

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved in Part;
Denied in Part

Appeal Number: 2178006

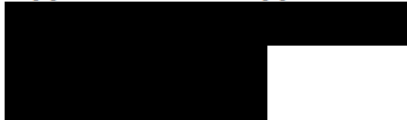
Decision Date: 02/10/2022

Hearing Date: 12/09/2021

Hearing Officer: Sara E. McGrath

Record Closed: 01/25/2022

Appearances for Appellant:



Appearances for MassHealth/CCM:


Linda Phillips, RN

Karen Tomasetti, RN



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Approved in Part; Denied in Part	Issue:	Community Case Management (CCM)
Decision Date:	02/10/2022	Hearing Date:	12/09/2021
MassHealth's Reps.:	Linda Phillips Karen Tomasetti	Appellant's Reps.:	
Hearing Location:	Board of Hearings (Remote Video)	Aid Pending:	No

Authority

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

Jurisdiction

Through a notice dated October 14, 2021, the MassHealth Community Case Management (CCM) program authorized the appellant to receive nursing and personal care attendant (PCA) services (Exhibit 1). The appellant's mother filed a timely appeal on October 18, 2021, contesting the number of hours that were approved (130 CMR 610.015(B); Exhibit 1). The authorization of nursing and PCA hours is a valid basis for appeal (130 CMR 610.032). After hearing, the record was held open until January 25, 2022 for the submission of additional records.

Action Taken by MassHealth

MassHealth authorized nursing time in the amount of 88 hours per week during school vacation and 85 hours per week during school.¹ MassHealth authorized PCA time of 32.5 hours per week of day/evening services.

¹ CCM recommended a slow wean of nursing hours over 16 weeks to accommodate the decrease from the previously authorized 117 hours per week during school vacation and 113 hours per week during school.

Issue

The appeal issue is whether the nursing time that MassHealth authorized is adequate or whether additional time is medically necessary.

Summary of Evidence

MassHealth was represented by two registered nurses. The record indicates that the appellant is a young child in the CCM program with primary diagnoses of hypoxic ischemic encephalopathy, quadriplegic cerebral palsy, and epilepsy. He also has associated diagnoses of microcephaly, gastroesophageal reflux disease (GERD), dysphagia, asthma, developmental delay, hip dysplasia, legal blindness, infantile spasm, autonomic dysfunction, and neurostorms. After his previous evaluation, the appellant filed an appeal and was ultimately approved for 117 hours of continuous skilled nursing (CSN) services per week during school vacation and 113 hours per week during school.

The current authorization is for the period of October 17, 2021, through August 27, 2022. The MassHealth representatives testified that the determination of the nursing hours needed was based on the nursing agencies' notes. These were reviewed with the appellant's clinical nurse manager from the agency that provides the nursing services. In this authorization period, MassHealth approved the appellant for 88 nursing hours per week during school vacation and 85 hours per week during school. The appellant was also approved for PCA services in the amount of 32.5 hours per week of day/evening services. Prior to hearing, the appellant submitted additional documentation. Based on this additional information, the CCM team increased the authorization to 96 hours per week (for both school and vacation weeks). After hearing, CCM reviewed more documentation and increased the authorization to 102 hours per week during school vacation and 99 hours per week during school (Exhibits 7 and 9).

The MassHealth representatives testified that the appellant attends school 5 days per week, 3 days in-person and 2 days remotely. The school system pays for 1:1 nursing up to 40 hours per week. They noted that the appellant's primary insurer pays for an additional 40 hours per week of skilled nursing services on top of the nursing hours authorized by MassHealth and the school system.

The appellant was represented at hearing by his mother, his clinical nurse manager, and an attorney. The attorney stated that they are only contesting the nursing hours, not the PCA time that was authorized. He argued that the appellant needs more hours than those authorized by MassHealth.

The MassHealth representatives reviewed the assessment that the CCM team completed. They testified to each of the nursing interventions that it determined the appellant needs, as well as the frequency and duration of each intervention. The appellant's representatives provided their own testimony as to the appellant's nursing needs in each area, disputing many of the MassHealth determinations.

The tasks that are still in dispute are as follows:

Respiratory System: Oral and nasal suctioning: MassHealth authorized a total of **25 minutes per day** for suctioning. The MassHealth representatives stated that suctioning is required as needed. The time allotted is 5 times per day, taking 5 minutes for each suctioning episode; time includes respiratory and airway assessment. The MassHealth representatives stated that the appellant's needs have decreased in this area, and documentation reveals that suctioning is only performed when he is sick, not on a daily basis. MassHealth referenced a physician order for suctioning as needed for increased congestion or when he is unable to cough/clear secretions (Exhibit 3, Ex. C, p. 5). MassHealth determined that the appellant requires and receives much less suctioning than he has in the past. However, because the appellant's mother indicated that *she* suctions the appellant more regularly, MassHealth authorized some nursing time for this task.

The MassHealth representatives stated that the appellant submitted another physician order, dated November 29, 2021, this one for suctioning 10 times per day (and as needed) (Exhibit 4, p. 46). In response, MassHealth reviewed documentation, including additional nursing notes from November and December (Exhibit 6). The MassHealth nurses noted that the additional nursing notes do not reflect that any suctioning is being done. Therefore, MassHealth determined that no additional time for suctioning was warranted.

