Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Approved in part; Denied in part	**Appeal Number:**	2404831
Decision Date:	10/29/2024	**Hearing Date:**	6/25/2024
Hearing Officer:	Cynthia Kopka	**Record Open to:**	8/14/2024

Appearance for Appellant:
[redacted]

Appearances for MassHealth:
Linda Phillips, R.N.
Catherine Kosta, R.N.

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

APPEAL DECISION

Appeal Decision:	Approved in part; Denied in part	**Issue:**	Community Case Management (CCM)
Decision Date:	10/29/2024	**Hearing Date:**	6/25/2024
MassHealth's Reps.:	Linda Phillips and Catherine Kosta	**Appellant's Rep.:**	[redacted]
Hearing Location:	Quincy (remote)	**Aid Pending:**	Yes

Authority

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

Jurisdiction

By notice dated March 19, 2024, the MassHealth Community Case Management (CCM) program approved Appellant for continuous skilled nursing (CSN) services. Exhibit 1. Appellant filed this timely appeal on March 26, 2024, and was eligible to retain the prior benefit level pending the outcome of the appeal. Exhibit 2. 130 CMR 610.015(B), 610.036. Denial or modification of assistance is a valid basis for appeal. 130 CMR 508.010, 130 CMR 610.032(B). The Board of Hearings granted Appellant's request to reschedule the appeal from May 9, 2024, to June 25, 2024. Exhibit 3. The hearing record was held open through August 14, 2024, for submission of additional evidence at Appellant's request. Exhibit 6.

Action Taken by MassHealth

MassHealth reduced Appellant's request for CSN services.

Issue

The issue on appeal is whether Appellant qualifies for an increase in CSN services.

Summary of Evidence

MassHealth's Community Case Management (CCM) program provides authorization and coordination of MassHealth Long Term Services and Supports (LTSS), including continuous skilled nursing (CSN) services, to MassHealth members with complex medical needs and their caregivers. Exhibit 4 at 74. Clinical Managers, or CMs, are registered nurses who coordinate and approve services on behalf of MassHealth and provide a point of contact to members.

MassHealth/CCM was represented at hearing by phone by MassHealth/CCM's representative, the associate director of appeals and regulatory compliance, as well as the MassHealth/CCM RN CM. MassHealth/CCM provided written materials in support. Exhibit 4. Appellant's parent/guardian appeared by phone and submitted records in support, Exhibit 5. At the hearing, the issues in dispute were narrowed, and the hearing record was held open for the parties to submit additional evidence. Exhibit 6. The record open submission and response are contained in Exhibit 7. A summary of the identified issues in dispute from the hearing and during the record open period follows.

Appellant is in his [redacted] and has been enrolled with CCM since 2004. His primary diagnoses include cerebral palsy and hypoxic ischemic encephalopathy. Associated diagnoses and medical history include osteopenia, restrictive lung disease, spastic quadriplegia, gastroesophageal reflux disease (GERD), seizure disorder, urinary retention, constipation, history of aspiration pneumonia, exotropia, cortical vision impairment, urinary tract infections, C-difficile infection, eustachian tube dysfunction, gastritis, atrial premature beat, autoimmune thyroiditis, dermatographias, pneumocystis intestinalis, and hyperuricemia. Exhibit 4 at 104.

The subject of this appeal is the determination made by MassHealth/CCM that Appellant is eligible to receive 149 CSN hours. *Id*. at 35-41. Previously, Appellant had been approved for 154 CSN hours per week on June 30, 2022 and 166 CSN hours per week on November 21, 2022.

The CCM representative testified that the increase to 166 hours was during a CCM pause that took place from October 12, 2022 through February 28, 2023. During this pause, MassHealth/CCM did not perform CSN assessments so the team could focus on outreach to CSN providers to support members in filling unfilled hours. The CCM representative testified that during this pause, families had a choice to request a new assessment or request additional hours for new interventions. MassHealth/CCM did not perform evaluations but offered additional hours based on the reports. The CCM representative testified that during this time, approved hours were not evaluated for medical necessity or duplication. Based on Appellant's guardian's request, MassHealth/CCM increased the approval to 166 CSN hours. Appellant is currently receiving 166 CSN hours pending the outcome of this appeal. Appellant's guardian argued that 166 hours are medically necessary. Appellant's guardian testified that the November 2022 reassessment occurred because the June 2022 assessment was incorrect and hours were manipulated.
On January 9, 2024, the CM conducted an in-person LTSS Needs Assessment (NA) and reviewed documents, including the medication review, Home Health Certification and Plan of Treatment

(MD orders, also referred to herein as the "485 form" or "485"), and nursing flow sheets and notes. Exhibit 4 at 151-538. Based on this review, MassHealth/CCM determined the clearly identifiable, specific medical needs for Appellant's CSN services, and the time required to perform each nursing intervention, totaling 149 CSN hours per week to start March 31, 2024, and end December 28, 2024. *Id*. at 127. Appellant's guardian argued that after the NA, the CM calculated a total of 173 CSN hours. The MassHealth/CCM representative argued that the January 9, 2024 NA was part of the review process but not the final assessment. MassHealth/CCM completed the following chart that reflects the nursing time allotted in each body system category (with additional section breaks added for clarity and inapplicable line items on the form omitted). *Id*. at 121-127.

Nursing Interventions	Time	Freq.	Clinical Rationale/Medical Necessity	Total Mins Per Day
Respiratory				
Tracheostomy care	10	2	Tracheostomy (trach) care includes skilled assessment, cleaning/drying of the site, application of as needed topical medication, application of gauze, trach tie changes, and suctioning as needed.	20
	1	10	Split gauze (applied at trach site) is changed an additional 10 times per day.	10
	3	1	The trach tube is changed once per week. This task includes pre-oxygenation with 5 Liters of Oxygen for 5 minutes, saline instillation, hand ventilation via ambu bag, and suctioning as needed. Time allotted is a total of 20 minutes, 1 time/week. Total average time authorized=3 minutes/day.	3
			Subtotal	33
Suction	5	64	Tracheal and oral suctioning frequently throughout the day and less frequently at night. There is an average of 134 episodes per 24-hour span of time. Additional suction episodes are also included in other skilled nursing tasks in this assessment.	320
Mechanical Ventilation Care Management (CPAP, BiPAP, Ventilator)	5	2	Use of Trilogy ventilator (vent) with heated humidification for 12 hours overnight (8pm-8am). Time allotted for transition on and off vent, includes inflating/deflating trach cuff, connecting vent, confirmation of settings, and assessment of initial tolerance.	10
	5	12	Time allotted for hourly management of the vent to include assessment of the settings, assessment of vent tolerance, assessing the integrity of the vent to trach connection, reconnecting the vent tubing as needed, and responding to all alarms.	60

