

# 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>	1800903
<b>Decision Date:</b>	5/1/18	<b>Hearing Date:</b>	03/22/2018
<b>Hearing Officer:</b>	Paul C. Moore	<b>Record Closed:</b>	04/09/2018

## Appellant Representative:

### MassHealth Representatives:

Linda Phillips, R.N., senior manager, appeals and regulatory compliance, University of Massachusetts Medical School (in person); Ramona Barron, R.N., community case management clinical manager; Margie Morel, appeals coordinator (both by telephone)



*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
<b>Decision Date:</b>	5/1/18	<b>Hearing Date:</b>	03/22/2018
<b>MassHealth Reps.:</b>	Linda Phillips et al.	<b>Appellant Rep.:</b>	
<b>Hearing Location:</b>	Quincy Harbor South Tower	<b>Aid Pending:</b>	Yes

## 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 December 15, 2017, MassHealth approved the appellant for continuous skilled nursing (CSN) and personal care attendant (PCA) services through the Community Case Management (CCM) program (Exhibit 1). The appellant filed this appeal with the Board of Hearings (BOH) in a timely manner on December 26, 2017 (Exhibit 2; 130 CMR 610.015(B)). An agency determination regarding the scope and amount of assistance is valid grounds for appeal to BOH (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth approved 115 hours of CSN services per week for the appellant for December 17, 2017 through June 16, 2018. MassHealth also approved 80 hours, 15 minutes per week of day/evening PCA services, and 2 nighttime PCA hours per night, 7 nights per week, for the appellant for the period December 31, 2017 through January 13, 2018, following by 14 hours, 30 minutes of day/evening PCA services, and 2 nighttime PCA hours per night, 5 nights per week, for the period January 14, 2018 through June 16, 2018.

## Issue



The appeal issue is whether MassHealth was correct in determining the number of CSN hours and PCA hours that are medically necessary for the appellant.

## Summary of Evidence

The MassHealth representative, a registered nurse and senior manager of appeals and regulatory compliance at the University of Massachusetts Medical School, testified that the Community Case Management (“CCM”) program provides authorization and coordination of MassHealth long-term services and supports, including CSN services and PCA services, to a defined population of MassHealth eligible, medically complex members (Testimony).

On September 25, 2017, CCM completed an annual in-person long-term services and supports assessment Needs Assessment (“assessment”) of the appellant at the appellant’s home. Based on the assessment, CCM determined the amount of CSN services that are medically necessary for the appellant, and authorized the appellant to receive the following: 115 hours of CSN services per week for December 17, 2017 through June 16, 2018. Based on the assessment, CCM also determined the amount of PCA services that are medically necessary for the appellant, and authorized the following: 80 hours, 15 minutes per week of day/evening PCA services, and 2 nighttime PCA hours per night, 7 nights per week, for the period December 31, 2017 through January 13, 2018, following by 14 hours, 30 minutes of day/evening PCA services, and 2 nighttime PCA hours per night, 5 nights per week, for the period January 14, 2018 through June 16, 2018 (Testimony; Exhibit 7).

MassHealth coverage is secondary coverage for the appellant; she also has Medicare and Champus Tricare insurance (Ex. 1, Ex. 7).

The MassHealth representative testified that the appellant is 75 years old, lives in the community with her husband, daughter, son-in-law, and grandchildren, and has been a complex care member since May 28, 2014. The MassHealth representative testified that the appellant’s primary diagnosis is amyotrophic lateral sclerosis (“ALS”), for which she requires a tracheostomy, continuous mechanical ventilator support, and a gastrostomy tube (“G-tube”). Secondary diagnoses include gastroparesis, osteopenia, Takotsubo cardiomyopathy, constipation, and recurrent pressure ulcers (Testimony, Ex. 1). At the in-home CCM assessment on September 25, 2017, the appellant was present, along with her daughter (who is her primary caregiver and her appeal representative); a MassHealth CCM clinical manager, Ms. Barron; a PCA; a home health aide (“HHA”); and a licensed practical nurse from a home care agency, Home and Health Resources. At the in-person assessment, MassHealth learned that the appellant currently receives 56 hours per week of HHA services through the MassHealth frail elder waiver program.<sup>1</sup> According to the MassHealth representative, CCM does not pay for any health care and related services that are available at no cost to the member, including services that are available through any agency of the local, state or federal government, or from any entity legally obligated to provide those services (Testimony, Ex. 7).

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<sup>1</sup> These HHA services are furnished by Bayada, according to Ex. 11.

Prior to making its decision in this matter, MassHealth reviewed the appellant's medication list, a home health certification and plan of care from PSA Healthcare agency ("PSA"), nursing flowsheets and private duty nurses notes from PSA, home health certification and plan of care from Home and Health Resources agency, nursing flowsheets and private duty nurses notes from Home and Health Resources agency, and a plan of care from South Shore Elder Services ("SSES"), the agency coordinating HHA services for the appellant (Testimony, Ex. 7).

#### A. PCA time

The MassHealth representative stated that MassHealth also completed a PCA evaluation of the appellant, in order to determine how much hands-on assistance the appellant needs in order to carry out her activities of daily living (ADLs) and instrumental activities of daily living (IADLs). Pursuant to the PCA evaluation, MassHealth determined that for most of her ADLs, the appellant needs two persons to assist her. The appellant is transferred via Hoyer lift, which requires two persons, including one to ensure the safety of, and to assist with the maneuvering of, her ventilator tubing. The MassHealth representative indicated that MassHealth will not authorize PCA assistance time for the appellant at times when the appellant has HHA services and CSN services present simultaneously, *i.e.*, when two caregivers are already present. The MassHealth representative submitted into evidence a graphic representation ("graph") of the weekly CSN and HHA services that the appellant receives (Ex. 8).

The graph shows that the appellant has CSN services for the following shifts: 7 am to 2 pm, and 2 pm to 10 pm on Mondays; 7:30 am to 2 pm on Tuesdays; 3 pm Tuesdays through 6 am Wednesday mornings; 7 am through 2 pm, and 2 pm through 10 pm on Wednesdays; 7:30 am through 1:30 pm on Thursdays; 3 pm Thursday through 6 am Friday mornings; 7:30 am through 10 pm on Fridays; 7 am through 2 pm, and 3 pm through 10 pm, on Saturdays; and 6 am through 2 pm on Sundays (Ex. 3B, p. 49). With regard to these hours, the appeal representative testified that currently the appellant does not have CSN from 2 pm to 10 pm on Mondays; that she does not have CSN from 7:30 am to 10 pm on Thursdays; that she does not have CSN from 7 am to 2 pm or from 3 pm to 10 pm Saturdays; and that she has CSN only every other Sunday from 8 am to 2 pm. She is seeking to fill those time slots (Testimony, Ex. 8).

The graph also shows that the appellant has HHA services for the following times: 8 am to 1 pm, and 3 pm to 9 pm, on Mondays; 8 am to 1 pm, and 4 pm to 9 pm, on Tuesdays; 8 am to 1 pm, and 4 pm to 9 pm on Thursdays; 8 am to 1 pm, and 5 pm to 9 pm, on Fridays; 3 pm to 9 pm both Saturdays and Sundays. With regard to these hours, the appeal representative testified that they are accurate, except that currently the appellant does not have HHA services from 3 pm to 9 pm on Mondays, although SSES is looking to fill that time slot with a HHA (Testimony, Ex. 8).<sup>2</sup> The MassHealth representative testified that MassHealth authorized PCA assistance time for transfers for the appellant as follows: Wednesdays 4 times a day, taking 15 minutes per transfer; and Saturdays and Sundays 2 times a day, taking 15 minutes per transfer, for a total of 120

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<sup>2</sup> The appeal representative stated that the Monday evening time slot (3 pm to 9 pm) is now filled by a PCA.



minutes per week. The appeal representative stated that she did not agree with the duration of PCA assistance with transfers authorized by MassHealth, and stated it is "more like 15 to 20 minutes" per transfer. She stated that the appellant has gotten worse since the date of the in-person assessment. She needs to be suctioned during all transfers. Also, the nurse and/or PCA applies Balmex to a pressure sore on the appellant's buttocks at times when the appellant is being transferred. Sometimes, a cough-assist machine also accompanies the appellant during transfers (Testimony).

