

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2411000
Decision Date:	11/13/2024	Hearing Date:	09/26/2024
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:



Appearance for MassHealth:

Linda Phillips et. al.



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

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Prior Authorization Continuous Skilled Nursing Services
Decision Date:	11/13/2024	Hearing Date:	09/26/2024
MassHealth's Rep.:	Linda Phillips et. al.	Appellant's Rep.:	
Hearing Location:	All Parties Appeared by Telephone	Aid Pending:	No

Authority

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

Jurisdiction

Through a notice dated May 22, 2024, MassHealth's Community Case Management (CCM) program notified the appellant that they were approved for 31 hours of continuous skilled nursing (CSN) services each week for 52 weeks with dates of Sunday, May 26, 2024 to Saturday, May 24, 2025. (130 CMR 403.410; 130 CMR 414.408; Exhibit 1; Exhibit 9; Exhibit 10). The appellant's guardian filed this appeal in a timely manner on July 15, 2024. (130 CMR 610.015(B); Exhibit 2; Exhibit 3). The Board of Hearings scheduled a hearing for August 27, 2024. (Exhibit 4).

On August 16, 2024, representatives for the appellant requested that the hearing be rescheduled as their Health Law Clinic agreed to provide representation if they are granted a continuance for a date in mid-October to afford student attorneys time to prepare. (Exhibit 5). The Board of Hearings agreed to reschedule the hearing for a date in late-September. (Exhibit 5). A hearing was held on September 26, 2024. (Exhibit 6).

On September 17, 2024, counsel for the appellant submitted a second request to reschedule the hearing to allow the appellant to obtain what counsel deemed as relevant medical information. Counsel listed a number of medical appointments that they felt would provide relevant insight into the medical necessity of the appellant's request for CSN services. (Exhibit 8). This request was

denied. A hearing was held on September 27, 2024 and the record closed that day as neither party made a request to keep the record open.

An agency determination regarding the scope and amount of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the appellant for 31 hours of CSN services each week from Sunday, May 26, 2024 to Saturday, May 24, 2025. (130 CMR 438.000; 130 CMR 450.204).

Issue

Whether MassHealth was correct in their decision to approve 31 hours of CSN services each week from Sunday, May 26, 2024 to Saturday May 24, 2025.

Summary of Evidence

All parties appeared by telephone. Documents from MassHealth's Community Case Management program (CCM) were incorporated into the hearing record as Exhibits 9 and 10. A brief and documents from the appellant were incorporated into the hearing record as Exhibits 11 and 12.

On April 17, 2024, representatives from MassHealth's CCM program completed a Long-Term Services and Supports (LTSS) Needs Assessment. (Testimony; Exhibit 9; Exhibit 10). CCM determined that the appellant was eligible for 31 hours each week of continuous skilled nursing (CSN) services from Sunday, May 26, 2024 to Saturday, May 24, 2025. (Testimony; Exhibit 9; Exhibit 10). The MassHealth representative testified that near the end date of the LTSS approval period, a re-evaluation of LTSS will be conducted. (Testimony; Exhibit 9; Exhibit 10). The MassHealth representative testified that in order for nursing services to be authorized, there must be a clearly identifiable, specific medical need for a nursing visit of more than two continuous hours.

The appellant is over the age of 18 and enrolled in MassHealth's CCM program in 2006 when they were still a minor. (Testimony; Exhibit 9; Exhibit 10). The appellant has a primary diagnosis of [REDACTED] Other diagnoses include: anxiety disorder; dystonia; obesity; dysautonomia; sleep apnea; nystagmus; myopia; cortical vision impairment; laryngeal spasms; hemiplegia; swallowing issues; optic atrophy; and cognitive impairment. (Testimony; Exhibit 9; Exhibit 10). Individuals present at the in-person LTSS needs assessment included the appellant, the appellant's mother, and two CCM clinical managers. (Testimony; Exhibit 9; Exhibit 10). In making the decision regarding the amount of CSN services that are medically necessary for