The appellant's representatives have requested an increase in suctioning time to 75 minutes per day. Specifically, the appellant argues that he needs 25 minutes during the day (5 times per day, taking 5 minutes for each episode), and 50 minutes at night (5 times per night, taking 10 minutes for each episode). The appellant's representatives explained that suctioning takes less time during the day when the appellant is "off BiPAP," and longer at night when the appellant is "on BiPAP" (because the machine needs to be removed, suctioning needs to occur, and the machine then needs to be repositioned).

The appellant's representatives explained, and the assessment notes² indicate, that suctioning occurs on an as-needed basis, but also occurs daily as part of other nursing tasks, including manual chest physiotherapy (CPT) (3 times per day), vest treatments (2 times per day), oral feeding (2 times per day), and after oral care (2 times per day). Because the suctioning during these tasks is a common occurrence, but does not happen every single time (which would be 9 times per day), the appellant averaged the occurrences to 5 times per day. The appellant's representatives also stated that suctioning happens, on average, 5 times per night.

The appellant's representatives stated that the nursing notes may be incomplete because the nurses do not always document well. For example, a nurse may document an episode of CPT, but may not document that suctioning occurs with this task. The appellant's mother keeps a journal of nursing interventions; this journal reflects that suctioning was done 12 times per day

² The appellant's representatives submitted their own assessment spreadsheet into evidence. It is structured similarly to the one prepared by MassHealth (Exhibit 4).

on October 18, 2021 (Exhibit 4, p. 17).³ The appellant's representatives also referenced a progress report from December that mentions suctioning, desaturations, and a general need for increased respiratory support (Exhibit 4, p. 49).⁴ The appellant's mother stated that since his post-COVID-19 return to school, the appellant's respiratory issues have increased, as has his need for suctioning.

Respiratory System: Oxygen: MassHealth authorized a total of **10 minutes per day** for daily monitoring of the appellant's oxygen tank levels and tubing, and to ensure proper functioning of the equipment. The appellant needs to maintain an oxygen level above 90%. MassHealth authorized the industry standard of 10 minutes per day for this task. The appellant's representatives did not dispute the time authorized here, but argued that MassHealth did not authorize any time for the nurses to manage the appellant's desaturation episodes. They argued that these episodes occur regularly, as noted in the monthly progress report and family journal. The appellant's mother stated that when these episodes occur, the nurses respond in various ways, including stimulating the appellant by touching or repositioning him, given him oxygen, or putting him on BiPAP. She stated that the appellant can desaturate because of phlegm, breath holding, or from apnea. She indicated that 10 minutes per episode is a conservative estimate of the time it takes to address a desaturation episode.

The MassHealth representatives responded and stated that oxygen is ordered as needed, and the nursing notes do not document that desaturations are occurring regularly. The appellant's mother responded and stated that the nurses do not always chart these episodes. Further, the pulse oximeter is not always on the appellant's finger, and thus his exact oxygen level is not always known or recorded. This does not mean, however, that the interventions to address the desaturations are not taking place.

GI/Nutrition: Gastrostomy-jejunostomy (GJ) tube site care: MassHealth authorized a total of **10 minutes per day** for GJ tube site care. The MassHealth representatives testified that site care is required 2 times per day, including assessment of skin, cleansing, application of topical ointment if needed, taking 5 minutes each time. There is also a weekly balloon check. The GJ tube is changed at the hospital. The MassHealth representatives stated that if the GJ tube becomes accidentally dislodged, a nurse will insert a G tube in its place as a temporary measure before going to the hospital. Because accidental dislodgment occurs only a few times per year, time for this task is included in site care time, and no separate time was authorized for this task.

The appellant's representatives argued that an additional 1 minute per day is needed to cover the nursing time needed when the GJ tube falls out and a G tube is inserted in the stoma. They testified that this occurs at least 6 times per year, and dealing with it (by inserting a G tube) takes

³ The MassHealth nurses stated that they do not rely on family journals when determining the medical necessity of nursing hours; the entries are not signed, and it is unclear who is performing the identified tasks.

⁴ The MassHealth nurses stated that progress reports are not reviewed by CCM and are not part of the assessment.

20 minutes.⁵

The appellant's representatives also argued that extra cream needs to be applied to the stoma area an average of 4 times per week, taking 5 minutes per application. This results in additional nursing time of 3 minutes per day. The appellant's mother explained that cream is regularly applied 2 times per day. However, approximately 4 times per week, the appellant requires an extra application when the area becomes red.⁶ The MassHealth representatives responded and stated that the physician orders state that cream is to be applied twice per day. They also noted that 5 minutes should be more than sufficient to perform all the site care, including assessment, cleansing, and cream application; the nurses are skilled and perform this task regularly.

The appellant's mother went through the steps required for this task, including going to get the cream, putting on gloves, lifting up the appellant's shirt, assessing the site, and applying the cream. MassHealth clarified that time is only authorized for the actual nursing intervention, not gathering the supplies. Further, increased time for skin assessment has been separately authorized.