The MassHealth representative testified that MassHealth authorized PCA assistance time for showering the appellant (including time for transfers to and from the shower chair, full body wash, hair washing and drying, and proper tracheostomy and ventilator care) as follows: 60 minutes of PCA assistance per day, on Wednesdays, Saturdays, and Sundays, for a total of 180 minutes per week. The appeal representative agreed with this authorization of PCA time (Testimony, Ex. 3B, p. 50).

The MassHealth representative next testified that MassHealth authorized PCA assistance time for dressing the appellant as follows: 25 minutes once per day on Wednesdays, and 25 minutes twice per day on Saturdays and Sundays, for a total of 125 minutes per week. At hearing, the MassHealth representative identified an error in the MassHealth authorization in this area, stating that 25 minutes of PCA assistance with dressing should have been authorized only one time on Saturdays, and only one time on Sundays, for a total of 75 minutes per week. The appeal representative testified that it takes longer than 25 minutes for two persons to assist the appellant to dress, especially now that the appellant no longer can support her head on her own, which occurred about a month prior to hearing. The appeal representative struggled to quantify the amount of additional time it takes two persons to assist the appellant to dress due to the appellant's lack of head support, finally settling on approximately 30 minutes (Testimony, Ex. 3B, p. 51).

The MassHealth representative next testified that MassHealth authorized PCA assistance time for undressing the appellant as follows: 20 minutes once per day on Wednesdays and Sundays, for a total of 40 minutes per week. The appeal representative stated that this task, requiring two persons, involves rolling the appellant from side to side, applying multi-podus boots to her lower extremities, applying hand splints, and preparing the bed with pillows under the appellant's head, and under her knees and calves. She did not agree that this task takes 20 minutes in duration (Testimony, Ex. 3B, p. 51).

Next, the MassHealth representative testified that MassHealth authorized PCA assistance for the appellant with bladder care, as follows: 20 minutes in duration, 7 times per day on Wednesdays, and 20 minutes in duration, 4 times per day, on Saturdays and Sundays, for total time of 300 minutes per week (Testimony, Ex. 3B, p. 52). The MassHealth representative and CCM case manager (the latter testified telephonically), indicated that the 20-minute duration per occurrence includes hands-on PCA assistance time with transfers via Hoyer lift to the commode chair in the bathroom, and transfers via Hoyer lift from the commode chair to the appellant's wheelchair (Testimony).

The appeal representative testified that it typically takes about 45 minutes for two persons to assist the appellant with bladder care per occurrence, including about 20 minutes per transfer via Hoyer lift, and an additional 5 minutes for managing the appellant's clothing, and assisting her with hygiene following urination. The appellant does not use a bedpan (Testimony).

The MassHealth representative next testified that MassHealth authorized PCA assistance for the appellant with bowel care, as follows: 25 minutes in duration per occurrence, once per day, on Wednesdays, Saturdays, and Sundays, for a total of 75 minutes per week (Ex. 3B, p. 53). The appeal representative indicated that the appellant now regularly has a bowel movement three times a day, not once per day, in view of the laxatives she is now prescribed, and a daily suppository she receives. The appeal representative also stated that the duration for each occurrence is roughly the same as for bladder care occurrences, 45 minutes (including 20 minutes of transfer time to/from the commode chair, and 5 minutes for hygiene management) (Testimony).

In response to the testimony of the appeal representative, the MassHealth representative agreed to increase the frequency of PCA assistance with bowel care from one time on Wednesdays, to three times on Wednesdays, from one time on Saturday to two times on Saturday, and from one time on Sunday to two times on Sunday, totaling an extra 100 minutes per week. However, the parties did not agree on the duration of each occurrence of PCA assistance with bowel care (Testimony).

The MassHealth representative asked the appeal representative if there are any occasions when the appellant has a bowel movement and urinates simultaneously. The appeal representative responded that in the morning, the appellant transfers from bed to commode chair, has a bowel movement and urinates at the same time, and then transfers from commode chair to her wheelchair. However, this is the only time of day when her urination and bowel movements coincide, so that in fact, the appellant requires nine total instances of PCA assistance with bowel and bladder care daily (Testimony).

Next, the MassHealth representative addressed PCA assistance time MassHealth authorized for transport to and from the appellant's medical appointments. Based on information MassHealth received that the appellant had six medical appointments last year, including 5 with physicians at Massachusetts General Hospital ("MGH") in Boston, and one with a physician in South Weymouth, MassHealth calculated round-trip travel time from Hingham to Boston (150 minutes) multiplied by five visits (750 minutes), and round-trip travel time and Hingham to South Weymouth (60 minutes), multiplied by one visit (60). Adding these figures yielded total travel time per year of 810 minutes. Next, MassHealth calculated PCA assistance time for transfers from the appellant's home to a vehicle, and from the vehicle back into the home (20 minutes per transfer, or 40 minutes total), and then calculated PCA assistance time for transfers from the vehicle to the doctor's office, and from the doctor's office back into the vehicle (20 minutes per transfer, or 40 minutes total), adding these figures together to calculate total transfer time per appointment (80 minutes). MassHealth then multiplied 80 minutes times six (the total number of



medical appointments per year), yielding 480 minutes. Next, MassHealth added 810 minutes and 480 minutes, yielding a figure of 1290 minutes of PCA assistance per year with travel/transfers to and from medical appointments. MassHealth then divided 1290 minutes by 52.14, representing weeks per year, yielding a figure of 25 minutes per week (on average) of time for PCAs to assist the appellant with transport to and from medical appointments, including necessary transfers (Testimony, Ex. 10).<sup>3</sup>

The appeal representative asked the MassHealth representative whether MassHealth allocates time, in the medical transport line item, for the PCA to assist with buckling the appellant into the vehicle seat, with packing an ambu-bag, and for loading a suction machine and a cough-assist machine into the van to bring with the appellant. The MassHealth representative stated that the time allocated for this task includes only hands-on time for the PCA to physically assist the appellant (Testimony).

Next, the MassHealth representative indicated that the appellant is authorized for two hours of PCA assistance time per night, every night, which includes time for transfers for toileting the appellant, and for repositioning the appellant. The appeal representative agreed that this time is acceptable (Testimony, Ex. 3B, pp. 54-55).<sup>4</sup>

The appeal representative testified that she does not understand why MassHealth is reducing the appellant's PCA hours for the current authorization, when the appellant's condition has not gotten any better. Further, the appeal representative is employed outside the home, and the appellant's husband is no longer able to care for the appellant due to his own health issues. She testified she would never consider placing the appellant in a nursing facility. She testified that the appellant had 56 HHA hours last year, plus 80 PCA hours. In response, the MassHealth representative stated that MassHealth did not know that the appellant had 56 HHA hours last year. When it learned at the September, 2017 in-person assessment that she receives 56 HHA hours, MassHealth made a determination to gradually reduce the authorized PCA hours because they duplicate service hours provided by the HHAs. In sum, according to the MassHealth representative, pursuant to this decision, the appellant gets coverage from a PCA or a HHA for a total of 80 hours, 30 minutes per week through June, 2018, when a new MassHealth CCM evaluation will occur (Testimony).

#### B. Skilled nursing care

The MassHealth representative stated that MassHealth authorized 115 hours per week of CSN for the appellant for the current time period. The appeal representative stated that this amount of

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<sup>3</sup> The MassHealth representative did not produce a copy of the worksheet MassHealth used to calculate the 25 minutes/week figure at hearing, so at the close of the hearing, the hearing officer left the record of this appeal open for MassHealth to produce a copy. The MassHealth representative produced the worksheet to the hearing officer and to the appeal representative via e-mail on March 23, 2018 (Ex. 10).

