

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed in part; Approved in part; Denied in part	<b>Appeal Number:</b>	2507240
<b>Decision Date:</b>	06/26/2025	<b>Hearing Date:</b>	06/12/2025
<b>Hearing Officer:</b>	Sharon Dehmand		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Linda Phillips, R.N., Associate Director -  
Appeals and Regulatory Compliance;  
Catherine Kostas, R.N., Clinical Manager



*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

<b>Appeal Decision:</b>	Dismissed in part; Approved in part; Denied in part	<b>Issue:</b>	Community Case Management (CCM)
<b>Decision Date:</b>	06/26/2025	<b>Hearing Date:</b>	06/12/2025
<b>MassHealth's Rep.:</b>	Linda Phillips; Kimberly Kostas	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Remote	<b>Aid Pending:</b>	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 April 18, 2025, the MassHealth Community Case Management (CCM) program approved the appellant for continuous skilled nursing (CSN) services. See 130 CMR 414.408; 130 CMR 438.410; and Exhibit 1. The appellant filed this appeal in a timely manner on May 8, 2025. See 130 CMR 610.015(B); and Exhibit 2. The authorization of CSN service hours is a valid ground for appeal before the Board of Hearings. See 130 CMR 610.032.

### Action Taken by MassHealth

MassHealth approved the appellant for 33 hours of continuous skilled nursing services per week.

### Issue

Whether MassHealth was correct in its determination to approve the appellant for 33 hours of continuous skilled nursing services per week.

## Summary of Evidence

All parties participated telephonically. MassHealth was represented by the associate director of appeals and regulatory compliance for CCM as well as the clinical manager for CCM. The appellant appeared pro se with his mother who is also his independent nurse and verified his identity. Both parties submitted supporting documents which were incorporated into the hearing record as Exhibits 5 and 6. The following is a summary of the testimony and evidence provided at the hearing:

The MassHealth representative stated that CCM provides authorization and coordination of MassHealth Long Term Services and Supports (LTSS), which includes continuous skilled nursing (CSN) services, to a defined population of MassHealth-eligible, medically complex members.

The appellant is under the age of 19 and was enrolled with CCM on December 27, 2024. His primary diagnosis is refractory epilepsy. Associated diagnoses and medical history include developmental delay, anxiety disorder, depression, attention deficit hyperactivity disorder, obstructive sleep apnea, intellectual disability, oppositional defiant disorder, hemiparesis, and vagal nerve stimulator. See Exhibit 6, 66. On March 19, 2025, and again on April 2, 2025, MassHealth/CCM completed an in person LTSS individualized assessment of the appellant. Based on this assessment, MassHealth/CCM determined the amount of CSN services that were medically necessary and authorized the appellant to receive 31 hours per week of CSN services when out of school and 28 hours per week of CSN services when in school.<sup>1</sup> See Exhibit 6, p. 1. Since the appellant has been medically excused from school and attends school remotely, the CSN service hours discussed during the hearing were based on out of school hours of 31 hours per week for 52 weeks from April 27, 2025 to April 25, 2026. See Exhibit 6, pp. 66, and 101. In addition, CCM allows for administrative CSN documentation time which is 5% of the current assessed hours. Therefore, since the current assessed hours on this service record is 31 hours, 5% of the current assessed hours equals 2 hours. Thus, total CSN service hours including documentation time has been approved for 33 hours out of school and 30 hours in school. See Exhibit 6, p. 67.

The MassHealth representative stated that in order for nursing services to be authorized by MassHealth, there must be 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. MassHealth/CCM reviewed the following documentation made available to them in order to determine the number of CSN service hours that are medically necessary for the appellant:

- MassHealth Medication Review, dated 5/30/2025. See Exhibit 6, pp. 103-108;

---

<sup>1</sup> These numbers were erroneously reversed during the testimony. See Exhibit 6, pp. 66, and 101.

