

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved in Part;
Denied in Part

Appeal Number: 2204708

Decision Date: 11/7/2022

Hearing Date: 08/25/2022

Hearing Officer: Rebecca Brochstein

Record Closed: 10/11/2022

Appearances for Appellant:




Appearances for MassHealth/CCM:

Linda Phillips, RN
Demetra Kennedy, RN
Margie Morel



*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:	11/7/2022	Hearing Date:	08/25/2022
MassHealth's Reps.:	Linda Phillips Demetra Kennedy Margie Morel	Appellant's Reps.:	
Hearing Location:	Board of Hearings (Remote)		

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 June 9, 2022, the MassHealth Community Case Management (CCM) program approved the appellant for continuous skilled nursing services (Exhibit 1). The appellant's mother filed a timely appeal on June 21, 2022, contesting the number of hours that were approved (130 CMR 610.015(B); Exhibit 2). The Board of Hearings dismissed the appeal because it was submitted without a copy of the notice (Exhibit 3). The appellant subsequently provided the notice to the Board of Hearings, which vacated the dismissal (Exhibits 4 and 5). After hearing on August 25, 2022, the hearing officer held the record open for submission of additional records; the hearing officer then reopened the record on October 11, 2022, to accept additional evidence from the appellant (Exhibits 8-13). The authorization of nursing hours is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth authorized the appellant for continuous skilled nursing services in the amount of 34 hours per week.

Issue

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

Summary of Evidence

The Associate Director of Appeals and Regulatory Compliance for CCM testified on behalf of the agency.¹ She stated that CCM provides authorization and coordination of MassHealth Long Term Services and Supports (LTSS), including continuous skilled nursing (CSN) services, to a defined population of MassHealth-eligible, medically complex members. The appellant is a child who is enrolled in the CCM program. The record indicates she has diagnoses that include cerebral palsy, restrictive lung disease, seizure disorder, hypoxic brain injury, central sleep apnea/obstructive sleep apnea, oropharyngeal dysphagia, and spasticity. She uses G and J tubes as well as a baclofen pump. See Exhibit 6 at 37. Following a period at Boston Children's Hospital, she was admitted to (and remains at) a long-term care facility.

On June 1, 2022, MassHealth/CCM performed an assessment to determine the appellant's eligibility for home-based CSN services.² MassHealth reviewed documentation from the Boston Children's Hospital, where the appellant had been hospitalized, as well as a plan of care previously established for her by the State of Maryland's Medicaid program. The MassHealth assessment sets forth the following medical history:

[Appellant] has a primary diagnosis of hypoxic ischemic encephalopathy (HIE) due to complications of seizures and a high fever as well as: seizure disorder, spastic quadriplegic cerebral palsy, scoliosis with restrictive lung disease and GJ tube dependence. She was hospitalized at Boston Children's Hospital (BCH) on 4/21/22 . . . secondary to fever and dehydration; her infectious workup was negative. While on continuous monitoring given concerns for seizure activity in the setting of agitation, she was found to have nocturnal desaturations and pauses in breathing. A baseline sleep study confirmed a diagnosis of severe central apnea and [she] was initiated on nocturnal Bipap. [Appellant] is nonverbal and communicates via eye gaze with a Tobii Dynavox speech generating device as well as with a communication board. Her family relocated to Massachusetts from Maryland in 2022 just prior to her hospitalization. (Exhibit 4 at 40)

Based on this assessment, MassHealth authorized the appellant for 34 hours per week of CSN services for a period of twelve weeks. The MassHealth representative testified that the agency determined the appellant has a number of clearly identifiable, specific medical needs that justify

¹ CCM's clinical director and appeals coordinator also appeared at the hearing, which was conducted on a video conferencing platform (audio only).

² It does not appear from the record that MassHealth/CCM completed a separate evaluation for personal care attendant (PCA) services.

CSN services, and calculated the amount of time required to perform each nursing intervention. MassHealth completed a spreadsheet that reflects the nursing time allotted in each body system category, as follows:³

Nursing Interventions	Time	Freq.	Clinical Rationale/Medical Necessity	Total Mins Per Day
Respiratory				
Suction	0	0	Suctioning is required on an as needed basis during periods of illness. No time allotted.	0
Mechanical Ventilation Care Management (CPAP, BiPAP, Ventilator)	39	1	The administration of BiPAP is required overnight for 12 hours per night. Time allotted to apply and secure the nasal pillow mask and assess for leaks is 5 minutes a day. Time allotted to assess the integrity of the BiPAP mask and reposition the mask as needed while BiPAP is in use is 2 minutes every hour or 24 minutes a day. Time allotted for maintenance of the BiPAP machine is 10 minutes a day. Total time allotted is 39 minutes a day.	39
O2 Desaturations	5	6	Use of the pulse oximeter is required continuously. Time allotted to rotate and secure the wrap probe, obtain an accurate reading and assess the site is 5 minutes 6 times a day.	30
Oxygen	5	1	Oxygen (O2) is ordered for as needed use. Time allotted to assess O2 equipment for proper delivery and function is 5 minutes a day.	5
Skilled Assessment	0	0	Time allotted with skilled interventions.	0
Cardiac/Autonomic Instability				
Skilled Assessment	0	0	Time for cardiac assessment including the assessment of vital signs allotted with general assessment in <i>Skilled Assessment Needs Related to Fluctuation in Medical Status</i>	0

³ The spreadsheet as set forth here includes only those interventions that MassHealth deemed applicable to the appellant; the numerous line items on the standardized form that MassHealth marked “Not Applicable” have been omitted.