the appellant, and in preparation for the hearing, representatives from MassHealth's CCM program reviewed: doctor's orders for a home health certification and plan of treatment for services from February 7, 2024 to April 6, 2024; private nursing duty flow sheets and notes from February 12, 2024 to March 1, 2024; a physician daily medication list updated on April 14, 2024; a medication review from August 2024; and an individual support plan from the Massachusetts Department of Developmental Services dated October 23, 2023. (Testimony; Exhibit 9; Exhibit 10). Upon reviewing these records, the CCM representatives identified specific medical needs for CSN services and the time required to perform each nursing intervention. (Testimony; Exhibit 9; Exhibit 10).

Notes regarding interventions related to the appellant's respiratory system include time to maintain oxygen equipment to ensure proper function. (Testimony; Exhibit 9; Exhibit 10). MassHealth authorized 5 minutes each day for this intervention. (Testimony; Exhibit 9; Exhibit 10).

Notes regarding interventions related to nutrition and the appellant's gastro-intestinal system note that the appellant is at risk for aspiration and requires assessments to ensure their swallowing is not compromised before and during intake of any oral food. (Testimony; Exhibit 9; Exhibit 10). The MassHealth representative testified that the nurse is not expected to assess during the entire intake of the meal and the agency approves time for the assessment alone, it does not authorize time for sitting or waiting. MassHealth authorized 10 minutes for each meal (3 meals) and 5 minutes for each snack (3 snacks) for a total time of 45 minutes each day. (Testimony; Exhibit 9; Exhibit 10).

Notes regarding interventions related to the appellant's neurological system include a list of several neurological conditions that require nursing interventions. (Testimony; Exhibit 9; Exhibit 10). The MassHealth representative testified that the appellant has seizures that typically present as tonic-clonic seizures. (Testimony; Exhibit 9; Exhibit 10). The appellant's mother reported 7 seizures last year that required the use of midazolam or valium, suctioning, oxygen and continuous plus oximeter monitoring. (Testimony; Exhibit 9; Exhibit 10). In addition to these home interventions, 911 was called 2 times to provide care and support in the home. (Testimony; Exhibit 9; Exhibit 10). The MassHealth representative noted that in the past year, all of the appellant's seizures were treated in the home. (Testimony; Exhibit 9; Exhibit 10). MassHealth authorized 40 minutes for each episode, 7 times each year for an average of 1 minute each day. (Testimony; Exhibit 9; Exhibit 10).

MassHealth determined that if the seizure does not require the appellant to go to the hospital, the appellant requires skilled assessments for another 60 minutes for oxygen administration and to determine if the appellant is safe to manage at home. (Testimony; Exhibit 9; Exhibit 10). MassHealth authorized 60 minutes, 7 times each year for an average of 2 minutes each day. (Testimony; Exhibit 9; Exhibit 10).

MassHealth determined that [REDACTED] events can be triggered

by: fatigue, excitement; anxiety; light, wind or temperature changes; medication changes; a cold; hormone fluctuations; or no identifiable trigger. (Testimony; Exhibit 9; Exhibit 10). MassHealth notes that when [REDACTED] events start, the appellant becomes [REDACTED] they cannot walk and are transferred to a safe location to prevent injury. (Testimony; Exhibit 9; Exhibit 10). MassHealth recognized that it is important to pick up on subtle signs of an impending [REDACTED] event, including color changes, eye deviations, weakness, behavior issues and rigidity. (Testimony; Exhibit 9; Exhibit 10). MassHealth authorized 10 minutes, 6 times each day for hands-on intervention and assessment for these events. (Testimony; Exhibit 9; Exhibit 10).

MassHealth notes that the appellant has episodes of focal dystonia in the hands, eyes and mouth. (Testimony; Exhibit 9; Exhibit 10). MassHealth determined that the appellant requires assessments during waking and sleeping hours. (Testimony; Exhibit 9; Exhibit 10). MassHealth authorized 4 minutes every hour or 96 minutes each day for these assessments. (Testimony; Exhibit 9; Exhibit 10).