	10	1	Time allotted for daily vent maintenance includes tubing/circuit management, humidifier maintenance, maintenance of Oxygen (O2) equipment, titrating O2, and emptying water traps.	10
	3	1	Time allotted to change the filters and circuits every week is 10 minutes per vent or 20 minutes per week (divided by 7 days) = 3 minutes per day.	3
	13	1	Appellant requires vent use during the day an average of 3-4 hours on 3 days per week. Time allotted is 5 minutes x 2 = 10 minutes for transition on/off and 5 minutes x 4 = 20 minutes for vent management = 30 minutes per day x 3 days = 90 minutes per week divided by 7 = 13 minutes per day	13
	5	1	Trach mist is used daily when Appellant is off the vent. Time allotted is 5 minutes per day and includes application and management of trach mist and assessment of tolerance.	5
			Subtotal	101
O2 Desaturations	3	6	Oxygen saturation monitoring continuously overnight for 12 hours. Time allotted to apply probe, obtain accurate reading, and rotate every 2 hours during the night.	18
	3	12	Spot checks are required hourly during the day. Time allotted includes applying the probe, obtaining an accurate reading and changing the probe, as needed	36
	5	10	Desaturation 9-10 times per day to under 88% requiring interventions, which can include additional suctioning, instillations of normal saline followed by hand ventilation via Ambu Bag, and occasional administration of oxygen. Time allotted includes skilled respiratory assessment and monitoring heart rate.	50
			Subtotal	104
Oxygen	0	0	Appellant requires Oxygen continuously overnight and PRN during the day. Time allotted for equipment maintenance and administration is included in ventilator and O2 desaturations sections.	0
Chest physiotherapy	40	6	Chest physiotherapy (CPT) with the vest is required every 4 hours (6 times per day) with simultaneous nebulizer treatments. Time allotted includes application/removal of vest, assessment, nebulizer administration as indicated below, and additional suctioning, as needed.	240
	15	3	Cough assist is required 3 times per day. Time allotted includes inflating/deflating trach cuff, instillation of saline, and additional suctioning (6x), as needed.	45

	2	3	Ambu breaths are required 3 times per day which includes inflating cuff, 12 Ambu breaths given over 1 minute and deflating cuff when done.	6
	5	6	Appellant requires additional Ambu breaths with saline drops 6 times per day. Time allotted includes inflation/deflation of cuff, instillation of saline, Ambu breaths and suctioning (6x).	30
			Subtotal	321
Nebulizer treatments	0	0	Albuterol nebulizers (neb) 3 times per day while on CPT vest. Time allotted is 30 minutes per CPT Vest session x3 in Chest Physiotherapy section.	0
	20	2	Appellant requires Normal Saline 0.9% nebs 2 times a day.	40
	23	1	Appellant requires Normal Saline 3% nebs 2 times a day, 4 days a week. Time allotted 20 x 2= 40 x 4 = 160/7 = 23 minutes per day.	23
	45	1	Appellant receives Tobramycin nebulizer treatments 2 times per day for 28 days on, then 28 days off followed by normal saline neb. Time allotted is averaged to 45 minutes per day.	45
	0	0	Three additional NS nebs are administered with CPT Vest at night, time already allotted 30 minutes per CPT Vest session in Chest Physiotherapy section.	0
			Subtotal	108
Inhalers	5	2	Flovent inhaler is administered 2 times per day by trach with spacer using Ambu. Total time allotted includes inflation/deflation of cuff.	10
	2	1	Flonase nasal inhaler is required daily. Total time allotted includes post-administration mouth care	2
			Subtotal	12
Skilled Assessment	0	0	Time allotted with skilled interventions.	0
			Respiratory total	**999**
Cardiac/Autonomic Instability				
Skilled Assessment	5	3	Blood pressure monitoring 3 times per day and orthostatic blood pressure monthly. Time allotted includes temperature and respiratory rate (heart rate monitored with spot checks).	15
Gastro-Intestinal (GI) Nutrition				
G/J Tube Care	5	3	Includes skilled assessment, cleaning, and drying site. Includes weekly balloon checks and once-monthly G-Tube change.	15
G/J Tube Feedings	10	1	Kate Farms real food continuously for 10 hours overnight. Time allotted includes setup and priming of the feeding pump, venting, checking residuals, initiate feeding, assessing for tolerance and water flushes before and after feedings, and suctioning.	10

	10	2	Real Food Blend 1 pouch 2 times per day with 250cc water run at 400ml/hour via pump. Time allotted includes venting, checking residuals, and water flushes.	20
	5	3	Appellant receives boluses 3 times per day of diluted prune juice and free water. Time allotted includes venting of G-Tube, and checking residual.	15
			Subtotal	45
Adjustments and Venting	5	1	Residuals are checked before each feeding and bolus. Feedings need to be held an average of 5-6 times per week. Residual is rechecked every 20 minutes until the volume is less than 60ml. Time allotted to hold feeding and recheck residual is 5 minutes x 6 = 30 minutes per week, averaged to 5 minutes per day.	5
Elimination management	5	1	Fleet Enema daily. Time allotted includes assessment of results. Time allotted for Milk of Magnesia, Bisacodyl, and Motegrity included with medications	5
Skilled Assessment	0	0	Time allotted with skilled care	0
			GI total	**70**
Genito-Urinary (GU)				
Catheter care	15	1	Straight catheterization daily to promote bladder emptying and prevent urinary retention. Time allotted includes need for bladder crede to facilitate bladder emptying and suctioning(2x). Includes assessment of urine for signs and symptoms of infection.	15
Skilled assessment	0	0	Time allotted with general assessment in *Skilled Assessment Needs Related to Fluctuation in Medical Status*.	0
Wound Care/Skin				
Skilled Assessment	2	6	Wears equipment including body jacket, hand splints and AFOs up to 12 hours per day and requires skin checks to be performed every 2 hours when wearing equipment due to history of redness and irritation.	12
Neurological				
Seizures	0	0	Seizures have been well controlled with his current regimen of medication. Time allotted for neurologic assessment below.	0
Skilled assessment	0	0	Time allotted for Neurologic assessment included in Musculoskeletal Assessment.	0
Pain Management				
Pain Management	0	0	Pain related to increased tone. Receives scheduled medications to help reduce tone and muscle tightness, time allotted in Fluctuations section.	0
Skilled Assessment	0	0	Time allotted for pain assessment is included in	0

			musculoskeletal.	
Musculoskeletal				
Skilled Assessment	20	3	Range of motion (ROM) 3 times per day due to osteopenia and worsening contractures. Time allotted includes skilled assessment of neurological system, musculoskeletal system, pain, and suctioning (6x).	60
Other considerations in skilled care needs				
Skilled Assessment Needs Related to Fluctuations in Medical Status	3	15	MEDICATION: Appellant requires 23 doses of scheduled medication by G-Tube per day. Time allotted is 3 minutes x 15 liquid medications = 45 minutes per day. Includes water flushes and venting.	45
	5	8	MEDICATION: Appellant requires 23 doses of scheduled medication by G-Tube per day. Time allotted is 5 minutes x 8 tablet/capsule/powdered medications. Includes water flushes and venting.	40
	1	11	Eye drops for lubricant	11
	2	1	Administration of Cetirizine daily April-November for environmental allergies. Time allotted is 3 minutes per dose, averaged to 2 minutes per day.	2
	1	1	ILLNESS: 3 ear infections this past year which required treatment with Floxin, Cipro or Tobramycin drops; time allotted 1 minute per day.	1
	2	1	ILLNESS: 3 ear infections this past year which required increased suction, NS nebs for tracheal bleeding and secretions; time averaged to 2 minutes per day.	2
			Subtotal	101
Total Minutes Per Day				**1272**
Total Hours Per Week				**148.4**