- [REDACTED] Independent Nurse (IN) - Plan of Care Record, dated 2/4/2025-5/31/2025. See Exhibit 6, pp. 110-111;
- [REDACTED] Medication Orders, dated 4/8/2025. See Exhibit 6, pp. 112-113;
- [REDACTED] Nursing Note Review by MassHealth, dated 3/9/2025-3/25/2025. See Exhibit 6, pp. 114-115;
- [REDACTED] - Nursing Notes, dated 3/9/2025-3/25/2025. See Exhibit 6, pp. 116-161;
- [REDACTED] - Progress Notes, dated 3/4/2025. See Exhibit 6, pp.162-165;
- Seizure Activity Log, dated January 2025 - March 2025. See Exhibit 6, pp. 166-167;
- [REDACTED] - CPAP Machine Order, dated 3/4/2025. See Exhibit 6, pp. 168-170;
- [REDACTED] Wheelchair Gait Letter, dated 3/24/2024. See Exhibit 6, p. 171;
- [REDACTED] - Skin Health Letter, dated 3/24/2025. See Exhibit 6, p. 172; and
- [REDACTED] Patient Clinical Summary, dated 3/26/2025. See Exhibit 6, p. 173.

Based on this LTSS needs assessment, MassHealth/CCM determined that the appellant has a number of clearly identifiable, specific medical needs that justify CSN services, and calculated the amount of time required to perform each nursing intervention. The following chart reflects the nursing time allotted in each body system category:<sup>2</sup>

Nursing Interventions	Time	Freq.	Clinical Rationale/Medical Necessity	Total Mins Per Day
Teaching needs of the caregiver	0	0	Mother is competent in [appellant's] care and has no current teaching needs. <sup>3</sup>	0
<b>Respiratory</b>				
Suction Type/frequency	0	0	[Appellant] requires suctioning during seizure activity. Time allotted in seizure section below.	0

<sup>2</sup> Only those interventions deemed applicable by MassHealth are reflected in the chart. Other line items on the standardized form that MassHealth marked "Not Applicable" have been omitted.

<sup>3</sup> The appellant's mother is a registered nurse and the appellant's independent nurse.

Mechanical Ventilation Care Management (CPAP, BIPAP, Ventilator)	27	1	[Appellant] uses a Resmed CPAP with nasal mask and humidification for 10 hours overnight and one nap during the day. Time allotted to set-up, apply, remove mask, and obtain a proper seal is 5 minutes x 2 = 10 minutes per day. His mask becomes dislodged and requires adjustment an average of 4 times per night. Time allotted is 3 minutes x 4 = 12 minutes per day. [Appellant] requires daily cleaning of mask and tubing, refilling of water for humidification, and monthly mask/tubing/filter changes. Time allotted is 5 minutes per day. Total time allotted in this section is 10 + 12 + 5 = 27 minutes per day.	27
O2 Desaturations	0	0	[Appellant] has desaturations (desats) during seizure activity. Time allotted in seizure section below.	0
Oxygen	5	1	Oxygen (O2) is ordered for as needed use. Time allotted to assess O2 equipment for proper delivery and function is 5 minutes a day.	5
Skilled Assessment/respiratory	0	0	Time allotted for respiratory assessment is included in seizure management and general assessment below.	0
<b>Gastro-Intestinal (GI)/ Nutrition</b>				
Oral feeds/frequency-only scored if at risk for aspiration	3	6	[Appellant] eats by mouth and requires aspiration precautions during meals and snacks due to oro-motor difficulties with hemiplegia and frequent seizures. [Appellant] has 3 meals and 3 snacks per day. Time allotted is 3 minutes x 6 = 18 minutes per day and includes assessment of aspiration and ensuring a patent airway.	18
Elimination management/frequency	3	1	[Appellant] has a history of constipation and receives Colace daily. Time allotted in medications section below. He also requires additional as needed Senna and Miralax 1-2 times per week. Time allotted is 3 minutes per day for GI assessment and the administration of as needed bowel medications.	3
Skilled Assessment/GI	0	0	Time allotted for GI assessment is included in elimination section above.	0
<b>Wound Care/Skin</b>				

