

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



| | | | |
|-------------------------|-------------|-----------------------|------------|
| Appeal Decision: | Denied | Appeal Number: | 2414624 |
| Decision Date: | 1/21/2025 | Hearing Date: | 10/24/2024 |
| Hearing Officer: | Casey Groff | Record Closed | 12/16/2024 |

Appearance for Appellant:
Pro se

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: | Denied | Issue: | Prior Authorization; Home Health Services |
| Decision Date: | 1/21/2025 | Hearing Date: | 10/24/2024 |
| MassHealth's Rep.: | Nelisette Rodriguez, R.N. | Appellant's Rep.: | Pro se |
| Hearing Location: | Board of Hearings, 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

Through consecutive notices dated 8/6/24, 8/30/24, and 9/5/24, MassHealth respectively modified and denied Appellant's requests for prior authorization of home health skilled nursing services on the basis that that the requested services were duplicative of services that were covered under the personal care attendant program. *See* Exhs. 2, 5, and 6. On 9/23/24, Appellant filed a timely request for a fair hearing to appeal the adverse home health coverage determinations. *See* Exh. 1; 130 CMR 610.015(B). Denial or a reduction of assistance is valid grounds for appeal. *See* 130 CMR 610.032. The record remained open through 12/16/24 for additional evidence.

Action Taken by MassHealth

MassHealth modified and denied Appellant's respective requests for home health skilled nursing services.

Issue

The appeal issue is whether MassHealth was correct in modifying and subsequently denying Appellant's request for skilled home health nursing services.

Summary of Evidence

A MassHealth representative appeared at hearing. Through testimony and documentary submissions, MassHealth presented the following evidence: Appellant is under the age of 65 and has received home health services since 4/24/24. *See* Exh. 4, p. 9. Appellant has diagnoses that include diabetes mellitus with diabetic polyneuropathy, Crohn's disease, anxiety disorder, obesity, and heart disease, among other conditions. *Id.* at 6. Appellant lives with his elderly ex-wife in a first-floor apartment. *Id.* at 10.

On 8/5/24, MassHealth received a recertification request from Appellant's home health agency (HHA), Visiting Rehab and Nursing Services, Inc., on behalf of Appellant seeking prior authorization (PA) for two skilled nursing visits (SNV) and 1 PRN visit for dates of service 8/7/24 through 8/23/24. According to the PA request, Appellant has "multiple comorbidities requiring SN services for management." *Id.* at 6. The HHA indicated that the basis for the nursing visits was to provide nursing assessments and medication management. *Id.* The home health plan of care (POC) indicated that Appellant did not receive home health aid services but was authorized for PCA services 5-7 days weekly for 2-6 hours daily." *Id.* at 9. The nurse that completed the recertification form noted that Appellant sees multiple providers with frequent medication changes from multiple physicians. *Id.* at 11. According to documentation in the HHA PA request, Appellant is currently prescribed approximately 32 different medications with various methods of administration, including oral, sublingual, topical, inhaled, and subcutaneous injection. *Id.* at 11-12. The medications that are administered via subcutaneous injection are Mounjaro 2.5 mg once per-week, and Humulin at 10 mg and 15 mg doses multiple times daily for diabetes management. *Id.*

Through a letter dated 8/6/2024, MassHealth informed Appellant that it "**modified** the prior authorization request and has approved the request" for 2 SNV per-week with 1 PRN SNV for dates of service 8/7/2024 to 8/23/2024. *See* Exh. 1 (emphasis in original). The MassHealth representative testified that despite the modification language in the notice, MassHealth effectively approved the requested services. However, the notice informed Appellant and the HHA provider that the services requested were duplicative of care that was already authorized under the PCA program and that the next PA would need to be submitted either "with PCA for reduction in time allotted and/or provide adjustments with next PA request." *Id.*

On 8/26/2024, MassHealth received a new PA request by Appellant's HHA provider, which again, sought authorization for 2 SNVs per-week for dates of service 8/27/2024 to 10/22/2024. *See* Exh. 7. There was no indication in the request to suggest an adjustment had been made to

his PCA authorization. Therefore, on 8/30/24, MassHealth modified the request by approving only 1 SNV per-week due to the duplication in services under Appellant's authorized PCA hours. *Id.*

On 9/3/2024, MassHealth received an expedited request from Appellant's HHA provider, seeking to add 1 SNV medication administration visit (MAV) for dates of service beginning 9/16/24 through 10/22/24. *See* Exh. 6 and 7.