Respiratory systems

Appellant disputed the following sections in the respiratory system:
Suctioning. Appellant's guardian argued that MassHealth/CCM miscalculated the frequency of daily suctioning. Appellant's guardian argued that the 2024 assessment describes Appellant as requiring suctioning 8 times per hour between 8:00 AM and 11:00 PM (120 times in 15 hours) and 1-2 times per hour between 11:00 PM and 8:00 AM (between 9 and 18 times in 9 hours). Appellant's guardian argued that this totals 138 instances of suctioning and is a low estimate. Appellant asserted that Appellant had been approved for 84 instances of suctioning in previous assessments, but MassHealth/CCM reduced this to 64. The CCM representative testified that time is allotted based on current needs, not on what was approved in the past. Appellant's guardian asserted that Appellant's care is not changing.

Additionally, Appellant's guardian argued that Appellant cannot be suctioned while other tasks are being performed because it is impossible, unsanitary, and a safety hazard. The nurses cannot perform chest PT, nebulizers, range of motion, or urine catheter at the same time as suctioning. Appellant referenced a note from Appellant's primary care physician (PCP), [redacted], dated May 28, 2024 which states that suctioning "would not be a duplication of services because when [Appellant] is suctioned all additional treatments need to stop." Exhibit 5 at 7. Another provider, [redacted] wrote on June 12, 2024 that Appellant "requires frequent tracheostomy tube suctioning even while other interventions are being performed (i.e. urine catheterization). This requires the caregivers to stop doing the primary intervention and attend to his respiratory needs. Then they resume his primary intervention." *Id*. at 10. Finally, [redacted] Appellant's otolaryngologist, wrote on May 30, 2024 that Appellant

> needs suctioning on a frequent basis, without delay, to prevent airway obstruction. In order to ensure patient safety and well-being, it is not advisable to provide concurrent treatments/services while suctioning, and all other treatments need to be discontinued when suctioning occurs. This will add additional time to the treatment/service that was interrupted. Suctioning does not by any means represent a duplication of service, but rather is a central component of services offered. Put another way: one cannot provide additional care while suctioning

Id. at 12.

The assessment provided that in addition to the 64 episodes approved, "[**a]dditional suction episodes are included in trach care (2x/day), oxygen desaturation (10x/day), chest physiotherapy (12Xday), cough assist (6x/day), ambu breath with drops (6x/day), nebulizer (23x/day), G/J feedings, (3x/day), catheter care (2x/day), and range of motion (6x/day)**." Exhibit 4 at 121 (emphasis added). Appellant's guardian argued that Appellant loses time for other services when suctioning is included in the time calculation. For example, if two suctions occur during trach care, this reduces the time for trach care by 10 minutes (5 minutes per instance of suctioning). In another example, the time approved for nebulizers, 108 minutes, included 23 episodes of suctioning, which totals 115 minutes. Appellant's guardian asserted that this nullifies all of the time approved for nebulizers, which effectively means Appellant is not given any nursing time to administer nebulizers.

The CCM representative testified that using Appellant's example, the 10 minutes allotted for each episode of trach care includes the 5 minutes needed for suctioning. The CCM representative testified these times are captured as averages and nursing care varies each day. The CM testified that suctioning is performed with other medically necessary interventions in the assessment. The time for suctioning is included in those listed intervention sections. The CM agreed with Appellant's guardian that one would not perform suctioning during range of motion exercises, but would suction during the range of motion episode if Appellant started coughing after moving around. Suctioning episodes were identified and there were notations in the assessment of other

times suctioning was being performed.

Appellant argued that in prior assessments, time for Gastrostomy Tube (G-Tube) feeds, range of motion, and urine catheters was not reduced for suctioning. *See* Exhibit 5 at 29 (June 2021 assessment, approving 79 suctioning episodes with no other references to suctioning in other areas); 51 (June 2022 assessment, approving 80 suctioning episodes and noting additional suction episodes were included in oxygen desaturation and chest physiotherapy sections), and 74 (November 2022 assessment, approving 74 suctioning episodes and noting additional suction episodes were included in trach care (2x/day), oxygen desaturation (10x/day), chest physiotherapy (18x/day), and nebulizer (30x/day) sections (74 + 2 + 10 + 18 + 30 = 134 total suction episodes).

Nebulizers. During the record open period following the hearing, MassHealth/CCM approved additional time for the saline 3% nebulizers: 20 minutes, 3 times per day, 7 days per week, for an increase of 259 minutes per week (over the 161 weekly minutes originally approved). Exhibit 7.[1] CCM did not change the time for Albuterol, Tobramycin, or saline 0.9% nebulizer treatments.

Appellant's guardian disputed time being denied for the albuterol nebulizer. CCM reduced the time because time was approved for chest physiotherapy (CPT), and the albuterol nebulizer is administered simultaneously with the chest vest.

For normal saline (0.9%), Appellant's guardian argued that Appellant gets this 10 times per day, and MassHealth/CCM only factored 3 times into the time allotted for chest PT. Appellant requested an increase of 100 minutes per day for this intervention. Appellant did not cite to the 485 order or to a medical document for this increase. MassHealth/CCM did not address this request in its record open response.

Oxygen. Appellant's guardian argued that MassHealth/CCM did not give time for oxygen use or maintenance. The CCM representative testified that MassHealth/CCM approved 104 minutes daily for oxygen, including 50 minutes daily for oxygen desaturation, 36 minutes for daily spot checks, and 18 minutes for monitoring overnight every 2 hours. Appellant argued that the time was not sufficient, as it takes more than 3 minutes during each night check. No time was given for putting Appellant on oxygen, and titrating oxygen up and down. Appellant's guardian did not include a request for additional time for oxygen in his record open submission.

Ambu breath 3 times daily (listed under Chest PT). Appellant argued that Appellant used to receive 5 minutes for each episode, which MassHealth/CCM reduced to 2 minutes per episode. Appellant's guardian argued that 5 minutes is the bare minimum to perform the process which includes washing hands, prepare equipment, fill a syringe with sterile water, clear Appellant's airway, inflate Appellant's trach cuff, perform breaths over 1 minute, deflate the cuff, put the equipment away, monitor vitals, and wash hands. Exhibit 7 at 12. Appellant's guardian referred to

[1] MassHealth/CCM wrote that the approval was an increase of 260 minutes. Exhibit 7.

the 485 form, which provides that 3 times per day, Appellant is to get 12 breaths over a 1 minute period. Exhibit 4 at 180. Appellant asked for 5 minutes, 3 times per day for 15 minutes.

Ambu breath with saline (listed under Chest PT). Appellant's guardian noted that MassHealth/CCM reduced this from 10 minutes to 5 minutes and argued that it is not enough time for this treatment. Appellant's guardian did not dispute the time reduction but argued that the time is further reduced by including 6 episodes of suctioning in the calculation.