GI/Nutrition: Feeding: MassHealth authorized a total of **15 minutes per day** for Nourish Formula administration (with added non-medication items including Beneprotein and salt).⁷ MassHealth determined that the daily time required to initiate the feeding, assess initial tolerance, and to assess and flush the J tube after feeding, is 15 minutes per day.⁸

The MassHealth representatives explained that standard nursing time to prepare and initiate a J tube formula feeding is 10 minutes, but because there are items added to the appellant's formula, MassHealth increased the time to 15 minutes. They explained that the process involves gathering the equipment and ingredients, measuring the ingredients, pouring the ingredients into the feeding bag, priming the pump, connecting the tubing, starting the feed, and making sure the appellant is tolerating the feeding.

The appellant's representatives argued that the time authorized is not sufficient; the appellant needs 45 minutes per day to cover all of the tasks included with the appellant's oral feedings. Specifically, the appellant's representatives argued that the nurses need an additional 30 minutes

⁵ The MassHealth representatives clarified that if the daily nursing time needed is under a minute, no time is authorized. Thus, here, even if the time needed is 20 minutes per episode (which MassHealth argues is excessive), the daily time needed to cover 6 episodes is far less than a minute.

⁶ The appellant's mother stated that because the appellant does a lot of "tummy time," the tube leaks and the area gets red and irritated. The nurses assess the area at bath time and apply cream when needed.

⁷ There are other medications added to the appellant's formula as well; time for adding these was authorized in another section.

⁸ MassHealth also authorized time in this section for 6 water boluses administered via the J tube, taking 2 minutes (12 minutes per day), and for an additional 75 ml. of formula after the feeding is disconnected every other day (4 times per week), taking 5 minutes each time (3 minutes per day). The appellant's representatives did not dispute this part of the authorization (15 minutes per day).

per day to prime the infinity food pump, to initiate feedings, to assess the appellant's tolerance, and to respond to alarms.

The MassHealth representatives stated that responding to alarms is an anticipatory task that is not covered. If the alarm is going off frequently, the pump manufacturer should be notified. They also noted that there are 3 medications added to the formula (in addition to the 2 other additives noted above), and an additional 15 minutes per day was authorized for this (in another section of the assessment). Thus, in all, 30 minutes per day of nursing time was authorized for the appellant's J tube formula feedings. The MassHealth representatives stated that this amount of time should be more than sufficient.

Wound Care/Skin: MassHealth authorized **18 minutes per day** for skin assessment.⁹ The MassHealth representatives explained that skin assessment is done 6 times per day, taking 3 minutes each time, to assess skin integrity around the appellant's TLSO and AFO braces and any reddened areas on his hips.

The appellant's representatives agreed with the time authorized above, but dispute that MassHealth did not authorize any time for daily wound care. They argue that the appellant requires daily wound care to dress pressure sores 3 times per day, during 4 months of the year. This averages to nursing time of 10 minutes per day. The appellant's mother described the process, which includes assessing the skin, and if it is red and hot, cleansing the area, applying cream and gauze, and covering the gauze with tape.

The appellant's representatives referenced a December 3, 2021 letter from one of the appellant's physicians that includes the following order: "[D]ressing any stage one hip wounds three times daily. This reoccurring problem started in February 2021. He is at significant risk for a decubitus ulcer" (Exhibit 4, p. 47). They also referenced a December 6, 2021 letter from one of the appellant's nurses that provides in part as follows: "[The appellant] had a stage 1 pressure injury to his hip starting in February 2021. Since that time the pressure injury had intermittently recurred due to his non-ambulatory status. When pressure injury is present, he requires frequent repositioning at least every 2 hours and dressing changes/assessment three times per day" (Exhibit 4, p. 48).

The MassHealth representatives responded and noted that the documentation reflects that the appellant's pressure sores are all described as "stage 1." This means that these are intact, reddened areas; no cleansing, packing, or significant dressing is required. A "dry dressing" takes seconds to apply. They agreed that the appellant is at risk for pressure sores because of his braces, and for this reason time for skin assessment was authorized 6 times per day. They argue that it seems reasonable to include the application of a dry dressing during the time allotted for

⁹ The MassHealth representatives stated that they had initially authorized 9 minutes per day for skin assessment based on an order stating that skin assessment should occur 3 times per day. After a pre-hearing conference with the appellant's representatives, MassHealth increased the time to 18 minutes per day based on a new order for increased frequency and an understanding that the appellant sometimes has reddened areas and is at risk for pressure sores.

skin checks.

Neurological: Temperature checks during sleep: MassHealth authorized **11 minutes per day** for temperature checks during sleep. The MassHealth representatives testified that the appellant has temperature instability during sleep, and that temporal or tympanic temperature checks are required hourly, taking 1 minute each time during sleep.¹⁰ The frequency totals 11 times per day, which covers 1 nap and 10 hours of sleep at night. The appellant's representatives argued that the appellant requires an additional monthly rectal temperature check, and that the time should therefore be increased to 12 minutes per day. The appellant's mother explained that when an axillary reading is low (coupled with a low heart rate), a rectal reading is required due to his seizure risk, and this takes 15 minutes each time.