<sup>4</sup> Although not addressed specifically by MassHealth in its testimony, the hearing officer notes that PCA nighttime hours were reduced to five nights a week, rather than 7, for the time period at issue, presumably because a nurse is present in the appellant's home two nights per week per Ex. 8.

CSN time is insufficient, because the appellant's condition has gotten worse since the time of the in-person assessment. In particular, the appeal representative took issue with the CSN time allocated for G-tube bolus feeds. MassHealth authorized time for the skilled nurse to administer Ensure to the appellant via bolus feed twice a day, at a duration of 15 minutes per feed. In addition, MassHealth authorized an additional one minute of CSN time for flushing the G-tube syringe with water and venting the G-tube site following each bolus feed, and 2 additional minutes per day for checking the placement of the G-tube balloon. Thus, total CSN time authorized by MassHealth for the line item "G-tube feedings" was 33 minutes per day (Testimony, Ex. 3B, p. 45).

The appeal representative testified that the appellant now receives four bolus feeds of Ensure, one-half can per feed, daily. In response to this testimony, the MassHealth representative agreed increase the CSN time for the line item "G-tube feedings" from 33 minutes per day to 63 minutes per day (Testimony).

The appeal representative testified that following each bolus feed, the appellant's G-tube must be vented, requiring the skilled nurse to push on the appellant's belly. Typically, the nurse waits about five minutes following the bolus feeds prior to venting the G-tube site. In response to this testimony, MassHealth agreed to authorize an additional three minutes, four times per day following each bolus feed, or 84 minutes per week, for the nurse to vent the G-tube site. The appeal representative agreed that this additional time is acceptable to her (Testimony).

The appeal representative requested additional CSN time for suctioning the appellant's tracheostomy and mouth, because the appellant has more secretions now and more difficulty swallowing. MassHealth authorized 360 minutes daily of CSN time for suctioning, taking 3 minutes per suction approximately 5 times per hour, 24 hours per day. The MassHealth representative stated that time was also authorized for general tracheostomy care in the amount of 55 minutes daily, which includes some time for tracheostomy suctioning.<sup>5</sup> The appeal representative stated that the nurses suction the appellant's tracheostomy approximately 7 times every hour. The appeal representative indicated that at times, she personally suctions the appellant's mouth, as do the appellant's husband, the HHAs and the PCAs. She also stated, "we suction all the time now, and normally when you do one, the machine is on, you just do the other." In response to this testimony, the MassHealth representative stated that MassHealth will authorize an additional 3 minutes two additional times per hour for suctioning, or 144 minutes daily (Testimony, Ex. 3B, p. 43). The appeal representative stated that this is acceptable to her.

The appeal representative stated that the appellant needs more CSN time in the area of "cough assist" for the appellant (in the line item for chest physiotherapy), which MassHealth authorized in the amount of 80 minutes daily. Upon hearing the appeal representative's testimony that this task is performed five times a day, rather than four times a day, taking a duration of 20 minutes each time, MassHealth agreed to authorize an additional 20 minutes per day, or 700 minutes per

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<sup>5</sup> The line item for nursing tracheostomy care states that 30 minutes is authorized in the morning for the nurse to perform trach care, including "[clearing] copious oral and tracheal secretions by suction" (Ex. 3B, p. 43).



week, of CSN time for this nursing intervention (Testimony).

The appeal representative submitted into evidence a March 8, 2018 letter from Debra Skoniecki, R.N., a nurse practitioner at the ALS multidisciplinary clinic at MGH, which states in relevant part:

I am writing on behalf of [the appellant], who is under my care at MGH for [ALS], a progressive motor neuron disease with no cure.

[The appellant] is in the advanced stages of ALS. She is bedbound with a tracheostomy and requires ventilation due to chronic respiratory failure. Due to disease progression and advanced stage, she needs 24/7 total care including ventilation management, constant mouth and tracheostomy suctioning, assistance with all ADLs, food preparation, transferring and repositioning.

(Ex. 6)

The appeal representative also submitted into evidence a March 21, 2018 letter from Karen O'Neil, R.N., a nurse practitioner at Brigham and Women's Hospital in South Weymouth, concerning the appellant's husband, with whom the appellant lives (Ex. 5). The letter states in pertinent part:

J.R. is a 78 year-old gentleman who is under the medical care of . . . a nephrologist. . . and a cardiologist . . . .

J.R. is currently a care provider for [the appellant] who has ALS. J.R. also has multiple medical problems including: coronary artery disease, history of myocardial infarction, severe vascular disease, history of stroke, carotid artery stenosis, cardiomyopathy, congestive heart failure, COPD and advanced chronic kidney disease. He has had recurrent hospitalizations, most recently for treatment of pneumonia, and prior to that for management of shortness of breath requiring cardiac catheterization for the evaluation of ischemic heart disease.

J.R. has had to postpone his own health care needs, to care for [the appellant] at home, compromising his own health. It is becoming increasingly more difficult for him to physically provide care that [the appellant] requires as her health declines with the progression of ALS. He is requesting additional home care nursing services to help manage all the needs of [the appellant].

(*Id.*)<sup>6</sup>

### C. Post-hearing submissions

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<sup>6</sup> Initials are used to protect confidentiality.

At the close of the hearing, the hearing officer agreed to keep the record of this appeal open until April 9, 2018 for the MassHealth representative to review and respond to the nurse practitioner letters submitted by the appeal representative at hearing, and to submit a copy of the worksheet used by MassHealth to compute the authorized PCA time for assistance with medical transport (Ex. 9). The hearing officer also allowed the appeal representative until April 16, 2018 to submit written comments on the worksheet calculation of PCA time for assistance with medical transport, if she chose to do so (*Id.*).

On March 29, 2018, the hearing officer received, via e-mail, written comments from the appeal representative concerning the calculation of PCA assistance with medical transport (Ex. 11). The comments state in relevant part:

A PCA accompanies [the appellant] [to physician visits] as she needs constant suctioning and often have to pull over to do it.

The nurse at my home pointed out that when we travel to the doctor we need to use the bathroom, an extra trip, prior to leaving. [The appellant] can't use the bathroom at MGH as she needs a bathroom chair and a Hoyer lift. This means we need the Hoyer transfer that is about 20 minutes one way and 20 the other, totaling 40 minutes. . . .

Regarding the amount of appointments (*sic*). [The appellant] can no longer get into Dr. Patel's [primary care physician's] office as it is small. Therefore she will be seen by the MGH team twice a year for PCP appointments. . . . [The appellant] had a recent dental procedure and as I write this she is currently on amoxicillin for a tooth ache. . . I attached the last bill and would like to add a visit to Holbrook Dental to the current doctor appointments. This is a similar time to Boston so I would suggest the same time allotted for the MGH visit. [The appellant] may need a Dermatologist appointment as she has eczema. Currently we do not have it scheduled but I would like the opportunity to add it, when we do?

(*Id.*).

The appeal representative's March 29, 2018 e-mail also further addresses issues of CSN-authorized time for suctioning, although the hearing officer did not request any such additional evidence. In particular, the appeal representative stated:

[The appellant] also needs care 7 nights a week as she is on a ventilator unable to move or suction herself. . . . As you can see by the [Bayada] directors letter, attached, that the HHAs that work 54 (*sic*) hours in my home for respite can NOT suction either mouth or trach. Therefore a PCA or nurse has to be taking care of [the appellant's] vent suctioning and respiratory needs 24/7, as per the note MGH had sent. I asked Dr. David for a clarification and have attached it to the e-mail.



(*Id.*).

