

**Office of Medicaid  
BOARD OF HEARINGS**

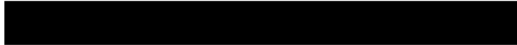
**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2177153
<b>Decision Date:</b>	02/08/2022	<b>Hearing Date:</b>	11/09/2021
<b>Hearing Officer:</b>	Alexandra Shube	<b>Record Open to:</b>	01/06/2022

**Appearance for Appellant:**

Pro Se



**Appearance for ACO:**

Kay George, RN



*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>	Denied	<b>Issue:</b>	Prior Authorization – DME
<b>Decision Date:</b>	02/08/2022	<b>Hearing Date:</b>	11/09/2021
<b>ACO's Rep.:</b>	Kay George, RN	<b>Appellant's Rep.:</b>	Pro se [REDACTED]
<b>Hearing Location:</b>	Quincy Harbor South	<b>Aid Pending:</b>	No

## Authority

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

## Jurisdiction

Through a notice dated June 21, 2021, Fallon Health (Fallon), a MassHealth accountable care organization (ACO), informed the appellant that it had denied her internal appeal of a prior authorization request for a power wheelchair (see 130 CMR 450.204 and Exhibit 1). The appellant filed this appeal in a timely manner on September 16, 2021 (see 130 CMR 610.015(B) and Exhibit 2)<sup>1</sup>. An ACO's decision to deny a requested service is valid grounds for appeal (see 130 CMR 610.032(B)(2)).

The record was initially held open until December 9, 2021 for the appellant to provide additional documentation. The appellant did not respond until December 15, 2021; however, the hearing officer agreed to accept the documentation. Fallon was given until January 9, 2022 to review and respond to the appellant's submission, but ultimately responded on January 6, 2022 and the record was closed.

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<sup>1</sup> In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
  - All appeal hearings will be telephonic; and
  - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

## **Action Taken by ACO**

Fallon denied the appellant's internal appeal of a prior authorization request for a power wheelchair.

## **Issue**

The appeal issue is whether MassHealth's agent or designee, Fallon Health, was correct, pursuant to 130 CMR 450.204(A) and 130 CMR 409.000 *et seq.*, in denying the appellant's internal appeal of a prior authorization request for a power wheelchair.

## **Summary of Evidence**

The appellant appeared at hearing via telephone along with her clinical social worker. Fallon was represented at hearing via telephone by a registered nurse.

At hearing, Fallon testified that the appellant is enrolled in Fallon's Berkshire Medicaid ACO Plan. On May 17, 2021, Fallon received a prior authorization request on behalf of the appellant for a power wheelchair and accessories. The request stated the appellant's primary diagnosis was "pain in leg" and secondary diagnosis was "pressure ulcer of sacral region, stage 2." The Fallon representative testified that per MassHealth regulation 130 CMR 450.204 for medical necessity, Fallon denied the request because there was no indication from the submitted medical records that the appellant is not currently independent with her manual wheelchair or that she is unable to propel it. She stated that the quote for the power wheelchair with accessories was \$4,446.24, while a manual wheelchair costs approximately \$500. National Seating and Mobility provided the appellant with a loaner power wheelchair while her manual chair was being repaired.

Fallon testified that documentation showed the appellant is ■-years-old and lives alone in a second floor efficiency apartment which she accesses via elevator. The Wheelchair/Seating Clinic conducted an evaluation of the appellant which was submitted with the prior authorization request. It stated that the primary diagnosis was impaired mobility, physical deconditioning, and neuropathy. Other active problems include the following: dermatomycosis, bunion of left foot, dermatitis of external ear, peripheral edema, opioid use disorder (severe, in sustained remission, on maintenance therapy), major depression in full remission, iron deficiency, anemia, mood disorder, xerosis cutis, hallux valgus, neuropathic pain, anxiety and depression, ventricular premature depolarization, essential hypertension, prolonged QT interval, deep venous thrombosis, and congestive heart failure.

The Fallon representative testified that pursuant to the physician notes provided, the appellant saw her primary care physician on March 12, 2021, April 6, 2021, May 13, 2021, and June 11, 2021. She noted that there was no mention of any upper body weakness or any other reason (such as cardiac issues or chest pain) that would impede the appellant's ability to use a manual wheelchair. She also noted that the appellant has 54 hours per week of personal care attendant (PCA) assistance.

The Fallon representative explained that the MassHealth Fallon Durable Medical Equipment (DME) Clinical Coverage Criteria state that DME is defined as equipment that is primarily and customarily used to serve a medical purpose; must be medically necessary for the treatment of a member's illness or injury and/or to improve the functioning of a malformed body part; and is appropriate for use in the member's home. She summarized that the appellant spends about 8 hours per day in her wheelchair and can safely and independently transfer in and out of it. She is at risk for skin breakdowns, there has been no change in her medical condition, and there is no evidence in the records submitted that she does not have the ability to propel a lightweight manual wheelchair. She concluded that the power wheelchair is not medically necessary and is not the least costly option.

