

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2177656
Decision Date:	12/22/2021	Hearing Date:	12/01/2021
Hearing Officer:	Rebecca Brochstein		

Appearances for Appellant:



Appearances for Comm. Care Alliance
Cassandra Horne, Appeals & Grievances Sup.
Dr. Debra Poskanzer, Medical Director



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	MCO Prior Approval
Decision Date:	12/22/2021	Hearing Date:	12/01/2021
MCO's Reps.:	Cassandra Horne Dr. Debra Poskanzer	Appellant's Rep.:	Pro se
Hearing Location:	Board of Hearings (Remote)		

Authority

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

Jurisdiction

Through a notice dated September 1, 2021, Commonwealth Care Alliance, a managed care organization (MCO) that contracts with MassHealth, notified the appellant that it had denied her Level 1 Appeal regarding her request for a manual wheelchair accessory (Exhibit 1). The appellant filed a timely appeal with the Board of Hearings on September 29, 2021 (130 CMR 610.015(B); Exhibit 2). Denial of a request for services is a valid basis for appeal (130 CMR 610.032).

Action Taken by MCO

Commonwealth Care Alliance denied the appellant's request for a manual wheelchair accessory (push-rim activated power assist system). CCA then denied her Level 1 Appeal of that initial denial.

Issue

The appeal issue is whether Commonwealth Care Alliance was correct in denying the appellant's request that CCA cover the cost of the requested manual wheelchair accessory.

Summary of Evidence

The Commonwealth Care Alliance (CCA) medical director and appeals and grievances supervisor appeared at the hearing, which was held via video conference.¹ They testified that the appellant is a CCA One Care member in her mid-50s, with diagnoses that include osteoarthritis and PTSD. She is also deaf.

On July 16, 2021, the appellant requested that CCA authorize a SmartDrive power assist accessory for her manual wheelchair. The request followed an occupational therapy assessment, which was completed on June 8, 2021. The OT report includes the following findings:

- Current Medical/Physical Status:
 - Pain present, hips, right>left. Bilateral knees, right>left. She c/o pain with sit to stand activities and feels her knee “pop” as she stands and straightens it. Mild hand and severe wrist pain due to arthritis reported. Wrists are noted to have slight deformity due to arthritis.
 - Cognitive/Perceptual: [Appellant] reports a short-term memory loss. She forgets where she puts items but her long-term memory is intact. She is able to tell details of events from her past. Attention is good. Problem solving is good. Judgement for safety and using a POV and MWC is good.
 - Vision/Hearing: . . . Deaf since birth. Has a hearing aid on the left and recent Cochlear implant on the right. . . .
 - Tone/ROM: Tone is normal to slightly hypotonic. ROM is WNL/WFL. Minimal limits in ROM are due to pain and vary with level of pain.
 - Upper Extremity Strength: Shoulders: 4-/5, Elbows: WNL, Wrists: 3-/5, Grip: 3-/5, Endurance is poor+/fair with her UE’s due to pain in her hands and wrists.
 - Lower Extremity Strength: Hips: 3+/5 on right and 4-/5 on left, Knees: 3+/5, Ankles 4/5, Endurance is fair to good. She is able to walk short community distances such as around her apartment to take her dog^[2] outside. Pain in her knees is mostly when standing from sitting. Right hip pain worsens with walking decreasing her ability to walk long distances. She was observed to walk down the hall, to the elevator and then about 150 feet with her dog. [The] dog walks well on a leash.
[Appellant] reports that some days she cannot walk to the elevator due to pain. She uses her scooter to take the dog outside on those days.
 - Sitting Balance/Trunk Control: sitting balance is good. Static standing balance is good. Dynamic standing balance is fair+/good minutes depending on her pain level.
- Functional Status:

¹ The video conference was arranged to accommodate the needs of the appellant, who is deaf but can read lips.

² The record is inconsistent as to whether the appellant has one dog or two.

