

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2177607
Decision Date:	12/15/2021	Hearing Date:	November 09, 2021
Hearing Officer:	Brook Padgett	Record Open:	December 09, 2021

Appellant Representative:




MassHealth Representatives:

Linda Phillips, RN, BSN, LNC-Csp.
Rachel Arthur, RN



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
MassHealth of Medical Assistance
Board of Hearings
100 Hancock Street, 6th floor
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	130 CMR 450.204 130 CMR 414.408
Decision Date:	12/15/2021	Hearing Date:	November 09, 2021
MassHealth Reps.:	L. Phillips, RN R. Arthur, RN	Appellant Rep.:	
Hearing Location:	Quincy		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

The appellant received a notice dated September 09, 2021, stating the appellant's request for 85 hours of continuous nursing services (CNS) per week has been modified to 82 hours of CNS (Exhibit 1).

The appellant filed this appeal timely on September 21, 2021. (130 CMR 610.015(B); Exhibit 2).

A challenge to a CCM service plan is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's request for 85 hours of CNS per week.

Issue

Is MassHealth correct in determining that time requested for professional nursing assistance does not meet MassHealth's regulatory requirements and/or the medical necessity regulation?

Summary of Evidence

MassHealth testified MassHealth/Community Case Management's (CCM) provides authorization and coordination of MassHealth Long Term Services and Supports (LTSS), which includes CNS services, to a defined population of MassHealth eligible, medically complex Members. On July 09, 2021, a Needs Assessment (NA) was completed by MassHealth/CCM. Based on this assessment, MassHealth/CCM determined the amount of CNS services that were medically necessary and authorized the appellant to receive 83 hours/week of CNS services. This CNS authorization is a decrease of 2 hours from last year as the appellant had a reduced amount of illness, which reduced the total minutes of sick time within this CNS assessment. In addition, MassHealth/CCM authorized PCA services, and on October 29, 2021, the appellant was approved for Adult Foster Care (AFC) which began October 31, 2021.

The appellant has a primary diagnosis of Anoxic Brain Damage, with associated diagnoses including Asthma; Developmental Delay; GERD; Seizure Disorder; GJ-Tube; Legal Blindness; History of Right Femur Fracture; and Tracheostomy. A LTSS NA was completed on July 09, 2021, via the telephone due to Covid restrictions. Present at the visit were: the appellant's mother/guardian and a MassHealth/CCM Clinical Manager. MassHealth/CCM's LTSS NA is an evaluation of the appellant needs each year; it is not a look-back of CNS services that had previously been authorized. The appellant attends [REDACTED] Monday through Friday, 8am-2pm. MassHealth/CCM requested and reviewed the MassHealth/CCM Medication Review, dated October 25, 2021; Home Health Certification and Plan of Care (Physician Orders) from Northeast Arc dated July 14, 2021-September 11, 2021; MassHealth/CCM Nursing Note Review for Northeast Arc Nursing Notes, dated July 05, 2021-July 28, 2021; Nursing Flow Sheets from Northeast Arc, dated July 05, 2021-July 28, 2021; Medication Administration Record from Northeast Arc dated July 2021; and [REDACTED] Public Schools-Individualized Education Program (IEP) and Amendment dated April 08, 2021-April 07, 2022.

Based on the LTSS Needs Assessment, MassHealth/CCM determined the following clearly identifiable, specific medical needs for the appellant CNS services, and the time required to perform each nursing intervention:

Total time authorized for the Respiratory system = 370 minutes/day.

- Tracheostomy (trach)care is performed 2 times/day, taking 15 minutes each time to include Heat and Moisture Exchanger (HME) changes, trach site assessment and monthly trach changes. Total time authorized = 30 minutes/day.

