Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2503845
Decision Date:	5/5/2025	**Hearing Date:**	04/11/2025
Hearing Officer:	Amy B. Kullar, Esq.		

Appearance for Appellant:

[redacted]

Appearances for MassHealth:

Susan Lebreux, R.N. (Optum); 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:	5/5/2025	**Hearing Date:**	04/11/2025
MassHealth's Reps.:	Susan Lebreux, R.N.; Nelisette Rodriguez, R.N.	**Appellant's Rep.:**	[redacted]
Hearing Location:	Quincy Harbor South 1 (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 February 28, 2025, MassHealth approved the appellant's request for weekly skilled nursing visits and modified the requested medication administration visits. *See* Exhibit 1; 130 CMR 450.204(A)(2). The appellant filed this appeal in a timely manner on March 10, 2025; 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.

Action Taken by MassHealth

MassHealth denied the requested medication administration visits because they are not medically necessary.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.303, in determining that the requested service is not medically necessary for the appellant.

Summary of Evidence

The MassHealth representative, a registered nurse who works for Optum, the contractor who makes the home health services decisions for MassHealth, testified that the appellant's prior authorization request was submitted by [redacted] (Provider) on February 26, 2025 requesting skilled nursing visits (SNV) 1 per week with 3 PRN[1] and 6 medication administration visits (MAV) per week from 03/02/2025 to 06/01/2025.[2] The appellant is an adult under the age of 65, who lives independently in the community, and is not homebound. She has a primary diagnosis of type 2 diabetes mellitus without complications, and secondary diagnoses of major depressive disorder, bipolar disorder, borderline personality disorder, attention deficit hyperactivity disorder, morbid (severe) obesity, and dorsalgia. Testimony and Exhibit 6.

On February 28, 2025, MassHealth approved the SNV as requested (1 visit per week plus 3 PRN) but modified the MAVs to 4 visits per week from 03/02/2025 to 06/01/2025. The MassHealth representative testified that MAVs are authorized only if they are medically necessary. MassHealth indicated that after review of the documentation included with the request, it was determined the evidence does not demonstrate medical necessity for the requested frequency of MAVs.

The MassHealth representative testified that, according to the nurses' notes included with the PA request, the appellant's records "do not indicate non-compliance with medications" and there is "no documentation of missed doses during non-nursing visit times." Testimony. The MassHealth representative stated that the record indicates that "during this certification period there were no documented hospitalizations, ER visits or psychiatric emergency services. There were no communication notes regarding any non-clinical or medical issues." Testimony. The MassHealth representative acknowledged that the nursing note indicates that the appellant reports "forgetfulness, depression and anxiety," but also that the appellant is "oriented," has "no recent hospitalizations," the appellant has "grown used to the nurse," her "vital signs are within normal limits," and there is no documentation of "exacerbation of the diagnosis." The nursing notes do not indicate that the appellant is non-compliant with medications and there is no documentation of missed doses during non-nursing visit times. Testimony and Exhibit 6. The

[1] PRN means "as needed."

[2] The appellant is presently receiving 1 SNV per week with 3 PRN and 6 MAVs, as aid pending was applied to this appeal by the Board of Hearings.

MassHealth representative stated that "after reviewing the documentation, it appeared that the member is stable and due to her current status, a trial wean was initiated of two [fewer] visits per week to promote independence." Testimony. She testified that the appellant's provider can expedite a request for additional MAVs or SNVs if the appellant showed noncompliance or decompensation during the weaning period. The MassHealth representative then referred to page 25 of her prehearing submission, Exhibit 6, which contains the MassHealth medical necessity guidelines for medication administration nursing visits, and she stated:

> "MassHealth only considers medication administration visits to be medically necessary if all the following criteria are present: (1) Medication administration is prescribed to treat a medical or behavioral health condition; (2) A member has no able caregiver present; and (3) The task requires the skills of a licensed nurse and at least one of the following conditions apply: (i) The member is unable to perform the task due to impaired physical or cognitive, behavioral and/or emotional issues, and/or (ii) the member has a history of failed medication compliance resulting in a documented exacerbation of the member's condition."

Testimony. *See also* Exhibit 6 at 25.

The MassHealth representative concluded her testimony by stating that the documentation submitted by the appellant's provider indicates that the appellant "is able to self-administer medications from a pre-filled planner, that there appear to be no concerns with medication effectiveness and compliance on non-nursing times, and no documentation of exacerbation of member condition due to her noncompliance," and that MassHealth stands on its determination. Testimony.