Ambu 5 breaths BID and ambu 5-10 breaths on vent. Additionally, Appellant's guardian pointed to orders in the 485 that were not included in the assessment: "Bag with 5 breaths & then suction – twice daily" and "Ambu 5-10 breaths while suctioning – when on vent." Exhibit 4 at 180. Appellant's guardian testified that this order is due to Appellant being suctioned so frequently. Appellant requested 4 minutes, 2 times per day for these treatments. Exhibit 7 at 12. The CM was not able to clarify the omission of 5-10 breaths while on vent at hearing and did not address it in the record open response.

Vent care. Appellant's guardian noted that Appellant's daytime vent use has increased from 3-4 hours, 3 days per week to 1-2 hours, 7 days per week. Appellant referred to the letter from Ms. Shurtleff dated June 12, 2024 in support of the change in daytime frequency. Exhibit 5 at 9. MassHealth/CCM had approved 13 minutes per day, averaging the time over 7 days per week. Exhibit 4 at 122. Appellant requested this be increased to 20 minutes daily to allow 10 minutes for the transition on and off the vent and 10 minutes for vent management daily. Exhibit 7 at 11. The CCM representative did not address this request in her record open response. *Id*. at 4.

Cardiac/Autonomic Instability

Appellant did not dispute CCM's allotment of 15 minutes daily for the skilled assessment, blood pressure monitoring, and monthly orthostatic blood pressure.

Gastro-Intestinal (GI) Nutrition

Appellant did not dispute CCM's allotment of time for G-Tube care and G-Tube feedings. Appellant's guardian argued that 50 minutes was taken away from G-Tube feeds for suctioning. The CCM representative acknowledged that 3 episodes of suctioning were identified as taking place during the G-Tube feed. Appellant's guardian argued that time has never been reduced for suctioning in the past and asked CCM to identify the regulation that allows for time to be reduced for that.

Regarding boluses/flushes, MassHealth/CCM approved 5 minutes, 3 times a day for flushes for a total of 15 minutes daily for flushes with diluted prune juice and free water. Appellant's guardian argued that Appellant gets 14 flushes a day. Some of the flushes are on their own, some are after medications, and some are after feedings. The CM testified that time allotted for feeds and

medication includes the flush occurring after the episode. At hearing, Appellant agreed to check the 485 and doctors' orders to ensure that the appropriate number of flushes/boluses were captured in the assessment and identify any missing instances. Appellant's record open submission did not identify additional episodes of flushes/boluses that went unaddressed. Exhibit 7.

Genito-urinary

Appellant disputed that MassHealth/CCM only allotted time for one catheterization per day. At hearing and in the record open response, MassHealth/CCM acknowledged the doctors' order for two catheterizations per day and adjusted the time for catheterization to 15 minutes, 2 times per day, approving 30 additional minutes per day. Exhibit 7 at 5. However, MassHealth/CCM wrote in the record open response that an additional 195 minutes per week is approved, when the calculation adds up to 105 additional minutes per week.

Wound/skin care

For wound care and skin checks, MassHealth/CCM authorized 2 minutes, 6 times per day for a total of 12 minutes per day. Appellant wears a body jacket, hand splints, and ankle-foot orthosis braces (AFOs) and requires skin checks every 2 hours when wearing these items due to a history of redness and skin irritation. Appellant's guardian disputed this allotment, arguing that Appellant has always been approved for 5 minutes for skin checks in prior assessments. The CM testified that when reviewing this time, she determined that removing equipment for skin checks did not require the skills of a nurse and could be done by an unskilled PCA. The actual skin check is a skilled need and therefore time was allotted for the nurse to check skin.

Appellant's guardian argued that Appellant has severe osteopenia and therefore a nurse must remove the equipment to ensure that it is done carefully. Appellant's guardian argued that Appellant has always been approved for skilled time and MassHealth/CCM did not have a good enough excuse why this was reduced. Nothing has changed and Appellant's osteopenia is getting worse. Appellant has pain every day that they are trying to manage. The CCM representative argued that Appellant is approved for skilled skin checks because he has osteopenia.

During the record open period, Appellant submitted a letter from [redacted] Appellant's physiatrist, who follows Appellant for his spastic tetraplegic cerebral palsy. Exhibit 7 at 28. The doctor wrote relative to this issue that due to Appellant's severe osteopenia, Appellant

> requires trained and licensed individuals to recognize pain and to avoid injury during the following activities:
>
> …
> 4) Donning and doffing hand splints, AFOs, and body jacket 12 hours daily as tolerated with skin checks;

5) Donning and doffing KAFOs while lying down during the day (3 times a day) to prevent worsening contractures as tolerated, with skin checks;

Id. MassHealth/CCM responded that "there is no medical evidence that an increased time is medically necessary for skilled nursing interventions. Time to apply and remove equipment is allotted under PCA tasks." *Id*. at 5.

Neurological, Pain Management, and Musculoskeletal

Under neurological system category, MassHealth/CCM did not give time for seizure management or a separate neurological assessment. Exhibit 4 at 126. Under pain management category, MassHealth/CCM did not give time for a separate skilled assessment and wrote that time to administer pain medications was allotted in the fluctuation section. *Id*. Both the neurological and pain management skilled assessments were grouped in the musculoskeletal time, for which 60 minutes per day was granted for range of motion (ROM) exercises and skilled assessments of the musculoskeletal system, neurological system, pain management, and six episodes of suctioning. *Id*.

Appellant disputed that MassHealth/CCM only allotted time for three episodes of range of motion (ROM) exercises, arguing that the 485 calls for four times daily. Exhibit 4 at 182. Dr. Frankel's letter submitted during the record open confirms that Appellant requires ROM 4 times per day. Exhibit 7 at 28. MassHealth/CCM's response was to approve the increase from 20 minutes, 3 times per day, 7 days per week (420 minutes per week) to 20 minutes, 4 times per day, 7 days per week (560 minutes per week) for an increase of 140 minutes per week. *Id*. at 6. Though the calculation of the minutes increased was correct, MassHealth/CCM wrote in the record open response that total time authorized for PROM is 450 minutes/week.

Appellant's guardian argued that time was dropped from neurological system and pain management system. Appellant's guardian argued that Appellant had previously been given 6 minutes daily for seizure monitoring and this was reduced to zero. Appellant's guardian provided a note from Appellant's neurologist, who wrote that Appellant requires nursing to monitor seizures, provide neurological assessments, and keep Appellant safe. For seizures that last over 4 minutes, Appellant requires a rescue med administered by a trained professional. Exhibit 5 at 13.

For pain management, Appellant's guardian conceded that Appellant has never been approved for time in this section. However, Appellant has been in horrible pain in the past year and has undergone x-rays and MRIs to try to find the reason. The CCM representative argued that assessment is typically done when pain medication is administered. Appellant's pain is not being ignored, but time for assessment is incorporated elsewhere.