MassHealth authorized time for skilled assessment needs related to fluctuations in the appellant's medical status including: 10 minutes, 3 times each day for a general assessment that includes vital signs, pulse oximetry checks, skin, pain and additional neurological assessments as needed; 10 minutes, 2 times each day to prepare, administer medications and assess appropriate swallowing; 1 minute each day for treatment of illnesses including the administration of Flonase daily for about 3 weeks in the spring and fall. (Testimony; Exhibit 9; Exhibit 10).

In making the assessment, MassHealth recognized that the appellant's medical condition is complex and determined they require CSN services for 31 hours each week. (Testimony; Exhibit 9; Exhibit 10). MassHealth determined that the remainder of the appellant's care does not require a skilled nurse. (Testimony; Exhibit 9; Exhibit 10). MassHealth authorized time for hands-on skilled nursing care and assessments. (Testimony; Exhibit 9; Exhibit 10). The MassHealth representative testified that MassHealth does not authorize CSN services for anticipatory needs or unskilled care. (Testimony; Exhibit 9; Exhibit 10). The MassHealth representative testified that the agency can increase the appellant's CSN services temporarily if their condition worsens or following a hospitalization. (Testimony; Exhibit 9; Exhibit 10). The MassHealth representative noted that an increase occurred in June 2023 following a hospitalization. At that time, MassHealth authorized 39 hours each week for a period and then returned to the authorization of 30 hours each week. The MassHealth representative noted that the agency had not been notified of any other hospitalizations from June 2023 to the time of the assessment in April 2024 or the date of the hearing in September 2024. The MassHealth representative testified that the appellant was approved for 26 hours of CSN in 2022, 30 hours of CSN in 2023 and 31 hours of CSN in 2024.

Records from the Department of Developmental Services (DDS) include a semi-annual Individual Support Plan (ISP) from October 2023. (Exhibit 10). The ISP indicates that the appellant receives 12 hours of in-home services from Bridging Independent Living Together (BILT) on Wednesday, Friday and Saturday. (Exhibit 10). Records from DDS indicate that the appellant receives community-

based day service programming 3 days each week for 9 hours. (Exhibit 10). Records indicate that the appellant attends the program 1 to 2 days and typically goes home at 12:00 PM to rest. (Exhibit 10). Records from DDS state that the appellant enjoys arts and crafts, journaling, chair yoga and occasional cooking classes. (Exhibit 10). Records from DDS indicate that the appellant is not able to go into the community with the day program due to health concerns. (Exhibit 10). Records from DDS indicate that the appellant has a nurse and/or their mother or staff with them 24/7 for safety purposes due to their medical conditions. (Exhibit 10). Records from DDS state that the day program reports that the appellant enjoys the activities offered when they attend the program and has transitioned well to their in-home supports offered through BILT. (Exhibit 10). The appellant's mother made a request for better communication with day-program staff and the staff responded by offering the appellant's mother the opportunity to visit the appellant at the program as well as providing other modes of communication with staff such as electronic mail and telephone calls. (Exhibit 10). Nursing notes from February 12, 2024 though March 4, 2024 show no major nursing interventions and indicate that the appellant's systems are within normal limits. (Exhibit 10). The MassHealth representative testified that the appellant is approved for 65 hours of Personal Care Attendant (PCA) services each week. The MassHealth representative noted that the appellant was approved for 63.5 hours of PCA services in 2023 and 65 hours of PCA services in 2024.

The appellant's mother did not agree with the time approved for CSN services. Counsel for the appellant argued that the appellant's unpredictable and severe symptoms require around-the-clock skilled care to ensure their safety and well-being. (Testimony; Exhibit 11). Counsel notes that due to the nature of the appellant's condition, including the frequent episodes of dystonic storms, seizures and other [REDACTED]-related events, the appellant requires continuous monitoring and episodic intervention from an independent nurse. (Testimony; Exhibit 11). Counsel notes that without increased CSN services, the appellant's health is at significant risk as the complexity of their symptoms requires specialized care that non-medical caregivers cannot adequately provide. Counsel argues that MassHealth's decision is contrary to the standard of nursing care necessitated by the appellant's unique condition and individual needs. (Testimony; Exhibit 11).