Gastro-Intestinal (GI) Nutrition				
G/J Tube Care	5	2	Care and assessment of the separate G tube and J tube sites is required daily. There are currently no issues at the site. Time allotted is 5 minutes per episode and includes time for weekly assessment of the G tube balloon and time to change the G tube every 3 months.	10
G/J Tube Feedings	140	1	Eight (8) tube bolus feedings a day of Alphamino [sic] JR are administered on the enteral pump. Time allotted for feeding initiation and initial assessment of feeding tolerance is 10 minutes per feeding or 80 minutes a day including flushing the J tube before and after each feeding. Two (2) dose[s] of medication is administered via the G tube and 18 doses of medication a day are administered via the J tube. Time allotted is 3 minutes per dosage or 60 minutes a day to include time for flushing the G and J tube before and after each dose. Total time allotted is 140 minutes a day including assessment.	140
Adjustments and Venting	1	12	The G tube is attached to a Farrell bag for continuous venting when BiPAP is in use. Time allotted for management and assessment of the Farrell bag is 1 minute every hour times 12 hours (12 times a day)	12
Intake and Output	0	0	Time allotted with general assessment in <i>Skilled Assessment Needs Related to Fluctuation in Medical Status</i> .	0
Skilled Assessment	0	0	Time allotted with skilled care	0
Genito-Urinary (GU)				
Skilled assessment	0	0	Time allotted with general assessment in <i>Skilled Assessment Needs Related to Fluctuation in Medical Status</i> .	0
Wound Care/Skin				
Skilled Assessment	0	0	Time allotted with general assessment in <i>Skilled Assessment Needs Related to Fluctuation in Medical Status</i> .	0

Neurological				
Seizures	0	0	Seizures consisting of eye twitching [that] self resolves occur an average of 2 times a week requiring assessment. A seizure log detailing each seizure is maintained. Nasal Midazolam is ordered as needed for seizures lasting more than 5 minutes. Midazolam administration has not been recently required. Time allotted for assessment during seizures in Neurological skilled assessment.	0
Skilled assessment	3	6	Time allotted for assessment during seizures is 3 minutes every 4 hours or 6 times a day	18
Pain Management				
Skilled Assessment	0	0	Time allotted with general assessment in <i>Skilled Assessment Needs Related to Fluctuation in Medical Status</i> .	0
Musculoskeletal				
Skilled Assessment	0	0	Time allotted with general assessment in <i>Skilled Assessment Needs Related to Fluctuation in Medical Status</i> .	0
Other considerations in skilled care needs				
Skilled Assessment Needs Related to Fluctuations in Medical Status	5	6	Time allotted for head-to-toe general assessment to include time for cardiac assessment/assessment of vital signs, intake and output, GU, skin, pain, additional neurological and musculoskeletal assessment during initial 12-week transition to home is 5 minutes every 4 hours or 6 times per day. Additional assessment time allotted with skilled interventions.	30
Total Minutes Per Day				284
Total Hours Per Week				33.13

Exhibit 6 at 44-47.

The MassHealth representative testified that in completing the assessment, MassHealth considered all the appellant's medical needs as they had been reported and documented in writing. She stated

that the time authorized is for hands-on care as well as the time needed to assess each involved body system; she added that CSN services are not intended to cover anticipatory needs or for unskilled care.

The appellant's mother appeared at the hearing with an attorney.⁴ The mother argued that MassHealth failed to consider the plan of care that was authorized for the appellant in January 2022, when the family lived in Maryland. The Medicaid program in that state had authorized the appellant for nursing services in the amount of 106 hours per week. See Exhibit 6 at 51.⁵ The mother contended that MassHealth should honor the care plan established in Maryland, which was developed by medical doctors. She indicated that she placed the appellant in the nursing facility when they moved to Massachusetts because MassHealth did not authorize sufficient nursing hours for her to remain safely at home.

The mother testified that the MassHealth assessment does not accurately capture the appellant's needs in a number of areas. For example, she stated that the appellant does not get bolus feedings, but rather is fed "below her stomach" at a slow but continuous rate, over the course of 20 hours each day. She explained that the appellant has been hospitalized frequently for dehydration, constipation, and feeding intolerance, and that the current regimen was developed using "trial and error and empirical observation." Her providers determined that she tolerates feedings at a maximum rate of 56 ml per hour, and the mother contended that the appellant must be monitored continuously during this process. She stated that the appellant does not always tolerate a feeding well and may choke, in which case it has to be stopped immediately; in addition, the feeding tube sometimes falls out and must be reinserted by an experienced nurse. She emphasized that the appellant is non-verbal and cannot communicate if something is wrong except to cry until her needs are met. See Exhibit 2 at 4-6. The mother testified that the appellant's most time-consuming nursing needs are tied to feeding.

The mother further testified that the appellant needs monitoring for seizures, which she experiences on a daily basis even with the maximum dose of medication. She stated that the seizures are often very small, "just a twitch," but that the nurses are constantly watching so they can record the frequency, duration, and nature of each seizure in a log. She argued that nursing time is required for this purpose at least hourly.

⁴ The mother also submitted several detailed letters in support of her appeal. See, e.g., Exhibits 2, 2a, 4, and 7.

⁵ The Maryland plan of care describes the appellant's skilled needs as follows: "Multisystem assessment with focus on GI and respiratory systems, administration of medications, oral/nasal suctioning as needed, gastrostomy/jejunostomy tube care, administration and monitoring of continuous feedings, aspiration precautions, seizure precautions, dependent for all ADL's, nursing documentation, repositioning." The authorization was for a block period of eight hours per night "for an alert and awake caregiver" and ten hours per day "when mother is working and [appellant] is out of school, up to 50 hrs/week." Exhibit 6 at 51. There is no indication that the nursing interventions were broken down and timed by individual task.