The MassHealth representatives responded that the appellant's temperature is checked hourly; if the nurse is unable to obtain a reading one way, the nurse will try another way. Nurses are skilled and able to take oral, axillary, or rectal temperatures. MassHealth also has authorized a significant amount of time for neurological assessments and interventions, and has also increased the frequency of vital sign checks from 3 to 6 times per day.

Skilled Assessment: Fluctuation in medical status: MassHealth initially authorized **199 minutes per day** in a variety of areas for skilled assessment needs related to fluctuation in the appellant's medical status. These include a **general system assessment** (30 minutes per day); **medications:** administration of 16 doses of non-liquid medications (5 minutes to prepare and administer each dose, or 80 minutes per day); administration of 17 doses of liquid medications (3 minutes to prepare and administer each dose, or 51 minutes per day); administration of melatonin (3 minutes per day); administration of fluticasone nasal spray (3 minutes per day); **illnesses:** Ciprodex drops for management of 2 episodes of otitis (1 minute per day); additional interventions for 3 respiratory illnesses (18 minutes per day); Nystatin oral medication swabs for 6 months of oral thrush (8 minutes per day); and time for daily **teaching** (5 minutes per day). The total time authorized for skilled assessment needs related to fluctuations in medical status was 199 minutes per day.

After reviewing additional documentation before and after the hearing, MassHealth revised its assessment and authorized **213 minutes per day**, as follows: **general system assessment** (30 minutes per day); **medications:** administration of 17 doses of non-liquid medications (5 minutes to prepare and administer each dose, or 85 minutes per day); administration of 17 doses of liquid medications (3 minutes to prepare and administer each dose, or 51 minutes per day); administration of melatonin (3 minutes per day); administration of fluticasone nasal spray (3 minutes per day); **illnesses:** Ciprodex drops for management of 2 episodes of otitis (1 minute per day); additional interventions for 3 respiratory illnesses (18 minutes per day)¹¹; Nystatin oral

¹⁰ This time is in addition to the temperature checks done during vital sign checks.

¹¹ MassHealth revised this section to include interventions of Zicam twice a day and Mucinex 6 times per day, as well as a CPT frequency increase to 6 times per day and cough assist increase to 6 times per day. These interventions did not change the time allotted from the previous calculation.

medication swabs for 6 months of oral thrush (8 minutes per day); administration of gabapentin 3 times per day for 22 weeks (7 minutes per day); administration of Zofran twice per week for nausea, including time to flush (2 minutes per day); Ofloxacin eye drops for 5 day treatment of sty on right eye (averaged to 0.05 minutes and included in general assessment time); and time for daily **teaching** (5 minutes per day). The total time authorized for skilled assessment needs related to fluctuations in medical status was 213 minutes per day.

The appellant's representatives agree with most of the above, but argue that MassHealth should authorize 230 minutes per day in this category, as follows:

- The appellant receives 19 (not 17) daily doses of liquid medication, taking 3 minutes each to prepare and administer (an increase of 6 minutes per day).
- The appellant uses PreviDent toothpaste twice per day after nebulizer treatments, taking 5 minutes each time (10 minutes per day).
- The appellant uses triamcinolone 1% ointment for eczema, 3 times per day, 3 times per week (an average of 1 minute per day).

The appellant's mother submitted an affidavit in support of their request for increased nursing services. The affidavit states in relevant part as follows:

Going back to school in September 2021 has been good for [the appellant's] education and socialization, but being in contact with other people has caused [him] to experience a lot more illnesses, which has increased his CSN care needs. The evaluation performed by CCM in June 2021 occurred before [he] went back to school. He had been out of school since the beginning of the COVID pandemic in March 2020. We had a similar experience as many other families where staying home during the pandemic kept [the appellant] – and a lot of us – from falling sick with colds and other seasonal illnesses. For [the appellant], these kinds of regular sicknesses present many more difficulties due to his medical conditions and they exacerbate his need for skilled nursing services. Still, the educational and socio-emotional benefits of interacting with teachers and other children is so important for [his] development and wellbeing that we wouldn't want to keep him home continuously.

Reductions in CSN services have all been correlated positively with increased hospitalizations (7 hospitalizations in 6 months after our first decrease in 2018, several after the hours were reduced in 2019, etc.) and the current amount of CSN services have been paramount in his only needing 1 hospitalization in the past 1.5 years. Our goal is to keep him as well as possible with daily care, so he doesn't need to go to the hospital.

I maintain a notebook including contemporaneous notes of all interventions

delivered to [the appellant]. All of [his] nurses add to the notebook in addition to maintaining official notes required by the nursing agencies. I often find that the notes in my notebook are more accurate than those submitted to the agencies. I've included some recent notes from October as an attachment to this Affidavit (see Affidavit Exhibit 3).

At a minimum, [the appellant] requires suctioning once per manual CPT (3x/day) + once per vest treatment (2x/day) + once per feeding (2x/day) + after oral care (2x/day) = 9 times. He also requires suctioning on an as needed basis. On average, he gets suctioned 10 or more times every day.

