Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Dismissed in part, Denied in part	**Appeal Number:**	2153683
Decision Date:	10/04/2021	**Hearing Date:**	09/30/2021
Hearing Officer:	Paul C. Moore		

Appellant Representative:
Pro se (via telephone)

Tufts Health Unify/MCO Representatives:
Molly Cochran, Esq., Seegel, Lipshutz, Lo, and Martin, LLP; David Dohan, M.D., Tufts Health Plan; Sandra Brannelly, Program Manager, Appeals and Grievances, Tufts Health Plan (via 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

Appeal Decision:	Dismissed in part, Denied in part	**Issue:**	Managed Care Organization/Durable Medical Equipment
Decision Date:	10/04/2021	**Hearing Date :**	09/30/2021
MCO Reps.:	Counsel et al.	**Appellant Rep.:**	Pro se
Hearing Location:	Remote		

Authority

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

Jurisdiction

By notice dated April 6, 2021, Tufts Health Unify (Tufts), a MassHealth managed care organization (MCO), informed the appellant that it had denied her level one internal appeal of a decision not to provide coverage for a requested massage chair and power-operated scooter and accessories ("scooter") (Exhibit 1). The appellant filed this external appeal with the Board of Hearings (BOH) in a timely manner on May 12, 2021 (Exhibit 2).[1] A MCO's denial of an internal appeal is grounds for appeal to the BOH (130 CMR 610.032(B)(2)).[2]

Action Taken by MCO

Tufts, a MassHealth MCO, denied the appellant's level one internal appeal of a denial of

[1] The appellant initially did not include a copy of the level one denial notice when she requested an appeal on May 12, 2021. The BOH therefore dismissed the appeal by letter dated May 19, 2021 with the right for appellant to request the dismissal be vacated. Subsequently, the appellant sent the BOH a copy of the level 1 denial notice, and the dismissal was vacated.

[2] A managed care organization is defined at 130 CMR 501.001 as any entity with which the MassHealth agency contracts to provide and coordinate care and certain other medical services to members on a capitated basis, including a senior care organization (SCO), an integrated care organization, or an entity that is approved by the Massachusetts Division of Insurance as a health-maintenance organization (HMO), or that otherwise meets the State Plan definition of an HMO.

coverage for a massage chair and a scooter.

Issue

Did Tufts correctly deny the appellant's internal appeal of a decision not to provide coverage for a massage chair and a scooter?

Summary of Evidence

An attorney for Tufts, Ms. Cochran, testified by telephone that the appellant is under the age of 65, disabled, and is enrolled in Tufts Health Unify, a Medicare-Medicaid plan. Ms. Cochran indicated that the appellant has medical diagnoses including fibromyalgia and sciatica, resulting in back pain. On February 5, 2021, Tufts received a prior authorization request from the appellant's physician, Lana Habash, M.D., requesting coverage for a massage chair and scooter for the appellant. On February 12, 2021, Tufts made a decision to deny the request, as the massage chair was not considered to be durable medical equipment, and the scooter was deemed not medically necessary. A letter of denial was sent to the appellant on February 18, 2021 (Ex. 4A, pp. 18-22). According to Ms. Cochran, the appellant requested a level one internal appeal on February 23, 2021. Ultimately, the internal appeal was considered by the Tufts public plans committee, which upheld the level one denial. A notice to this effect was sent to the appellant on April 6, 2021 (Ex. 1). It is this notice that the appellant appealed externally to the BOH (Ex. 2).

Ms. Cochran cited to Medicare regulations defining durable medical equipment ("DME"), which she indicated was "pretty much" the same definition used by MassHealth, noting that DME is equipment which:

- Can withstand repeated use; *i.e.*, could normally be rented, and used by successive patients;
- Is primarily and customarily used to serve a medical purpose;
- Generally is not useful to a person in the absence illness or injury; and
- Is appropriate for used in a patient's home

(Testimony, *citing to* Ex. 4A, p. 35)

She asserted that Tufts believes the massage chair requested does not meet the aforementioned definition of DME.

David Dohan, M.D., the medical director of pharmacy for Tufts and an internal medicine physician, testified by telephone for Tufts that sciatica is an impingement of the sciatic nerve as it exits the spinal column, and is treated with physical therapy, rest, and sometimes with surgery and/or injections. In addition, fibromyalgia is a complex illness characterized by multiple points of body achiness, and is treated mostly with physical therapy and medication (Testimony).