Skilled Assessment	0	0	Time allotted for skin assessment in head to toe assessment below.	0
<b>Neurological</b>				
Seizures frequency	138	1	<p>[Appellant] has up to 5 generalized seizures per day that require swiping of his vagal nerve stimulator (VNS) with a magnet, as well as suctioning and oxygen administration due to vomiting and desaturations during seizure activity. Valtoco is only required for seizure lasting over 2 minutes which do not happen often. Seizure episodes, from onset of seizure to recovery is typically 10 minutes. Time allotted is to 10 minutes x 5= 50 per day and includes swiping VNS, maintaining safe environment during seizure, administering as needed seizure medication, as needed suctioning and oxygen administration, and neurological and respiratory assessment.</p> <p>[Appellant] has up to 7 focal seizures per day that require swiping of his vagal nerve stimulator (VNS), suctioning and oxygen administration due to vomiting and desaturations during seizure activity. Seizure episodes, from onset of seizure to recovery is typically 10 minutes. Time allotted is averaged to 10 minutes x 7 = 70 minutes per day and includes swiping VNS, maintaining safe environment during seizure, administering as needed seizure medication, and neurological assessment.</p> <p>[Appellant] has episodes of myoclonus in his left leg an average of 6 times per day that require swiping of VNS and administration of PO diazepam as needed (typically every other day). Time allotted is averaged to 3 minutes x 6 = 18 minutes per day and includes swiping VNS, administering as needed PO diazepam, and neurological assessment.</p> <p>Total time allotted in this section is 50 + 70 + 18 = 138 minutes per day.</p>	138

Skilled assessment	0	0	Neurological assessment is allotted in skilled interventions above.	0
<b>Other considerations in Skilled Care Needs</b>				
Skilled assessment needs related to fluctuations in medical status	68	1	General Assessment: Time allotted for vital signs and head to toe/general assessment is 10 minutes x 3 = 30 minutes per day. Medications: [Appellant] requires 19 doses of scheduled oral medications per day. Time Allotted is 2 minutes x 19 = 38 minutes per day and includes medication administration and aspiration assessment. Total time allotted in this section is 30 + 38 = 68 minutes per day.	68
Is there any other information about your child's care that you would like to add to this assessment?			Mother reports she is up all night watching him with frequent myoclonus and seizure activity.	
In-School nursing paid by school/#hours 130 CMR 517.008			Per the IEP, the Member has a 1:1 nurse, in school. Review of skilled nursing interventions during this timeframe identifies 3 hours/week of duplication.	
<b>Total Minutes Per Day</b>				<b>259</b>
<b>Total Hours Per Week</b>			<b>Rounded to 31 hours (out of school)/28 hours (in school) per week.</b>	<b>30.22</b>

Exhibit 6, pp. 80-85.

The appellant's mother, who is also his independent nurse, testified that her son requires continuous skilled nursing care around the clock. She said she is unable to be present 24 hours a day, 7 days a week and argued that a second skilled nurse is required to fill in the gap. She added that her son's medical condition requires continuous professional assessment to prevent health risks. She referenced the following two documents submitted as part of the record in support of her argument: 1) [REDACTED] letter stating that "[the Appellant] suffers from refractory epilepsy with very frequent seizures. It is my medical opinion that [Appellant] requires 24/7 supervision for monitoring of seizures, proper performance of seizure first-aid, and seizure rescue medication administration; and 2) [REDACTED] letter stating that [the appellant has been admitted to [REDACTED] and other tertiary hospitals nine times in the past year with several prolonged admissions...[The appellant's] medical history is quite complex. As such, it is my opinion and recommendation as a Pediatric Hospital Medicine physician as well as the recommendation of his Pediatric Neurologist...that [appellant] requires a licensed nurse for safe and appropriate home care....1:1 care – [Appellant] has someone present 24 hours a day, 7 days a week within reach of him.... See Exhibit 5, pp. 3-5; Exhibit 6, pp. 291-293.