[The appellant's] oxygen levels are often unstable and he desaturates frequently, which requires time to respond to ensure he is safe and his airway is clear.

[The appellant] has been coping with pressure sores for a while and requires daily wound care as well as increased skin checks on a daily basis.

[The appellant] requires significant hands-on services by a skilled professional, including the following:

- a. Constant vital sign monitoring (including temperature checks as often 10 [sic] minutes or more frequently if change in condition). Temperature instability results in exacerbated seizures;
- b. Seizure monitoring and intervention as necessary – he has frequent seizures, the nature of the seizures are [sic] evolving, and requires emergency medication in response;
- c. Oxygen saturation must be checked every hour and more frequently with any change in condition or respiratory illness;
- d. Monitoring for Bradycardia throughout the day due to increased clonidine that he takes for pain management;
- e. Frequent nasal and oropharyngeal and suctioning at least 9 times a day baseline but typically 10 or more for increased secretions to maintain his airway;
- f. Management of frequent desaturations and apnea with stimulation and oxygen after nasal and oropharyngeal and suctioning;
- g. Nebulizer treatments of both Pulmicort and 3% hypertonic saline twice a day;
- h. Weekly use of Atrovent chamber inhaler for respiratory stress;
- i. [The appellant] is chronically ill and experiences respiratory stress which increases need for chest physiotherapy including use of a Cough Assist twice a day, manual Chest Physiotherapy three times a day, use of an inhaler, and nebulizer treatments every 4 hours;
- j. BiPAP via face mask overnight (9 hours) and with naps during the day (2 hours);
- k. Urinary catheterization for no urine output and close monitoring of

intake and output, including weighing and recording diaper output;
k [sic]. Regular venting of the G-tube with a Farrell bag during naps and overnight as well as manually;
l. [The appellant] receives suppositories every 24 hours without a stool and needs adequate time to monitor results;
m. [The appellant] requires other daily maintenance such as cleaning the G/J tube twice and multiple applications of ointment for redness;
n. [The appellant] receives medication in the G and J port around the clock in addition to flushes, prune juice, and PRNS for complex, chronic, GI/nerve/hip pain;
o. [The appellant] receives 60 cc bolus via J port around the clock to maintain proper hydration and avoid challenges with feeding intolerance (in addition to prune juice and water for treating chronic constipation);
p. [The appellant] receives an additional bolus of distilled water via J tube to replace volume output from the Farrell bag after nap and overnight sleep. This is done at 1 pm and 5:30 am;
q. Risk for aspiration is higher due to regression caused by his seizure disorder, so oral feedings must be done by a skilled professional (twice a day) with the ability to perform nasal and oropharyngeal suctioning;
r. [The appellant] requires regular use of Thoracolumbosacral Orthosis (TLSO) brace, Ankle-foot orthosis (AFOs) braces, bilateral handsplints, a Benick Vest, and knee immobilizers; he also has high risk for recurring stage 1 pressure wounds and obtains skin break down easily and needs skin checks throughout the day and night (in the morning, before bath, and before bedtime, and every two hours throughout the night, equating to 6 times daily);
s. [The appellant] requires routine pain control and this has been a significant change in care requiring almost constant hands on care and assessment due to screaming, high heart rate, neurological storming, teeth grinding, drawing his legs up, and breath holding throughout the day.

Our greatest fear is that [the appellant's] care needs will require institutionalization and that our family will be broken apart. I believe that [he] can be adequately cared for [at] home, but he needs MassHealth to cover an adequate and accurate amount of CSN services to ensure his medical safety.

(Exhibit 4, pp. 2-4)).

The record was held open for the appellant's representatives to submit additional information. During the record-open period, they submitted updated doctor's orders as well as supplemental care notes and journal entries (Exhibits 8 and 10).

Findings of Fact

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

1. The appellant is a young child with primary diagnoses of hypoxic ischemic encephalopathy, quadriplegic cerebral palsy, and epilepsy. He also has associated diagnoses of microcephaly, GERD, dysphagia, asthma, developmental delay, hip dysplasia, legal blindness, infantile spasm, autonomic dysfunction, and neurostorms.
2. The appellant is a member of MassHealth's CCM program. In his previous evaluation, he was approved for 117 hours of CSN services per week during school vacation and 113 hours per week during school.
3. In this authorization period, MassHealth approved the appellant for 88 nursing hours per week during school vacation and 85 hours per week during school.
4. Prior to hearing, the appellant submitted additional documentation and based on this additional information, the CCM team increased the authorization to 96 hours of CSN services per week.
5. After the hearing, the appellant submitted more documentation and based on this additional information, the CCM team increased the authorization to 102 hours of CSN services per week during school vacation and 99 hours per week during school.
6. The appellant was also approved for PCA services in the amount of 32.5 hours per week of day/evening services. The appellant is not contesting the PCA hours.
7. The appellant attends school 5 days per week, three days in-person and 2 days remotely; the school system pays for 1:1 nursing up to 40 hours per week. The appellant's primary insurer pays for an additional 40 hours per week of skilled nursing services in addition to the nursing hours authorized by MassHealth and the school system.
8. **Respiratory System: Oral and nasal suctioning:** MassHealth authorized a total of 25 minutes per day for suctioning.
 - a. The total time authorized was based on suctioning 5 times per day, taking 5 minutes for each episode. The time was intended to include respiratory and airway assessment. The time was based on a physician order directing that suctioning be performed as needed, conversations with nursing staff and family confirming that suctioning occurs only when the appellant is sick, and nursing notes that do not document daily suctioning.
 - b. The appellant is regularly suctioned during the day as part of other nursing interventions including CPT, vest treatments, oral feeding, and after oral care.