Counsel provides a history of the appellant's diagnoses and medical condition dating back to a diagnosis of [REDACTED] when the appellant was [REDACTED] years old. (Exhibit 11). Records presented by counsel for the appellant include an August 2024 letter from a neurologist; an October 2023 letter from an ophthalmologist; a July 2017 letter from a neurologist; a neurophysiological evaluation from 2019; and notes from a hospital admission in June 2024. (Exhibit 12).

The letter from the appellant's neurologist outlines the appellant's condition; notes that the appellant has severe neurological events that can be precipitated by an uncontrolled spasm involving the diaphragm and muscles of the throat where the appellant is unable to maintain a patent airway or speak during the episode. (Exhibit 12). The neurologist states that neurological events occur in an unpredictable pattern and are often difficult to discern from uncontrolled seizures. (Exhibit 12). The neurologist notes that the appellant's caregivers must be alert to subtle

signs signaling the onset of an acute neurologic episode and lists some of the signs. (Exhibit 12). The neurologist notes that the caregiver must be able to quickly initiate a specific treatment protocol that requires the administration of benzodiazepines, oxygen, monitoring of oxygen saturation and clinical state. (Exhibit 12). The neurologist states that the appellant needs continuous nursing services to monitor for signs of illness or overstimulation. (Exhibit 12). The neurologist notes that the appellant recently had seizures during a hospitalization that were difficult to control and required an admission to the Intensive Care Unit. (Exhibit 12). The neurologist states that to reduce the appellant's fall, injury and subsequent life-threatening complications it is critical for the appellant to have more nursing care. (Exhibit 12). The neurologist states that medically trained personnel must always be by the appellant's side to manage their level of intense emotion and ensure that they are attentive and walking safely. (Exhibit 12). The neurologist states that it is medically necessary that the appellant receive around-the-clock one-on-one nursing care. (Exhibit 12).

A letter from a physician dated July 2017 notes that the appellant's in-home nursing services were eliminated. (Exhibit 12). The letter states that the appellant's symptoms vary from mild to life threatening, every day is variable and requires ongoing assessments. (Exhibit 12).

A neuropsychological evaluation from October 2019 provides a medical history and results of testing in intellectual functioning; fine motor skills; processing speed; attention; executive functioning; language; perceptual reasoning; learning and memory; social, emotional and behavioral functioning; and adaptive functioning. (Exhibit 12). The appellant was referred to the neuropsychological evaluation due to concerns regarding their social and emotional functioning and whether these features are best conceptualized under a diagnosis of autism spectrum disorder (ASD) as well as to help with transition planning from school. (Exhibit 12). The conclusions from the testing state that while the appellant shows significant impairments in their intellectual and cognitive development and adaptive functioning, they displayed strong core characteristics not consistent with ASD. (Exhibit 12). The test results state that the appellant has a mild intellectual disability. (Exhibit 12). The evaluation provides recommendations including having the appellant explore care coordination services with MassHealth as they transition to adult services. (Exhibit 12). The evaluation does not provide any specific recommendations regarding direct medical services. (Exhibit 12).

Notes from a June 2024 hospital admission indicate that the appellant was admitted due to a [REDACTED] crisis requiring intubation. (Exhibit 12). Records indicate that the appellant was intubated at the time of admission, extubated the next day and discharged three days after the date of admission. (Exhibit 12). During the admission the appellant had Long-term electroencephalographic monitoring (LTM) with no seizures. (Exhibit 12). The appellant did not contact CCM regarding the hospitalization.

