not take medications from the PCA. A nursing note dated July 12, 2024, from the appellant's exhibit packet was read into the record because it had not been sent to MassHealth directly. However, this nursing note does not mention the appellant's non-compliance with PCA-assisted medication administration. The appellant's representative testified that there must have been another nursing note that was supposed to be submitted. This note was never submitted into the record. Nonetheless, the appellant's representative argues that the PCA does not actually assist the appellant with morning medications, though the PCA might remind the appellant to take medications at bedtime.

¹ The physician's order indicated two to four MAVs per week. (Exhibit 5, p. 12.)

MassHealth's representative testified that the agency is working on managing benefits-coordination, for members who receive multiple services, that could provide overlapping care. MassHealth's representative noted however, at this point, it is still the member's responsibility not to request duplicative services. MassHealth's representative suggested that the appellant contact his personal care management agency, Northeast Arc, and request a reduction in the PCA time for medication reminders. MassHealth's representative agreed to approve the requested MAVs if the appellant's PCA services were reduced to remove this duplication of services. MassHealth's representative did not know whether the PCA services were more or less costly than the requested MAVs.

The hearing record was left open until August 26 for the appellant to file their adjustment request with Northeast Arc. The appellant requested an extension because they had not heard back by the time they were leaving on a planned family vacation. An extension was granted to October 4, but despite this extension the appellant never heard back from their personal care management agency. MassHealth's representative indicated that if the appeal were denied, the appellant could request MAVs again once they had successfully filed their adjustment request. In their record open correspondence, MassHealth cited 130 CMR 403.422(A)(1)(d) as grounds for denying the requested MAVs.

Findings of Fact

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

- 1) The appellant is a man over age 65 with diagnoses including malignant neoplasm of the upper lobe, congestive heart failure, and major depressive disorder, amongst others. (Exhibit 5, pp. 11-12.)
- 2) On or around June 27, 2025, the appellant's home health agency, Alternative Home Health Care, LLC, requested one SNV and four MAVs per week with three PRN SNVs over the course of the prior authorization period running from July 3, 2024, through October 3, 2024. (Exhibit 5, pp. 2, 6.)
- 3) The appellant is approved for PCA services through Northeast Arc. These services include three minutes, twice per day for medication assistance from the PCA. (Testimony by MassHealth's representative.)
- 4) MassHealth has notified the appellant of this duplication of services during two earlier prior authorization approvals for home health services. (Testimony by MassHealth's representative.)

Analysis and Conclusions of Law

MassHealth pays for home health services for eligible members, including nursing, home health aide, and home therapy services. (130 CMR 403.000.) Home health services must be prescribed and provided in accordance with a plan of care that certifies the medical necessity of the services requested. (130 CMR 403.409(A).) Often, prior authorization is required. (130 CMR 403.410.) Any service requested of MassHealth must be “medically necessary”:

(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: *Potential Sources of Health Care*, or 517.007: *Utilization of Potential Benefits*.

(130 CMR 450.204(A).)

The home health regulations also include reference to the medical necessity requirements. These clinical eligibility criteria note that it is not medically necessary for a home health agency to provide services when those services are provided by another caregiver.

403.409: Clinical Eligibility Criteria for Home Health Services

...

(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.

(D) Availability of Other Caregivers. 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.

(E) Least Costly Form of Care. The MassHealth agency 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.

(130 CMR 403.409.)

Finally, MassHealth requires that a member be discharged from 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”² (130 CMR 403.422(A).)

Presumably, the appellant’s position is that the services are not duplicative because the PCA does not actually administer the medication, or that the MAVs are a better service because they implicitly include skilled assessment. It is undisputed, however, that the appellant has requested duplicative services by asking that his PCA be allowed to administer his medications. The appellant also never submitted the clinical documentation showing non-compliance with PCA provided medication. Further, this is the third prior authorization approval during which MassHealth has told the appellant that this duplication of services must be fixed, on top of which an extension was allowed for the appellant to start this process while this appeal was pending. Therefore, this appeal is DENIED because the requested MAVs are duplicative of approved PCA services.

The appellant’s representative testified that the visiting nurse also provided care coordination and picked up the appellant’s prescriptions, services that could not be completed in the time allowed for one SNV per week. Whether these services are appropriately compensated under the home health program need not be addressed here. It is sufficient to note that they do not fall within the clearly delineated definition of Medication Administration Visit.

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

² There is no definition of “discharge” in the home health agency regulations. Though “discharge” implies the complete discontinuation of services, the agencies reliance on this regulation to contemplate the partial discontinuation of services is reasonable.

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, but does not include intravenous administration.

(130 CMR 403.402 (emphasis added).)

It would be inappropriate to approve MAVs for the nurse to provide care coordination or pharmacy pickup services in the absence of providing medication administration. This appeal is DENIED in so far as MAVs are requested for non-medication administration purposes.³

Order for MassHealth

Remove Aid Pending. Do not allow MAVs for medication administration while the appellant continues to receive duplicative PCA time to assist with medications.

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.

Christopher Jones
Hearing Officer
Board of Hearings

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

³ The present prior authorization has expired, but presumably the services remain in effect due to the Aid Pending protection placed by the Board of Hearings. For this reason, the appeal is not dismissed as moot.