In the record open submission, Appellant's guardian argued that Appellant requires daily pain management, which is performed throughout the day by trying to find the source, the reason for the pain, and the location of the pain (made difficult because Appellant is non-verbal). Pain

management includes, in addition to medication, repositioning Appellant. Appellant "is unsafe during transfers, in his shower chair, and has dystonic episodes frequently throughout the day, which all create dangerous situations for him. Preventing high tone, dystonic episodes, and periods of pain will help to keep him safe. A constant motion of body parts during dystonic episodes can be life-threatening and create organ damage." Exhibit 7 at 14. A neurological clinical note indicated that Appellant is having consistent, daily dystonia episodes including back arching and jackknife positioning. *Id*. at 20. This note referenced Appellant's high tone episodes which lead to constant movement, appearing uncomfortable, and unsafe transfers. Appellant is unable to lie flat and his limbs are constantly tense and moving. *Id*. at 21. The doctor recommended keeping a dystonia diary and using a small dose of clonidine as needed during a prolonged dystonia episode in addition to the current dose. The doctor also recommended Benadryl as a rescue medication as needed for a prolonged dystonic episode lasting over 1-2 hours that does not respond to repositioning. *Id*. at 27.

Other considerations in skilled care needs – skilled assessment needs related to fluctuation in medical status

Appellant's guardian argued that MassHealth did not consider the prior year's sick interventions in calculating the time approved for fluctuation in medical status. MassHealth/CCM had approved 101 minutes total for time including medications, sick interventions, and eye lubrication. Exhibit 4 at 126-127. Based on Appellant's submission, Exhibit 5 at 119-124, MassHealth/CCM adjusted this section and came to the same amount of time approved. Exhibit 7 at 8:

Other considerations in skilled care needs				
Skilled Assessment Needs Related to Fluctuations in Medical Status	3	14	MEDICATION: liquid	42
	5	7	MEDICATION: tablets	35
	1	12	Eye drops for lubricant	12
	2	1	Administration of Cetirizine daily April-November for environmental allergies. Time allotted is 3 minutes per dose, averaged to 2 minutes per day.	2
	1	1	Lidoderm patch	1
	9	1	ILLNESS: ear infections, tracheal bleeding, fever, eye infection, left hip hematoma	9
			Subtotal	101

Oral care. At hearing and in the record open submission, Appellant's guardian argued that Appellant requires oral care every two hours, referring to doctors' orders. Exhibit 4 at 183. Appellant requested an additional 5 minutes, 8 times per day for a total of 40 minutes. Exhibit 7 at

13. Appellant referred to a letter from [redacted] Appellant's pediatric otolaryngologist who wrote that Appellant requires "oral care every 2 hours with toothettes and chlorhexidine. He requires continuous suctioning during this time to prevent aspiration of saliva." Exhibit 5 at 12. MassHealth/CCM responded that oral care skills fall under the PCA tasks for oral care and these orders are located with other PCA tasks. Exhibit 7 at 5, 46. Appellant's guardian argued that this is a nursing task because it is medical care, which cannot be performed by a PCA. A nurse is needed to assess for aspiration risk. Exhibit 8.

Contact lenses. Appellant requested 5 minutes per day for insertion and removal of contact lenses. Exhibit 4 at 185. Appellant's guardian argued that Appellant recently had a corneal tear. Appellant argued that this has always been a nursing intervention. MassHealth/CCM denied this time, arguing that it is not a skilled need. Exhibit 7 at 6.

At the close of the hearing record, MassHealth/CCM adjusted the assessment as noted and reported that it resulted in an increase of 630 minutes per week, adding 11 additional CSN hours per week (160 total). However, the corrected calculation totals 539 hours per week, which adds up to 9 additional CSN hours per week (158 total). Appellant argued that additional hours up to 181 hours were medically necessary. Exhibit 7 at 17.

Findings of Fact

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

1. Appellant is a member of MassHealth's Complex Case Management (CCM) program.

2. Appellant is in his [redacted] and has been enrolled with CCM since 2004. His primary diagnoses include cerebral palsy and hypoxic ischemic encephalopathy. Associated diagnoses and medical history include osteopenia, restrictive lung disease, spastic quadriplegia, GERD, seizure disorder, urinary retention, constipation, history of aspiration pneumonia, exotropia, cortical vision impairment, urinary tract infections, C-difficile infection, eustachian tube dysfunction, gastritis, atrial premature beat, autoimmune thyroiditis, dermatographias, pneumocystis intestinalis, and hyperuricemia. Exhibit 4 at 104.

3. Prior to the current NA, Appellant was approved for 154 CSN hours per week pursuant to an in-person NA performed June 30, 2022.

4. On November 21, 2022, MassHealth/CCM increased Appellant's CSN hours to 166 during a pause in assessments, based on Appellant's guardian's report.

5. On January 9, 2024, CCM's Clinical Manager (CM) conducted an in-person LTSS NA with

Appellant and Appellant's parents. Documents reviewed in making the determination included the medication review, Home Health Certification and Plan of Treatment (485), and nursing flow sheets and notes. Exhibit 4 at 151-538.

6. Based on this assessment, MassHealth/CCM determined that 149 CSN hours per week were medically necessary for dates of service March 31, 2024 through December 28, 2024. MassHealth notified Appellant in writing on March 19, 2024. Exhibit 1.

7. Appellant filed this timely appeal on March 26, 2024 and was eligible to retain the prior benefit level of 166 CSN hours pending the outcome of the appeal. Exhibit 2.

8. After reviewing Appellant's record open submissions and offering corrections, MassHealth/CCM increased CSN time in the following areas:

    a. **Respiratory – Saline nebulizer 3%:** MassHealth/CCM authorized a total of 20 minutes, 3 times per day.

    b. **GI – Dulcolax**: MassHealth/CCM authorized 5 minutes, 1 time per day.

    c. **Genito-urinary – Catheter**: MassHealth/CCM authorized a total of 15 minutes, 2 times per day.

    d. **Musculoskeletal – ROM**: MassHealth/CCM authorized 20 minutes, 4 times per day.

9. MassHealth/CCM calculated the adjustment made after hearing resulted in an increase of 630 minutes per week, adding 11 additional CSN hours per week (160 total). However, the corrected calculation totals 539 hours per week, which adds up to 9 additional CSN hours per week (158 total).

10. Appellant disputed MassHealth/CCM's determination of medical necessity for the following body systems:

11. **Respiratory – Suctioning**. MassHealth/CCM authorized 5 minutes, 64 times per day for suctioning. The assessment provided that in addition to the 64 episodes approved, "[a]dditional suction episodes are included in trach care (2x/day), oxygen desaturation (10x/day), chest physiotherapy (12Xday), cough assist (6x/day), ambu breath with drops (6x/day)) nebulizer (23x/day), G/J feedings, (3x/day), catheter care (2x/day), and range of motion (6x/day)." Exhibit 4 at 121 (emphasis added).

    a. Appellant's providers wrote that Appellant cannot be suctioned simultaneously with another intervention. Exhibit 5 at 7, 10, 12.

b. Appellant's guardian argued that the 2024 assessment describes Appellant as requiring suctioning 8 times per hour between 8:00 AM and 11:00 PM (120 times in 15 hours) and 1-2 times per hour between 11:00 PM and 8:00 AM (between 9 and 18 times in 9 hours).

