

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2503309
Decision Date:	5/22/2025	Hearing Date:	03/25/2025
Hearing Officer:	Thomas Doyle	Record Open to:	N/A

Appearance for Appellant:



Appearance for MassHealth:

Susan Lebreux, RN
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:	Skilled Nursing Visits
Decision Date:	5/22/2025	Hearing Date:	03/25/2025
MassHealth's Rep.:	Susan Lebreux Nelisette Rodriguez	Appellant's Rep.:	
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 February 24, 2025, MassHealth modified appellant's request for skilled nursing visits from 1 visit a week with 3 as needed visits (PRN) to 1 visit every other week with 3 PRN visits because MassHealth determined a lack of medical necessity. (130 CMR 450.204(A)(1) and Ex. 1). Appellant filed this appeal in a timely manner on February 26, 2025. (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 1 skilled nursing visit per week to 1 skilled nursing visit every other week.

Issue

The appeal issue is whether MassHealth was correct in modifying appellant's PA request from 1 skilled nursing visit per week to 1 skilled nursing visit every other week.

Summary of Evidence

MassHealth was represented by two registered nurses. Appellant appointed an appeal representative who is also a registered nurse. All appeared via phone. The hearing began, participants were sworn and documents marked as evidence. A registered nurse for MassHealth testified to the following: MassHealth received a request from Alternative Home Health Care, LLC for skilled nursing care on February 20, 2025 seeking 1 skilled nursing visit per week with 3 PRN skilled nursing visits. The requested period was from February 24, 2025 to May 23, 2025. MassHealth modified this request on February 24, 2025 to 1 skilled nursing visit every other week and 3 PRN visits. The MassHealth nurse stated appellant is a male in his [REDACTED], alert and oriented times two with a disorientation to time. Appellant's primary diagnosis is alcohol abuse and cocaine abuse. She stated appellant is not homebound. (Testimony; Ex. 4, p. 13, 16). She stated appellant is ordered 4 daily medications and 1 medicine 2 times a day. (Testimony; Ex. 4, p. 12). She stated appellant is not taking any antipsychotic medications. The MassHealth nurse testified there is no documentation of any hospital visits, emergency room visits or psychiatric inpatient events or decompensation. (Testimony). She stated there is no documentation of nursing administering medications. (Testimony). Appellant can go to pharmacy to pick up medications and was educated on importance of compliance. Appellant denies depression and anxiety. Appellant has a history of smoking marijuana. (Ex. 4, p. 27). The MassHealth nurse stated there is no noted illicit drug use or alcohol intake and there is no notice of noncompliance with prefilled medications. (Testimony). The MassHealth nurse testified appellant's provider has the option to submit an expedited request for authorization for more PRN visits should appellant's compliance or condition change. (Testimony).

The appeal representative had no questions for the MassHealth nurses. She stated the agency believes trying to manage a patient every other week is not a successful way of managing a client. She stated to effectively manage a person they have to communicate with a doctor, call the pharmacy to order medications to refill his pill box,¹ and then actually fill his pill box and doing these things is difficult on an every other week basis. She referenced what appellant wrote on his request for hearing that "I need skilled nursing to fill my planner every week as I become overwhelmed and forget." (Testimony; Ex. 2).

Findings of Fact

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

1. MassHealth received a request from Alternative Home Health Care, LLC for skilled nursing care on February 20, 2025 seeking 1 skilled nursing visit per week with 3 PRN skilled nursing visits. (Testimony).

¹ The appeal representative referred to appellant's pill box as a planner.

2. MassHealth modified this request on February 24, 2025 to 1 skilled nursing visit every other week and 3 PRN visits. (Testimony).
3. Appellant is a male in his [REDACTED], alert and oriented times two with a disorientation to time. Appellant's primary diagnosis is alcohol abuse and cocaine abuse. Appellant is not homebound. (Testimony; Ex. 4, p. 13, 16).
4. Appellant is not taking any antipsychotic medications, there is no documentation of any hospital visits, emergency room visits or psychiatric inpatient events or decompensation and there is no documentation of nursing administering medications. (Testimony).
5. Appellant can go to the pharmacy to pick up medications and was educated on importance of compliance. Appellant denies depression and anxiety. (Testimony; Ex. 4, p. 27).
6. There is no noted illicit drug use or alcohol intake and there is no notice of noncompliance with prefilled medications. (Testimony).

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.

At issue in this appeal is whether MassHealth was correct in modifying appellant's PA request from 1 skilled nursing visit per week with 3 PRN visits to 1 skilled nursing visit every other week with 3 PRN visits 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 and has not been recently hospitalized. Further, the appellant's clinical record does not note any issues with recent medication non-compliance. Appellant is not homebound and can go to the pharmacy to pick up medications and was educated on importance of compliance. Appellant is not taking any antipsychotic medications, there is no documentation of emergency room visits or psychiatric inpatient events or decompensation and there is no documentation of

nursing administering medications. Appellant denies depression and anxiety. The record before me supports MassHealth's modification to 1 skilled nursing visit every other week. Appellant needs to take his medications that are placed in the pill box. There is nothing in the record that suggests he cannot do that on his own. He has been educated on compliance in taking his medication. Additionally, the provider still has PRN visits available to them and can expedite a prior authorization request to increase PRN visits if appellant shows noncompliance or decompensation. The appeal representative did not make a medical necessity argument but only stated the belief that only 1 skilled nursing visit every other week was not a successful way of managing a client. I find this argument insufficient.

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

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