- Tracheal suctioning and administering normal saline drops in the trach are performed an average of 20 times/day, taking 4 minutes each time. Total time authorized = 80 minutes/day.
- Oral suctioning is performed an average of 35 times/day taking 2 minutes each time, including respiratory assessment. Total time authorized = 70 minutes/day.
- HME is changed an average 15 times/day due to copious secretions, taking 1 minute each time. (2 changes are included with trach care). Therefore, total time authorized = 13 minutes/day.
- Pulse Oximeter (Pox- monitors O2 levels) is monitored continuously. Time allotted is to reposition the probe 5 times/day, taking 2 minutes each time. Total time authorized = 10 minutes/day.
- The appellant experiences desaturation episodes with shallow breathing and pooling of saliva 3 times/day, taking 3 minutes each time to suction, reposition, administer oxygen, and assess respiratory status. Total time authorized = 9 minutes/day.
- Daily monitoring of the oxygen tank O2 levels, tubing and ensuring proper functioning takes 5 minutes/day. The appellant is reported to use oxygen intermittently at night and at nap time. Total time authorized = 5 minutes/day.
- Chest Physiotherapy (CPT) with the vest is performed every 2 times/day, taking 20 minutes each time. Time authorized also includes respiratory assessment. Total time authorized = 40 minutes/day.
- Manual CPT is performed at bedtime, taking 15 minutes. Total time authorized = 15 minutes/day.
- Cough Assist is performed 2 times/day, taking 15 minutes each time including respiratory assessment. Total time authorized = 30 minutes/day.
- Xopenex (Levalbuterol) and/or Normal Saline nebulizer treatments are administered 1-2 times/day, taking 20 minutes each time. Total time authorized = 40 minutes/day.
- Tobramycin nebulizer treatment is administered an average of 15 times/month, taking 25 minutes each time. Total time averaged = 13 minutes/day.
- Combivent inhaler is administered 1 time/day and Flovent inhaler is administered 2 times/day, taking 5 minutes each time. Total time authorized = 15 minutes/day.

Total time authorized for GI system/nutrition = 102 minutes/day.

- Site care is required for gastrostomy and jejunostomy tubes (G and J tubes), 2 times/day, taking 5 minutes each time to include assessment of skin, cleansing site with ½ strength hydrogen peroxide and water, and application of Bacitracin and gauze. Total time authorized = 10 minutes/day.
- The appellant is administered a Ketogenic diet via J-tube at 85ml/hour for 16 hours/day with breaks for transport, therapies, and personal care. Time allotted to prepare the formula diet is 20 minutes/day. Total time authorized = 20 minutes/day.
- Time allotted to initiate the feeding and assess tolerance 2 times/day, taking 10 minutes each time. Total time authorized = 20 minutes/day.
- Water boluses take 30 minutes/day to be administered. Total time authorized = 30 minutes/day.

- The appellant requires pausing of J-tube feeding with personal care, transport, and therapies 3 times/day, taking 5 minutes each time for feeding adjustments and GI assessment. Total time authorized = 15 minutes/day.
- Venting of the J-tube is performed daily, taking 5 minutes, including GI assessment. Total time authorized = 5 minutes/day.
- Ketone monitoring allotted 2 times/day, taking 1 minute each time. Total time authorized = 2 minutes/day.

Total time authorized for Neurological System = 30minutes/day

- The appellant has 4-5 seizures/day, lasting an average of 1-4 minutes each time which range from startle, focal and tonic clonic seizures. Time allotted for seizure management 5 times/day, taking 6 minutes each time to include maintain safety and patent airway; repositioning; oxygen monitoring and administration; suctioning; neurological assessment and medication as needed. Total time authorized = 30 minutes/day.

Total time authorized for Pain Management = 5 minutes/day

- The appellant requires Tylenol or Ibuprofen daily for pain/discomfort, taking 5 minutes to assess pain, administer medication, and assess effectiveness. Total time authorized = 5 minutes/day.

Total time authorized for Musculoskeletal System = 60 minutes/day

- The appellant requires Passive Range of Motion (PROM) exercises 3 times/day, taking 20 minutes each time and includes musculoskeletal and pain assessment. Total time authorized = 60 minutes/day.

Total time authorized for skilled assessment needs related to fluctuation in medical status = 143 minutes/day.