12. **Respiratory – Nebulizers**. MassHealth/CCM authorized 20 minutes, 2 times per day for normal saline 0.9%. MassHealth/CCM did not allot time for albuterol because it was administered simultaneously with the chest vest.

    a. Appellant requested an increase of 100 minutes per day for normal saline 0.9% for an additional 7 interventions daily.

    b. Appellant did not cite the 485 order or to a medical document for this increase.

13. **Respiratory – Ambu breath 3 times daily with chest PT**. MassHealth/CCM authorized 2 minutes, 3 times per day.

    a. Appellant requested an increase to 5 minutes, 3 times per day for 15 minutes.

    b. Appellant's guardian argued that the process takes 5 minutes each time and includes washing hands, preparing equipment, filling a syringe with sterile water, clearing Appellant's airway, inflating Appellant's trach cuff, performing breaths over 1 minute, deflating the cuff, putting the equipment away, monitoring vitals, and washing hands. Exhibit 7 at 12.

14. **Respiratory – Ambu 5 breaths BID and ambu 5-10 breaths on vent**. MassHealth/CCM did not include these items in the assessment.

    a. Per the 485, Appellant's orders include "Bag with 5 breaths & then suction – twice daily" and "Ambu 5-10 breaths while suctioning – when on vent." Exhibit 4 at 180.

    b. Appellant requested 4 minutes, 2 times per day for these treatments. Exhibit 7 at 12.

    c. The CM was not able to clarify the omissions at hearing and did not address it in the record open response.

15. **Respiratory – vent care**. For vent care 3-4 days per week, MassHealth/CCM allotted 5 minutes, 2 times per day for transition on and off the vent and 5 minutes, 4 times per day for vent management, 3 days per week. This averaged 13 minutes per day.

    a. Appellant now receives daily vent use, as provided in a medical note. Exhibit 5 at 9.

b. Appellant requested 20 minutes daily for daytime vent use. Exhibit 7 at 11.

16. **Wound/skin care**: MassHealth/CCM authorized 12 minutes per day (2 minutes, 6 times) for skin checks only, determining that the donning/doffing of a body jacket, hand splints, and AFOs was not a skilled need and could be performed by a PCA.

    a. [redacted], Appellant's physiatrist who follows Appellant for his spastic tetraplegic cerebral palsy, wrote relative to this issue that due to Appellant's severe osteopenia, Appellant "requires trained and licensed individuals to recognize pain and to avoid injury" to don and doff hand splints, AFOs, and body jacket 12 hours daily as tolerated with skin checks and to don and doff "KAFOs while lying down during the day (3 times a day) to prevent worsening contractures as tolerated, with skin checks." Exhibit 7 at 28.

    b. CCM responded that "there is no medical evidence that an increased time is medically necessary for skilled nursing interventions. Time to apply and remove equipment is allotted under PCA tasks." *Id*. at 5.

17. MassHealth/CCM did not allot any separate time for management of **seizures, neurological skilled assessment, or pain assessment**. MassHealth included the time for monitoring these items in the time approved for musculoskeletal interventions. MassHealth/CCM allotted time for **pain management** for time authorized for administration of pain medicine in the fluctuation section.

    a. Appellant had previously been authorized 6 minutes daily for seizure monitoring. Appellant's guardian provided a note from Appellant's neurologist, who wrote that Appellant requires nursing to monitor for seizures, provide neurological assessments, and keep Appellant safe. For seizures that last over 4 minutes, Appellant requires a rescue med administered by a trained professional. Exhibit 7 at 14.

    b. MassHealth/CCM argued that Appellant's seizures are well-controlled on his current medication regimen.

    c. For pain management, Appellant did not request a specific amount of time, but argued that Appellant requires daily pain management and repositioning.

        i. Appellant "is unsafe during transfers, in his shower chair, and has dystonic episodes frequently throughout the day, which all create dangerous situations for him. Preventing high tone, dystonic episodes, and periods of pain will help to keep him safe. A constant motion of body parts during

dystonic episodes can be life-threatening and create organ damage." Exhibit 7 at 14.

ii. A neurological clinical note indicated that Appellant is having consistent, daily dystonia episodes including back arching and jackknife positioning. *Id*. at 20.

iii. This note referenced Appellant's high tone episodes which lead to constant movement, appearing uncomfortable, and unsafe transfers. Appellant is unable to lie flat and his limbs are constantly tense and moving. *Id*. at 21.

iv. The doctor recommended keeping a dystonia diary and using a small dose of clonidine as needed during a prolonged dystonia episode in addition to current dose. The doctor also recommended Benadryl as a rescue medication as needed for a prolonged dystonic episode lasting over 1-2 hours that does not respond to repositioning. *Id*. at 27.

18. MassHealth/CCM did not authorize time for **oral care** on the basis that this is not a skilled intervention and can be performed by the PCA.

    a. Appellant's guardian argued that Appellant requires oral care every two hours, referring to doctors' orders. Exhibit 4 at 183. Appellant requested an additional 5 minutes, 8 times per day for a total of 40 minutes. Exhibit 7 at 13.

    b. Appellant referred to a letter from [redacted], Appellant's pediatric otolaryngologist who wrote that Appellant requires "oral care every 2 hours with toothettes and chlorhexidine. He requires continuous suctioning during this time to prevent aspiration of saliva." Exhibit 5 at 12.

19. MassHealth/CCM did not authorize time for a **contact lens** insertion or removal on the basis that this is not a skilled need.

    a. Appellant requested 5 minutes per day for insertion and removal of contact lenses. Exhibit 4 at 185.

    b. Appellant's guardian argued that Appellant recently had a corneal tear.

Analysis and Conclusions of Law

MassHealth's regulations at 130 CMR 438.000 et seq. set forth the requirements for the payment of continuous skilled nursing (CSN) services and complex care assistant services provided by a CSN agency. All CSN agencies participating in MassHealth must comply with MassHealth regulations including, but not limited to, 130 CMR 438.000 and 130 CMR 450.000. 130 CMR 438.401.

Complex-care members are MassHealth members whose medical needs, as determined by MassHealth 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. 130 CMR 438.402 (2023 definition).[2] Pursuant to 130 CMR 438.414, MassHealth or its designee provides administrative care management to complex care members that includes service coordination with CSN agencies as appropriate. This is to ensure that a complex care member is provided with a coordinated Long-term Services and Supports (LTSS)[3] package that meets the member's individual needs and to ensure that MassHealth pays for nursing, complex care assistant services, and other community LTSS only if medically necessary in accordance with 130 CMR 450.204: *Medical Necessity*. *Id*. The Administrative Care Management regulations are set forth in 130 CMR 438.414:

(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

[2] Regulation 130 CMR 438.000 was updated effective August 30, 2024, while this appeal was pending. The definition of "complex care member" was removed from 130 CMR 438.402. However, the 2024 regulation contains multiple references to complex care members without providing a definition.

[3] Long-term Services and Supports (LTSS) is defined in 130 CMR 438.402 as "certain MassHealth-covered services intended to enable a member to remain in the community. Such services include, but are not limited to, home health, durable medical equipment (DME), oxygen and respiratory equipment, personal care attendant (PCA), and other health-related services as determined by the MassHealth agency or its designee."

