

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2418206
Decision Date:	01/31/2025	Hearing Date:	01/03/2025
Hearing Officer:	Amy B. Kullar, Esq.	Record Open to:	01/17/2025

Appearances for Appellant:



Appearance for MassHealth:

Nelisette Rodriguez, R.N., Clinical Reviewer,
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; Duplication
Decision Date:	01/31/2025	Hearing Date:	01/03/2025
MassHealth's Rep.:	Nelisette Rodriguez, R.N.	Appellant's Reps.:	
Hearing Location:	Quincy Harbor South 7 (Telephone)	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 November 25, 2024, MassHealth approved the appellant's request for weekly skilled nursing visits and denied the requested medication administration visits. *See* Exhibit 1; 130 CMR 450.204(A)(2). The appellant filed this appeal in a timely manner on November 27, 2024; and her services are protected pending the outcome of this appeal. *See* 130 CMR 610.015(B), 610.036; Exhibit 2. Denial of assistance is valid grounds for appeal. *See* 130 CMR 610.032.

Following the hearing, the record was left open until January 17, 2025 for the appellant and her home health agency to submit a new medication list and an updated request for services to MassHealth. Nothing was received.

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) and 403.422, in determining that the appellant had other caregivers available to provide the requested service.

Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. The appellant appeared telephonically and was accompanied by her son. The parties' testimony and record evidence are summarized as follows:

The appellant is over age 65 with pertinent diagnoses including [REDACTED]

[REDACTED] long-term (current) drug therapy, overactive bladder, [REDACTED]

[REDACTED] testimony and Exhibit 6 at 23. On November 20, 2024, the appellant's home health agency, Comfort Home Care, LLC, requested one (1) skilled nursing visit ("SNV") per week, and six (6) medication administration visits ("MAVs") per week, over the course of the prior authorization period running from December 11, 2024 through June 8, 2025. (Exhibit 6, pp. 4, 6-9.)

The MassHealth representative testified that by notice dated November 25, 2024, MassHealth approved one skilled nursing visits as requested, and six (6) PRN SNVs, but modified the request to zero MAVs per week for the prior authorization period running from December 11, 2024 through June 8, 2025. The request for 6 MAVs per week was denied because MassHealth determined that the documentation submitted on behalf of the appellant does not support the services requested. (Testimony; Exhibit 1 at 2). Specifically, the documentation submitted on the appellant's behalf indicates that there is a comparable medical service available that is less costly to the division (Testimony; Exhibit 1 at 2-3). The MassHealth representative explained that MassHealth made this modification because the appellant receives 44 hours of personal care attendant ("PCA") services per week from MassHealth, and those hours include three episodes of medication administration assistance per day by her PCA, seven days per week. This modification to requested MAVs was made in accordance with the Home Health Aide Medical Necessity Guidelines. The appellant's request for MAVs was denied due to duplication of services. Because the appellant continues to have coverage from a PCA to assist with her medications, MassHealth denied the appellant's request for continued MAVs.

The appellant's son stated that the appellant has home health services and PCA services and has had both services for over a year; this is a recertification. He explained that the home health agency does skilled nursing for the appellant. Due to her COPD, the appellant's weight must be monitored closely, and if she gains weight, she must go to the emergency room immediately due to her edema in her lower limbs. According to the appellant's son, the home health agency nurse performs the appellant's daily weight check assessment. He stated that the appellant's home health agency only comes in the morning, and that they do not physically administer medication to the appellant. He further testified that the appellant takes "37 medications every day," at various points in the day, that her home health agency is understaffed, and that they do not come in the afternoons anymore. The home health nurse provides the appellant with a "sleeve of meds" in the morning, and this is what the PCA administers over the course of the day to the appellant. Testimony.