Additionally, the mother testified that the appellant needs nursing time at least hourly for pain management. She stated that over the summer the appellant developed clonus, which causes her extreme pain. Managing this pain requires removing her AFOs and massaging her muscles. The mother stated that the appellant also has pain from constipation, as well as from wounds near her feeding tube site. She stated that the appellant “screams” from pain about three times per day, and it is not always possible to discern whether it is caused by clonus, a seizure, or gas from a feeding, or by something less serious like biting her tongue or getting her hair caught. Consequently, it is often necessary to look at her “from head to toe” to determine the reason for her reaction. The mother stated that there is no standard amount of time needed to investigate and address the appellant’s pain, as the intervention is sometimes simple and sometimes not.

The mother argued that it is improper for MassHealth nurses to make decisions about medical necessity without physician oversight. She took issue with the CCM guidelines, stating that she found no credible medical source for the spreadsheet that MassHealth utilizes in its assessments. She argued that the “huge discrepancy” between her nursing hours in Maryland and those approved by MassHealth indicates the CCM evaluator is unqualified for this role and is acting in a discriminatory way. She also cast blame on the team at Children’s Hospital for not questioning the low number of nursing hours. See Exhibit 2a at 6-8.

The record was held open after the hearing for the mother to submit updated clinical records from the facility where the appellant resides, as well as her own time-for-task spreadsheet that tracks the one prepared by MassHealth. MassHealth then had time to file a response. See Exhibit 8. On September 8, 2022, the mother submitted facility records and her own version of the MassHealth spreadsheet. She first noted some corrections and additions to the background sections of the MassHealth assessment, as follows:

- Addition to primary diagnosis section: Quadriplegic, constipation, skin eruption, scoliosis, and pain unspecified; gastro-esophageal reflux disease without esophagitis (Note: cannot tolerate any bolus feeding in G-tube)
- Correction to associated diagnosis section: She does not have a gjtube. There is a separate J-tube for [continuous] tube feeding at a slow rate using feeding machine and for administering medications and water flushes; a separate G-tube is kept for venting with [F]arrell bag to drain stomach secretions to prevent aspiration; and administering copper supplement (because copper is only absorbed in stomach).
- Additions to independent motor skills: Unable to hold head up, roll, sit, crawl or walk; ADLS: 1 Person lift for transfers; Unable to perform bathing, toileting or dressing.

The mother’s version of the time-for-task spreadsheet offers the following assessment of the appellant’s needs:⁶

⁶ For some of the spreadsheet entries, the mother based her request for additional time on the physician’s orders that are found in the records from the facility. The “Clinical Rationale/Medical Necessity” column

Nursing Interventions	Time	Freq.	Clinical Rationale/Medical Necessity	Total Mins Per Day
Respiratory				
Suction	0	0	[Not included in mother's spreadsheet]	0
Mechanical Ventilation Care Management (CPAP, BiPAP, Ventilator)	39	1	(Same as CCM)	39
O2 Desaturations	5	6	(Same as CCM)	30
Oxygen	5	1	(Same as CCM)	5
Skilled Assessment	15	3	<u>Per physician order:</u> Skilled Respiratory Protocol (No Trach): Monitor lung sounds every shift (8 hours) and PRN, maintain O2 sats > 90% with up to 6 liters O2, CPT PRN congestion, suction oral, nasal PRN secretions with #10 suction catheter or yankauer. Schedule: Every day at 12:00 a.m., 8:00 a.m., 4:00 p.m. (Exhibit 9 at 15)	45
Cardiac/Autonomic Instability				
Skilled Assessment	0	0	[Not included in mother's spreadsheet]	0
Gastro-Intestinal (GI) Nutrition				
G/J Tube Care	5	2	(Same as CCM)	10

set forth here indicates the mother's comments and, where relevant, the text of the physician's order.

G/J Tube Feedings	201	4	<p><u>Physician's Order:</u> Alfamino JR 180ml mixed w/30ml H2O autoflush Q 1hr during TF & PC. Schedule: Every day at 12:00 a.m., 4:00 a.m., 8:00 a.m., 12:00 p.m., 4:00 p.m., 8:00 p.m. (Exhibit 9 at 9)</p> <p><u>Mother's Comments:</u> Nurse responsible for filling bag with appropriate amount of feeding or flush and hooking up the feeding machine for the appropriate time at the correct rate. Aspiration risk for [quadriplegic] non-verbal and unable to roll or hold head up to prevent aspiration. Continuous J-Tube feeding at 70 ml/hr for 3 hours (180 minutes) followed by a 25 ml flush administered by pump at 70 ml/hr (21 minutes) before the next feeding: 12am-3am; 4am-7am; 8am-11am; 12pm-4pm, 8pm-12pm.</p>	804
Adjustments and Venting	1	12	(Same as CCM)	12
Intake and Output	0	0	[Not included in mother's spreadsheet]	0
Skilled Assessment	5	8	<p><u>Mother's comments:</u> Additional time needed to program machine with each change, fill bag, change bag, hook up tubing, etc. Allocate 5 minutes to prep each feed (4x) and flush (4x), programming=40 minutes; if the J-tube is dislodged, a skilled nurse needs to replace it immediately to prevent the tract from closing. Feeding must resume to prevent dehydration.</p>	40
Genito-Urinary (GU)				
Skilled assessment	5	3	<p><u>Physician's Order:</u> Skilled Observation: Bowel protocol. Obtain bowel sounds and abdominal girth every 8 hours and document on flow sheet. Every day at 7:00 am-3:00 pm; 3:00 pm-11:00 pm; 11:00 pm-7:00am (Exhibit 9 at 13)</p>	15
Wound Care/Skin				
Wound Care	5	1	<p><u>Physician's Order:</u> Allevyn flower dressing to protruding area of ITB pump/hyperpigmented area (Exhibit 9 at 13)</p>	5
Skilled Assessment	5	1	<p><u>Mother's Comments:</u> Both G and J Tube sites have red [granulation] tissue. She also has a wound on her lower lip from biting her lip due to pain.</p>	5