Dr. Dohan testified that Tufts follows the MassHealth regulations for coverage of DME. According to Dr. Dohan, a massage chair is not considered to be DME, because it is not primarily and customarily medical in nature. Ms. Brannelly, the Tufts program manager for appeals and grievances, testified that Tufts has rescinded its decision not to provide coverage for the scooter. The appellant testified that she was aware that the scooter has been approved, although she has not yet received it from the manufacturer. She agreed, on the record, that this portion of the appeal is resolved.[3]

With regard to the requested massage chair, Dr. Dohan indicated that once the appellant requested a level one internal appeal, Tufts referred the matter to a consulting physician at MCMC, an independent organization, on or about March 15, 2021. Dr. Dohan noted that the consulting physician spoke with the appellant's prescribing physician, Dr. Habash, on March 17, 2021. The consulting physician documented, in her written report, that she had reviewed medical literature on the use of massage for treatment of fibromyalgia, which supported the use of deep tissue massage to decrease muscle tension and muscle spasms (Ex. 4A, p. 51). However, the consulting physician also documented that in medical literature, a massage chair, in particular, is not considered effective in providing deep tissue massage, nor is a massage chair considered useful in the management of fibromyalgia (*Id*.).

Next, according to Dr. Dohan, the Tufts public plans committee, consisting of a physician, nurse reviewers, case managers, and claims representatives, met and reviewed the appellant's case, including the report by the consulting physician at MCMC. The committee, according to Dr. Dohan, determined that the requested massage chair did not meet the MassHealth and Medicare definitions of DME, and upheld the level one denial by notice to the appellant dated April 6, 2021 (Testimony; Ex. 4A, p. 65; Ex. 1).

Dr. Dohan added that a massage chair is not primarily used by individuals with sickness or injury.

The appellant testified by telephone that she suffers from extreme pain all over her body. She used to have at-home physical therapy sessions, but she was unable to tolerate these sessions unless they were preceded by a massage. She used to be a member of Planet Fitness, and although she can no longer afford a membership there, she continues to use a massage chair there for about an hour per session, three to four days per week. The appellant testified that her physical therapist "dismissed" her because the physical therapist believed that the physical therapy sessions were making the appellant's condition worse (Testimony).

The appellant testified that at some point in 2020, she was admitted to [redacted] Rehabilitation Center for rehabilitation, although she could not recall the exact dates.

The appellant testified that the massage chair she uses loosens her muscles, and allows her to

[3] In the Tufts Health Unify Member Handbook for 2021, a massage chair is not listed as an example of DME covered by the plan (Ex. 4B, p. 55).

walk. She testified that she was deemed disabled in 2013. She also suffers from urinary incontinence. She is prescribed Tramadol and Naprosyn for pain. She uses hotpacks and coldpacks alternately. She also receives periodic back injections for her pain. She has had a number of falls due to her pain, resulting in hospital visits. Nothing has provided any relief, except for the massage chair (Testimony).

Findings of Fact

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

1. The appellant, who is under age 65, is disabled, and is enrolled in Tufts Health Unify ("Tufts"), a Medicare-Medicaid plan (Testimony, Ex. 4A).

2. The appellant's medical diagnoses including fibromyalgia and sciatica, resulting in back pain (Testimony).

3. On February 5, 2021, Tufts received a prior authorization request from the appellant's physician, Lana Habash, M.D., requesting coverage for a massage chair and scooter for the appellant (Testimony, Ex. 4A).

4. On February 12, 2021, Tufts made a decision to deny the request, as the massage chair was not considered to be durable medical equipment, and the scooter was deemed not medically necessary (Testimony, Ex. 4A, p. 10).

5. Tufts sent a denial letter to the appellant on February 18, 2021 (Ex. 4A, pp. 18-22).

6. The appellant requested a level one internal appeal with Tufts on February 23, 2021 (Testimony).

7. On or about March 15, 2021, following the appellant's request for a level one appeal, Tufts referred the matter to a consulting physician at MCMC, an independent organization (Testimony, Ex. 4A, p. 50).

8. The consulting physician from MCMC documented, in her written report, that she had reviewed medical literature on the use of massage for treatment of fibromyalgia, which supported the use of deep tissue massage to decrease muscle tension and muscle spasms (Ex. 4A, p. 51).

9. The consulting physician also documented that in medical literature, a massage chair, in particular, is not considered effective in providing deep tissue massage, nor is a massage chair considered useful in the management of fibromyalgia (*Id*.).

10. Sciatica is an impingement of the sciatic nerve as it exits the spinal column, and is treated with physical therapy, rest, and sometimes with surgery and/or injections (Testimony).