Attached to the March 29, 2018 submission of the appeal representative (Ex. 11) is a copy of an e-mail with the subject line, "HHA Duties Clarified," from an individual purportedly from Bayada sent to the appeal representative, stating, "As [the appeal representative] requested, I reviewed the Massachusetts Scope of Practice and it reads as follows: Under respiratory care: Trach care is not allowed as per Bayada policy. Oropharyngeal suctioning is allowed by yankauer suction only. However [Bayada's] contract with SSES does not allow us to yankauer suction. Nasopharyngeal suctioning is not allowed as per Bayada policy. These three tasks are not allowed under the Massachusetts Scope of Practice as well as our contract with SSES" (Ex. 11A).<sup>7</sup>

The appeal representative also submitted, with her March 29, 2018 e-mail, a March 26, 2018 letter from William David, M.D., Ph.D., at the MGH multidisciplinary clinic, stating in pertinent part:

I am writing this letter on behalf of [the appellant], who is under my care at MGH for ALS, a progressive motor neuron disease without a cure.

[The appellant] is in the advanced stages of ALS. She is bedbound with a tracheostomy and requires ventilation due to chronic respiratory failure. Due to her disease progression and advanced stage, she needs 24/7 care. This includes a medical professional trained in trach care/management and deep suctioning as this is required many times throughout the day/night.

(Ex. 11B)

On or about March 30, 2018, the hearing officer received written comments from the MassHealth representative, stating that MassHealth will not authorize any additional CSN or PCA time for the appellant based on the content of Ex. 5 (letter from Karen O'Neil, R.N., nurse practitioner about the appellant's husband's health conditions) and of Ex. 6 (letter from Debra Skoniecki, R.N., a nurse practitioner about the appellant's medical needs) (Ex. 12).<sup>8</sup>

Finally, on or about April 4, 2018, the hearing officer received an additional e-mail from the appeal representative, stating in part:<sup>9</sup>

I just wanted to let you know that [the appellant] went to Holbrook Dental today to have a back tooth pulled and X-rays. She has been having severe tooth pain. We need to schedule two more visits for fillings on each side of her mouth. Please let me

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<sup>7</sup> The hearing officer is unclear what Massachusetts scope of practice the Bayada representative is referring to, as she did not testify at hearing, and the appeal representative did not clarify this point in her post-hearing submissions.

<sup>8</sup> This response was copied to the appeal representative.

<sup>9</sup> The appeal representative did not copy this e-mail to the MassHealth representative, so the hearing officer forwarded same to the MassHealth representative on April 4, 2018.

know if we can add this to the doctor visit schedule for PCA help.

(Ex. 13)

## Findings of Fact

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

1. The appellant is 75 years old, lives in the community with her husband, daughter, son-in-law, and grandchildren (Testimony).
2. MassHealth CCM provides authorization and coordination of MassHealth long-term services and supports, including CSN services and PCA services, to a defined population of MassHealth eligible, medically complex members (Testimony).
3. The appellant's primary diagnosis is ALS, for which she requires a tracheostomy, continuous mechanical ventilator support, and a G-tube. Secondary diagnoses include gastroparesis, osteopenia, Takotsubo cardiomyopathy, constipation, and recurrent pressure ulcers (Testimony, Ex. 1).
4. MassHealth coverage is secondary coverage for the appellant; she also has Medicare and Champus Tricare (Ex. 1, Ex. 7).
5. On September 25, 2017, CCM completed an annual in-person assessment of the appellant at the appellant's home. Based on the assessment, CCM determined the amount of CSN services that are medically necessary for the appellant, and authorized the appellant to receive the following: 115 hours of CSN services per week for December 17, 2017 through June 16, 2018. Based on the assessment, CCM also determined the amount of PCA services that are medically necessary for the appellant, and authorized the following: 80 hours, 15 minutes per week of day/evening PCA services, and 2 nighttime PCA hours per night, 7 nights per week, for the period December 31, 2017 through January 13, 2018, following by 14 hours, 30 minutes of day/evening PCA services, and 2 nighttime PCA hours per night, 5 nights per week, for the period January 14, 2018 through June 16, 2018 (Testimony, Ex. 1).
6. The appellant currently receives 56 hours per week of HHA services through the MassHealth frail elder waiver program (Testimony, Ex. 3).
7. The appellant's husband and daughter have been the appellant's primary caregivers (Testimony).
8. The appellant's husband is 78 years old, has his own medical problems, and is no longer able to care for the appellant (Testimony, Ex. 5).
9. Prior to making its decision in this matter, MassHealth reviewed the appellant's medication list, a home health certification and plan of care from PSA Healthcare agency



(“PSA”), nursing flowsheets and private duty nurses notes from PSA, home health certification and plan of care from Home and Health Resources agency, nursing flowsheets and private duty nurses notes from Home and Health Resources agency, and a plan of care from SSES, the agency coordinating the appellant’s HHA services (Testimony).

10. MassHealth also completed a PCA evaluation of the appellant, in order to determine how much hands-on assistance the appellant needs in order to carry out her ADLs and IADLs. Pursuant to the PCA evaluation, MassHealth determined that for most of her ADLs, the appellant needs two persons to assist her. (Testimony, Ex. 3).
11. For most of her ADLs, the appellant needs two persons to assist her (Testimony, Ex. 5).
12. MassHealth will not authorize PCA assistance time for the appellant at times when the appellant has HHA services and CSN services present simultaneously, *i.e.*, when two caregivers are already present (Testimony).
13. The appellant has CSN services for the following shifts: 7 am to 2 pm on Mondays; 7:30 am to 2 pm on Tuesdays; 3 pm Tuesdays through 6 am Wednesday mornings; 7 am through 2 pm, and 2 pm through 10 pm on Wednesdays; 3 pm Thursday through 6 am Friday mornings; 7:30 am through 10 pm on Fridays; 7 am through 2 pm on Saturdays; and 6 am through 2 pm every other Sunday (Ex. 3B, p. 49).
14. The appellant does not have CSN from 2 pm to 10 pm on Mondays; she does not have CSN from 7:30 am to 10 pm on Thursdays; she does not have CSN from 7 am to 2 pm or from 3 pm to 10 pm Saturdays; and she has CSN only every other Sunday from 8 am to 2 pm. She is seeking to fill those time slots (Testimony, Ex. 8).
15. The appellant has HHA services for the following times: 8 am to 1 pm on Mondays; 8 am to 1 pm, and 4 pm to 9 pm, on Tuesdays; 8 am to 1 pm, and 4 pm to 9 pm on Thursdays; 8 am to 1 pm, and 5 pm to 9 pm, on Fridays; 3 pm to 9 pm both Saturdays and Sundays (Testimony, Ex. 8).
16. Currently, the appellant does not have HHA services from 3 pm to 9 pm on Mondays, although SSES is looking to fill that time slot with a HHA (Testimony, Ex. 8).
17. MassHealth authorized PCA assistance time for transfers for the appellant as follows: Wednesdays 4 times a day, taking 15 minutes per transfer; and Saturdays and Sundays 2 times a day, taking 15 minutes per transfer, for a total of 120 minutes per week (Testimony, Ex. 3).
18. The appeal representative disagreed with the duration of each PCA-assisted transfer, stating it is “more like 15 to 20 minutes” per transfer (Testimony)
19. MassHealth authorized PCA assistance time for showering the appellant (including time for transfers to and from the shower chair, full body wash, hair washing and drying, and

proper tracheostomy and ventilator care) as follows: 60 minutes of PCA assistance per day, on Wednesdays, Saturdays, and Sundays, for a total of 180 minutes per week (Testimony, Ex. 3).