Counsel argues that MassHealth utilized a rigid interpretation of the LTSS needs assessment to calculate the approved CSN hours. (Testimony; Exhibit 11). Counsel argues that the appellant's

unique condition and individual needs are identified and detailed in the LTSS needs assessment which includes a note that the appellant requires assessments during waking and sleeping hours. Counsel argues that simply averaging and adding CSN services fails to account for the inherent unpredictability of the appellant's condition. (Testimony; Exhibit 11). Counsel notes that the appellant requires skilled nursing assessments when they eat as they are at risk for aspiration and providing only 45 minutes of skilled nursing services each day for assessments associated with these tasks is "unfathomable" given the complexity of the appellant's condition. (Testimony; Exhibit 11). Counsel argues that expecting the appellant to consume meals within such a limited timeframe fails to account for the severity of the appellant's swallowing issues and additional time is needed for safe feeding. (Testimony; Exhibit 11).

Counsel notes that the appellant received 35 hours of CSN each week while in school as part of an Individualized Education Plan (IEP). (Testimony; Exhibit 11). Counsel states that since transitioning to adulthood, the severity of the appellant's symptoms has increased. (Testimony; Exhibit 11). Counsel cites a discharge summary from a June 2023 hospitalization which MassHealth reviewed and considered in the decision on appeal as well as in a decision to increase the appellant's CSN services in June 2023. (Testimony; Exhibit 11). Counsel argues that events associated with the appellant's diagnoses are traumatic and painful for the appellant to endure. In the brief, counsel cites videos which were inaccessible to MassHealth and the Board of Hearings prior to and at the time of the hearing. The videos were not incorporated into the hearing record as the MassHealth representative noted that they understood the appellant's diagnoses and the variety of events that could occur. Both parties agreed that the appellant requires interventions related to various episodes.

Counsel for the appellant lays out a "Visual Depiction of CSN Hours as Indicated on the Assessment". (Exhibit 11). This chart takes the time approved by MassHealth for various tasks and places them in designated time slots. (Exhibit 11). Counsel argues that a rigid reading of the assessment fails to provide the appellant with all medically necessary CSN hours as their nursing needs span a 24-hour period. (Exhibit 11). The time distributed by counsel for the appellant spans a 24-hour period. (Exhibit 11). Counsel argued that a task such as neurological assessments are required to be done hourly. (Testimony; Exhibit 11). Therefore, even if the time for the task is 4 minutes, the appellant should be provided with 60 minutes of CSN services as the task needs to be performed throughout an entire 24-hour period. (Testimony; Exhibit 11). Counsel argued that a nurse cannot be scheduled for a short period of time and catastrophic events can occur throughout the day. (Testimony; Exhibit 11).

The appellant's mother testified that when the appellant was in school, they received over 50 hours of nursing services each week due to the school providing services along with MassHealth's approval of in-home services. The appellant's mother testified that when they were in school, the nurse was in the home after school until the appellant went to sleep. The appellant did not receive nursing services at night. The appellant's mother testified that the appellant has always required 24-hour care. The appellant's mother testified that family members care for the

appellant when the nurse is not present. The appellant's mother testified that the appellant is safest when they are sleeping.

The nurse who has been working with the appellant for the past 2 months testified that they work Monday to Friday from 8:30 AM to 2:30 PM. The nurse described a recent event where the appellant was on a treadmill and while walking their legs buckled. The nurse noted that they recognized that the appellant's breathing changed while they were on the treadmill so was able to provide the necessary assistance. The nurse testified that if they and the home health aide were not there to monitor the appellant, the situation could have been worse. The nurse noted that the appellant is at risk of injury, falls and oxygen deprivation. The nurse testified that the appellant requires 24-hour care. The nurse did not specify that the care has to be skilled nursing services noting that they did not have the authority to make such a decision.

The appellant's mother testified that the CSN services are not about addressing anticipatory needs, they are about prevention. The appellant's mother testified that it is difficult to care for the appellant due to their complex conditions. The appellant's mother testified that caregivers for the appellant need proper training and skills to prevent hospitalizations. The appellant's mother testified that the appellant's condition is becoming more complex resulting in the June 2024 hospitalization. The MassHealth representative responded that CCM did not receive a report of any other hospitalizations or incidents that would require an increase in services. The CCM representative noted that if they received this information, they may have performed a new assessment or temporarily increased the appellant's hours.