- c. The appellant is suctioned an average of 1 time per night.
 - d. 5 minutes is sufficient for suctioning when appellant is awake or off BiPAP (5 times per day, or 25 minutes), but 10 minutes is required for the 1 time per day he is on BiPAP at night (10 minutes). The total time required per day is 35 minutes.
9. **Respiratory System: Oxygen:** MassHealth authorized a total of 10 minutes per day to monitor the appellant's oxygen equipment.
- a. The total time authorized was based on the industry standard of 10 minutes per day.
 - b. The appellant has regular desaturation episodes due to phlegm, breath holding, and apnea.
 - c. These desaturation episodes require nursing interventions including stimulation, oxygen therapy, on placement on BiPAP; the average length of time to respond to a desaturation episode is 10 minutes.
10. **GI/Nutrition: GJ tube site care:** MassHealth authorized a total of 10 minutes per day for GJ tube site care.
- a. The total time authorized was based on site care occurring 2 times per day, including assessment of skin, cleansing, application of topical ointment if needed, and a weekly balloon check, taking 5 minutes each time.
 - b. The appellant's GJ tube becomes accidentally dislodged approximately 6 times per year. When this happens, a nurse must insert a G tube before the appellant goes to the hospital. This takes an average of 20 minutes.
 - c. The standard for site care cream application is 2 times per day; the appellant requires an extra cream application about 4 times per week due to redness and irritation.
11. **GI/Nutrition: Feeding:** MassHealth authorized a total of 15 minutes per day for Nourish Formula administration, including adding non-medication items (Beneprotein and salt).
- a. The total time authorized was based on the standard of care of 10 minutes (to initiate the feeding, assess initial tolerance, and to assess and flush the J tube after feeding), plus 5 minutes (to measure and add the non-medication items).
 - b. MassHealth typically allows 5 minutes for the addition of each powdered additive to formula.

- c. Beneprotein and salt are two powders that are added to the appellant's formula, taking 5 minutes each to prepare and add.
 - d. MassHealth did not allow additional time to respond to alarms.
12. **Wound Care/Skin:** MassHealth allotted 18 minutes per day for skin assessment, but did not authorize any separate time for dry dressing the appellant's pressure sores which are present approximately 4 months per year.
- a. The total time authorized was based on skin assessments performed 6 times per day, taking 3 minutes each time, to assess skin integrity around the appellant's TLSO and AFO braces and the reddened areas on both hips.
 - b. MassHealth includes in this authorization time to dry dress any stage 1 pressure sores.
 - c. The appellant is at risk of skin breakdown and has intermittent stage 1 pressure sores.
 - d. There is a doctor's order for dressing stage 1 pressure sores, when present, 3 times per day.
 - e. Dressing a stage 1 pressure sore involves cleansing the area, applying cream and gauze, and securing the area with tape.
13. **Neurological: Temperature checks during sleep:** MassHealth authorized 11 minutes per day for temperature checks during sleep.
- a. The appellant requires temperature checks, which take 1 minute each time, every hour of sleep (includes a nap and 10 hours of sleep at night).
 - b. Once per month, due to inconsistent readings, the appellant needs a rectal temperature check.
 - c. A rectal temperature check can take up to 15 minutes, which results in total daily time of far less than 1 minute.
14. **Fluctuation in medical status:** MassHealth authorized a total of 213 minutes per day for a variety of skilled assessment needs related to fluctuation in the appellant's medical status.
- a. The appellant receives 19 daily doses of liquid medication.
 - b. The appellant uses PreviDent toothpaste twice per day after nebulizer treatments, taking 5 minutes each time.

- c. The appellant uses triamcinolone 1% ointment for eczema, 3 times per day, 3 times per week (an average of 1 minute per day).

Analysis and Conclusions of Law

For complex-care members, as defined in 130 CMR 414.402, the MassHealth agency or its designee provides care management that includes service coordination with independent nurses as appropriate. The purpose of care management is to ensure that a complex-care member is provided with a coordinated community-long-term-care service package that meets the member's individual needs and to ensure that the MassHealth agency pays for nursing and other community-long-term-care services only if they are medically necessary in accordance with 130 CMR 450.204: *Medical Necessity*. The MassHealth member eligibility verification system identifies complex-care members (130 CMR 414.411). The CCM regulations at 130 CMR 414.411 further provide as follows:

(A) Care Management Activities.

(1) Enrollment. The MassHealth agency or its designee automatically assigns a clinical manager to members whom it has determined require a nurse visit of more than two continuous hours of nursing, and informs such members of the name, telephone number, and role of the assigned clinical manager.