- Mobility: manual wheelchair, Quickie 2 Lite with adjustable back, anti-tippers and Comfort Curve cushion. [Appellant] is independent with her manual wheelchair in her home and scooter in the community.
 She wants to take her manual wheelchair more often into the community because it is easier to get on/off transportation and she would like to have her dog walk with her. He is a comfort to her and helps her feel more secure in the community because he can alert her to other people around. [Appellant] has PTSD and having people startle can be a trigger especially if it is a male.
 But due to pain in her hands and wrists, she cannot mobilize community distances in her manual wheelchair. She would like a Smart Drive to assist with mobilizing in the community and being able to take the chair with her if friends/family want to assist her with attending community outings.
 [Appellant] takes her dog with her with the scooter but it's more difficult to control her dog and the scooter and be sure she and her dog are safe. She also cannot take the scooter with her friends or family unless she meets them somewhere which is not always feasible.
- Ambulatory status: [Appellant's] mobility in her home is modified independent. She is often noted to grab furniture or walls for support due to pain in her hips and knees. She uses her manual wheelchair most of the time in the home but tries to walk as much as possible to maintain her strength. She works on ambulating so that she can make it to bathroom to use the toilet and she enjoys taking baths when she is physically able to due to pain. The heat from the water helps with pain relief. Distance she ambulates varies depending on her pain level; from 20 feet to 250 feet. When pain is increased she must use her scooter to get to the elevator and cannot walk the distance which [is] approximately 60 feet.
- Equipment:
 - Wheelchair mobility: In home with manual wheelchair, she is independent. In community she can mobilize her manual wheelchair short community distances because of pain in her wrists and hands. She needs frequent rests due to pain.
 With her scooter, she is independent in her building and in the community. She cannot use it in her apartment because the apartment is too small to accommodate the turning radius except in one area between the living area and kitchen.
- Goals/Considerations/Recommendations:
 - Patient/Caregiver Goals: Member wants to drive her manual wheelchair with power assist in the community. . . .
 - Equipment Considered and/or Tried During Evaluation: replace reacher and scooter visibility flag. Knee pillow for positioning.
 Smart Drive for [manual wheelchair] considered and she would like to trial one.
 Due to having a scooter, [appellant] does not meet the DST for a power assist for her manual wheelchair. (Exhibit 4 at 74-77).

CCA denied the request on July 22, 2021, on the basis that she is able to independently propel her manual wheelchair and also has a scooter for community use. In its denial notice, CCA indicated that approval for this equipment requires that the member meet the eligibility requirements for a

manual wheelchair, that the member have a manual wheelchair but not be able to independently propel the chair to meet their daily mobility needs, and that the member not already have equipment that is able to meet their needs and is in good working order. See Exhibit 4 at 81, 162.

On August 4, 2021, the CCA ombudsman filed a Level 1 appeal on the appellant's behalf. The CCA record includes the appellant's argument in favor of her appeal:

[Appellant] was denied for the Smart Drive. She would like to file an appeal for Level 1. After reviewing the denial letter, the letter mentioned that the member requested a smart drive [sic] to be used in the community. Member clarified that the smart drive is not used in the community. She has a scooter which is used in the community only. While the member is at home, it becomes more challenge [sic] for the member to use the scooter because it is a large [sic] that would not fit in the apartment and can cause damage around the apartment. Member needed a Smart Drive is because it is a smaller [sic] and it has a remote manual wheelchair which would fit in her apartment. She also can use the smart drive when she goes out of the apartment to take the trash out which is a long walk from her apartment building door to the garbage. The Smart Drive also will help her to take her two service dogs out for walk and do their business. Without the smart drive, the member is at high risk for falling and get [sic] injured. Member cannot use the manual wheelchair because the member has arthritis on both wrists which makes it hard for her to push a manual wheelchair. No one can lift a heavy scooter into a truck or a car. Member wants to be very independent. If someone pushes the member around, then she cannot communicate with someone behind her because the member is Deaf and cannot see someone behind the member's back. Using the Smart Drive, the member can do independently and can communicate with someone, such as the member's son, side by side to provide accessibility for the member. With the scooter, it makes more difficult with many barriers for the member because of the large size for the apartment only. The scooter can also cause damage around the apartment if she must use it because of the large space. Member believes that the smart drive will help to provide the support with her mobility around her home. (Exhibit 4 at 88)