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(D)(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 an RN or LPN 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 an RN or LPN 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 an RN or LPN, the service is not considered a nursing service, unless there is no one trained and able to provide it.
(4) The CSN agency must assess the member to ensure that continued nursing services are necessary.
(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 their 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. 130 CMR 438.419(B). Pursuant to 130 CMR 450.204, a service is medically necessary if:

(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*.

(B) 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. A provider must make those records, including medical records, available to the MassHealth agency upon request. (*See* 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

(C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

(D) Additional requirements about the medical necessity of MassHealth services are contained in other MassHealth regulations and medical necessity and coverage guidelines.

(E) Any regulatory or contractual exclusion from payment of experimental or unproven services refers to any service for which there is insufficient authoritative evidence that such service is reasonably calculated to have the effect described in 130 CMR 450.204(A)(1).

At issue in this case is MassHealth/CCM's authorization for CSN services for Appellant, who is a complex-care member as defined in the 2023 regulations. MassHealth/CCM completed an LTSS NA most recently on January 9, 2024 and determined at the time that that Appellant required a total of 149 nursing hours per week. After further consideration during the record-open period, MassHealth/CCM authorized additional time resulting in an increase to 158 hours per week. Areas that remained in dispute after the record open exchange and adjustment are addressed. Anything raised by Appellant at hearing for which specificity was not provided as to the time requested, or for which there was no citation to a prescriber's order for that intervention is denied.

Suctioning: Appellant's request for 4 additional episodes of suctioning, based on the need for 138 instances per day, is denied. Appellant's calculation of 8 times per hour between 8:00 AM and 11:00 PM (120 times in 15 hours) and 1-2 times per hour between 11:00 PM and 8:00 AM (between 9 and 18 times in 9 hours) yields between 129-138 episodes daily. MassHealth/CCM was not incorrect in averaging this to 134 episodes.

While MassHealth/CCM's testimony that time for suctioning is averaged into the time to perform other respiratory interventions is reasonable, Appellant presented several medical notes supporting approval of additional episodes of suctioning. Accordingly, this appeal is approved in part to allow an additional 6 episodes of suctioning per day to support the time needed for suctioning during the non-respiratory interventions of G-Tube feedings, (3x/day), catheter care (2x/day), and ROM (6x/day). Accordingly, Appellant is approved for 75 total instances of suctioning per day.

Nebulizers. Appellant's request for an increase of time for albuterol and normal saline 0.9% is denied. The albuterol nebulizer is included in time for chest PT. Appellant did not point to an order or medical note indicating the need to increase time to administer the normal saline 0.9% nebulizer in addition to the 40 minutes approved per day.

Ambu breath 3 times daily (listed under Chest PT). Appellant's request to increase the time for each episode to 5 minutes, 3 times per day (15 minutes per day) is denied. Appellant's testimony and description of the task from start to finish matches what MassHealth/CCM wrote in the assessment and therefore was considered when determining the time necessary for the task.

Ambu 5 breaths BID and ambu 5-10 breaths on vent. Appellant's request for 4 minutes, 2 times per day (8 minutes per day) for these treatments is approved, as CCM acknowledged the omission of these orders from the assessment, but did not address the change in the record open response.

Wound/skin care. Appellant's request for 5 minutes, 6 times per day for a total of 30 minutes is approved. Appellant's letter from Dr. Frankel established the medical necessity for this intervention to be performed by a skilled nurse. Appellant should note that CCM may reduce the PCA time approved for this intervention to avoid duplication.

Seizures, neurological assessment, pain management, and musculoskeletal skilled assessment. MassHealth/CCM did not allot any separate time for management of seizures and grouped Appellant's skilled neurological, pain management, and musculoskeletal assessments in with the time approved for ROM exercises. While it is reasonable for MassHealth/CCM to group categories of well-controlled systems for assessment, Appellant provided evidence of how important the pain and neurological assessments can be. Furthermore, as MassHealth/CCM included 6 suctioning episodes in the ROM time, this further diminishes the time allotted for skilled assessment during this period.

The record did not include specific information on how much additional time Appellant would need for pain and neurological assessments. Therefore, the approval of 6 additional suctioning episodes in **Respiratory – Suction** is intended in part to provide Appellant's caregivers more time to provide the assessments grouped in the Musculoskeletal category. To the extent additional time is requested for these assessments, it is denied.

Other skilled needs. Appellant's requests for CSN for oral care and contact lenses is denied. Appellant's guardian argued that these tasks must be performed by a nurse but the medical notes submitted in support do not establish that this is medically necessity. The suctioning that occurs during oral care is a nursing intervention for which time was approved.

For the foregoing reasons, this appeal is approved in part and denied in part. The adjustment with this hearing decision yields a total of 169 hours of CSN per week as set forth in the updated chart below. Changes made by MassHealth/CCM during the record open period are written in italics and changes made as a result of this decision are in bold:

Nursing Interventions	Time	Freq.	Clinical Rationale/Medical Necessity	Total Mins Per Day
Respiratory				
Tracheostomy care	10	2	Tracheostomy (trach) care includes skilled assessment, cleaning/drying of the site, application of as needed topical medication, application of gauze, trach tie changes and suctioning as needed.	20
	1	10	Split gauze (applied at trach site) is changed an additional 10 times per day.	10

	3	1	The trach tube is changed once per week. This task includes pre-oxygenation with 5 Liters of Oxygen for 5 minutes, saline instillation, hand ventilation via ambu bag and suctioning as needed. Time allotted is a total of 20 minutes, 1 time/week. Total average time authorized=3 minutes/day.	3
			Subtotal	33
Suction	**5**	**75**	**Tracheal and oral suctioning frequently throughout the day and less frequently at night. There is an average of 134 episodes per 24-hour span of time. Additional suction episodes are also included in other skilled nursing tasks in this assessment.**	**375**
Mechanical Ventilation Care Management (CPAP, BiPAP, Ventilator)	5	2	Use of Trilogy ventilator (vent) with heated humidification is required for 12 hours overnight (8pm-8am). Time allotted for transition on and off vent includes inflating/deflating trach cuff, connecting vent, confirmation of settings and assessment of initial tolerance.	10
	5	12	Time allotted for hourly management of the vent to include assessment of the settings, assessment of vent tolerance, assessing the integrity of the vent to trach connection and reconnecting the vent tubing as needed, and responding to all alarms.	60
	10	1	Time allotted for daily vent maintenance includes tubing/circuit management, humidifier maintenance, maintenance of Oxygen (O2) equipment, titrating O2 and emptying water traps.	10
	3	1	Time allotted to change the filters and circuits every week is 10 minutes per vent or 20 minutes per week (divided by 7 days) = 3 minutes per day	3
	20	**1**	**Appellant requires vent use during the day daily for 20 minutes.**	**20**
	5	1	Trach mist is used daily when Appellant is off the vent. Time allotted is 5 minutes per day and includes application and management of trach mist and assessment of tolerance.	5
			Subtotal	108
O2 Desaturations	3	6	Oxygen saturation monitoring is required continuously overnight for 12 hours. Time allotted to apply probe, obtain accurate reading and rotate every 2 hours during the night.	18
	3	12	Spot checks are required hourly during the day, time allotted includes applying the probe, obtaining an accurate reading and changing the probe, as needed.	36