Findings of Fact

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

1. The appellant is over the age of 18 and enrolled in MassHealth's CCM program in 2006.
2. The appellant has a primary diagnosis of [REDACTED]
3. Other diagnoses include: anxiety disorder; dystonia; obesity; dysautonomia; sleep apnea; nystagmus, myopia; cortical vision impairment; laryngeal spasms; hemiplegia; swallowing issues; optic atrophy; and cognitive impairment.
4. On April 17, 2024, representatives from MassHealth's CCM program completed a Long-Term Services and Supports (LTSS) needs assessment.
5. Individuals present at the in-person LTSS needs assessment included the appellant, the appellant's mother, and two CCM clinical managers.

6. CCM determined that the appellant was eligible for 31 hours each week of continuous skilled nursing (CSN) services from Sunday, May 26, 2024 to Saturday, May 24, 2025.
7. In making the decision regarding the amount of CSN services that are medically necessary for the appellant, representatives from MassHealth's CCM program reviewed: doctor's orders for a home health certification and plan of treatment for services from February 7, 2024 to April 6, 2024; private nursing duty flow sheets and notes from February 12, 2024 to March 1, 2024; a physician daily medication list updated on April 14, 2024; a medication review from August 2024; and an individual support plan from the Massachusetts Department of Developmental Services dated October 23, 2023.
8. Upon reviewing records, the CCM representatives identified specific medical needs for CSN services and the time required to perform each nursing intervention.
9. CCM authorized 5 minutes each day for time to maintain oxygen equipment to ensure proper function.
10. CCM authorized 10 minutes for each meal and 5 minutes for each snack for a nurse to perform assessments to ensure the appellant's swallowing is not compromised before and during intake of any oral food.
11. The appellant has seizures that typically present as tonic-clonic seizures.
12. The appellant's mother reported 7 seizures last year that required the use of midazolam or valium, suctioning, oxygen and continuous pulse oximeter monitoring.
13. In addition to these home interventions, 911 was called 2 times in the year prior to the assessment to provide care and support in the home.
14. In the year prior to the assessment, all of the appellant's seizures were treated in the home.
15. MassHealth authorized 40 minutes for each episode, 7 times each year for an average of 1 minute each day.
16. MassHealth determined that if the seizure does not require the appellant to go to the hospital, the appellant requires skilled assessments for another 60 minutes for oxygen administration and to determine if the appellant is safe to manage at home. MassHealth authorized 60 minutes, 7 times each year for an average of 2 minutes each day.
17. [REDACTED] events can be triggered by: fatigue; excitement; anxiety; light, wind or temperature changes; medication changes; a cold;

hormone fluctuations; or no identifiable trigger.

18. When [REDACTED] events start, the appellant becomes [REDACTED] they cannot walk and are transferred to a safe location to prevent injury.
19. Subtle signs of an impending [REDACTED] event, include color changes, eye deviations, weakness, behavior issues and rigidity.
20. MassHealth authorized 10 minutes, 6 times each day for hands-on intervention and assessment for [REDACTED]
21. The appellant has episodes of focal dystonia in the hands, eyes and mouth that require assessments. MassHealth authorized 4 minutes every hour or 96 minutes each day for these assessments.
22. MassHealth authorized time for skilled assessment needs related to fluctuations in the appellant's medical status including: 10 minutes, 3 times each day for a general assessment that includes vital signs, pulse oximetry checks, skin, pain and additional neurological assessments as needed; 10 minutes, 2 times each day to prepare, administer medications and assess appropriate swallowing; 1 minute each day for treatment of illnesses including the administration of Flonase daily for about 3 weeks in the spring and fall.
23. MassHealth determined that the remainder of the appellant's care does not require a skilled nurse.
24. The appellant receives PCA services.
25. The appellant's CSN services are provided during the day.
26. The appellant lives with their parents.
27. MassHealth increased the appellant's CSN services to 39 hours each week for a period in June 2023 following a hospitalization.
28. The appellant then returned to 30 hours each week.
29. The appellant was hospitalized in June 2024 due to a [REDACTED] requiring intubation.
30. The appellant was intubated at the time of admission, extubated the next day and discharged three days after the date of admission.