CCA denied that appeal on September 1, 2021, stating its rationale as follows:

After careful consideration the Level 1 Appeal Reviewer agreed with the initial decision and denied your request for a Manual wheelchair accessory, push-rim activated power assist system (Smart drive power assist). A full and careful review of the provided documentation was performed in the context of the CCA Knowledge Base. The requested Manual wheelchair accessory, push-rim activated power assist system (Smart drive power assist) is not medically necessary per the medical policy outlined in the member handbook and Manual Wheelchair-Power Accessories DST 023. Our records indicate that your upper limb coordination and strength are functional. You have cochlear implant in place and you are currently using a wheelchair. The original decision is upheld, and this First Appeal is denied. Please continue to work with your Care Team to report any changes in your health status. (Exhibit 1)

At hearing, the CCA medical director testified that the appellant's current equipment is in good working order, and that the OT report indicates she is able to independently manage and propel her manual wheelchair within her apartment. In addition, she has a scooter for use in the community. The medical director pointed out that the OT observed the appellant walk around inside her apartment as well as down the hall to the elevator. The OT also reported that the appellant was able to walk about 150 feet with her dog on a leash. Based on this information, CCA determined that the SmartDrive accessory did not meet the guidelines for approval.

The appellant appeared at the hearing via video conference and testified on her own behalf. She stated that she has "very painful" arthritis in her hips as well as a number of other diagnoses. She has had ten operations, including two hip replacements that did not work. Her psychiatric medication causes tardive dyskinesia, which prevents her from taking many other medications. She emphasized that because her apartment is small she is not able to use the scooter inside, and also noted that the scooter cannot handle potholes outside. The appellant testified that she is not able to get her scooter into the area where the garbage chute is because it is too big; she contended that the occupational therapist who completed the report did not observe her take the trash out. She also stated that she cannot get out the door with her dogs, adding that they "don't like people" and "fight" them.

Findings of Fact

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

1. The appellant is a woman in her mid-50s who is enrolled in the Commonwealth Care Alliance One Care program.
2. The appellant's diagnoses include deafness, osteoarthritis, and PTSD.
3. The appellant has a manual wheelchair and a scooter.
4. On July 16, 2021, the appellant submitted a prior authorization request for a SmartDrive power assist accessory for her manual wheelchair.
5. An occupational therapy assessment performed on June 8, 2021, revealed the following:
 - a. The appellant suffers from hip, knee, and wrist pain due to arthritis.
 - b. The appellant's range of motion is within normal limits.
 - c. The appellant's mobility in her home is modified independent. She uses her manual wheelchair most of the time in the home but tries to walk as much as possible to maintain her strength. Depending on pain levels, she can ambulate from 20 feet to 250 feet.

- d. The appellant cannot use her scooter inside her apartment because the apartment is too small to accommodate the turning radius.
 - e. The appellant is able to walk short community distances such as around her apartment to take her dog outside. She was observed to walk down the hall to the elevator and then about 150 feet with her dog.
 - f. On days she cannot walk to the elevator the appellant uses her scooter to take the dog outside. She finds it difficult to control the dog and the scooter together.
 - g. The appellant is unable to mobilize community distances in her manual wheelchair due to pain in her hands and wrists.
 - h. The appellant is limited in her ability to go on community outings with friends and family because the scooter cannot easily be transported in a vehicle.
- 6. On July 22, 2021, CCA denied the request for the equipment, determining that she is able to independently propel her manual wheelchair and has a scooter for community use.
 - 7. On August 4, 2021, the CCA ombudsman filed a Level 1 appeal on the appellant's behalf.
 - 8. On September 1, 2021, CCA denied the Level 1 appeal.
 - 9. On September 29, 2021, the appellant filed an appeal with the Board of Hearings.

Analysis and Conclusions of Law

Under 130 CMR 508.006, MassHealth members who are enrolled in MassHealth-contracted managed care plans 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(A);

(B) a determination by the MassHealth behavioral-health contractor, by one of the MassHealth managed care organization (MCO) contractors, or by a senior care organization (SCO), as further described in 130 CMR 610.032(B), if the member has exhausted all remedies available through the contractor's internal appeals process;

(C) the MassHealth agency's denial of a request for an out-of-area MassHealth managed care provider under 130 CMR 508.002(F); or

(D) the MassHealth agency's disenrollment of a member from a MassHealth managed care provider under 130 CMR 508.002(G).