11. Fibromyalgia is a complex illness characterized by multiple points of body achiness, and is treated mostly with physical therapy and medication (Testimony).

12. The Tufts public plans committee, consisting of a physician, nurse reviewers, case managers, and claims representatives, met and reviewed the appellant's case, including the report by the consulting physician at MCMC, on or about April 6, 2021 (Testimony).

13. By notice dated April 6, 2021, Tufts denied the appellant's level one internal appeal for coverage of the massage chair as not DME, and for coverage of the scooter as not medically necessary (Ex. 1).

14. The appellant filed a timely external appeal with the BOH on August 9, 2021 (Ex. 2).

15. Tufts ultimately reversed its denial of coverage for the requested scooter (Testimony).

16. Tufts contends that a massage chair does not meet the MassHealth or the Medicare definition of DME (Testimony).

17. In the Tufts Health Unify Member Handbook for 2021, a massage chair is not listed as an example of DME covered by the plan (Ex. 4B, p. 55).

18. A massage chair is not primarily used by individuals with sickness or injury (Testimony).

19. The appellant used to have at-home physical therapy sessions, but she was unable to tolerate these sessions unless they were preceded by a massage (Testimony).

20. The appellant used to be a member of Planet Fitness, and although she can no longer afford a membership there, she continues to use a massage chair there for about an hour per session, three to four days per week (Testimony).

21. When she uses the massage chair, the appellant's muscles are loosened, allowing her to walk (Testimony).

22. The appellant is prescribed Tramadol and Naprosyn for pain, with little relief (Testimony).

23. The appellant was deemed disabled in 2013 (Testimony).

24. The appellant suffers from urinary incontinence (Testimony).

25. The appellant also receives periodic back injections for her pain (Testimony).

26. The appellant has had a number of falls due to her pain, resulting in hospital visits (Testimony).

Analysis and Conclusions of Law

Pursuant to MassHealth regulation 130 CMR 508.001(A):

> Mandatory Enrollment with a MassHealth Managed Care Provider. MassHealth members who are younger than 65 years old must enroll in a MassHealth managed care provider available for their coverage type. Members described in 130 CMR 508.001(B) or who are excluded from participation in a MassHealth managed care provider pursuant to 130 CMR 508.002(A) are not required to enroll with a MassHealth managed care provider.

Next, MassHealth regulation 130 CMR 508.003, "Enrollment with a MassHealth Managed Care Provider," provides in relevant part:

> (A) Member Selection
> (1) In accordance with 130 CMR 508.004 through 508.006, members required or permitted to select a MassHealth managed care provider may select any MassHealth managed care provider from the MassHealth agency's list of MassHealth managed care providers for the member's coverage type in the member's service area, if the provider is able to accept new members. . . .
> (B) Member Assignment to a MassHealth Managed Care Provider. If a member does not choose a MassHealth managed care provider within the time period specified by the MassHealth agency in a notice to the member or in other circumstances determined appropriate by the MassHealth agency and consistent with applicable laws, the MassHealth agency assigns the member to an available MassHealth managed care provider. . . .

Next, MassHealth regulation 130 CMR 508.004(B), "Obtaining Services when Enrolled in an MCO," states:

(1) **Primary Care Services. When the member selects or is assigned to an MCO, that MCO will deliver the member's primary care, determine if the member needs medical or other specialty care from other providers, and determine referral requirements for such necessary medical services.** An MCO may provide a member's primary are through an MCO-administered Accountable Care Organization.
(2) **Other Medical Services. All medical services to members enrolled in an MCO (except those services not covered under the MassHealth contract with the MCO, family planning services, and emergency services) are subject to the authorization and referral requirements of the MCO**. MassHealth members enrolled in an MCO may receive family planning services from any MassHealth

family planning provider and do not need an authorization or referral in order to receive such services. Members enrolled with an MCO should contact their MCO for information about covered services, authorization requirements, and referral requirements.

(Emphasis added)

Next, MassHealth regulation 130 CMR 508.010, "Right to a Fair Hearing," states as follows:

> Members are entitled to a fair hearing under 130 CMR 610.000: *MassHealth: Fair Hearing Rules* to appeal
> (A) the MassHealth agency's determination that the MassHealth member is required to enroll with a MassHealth managed care provider under 130 CMR 508.001;
> **(B) a determination by the MassHealth behavioral health contractor, by one of the MCOs, Accountable Care Partnership Plans, or SCOs as further described in 130 CMR 610.032(B), if the member has exhausted all remedies available through the contractor's internal appeals process**;
>
> …

(Emphasis added)

The appellant exhausted the internal appeal process offered through her MCO, and thereafter, requested a fair hearing with the BOH, to which she is entitled pursuant to the above regulations.

