

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied in part; Approve in part	Appeal Number:	2509824
Decision Date:	10/27/2025	Hearing Date:	08/22/2025
Hearing Officer:	Christopher Jones	Record Open to:	09/05/2025

Appearance for Appellant:



Appearances for MassHealth:

Linda Phillips, RN, BSN, LNC-CSp. – Assc. Dir. of Appeals and Regulatory Compliance
Gianna Hemingway, RN – Assc. Dir. of Clinical Services for CCM

Interpreter:



*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 in part; Approve in part	Issue:	CCM
Decision Date:	10/27/2025	Hearing Date:	08/22/2025
MassHealth's Reps.:	Linda Phillips, RN; Gianna Hemingway, RN	Appellant's Rep.:	Mother
Hearing Location:	Teams	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 April 24, 2025, MassHealth's Community Case Management program authorized 54 hours per week of Complex Care Assistance, and 1 nursing supervisory visit every 60 days. (Exhibit 1; 130 CMR 438.000.) The appellant filed an untimely appeal on June 30, 2025. (Exhibit 2; 130 CMR 610.015(B).) The Board of Hearings dismissed this appeal on July 2, 2025, because the appellant did not provide the basis for the appeal. (Exhibit 3; 130 CMR 610.034; 610.035.) The appellant submitted a copy of a March 4, 2025 Community Long Term Care Assessment on July 10, 2025, explaining that the amount of assistance authorized was insufficient. (Exhibit 4.) The Board of Hearings dismissed this appeal request as untimely. (Exhibit 6; 130 CMR 610.015; 610.035.) The appellant requested that the dismissal be vacated, explaining that the appellant's life-threatening medical conditions resulted in the delay in filing the hearing request. This request was granted and the appeal was scheduled for hearing. (Exhibit 6; Exhibit 7.) Individual MassHealth determinations regarding scope and amount of assistance are valid grounds for appeal. (130 CMR 610.032.)

Following the hearing, the record was held open until September 5, 2025, to allow time for the appellant to submit additional evidence and for MassHealth to respond.

Action Taken by MassHealth

MassHealth conducted an annual assessment for long term services and supports and allowed 57 hours of complex care assistant services per week and 82 hours of continuous skilled nursing services per week.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 438.000, in determining that the appellant's parents, who are his complex care assistants, may not provide skilled nursing services if they are not licensed nurses.

Summary of Evidence

Linda Phillips, the Associate Director of Appeals and Regulatory Compliance for MassHealth's Community Case Management (CCM) program, was the principal representative on the agency's behalf. Ms. Phillips testified that CCM authorizes and coordinates MassHealth Long Term Services and Supports (LTSS), including continuous skilled nursing (CSN) services, home health aide (HHA), and complex care assistant (CCA) services to MassHealth members with complex medical needs. Clinical Managers, or CMs, are registered nurses who coordinate and approve services on behalf of MassHealth and provide a point of contact to members.

The appellant is a young child who enrolled with CCM on [REDACTED]. The appellant's primary diagnosis is [REDACTED]. In addition, he has diagnoses including dysphagia, scoliosis, ventilator dependence, G-Tube, tracheostomy, severe global developmental delay, granuloma, eosinophilic esophagitis, acute and chronic respiratory failure, and dislocated right hip. (Exhibit 10, p. 59.) An annual Community Long Term Care Needs Assessment was completed by MassHealth/CCM on March 4, 2025. As part of this assessment, the appellant was approved for 82 hours of CSN, 1,983 minutes (33 hours) per week of HHA services, and 1,427 minutes (24 hours) per week of CCA hours. (Exhibit 10, pp. 89-90.) At the appellant's request, MassHealth consolidated the HHA and CCA hours as all CCA hours, and the appellant was approved for 57 hours.¹ MassHealth's representative explained that CCA and HHA services are considered unskilled services, to distinguish them from skilled nursing services. The dates of service for this prior authorization period run from April 27, 2025, through April 26, 2026.