Neurological				
Seizures	3	1	<u>Mother's Comments:</u> Estimated seizure duration and frequency. Nurse must assess if lasts longer than 5 minutes before administering emergency seizure medication; seizure trigger may be positional and nurses need to take appropriate action to stop the seizure to avoid giving the emergency medicine. [Noted that this can be multiple times per day]	3
Skilled assessment	3	6	(Same as CCM)	18
Pain Management				
Skilled Assessment	10	1	<u>Mother's Comments:</u> Suffers from painful clonus (muscle spasms) of unknown origin and may require nurse [to] administer pain medication PRN	10
Musculoskeletal				
Skilled Assessment	0	0	(Same as CCM, with mother adding note to see pain management section above)	0
Other considerations in skilled care needs				
Skilled Assessment Needs Related to Fluctuations in Medical Status	5	6	(Same as CCM)	30
Total Minutes Per Day				1,071
Total Hours Per Week				124.95

MassHealth reviewed the record-open submission by the appellant's mother, and reported that it would update the appellant's records to include new medical information that was either omitted or incorrect in the original assessment. The MassHealth representative also agreed to two adjustments to the CSN time:

- Genito-urinary (GU): Skilled Assessment: Physician order for bowel sounds and abdominal girth measurement 3 times/day. Bowel sounds are included in the CCM general head to toe assessment 5 minutes, 6 times/day. . . . **Additional Abdominal girth measurement is a new order and therefore would be added for 5 minutes, 3 times/day=15 minutes/day. (Total Time Authorized by CCM for GU = 15 min/day) (This is an increase from the original CCM assessment)**
- Wound Care/Skin: **Additional monitoring at G and J tube sites and apply Allevyn**

flower dressing to ITB Pump daily for 5 minutes, 1 time/day. . . . (Total Time Authorized by CCM for Wound Care = 5 min/day) (This is an increase from the original CCM assessment) [Emphasis in original]

See Exhibit 11 at 6.

MassHealth declined to increase the time for the other tasks that the appellant's mother had disputed. These tasks, along with the agency's rationale for denying additional time, are as follows:

- **Respiratory: Skilled Assessment:** Skilled Respiratory interventions are included with the total time allotted by CCM of 74 minutes/day for respiratory care. Separate time is not allotted for anticipatory respiratory interventions. CCM has allotted Pox monitoring for 30 minutes per day and oxygen equipment is allotted for a total of 5 minutes per day to assess for proper delivery and function as oxygen is ordered PRN. Skilled respiratory assessment time is included during skilled respiratory interventions. No additional skilled respiratory interventions have been indicated as medically necessary. ***(Total Time Authorized by CCM for Respiratory = 74 min/day) (no change from the original CCM assessment)***
- **Gastrointestinal: G/J Tube Feedings:** J-tube feedings (Alfamino JR) are administered by mixing 180 ml with 30 ml water=210 mls to run at 70 mls and hour x 3 hours. There is an auto flush of 25 mls of water every 1 hour while the feeding is running. **(New England Pediatric Care physician orders page 21)**
Time for skilled nursing interventions is not allotted for the entire 3 hours that the feeding is running as it is delivered per an automatic pump which sets off an alarm with any feeding disruptions. **This new feeding schedule is given a total of 6 times/day, according to hospital orders at New England Pediatric Care, which is 2 times less per day than in Boston Children's Hospital.**
CCM maintains the allotted time to include 10 minutes with each feeding to include: feeding initiation, initial assessment of feeding tolerance and include flushing the J-tube before and after each feeding.
- **Gastrointestinal: Skilled Assessment:** Skilled Assessment of GI system is included above in J-tube feeding.
- **Wound Care/Skin: Skilled Assessment:** Five minutes per day already authorized to monitor G and J tube sites and to apply Allevyn flower dressing to ITB pump. No documentation of lower lip wound, or treatment noted.
- **Neurological: Seizures:** Skilled Neurological assessment was previously allotted by CCM to assess during seizures 3 minutes every 4 hours (6 times/day) for a total of 18 minutes/day. . . . (no change from original assessment) ***(Total Time Authorized by CCM for Neurological = 18 min/day (no change from original CCM assessment)***

- Pain Management: In Skilled assessment needs related to fluctuation in medical status . . . , CCM has included monitoring for pain, 5 minutes, 6 times/day under head-to-toe assessment. There are no other additional noted assessments for pain in documentation from New England Pediatric Care. *(Total Time Authorized by CCM including Pain Management = 30 min/day) (no change from the original CCM assessment)* (Exhibit 11 at 5-7) [Emphasis in original]

With the additional time allowed for genito-urinary assessment and wound care, MassHealth recalculated the appellant's total CSN time at 37 hours per week. This represents an increase of three hours per week over the original assessment.