The appellant was represented at Fair Hearing by a registered nurse from her Provider; she appeared at the fair hearing telephonically and verified the appellant's identity. The appellant's representative testified that the appellant is seen every morning by a nurse. The appellant's medications are administered by the nurse in the morning from a lockbox, and the appellant is left with only the evening medications and a couple more medications that the appellant takes more than twice per day. The appellant's representative stated that the appellant continues to require the skilled nursing visits for medication administration from the lockbox for "compliance monitoring." The appellant is unable to independently administer her medication "due to a history of non-compliance and misuse of medication, her forgetfulness, depression, anxiety, and she does not have any caregiver in the home or anyone in her life that is willing or able to do that for her." It is the representative's belief that the appellant, due to her anxiety and her forgetfulness, would not be successful at a reduction at this time.

The MassHealth representative responded that the nursing notes and written record do not mention that the appellant actually requires a nurse to hand her medications, that the

appellant can and does take medications when the nurse is not present; and that MassHealth would like to see at least an attempt by the appellant to see if she would be able to take medications on her own to decrease the frequency that she needs a nurse. Testimony.

Findings of Fact

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

1. The appellant is an adult woman who lives independently in the community. She has a primary diagnosis of type 2 diabetes mellitus without complications, and secondary diagnoses of major depressive disorder, bipolar disorder, borderline personality disorder, attention deficit hyperactivity disorder, morbid (severe) obesity, and dorsalgia. Testimony and Exhibit 6.

2. On February 26, 2025, the appellant's prior authorization (PA) request was submitted by [redacted] (Provider). The PA requested skilled nursing visits (SNV) 1 time per week with 3 PRN and 6 medication administration visits (MAV) from 03/02/2025 to 06/01/2025. Testimony and Exhibit 6.

3. On February 28, 2025, MassHealth approved the SNV as requested, 1 visit per week plus 3 PRN, from 03/02/2025 to 06/01/2025 and modified the requested MAVs to 4 per week. Testimony; Exhibits 1 & 6.

4. On March 10, 2025, the appellant filed a timely request for a hearing with the Board of Hearings. Exhibit 2.

5. On April 11, 2025, a fair hearing was held before the Board of Hearings. Exhibit 3.

6. According to the nurses' notes included with the PA request, the appellant is compliant with medications and there is no documentation of "missed doses during non-nursing visit time;" she reports "forgetfulness, depression and anxiety" but also is "oriented," and has "no recent hospitalizations." Exhibit 6.

7. The appellant is able to self-administer medications from a pre-filled planner, and there are no documented concerns with medication effectiveness and non-compliance on non-nursing times, and no documentation of exacerbation of the appellant's condition due to any noncompliance. Testimony.

Analysis and Conclusions of Law

Pursuant to 130 CMR 450.204 (A), MassHealth will not pay a provider for services that are not medically necessary; and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary. 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 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.

130 CMR 403.410: Prior-Authorization Requirements

(A) General Terms.

(1) Prior authorization must be obtained from the MassHealth agency or its designee as a prerequisite to receipt of home health home health services as described in 130 CMR 403.410(C) and 403.410(F), below. For all other home health services prior authorization must be obtained from the MassHealth agency or its designee as a prerequisite to payment after certain limits are reached, as described in 130 CMR 403.410. Without such prior authorization, the MassHealth agency will not pay providers for these services.

(2) Prior authorization determines only the medical necessity of the authorized service, and does not establish or waive any other prerequisites for payment such as member eligibility or resort to health insurance payment.

(3) Approvals for prior authorization specify the number of hours, visits, or units for each service that are medically necessary and payable each calendar week and the duration of the prior authorization period. The authorization is issued in the member's name and specifies frequency and duration of care for each service approved per calendar week.

(4) The home health agency must submit all prior authorization requests in accordance with the MassHealth agency's administrative and billing regulations and instructions and must submit each such request to the

appropriate addresses listed in Appendix A of the Home Health Agency Manual.

(5) In conducting prior authorization review, the MassHealth agency or its designee may refer the member for an independent clinical assessment to inform the determination of medical necessity for home health services.

(6) If authorized services need to be adjusted because the member's medical needs have changed, the home health agency must submit an adjustment request to the MassHealth agency or its designee.

(7) MassHealth only pays for services up to the amount authorized in the PA.

(B) Skilled Nursing and Medication Administration Visits for MassHealth Members Not Enrolled in a Capitated Program[3].

(1) The home health agency must obtain prior authorization for the provision of skilled nursing and medication administration visits beyond the amounts set forth in 130 CMR 403.410(B)(5). *See* 130 CMR 403.410(C) for prior authorization requirements relative to home health aide services. *See* 130 CMR 403.410(D) for prior authorization requirements relative to home health therapy services.

(2) To obtain prior authorization for skilled nursing and/or medication administration visits, the home health agency must submit to the MassHealth agency or its designee written physician or ordering non-physician practitioner orders that identifies the member's admitting diagnosis, frequency, and, as applicable, duration of nursing services, and a description of the intended nursing intervention.

(3) The home health agency must complete a prior authorization request through the Provider Portal or by using the Request and Justification for Nursing and Home Health Aide Services Form, if paper submission is necessary, in accordance with 130 CMR 403.410(B)(1) and 403.415, as applicable. This must be submitted to the MassHealth agency or its designee for all prior authorization requests for skilled nursing, medication administration, and home health aide services, as applicable.