The appellant has declined to use the 82 hours of CSN services, and the appellant's primary objective in this appeal is to have his CSN services consolidated with his CCA hours. The appellant's

¹ The April 24, 2025 notice issued by MassHealth states that CCA hours were approved at 54 hours per week. At the hearing, MassHealth's representative corrected the total number of hours to 57 per week.

mother testified through the use of an interpreter.² She explained that she and her husband provide all of the appellant's care, and they do not want strangers providing care to the appellant. The appellant submitted a letter from his medical care team, which states in part:

[The appellant] is currently approved for only 57 hours per week. This allocation does not adequately reflect the full extent of the care, supervision, and clinical interventions that [the appellant] requires daily and nightly. Given the complexity of his medical needs, [the appellant] requires 24/7, around-the clock care and continuous supervision. The current allocation is significantly insufficient to ensure his safety and his well-being. [The appellant] is tracheostomy-dependent, ventilator-dependent, and G-tube fed, which necessitates high-level, skilled care. He requires constant, hands-on medical oversight that includes, but is not limited to: [tracheostomy care; ventilator management; G-tube care and feedings; respiratory therapies; and medical supply management.]

All of these duties are currently managed by his parents ... whom are his CCA, and they are solely responsible for providing his care, monitoring his condition, and responding promptly to any changes in status. This is not a level of care that can be left unattended or managed without constant, skilled support such as both of [the appellant's] parents. [The appellant's] condition is medically fragile. Any lapse in care, even briefly, can result in a rapid decline or emergency situation. Therefore, I respectfully urge you to reevaluate the current CCA hour allocation and approve an increase that more accurately reflects his intensive care needs—particularly the need for 24/7 support.

(Exhibit 15, pp. 1-2.)

MassHealth's representative testified that the appellant's parents are not nurses, and therefore they cannot be paid for providing skilled nursing services. MassHealth has regulations that govern what tasks must be performed by a nurse, and it also defines what tasks may be performed by a CCA. The definition of "Nursing Services" intrinsically defines a nursing task to be one that "requires specialized knowledge and skills acquired under the established curriculum of a school of nursing approved by a board of registration in nursing. Such services include only those services that require the skills of a nurse." (130 CMR 438.402.) CCA services are specifically delineated at 130 CMR 438.015(C).

² Testimony through the interpreter became unclear at several points. The interpreter paused on multiple occasions to note that the appellant's mother was using impolite language. The interpreter was asked to interpret exactly, to the best of her ability. The appellant's mother's frustration with the review process was apparent, but specific insults were never interpreted.

There is additional guidance regarding what services are “Nursing Services” in the Clinical Eligibility regulation at 130 CMR 438.410. Included in this guidance is the requirement that the service be provided by a registered nurse (RN) or licensed practical nurse (LPN). MassHealth’s representative pointed to the definition of “medical necessity,” which requires that care “must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality.” (130 CMR 450.204(B).) MassHealth argues that this definition requires skilled nursing tasks be performed by a licensed nurse in order to be billable as a “medically necessary” service.

It was noted that MassHealth and CCM often expect parents to provide care, including skilled care, that is required when a nurse is not available. MassHealth’s representative responded that this is a result of scheduling and the inability to anticipate when a nurse might be needed. The distinction here is that in order to bill for nursing services, those services must be provided by a qualified nurse. The appellant’s mother understood that if she were a nurse she would be able to work hours as a skilled nurse under the CCM program. The appellant’s mother testified that she completed a one-year home nurse certificate in her native country, and that she is providing all of the care that the appellant receives regardless of whether it is defined as “skilled nursing” care.³ The appellant’s mother agreed that she is not licensed in the Commonwealth of Massachusetts as a nurse. The parties agreed that it was a purely legal question regarding whether parents, who are not licensed nurses, may be paid for providing skilled nursing services.