The MassHealth representative responded that although the doctor's notes do suggest 24/7

supervision, they do not require 24/7 CSN services. In particular, she pointed out how the appellant's doctor stated that "someone" must be present 24 hours a day with the appellant and not a "skilled nurse." See id.

The appellant's mother said that aside from her position that her son needs 24/7 continuous skilled nursing services, she does agree with MassHealth's determination relevant to the amount of time required to perform the following nursing interventions:

- Respiratory: totaling 32 minutes per day;
- Gastro-Intestinal (GI)/Nutrition: Elimination management/frequency (totaling 3 minutes per day);
- Neurological: Seizure frequency - generalized seizures (10 minutes per episode, 5 episodes per day; totaling 50 minutes per day), focal seizures (10 minutes per episode, 7 episodes per day; totaling 70 minutes per day);
- Skilled assessment needs related to fluctuation in medical status: general assessment (30 minutes per day); medications (2 minutes per episode, 19 episodes per day; totaling 38 minutes per day).

The appellant's mother disputed MassHealth's determination relevant to the amount of time required to perform the following nursing interventions:

- Gastro-Intestinal (GI)/Nutrition: Oral feeds/frequency-only scored if at risk for aspiration (3 minutes per episode, 6 episodes per day; totaling 18 minutes per day). The appellant's mother stated that it takes the appellant 30 minutes to eat a meal and 15 minutes to eat a snack. During this time, it is imperative that he is monitored and assessed continuously to prevent aspiration. She added that he should also be monitored for 45 minutes after each meal because he has vomited at least once per week for the past month after consumption of meals which puts him at risk of aspiration. She also referenced section 22 of the Independent Nurse (IN) Plan of Care Record which states "maintain high-Fowler's position during and up to 45 minutes after meals. Supervise or assist patient with oral intake, encourage to eat slowly and chew thoroughly..." see Exhibit 6, p. 110, to support her argument regarding time needed to monitor after meals. The MassHealth representative responded by arguing that MassHealth does not allow any time for anticipatory events.
- Neurological: Seizure frequency – myoclonus (muscle contraction) in left leg (3 minutes per episode, 6 episodes per day; totaling 18 minutes per day). The appellant's mother referenced updated records submitted which contained updated seizure activity log reflecting an increase in number of myoclonus seizures. See Exhibit 5, pp. 120-122. She added that she is still making observations in order to ascertain an average number of myoclonus seizures per day, but that she had observed up to 26 episodes the day before this hearing. In response, the MassHealth representative agreed to allow time for this increase in the frequency of myoclonus seizures to 12 episodes per day.



In conclusion, the appellant's mother reiterated her child's need for 24/7 CNS service hours based on his medical condition and medical necessity.

## Findings of Fact

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

1. The appellant is under the age of 19 and is a member of MassHealth's Complex Care Management (CCM) program. (Testimony and Exhibit 4).
2. He enrolled with CCM on December 27, 2024. His primary diagnosis includes refractory epilepsy. Associated diagnoses and medical history include developmental delay, anxiety disorder, depression, attention deficit hyperactivity disorder, obstructive sleep apnea, intellectual disability, oppositional defiant disorder, hemiparesis, and vagal nerve stimulator. (Testimony and Exhibit 6).
3. On March 19, 2025, and again on April 2, 2025, MassHealth/CCM completed an in person LTSS individualized assessment of the appellant. (Testimony).
4. Based on this assessment, MassHealth/CCM determined the amount of CSN services that were medically necessary and authorized the appellant to receive 33 hours out of school and 30 hours in school from April 27, 2025 to April 25, 2026. (Testimony and Exhibit 6).
5. In making the decision regarding the amount of CSN services that are medically necessary for the appellant, the MassHealth representative reviewed the following documents:
  - a. MassHealth medication review, Independent Nurse (IN) Plan of Care Record, MassGeneral Brigham medication orders, Nursing Notes, progress notes, seizure activity log, CPAP machine order, wheelchair gait letter, skin health letter, and patient clinical summary. (Testimony).
6. Through a notice dated April 18, 2025, the MassHealth notified the appellant that he has been approved for CSN services. (Exhibit 1).
7. The appellant's mother filed this appeal in a timely manner on May 8, 2025. (Exhibit 2).
8. The appellant lives with his mother who is a registered nurse and his independent nurse. (Testimony).
9. The appellant's mother did not contest MassHealth's determination relevant to the amount of time required to perform the following nursing interventions:

- a. Respiratory: totaling 32 minutes per day;
  - b. Gastro-Intestinal (GI)/Nutrition: Elimination management/frequency (totaling 3 minutes per day);
  - c. Neurological: Seizure frequency - generalized seizures (10 minutes per episode, 5 episodes per day; totaling 50 minutes per day), focal seizures (10 minutes per episode, 7 episodes per day; totaling 70 minutes per day);
  - d. Skilled assessment needs related to fluctuation in medical status: general assessment (30 minutes per day); medications (2 minutes per episode, 19 episodes per day; totaling 38 minutes per day). (Testimony).
10. MassHealth authorized a total of 18 minutes for oral feeds for 6 episodes of feeding per day due to risk for aspiration.
- a. The appellant has vomited at least once per week in the past month after consumption of meals which puts him at risk of aspiration.
  - b. The Independent Nurse (IN) Plan of Care Record sets forth a protocol of maintaining “high-Fowler’s position during and up to 45 minutes after meals.” (Testimony and Exhibit 6).
  - c. The appellant requires skilled nursing intervention for a total of 18 minutes per day due to risk of aspiration. (Testimony and Exhibit 6).
11. MassHealth increased the number of episodes allowed for myoclonus (muscle contraction) seizure to 12 episodes per day, 3 minutes per episode for a total of 36 minutes per day. (Testimony).
12. The updated myoclonus seizure records submitted by the appellant are consistent with an average of 12 episodes per day. (Exhibit 5).

## **Analysis and Conclusions of Law**

MassHealth’s regulation at 130 CMR 438.000 states 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. See 130 CMR 438.401.

Member with medical complexity is 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. See 130 CMR 438.402. For complex care members, as defined in 130 CMR 438.402,<sup>4</sup> the MassHealth agency or its designee provides administrative care management that includes service coordination with CSN agencies as appropriate. The purpose of administrative care management is to ensure that a complex care member is provided with a coordinated LTSS<sup>5</sup> package that meets the member's individual needs and to ensure that the MassHealth agency pays for nursing, complex care assistant services, and other community LTSS only if medically necessary in accordance with 130 CMR 450.204: Medical Necessity. The MassHealth member eligibility verification system identifies complex care members. See 130 CMR 438.414.

The complex-care member regulations are as follows:

(A) Care Management Activities.

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

(2) LTSS Needs Assessment. The clinical manager performs an in-person visit with the member to evaluate whether the member meets the criteria to be a complex care member as described at 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 an 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) DME 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 natural caregiver, and where appropriate, the CSN agency and the member's physician or ordering non-physician practitioner, that

---

<sup>4</sup> There is no definition for "complex care member" in this regulation. However, it appears that the term "member with medical complexity" is being used as a replacement. See 130 CMR 438.402.

<sup>5</sup> Long-term Services and Supports (LTSS) is defined 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." See in 130 CMR 438.402.