31. During the admission the appellant had Long-term electroencephalographic monitoring (LTM) with no seizures.
32. The appellant did not contact CCM regarding the hospitalization or need for an increase in CSN services due to the hospitalization.
33. The appellant was approved for 26 hours of CSN in 2022, 30 hours of CSN in 2023 and 31 hours of CSN in 2024.
34. The appellant receives services through the Department of Developmental Services (DDS) including: 12 hours of in-home services from Bridging Independent Living Together (BILT) on Wednesday, Friday and Saturday, community-based day service programming 3 days each week for 9 hours. The appellant attends the program 1 to 2 days each week.
35. The appellant has a nurse and/or their mother or staff with them 24/7 for safety purposes due to their medical conditions.
36. Nursing notes from February 12, 2024 through March 4, 2024 show no major nursing interventions and indicate that the appellant's systems are within normal limits.
37. The appellant is approved for 65 hours of Personal Care Attendant (PCA) services each week.
38. The appellant was approved for 63.5 hours of PCA services in 2023 and 65 hours of PCA services in 2024.
39. The appellant received 35 hours of CSN each week while in school as part of an Individualized Education Plan (IEP).
40. When the appellant was in school, they received approximately 50 hours of nursing services each week in combining the services at school and those at home.
41. While the appellant was in school, a nurse was in the home after school until the appellant went to sleep.
42. The appellant did not receive nursing services at night while in school.
43. The appellant's current nursing services are primarily provided Monday to Friday from 8:30 AM to 2:30 PM.

Analysis and Conclusions of Law

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). MassHealth or its designee provides administrative care management that includes service coordination with CSN agencies as appropriate. (130 CMR 438.414). 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 MassHealth pays for nursing, complex care assistant services, and other community LTSS only if they are medically necessary in accordance with 130 CMR 450.204. (130 CMR 438.414).

MassHealth automatically assigns a clinical manager to members who may require a nurse visit of more than two continuous hours of nursing and informs the member of the name, telephone number and role of the assigned clinical manager (130 CMR 438.414(A)(1)).

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 438.402¹ and 438.410(B)². (130 CMR 438.414(A)(2)). If the member is determined to meet the criteria as a complex care member, the clinical manager will complete a LTSS Needs Assessment. (130 CMR 438.414(A)(2)). The LTSS Needs Assessment will include input from the member, the member's caregiver, if applicable, LTSS providers, and other treating clinicians. (130 CMR 438.414(A)(2)). The LTSS Needs Assessment will identify

- (1) skilled and unskilled care needs within a 24-hour period;
- (2) current medications the member is receiving;
- (3) durable medical equipment currently available to the member;
- (4) services the member is currently receiving in the home and in the community; and
- (5) any other case management activities in which the member participates. (130 CMR 438.414(A)(2)).

¹ As noted above, the regulations at 130 CMR 438.402 define a member with medical complexity as an individual who is a MassHealth member and 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.

² The regulations at 130 CMR 438.410(B) speak to clinical eligibility for CSN services and state that 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 at 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 clinical manager 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. (130 CMR 438.414(A)(3)(a)).

The clinical manager provides the member with copies of 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. (130 CMR 438.414(A)(3)(b)). 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 the LTSS Needs Assessment. (130 CMR 438.414(A)(3)(b)). The clinical manager also provides information to the CSN agency about services authorized in the service record that are applicable to the CSN agency. (130 CMR 438.414(A)(3)(c)).