The appellant’s mother also raised concerns about the amount of time allowed for CCA tasks. MassHealth’s representative explained that a CCA must meet all of the qualifications federally required for a HHA, but they are specifically authorized to provide certain enhanced care services in 10 categories of care: enteral G-tube/J-tube feedings; skin care including application of OTC products or routine G-tube/J-tube care; oxygen therapy; oral (dental) suction to remove superficial oral secretions; ostomy and catheter care; modified meal preparation; equipment management and maintenance (wheelchair, CPAP/BiPAP, oxygen and respiratory) and paperwork; braces, splints, and/or pressure stockings; transportation to medical providers/pharmacy (by driving the member or going alone); and incidental services. (See 130 CMR 438.415(C)(3)(a)2.)⁴

MassHealth authorizes time using its annual LTSS Needs Assessment, which was performed in person on March 4, 2025. The Needs Assessment is an in-person evaluation of the member and their care. Additionally, CCM reviewed a medication review MassHealth had prepared by a pharmacist. CCM then determined the clearly identifiable, specific medical needs for CSN and CCA services and the time required to perform each service. This time is catalogued in charts that reflect the nursing time allotted in each body system category and break down the time for hands-

³ It was also noted that there are overtime rules that would likely be involved if the appellant’s parents were his sole billing caregivers for 138 hours per week.

⁴ Additional guidance is published included in Exhibit 11 at pages 35-56.

on assistance with activities of daily living (ADL) that would be provided by a HHA, and a breakdown of “Enhanced Care Tasks” provided by a CCA.⁵ (See Exhibit 10, pp. 74-103.)

MassHealth’s Needs Assessment allowed the following time for Enhanced Care Tasks:

- For Enteral G-tube/J-tube feedings, MassHealth authorized 72 minutes per day, 7 days per week for a total of 504 minutes per week. (Exhibit 10, pp. 85-86, 90.)
 - 10 minutes, 6 times per day to initiate G-tube feeding, initial assessment of tolerance, and flushing the G-tube with 40ml of water before and after feeding, and
 - 2 minutes, 6 times per day for providing a 120 ml water bolus.
- For Skin Care around the G-tube site, MassHealth authorized 16 minutes per day, 7 days per week for a total of 112 minutes per week. (Exhibit 10, pp. 85, 90.)
 - 5 minutes, 2 times per day for care and assessment of the G-tube site, including time for cleansing, site assessment, application of topical medications if needed and a dressing. This time included the time for weekly balloon checks and time to change the G-tube every 3 months.
 - 3 minutes, 2 times per day to apply barrier cream to G-tube site.
- For Oral (dental) Suctioning, MassHealth authorized 72 minutes per day, 7 days per week for a total of 504 minutes per week. (Exhibit 10, pp. 83, 90.)
 - 1 minute, 3 times per hour (on average) for oral suctioning to manage oral secretions; time allotted includes time for respiratory assessment, suctioning and assessment of airway clearance, and nasal suctioning if needed.
- For Equipment Management/Maintenance, MassHealth authorized 5 minutes per day, 7 days per week for a total of 35 minutes per week. (Exhibit 10, p. 90.)

⁵ MassHealth confirmed that the appellant has declined personal care attendant (PCA) assistance, which is the service that would assist with instrumental activities of daily living, or chore services. The appellant’s parents cannot be his PCA. (130 CMR 422.404(A)(1)(d)1.)

- For Orthotics/Stockings, MassHealth authorized 5 minutes, 6 times per day, 7 days per week to apply and remove orthotics for the appellant. This totaled 210 minutes per week. (Exhibit 10, p. 90.)
 - 5 minutes to apply and 5 minutes to remove thoraco-lumbar-sacral orthosis (TLSO);
 - 5 minutes to apply and 5 minutes to remove ankle-foot orthoses (AFOs);
 - 5 minutes to apply and 5 minutes to remove hand splints.
- For Transportation, MassHealth authorized 62 minutes per week to bring the appellant to medical appointments and pharmacy trips. (Exhibit 10, p. 90.)

The appellant's mother raised concerns regarding the time for feeding and transportation.