(2) Comprehensive Needs Assessment. The clinical manager performs an in-person visit with the member to evaluate whether the member meets the criteria to be a complex-care member as described in 130 CMR 414.402. If the member is determined to meet the criteria for a Complex Care member, the clinical manager will complete a comprehensive needs assessment. The comprehensive needs assessment will identify

- (a) services that are medically necessary, covered by MassHealth, and required by the member to remain safely in the community;
- (b) services the member is currently receiving; and
- (c) any other case-management activities in which the member participates.

(3) Service Record. The clinical manager

- (a) develops a service record, in consultation with the member, the member's primary caregiver, and where appropriate, the independent nurse and the member's physician, that
 - (i) lists those MassHealth-covered services to be authorized by the clinical manager;
 - (ii) describes the scope and duration of each service;
 - (iii) lists service arrangements approved by the member or the member's primary caregiver;
 - (iv) and informs the member of his or her right to a hearing, as described in 130 CMR 414.414.

(b) provide to the member copies of the service record, one copy of which the member or the member's primary caregiver must sign and return to the clinical manager. On the copy being returned, the member's primary caregiver must indicate whether he or she accepts or rejects each service as offered and that he or she has been notified of the right to appeal and provided an appeal form; and

(c) provide information to the independent nurse about services authorized in the services record that are applicable to the independent nurse.

(4) Service Authorizations. The clinical manager will authorize those community-long-term-care services in the service record, including nursing, that require prior authorization and that are medically necessary, as provided in 130 CMR 414.413, and coordinate all nursing services and any subsequent changes with the independent nurse.

(5) Discharge Planning. The clinical manager may participate in member hospital discharge planning meetings as necessary to ensure that medically necessary community-long-term-care services necessary to discharge the member from the hospital to the community are authorized and to identify third-party payers.

(6) Service Coordination. The clinical manager will work collaboratively with any identified case managers assigned to the member.

(7) Clinical Manager Follow-up and Reassessment. The clinical manager will provide ongoing care management for members to

(a) determine whether the member continues to meet the definition of a complex-care member; and

(b) reassess whether services in the service plan are appropriate to meet the member's needs.

(B) Independent Nurse – Coordination with the Clinical Manager. The independent nurse must closely communicate and coordinate with the MassHealth agency's or its designee's clinical manager about the status of the member's nursing needs.

MassHealth regulations identify a two-prong analysis to determination whether a service is medically necessary (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: *Potential Sources of Health Care*, or 517.007: *Utilization of Potential Benefits*.

Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality (130 CMR 450.204(B)).

At issue in this case is a MassHealth authorization for CSN services for the appellant, a complex-care member. The appellant had been authorized to receive 117 hours of CSN services per week during school vacation and 113 hours per week during school. MassHealth reevaluated the appellant's needs and decreased the authorization to 102 hours per week during school vacation and 99 hours per week during school. In this appeal, the appellant contends that he requires more than the authorized hours. Based on the evidence in the record, the appellant has demonstrated the medical necessity of some but not all of the CSN time for the tasks in dispute.

Respiratory System: Oral and nasal suctioning: MassHealth authorized 25 minutes per day for oral and nasal suctioning; this was calculated by allotting 5 minutes per treatment, 5 times per day. MassHealth arrived at the frequency of 5 times because it determined that although the nursing notes do not reflect that suctioning occurs on a daily basis, the appellant's mother reported that she suctions him regularly. In light of this, and the fact that suctioning is authorized as needed, MassHealth erred on the side of member and authorized the above-referenced time. The appellant's representatives argued that the authorized time covers the appellant's average suctioning needs during the day, but it does not cover the time needed at night. The appellant's representatives argued that the appellant receives suctioning at night an average of 5 times per night. When the appellant is on BiPAP, the mask must be removed, the suctioning process completed, and then the BiPAP mask is then replaced while ensuring a good seal to protect against skin breakdown. The appellant's representatives testified that when the appellant is on BiPAP this process extends to 10 minutes rather than 5. MassHealth did not specifically argue that ten minutes would be an excessive amount of time to complete this task; rather, the MassHealth representatives focused on the fact that the nursing notes do not document that suctioning is occurring at night. Despite these nursing documentation gaps, the appellant's family journal does document that some night suctioning is occurring, although the average is, at best, 1 time per night (Exhibit 10). There is sufficient evidence to support the appellant's request for an additional 10 minutes per day (to allow for the additional 1 suctioning episode per night). The appellant has demonstrated that suctioning 6 times per 24-hour period is medically necessary, and that it is being consistently performed, and thus there is sufficient support to increase the time for this task to a total of 35 minutes per day.

Respiratory System: Oxygen: MassHealth authorized 10 minutes per day for monitoring the appellant's oxygen equipment; the appellant argues that an additional 10 minutes per day is needed to address the appellant's regular desaturation episodes. MassHealth did not argue that 10 minutes would be an excessive amount of time to complete this task; rather, the MassHealth representatives focused on the fact that the nursing notes do not document that desaturation episodes are occurring on a regular basis. Despite these nursing documentation gaps, both the monthly progress report, as well as the appellant's family journal, document that the nurses regularly address desaturation episodes (Exhibit 10). The appellant's mother's testimony corroborates these written statements. There is a sufficient basis for this request, and the appellant has demonstrated that a total of 20 minutes is medically necessary to maintain the appellant's oxygen levels above 90%.