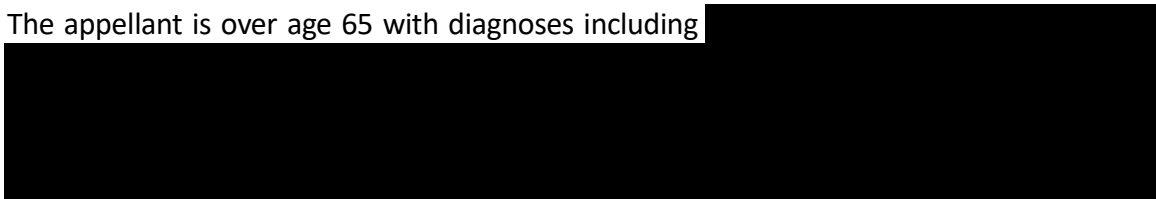
The MassHealth representative responded that based upon the appellant's son's testimony, the home health services as requested by the appellant's agency were not properly requested or documented to meet the appellant's needs. The home health agency needs to change the request for services and document the skilled nursing that goes on during the home health visits. The MassHealth representative empathized with the appellant's son, but she stated that she could not approve the MAVs as requested because it is a PCA duplication. Testimony. If the services had been requested as the appellant's son described, which is skilled nursing, she would approve the request, but the request was not properly made by the home health agency. The appellant's son understood and agreed to work with the home health agency to adjust the appellant's request for services, and her medication list. The MassHealth representative stated that she would be happy to process an expedited request from the home health agency to review an updated medication list and resubmission of the request for services.

Following the hearing, the record was left open until January 17, 2025 for the appellant and her home health agency to submit a new medication list, and an updated request for services, to MassHealth and to the hearing officer. Via email on January 17, 2025, MassHealth indicated that no additional information was submitted by the appellant or her home health agency, and the hearing officer closed the administrative record.

Findings of Fact

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

1. The appellant is over age 65 with diagnoses including



[REDACTED] amongst others. (Testimony and Exhibit 6 at 23.)

2. On November 20, 2024, the appellant's home health agency, Comfort Home Care, LLC, requested one SNV per week and six MAVs per week over the course of the prior authorization period running from December 11, 2024 through June 8, 2025. (Exhibit 6, pp. 4, 6-9.)
3. On November 25, 2024, MassHealth modified the request to the following: 1 SNV per week, plus 6 PRN SNVs, and 0 MAVs per week for the prior authorization period running from December 11, 2024 through June 8, 2025. (Testimony by MassHealth's representative and Exhibit 1.)
4. The appellant is approved for PCA services. These services include three episodes of medication administration assistance by the PCA per day, seven days per week. (Testimony by MassHealth's representative.)
5. MassHealth will not authorize a duplication of 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) (emphasis added)

Furthermore, 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...”.¹
(130 CMR 403.422(A).)

The appellant’s representative testified that the visiting nurse also provided daily skilled nursing in the form of weight checks and assessment for changes in condition as part of the medication administration visit, and that this service was essential to the appellant’s care. While I agree that the daily weight check and assessment of the appellant appear to be necessary services for her to receive, these visits do not fall within the clearly delineated definition of Medication Administration Visit, set forth below:

¹ There is no definition of “discharge” in the home health agency regulations. Though “discharge” implies the complete discontinuation of services, the agency’s reliance on this regulation to contemplate the partial discontinuation of services is reasonable.

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 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))

The appellant's representative testified that critical nursing services are being provided during the so-called MAV visits that are more suited to the definition of a Skilled Nursing Visit under the regulations. A SNV is defined as a nursing visit that is "necessary to provide targeted skilled nursing assessment for a specific member medical need." *Id.*

The appellant's position is that the home health services provided are not duplicative because the PCA does not actually administer the medication, and that the MAVs are a better service because they include skilled nursing such as the daily weight assessment. On this record, however, it is undisputed that the appellant has requested duplicative services by asking that her PCA be allowed to administer her medications. Despite being given the opportunity to correct the request for services following the appeal hearing, neither the appellant nor her home health agency submitted revised documentation or an adjusted request during the two-week record open period. Because the requested MAVs are duplicative of approved PCA services, this appeal is DENIED.

Order for MassHealth

None, except to remove aid pending.

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.

Amy B. Kullar, Esq.
Hearing Officer
Board of Hearings

[REDACTED]

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