On 9/5/24, MassHealth denied the expedited request for 1 SNV/MAV, again citing that it was a duplicative request. The following basis for the denial was cited in the notice:

Member is authorized for PCA service with allotted time for medication and insulin administration along with glucometer check. Med dosing orders and instructions were written out for patient and PCA. Insulin syringes prefilled in Humulin R 500 in 15 and 10 units, prefilled syringes, stored in refrigerator in cups marked with black bold marker with does. Instructed patient to continue testing B5 via Libre sensor, sensor changed every 2 weeks and PRN by RN. Patient has glucometer with lancets to test PRN if Libre not working.

See Exh. 7.

MassHealth submitted a portion of Appellant's current PA for PCA services as it related authorized assistance for medication administration. According to the PA, Appellant requested, and MassHealth approved, 2 minutes 3x daily for physical assistance with medications ("PO, PR, HTTS, inhalers, and topical"), 2 minutes, twice per-day for assistance with subcutaneous injections; and 1 minute per-day for assistance with the glucometer check. *Id.* The notations from the PCA PA report state the following:

Consumer with pharmacy monthly med planner prefill due to complexity of meds (Med Minder); PCA assists with opening of packages and med admin....; [Independent] use of inhalers.; Dep. Eye drop admin. ...; Dep insulin Humulin R 2xs day ...Consumer reports VNA SN for Mounjaro injection admin. ...

See Exh. 6.

The MassHealth representative explained that because the skilled nursing visits that were being requested were duplicative of those already authorized under the PCA program, the additional MAV was denied as a non-covered, non-medically necessary service. She explained that, as of the hearing date, there had been no additional PA request submitted by the HHA following the PA period that ended 10/22/24. The representative explained that if Appellant continues to need SNVs, he may proceed either (1) by having his HHA submit for 1 SNV per-week, which would accommodate blood pressure and mental status checks, or (2) have the PCM agency remove the

time allotted for PCA assistance with subcutaneous injection and glucometer checks, at which point Appellant could submit for additional SNV/MAV's in addition to the 1 SNV per-week.

Appellant appeared at hearing and testified that he disagrees with MassHealth's position that the nursing services were duplicative of the PCA services. Appellant testified that all his PCA does is place pills in a cup and bring them to him when he needs to take them. The PCA cannot administer the medications without a nursing license, nor does the PCA have medical knowledge of what each pill is for. Appellant testified that his nurse performs the necessary oversight and management tasks to ensure he is taking the correct medications and dosages. Appellant testified that he sees multiple providers of various specialties, including a cardiologist, pain management, endocrinologist and psychiatrist – each of whom prescribe multiple medications. While his pharmacy does provide a monthly medication prefill service, it is most often not accurate given the frequent adjustments to his medications. His nurse performs necessary medication oversight, including making calls to his doctors and changing cups for dispensers, administers his weekly Mounjaro injection, prefills insulin syringes, administers his insulin as ordered; Libre sensors for blood sugar tests, and directs the PCA with medication assistance accordingly. It takes more than one visit per-week to perform these tasks. Although the PA period ended, Appellant testified that his nurse came at least two times per-week during the period in question, and that, as of the hearing date, she continued to making multiple visits per-week. Appellant was not aware about whether the nurse was paid for the additional nursing services provided.

Appellant read into evidence separate letters from his primary care physician and cardiologist, both of whom expressed that it was their medical opinion that Appellant must continue to have a visiting nurse 2x per-week due to his complex medical conditions. He also read into evidence a note from his therapist, dated [REDACTED] 24, stating that a nurse is required 2-times per-week due to Appellant's anxiety which interferes with his medication compliance. The therapist also noted that the PCA does not have a nursing license to perform the same services that the nurse performs.

Findings of Fact

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

1. Appellant is under the age of 65 and has received home health services since 4/24/24.
2. Appellant has diagnoses that include diabetes mellitus with diabetic polyneuropathy, Crohn's disease, anxiety disorder, obesity, and heart disease, among other conditions.
3. On 8/5/24, MassHealth received a recertification request from Appellant's HHA, on behalf of Appellant, seeking PA for two SNVs and 1 PRN visit for dates of service 8/7/24 through 8/23/24.

4. Through a letter dated 8/6/2024, MassHealth informed Appellant that it “**modified** the prior authorization request and has approved the request” for 2 SNV per-week with 1 PRN SNV for dates of service 8/7/2024 to 8/23/2024. *See* Exh. 1 (emphasis in original).
5. On 8/26/2024, MassHealth received a new PA request by Appellant’s HHA provider, which again, sought authorization for 2 SNVs per-week for dates of service 8/27/2024 to 10/22/2024.
6. On 8/30/24, MassHealth modified the request by approving only 1 SNV per-week due to the duplication in services under Appellant’s authorized PCA hours.
7. On 9/3/2024, MassHealth received an expedited request from Appellant’s HHA provider, seeking to add 1 SNV MAV for dates of service beginning 9/16/24 through 10/22/24.
8. On 9/5/24, MassHealth denied the expedited request for 1 SNV/MAV, again citing that it was a duplicative request.
9. Appellant is authorized for PCA services 5-7 days weekly for 2-6 hours daily; including PCA assistance for medication administration of subcutaneous injections twice daily and assistance with the glucometer checks once per-day.
10. Appellant is currently prescribed approximately 32 different medications with various methods of administration, including oral, sublingual, topical, inhaled, and subcutaneous injection. The medications that are administered via subcutaneous injection are Mounjaro 2.5 mg once per-week, and Humulin at 10 mg and 15 mg doses multiple times daily for diabetes management.