The Fair Hearing regulations at 130 CMR 610.032(B) describe in greater detail the bases for appeal:

(B) Members enrolled in a managed care contractor have a right to request a fair hearing for any of the following actions or inactions by the managed care contractor, provided the member has exhausted all remedies available through the managed care contractor's internal appeals process (except where a member is notified by the managed care contractor that exhaustion is unnecessary):

(1) failure to provide services in a timely manner, as defined in the information on access standards provided to members enrolled with the managed care contractor;

(2) a decision to deny or provide limited authorization of a requested service, including the type or level of service;

(3) a decision to reduce, suspend, or terminate a previous authorization for a service;

(4) a denial, in whole or in part, of payment for a service where coverage of the requested service is at issue, provided that procedural denials for services do not constitute appealable actions. Notwithstanding the foregoing, members have the right to request a fair hearing where there is a factual dispute over whether a procedural error occurred. Procedural denials include, but are not limited to, denials based on the following: (a) failure to follow prior-authorization procedures; (b) failure to follow referral rules; and (c) failure to file a timely claim;

(5) failure to act within the time frames for resolution of an internal appeal as described in 130 CMR 508.010;

(6) a decision by an MCO to deny a request by a member who resides in a rural service area served by only one MCO to exercise his or her right to obtain services outside the MCO's network under the following circumstances, pursuant to 42 CFR 438.52(b)(2)(ii):

(a) the member is unable to obtain the same service or to access a provider with the same type of training, experience, and specialization within the MCO's network;

(b) the provider from whom the member seeks service is the main source of service to the member, except that member will have no right to obtain

services from a provider outside the MCO's network if the MCO gave the provider the opportunity to participate in the MCO's network under the same requirements for participation applicable to other providers and the provider chose not to join the network or did not meet the necessary requirements to join the network;

(c) the only provider available to the member in the MCO's network does not, because of moral or religious objections, provide the service the member seeks; and

(d) the member's primary care provider or other provider determines that the member needs related services and that the member would be subjected to unnecessary risk if he or she received those services separately and not all of the related services are available within the MCO's network; or

(7) failure to act within the time frames for making service authorization decisions, as described in the information on service authorization decisions provided to members enrolled with the managed care contractor.

Under 130 CMR 450.204, 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 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. 130 CMR 450.204(A)

At issue in this case is a denial by Commonwealth Care Alliance, a MassHealth-contracted managed care program, of the appellant's request for coverage of a SmartDrive power accessory for her manual wheelchair. After a Level 1 internal appeal, CCA again denied the request, and the appellant now seeks relief at the Board of Hearings. CCA denied the request on the basis that she is able to independently propel her manual wheelchair and has a scooter for community use.

CCA's Decision Support Tool (DST) 023, which it relied upon to make this determination, sets forth the following guidelines for power accessories for manual wheelchairs:

Clinical eligibility: Member must meet all of the following criteria:

- Member meets the eligibility requirements for a manual wheelchair
- Member has a manual wheelchair but is not able to independently propel the chair to meet their daily mobility needs

Determination of Need: Member must meet all of the following criteria:

- Member has had an evaluation by a LCMP (Licensed/certified medical professional) to determine the need for the equipment
- Member has been self-propelling in a MWC for at least one year
- Member is no longer able to self-propel MWC due to insufficient upper extremity or cardiovascular function
- Member is at risk for repetitive motion injury to the arms or shoulders
- Member is able to independently meet their daily mobility needs with the use of this equipment

In accordance with the MassHealth medical necessity regulation, the CCA guidelines limit authorization of this equipment to cases where the member does not already have equipment that is able to meet their needs and is in good working order, where the member's need could be met by a less costly alternative, or where the equipment cannot reasonably be expected to make a meaningful contribution to the treatment of a member's illness or injury. See Exhibit 4 at 162-163; 130 CMR 450.204.

