

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2178556
Decision Date:	01/26/2022	Hearing Date:	12/30/2021
Hearing Officer:	Marc Tonaszuck		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Robin Brown, OTR/L, Optum



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

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Durable Medical Equipment
Decision Date:	01/26/2022	Hearing Date:	12/30/2021
MassHealth's Rep.:	Robin Brown, OTR/L, Optum	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South		

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 10/12/2021, MassHealth informed the appellant that denied his prior authorization (PA) request for a power wheelchair accessory, power seat elevator (130 CMR 450.204(A)) (130 CMR 450.303; Exhibit 1). The appellant filed this appeal timely on 11/08/2021 (130 CMR 610.015(B); Exhibit 2).¹ Denial of assistance is valid grounds for appeal (130 CMR 610.032).

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated 04/07/2020, 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 MassHealth

MassHealth denied the appellant's PA request for a power wheelchair accessory, power seat elevator.

Issue

Is MassHealth correct in denying the appellant's prior authorization request for a power wheelchair accessory, power seat elevator?

Summary of Evidence

The MassHealth consultant, a licensed occupational therapist, testified that on 10/06/2021, MassHealth received a prior authorization (PA) request from National Seating and Mobility (Provider) on behalf of the appellant for a Group 3 power wheelchair, power seat elevator, power seating system, accessories, center mount power elevating leg rests, and routine service/maintenance of those items. MassHealth approved all items except the powered seat elevator line item. The cost of the approved items was \$23,152.00. The cost of the denied item is \$1,049.94. Included in the PA request packet is a letter of medical necessity from Thomas Murphy, occupational therapist from Cooley Dickinson Hospital in Northampton, Mass. (Exhibit 5, pp. 12-19).

According to the information provided by Mr. Murphy in the letter of medical necessity, the appellant is in his late-50's and has diagnoses of spinal cord injury at the C4-5 level (incomplete) as the result of a motor vehicle accident in 1980, frequent bladder infections, requiring hospitalization, required pacemaker placement 10 years ago, osteoarthritis in hips and spine; had two decubitus on buttocks beginning in May 2015 now healed; suprapubic catheter surgery two years ago, several hospitalizations for UTI's, Type 2 Diabetes, neurogenic bladder. He has no lower extremity movement, has 3/5 upper extremity strength, can raise his arm and shrug his shoulder, but cannot move his wrist or fingers. MassHealth provides 92:45 day/evening hours of weekly personal care attendant hours plus two daily nighttime attendant hours. (Exhibit 4).

The MassHealth representative testified that the letter of medical necessity contains contradictory information; specifically that the requested item would be used to permit the appellant to reach and take out items from the refrigerator, to better reach items in cabinets and in the kitchen sink. The representative testified that the appellant has minimal strength in his upper extremities, to the extent that he cannot lift anything more than the weight of his hand and arm. Also according to the PCA assessments, the appellant is unable to use his upper extremities for functional tasks. Additionally, there is no information about the requested item being trialed and documented by the provider. As a result, there is no documented medical necessity for the powered seat elevator. The PCA has been approved for time to assist the appellant getting things in and out of the

refrigerator, cabinets, and kitchen sink. If the appellant needs a drink of water when the PCA is not there, the PCA can fill a bottle and place it near the appellant's wheelchair. Moreover, any need for social purposes (e.g., raising up to be face-to-face with others), is not a medical need (Exhibit 4).

The appellant appeared at the fair hearing and testified that he would like the power elevating feature to get a drink of water from the faucet when the PCA is not present and to be eye-to-eye with others when socializing.