GI/Nutrition: GJ tube site care: MassHealth authorized 10 minutes per day for GJ tube site care. This authorization includes time for assessment of skin, cleansing, cream application, and a weekly balloon check. The appellant argues that an additional 4 minutes per day is needed; 1 minute to cover G tube placement when the G/J tube falls out 6 times per year, and 3 minutes to allow for an extra cream application to the stoma site when it is red and irritated (about 4 times per week, taking 5 minutes each time).

The appellant has not demonstrated that any additional time should be authorized when the appellant's GJ tube becomes dislodged. Even assuming the G tube insertion takes 20 minutes (which MassHealth argues is excessive), the daily time required to capture the 6 occurrences is less than 30 seconds. Per MassHealth policy, when the daily time required is less than a minute, the time for task is appropriately included in the time already authorized for site care. The amount of time authorized by MassHealth is therefore sufficient.

Further, the appellant has not adequately demonstrated that an additional 5 minutes is required for an extra cream application to the appellant's stoma site. The MassHealth representatives persuasively argue that the stoma site is a very small area, and the nurses are skilled individuals who apply cream to this area multiple times per day. MassHealth's authorization for *all* site care tasks, with which the appellant has no dispute, is only 5 minutes per episode. That time covers more than just cream application; it also includes time for assessment, cleansing, and a weekly balloon check. Thus, the appellant has not provided sufficient support for the additional 3 minutes requested here.

GI/Nutrition: Feeding: MassHealth approved 15 minutes per day for J tube feedings, but the appellant's representatives requested 45 minutes per day, arguing that the time authorized is insufficient to prepare the formula, initiate the feeding, assess the process, and respond to alarms. MassHealth's position is that 10 minutes is the standard time for this entire task, but because the appellant has several items added to his formula, an additional 5 minutes was authorized. MassHealth also explained that it typically adds 5 minutes of time for *each* powdered additive. Thus, there is support for an additional 5 minutes of time here (to add both the Beneprotein and salt to the formula). Beyond that, there is insufficient evidence to support any additional time in this area. MassHealth persuasively argues that responding to alarms is considered an anticipatory

task for which time would not be authorized. The appellant has not documented how or why the appellant's J tube feeding needs would further exceed the standard time authorized. The appellant has demonstrated that 20 minutes per day is needed for this task.¹²

Wound Care/Skin: MassHealth authorized 18 minutes per day for skin assessments to assess skin integrity around the appellant's hips and where his braces touch his skin. The appellant is at risk for skin breakdown and has intermittent stage 1 pressure sores. The appellant's physician has ordered skin assessments 6 times per day, and when pressure sores are present, dressing these reddened areas 3 times per day. MassHealth takes the position that "dry dressing" any red area takes seconds and can be done during the 3 minutes that has been allotted for each skin assessment. This position is persuasive. Per the appellant's mother, dry dressing a stage 1 pressure sore includes applying cream, gauze, and tape; there is no debriding or packing of a wound involved. The appellant's mother describes a straightforward, relatively uncomplicated routine. There is insufficient evidence to support the request for an additional 10 minutes for daily wound care.

Neurological: Temperature checks during sleep: MassHealth authorized 11 minutes per day for temperature checks during sleep. Approximately once a month, the appellant needs a rectal temperature check. The time needed for this task is about 15 minutes, which amounts to about 30 seconds per day. As noted earlier, per MassHealth policy, when the daily time required is less than a minute, the time for task is included in the time already authorized. The amount of time authorized by MassHealth is therefore sufficient.

Fluctuation in medical status: MassHealth authorized 213 minutes per day for skilled assessment needs related to fluctuations in the appellant's medical status. The appellant's representatives argue that 230 minutes is required, and submitted documentation verifying that the appellant receives 19 daily doses of liquid medications, uses PreviDent toothpaste twice per day after nebulizer treatments, and uses triamcinolone 1% ointment for eczema, 3 times per day, 3 times per week. There is therefore sufficient evidence to support the request for an additional 17 minutes in this category, for a total of 230 minutes per day.

Summary of adjustments

The appellant has demonstrated medical necessity to justify the following increases to CSN time:

Oral/nasal suctioning	+ 10 minutes per day
Oxygen	+ 10 minutes per day
Feeding	+ 5 minutes per day
Fluctuation in medical status	+ 17 minutes per day

For the foregoing reasons, this appeal is approved in part and denied in part.

¹² As noted above, and not in dispute, an additional 15 minutes per day has also been authorized in the category of oral feeding (for daily water boluses and an additional food bolus every other day).

Order for MassHealth

Adjust the time authorized for CSN time in accordance with this decision.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact CCM. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings at the address on the first page of this decision.

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.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc: Linda Phillips, R.N.
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UMass Medical School
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