

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2200723

**Decision Date:** 3/25/2022

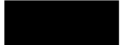
**Hearing Date:** 03/01/2022

**Hearing Officer:** Marc Tonaszuck

**Appearance for Appellant:**  
Pro se

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

**Interpreter:**



*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>	Durable Medical Equipment
<b>Decision Date:</b>	3/25/2022	<b>Hearing Date:</b>	03/01/2022
<b>MassHealth's Rep.:</b>	Robin Brown, OTR/L, Optum	<b>Appellant's Rep.:</b>	██████
<b>Hearing Location:</b>	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 11/04/2021, MassHealth informed the appellant that denied her prior authorization (PA) request for Flexitouch pneumatic compression system and leg garments (130 CMR 450.204(A), 450.303; Exhibit 1). The appellant filed this appeal timely on 01/31/2021 (130 CMR 610.015(B); Exhibit 2).<sup>1</sup> Denial of assistance is valid grounds for appeal (130 CMR 610.032).

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<sup>1</sup> 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 Flexitouch pneumatic compression system and leg garments.

## **Issue**

Is MassHealth correct in denying the appellant's prior authorization request for Flexitouch pneumatic compression system and leg garments?

## **Summary of Evidence**

The MassHealth consultant, a licensed occupational therapist, testified that on 11/01/2021, MassHealth received a prior authorization (PA) request from Tactile Medical (Provider) on behalf of the appellant for Flexitouch pneumatic compression system and leg garments at a cost of \$6,048.76. MassHealth reviewed the request and denied it based on medical necessity. Included in the PA request packet is a letter of medical necessity from Dr. Rosano. According to the information provided by Dr. Rosano in the letter of medical necessity, the appellant has a diagnosis of hereditary lymphedema (Exhibit 4).

The MassHealth representative testified that the PA packet does not contain information demonstrating medical necessity. Specifically, the documentation provided does not sufficiently show why a less costly alternative cannot be used. The MassHealth representative testified that the first treatment that must be trialed for the appellant's condition is manual lymphatic massage, drainage and compression bandage. If this is not effective, the next less costly alternative treatment is electric pumps with sequential or segmental pneumatic units. The requested item uses a higher level of treatment, computerized compression sequences for lymphatic drainage. The PA request contains no documentation that the requested item was trialed, and no documentation of the results. Also, there is insufficient documentation to show that the less costly treatment options had been trialed or are contraindicated. In one instance, the documentation states that one option is "ruled out ... because risk of trunk, chest, abdominal swelling." The MassHealth representative stated that there is no additional diagnosis or medical history provided to MassHealth to substantiate this statement (Exhibits 1 and 4). As a result, the request for the item was denied.

The appellant appeared at the fair hearing and testified that she did not understand why MassHealth did not receive the appropriate documentation. She testified that she trialed all of the treatments and did see "much improvement." She stated she has fatigue after long walks or doing chores and that her feet often feel tired. She tried diet and exercise but has not experienced satisfactory improvement. The appellant also stated that she does not like the way her condition makes her look and she suffers from depression as a result. In addition, her condition affects her relationship with her partner. She wants to try

the pneumatic pump to see if it can assist her condition.

## **Findings of Fact**

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

1. The appellant is in her late 30's and has a diagnosis of hereditary lymphedema.
2. On 11/01/2021, MassHealth received a prior authorization (PA) request from Tactile Medical (Provider) on behalf of the appellant for Flexitouch pneumatic compression system and leg garments at a cost of \$6,048.76.
3. On 11/04/2021, MassHealth denied the request for the Flexitouch pneumatic compression system and leg garments.
4. The appellant filed a timely request for a fair hearing with the Board of Hearings on 01/31/2022.
5. There is no documentation with the PA request to show the appellant trialed the Flexitouch pneumatic compression system and leg garments and with what results.
6. The documentation included with the PA request indicates that the basic pneumatic compression device was ruled out due to the risk of trunk, chest, and abdominal swelling; however there is no diagnosis or any medical records to substantiate the concerns.
7. Less costly alternatives to the requested item are manual lymphatic massage with compression bandages, and the use of a basic pneumatic compression device.
8. No documentation was provided to MassHealth to show that less costly alternatives were trialed or, if not, that they were contraindicated due to a specific diagnosis.

## **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.)

**(Emphasis added.)**

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 Tactile Medical on behalf of the appellant for Flexitouch pneumatic compression system and leg garments. MassHealth denied the request for two reasons: the first is that there is no documentation to show that a less costly alternative was ineffective or contraindicated; and the second is that there is no documentation provided to show that the requested item was trialed and with what results.

The appellant has essentially testified that she trialed the requested item and the less costly alternatives. She also testified that she was unclear why MassHealth did not receive the documentation of the trials.

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. Also, that there is no less costly alternative that would treat the condition. She testified credibly that the documentation submitted with the requested equipment does not demonstrate medical necessity. Specifically, she testified that she would need to see that less costly alternatives were either trialed without good results or were contraindicated, and that the requested item was trialed with good results. The documentation submitted on the appellant's behalf does not adequately address MassHealth's concerns. The appellant may resubmit her request for this item with the appropriate documentation; however, MassHealth's decision to deny this request is supported by the regulations and the

material facts in the hearing record. 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.

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Marc Tonaszuck  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Optum MassHealth LTSS, P.O. Box 159108, Boston, MA 02215