Following MassHealth's submission, the hearing officer reopened the record to accept a response letter from the appellant's mother. The mother's letter includes the following points:

- While the appellant is living in the nursing facility the 140 minutes per day allotted by MassHealth is sufficient, as a skilled nurse can complete the tasks of preparing and initiating each feeding in the allotted ten minutes, and facility staff would be able to alert a nurse of any issues after that.
- The appellant's pediatrician advised that the appellant should not be left alone at home during the three hours the feeding machine is running, and also stated that the tube feeding does not necessarily need to be monitored by a skilled nurse once it is running.
- The appellant is dependent on the feeding machine to keep her alive, as without continuous J tube feeding she will need to be hospitalized or die of dehydration very quickly. Her continuous feeding via machine can be dangerous without supervision because she is unable to reattach the feeding tube to the pump if it accidentally comes loose when the feed is running. She is also unable to replace a defective J tube or G tube if the balloon holding it in place deflates and the tube falls out; a trained nurse needs to insert a new tube immediately, before the opening in the abdomen closes. Additionally, there can be kinks in the feeding tube and prevent the appellant from getting the right amount of formula; a nurse would recognize any inconsistencies and set up the machine to deliver what was missed.
- The appellant's other medical conditions (seizures, dysphasia, gastric-reflux, retching, coughing, and feeding intolerance) put her at risk for aspiration. Because she is non-verbal she is unable to call for help or inform the caregiver of the reason for her discomfort. She is also unable to roll her head to the side independently to clear her airway. A nurse would act quickly at the first sign of distress, turn off the feeding machine, and roll her on her side to clear her airway of secretions.
- The appellant may suffer from pain due to GI distress and a nurse may need to stop the feeding machine to relieve her pain.

- The alarm on the feeding machine might not be heard if the caregiver is fatigued and sleeps through the sound. The alarm also will not be triggered if there is human error in programming the feeding rate; a nurse must be present to check the feeding bag is emptying as it should. It will also not be triggered if there is leaking from the feeding tube, so a nurse must be present to check the tube connections for leaks. If the appellant is choking due to feeding intolerance a nurse needs to be present to manually stop the feeding machine and to assess when it is safe to resume.
- Skilled nursing is necessary to monitor her central sleep apnea while she is on BiPAP. A nurse needs to assure she has adequate oxygen saturation while sleeping and provide supplemental oxygen as needed.
- A skilled nurse is needed to recognize the appellant's seizure activity, to monitor the duration, and to give supplemental oxygen or emergency seizure medication if necessary.
- The appellant needs a skilled nurse to assess and determine the source of pain from muscle spasms or clonus. (Exhibit 12)

The hearing officer reopened the record once again on October 11, 2022, to accept another submission by the appellant's mother. This submission set forth the costs associated with the appellant's stay in the nursing facility as well as past hospitalizations, and purported to show that home-based nursing care would be a more efficient use of MassHealth funds. See Exhibit 13.

Findings of Fact

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

1. The appellant is a child who is a member of MassHealth's Complex Case Management (CCM) program.
2. The appellant has diagnoses that include cerebral palsy, quadriplegia, restrictive lung disease, seizure disorder, hypoxic brain injury, central sleep apnea/obstructive sleep apnea, oropharyngeal dysphagia, constipation, scoliosis, and spasticity. She uses a J tube for feeding and medications, as well as a G tube for venting and medications. She also has a baclofen pump.
3. The appellant is nonverbal and communicates via eye gaze and with a communication board. She has no head or neck control, and cannot sit up without assistance.
4. The appellant and her family relocated to Massachusetts from Maryland, where the Medicaid program had authorized her for a block period of up to 106 hours of nursing services per week (eight hours per night "for an alert and awake caregiver" and ten hours per day when the mother was working and the appellant was not in school).

5. The appellant currently lives in a long-term care facility.
6. On June 1, 2022, MassHealth performed an assessment to determine the appellant's eligibility for home-based continuous skilled nursing (CSN) services. Based on this assessment, MassHealth authorized 34 hours per week of CSN services for a period of twelve weeks.
7. The appellant's mother filed an appeal on her behalf, seeking nursing time that is comparable to or greater than what she had in Maryland.
8. The record was held open after hearing for the mother to obtain additional medical records and to complete her own time-for-task spreadsheet that mirrored the one prepared by MassHealth.
9. Based on the appellant's post-hearing submission, MassHealth increased the CSN time in two areas:
 - a. Genito-urinary: Skilled Assessment: MassHealth authorized an additional five minutes, three times per day (15 minutes per day) for abdominal girth measurements.
 - b. Wound Care/Skin: MassHealth authorized an additional five minutes per day for monitoring at the G and J tube sites and for application of Allevyn flower dressing.
10. With these adjustments, MassHealth set the new authorization for 37 CSN hours per week.
11. The appellant's mother agreed with MassHealth's allotment of time for mechanical ventilation care management (39 minutes per day); oxygen desaturations (30 minutes per day), oxygen (5 minutes per day); G/J tube care (10 minutes per day); adjustments and venting (12 minutes per day); skilled assessment for seizures (18 minutes per day); and skilled assessment needs related to fluctuations in medical status (30 minutes per day).
12. The appellant's mother did not contest MassHealth's allotment of no separate time for suctioning; skilled assessment for cardiac/autonomic instability; measurement of GI intake and output; and skilled assessment of the musculoskeletal system.
13. MassHealth did not authorize time for a **skilled assessment of the appellant's respiratory system** on the basis that this need is covered in the time allotted with other skilled interventions.
 - a. The appellant's mother argues that the appellant requires time for this assessment in the amount of fifteen minutes, three times per day (45 minutes per day).