Analysis and Conclusions of Law

At issue is whether MassHealth erred in partially denying Appellant’s request for home health skilled nursing visits (SNV) by approving only 1 SNV per-week. Under its program regulations, MassHealth will only pay for home health services that are deemed 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, MassHealth will only pay for skilled nursing visits under the home health program, which meet the following 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.¹

See 130 CMR 403.415(B).

In addition, MassHealth regulations state the following with respect to the 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.”*** See 130 CMR 403.408(D). While a member may be eligible to receive home health services and PCA services in concurrent PA periods, MassHealth directs home health agencies, in such cases, to ensure the following:

Home health agencies must work with the PCM agency to ensure that home health aide and PCA services are provided in a manner that complies with program rules. Home health agencies should get a copy of the member's current PA for PCA services and evaluate the member for any additional home health services the member may require. Any additional home health services may not duplicate PCA services for which the member is authorized. The home health agency must communicate these hours to the member's PCM agency to ensure that the PCM agency can request appropriate adjustments to the PCA PA, as needed, to avoid duplication.

See *MassHealth Home Health Agency Bulletin 84*, p. 2. (April 2023).

In this case, MassHealth, through notices dated 8/30/24 and 9/5/24, denied a second weekly SNV/MAV for the PA time period beginning 8/27/24 through 10/22/24.² Although the PA period

¹ Additionally, under MassHealth's *HHS Guidelines for Medical Necessity Determinations*, a medication administration visit (MAV) is a SNV solely for the purpose of administering medications (other than IV medication or infusion administrations) ordered by the prescribing practitioner. 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. In addition, certain medication administration tasks are not considered skilled nursing tasks unless the complexity of the member's condition or medication regimen requires the observation and assessment of a licensed nurse to safely perform, e.g., 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).

² The 8/6/24 notice, which informed Appellant that it had modified his PA request for HHS, was essentially a full approval of the Appellant's 8/5/24 PA request. The only actions through which MassHealth reduced and/or denied Appellant's PA requests which are within the scope of this appeal, were through MassHealth notices dated 8/30/24 and 9/5/24, which encompass the PA time period from 8/27/24 – 10/22/24. Although the 8/30/24 notice denied a second SNV and the 9/5/24 notice denied an additional MAV, the distinction in type of SNV is not relevant for purposes of this appeal.

at issue here ended before this hearing took place, Appellant testified that his nurse continued to render visits at least twice per week during this timeframe, and thus would not have been paid for the second weekly visit which Appellant claims was medically necessary.

The evidence indicates that Appellant is prescribed over 30 medications and has documented cognitive and physical impairments that limit his ability to oversee and administer his medications independently. Given his medical diagnoses and complex medication regimen, he undisputedly qualifies for skilled nursing visits under 130 CMR 403.415. The central question on appeal, however, is whether Appellant sufficiently demonstrated that MassHealth erred in denying the second SNV/MAV visit on the basis that it was duplicative of authorized PCA medication administration services. The evidence shows that MassHealth authorized PCA assistance with Humulin injections twice per-day, glucometer checks once per-day, and assistance with all other topical, oral, and inhaled medications 3x per-day. *See* Exh. 6. The evidence also shows that the visiting nurse is performing many of these same tasks during her nursing visits, namely, the insulin injections and glucometer checks. Where MassHealth is already paying another caregiver (i.e. the PCA) to provide these services, it is not medically necessary for the home health agency to provide such services. *See* 130 CMR 403.408(D). On this basis, it was appropriate for MassHealth to partially authorize Appellant's request by approving one SNV per-week to accommodate the nursing services that were beyond the scope of what the PCA was authorized to perform and/or capable of performing, such as prefilling insulin syringes, administering the weekly Mounjaro injection, medication oversight and performing nursing assessments. As the MassHealth representative explained at hearing, Appellant may be eligible for additional weekly nursing visits if his PCM agency requests "appropriate adjustments to the PCA PA, as needed, to avoid duplication." *See HHA Bulletin* 84, p. 2. As there was no adjustment to Appellant's PCA PA for medication assistance during the PA period in question, MassHealth did not err in denying the second weekly SNV/MAV as requested by Appellant.

Accordingly, this 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.

Casey Groff
Hearing Officer
Board of Hearings

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