20. The appeal representative agreed with this authorization of PCA time for showering.
21. MassHealth authorized PCA assistance time for dressing the appellant as follows: 25 minutes once per day on Wednesdays, and 25 minutes twice per day on Saturdays and Sundays, for a total of 125 minutes per week. At hearing, MassHealth corrected this authorization of time, stating that 25 minutes of PCA assistance with dressing should have been authorized only one time on Saturdays, and only one time on Sundays, for a total of 75 minutes per week (Testimony).
22. The appeal representative asserted it takes approximately 30 minutes for PCAs to assist the appellant with dressing, especially due to the appellant's inability to support her head (Testimony).
23. MassHealth authorized PCA assistance time for undressing the appellant as follows: 20 minutes once per day on Wednesdays and Sundays, for a total of 40 minutes per week (Testimony, Ex. 3).
24. Undressing the appellant requires two persons, and involves rolling the appellant from side to side, applying multi-podus boots to her lower extremities, applying hand splints, and preparing the bed with pillows under the appellant's head, and under her knees and calves (Testimony).
25. MassHealth authorized PCA assistance for the appellant with bladder care, as follows: 20 minutes in duration, 7 times per day on Wednesdays, and 20 minutes in duration, 4 times per day, on Saturdays and Sundays (including time for Hoyer lift transfers), for total time of 300 minutes per week (Testimony, Ex. 3B, p. 52).
26. The appeal representative asserted it typically takes about 45 minutes for two persons to assist the appellant with bladder care per occurrence, including about 20 minutes per transfer via Hoyer lift, and an additional 5 minutes for managing the appellant's clothing, and assisting her with hygiene following urination (Testimony).
27. The appellant does not use a bedpan (Testimony).
28. MassHealth authorized PCA assistance for the appellant with bowel care, as follows: 25 minutes in duration per occurrence, once per day, on Wednesdays, Saturdays, and Sundays, for a total of 75 minutes per week (Ex. 3B, p. 53).
29. The appellant now regularly has a bowel movement three times a day, not once per day, in view of the laxatives she is now prescribed, and a daily suppository she receives (Testimony).



30. The appeal representative asserted it typically takes about 45 minutes for two persons to assist the appellant with bowel care per occurrence, including about 20 minutes per transfer via Hoyer lift, and an additional 5 minutes for managing the appellant's clothing, and assisting her with hygiene (Testimony).
31. The appellant urinates and has a bowel movement at the same time in the mornings (Testimony).
32. MassHealth authorized PCA assistance time for transport to and from the appellant's medical appointments, including round-trip travel time to 5 appointments annually at MGH in Boston and 1 appointment annually to a physician in South Weymouth (Testimony, Ex. 10).
33. MassHealth assumed round-trip travel time from Hingham to/from MGH in Boston to be 150 minutes, and assumed round-trip travel time from Hingham to/from South Weymouth to be 60 minutes (*Id.*).
34. MassHealth assumed PCA would need to assist the appellant with transfers to/from her home to a vehicle, and to/from a medical office to a vehicle to be 20 minutes (Testimony, Ex. 10).
35. The appellant will no longer see a physician in South Weymouth annually, but will instead add one more appointment with a physician at MGH in Boston (Ex. 11).
36. MassHealth authorized the appellant for two hours of PCA assistance time per night, every night, which includes time for transfers for toileting the appellant, and for repositioning the appellant (Testimony, Ex. 3).
37. The appeal representative agreed with this authorization of nighttime PCA assistance for the appellant (Testimony).
38. MassHealth authorized CSN time for the skilled nurse to administer Ensure to the appellant via bolus feed twice a day, at a duration of 15 minutes per feed. In addition, MassHealth authorized an additional one minute of CSN time for flushing the G-tube syringe with water and venting the G-tube site following each bolus feed, and 2 additional minutes of CSN time per day for checking the placement of the G-tube balloon (Testimony, Ex. 3).
39. The appellant now receives 4 bolus feeds of Ensure daily via G-tube, one-half can per feed (Testimony).
40. At hearing, MassHealth agreed increase the CSN time for the line item "G-tube feedings" from 33 minutes per day to 63 minutes per day (Testimony).
41. At hearing, MassHealth also agreed to authorize an additional three minutes, four times per day following each bolus feed, or 84 minutes per week, for the nurse to vent the G-

tube site (Testimony).

42. MassHealth authorized 360 minutes daily of CSN time for suctioning, taking 3 minutes per suction approximately 5 times per hour, 24 hours per day (Testimony, Ex. 3).
43. The appeal representative stated that CSN suctioning of the appellant's mouth and tracheostomy occurs at least 7 times every hour, taking at least 3 minutes in duration each time (Testimony).
44. At times, she personally suctions the appellant's mouth and tracheostomy, as do the appellant's husband, the HHAs and the PCAs (Testimony).
45. At hearing, MassHealth agreed to authorize additional CSN time for suctioning the appellant's mouth and tracheostomy, *to wit*, two additional times per hour at a duration of three minutes each time (Testimony).
46. At hearing, the appeal representative stated that this authorization of CSN time for suctioning is acceptable to her, although following the appeal hearing, she contended that Bayada does not authorize its HHAs to perform certain kinds of suctioning of the appellant (Testimony, Ex. 11).
47. MassHealth authorized CSN time four times a day, at a duration of 20 minutes per occurrence, to assist the appellant via a cough-assist machine to loosen secretions (Testimony, Ex. 3).
48. At hearing, MassHealth agreed to authorize an additional 20 minutes daily of CSN time to assist the appellant via a cough-assist machine (Testimony).
49. A March 26, 2018 letter from William David, M.D., Ph.D., at the MGH multidisciplinary clinic, states in pertinent part: "I am writing this letter on behalf of [the appellant], who is under my care at MGH for ALS, a progressive motor neuron disease without a cure. [The appellant] is in the advanced stages of ALS. She is bedbound with a tracheostomy and requires ventilation due to chronic respiratory failure. Due to her disease progression and advanced stage, she needs 24/7 care. This includes a medical professional trained in trach care/management and deep suctioning as this is required many times throughout the day/night" (Ex. 11B).
50. CCM has slated the appellant for a new clinical assessment in June, 2018 (Testimony).

## **Analysis and Conclusions of Law**

Multiple MassHealth regulations govern the decisions involving the care that an individual is entitled to through the MassHealth CCM program, such as CSN services, including, but not limited to, 130 CMR 403.000 *et seq.* and 130 CMR 414.000 *et seq.* Regulations relevant to this appeal follow, in pertinent part:



### 130 CMR 403.414: Complex-Care Members

For complex-care members, as defined in 130 CMR 403.402, the MassHealth agency or its designee provides care management that includes service coordination with home health agencies as appropriate. The purpose of care management is to ensure that complex-care members are provided with a coordinated LTSS service plan that meets such members' individual needs, avoids duplicative services, and ensures that the MassHealth agency pays for home health and other LTSS only if they are medically necessary in accordance with 130 CMR 403.409(C). The MassHealth member eligibility verification system identifies complex-care members.

#### (A) Care Management Activities.

(1) Enrollment. The MassHealth agency or its designee automatically assigns a clinical manager to members whom it has determined 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) Comprehensive Needs Assessment. The clinical manager performs an in-person visit with the member to evaluate whether the member meets the criteria to be a complex-care member as described in 130 CMR 403.402. If the member is determined to meet the criteria for a complex-care member, the clinical manager will complete a comprehensive needs assessment. The comprehensive needs assessment identifies

(a) services that are medically necessary, covered by MassHealth, and required by the member to remain safely in the community;

(b) services the member is currently receiving; and

(c) 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 primary caregiver, and where appropriate, the home health agency and the member's physician, that

1. lists those MassHealth-covered services to be authorized by the clinical manager;

2. describes the scope and duration of each service;

3. lists service arrangements approved by the member or the member's primary caregiver; and

4. informs the member of his or her right to a hearing, as described in 130 CMR 403.411;

(b) provides to the member copies of the service record, one copy of which the member or the member's primary caregiver must sign and return to the clinical manager. On the copy being returned, the member must 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

(c) provides to the home health agency information from the service record that is applicable to the home health agency.