- b. The appellant's records from the facility show the following physician order for a skilled respiratory protocol: "Monitor lung sounds every shift (8 hours) and PRN, maintain O2 sats > 90% with up to 6 liters O2, CPT PRN congestion, suction oral, nasal PRN secretions with #10 suction catheter or yankauer. Schedule: Every day at 12:00 a.m., 8:00 a.m., 4:00 p.m."
 - c. MassHealth authorized a total of 74 minutes per day for other tasks related to the respiratory system:
 - i. MassHealth authorized a total of 39 minutes per day for management of the BiPAP machine, including applying and securing the nasal pillow mask and assessing for leaks; assessing the integrity of the BiPAP mask and reposition as needed; and maintenance of the BiPAP machine.
 - ii. MassHealth authorized five minutes, six times per day, for management of the pulse oximeter, including rotating and securing the wrap probe, obtaining an accurate reading, and assessing the site.
 - iii. MassHealth authorized five minutes, once per day, to assess the appellant's oxygen equipment for proper delivery and function. Oxygen is ordered for as-needed use.
 - d. MassHealth's existing allotment of skilled nursing time does not specifically include a full respiratory assessment or management of secretions.
14. MassHealth authorized a total of 140 minutes per day for eight **G/J tube feedings**. This includes ten minutes to initiate each feeding, initial assessment of feeding tolerance, and flushing the J tube before and after each feeding (80 minutes); and three minutes for the administration of each of twenty medication doses, plus flushing the tube before and after each dose (60 minutes).
- a. The appellant's mother contends that the appellant requires nursing services for a total of 804 minutes per day, or 201 minutes four times per day. Her calculations are based on 180 minutes for each continuous J-tube feeding, followed by 21 minutes to flush the tube before the next feeding. The physician's order states that the formula is mixed with water, with an "autoflush" once per hour.
 - b. According to the physician's order in the facility records, there are currently six feedings per 24-hour period, at 12 a.m., 4 a.m., 8 a.m., 12 p.m., 4 p.m., and 8 p.m.
 - c. The feeding is delivered by an automated pump that sets off an alarm with any feeding disruptions.
 - d. The appellant's pediatrician advised that the appellant should not be left alone at

home during the three hours the feeding machine is running, but that the tube feeding does not necessarily need to be monitored by a skilled nurse once it is running.

15. MassHealth did not authorize time for a **skilled assessment of the appellant's gastrointestinal system** on the basis that this need is covered in the time allotted for other skilled interventions.

- a. The appellant's mother argues that additional time is needed around feedings to program the machine, fill the bag, change the bag, and hook up the tubing. She requested five minutes to prepare each feed (four times per day) and to flush the tubing (four times per day), for a total of 40 minutes per day.
- b. The tasks of preparing each feed and flushing the tubing are covered in the time authorized for feedings.

16. MassHealth initially did not allot any time for **wound/skin care**, but, based on information submitted during the record-open period, authorized five minutes per day for monitoring at the G and J tube sites and for application of Allevyn flower dressing (see Finding 8b, above).

- a. The appellant's mother requested an additional five minutes per day for skilled assessment at the G and J tube sites and for care of a lip wound.
- b. MassHealth approved separate time (ten minutes per day) for care and assessment of the G and J tube sites under the heading of *G/J Tube Care*.
- c. The medical records do not reflect an active lip wound that requires skilled nursing intervention.

17. MassHealth did not allot any time for management of **seizures**.

- a. The appellant's seizures consist of eye twitching that usually self-resolve. She is prescribed nasal Midazolam for seizures lasting more than five minutes, but it has not been needed recently.
- b. MassHealth allotted three minutes, six times per day, for skilled neurological assessment during seizures. The appellant's mother agreed with this determination (see Finding 9, above).
- c. The mother requests a separate three minutes per day for a nurse to take necessary action to stop a seizure and avoid having to administer the medication (e.g., repositioning).

- d. The tasks described in the mother's request under this category are already covered in the time allotted for the skilled neurological assessment.
18. MassHealth did not authorize time for a **skilled assessment for pain** on the basis that this need is covered in the 30 minutes per day allotted for *Skilled Assessment Needs Related to Fluctuation in Medical Status*.
- a. The appellant's mother seeks ten minutes per day for a nurse to assess and manage her pain.
 - b. The appellant cries in pain about three times per day but cannot communicate the source of the pain.
 - c. The appellant developed clonus over the past summer, which causes significant pain and necessitates removing her AFOs and massaging her muscles.
 - d. When the appellant exhibits a response to pain, it is necessary to assess the source (e.g., muscle spasms, a seizure, gastrointestinal distress, or another cause) and to intervene to relieve it.

Analysis and Conclusions of Law

Complex-care members are MassHealth members whose medical needs, as determined by the MassHealth agency or its designee, are such that they require a nurse visit of more than two continuous hours of nursing services to remain in the community. See 130 CMR 438.402. Pursuant to 130 CMR 438.414, the MassHealth agency or its designee provides administrative care management that includes service coordination with CSN agencies as appropriate. The purpose of care management is to ensure that a complex-care member is provided with a coordinated LTSS package that meets the member's individual needs and to ensure that the MassHealth agency pays for nursing and other community LTSS only if they are medically necessary in accordance with 130 CMR 450.204. The complex-care member regulations further provide as follows:

(A) Care Management Activities.