MassHealth or its designee will authorize those LTSS in the service record, including nursing and complex care assistant services, that require prior authorization and are medically necessary, as provided in 130 CMR 438.412³, 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. (130 CMR 438.414(A)(4)). 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. (130 CMR 438.414(A)(4)).

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. (130 CMR 438.414(A)(5)). The clinical manager will work collaboratively with any other identified case managers assigned to the member. (130 CMR 438.414(A)(6)).

The clinical manager will provide ongoing care management for members to:

³ The regulations at 130 CMR 438.412 speak to the prior authorization requirements including the right to notice of approval, modification, and termination of CSN services.

- (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. (130 CMR 438.414(A)(7)).

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 and complex care assistant needs, in addition, but not limited to,

- (1) The amount of authorized CSN and complex care assistant 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 agency PA; and
- (5) Any incidents warranting an agency to submit to MassHealth or its designee an incident report. (130 CMR 438.414(B)).

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.

MassHealth pays for only those CSN services that are medically necessary. (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 appeal is MassHealth's authorization of continuous skilled nursing hours for the appellant, a CCM member. In their assessment, MassHealth used a "time-for-task" tool to assign time for each skilled nursing intervention that the appellant requires, adding these together to arrive at the total number of skilled nursing hours per week. MassHealth suggests that this system ensures the approved time will be based solely on the medical needs of the member and not on other factors, such as the needs of the primary caregiver. The appellant takes issue with MassHealth's rigid application of the time-for-task system, asserting that it does not adequately account for the around-the-clock and unpredictable nature of their unique condition and individualized nursing needs. Counsel argues that MassHealth regulations and federal law require the agency to cover all medically necessary services that they need to

remain in the community, and CCM's time-for-task approach does not meet that standard in practice.

While counsel presents a persuasive argument, the evidence does not adequately demonstrate specific tasks or needs that would require 24-hour care. In their argument, counsel primarily relies on records presented by MassHealth and utilizes broad strokes regarding the appellant's overall needs as well as their own historical records that do not directly speak to the time necessary for CSN services. As noted at the hearing, MassHealth did not question the appellant's diagnoses or condition, the issue was about the amount of time a nurse is providing services.

Records and testimony presented at hearing show that the appellant primarily utilizes services during the day; do not specify what, if any, services are provided at night; and do not adequately demonstrate that the appellant requires 24-hour care. Quantifying care by one service listed as being performed for 10 minutes each hour does not demonstrate that the appellant requires services for 24 hours. Additionally, the task is that of an assessment and counsel did not demonstrate what, if any, assessments are being performed or are required at night. Counsel is primarily relying on records presented by MassHealth which the agency also utilized in authorizing time. The chart presented by counsel appears to arbitrarily distribute the time authorized by MassHealth, there is no supporting evidence that this is how the appellant utilizes the time authorized by MassHealth or why additional time is medically necessary. Testimony presented at hearing shows that the appellant does not utilize the services in the manner outlined by counsel as the nurse has always provided services during the day.

While MassHealth's methodology may not adequately address the full scope of the appellant's medical needs and the appellant may require more time than allocated by MassHealth, the request to go from 30 hours each week to 24 hours each day is extreme, and counsel did not present sufficient evidence regarding the need for constant care. The fact that the appellant did not request additional services following a recent hospitalization demonstrates that their condition may not have risen to a level to require such a drastic change in services. Also, while there was testimony presented regarding the appellant receiving services while in school, counsel did not provide any details of those services and the current need for that time as compared to what MassHealth authorized in this current decision. The Board of Hearings cannot arbitrarily allocate additional time beyond the time authorized by MassHealth without sufficient evidence of the tasks performed. If the appellant can adequately demonstrate specific tasks and needs beyond the broad strokes presented by counsel at hearing, the agency could likely perform a new assessment and possibly allocate additional time. At this time, the appellant has not clearly demonstrated that 24-hour care is necessary.

The decision made by MassHealth was correct.

This appeal is denied.

Order for MassHealth

None.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

[REDACTED]

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