(4) 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.

(5) Any verbal request for changes in service authorization must be followed up in writing to the MassHealth agency or its designee within two weeks of the date of the verbal request.

[3] Capitated Program – an ICO, SCO, ACO, or PACE organization, or any other entity that, according to a contract with EOHHS, covers home health and other medical services for members on a capitated basis. *See* 130 CMR 403.402.

The home health regulations also include reference to the medical necessity requirements.

130 CMR 403.416: Home Health Aide Services

(A) Conditions of Payment. Home health aide services are payable only if all of the following conditions are met:

(1) home health aide services are medically necessary and are provided pursuant to skilled nursing or therapy services;
(2) the frequency and duration of the home health aide services must be ordered by the physician and must be included in the plan of care for the member;
(3) the services are medically necessary to provide personal care to the member, to maintain the member's health, or to facilitate treatment of the member's injury or illness;
(4) prior authorization, where applicable, has been obtained where required in compliance with 130 CMR 403.410; and
(5) the home health aide is supervised by a registered nurse or therapist for skilled nursing services or therapy services, respectively, employed or contracted by the same home health agency as the home health aide. In the event that the home health agency contracts for, rather than directly employs, home health aides, such aides must be supervised in accordance with 42 CFR §484.80(h).

(B) Payable Home Health Aide Services. Payable home health aide services include, but are not limited to

(1) personal-care services; such as bathing, dressing, grooming, caring for hair, nail, and oral hygiene, which are needed to facilitate treatment or to prevent deterioration of the member's health, changing the bed linen, shaving, deodorant application, skin care with lotions and/or powder, foot care, ear care, feeding, assistance with elimination, routine catheter care, and routine colostomy care;
(2) simple dressing changes that do not require the skills of a registered or licensed nurse;
(3) medication reminders for medications that are ordinarily self-administered and that do not require the skills of a registered or licensed nurse;
(4) assistance with activities that are directly supportive of skilled therapy services; and
(5) routine care of prosthetic and orthotic devices.

> (C) Nonpayable Home Health Aide Services. The MassHealth agency does not pay for homemaker, respite, or chore services provided to any MassHealth member.
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> (D) Incidental Services. When a home health aide visits a member to provide a health-related service, the home health aide may also perform some incidental services that do not meet the definition of a home health aide service (for example, light cleaning, preparing a meal, removing trash). However, the purpose of a home health aide visit must not be to provide these incidental services, since they are not health-related services.

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance,* 68 Mass. App. Ct. 228, 231 (2006). Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass. App. Ct. 333, 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386 , 390 (1998).

On February 26, 2025, the appellant's PA request was submitted by [redacted] (Provider). The PA requested skilled nursing visits (SNV) 1 time per week with 3 PRN and 6 MAVs per week from 03/02/2025 to 06/01/2025. Testimony; Exhibit 6. On February 28, 2025, MassHealth approved the SNVs as requested but modified the request for MAVs to 4 visits per week from 03/02/2025 to 06/01/2025**.** The appellant appealed, arguing that she requires 6 MAVs per week, instead of the 4 MAVs approved by MassHealth.

According to the nurses' notes included with the PA request, the appellant is compliant with medications, and there is no documentation of "missed doses during non-nursing visit time;" while the appellant reports "forgetfulness, depression and anxiety," she is also "oriented" and has "no recent hospitalizations." MassHealth approved 4 MAVs per week for the purpose of allowing the appellant to wean from the daily nursing visits, while monitoring compliance with medications.

The appellant's representative asserted that the appellant needs the additional MAVs because the appellant has a "history of non-compliance and misuse of medication." There was no evidence in the written record that indicates that this is currently true. Rather, the nursing notes that were submitted indicate that the appellant is presently compliant with medication self-administration during non-nursing visit times, and has shown no signs of decompensation or change in her condition. The appellant takes many medications several times a day, without the supervision of a nurse. The appellant's representative also acknowledged that the appellant has not yet attempted a weaning program, but it was unclear from the testimony or record as to why it had not yet been attempted, especially since the MassHealth representative credibly

testified that the appellant's Provider could expedite a request for SNVs or MAVs if the appellant showed an inability to independently administer her medication during any such weaning period. If the appellant is truly unable to manage the self-administration of her medications during non-nursing times, it has not been corroborated in the written record, or by the hearing testimony.

Therefore, there is insufficient evidence in the hearing record to show that more than 4 MAVs per week are medically necessary. The appellant is compliant with her medications, even at the times that the nurse does not visit. The appellant has not shown by preponderance of the evidence that her needs cannot be met with 4 MAVs per week.

Accordingly, MassHealth's modification is supported by the material facts in the hearing record and the above regulations. This appeal is therefore DENIED.

Order for MassHealth

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