- (1) Enrollment. The MassHealth agency or its designee automatically assigns a clinical manager to members who may 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) LTSS 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 438.402 and 438.410(B). If the member is determined to meet the criteria as a complex-care member, the clinical

manager will complete a LTSS Needs Assessment. The LTSS Needs Assessment will include input from the member, the member's caregiver, if applicable, LTSS providers, and other treating clinicians. The LTSS Needs Assessment will identify (a) skilled and unskilled care needs within a 24-hour period; (b) current medications the member is receiving; (c) durable medical equipment currently available to the member; (d) services the member is currently receiving in the home and in the community; and (e) 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 CSN agency and the member's physician or ordering non-physician practitioner, that 1. lists those LTSS services that are medically necessary, covered by MassHealth, and required by the member to remain safely in the community, and to be authorized by the clinical manager; 2. describes the scope and duration of each service; 3. lists other sources of payment (e.g. TPL, Medicare, DDS, AFC); and 4. informs the member of his or her right to a hearing, as described in 130 CMR 438.414.

(b) provides the member with copies of 1. the service record, one copy of which the member or the member's primary caregiver is requested to sign and return to the clinical manager. On the copy being returned, the member or the member's primary caregiver should 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 2. the LTSS Needs Assessment.

(c) provides information to the CSN agency about services authorized in the service record that are applicable to the CSN agency.

(4) Service Authorizations. MassHealth or its designee will authorize those LTSS in the service record, including nursing, that require prior authorization and that are medically necessary, as provided in 130 CMR 438.413, and coordinate all nursing services, any applicable home health agency services, and any subsequent changes with the CSN agency, home health agency or independent nurse prior authorization, as applicable. MassHealth or its designee may also authorize other medically necessary LTSS including, but not limited to, Personal Care Attendant (PCA) Services, Therapy Services, Durable Medical Equipment (DME), Oxygen and Respiratory Therapy Equipment, and Prosthetic and Orthotics.

(5) Discharge Planning. The clinical manager may participate in member hospital discharge-planning meetings as necessary to ensure that medically necessary

LTSS 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 other 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 record are appropriate to meet the member's needs.

(B) CSN Agency Care Management Activities. The CSN agency 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, in addition, but not limited to, (1) The amount of authorized CSN hours the agency is able and unable to fill upon agency admission, and periodically with any significant changes in availability; (2) Any recent or current hospitalizations or emergency department visits, including providing copies of discharge documents, when known; (3) Any known changes to the member's nursing needs that may affect the member's CSN needs; (4) Needed changes in the agency's CSN PA; and (5) Any incidents warranting an agency to submit to MassHealth or its designee an incident report. See 130 CMR 438.415(C)(2).

The MassHealth regulations governing clinical eligibility for skilled nursing services are found at 130 CMR 438.410:

(A) Clinical Criteria for Nursing Services.

(1) A nursing service is a service that must be provided by a registered nurse or a licensed practical nurse to be safe and effective, considering the inherent complexity of the service, the condition of the patient, and accepted standards of medical and nursing practice.

(2) Some services are nursing services on the basis of complexity alone (for example, intravenous and intramuscular injections). However, in some cases, a service that is ordinarily considered unskilled may be considered a nursing service because of the patient's condition. This situation occurs when only a registered nurse or licensed practical nurse can safely and effectively provide the service.

(3) When a service can be safely and effectively performed (or self-administered) by the average nonmedical person without the direct intervention of a registered nurse or licensed practical nurse, the service is not considered a nursing service, unless there is no one trained and able to provide it.

(4) Nursing services for the management and evaluation of a plan of care are medically necessary when only a registered nurse or licensed practical nurse can ensure that essential care is effectively promoting the member's recovery, promoting medical safety, or avoiding deterioration.

(5) Medical necessity of services is based on the condition of the patient at the time the services were ordered and what was, at that time, expected to be appropriate treatment throughout the certification period.

(6) A member's need for nursing care is based solely on his or her unique condition and individual needs, whether the illness or injury is acute, chronic, terminal, stable, or expected to extend over a long period.

(B) Clinical Eligibility for CSN Services. A member is clinically eligible for MassHealth coverage of CSN services when all of the following criteria are met.

(1) There is a clearly identifiable, specific medical need for a nursing visit to provide nursing services, as described in 130 CMR 438.410(A), of more than two continuous hours;

(2) The CSN services are medically necessary to treat an illness or injury in accordance with 130 CMR 438.410; and

(3) Prior authorization is obtained by the CSN agency in accordance with 130 CMR 438.411.

The MassHealth agency pays for only those CSN services that are medically necessary. See 130 CMR 438.419(B). 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 450.204(A))

At issue in this case is a MassHealth authorization for continuous skilled nursing (CSN) services for the appellant, who is a complex-care member. MassHealth completed an assessment of the

appellant's skilled nursing needs and determined that the appellant requires a total of 34 nursing hours per week. After further consideration during the record-open period, MassHealth authorized additional time for two nursing tasks (abdominal girth measurements and skin/wound care); these adjustments resulted in increased nursing time to a total of 37 hours per week. Several other areas remain in dispute:

Respiratory skilled assessment: MassHealth did not authorize any distinct time for the skilled assessment of the appellant's respiratory system, determining that this task is covered in the time allotted for other skilled interventions. The respiratory tasks for which MassHealth did include time are for management of the BiPAP machine (39 minutes per day), management of the pulse oximeter (30 minutes per day), and assessment of the appellant's oxygen equipment (five minutes per day). The appellant's mother seeks an additional fifteen minutes, three times per day (45 minutes per day total) for skilled respiratory assessments. In arguing for this extra time, the mother cites to a physician order for skilled respiratory protocol, which involves monitoring lung sounds every shift and as needed, maintaining oxygen saturation above 90%, and managing secretions. She is correct that MassHealth's allotment of time for other skilled interventions does not fully cover these tasks. The tasks covered under *Skilled Assessment Needs Related to Fluctuation in Medical Status*, the "head-to-toe" assessment that is completed six times each day, does not explicitly cover a respiratory assessment. There is also no other allotment of time that would cover the management of secretions, in part because MassHealth did not allow any time for suctioning. Though MassHealth suggests this is anticipatory and therefore should not be given dedicated nursing time, the record suggests it is a chronic need rather than an unusual, unpredictable occurrence. For these reasons, the appellant has demonstrated the need for additional time for respiratory assessment. The mother's assessment of the time needed for this (15 minutes, three times per day), is not objectively unreasonable.