The appellant and her representative responded that she does not spend 8 hours per a day in her wheelchair because that would be very uncomfortable for her. She lives in a rural area and the main reason she needs the power wheelchair is so she can get around, get to the pharmacy, do her shopping, and connect to community services. She has major depressive disorder and needs to be able to get to the community on her own and the PT-1 services only bring her to medical appointments. She is in recovery and needs access to those services. She stated she is homebound without the use of a power wheelchair. Her upper body is weak, her hands are numb, and she experiences pain in her upper body when she propels the manual wheelchair. Her cardiac issues are the main reason she cannot self-propel a manual wheelchair. She stated in a letter to the Board of Hearings that her cardiologist reported that she is "unable to self-ambulate using functional devices due to her significant cardiac diagnosis." She was not able to find that statement from the cardiologist in the records submitted with the prior authorization request, but she pointed to the Wheelchair/Seating Clinic Evaluation that stated she "is unable to propel a standard, lightweight or ultra-lightweight manual wheelchair due to her cardiac status, poor endurance and chest pain which is exacerbated with manual wheelchair propulsion." She said that information comes from her cardiologist. She explained that self-propelling puts added pressure on her heart.

The appellant also stated that her medical condition has declined over the past six to seven months and her cardiac issues are getting worse. She is isolated a lot because she cannot get around and she has lost most of the feeling in her legs. She stated she does not have the strength to use a manual wheelchair any more.

The Fallon representative responded that the power wheelchair was requested for medical reasons. She has a lot of PCA hours and part of that time is to take the appellant shopping, to doctor appointments, and into the community. There is not a medical reason to approve an expensive power wheelchair for that reason when the PCA can take the appellant into the community. There is no documentation from the appellant's primary care physician or cardiologist supporting the statement from the occupational therapist in the evaluation. The appellant's most recent appointment with her physician on June 11, 2021 does not give any reason why the appellant cannot self-propel a manual wheelchair.

The appellant responded that her PCA does not have a car to help drive her places. She has a cardiac test today and a follow up with her cardiologist on November 24, 2021. Her neuropathy and cardiac issues do not allow her to use the manual wheelchair in her apartment, but she has been successful with the power wheelchair loaner in her apartment.

Parties agreed to leave the record open until December 9, 2021 for the appellant to provide documentation from her cardiologist including a summary from her most recent visit and a detailed statement from the cardiologist explaining why the appellant cannot propel a manual wheelchair. Fallon was given until January 9, 2022 to review and respond to the appellant's submission. Nothing was received from the appellant by December 9, 2021 and there was no request for additional time; however, on December 14, 2021, the appellant's representative emailed the hearing officer stating she had just received the letter from the cardiologist and asked if she could send it the following day. While it was late, the hearing officer agreed to accept the documentation, which was received on December 15, 2021. The appellant did not submit a recent visit summary from the cardiologist as was requested, only a letter from a physician's assistant at her cardiologist's office. It stated the following:

[The appellant] has been having a lot of lower extremity edema which may be exacerbating pain in her legs and reducing her mobility. We are in the process of getting venous insufficiency studies which will hopefully lead to providing [the appellant] with possible treatment of the edema and subsequent improvement in her mobility, though this is uncertain. In the meantime, she mentions that it is very difficult for her to walk and her independence is affected. She would like the assistance of an electronic wheelchair, which seems like a reasonable request given her situation. She will try to walk as much as possible and use the wheelchair when needed.

Fallon responded on January 6, 2022 and stated that pursuant to MassHealth regulation 130 CMR 450.204 for medical necessity, Fallon continues to deny the request for a power wheelchair. She stated that the appellant does require a medically necessary wheelchair due to lower extremity edema; however, the records submitted do not mention any weakness or medical condition that would impede her ability to self-propel a manual wheelchair. She noted there was nothing in the visit notes from the appellant's primary care physician and the Wheelchair/Seating Clinic evaluation of her upper extremities showed that her tone and range of motion were within functional limits. She noted that the letter from the physician's assistance at her cardiologist's office stated "she will try to walk as much as possible and use the wheelchair as needed." She stated that the appellant has sufficient upper extremity function to self-propel an optimally configured lightweight manual wheelchair. She is able to ambulate short distances with a roller walker and has full range of motion in her upper extremities. She concluded that a power wheelchair will not prevent the worsening of or alleviate, correct, or cure the appellant's medical issues any differently than a manual wheelchair. The letter from the cardiologist's office did not indicate any cardiac abnormalities that would impede the appellant from propelling a manual wheelchair.

## **Findings of Fact**

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

1. The appellant is under the age of 65 and enrolled in Fallon Health's Berkshire Medicaid ACO

Plan (Testimony and Exhibit 4).