- Skilled assessment needs related to fluctuation in medical status: General System assessment to include a head-to-toe assessment is required 3 times/day, taking 10 minutes each time. Total time authorized = 30 minutes/day.
- appellant is administered 15 doses of (tablet) medications taking 5 minutes each time to crush, mix with water and administer each medication with a flush via GJ-tube. Total time authorized = 75 minutes/day.
- appellant is also administered 2 liquid medications, taking 3 minutes to administer and flush via GJ tube. Total time authorized = 6 minutes/day.
- Time allotted is averaged to 5 minutes/day. Total time authorized = 5 minutes/day.
- appellant experiences 3 upper respiratory infections within this past year. Each episode required nebulizer treatments, tracheal/oral suctioning, CPT, feeding adjustments, Tylenol/Motrin, and administration of antibiotics. Time allotted is 18 minutes/day. Total time authorized = 18 minutes/day.
- appellant experiences seasonal allergies and requires additional nursing interventions for 1 week every 2 months. Time allotted is 9 minutes/day. Total time authorized = 9 minutes/day.

MassHealth/CCM recognizes that the appellant medical condition is complex and that he requires CNS services for the following systems: Respiratory; GI; Neurological; Pain Management; and Musculoskeletal. Based on the LTSS NA and all other provided information, MassHealth/CCM determined the appellant requires 83 hours/week of CNS services that are medically necessary, as the remainder of his care needs do not require a skilled nurse to provide.

MassHealth/CCM authorizes “hands-on” care plus time for assessment of each involved body system. The authorization of CNS services is not intended for anticipatory needs, such as the possibility of an occurrence, nor are CNS services intended to provide unskilled care.

MassHealth argued that pursuant to MassHealth Regulations 130 CMR 403.409 (H), in order for nursing services to be authorized by MassHealth, there must be a clearly identifiable, specific medical need for a nursing visit of more than two continuous hours. Assessment for CNS services is conducted by MassHealth/CCM as part of a LTSS Needs Assessment. The regulations governing LTSS Needs Assessments are set forth at 130 CMR 403.414 (A) (2). MassHealth/CCM is authorized to approve LTSS, such as CNS services, if they are medically necessary, and in accordance with 130 CMR 403.410. 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 the MassHealth agency include, but are not limited to, health care reasonably known by the provider, or identified by 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. (130 CMR 450.204).

After review of the professional, clinical opinions of the MassHealth/CCM Clinical Manager; Physician Orders, Nursing Flow Sheets, and Medication Administration Records from Northeast Arc; a Medication Review completed by a Doctor of Pharmacology; MassHealth/CCM’s determined that 83 hours/week of CNS services is reasonable and realistic to prevent, diagnose, prevent the worsening of, alleviate, correct, or cure conditions in the appellant that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or results in illness or infirmity. (Exhibit 4).

The appellant's mother testified the appellant is often sick during the year and requires additional time. The appellant's mother stated she does not always contact MassHealth every time appellant has an issue; however, his caregivers still must care for him requiring additional hours. The appellant's mother agreed that she would make a record of any additional time the appellant may require due to new circumstances such as illness and MassHealth/CCM would respond with additional time if needed.

At the hearing officer's request the record was extended to allow MassHealth/CCM to contact the appellant's Independent Nurse and review the current nursing notes. (Exhibit 5).

MassHealth/CCM responded within the required time period that MassHealth/CCM contacted the appellant's nurse and discussed the appellant's condition and nursing care in detail as well as completing a nursing note review. After a detailed discussion and note review MassHealth/CCM responded that it found no medical reason to modify the approved time of 83 hours.¹ (Exhibit 6).

Findings of Fact

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

1. The appellant is [REDACTED], with a diagnosis of primary diagnosis of Anoxic Brain Damage, with associated diagnoses including Asthma; Developmental Delay; GERD; Seizure Disorder; GJ-Tube; Legal Blindness; History of Right Femur Fracture; and Tracheostomy. (Exhibit 4).
2. A CNS needs assessment was completed by MassHealth/CCM which determined the appellant required 83 hours/week of CNS services as medically necessary. (Exhibit 4).
3. The CNS authorization of 83 hours is a decrease of 2 hours from last year.
4. MH/CCM reduced the appellant's CNS hours from 85 as the medical evidence indicated the appellant had a reduced amount of illness in the past year. (Exhibit 4).
5. The appellant is authorized PCA services and was approved for AFC beginning October 31, 2021. (Exhibit 4).