(4) Service Authorizations. The clinical manager authorizes those LTSS in the service record, including home health, that require prior authorization (PA) as

provided in 130 CMR 403.410, and that are medically necessary, and coordinates all home health services and any subsequent changes with the home health agency.

(5) Discharge Planning. The clinical manager may participate in member hospital discharge planning meetings as necessary to ensure that LTSS medically necessary to discharge the member from the hospital to the community are authorized and to provide coordination with all other identified third-party payers.

(6) Service Coordination. The clinical manager works collaboratively with any identified case managers assigned to the member.

(7) Clinical Manager Follow-up and Reassessment. The clinical manager provides ongoing care management for members and in coordination with the home health agency to

(a) determine whether the member continues to be a complex-care member; and

(b) reassess whether services in the service record are appropriate to meet the member's needs.

(B) Home Health Agency – Case Management Activities.

(1) Plan of Care. The home health agency participates in the development of the plan of care for each complex-care member as described in 130 CMR 403.420, in consultation with the physician, the clinical manager, the member, and the primary caregiver, or some combination, that

(a) includes the appropriate assignment of home health services; and

(b) incorporates full consideration of the member's and the caregiver's preferences for service arrangements.

(2) Coordination and Communication. The home health agency closely communicates and coordinates with MassHealth's or its designee's clinical manager about the status of the member's home health needs.

Next, MassHealth regulation 130 CMR 403.409, "Clinical Eligibility Criteria for Home Health Services," states:

(A) Member Must Be Under the Care of a Physician. The MassHealth agency pays for home health services only if the member's physician certifies the medical necessity for such services and establishes an individual plan of care in accordance with 130 CMR 403.420. A member may receive home health services only if he or she is under the care of a physician. (A podiatrist may be considered a physician for the purposes of meeting this requirement.) The physician providing the certification of medical necessity and submitting the plan of care for home health services must not be a physician on the staff of, or under contract with, the home health agency.

(B) Limitations on Covered Services. The MassHealth agency pays for home health services to a member who resides in a non-institutional setting, which may include, without limitation, a homeless shelter or other temporary residence or a community setting. In accordance with 42 CFR 440.70(c), the MassHealth agency does not pay for home health services provided in a hospital, nursing facility, intermediate care facility for the intellectually or developmentally disabled, or any other institutional facility providing medical, nursing, rehabilitative, or related care.



(C) Medical Necessity Requirement. In accordance with 130 CMR 450.204: *Medical Necessity*, and MassHealth Guidelines for Medical Necessity Determination for Home Health Services, the MassHealth agency pays for only those home health services that are medically necessary. Home health services are not to be used for homemaker, respite, or heavy cleaning or household repair.

**(D) Availability of Other Caregivers. When a family member or other caregiver is providing services, including nursing services, that adequately meet the member's needs, it is not medically necessary for the home health agency to provide such services.**

(E) Least Costly Form of Care. The MassHealth agency pays for home health agency services only when services are no more costly than medically comparable care in an appropriate institution and the least costly form of comparable care available in the community.

(F) Safe Maintenance in the Community. The member's physician and home health agency must determine that the member can be maintained safely in the community.

(G) Prior Authorization. Home health services including both intermittent and continuous skilled nursing require prior authorization. See 130 CMR 403.413 for requirements.

**(H) Continuous Skilled Nursing (CSN) Services. The MassHealth agency pays for CSN services when**

**(1) the member meets the criteria for nursing services as stated in 130 CMR 403.420;**

**(2) there is a clearly identifiable specific medical need for a nursing visit of more than two continuous hours; and**

**(3) prior authorization for CSN services has been obtained from the MassHealth agency or its designee, in accordance with 130 CMR 403.410.**

(Emphasis added)

MassHealth regulation 130 CMR 403.410, "Prior Authorization Requirements," states in relevant part:

(A) General Terms.

(1) Prior authorization must be obtained from the MassHealth agency or its designee as a prerequisite to receipt of home health services as described in 130 CMR 403.410(C) and 403.410(F), below. For all other home health services prior authorization must be obtained from the MassHealth agency or its designee as a prerequisite to payment after certain limits are reached, as described in 130 CMR 403.410. Without such prior authorization, the MassHealth agency will not pay providers for these services.

(2) Prior authorization determines only the medical necessity of the authorized service, and does not establish or waive any other prerequisites for payment such as member eligibility or resort to health insurance payment.

(3) Approvals for prior authorization specify the number of hours, visits, or units for each service that are medically necessary and payable each calendar week and the duration of the prior authorization period. The authorization is issued in the member's name and specifies frequency and duration of care for each service approved per calendar week.

(4) If there are unused hours of CSN services in a calendar week, they may be used at any time during the current authorized period.

(5) The home health agency must submit all prior authorization requests in accordance with the MassHealth agency's administrative and billing regulations and instructions and must submit each such request to the appropriate addresses listed in Appendix A of the *Home Health Agency Manual*.

(6) In conducting prior authorization review, the MassHealth agency or its designee may refer the member for an independent clinical assessment to inform the determination of medical necessity for home health services.

(7) If authorized services need to be adjusted because the member's medical needs have changed, the home health agency must submit an adjustment request to the MassHealth agency or its designee.

...

(C) CSN Services.

(1) The home health agency must obtain prior authorization from the MassHealth agency or its designee as a prerequisite for payment for CSN services before such services are provided to the member.

(2) The MassHealth agency, or its designee, will conduct the assessment of need for CSN services and coordinate other MassHealth community long-term-care services for the member, as appropriate. When the MassHealth agency or its designee conducts an assessment of need for CSN services and authorizes CSN services for the member, the member will select the home health agency that will be responsible for providing CSN services. The MassHealth agency, or its designee, will provide written notification of the outcome of the assessment to the member and, when applicable, to the home health agency selected by the member.

(3) For members who have been authorized for CSN services, the home health agency must obtain prior authorization from the member's clinical manager for all other home health services as defined in 130 CMR 403.412 before such services are provided to the member. This requirement applies to therapy services only if such therapy services are otherwise subject to prior authorization under 130 CMR 403.410(D).

(4) The MassHealth agency or its designee will specify on the prior authorization for CSN services the number of CSN hours that have been determined to be medically necessary and that are authorized for the member per calendar week. Any CSN hours provided to the member by the home health agency that exceed what the MassHealth agency or its designee has authorized in a calendar week are not payable by MassHealth.

(5) If the frequency of the authorized home health services needs to be adjusted because the member's medical needs have changed, the home health agency must



contact the MassHealth agency or its designee to request an adjustment to the prior authorization.

(6) Prior authorization for CSN services may be approved for more than one home health agency or independent nurse, or both, provided that

(a) each provider is authorized only for a specified portion of the member's total hours; and

(b) the sum total of the combined hours approved for co-vending providers does not exceed what the MassHealth agency or its designee has determined to be medically necessary and authorized for the member per calendar week.

Next, MassHealth regulation 130 CMR 403.415 regarding "Nursing Services" states:

A) Conditions of Payment. Nursing services are payable only if all of the following conditions are met:

**(1) there is a clearly identifiable, specific medical need for nursing services;**

(2) the services are ordered by the physician for the member and are included in the plan of care;

(3) the services require the skills of a registered nurse or of a licensed practical nurse under the supervision of a registered nurse, in accordance with 130 CMR 403.415(B);

(4) the services are medically necessary to treat an illness or injury in accordance with 130 CMR 403.409(C); and

(5) prior authorization is obtained where required in compliance with 130 CMR 403.410.

(B) Clinical Criteria.

(1) A nursing service is a service that must be provided by a registered nurse, or by a licensed practical nurse under the supervision of a registered nurse, to be safe and effective, considering the inherent complexity of the service, the condition of the member, 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, or insertion of catheters). However, in some cases, a service that is ordinarily considered unskilled may be considered a nursing service because of the patient's condition. This situation occurs when only a registered nurse or licensed practical nurse can safely and effectively provide the service.