The chart depicting the appellant's individualized assessment for CCA enhanced care tasks is available in Exhibit 10, pp. 90-91. The first enhanced care task reviewed is "Enteral G-tube/J-tube feedings." This time is described in the CSN assessment:

Bolus G-tube feedings of 230 ml of Neocate Splash are administered every 4 hours (6 times/day) on a pump. Time allotted to initiate each feeding, for an initial assessment of tolerance and flushing the G-tube with 40ml of water before and after feeding is 10 minutes per feeding = 60 minutes per day. [The appellant] requires a water bolus of 120 ml to be given via syringe 2 hours after each feeding. Time allotted is 2 minutes per bolus for a total of 6 per day = 12 minutes per day. Total time allowed is 60 + 12 = 72 minutes per day.

(Exhibit 10, pp. 85-86.)

The appellant's mother testified that each G-tube feeding takes an hour. She explained that the appellant has allergies and other stomach issues that require close attention. The food is pushed in through a pump, but the appellant's mother stays with him to make sure he is tolerating the food. MassHealth's representative is a registered nurse, and she testified that G-tube feeding pumps usually run on their own once they are set up. Time was allowed in CCM's calculation for setting up the feeding and assessing the appellant to ensure he is tolerating the food. She explained that MassHealth only allows time for active assistance from a CCA or nurse, and it does not allow time for waiting time.

The appellant's mother accepted the time allowed for feeding, but she felt that the time for water was drastically insufficient. For the water bolus, the appellant's mother testified that it takes about 15-18 minutes, and it has to be given 2 hours after the appellant's feeding. She testified that it

takes so long because she breaks up the 120 ml into 2, 60 ml syringes. She gives each of those very slowly, pressing the syringe across 8-10 minutes. The appellant has a history of stomach infections, and his doctors have recommended giving water slowly to avoid vomiting. The appellant's mother testified that giving the appellant water quickly also increases the risk to his liver and other organs. The appellant's mother watches the appellant for burps or other reactions, and generally never leaves his side.

MassHealth's representative testified that in her clinical experience, giving 60 ml of fluid through a syringe is a quick task. The appellant's mother was asked if she was applying pressure throughout the 15-18 minutes she gives the water bolus, and she replied that she applies pressure for 8-10 minutes and then takes a 2-3-minute break in between. It was noted that even if the appellant were receiving 1 ml of fluid per second, the syringe should only take a minute to administer. Ms. Phillips argued that if the appellant's stomach is so sensitive, his feeding and water bolus should be considered skilled tasks, and the task is not appropriate for a CCA to perform. The appellant's mother testified that she is just trying to care for her son in accordance with his doctor's instructions.

MassHealth had not included the calculation for how it determined transportation time in its hearing exhibit. MassHealth's representative reviewed the transportation time calculation on the record, reviewing all of the appellant's doctor's appointments. MassHealth's representative testified that there were 9 different providers that the appellant sees across the year. MassHealth calculated the transportation time to all of the appellant's appointments as 3,190 minutes per year, which equated to 62 minutes per week. MassHealth allowed the appellant 40 minutes round trip to get to the hospital where the appellant received most of his care. MassHealth determined the appellant attended 70 appointments per year at this hospital, which means 2,800 of the annual travel minutes are going to and from this hospital. The remaining 390 minutes for the year were made up going to the dentist and pharmacy. The appellant's mother testified that this time does not contemplate traffic to the hospital or the amount of time she spends in the doctor's office.

MassHealth's representative testified that they do not contemplate traffic when looking at how long transportation time is, and they testified that the time for a CCA to bring an individual to the doctor only includes the time for transportation. No time is allowed for staying at the doctor's office for the appointment because any hands-on assistance provided would have already been contemplated as hands-on assistance that would have happened at home. MassHealth's representative also testified that time for transferring into and out of the house was already approved as HHA service, 5 minutes per transfer, 10 transfers per day. (Exhibit 10, p. 93.) The appellant's mother argued that it never takes 20 minutes to get to an appointment. At best, it takes 25 minutes, but it is usually 40 minutes each way. The hearing record was held open for the appellant to submit proof of how long it takes to get to the provider from their house, and for MassHealth to respond.