As MassHealth's agent, Tufts is required to follow MassHealth laws and regulations pertaining to a member's care. Under the regulations pertaining to MassHealth MCOs, above, Tufts is empowered to determine if the appellant needs medical or other specialty care from other providers, subject to its prior authorization and referral requirements.

Pursuant to 130 CMR 409.402, the MassHealth regulations pertaining to DME, DME is defined as follows:

> equipment that
> (1) is used primarily and customarily to serve a medical purpose;
> (2) is generally not useful in the absence of disability, illness or injury;
> (3) can withstand repeated use over an extended period; and
> (4) is appropriate for use in any setting in which normal life activities take place, other than a hospital, nursing facility, ICF/IID, or any setting in which payment is or could be made under Medicaid inpatient services that includes room and board, except as allowed pursuant to 130 CMR 409.415 and 130 CMR 409.419(C).

Next, pursuant to 130 CMR 409.414(B), "Non-Covered Services," MassHealth does *not* pay for the following:

> DME that is determined by the MassHealth agency not to be medically necessary pursuant to 130 CMR 409.000, and 130 CMR 450.204: Medical Necessity. This includes, but is not limited to, items that:
> **(1) cannot reasonably be expected to make a meaningful contribution to the treatment of a member's illness, disability, or injury;**
> (2) are more costly than medically appropriate and feasible alternative pieces of equipment; or
> (3) serve the same purpose as DME already in use by the member, with the exception of the devices described in 130 CMR 409.413(D);
>
> …

(Emphasis added)

MassHealth will pay a provider only for those for services that are medically necessary. Pursuant to 130 CMR 450.204(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 MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider, or identified by MassHealth pursuant to a prior authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007, or 517.007.

The appellant's physician requested coverage of a massage chair and a scooter for the appellant to use, in view of her disabling conditions – fibromyalgia and sciatica. Although Tufts at first denied coverage of both items, Tufts ultimately agreed to cover the cost of a scooter for the appellant.

At hearing, the appellant agreed that the request for the scooter is resolved, although she has not yet received it.

Therefore, this portion of the appeal is moot, and is hereby DISMISSED.

Next, turning to the issue of the denied massage chair, Tufts has asserted that it is bound by the MassHealth definition of DME, which reflects that MassHealth will cover the cost of equipment that is used primarily and customarily to serve a medical purpose, and equipment that is generally not useful in the absence of disability, illness or injury.[4]

[4] Any reliance by Tufts on the Medicare definition of DME is not relevant to this appeal.

In medical literature reviewed by one consulting physician, cited in the record, deep tissue massage was deemed to be useful in decreasing muscle tension and muscle spasms in patients diagnosed with fibromyalgia. However, there is no medical literature cited in the record that posits that a deep tissue massage can be achieved via a massage chair.

In addition, Tufts argues persuasively that a massage chair is intended to be used primarily by persons without an injury or illness. That is not the appellant. Moreover, despite the appellant's sincere testimony that the massage chair has provided her relief from pain and allowed her to undergo physical therapy with minimal discomfort, there is nothing in the record reflecting whether the appellant is using the massage chair correctly.

Finally, there was no information offered by the appellant or by her physician to address what long-term effects the appellant may experience if she continues to use the massage chair, with or without supervision.

In the absence of such evidence, it cannot reasonably be concluded that a massage chair for the appellant, if covered by Tufts, could be expected to make a meaningful contribution to the treatment of her illness and disability.

I conclude that the requested massage chair is not DME under MassHealth regulation 130 CMR 409.402, above. I also conclude that a massage chair is not medically necessary for the appellant under 130 CMR 450.204(A)(1), because it is not reasonably calculated to prevent, diagnose, prevent the worsening of, alleviate, correct, or cure conditions that endanger life, cause suffering or pain, or cause physical deformity or malfunction.

Tufts did not err in denying the appellant's level one internal appeal as to the massage chair.

For these reasons, this portion of the appeal is DENIED.

Order for MCO

None.

Notification of Your Right to Appeal to Court

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

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Sandra Brannelly, Program Manager, Appeals and Grievances, Tufts Health Plan, Appeals and Grievances, 705 Mount Auburn Street, Watertown, MA 02472
[redacted]