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

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

(5) Medical necessity of services is based on the condition of the member at the time the services were ordered, what was, at that time, expected to be appropriate treatment throughout the certification period, and the ongoing condition of the member throughout the course of home care:

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

...

(Emphasis added)

Next, MassHealth regulation 130 CMR 450.204, "Medical Necessity," states as follows:

The MassHealth agency will not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

(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, or 517.007.

(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.

MassHealth regulation 130 CMR 403.402 defines Complex-care Member as "a MassHealth member whose medical needs, as determined by the MassHealth agency or its designee, are such that he or she requires a nurse visit of more than two continuous hours of nursing services to remain in the community."

Also relevant to this appeal, MassHealth regulation 130 CMR 503.007 states in relevant part:



**The MassHealth agency is the payor of last resort and pays for health care and related services only when no other source of payment is available, except as otherwise required by federal law.**

(A) Health Insurance. Every applicant and member must obtain and maintain available group health insurance in accordance with 130 CMR 505.000: *Health Care Reform: MassHealth: Coverage Types*. Failure to do so may result in loss or denial of eligibility unless the applicant or member is

- (1) receiving MassHealth Standard or MassHealth CommonHealth; and
- (2) younger than 21 years of age or pregnant.

**(B) Use of Benefits. The MassHealth agency does not pay for any health care and related services that are available**

- (1) through the member's health insurance, if any; or**
- (2) at no cost to the member including, but not limited to, any such services that are available through any agency of the local, state, or federal government, or any entity legally obligated to provide those services.**

(Emphasis added)

Finally, MassHealth regulations about PCA services are located at 130 CMR 422.401 *et seq.* Of note, 130 CMR 422.412, "Noncovered Services," states in pertinent part:

MassHealth does not cover any of the following as part of the PCA program or the transitional living program:

- (A) social services, including, but not limited to, babysitting, respite care, vocational rehabilitation, sheltered workshop, educational services, recreational services, advocacy, and liaison services with other agencies;
- (B) medical services available from other MassHealth providers, such as physician, pharmacy, or community health center services;**
- (C) assistance provided in the form of cueing, prompting, supervision, guiding, or coaching;
- (D) PCA services provided to a member while the member is a resident of a nursing facility or other inpatient facility;
- (E) PCA services provided to a member during the time a member is participating in a community program funded by MassHealth including, but not limited to, day habilitation, adult day health, adult foster care, or group adult foster care;
- (F) services provided by family members, as defined in 130 CMR 422.402; or
- (G) surrogates, as defined in 130 CMR 422.402.

(Emphasis added)

Based on an in-person assessment, a PCA evaluation, and a thorough review of clinical records, MassHealth determined that the appellant medically requires 115 hours of CSN services per week, as well as 14 hours and 30 minutes of day/evening PCA services. Regarding the latter, MassHealth

based its authorization decision in part on the fact that the appellant also receives 56 HHA hours through another agency, pursuant to the MassHealth frail elder waiver.<sup>10</sup>

There is no dispute that the appellant, who suffers from ALS, is a complex-care MassHealth member as that term is defined in 130 CMR 403.402. The issue for the hearing officer to decide is whether MassHealth was correct in determining how many hours of CSN services the appellant needs based on a clearly identifiable, specific medical need for a nursing visit of more than two continuous hours, and whether MassHealth was correct in authorizing a gradual tapering of medically necessary PCA services for the appellant.

MassHealth is correct that it may not lawfully authorize duplicative PCA services for the appellant, particularly where there is no dispute that the appellant is also receiving 56 hours of HHA services weekly.

#### PCA Time for Assistance with Showering and Nighttime PCA hours

For days when a nurse and HHA are not present simultaneously at the appellant's home, MassHealth authorized 60 minutes of PCA assistance per day, on Wednesdays, Saturdays, and Sundays, for a total of 180 minutes per week. At hearing, the appeal representative agreed with this authorization of PCA time.

For nights when a nurse and HHA are not present in the appellant's home simultaneously (5 nights per week), MassHealth authorized two hours of nighttime PCA assistance. At hearing, the appeal representative agreed with this authorization of PCA time.

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<sup>10</sup> MassHealth regulation 130 CMR 519.007(B), "Home and Community Based Frail Elder Waiver," states in pertinent part:

(1) Clinical and Age Requirements. The Home- and Community-Based Services Waiver allows an applicant or member who is certified by the MassHealth agency or its agent to be in need of nursing-facility services to receive certain waiver services at home if he or she

(a) is 60 years of age or older and, if younger than 65 years old, is permanently and totally disabled in accordance with Title XVI standards; and

(b) would be institutionalized in a nursing facility, unless he or she receives one or more of the services administered by the Executive Office of Elder Affairs under the Home- and Community-Based Services Waiver-Frail Elder authorized under section 1915(c) of the Social Security Act.

(2) Eligibility Requirements. In determining eligibility for MassHealth Standard and for waiver services, the MassHealth agency counts the income and assets of only the applicant or member regardless of his or her marital status. The applicant or member must

(a) meet the requirements of 130 CMR 519.007(B)(1)(a) and (b);

(b) have a countable-income amount less than or equal to 300 percent of the federal benefit rate (FBR) for an individual; and

(c) have countable assets of \$2,000 or less and have not transferred resources for the sole purpose of obtaining MassHealth as described at 130 CMR 520.018: *Transfer of Resources Regardless of the Transfer Date* and 520.019: *Transfer of Resources Occurring on or After August 11, 1993*.

(3) Financial Standards Not Met. Individuals whose income, assets, or both exceed the standards set forth in 130 CMR 519.007(B)(2) may establish eligibility for MassHealth Standard by reducing their assets in accordance with 130 CMR 520.004: *Asset Reduction*, by meeting a deductible as described at 130 CMR 520.028: *Eligibility for a Deductible* through 520.035: *Conclusion of the Deductible Process*, or by both.



These portions of the appeal were resolved and are DISMISSED.

PCA Time for Assistance with Transfers

For days when a nurse and HHA are not present simultaneously at the appellant's home, MassHealth authorized PCA time for assistance with transfers on Wednesdays 4 times a day, taking 15 minutes per transfer; and Saturdays and Sundays 2 times a day, taking 15 minutes per transfer, for a total of 120 minutes per week. The appeal representative indicated transfers of the appellant via Hoyer lift take about "15 to 20 minutes."

The appellant has not shown by a preponderance of the evidence that MassHealth's decision on the time allocated for transfers was incorrect.

This portion of the appeal is DENIED.

PCA Time for Assistance with Dressing

For days when a nurse and HHA are not present simultaneously at the appellant's home, MassHealth authorized PCA assistance time for dressing in the amount of 25 minutes once per day on Wednesdays, and 25 minutes twice per day on Saturdays and Sundays, for a total of 125 minutes per week. At hearing, MassHealth identified an error in the MassHealth authorization for this line item, stating that 25 minutes of PCA assistance with dressing should have been authorized only one time on Saturdays, and only one time on Sundays, for a total of 75 minutes per week.

The appeal representative testified that dressing takes longer for the appellant than 25 minutes, offering that it is "more like 30 minutes."

The appellant has not shown by a preponderance of the evidence that MassHealth's decision on the time allocated for dressing was incorrect.

This portion of the appeal is DENIED.

PCA Time for assistance with undressing

For days when a nurse and HHA are not present simultaneously at the appellant's home, MassHealth authorized PCA assistance time for undressing the appellant in the amount of 20 minutes once per day on Wednesdays, and 20 minutes once per day on Sundays, for a total of 40 minutes per week.

The appeal representative stated she did not agree with this allocation of time, but did not offer testimony about the duration of time needed for undressing.

The appellant has not shown by a preponderance of the evidence that MassHealth's decision on the time allocated for undressing was incorrect.

This portion of the appeal is DENIED.