The appellant's mother was again asked to clarify what she was looking to achieve from this appeal. The appellant's mother described many of the challenges that the appellant faces,

surviving on a day-to-day basis, and that he requires constant supervision and assistance. She reviewed all of the machines that she needs to monitor and disinfect every time they are used, and the orthotics the appellant uses. It was noted that MassHealth has allowed time for these, and the appellant's mother was asked if she had specific time estimates for these tasks that are different from MassHealth's. She did not have specific disputes regarding these times, rather she asked for over 100 hours per week of covered care. It was noted that she was authorized for 139 hours per week, if they were to use skilled nurses to provide care. The appellant's mother testified that she does not want to hire strangers to care for her son, so she wants to at least 100 hours for her and her husband to be paid to care for the appellant.

MassHealth's representative testified that CCM does not allow its members to have only CCA services. CCA services can only be approved in conjunction with CSN services.

During the record open period, the appellant submitted a copy of her 1-year home nursing diploma and screenshots showing that the drive to and from the appellant's home to the hospital was between 31 and 35 minutes each way. MassHealth's representative responded that they would increase the transportation time to 30 minutes each way from 20 minutes. Multiplied by 70, this increased the transportation time by 1,400 minutes per year. MassHealth agreed to increase the transportation time to 89 minutes per week, but did not include additional specific time for transfers, stating that this should be considered included in the 10 transfers per day authorized for the HHA.

Findings of Fact

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

- 1) The appellant is a young child who enrolled with CCM on [REDACTED] (Testimony by MassHealth's representative; Exhibit 11.)
- 2) The appellant's primary diagnosis [REDACTED] The appellant has other complicating diagnoses including dysphagia, scoliosis, ventilator dependence, G-Tube, tracheostomy, severe global developmental delay, granuloma, eosinophilic esophagitis, acute and chronic respiratory failure, and dislocated right hip. (Exhibit 10, p. 59.)
- 3) On March 4, 2025, MassHealth's CCM program began the appellant's annual LTSS Needs Assessment. (Testimony by MassHealth's representatives.)
- 4) On April 24, 2025, MassHealth mailed out a letter finalizing this Needs Assessment, and allowing 57 hours of CCA assistance per week. This time includes 33 hours of time originally authorized as HHA services. This authorization runs from April 27, 2025, through April 26, 2026. (Exhibit 1; testimony by MassHealth's representative; Exhibit 10, p. 90.)

- 5) The appellant was also authorized for 82 hours of CSN services, but the appellant has declined to access these services. (Testimony by MassHealth's representative; Exhibit 10, pp. 83-89.)
- 6) MassHealth detailed how it calculated time in the Needs Assessment for CCA services, and the appellant accepted most of the decisions made by MassHealth. (Testimony by MassHealth's representative and the appellant's mother; Exhibit 10, p. 90; Exhibit 11.)
- 7) The appellant specifically disputed how MassHealth calculated time for G-tube feedings and transportation time.
 - a. For G-tube feedings, MassHealth authorized a total of 72 minutes per day, or 504 minutes per week. (Exhibit 10, pp. 85-86, 90.)
 - i. This includes 10 minutes, 6 times per day to initiate G-tube feedings, perform an assessment of the appellant's tolerance of the food, and flush the G-tube with 40 ml of water before and after feeding, and 2 minutes, 6 times per day to give the appellant 120 ml of water. (Exhibit 10, pp. 85-86; testimony by MassHealth's representative.)
 - ii. The G-tube feeding runs through a pump that operates continuously for about an hour. The appellant's mother monitors the appellant during this time. The active hands-on assistance involved with feedings is about 10 minutes per feeding. (Testimony by the appellant's mother and MassHealth's representative.)
 - iii. The appellant's mother gives 2, 60 ml syringes of water, 2 hours after every feeding. The appellant's mother gives the water very slowly based upon instructions she received from the appellant's doctor. The appellant's mother testified that she actively presses a 60 ml syringe across 8-10 minutes before taking a 2-3 minute break. (Testimony by the appellant's mother.)
 - iv. If the appellant's medical condition is so delicate as to require water to be consumed at a rate of 1 ml every 8 seconds, this indicates a medical condition so severe as to require the skills of a nurse to perform the feedings and water boluses. (Testimony by MassHealth's representative.)
 - b. MassHealth calculated the transportation time to all of the appellant's appointments as 3,190 minutes per year, which equated to 62 minutes per week. (Exhibit 10, p. 90.)
 - i. 2,800 minutes of this time is based upon 70 visits per year to the hospital at which the appellant receives most of his care. MassHealth allowed 40

minutes for round trip transportation time to this hospital. (Testimony by MassHealth’s representative; Exhibit 15.)