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., third-party liability, Medicare, Department of Developmental Services, adult foster care); and
4. informs the member of their right to a hearing, as described at 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 natural caregiver is requested to sign and return to the clinical manager. On the copy being returned, the member or the member's primary natural caregiver should indicate whether they accept or reject each service as offered and that they have 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. The MassHealth agency or its designee will authorize those LTSS in the service record, including nursing and complex care assistant services, that require prior authorization and that are medically necessary, as provided in 130 CMR 438.412, and coordinate all nursing services and complex care assistant 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. The MassHealth agency or its designee may also authorize other medically necessary LTSS including, but not limited to, PCA services, therapy services, DME, oxygen and respiratory therapy equipment, and prosthetics 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 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 and services that may affect the member's CSN agency service needs;
- (4) Needed changes in the agency's CSN agency PA; and
- (5) Any incidents warranting an agency submitting to the MassHealth agency or its designee an incident or accident report. See 130 CMR 438.415(D)(2).

See id.

The MassHealth regulations setting forth the criteria for 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 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 MassHealth agency pays for only those CSN services that are medically necessary. See 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).

In this case, there is no dispute regarding the appellant's clinical eligibility for CSN services. See 130 CMR 438.410(B). The issue is regarding MassHealth/CCM's authorization for CSN service hours for the appellant, who is a member with medical complexity (a.k.a. complex-care member). See 130 CMR 438.402.

On March 19, 2025, and again on April 2, 2025, MassHealth/CCM completed an in person LTSS individualized assessment of the appellant. Based on this assessment, MassHealth/CCM determined the amount of CSN service hours that were medically necessary and authorized the appellant to receive 33 hours out of school and 30 hours in school from April 27, 2025 to April 25, 2026. Since the appellant is medically excused from attending school, only the time allotted for out of school was discussed at the hearing.

MassHealth uses 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 members. The appellant's mother 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. While I am sympathetic to the appellant's position, the evidence does not adequately demonstrate specific tasks or needs that would require 24-hour care by a skilled nurse. The appellant's mother takes broad strokes regarding the appellant's overall needs as well as her own needs as a caregiver when she argues that the appellant needs skilled nursing care 24/7. This hearing officer cannot arbitrarily allocate additional time beyond the time authorized by MassHealth without sufficient evidence of the tasks performed requiring skilled nursing intervention.

To that end, during the hearing, the appellant's mother accepted MassHealth's determination relevant to the amount of time required to perform the following nursing interventions: Respiratory: totaling 32 minutes per day; Gastro-Intestinal (GI)/Nutrition: Elimination management/frequency (totaling 3 minutes per day); Neurological: Seizure frequency - generalized seizures (10 minutes per episode, 5 episodes per day; totaling 50 minutes per day), focal seizures (10 minutes per episode, 7 episodes per day; totaling 70 minutes per day); Skilled assessment needs related to fluctuation in medical status: general assessment (30 minutes per day); medications (2 minutes per episode, 19 episodes per day; totaling 38 minutes per day). Since the parties reached a resolution regarding these issues, these portions of the appeal are DISMISSED in accordance with 130 CMR 610.035(A)(8).

The appellant's mother contested MassHealth's determination relevant to the amount of time required to perform the following nursing interventions:

Gastro-Intestinal (GI)/Nutrition: Oral feeds/frequency-only scored if at risk for aspiration (3 minutes per episode, 6 episodes per day; totaling 18 minutes per day).

The appellant's mother stated that it takes the appellant 30 minutes to eat a meal and 15 minutes to eat a snack. During this time, it is imperative that he is monitored and assessed continuously to prevent aspiration. She added that he should also be monitored for 45 minutes after each meal because he has vomited at least once per week for the past month after consumption of meals which puts him at risk of aspiration which required nursing intervention. She also referenced section 22 of the Independent Nurse (IN) Plan of Care Record which states "maintain high-Fowler's position during and up to 45 minutes after meals. Supervise or assist patient with oral intake, encourage to eat slowly and chew thoroughly..." see Exhibit 6, p. 110, to support her argument regarding time needed to monitor after meals. The MassHealth representative suggested that this time is anticipatory and that monitoring of the appellant's during his meal consumption does not require skilled nursing intervention. Therefore, CSN service hours should not be allotted for observation during consumption of meals.