2. On May 17, 2021, Fallon received a prior authorization request on behalf of the appellant for a power wheelchair and accessories (Testimony and Exhibit 4 at 5).
3. According to the prior authorization request, the appellant is under the age of 65 and has a primary diagnosis of “pain in leg” and a secondary diagnosis of “pressure ulcer of sacral region, stage 2.” (Testimony and Exhibit 4 at 5). The Wheelchair/Seating Clinic Evaluation states the primary diagnosis as impaired mobility, physical deconditioning, and neuropathy. (Testimony and Exhibit 4 at 16).
4. Fallon denied the request under the medical necessity guidelines because there was no indication from the submitted medical records that the appellant is not independent with her manual wheelchair or that she is unable to propel it (Testimony and Exhibit 1).
5. The requested wheelchair with accessories costs \$4,446.24 and a manual wheelchair costs approximately \$500 (Testimony and Exhibit 4 at 13).
6. The prior authorization included physician notes from the appellant’s most recent visits with her primary care physician on March 12, 2021, April 6, 2021, May 13, 2021, and June 11, 2021 (Testimony and Exhibit 4 at 21-40).
7. The record was held open until December 9, 2021 for the appellant to provide documentation from her cardiologist including a summary from her most recent visit and a detailed statement from the cardiologist explaining why the appellant cannot propel a manual wheelchair. The record was held open until January 9, 2022 for Fallon to review and respond to the appellant’s submission. (Exhibit 5).
8. The appellant did not submit anything by December 9, 2021, but on December 14, 2021 emailed the hearing officer and requested to submit the letter from the cardiologist on the following day, which the hearing officer allowed (Exhibit 8).
9. On December 15, 2021, the appellant submitted a letter from a physician’s assistant at her cardiologist’s office that stated the following:

[The appellant] has been having a lot of lower extremity edema which may be exacerbating pain in her legs and reducing her mobility. We are in the process of getting venous insufficiency studies which will hopefully lead to providing [the appellant] with possible treatment of the edema and subsequent improvement in her mobility, though this is uncertain. In the meantime, she mentions that it is very difficult for her to walk and her independence is affected. She would like the assistance of an electronic wheelchair, which seems like a reasonable request given her situation. She will try to walk as much as possible and use the wheelchair when needed. (Exhibit 6).

10. The appellant did not submit any additional medical records or office visit summaries from her cardiologist, only the letter from the physician's assistant (Exhibit 6).
11. Fallon responded on January 6, 2022 and stated that it would uphold its decision to deny the request for a power wheelchair because it was not medically necessary (Exhibit 7).

## **Analysis and Conclusions of Law**

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. 130 CMR 508.001(A).

### Enrollment in a Primary Care ACO.

(a) Selection Procedure. When a member becomes eligible for managed care, the MassHealth agency notifies the member of the member's obligation to select a MassHealth managed care provider within the time period specified by the MassHealth agency. To enroll in a Primary Care ACO, the member must select a Primary Care ACO and an available PCP that participates with the Primary Care ACO the member has selected. The MassHealth agency makes available to the member a list of PCPs that are participating with each Primary Care ACO. The list of PCPs that the MassHealth agency will make available to members may include those approved as a PCP in accordance with 130 CMR 450.119: *Primary Care ACOs* and who practices within the member's service area.

(b) MassHealth members are assigned to Primary Care ACOs, may transfer from Primary Care ACOs, may be disenrolled from Primary Care ACOs, and may be re-enrolled in Primary Care ACOs as described in 130 CMR 508.003(B) through 130 CMR 508.003(E).

130 CMR 508.006(B)(1).

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...

130 CMR 508.010(A),(B).

The appellant exhausted the internal appeal process offered through her ACO, and thus is entitled to a fair hearing pursuant to the above regulations. As MassHealth's agent, Fallon Health is required to follow MassHealth rules and regulations pertaining to a member's care. MassHealth requires prior authorization for durable medical equipment requests. 130 CMR 409.418.

By regulation, MassHealth will not pay a provider for services that are not medically necessary. Pursuant to 130 CMR 450.204(A), a service is considered "medically necessary" if:

- (1) it is reasonably calculated to prevent, diagnose, prevent the worsening of, alleviate, correct, or cure conditions in the recipient 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 (130 CMR 450.204(A)).

Pursuant to 130 CMR 409.414, MassHealth does not pay for the following:

- (B) 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)...

While the appellant's testimony was credible, there is insufficient medical documentation to support the medical necessity of the requested power wheelchair. The wheelchair evaluation makes note of the appellant's inability to propel a manual wheelchair due to her cardiac status; however, it is not supported by any of the medical records submitted with the prior authorization request. The appellant was given the opportunity to supplement those records during the record open period. The record open form specifically requested a detailed statement from her cardiologist explaining why the appellant cannot propel a manual wheelchair along with a summary of her most recent visit. The appellant's record open submission did not include any additional medical records or visit summaries. She provided a letter from a physician's assistant at her cardiologist's office, but it did not address the appellant's cardiac condition or explain how the appellant's cardiac issues prevent her from propelling a manual wheelchair. Additionally, the power wheelchair requested, which costs \$4,446.24, is more costly than a medically appropriate and feasible alternative piece of equipment, a manual wheelchair, which costs approximately \$500.



For these reasons, the requested power wheelchair with accessories is not medically necessary and the appeal is denied.

## **Order for ACO**

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.

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Alexandra Shube  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Fallon Health, Member Appeals and Grievances, 10 Chestnut Street, Worcester, MA 01608