In addition to these rules, the DST states that when CCA reviews a request for a push-rim activated power assist wheel, as the appellant has requested here, CCA follows the Medicare Local Coverage Determination (LCD) Power Mobility Devices (L33789) for the medical necessity guidelines. Those guidelines, which can be found on the CMS website, include the following three criteria that must be met:³

- A. The beneficiary has a mobility limitation that significantly impairs his/her ability to participate in one or more mobility-related activities of daily living (MRADLs) such as

³ These are the "Basic Coverage Criteria" for a power mobility device. There are additional requirements specific to the push-rim activated power device: That the member has been self-propelling in a manual wheelchair for at least one year; that the member has had a specialty evaluation performed by a licensed/certified medical professional, such as a PT or OT, or practitioner who has specific training and experience in rehabilitation wheelchair evaluations and that documents the need for the device in the member's home; and that the wheelchair is provided by a supplier that employs a RESNA-certified Assistive Technology Professional who specializes in wheelchairs and who has direct, in-person involvement in the wheelchair selection for the beneficiary. See [LCD - Power Mobility Devices \(L33789\) \(cms.gov\)](#), section VII.

toileting, feeding, dressing, grooming, and bathing in customary locations in the home. A mobility limitation is one that:

- Prevents the beneficiary from accomplishing an MRADL entirely, or
 - Places the beneficiary at reasonably determined heightened risk of morbidity or mortality secondary to the attempts to perform an MRADL; or
 - Prevents the beneficiary from completing an MRADL within a reasonable time frame.
- B. The beneficiary's mobility limitation cannot be sufficiently and safely resolved by the use of an appropriately fitted cane or walker.
- C. The beneficiary does not have sufficient upper extremity function to self-propel an optimally-configured manual wheelchair in the home to perform MRADLs during a typical day.
- Limitations of strength, endurance, range of motion, or coordination, presence of pain, or deformity or absence of one or both upper extremities are relevant to the assessment of upper extremity function.
 - An optimally-configured manual wheelchair is one with an appropriate wheelbase, device weight, seating options, and other appropriate nonpowered accessories.

The appellant argues that the SmartDrive push-rim activated power device is necessary because her manual wheelchair and her scooter do not meet all her mobility needs. Specifically, she maintains that she is unable to access the garbage chute down the hall from her apartment, to easily take her dog for a walk, or – because her scooter is too large to transport – to go on community outings with others.

As set forth above, the CCA DST guidelines require, among other things, that the “[m]ember is no longer able to self-propel [the manual wheelchair] due to insufficient upper extremity or cardiovascular function.” The evidence indicates that the appellant is still able to self-propel in the manual wheelchair, though not for long distances. But she also has a scooter that she can use for longer-distance mobility, including around her apartment building and outdoors. Furthermore, the activities for which the appellant has requested the power accessory are largely recreational rather than related to her own medical necessity.⁴

The CMS guidelines also highlight this distinction. The first requirement for approval of a power mobility device is that the member have “a mobility limitation that significantly impairs

⁴ The only arguable exception to this is accessing the trash chute down the hall from her apartment. However, it was not clear from the record why the appellant could not use her scooter to get down the hallway and ambulate on foot any additional distance required to get to the disposal location. The evidence also suggests that she is able to bring her dog outside for short walks in order to address its basic needs.

his/her ability to participate in one or more mobility-related activities of daily living (MRADLs) such as toileting, feeding, dressing, grooming, and bathing in customary locations in the home.” And the third requirement is that the member “not have sufficient upper extremity function to self-propel an optimally-configured manual wheelchair in the home to perform MRADLs during a typical day.” These criteria suggest that the focus must be on the member’s ability to perform activities of daily living *within the home environment*; community-based mobility limitations are not a consideration. Looking to the record here, there is nothing to suggest that the appellant is unable to complete the full range of activities of daily living in her home with the equipment she already has. The reasons the appellant cited for needing the power assist accessory primarily relate to recreational activities outside her home.

The CCA decision was consistent with MassHealth medical necessity regulations and with CCA and CMS guidelines. As such, this appeal is denied.

Order for CCA

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.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Cassandra Horne, Appeals & Grievances Supervisor
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