- ii. MassHealth approved HHA time for transfers at 5 minutes, 10 times per day for transferring. MassHealth considers this transfer time as covering transfer time for medical appointments. (Testimony by MassHealth’s representative; Exhibit 11.)
- iii. MassHealth agreed to increase the round-trip transportation time to 60 minutes, increasing the annual time to 4,590 minutes, which equates to 89 minutes per week of transportation time. (Exhibit 15.)
- iv. The transportation time to and from the appellant’s house to the hospital is an average of 33 minutes, one way. (Exhibit 14.)

8) The appellant’s mother is seeking approval to be paid for over 100 hours per week. She does not want to use other caregivers to provide care to the appellant in her home. (Testimony by the appellant’s mother.)

Analysis and Conclusions of Law

The CCM Program is administered pursuant to 130 CMR 438.414, whereby 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)⁶ 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*. (130 CMR 438.414.)

A complex care member is defined as: “Member with Medical Complexity - 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.” (130 CMR 438.402.) “Nursing services” are defined as “the assessment, planning, intervention, and evaluation of goal-oriented nursing care **that requires specialized knowledge and skills acquired under the established curriculum of school of nursing** approved by a board of registration in nursing. Such services include only those services that require the skills of a nurse.” (130 CMR 438.402 (emphasis added).) CSN services are defined as

⁶ 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.”

“skilled nursing care **provided by a licensed nurse** to complex care members who require more than two continuous hours of nursing services per day.” (130 CMR 438.402 (emphasis added).)

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.) These services are only authorized through prior authorization, and “MassHealth members and/or primary natural caregivers ... determine when authorized CSN hours ... [are] used in order to best support the member’s needs. This can include scheduling authorized service hours in increments of less than two hours in order to meet the member’s needs and best utilize authorized hours.” (130 CMR 438.411, (G).)

The regulation governing clinical eligibility for skilled nursing services states:

(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.

(C) Clinical Eligibility for Complex Care Assistant Services. A member is clinically eligible for MassHealth coverage of complex care assistant services when

(1) **they are found eligible for CSN services** as described at 130 CMR 438.410(B);

(2) services described at 130 CMR 438.415(C)(3)(a)2. may be safely performed by a complex care assistant; and

(3) services are not duplicative of other services the member is receiving.

(130 CMR 438.410 (emphasis added).)

To bill as a complex care assistant, the CSN agency overseeing a member's care must ensure all complex care assistants complete a competency training and comprehension program that:

1. meets the home health aide qualification standards set forth in 42 CFR 484.80(a); and

2. provides, through hands-on practical training, education on how to perform the following activities that do not require the skills of a nurse, as ordered for a specific complex care member the assistant is being trained to serve:

a. enteral G-tube/J-tube feedings

b. skin care including application of OTC products or routine G-tube/J-tube care

c. oxygen therapy

d. oral (dental) suction to remove superficial oral secretions

e. ostomy and catheter care

f. modified meal preparation

g. equipment management and maintenance (wheelchair, CPAP/BiPAP, oxygen and respiratory) and paperwork

h. braces, splints, and/or pressure stockings

- i. transportation to medical providers / pharmacy (by driving the member or going alone)
- j. incidental services

(130 CMR 438.415(C)(3)(a).)

The MassHealth agency pays for only those CSN services that are medically necessary. (130 CMR 438.419(B).) Amongst other requirements, a medically necessary “services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality.” (130 CMR 450.204(B).) MassHealth also limits payment to activity time, whether that service is for “a clearly identifiable, specific medical need for a nursing visit” (130 CMR 438.410(B)(1)), or “hands-on assistance throughout the task or until completion” (130 CMR 403.416(A)(1)(b)).