	5	10	Desaturation 9-10 times per day to under 88% requiring interventions, which can include additional suctioning, instillations of normal saline followed by hand ventilation via Ambu Bag and occasional administration of oxygen. Time allotted includes skilled respiratory assessment and monitoring heart rate.	50
			Subtotal	104
Oxygen	0	0	Appellant requires Oxygen continuously overnight and PRN during the day. Time allotted for equipment maintenance and administration is included in ventilator and O2 desaturations sections.	0
Chest physiotherapy	40	6	Chest physiotherapy (CPT) with the vest is required every 4 hours (6 times per day) with simultaneous nebulizer treatments. Time allotted includes application/removal of vest, assessment, nebulizer administration as indicated below, and additional suctioning, as needed.	240
	15	3	Cough assist is required 3 times per day. Time allotted includes inflating/deflating trach cuff, instillation of saline, and additional suctioning (6x), as needed.	45
	2	3	Ambu breaths are required 3 times per day which includes inflating cuff, 12 Ambu breaths given over 1 minute and deflating cuff when done.	6
	6	6	Appellant requires additional Ambu breaths with saline drops 6 times per day. Time allotted includes inflation/deflation of cuff, instillation of saline, Ambu breaths and suctioning(6x).	36
	4	**2**	**Ambu 5 breaths BID and ambu 5-10 on vent**	**8**
			Subtotal	335
Nebulizer treatments	0	0	Albuterol nebulizers (neb) 3 times per day while on CPT vest. Time allotted is 30 minutes per CPT Vest session x3 in Chest Physiotherapy section	0
	20	2	Appellant requires Normal Saline 0.9% nebs 2 times a day.	40
	20	*3*	*Appellant requires Normal Saline 3% nebs 3 times per day.*	*60*
	45	1	Appellant receives Tobramycin nebulizer treatments 2 times per day for 28 days on, then 28 days off followed by normal saline neb. Time allotted is averaged to 45 minutes per day.	45
	0	0	Three additional NS nebs are administered with CPT Vest at night, time already allotted 30 minutes per CPT Vest session in Chest Physiotherapy section	0
			Subtotal	145

Inhalers	5	2	Flovent inhaler is administered 2 times per day by trach with spacer using Ambu. Total time allotted includes inflation/deflation of cuff.	10
	2	1	Flonase nasal inhaler is required daily, time allotted is 2 minutes per day. Total time allotted includes post-administration mouth care.	2
			Subtotal	12
Skilled Assessment	0	0	Time allotted with skilled interventions.	0
			Respiratory total	1112
Cardiac/Autonomic Instability				
Skilled Assessment	5	3	Blood pressure monitoring 3 times per day and orthostatic blood pressure monthly. Time allotted includes temperature and respiratory rate (heart rate monitored with spot checks).	15
Gastro-Intestinal (GI) Nutrition				
G/J Tube Care	5	3	Includes skilled assessment, cleaning and drying site. Includes weekly balloon checks and once monthly G-Tube change.	15
G/J Tube Feedings	10	1	Kate farms real food continuously for 10 hours overnight. Time allotted includes setup and priming of the feeding pump, venting, checking residuals, initiate feeding, assessing for tolerance and water flushes before and after feedings, and suctioning	10
	10	2	Real Food Blend 1 pouch 2 times per day with 250cc water run at 400ml/hour via pump. Time allotted includes venting, checking residuals and water flushes.	20
	5	3	Appellant receives boluses 3 times per day of diluted prune juice and free water. Time allotted includes venting of G-Tube, checking residual.	15
			Subtotal	45
Adjustments and Venting	5	1	Residuals are checked before each feeding and bolus. Feedings need to be held an average of 5-6 times per week. Residual is rechecked every 20 minutes until the volume is less than 60ml. Time allotted to hold feeding and recheck residual is 5 minutes x 6 = 30 minutes per week averaged to 5 minutes per day.	5
Elimination management	5	1	Fleet Enema daily. Time allotted includes assessment of results. Time allotted for Milk of Magnesia, Bisacodyl, and Motegrity included with medications.	5
	5	*1*	*Dulcolax*	*5*
Skilled Assessment	0	0	Time allotted with skilled care	0
			GI total	**75**
Genito-Urinary (GU)				

Catheter care	*15*	*2*	*Straight catheterization daily to promote bladder emptying and prevent urinary retention. Time allotted includes need for bladder crede to facilitate bladder emptying* ~~*and suctioning(2x)*~~*. Includes assessment of urine for signs and symptoms of infection.*	*30*
Skilled assessment	0	0	Time allotted with general assessment in *Skilled Assessment Needs Related to Fluctuation in Medical Status.*	0
Wound Care/Skin				
Skilled Assessment	**5**	**6**	**Wears equipment including body jacket, hand splints and AFO's up to 12 hours per day and requires skin checks to be performed every 2 hours when wearing equipment due to history of redness and irritation from equipment.**	**30**
Neurological				
Seizures	0	0	Seizures have been well controlled with his current regimen of medication. Time allotted for neurologic assessment below.	0
Skilled assessment	0	0	Time allotted for Neurologic assessment included in Musculoskeletal Assessment	0
Pain Management				
Pain Management	0	0	Pain related to increased tone. Receives scheduled medications to help reduce tone and muscle tightness, time allotted in Fluctuations section.	0
Skilled Assessment	0	0	Time allotted for pain assessment is included in musculoskeletal.	0
Musculoskeletal				
Skilled Assessment	*20*	*4*	*Range of motion (ROM) 3 times per day due to osteopenia and worsening contractures. Time allotted includes skilled assessment of neurological system, musculoskeletal system, pain,* ~~*and suctioning (6x).*~~	*80*
Other considerations in skilled care needs				
Skilled Assessment Needs Related to Fluctuations in Medical Status	*3*	*14*	*MEDICATION: liquid*	*42*
	5	*7*	*MEDICATION: tablets*	*35*
	1	*12*	*Eye drops for lubricant*	*12*
	2	*1*	*Administration of Cetirizine daily April-November for environmental allergies. Time allotted is 3 minutes per dose, averaged to 2 minutes per day.*	*2*
	1	*1*	*Lidoderm patch*	*1*
	9	*1*	*ILLNESS: ear infections, tracheal bleeding, fever, eye infection, left hip hematoma*	*9*

			Subtotal	101
Total Minutes Per Day				**1443**
Total Hours Per Week				**168.4**

Order for MassHealth

Adjust the CSN time to 169 hours per week as of this decision date. Set the prior authorization period to end one year from the date of the 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.

Implementation of this Decision

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

Cynthia Kopka
Hearing Officer
Board of Hearings

cc: [redacted]

cc: MassHealth Representative: Linda Phillips, UMass Medical School - Commonwealth Medicine, Disability and Community-Based Services, 333 South Street, Shrewsbury, MA 01545-7807