¹ The appellant's nurse reported he has not noticed any major change in the appellant's condition since he started working with the appellant on October 04, 2021. MH/CCM discussed the following:

1. The appellant "requires tracheal followed by oral suction on average 4-5 times per shift (total 15 times/day) and member is a high risk for aspiration due to large amount of oral secretions". MassHealth/CCM has authorized Tracheal Suctioning 20 times/day, taking 4 minutes each time and Oral suctioning 35 times/day, taking 2 minutes each time. Total time authorized for tracheal and oral suctioning is 115 minutes/day. MassHealth/CCM did not modify time authorized for suctioning based on this verbal report and nursing notes reviewed. **2. The appellant "has tonic clonic seizure on average 1 per week and other forms of seizure, like startle 1-2 week".** MassHealth/CCM has authorized time for seizure management 5 times/day, taking 6 minutes each time. Total time authorized 30 minutes/day. MassHealth/CCM did not modify time authorized for seizure management based on this verbal report and nursing notes reviewed. **3. The appellant "requires an extra/PRN nebulizer once/shift and 1-2x during night shift".** MassHealth/CCM clarified this statement with the nurse further and he stated that nebulizer treatments were administered an average of 2 times/day in total. MassHealth/CCM authorized time for Xopenex/Normal saline nebulizers 2 times/day, taking 20 minutes each time. In addition, time is authorized for Tobramycin nebulizer administered 1 time/day, every other month. Total time authorized 53 minutes/day. MassHealth/CCM did not modify time authorized for nebulizer treatments based on this verbal report and nursing notes reviewed.

Analysis and Conclusions of Law

A needs assessment was completed by MassHealth/CCM on July 09, 2021. Based on this assessment it was determined it was medically necessary for the appellant to receive 83 hours of CNS. This CNS authorization was a decrease of 2 hours from last year. MassHealth/CCM argued the reduction is a result of the medical notes indicating the appellant had a reduced amount of illness during the past year, which reduced the total minutes of sick time required by the CNS. In addition, the appellant was approved for AFC which began October 31, 2021.

The appellant has a primary diagnosis of Anoxic Brain Damage, with associated diagnoses including Asthma; Developmental Delay; GERD; Seizure Disorder; GJ-Tube; Legal Blindness; History of Right Femur Fracture; and Tracheostomy.

MassHealth Regulations 130 CMR 403.409 (H), state for nursing services to be authorized by MassHealth, there must be a clearly identifiable, specific medical need for a nursing visit of more than two continuous hours. Assessment for CNS services is conducted by MassHealth/CCM as part of a LTSS Needs Assessment. The regulations governing LTSS Needs Assessments are set forth at 130 CMR 403.414 (A) (2). MassHealth/CCM is authorized to approve LTSS, such as CNS services, if they are medically necessary, and in accordance with 130 CMR 403.410. Pursuant to 130 CMR 450.204 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 the MassHealth agency include, but are not limited to, health care reasonably known by the provider, or identified by 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.

MassHealth/CCM authorizes “hands-on” care plus time for assessment of each involved body system. The authorization of CNS services is not intended for anticipatory needs, such as the possibility of an occurrence, nor are CNS services intended to provide unskilled care. Based on the LTSS Needs Assessment, MassHealth/CCM determined total time authorized for the Respiratory system = 370 minutes/day; GI system/nutrition = 102 minutes/day; Neurological System = 30 minutes/day; Pain Management = 5 minutes/day; Musculoskeletal System = 60 minutes/day; and fluctuation in medical status = 143 minutes/day.

Although the appellant's representative argued the appellant requires additional time there is insufficient medical evidence in the record to demonstrate that claim. The authorization of CNS is based on medically necessary interventions that require the skills of a licensed nurse. CCM must authorize services based on the current medical needs of the member, not on past

assessments or previous increases or decreases in service. Based on the current medical evidence in the record MassHealth/CCM correctly authorized 83 hours of CNS per week; however, if the appellant's medical condition should change, the family should call CCM with a request for an increase in hours. The nurse case manager has the authority to respond to requests for increases in nursing services in an immediate fashion to prevent hospitalizations.

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.

Brook Padgett
Hearing Officer
Board of Hearings

cc: MassHealth representative: Linda Phillips, RN, UMMS/Community Case Management, 333 South Street, Shrewsbury, MA 01545