Gastrointestinal skilled assessment: MassHealth did not authorize any time for a gastrointestinal skilled assessment, determining that this need is covered in the time allotted for other skilled interventions. The appellant's mother seeks additional time, in the amount of 40 minutes per day, citing to a range of activities related to prepare each feeding and to flush the tubing four times per day. However, this request is duplicative of the ten minutes that MassHealth already approved for each feeding. (Notably, MassHealth approved time for eight feedings per day, though the facility records indicate there are six per day while the mother requested time for only four.) As this time has already been accounted for, there is no medical necessity for the additional time requested.

G/J tube feedings: MassHealth authorized a total of 140 minutes per day for eight G/J tube feedings. This time includes ten minutes to initiate each feeding, to complete an initial assessment of feeding tolerance, and to flush the J tube before and after each feeding. It also includes three minutes for the administration of each of twenty medication doses and to flush the tube before and after each dose. The mother contends that the appellant requires far more nursing time around feeding: She requests a total of 201 minutes, four times per day (a total of

804 minutes per day), which is based on 180 minutes for each J tube feeding and 21 minutes to flush the tube before the next feeding.⁷

The appellant's mother argues that the appellant requires a nurse with her for the full duration of each feed because of the risk of aspiration and other potential mishaps related to the feeding machine and the J tube. She points in particular to the appellant's inability to hold her head up or to vocalize any issues, and to the risks she faces if anything goes wrong during the course of a feeding. It is understandable that having a nurse on hand for the full feeding time would offer the appellant's mother some peace of mind, particularly where she was accustomed to more extensive nursing coverage prior to her move to Massachusetts.⁸ However, the medical records do not support the need for nursing support at this level. Importantly, there is nothing from the appellant's providers or any objective medical authority that indicates a nurse should or must be present for the duration of the feed. To the contrary, the appellant's mother reported that the pediatrician advised against leaving the appellant alone during feeds, but still indicated the tube feeding does not necessarily have to be monitored by a skilled nurse once it is running. The skilled nurse sets up the feeding and ensures it is set to deliver at the proper rate; it is then administered by automated pump that is programmed to sound an alarm if there are any feeding disruptions. The evidence does not adequately support the medical necessity of skilled monitoring for the full three hours of each feeding.

Wound/skin care: MassHealth did not initially approve any time for wound or skin care, but later adjusted the nursing time to allow for five minutes per day to monitor the G and J tube sites and for dressing application. The appellant's mother, in her spreadsheet, seeks an additional five minutes per day for skilled assessment at the G and J tube sites and for care of a lip wound. However, the assessment of the tube sites is already covered in the time allotted under *G/J Tube Care* (10 minutes per day), and there is no documentation in the medical records of an active lip wound that requires treatment from a skilled nurse. As such, the appellant has not established medical necessity for additional time under this category.

Seizures: MassHealth did not allot any time for the management of seizures, on the basis that the appellant's seizures manifest mainly as eye-twitching that usually self-resolves. The appellant's mother seeks additional time for a nurse to take necessary measures to stop a seizure and avoid having to administer the nasal medication she takes when seizures last more than five minutes. However, this need is already covered by the time approved for skilled neurological assessment during seizures (three minutes, six times per day). Additional time for the same nursing tasks would be a duplication, and is not medically necessary.

⁷ As noted earlier, there is some discrepancy in the record as to the number of feedings the appellant receives each day. While the mother requests time for four feedings, the nursing facility records indicate there are six feedings per day (and MassHealth approved time based on hospital records showing there are eight).

⁸ MassHealth conducted an assessment in accordance with its own regulations and guidelines, and is not bound by a previous determination of another state's Medicaid program.

Pain assessment: MassHealth did not authorize any time for a skilled assessment of the appellant's pain, finding that the need is already covered under the 30 minutes per day allotted for the head-to-toe assessment under *Skilled Assessment Needs Related to Fluctuation in Medical Status*. The mother seeks an additional ten minutes per day for a nurse to assess and manage her pain, which she experiences throughout the day. The record confirms that the appellant developed clonus over the past several months, which causes her significant pain; there is also evidence to suggest that she suffers pain due to gastrointestinal distress and tube site wounds, among other things. As the mother testified, the appellant is unable to communicate the source of her pain and discomfort, so it can take some time to discern the cause and how to relieve it. Under these circumstances, it is reasonable to conclude that the five minutes allotted for each head-to-toe assessment is not sufficient to cover the appellant's recurring needs around pain assessment and management. The appellant has demonstrated the medical necessity for an additional ten minutes per day for this task.

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

Order for MassHealth

Adjust the CSN time to include an additional 45 minutes per day for respiratory assessment and ten minutes per day for pain assessment. Set the prior authorization period to end twelve weeks from the date of the decision.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact MassHealth. 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.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Linda Phillips, R.N.
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