#### PCA Time for assistance with Bladder Care

For days when a nurse and HHA are not present simultaneously at the appellant's home, MassHealth authorized PCA assistance time for the appellant's bladder care in the amount of 20 minutes seven times per day on Wednesdays, and 20 minutes four times per day on Saturdays and Sundays, respectively.

The appeal representative credibly testified that Hoyer lift transfers needed for the appellant to get to and from the bathroom take 15 minutes each way, and that an additional 5 minutes is needed for clothing management and hygiene following urination. The 15 minute-duration for transfers via Hoyer lift to/from the bathroom is consistent with the PCA assistance time authorized by MassHealth for mobility/transfers.

The hearing officer concludes that 35 minutes of PCA assistance for bladder care, 7 times per day on Wednesdays, and 35 minutes of assistance, 4 times per day on both Saturday and Sunday, is medically necessary for the appellant.

This portion of the appeal is APPROVED.

#### PCA Time for assistance with Bowel Care

For days when a nurse and HHA are not present simultaneously at the appellant's home, MassHealth authorized 25 minutes of PCA assistance with bowel care, once per day, on Wednesdays, Saturdays, and Sundays, for a total of 75 minutes per week. At hearing, the appeal representative testified that the appellant now has bowel movements three times a day, not once a day.

In response to this testimony, MassHealth agreed to increase the number of times it will authorize PCA assistance with bowel movements from one time on Wednesdays, to three times on Wednesdays, from one time on Saturday to two times on Saturday, and from one time on Sunday to two times on Sunday. The appeal representative added that in the morning, the appellant always has a bowel movement and urinates at the same time. The appeal representative added that she disagrees with the duration of PCA assistance time needed for the appellant's bowel movements, indicating 15-minute Hoyer lift transfers to/from the bathroom, plus 5 minutes of clothing management and hygiene assistance, are necessary.

The hearing officer agrees with the appellant that Hoyer lift transfers to/from the bathroom take 15 minutes, consistent with MassHealth-authorized PCA time for transfers, and that clothing



management and hygiene take approximately 5 minutes. Therefore, 35 minutes for each episode of bowel care is medically necessary for the appellant.

With regard to the frequency of bowel movements, two additional times beyond those authorized for PCA assistance with bladder care is medically necessary for the appellant on Wednesday, and one additional episode beyond those authorized for PCA assistance with bladder care are medically necessary for the appellant on Saturdays/Sundays, since the evidence shows one such transfer time is already accounted for in the line item for bladder care.

This portion of the appeal is APPROVED IN PART.

PCA assistance with Transfers/Transport to/from Medical Appointments

MassHealth authorized time for PCA assistance of the appellant to/from medical appointments. The evidence submitted at hearing and following hearing (medical transport worksheet) reflects that MassHealth calculated total travel time per year based on the assumption that the appellant will have five visits to physicians at MGH, and one visit to a physician in South Weymouth, annually. In addition, MassHealth authorized time for transfers needed to get into/out of a vehicle, twice, with each transfer taking 20 minutes, or 80 minutes total transfer time per appointment.

In her post-hearing submission, following her review of the MassHealth medical transportation worksheet, the appellant did not challenge the MassHealth duration of transfer time per appointment (80 minutes). She did, however, raise an issue regarding travel time, stating that the vehicle often stops en route to the doctor so the appellant can be suctioned. The hearing officer questions why it would be necessary for the driver to stop the vehicle while the appellant is being suctioned. Further, the appeal representative stated that on days when she goes to the doctor, the appellant needs an "extra" trip to the bathroom since the appellant cannot use bathrooms at MGH. However, the time for PCA assistance with transfers for bladder/bowel care is already authorized elsewhere in the MassHealth authorization (see above), and it is unclear why an "extra" bathroom trip would be needed on days when the appellant leaves her home.

The appeal representative indicated post-hearing that the appellant will no longer see the physician in South Weymouth, and will instead see her primary care physician at MGH twice a year instead of once. Therefore, the calculation of round-trip travel time should be increased, and the one-time "60 minutes," representing round-trip travel time from Hingham to South Weymouth, should be replaced by one additional "150 minutes," representing round-trip travel time from Hingham to Boston.

With regard to the appellant's request to add PCA assistance time for two appointments to go to the dentist, and one appointment to go to the dermatologist, these kinds of emergent medical issues are not addressed in a MassHealth authorization of time for PCA assistance with medical transport because they are unanticipated, and presumably will not recur. For this type of request, the appellant should to file a request for an adjustment to the current authorization pursuant to 130 CMR 403.410(C)(5), above.

The new calculation of time authorized for PCA assistance with medical transport should be as follows: round-trip travel time from Hingham to Boston (150 minutes) multiplied by six visits (900 minutes), plus 480 minutes (total PCA-assisted transfer time). These figures, when added, yields 1,380 minutes total time for transfer and travel per year. Next, dividing this figure by 52.14 weeks per year yields 27 minutes per week, on average, of PCA assistance with medical transport.

This portion of the appeal is APPROVED IN PART.

Skilled Nursing Time – G-tube feedings, G-tube venting, and Chest Physiotherapy

At hearing, in response to testimony offered by the appeal representative, MassHealth agreed to increase CSN time authorized for the appellant as follows:

G-tube feedings – 33 minutes per day to 66 minutes per day, every day

G-tube venting – 0 minutes per day to 3 minutes, 4 times per day, every day

Chest physiotherapy/cough-assist – from 80 minutes per day to 100 minutes per day, every day

These portions of the appeal were resolved and are DISMISSED.

Skilled Nursing Time – oral and tracheal suctioning

Although at hearing the appellant agreed to an additional three minutes of CSN time offered by MassHealth, twice per hour, for oral and tracheal suctioning of the appellant (an extra 144 minutes daily of CSN time), the appellant attempts to reopen this issue in her post-hearing submission.

The hearing officer reviewed the documents submitted by the appellant following the hearing concerning who may suction the appellant, although they were not requested. The appellant submitted some evidence that the company which supplies the HHAs to the appellant, Bayada, pursuant to a contract with SSES, has a policy prohibiting HHAs from performing tracheal suctioning, nasopharyngeal suctioning, and oropharyngeal suctioning. These terms are not defined or differentiated, and the Bayada representative was not made available to testify at hearing. On the basis of this thin evidence, the appeal representative appears to contend, for the first time, that PCA and CSN coverage are needed 24 hours per day, 7 day per week, for the appellant, *in addition to* the 56 HHA hours per week, because suctioning is needed round-the-clock, and HHAs are prohibited from doing so.

At hearing, the appeal representative testified that she, her father (the appellant's husband), the PCAs and the HHAs all perform oral suctioning AND tracheal suctioning of the appellant, and that the two kinds of suctioning are typically done together when the suction machine is on. It appears that following the hearing, the appeal representative learned that the company supplying the HHAs disallows certain kinds of suctioning, which did not comply with the family's actual practice of suctioning of the appellant to date.



It is entirely possible a different company supplying HHAs to the appellant might have less restrictive policies about its HHAs being trained to suction by a consumer, as a PCA would be trained to do.

On this record, there is insufficient evidence for the hearing officer to determine that MassHealth's decision to authorize 504 minutes of CSN time daily for oral and tracheal suctioning of the appellant is incorrect, and no evidence presented by the appellant provides a legal basis for hearing officer to add time for MassHealth-paid PCAs to suction the appellant.

This portion of the appeal is DENIED.

## **Order for MassHealth**

Remove aid pending. Rescind notice of December 15, 2017. Send notice to the appellant notifying her that she is authorized to receive 139 hours, 30 minutes of CSN services per week for the period December 17, 2017 through June 16, 2018, and that she is authorized to receive 21 hours, 30 minutes of day/evening PCA hours per week, 7 day per week, plus 2 nighttime hours, 5 nights per week. Send notice of implementation only; do not include appeal rights.

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

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Paul C. Moore  
Hearing Officer  
Board of Hearings

cc: MassHealth Representative: UMMS Community Case Management