The appellant's mother, who is also his independent nurse, credibly testified that the appellant has vomited at least once a week after meals over the past month which required skilled nursing intervention. This testimony suggests that the monitoring of the appellant for vomiting after meals is a chronic need rather than anticipatory and unusual occurrence. The appellant's contention is further supported by the notation in section 22 of the "Plan of Care." See *id.* For these reasons, the appellant has demonstrated the need for additional time for monitoring after consumption of meals. The mother's assessment of the time needed for this intervention (45 minutes per episode, 6 episodes per day; totaling 270 minutes per day), is not objectively unreasonable. Accordingly, the appellant's request for additional CSN service time for this task is APPROVED.

However, the appellant's mother did not present any evidence regarding the actual skilled nursing time needed for monitoring meal consumption other than to state that it takes the appellant about 30 minutes to eat his meal and 15 minutes to eat his snack. MassHealth did not dispute and in fact allowed time for skilled nursing intervention during the appellant's meal consumption. The fact that the appellant may need to be monitored during his meal consumption does not necessarily mean that he requires skilled nursing intervention during this entire time. See 130 CMR 438.410(A)(3)(when a service can be safely and effectively performed by the average nonmedical person without the direct intervention of an RN or LPN, the service is not considered a nursing service). Here, the necessity of skilled nursing intervention time is more consistent with the MassHealth representative's testimony than the appellant's mother's blanket statement that the appellant requires skilled nursing intervention for the entire meal consumption time. An appellant bears the burden of proof at fair hearings "to demonstrate the invalidity of the administrative determination." See Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228, 231 (2007); see also Craven v. State Ethics Comm'n, 390 Mass. 191, 200 (1983)("[p]roof by a preponderance of the evidence is the standard generally applicable to administrative proceedings"). Based on the evidence, testimony, and medical records in this case, the appellant did not meet his burden. Accordingly, the appellant's request for additional CSN



service time for this task is DENIED and MassHealth's determination to allow 3 minutes per episode, 6 episodes per day; totaling 18 minutes per day is upheld.

Neurological: Seizure frequency – myoclonus (muscle contraction) in left leg (3 minutes per episode, 6 episodes per day; totaling 18 minutes per day). The appellant's mother referenced updated records submitted which contained updated seizure activity log reflecting an increase in number of myoclonus seizures. She testified that she is still making observations in order to ascertain an average number of myoclonus seizures per day, but that she had observed up to 26 episodes the day before this hearing. The MassHealth representative acknowledged the increase in number of myoclonus seizures as reflected in the updated records and stated that it averages out to 12 episodes per day. As such, she agreed to increase the frequency of episodes per day for myoclonus seizures to 12 episodes per day. Since the appellant's own submission supports MassHealth's contention, and MassHealth agreed to increase the number of episodes to 12 episodes per day, I find no medical necessity for additional time beyond what MassHealth offered. Accordingly, the increase of 12 episodes per day for CSN service time for this task is APPROVED.

Lastly, if the appellant can adequately demonstrate with specificity the skilled nursing time required for each specific task beyond the broad strokes presented at the hearing, the agency could likely perform a new assessment and make a new determination.

For the foregoing reasons, this appeal is DISMISSED in part, APPROVED in part, and DENIED in part.

## **Order for MassHealth**

Adjust the CSN service time to include an additional 45 minutes per episode, 6 episodes per day; totaling 270 minutes per day for "Gastro-Intestinal (GI)/Nutrition" task; and 3 minutes per episode, 12 episodes per day; totaling 36 minutes per day for "Neurological" task.

## **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.

---

Sharon Dehmand, Esq.  
Hearing Officer  
Board of Hearings

cc:

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