Findings of Fact

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

1. The appellant is in his late-50's and has diagnoses of spinal cord injury at the C4-5 level (incomplete) as the result of a motor vehicle accident in 1980, frequent bladder infections, requiring hospitalization, required pacemaker placement 10 years ago, osteoarthritis in hips and spine; had two decubitus on buttocks beginning in May 2015 now healed; suprapubic catheter surgery two years ago, several hospitalizations for UTI's, Type 2 Diabetes, neurogenic bladder.
2. The appellant has no lower extremity movement, has 3/5 upper extremity strength, can raise his arm and shrug his shoulder, but cannot move his wrist or fingers.
3. MassHealth provides the appellant with 92:45 day/evening hours of weekly personal care attendant hours plus two daily nighttime attendant hours.
4. On 10/06/2021, MassHealth received a prior authorization (PA) request from National Seating and Mobility (Provider) on behalf of the appellant for a Group 3 power wheelchair, power seat elevator, power seating system, accessories, center mount power elevating leg rests, and routine service/maintenance of those items. The cost of the approved items was \$23,152.00.
5. MassHealth approved all items except the powered seat elevator line item. The cost of the denied item is \$1,049.94.
6. According to the letter of medical necessity included with the PA request, the requested item would be used to permit the appellant to reach and take out items from the refrigerator, to better reach items in cabinets and in the kitchen sink.
7. The MassHealth representative is a licensed occupational therapist.
8. The MassHealth consultant testified that according to the documentation in the letter of medical necessity and in the PCA evaluations, the appellant is not able to lift anything with his upper extremities.

9. The PCA is paid to assist the appellant with reaching things in the cabinets, refrigerator, and the kitchen sink.

Analysis and Conclusions of Law

MassHealth regulations at 130 CMR 450.204 address medical necessity 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.)

Durable medical equipment regulations at 130 CMR 409.414 address noncovered services as follows:

The MassHealth agency does not pay for the following:

(A) DME that is experimental in nature;

(B) DME that is determined by the MassHealth agency not to be medically necessary pursuant to 130 CMR 450.204. 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 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);
- (C) the repair of any durable medical equipment that is not identified as a covered service in Subchapter 6 of the Durable Medical Equipment Manual;
- (D) the repair of any equipment where the cost of the repair is equal to or more than the cost of purchasing a replacement;
- (E) routine periodic testing, cleaning, regulating, and checking of durable medical equipment that is owned by the member;
- (F) DME that is not of proven quality and dependability;
- (G) durable medical equipment that has not been approved by the federal Food and Drug Administration (FDA) for home use;
- (H) evaluation or diagnostic tests conducted by the DME provider to establish the medical need for DME;
- (I) home or vehicle modifications, such as ramps, elevators, or stair lifts;
- (J) common household and personal hygiene items generally used by the public, including but not limited to washcloths, wet wipes, and non-sterile swabs;
- (K) products that are not DME;
- (L) certain durable medical equipment provided to members in facilities in accordance with 130 CMR 409.415; and
- (M) provider claims for noncovered services under 130 CMR 409.414 for MassHealth members with other insurance, except as otherwise required by law.

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass. App. Ct. 333 , 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386 , 390 (1998).

MassHealth received a prior authorization (PA) request from National Seating and Mobility on behalf of the appellant for a Group 3 power wheelchair with power tilt recliner and accessories. MassHealth approved all items except the powered seat elevator line item.

The appellant has advanced two arguments in support for the power seat elevator: first that the power seat elevator would allow him to reach things in the refrigerator, cabinets and the kitchen sink; and second that he would like to be at eye-level with others in social situations.

The MassHealth representative, a licensed occupational therapist, stated that medical necessity is met when the item is 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 meets professional standards. She testified credibly that the documentation submitted with the requested equipment does not demonstrate medical necessity. The MassHealth representative also testified that the medical documentation does not support the appellant reaching and taking things in and out of the refrigerator, cabinets and kitchen sink since he does not have the document strength to do so in his upper extremities. Additionally, MassHealth relied on that information when approving PCA time for assistance in those tasks. MassHealth testified that the appellant has been approved for, and provided with, PCA time specifically for the purpose of getting things for him from those kitchen areas.

The MassHealth representative also responded to the testimony that the appellant would like to be at eye-level with others when socializing. The MassHealth representative testified that the ability to elevate his chair to interact with others is not a medical necessity. The appellant did not meet his burden of showing by a preponderance of the evidence that MassHealth's assertions are incorrect. As a result, the request, as it was submitted to MassHealth, was correctly denied because the item requested is duplicative of the services already provided and approved, and the documentation does not support medical necessity in the above regulations..

This appeal is therefore denied.

Order for MassHealth

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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Optum MassHealth LTSS, P.O. Box 159108, Boston, MA
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