The parties agree that their primary dispute rises from MassHealth’s refusal to reassign hours approved for CSN services to CCA services, so that the appellant’s parents can be paid for providing them. MassHealth’s decision is supported by the regulations. By definition, to be eligible for the CCM program, a MassHealth member must require CSN services. Further, CSN services may only be provided by a licensed nurse. (130 CMR 438.402.) It appears that MassHealth is already allowing the appellant an extraordinary degree of flexibility to have CCA services authorized without CSN also being provided. (See 130 CMR 438.415(C)(5) (CCAs must be supervised by an RN).)

There is some ambiguity as to what qualifies as a skilled nursing service. The lower bound appears to be a service that “can be safely and effectively performed (or self-administered) by the average nonmedical person without the direct intervention of an RN or LPN” (130 CMR 438.410(A)(3).) As an upper bound, certain services are intrinsically “nursing services on the basis of complexity alone (for example, intravenous and intramuscular injections).” (130 CMR 438.410(A)(2).) Typically, HHAs and PCAs are considered unskilled or “the average nonmedical person.” The CCA category of care specifically identifies certain tasks that a non-nurse may be allowed to perform after proving competency to perform them. These services are limited to the 10 categories of assistance listed in 130 CMR 438.415(C)(3)(a).

Therefore, this appeal must be DENIED with regard to the appellant’s primary goal of having the 82 hours of CSN services per week transferred to the appellant’s parents as is CCAs.

This appeal is also DENIED in part with regards to Enteral G-tube feedings. The appellant’s mother agreed with MassHealth regarding the time involved in actively managing the appellant’s G-tube feedings. The appellant’s mother’s dispute was regarding how long giving the appellant 120 ml of water takes. She testified that she is actively involved in delivering 60 ml of water using a syringe across 8-10 minutes, before taking a 2–3-minute break and then actively delivering another 60 ml. I cannot credit this testimony. MassHealth’s clinical determination was that 120 ml would take about 2 minutes to deliver, which equates to 1 ml per second. To a layman, this would already appear to

be a very slow delivery of water, and it is difficult to imagine how water could be manually delivered at a much slower rate without taking regular breaks. MassHealth's representative further argued that a medical condition that requires more intensive care should be considered a nursing service due to the complexity of the patient, pursuant to 130 CMR 438.410(A)(2).⁷

The appellant is correct that MassHealth allowed less medical transportation time than appropriate. MassHealth had allowed 40 minutes round-trip for the appellant to get from his home to the hospital that he visits 70 times a year. The hearing record was held open to allow the appellant to submit evidence regarding how long it takes to get to the hospital. The appellant submitted evidence showing that it takes between 31 and 35 minutes to get between his house and the hospital. MassHealth agreed to increase the round-trip travel time from 40 minutes to 60 minutes. However, MassHealth provided no evidence for why 30 minutes was a more accurate reflection of time than the average time from the online map estimates submitted by the appellant, 33 minutes. Therefore, this appeal is APPROVED in part. MassHealth shall recalculate travel time based upon 66 minutes for 70 visits to the hospital per year.

The appellant raised no concerns regarding the transfer time, though the appellant's mother noted how long the medical appointments are. MassHealth noted that CCA time is only for "transportation to medical," and that waiting at a medical provider is generally not considered hands-on assistance. Any assistance the appellant would require while at the medical provider is already contemplated elsewhere in the daily assistance approved through the LTSS assessment.

Order for MassHealth

Recalculate the appellant's CCA time, allowing 66 minutes for round-trip travel to 70 visits to the appellant's primary hospital.

⁷ The appellant is welcome to submit specific clinical instructions in the future, or support from medical providers regarding how this task should be performed, to substantiate the need for additional CCA or HHA time in this or any category of assistance.

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 CCM. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Christopher Jones
Hearing Officer
Board of Hearings

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