

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2202332
<b>Decision Date:</b>	5/25/2022	<b>Hearing Date:</b>	05/12/2022
<b>Hearing Officer:</b>	Thomas J. Goode		

**Appearance for Appellant:**  
Pro se

**Appearance for Cambridge Health Alliance:**  
Kathryn Tylander, PT, DPT, Manager of  
Quality and Compliance



*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
<b>Decision Date:</b>	5/25/2022	<b>Hearing Date:</b>	05/12/2022
<b>CHA Rep.:</b>	Kathryn Tylander	<b>Appellant Rep.:</b>	Pro se
<b>Hearing Location:</b>	Remote	<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 February 14, 2022, and following a standard internal appeal, Cambridge Health Alliance (CHA) PACE (Program of All-Inclusive Care for the Elderly) denied Appellant's request for a motorized scooter (130 CMR 409.417, 450.204). Appellant filed this appeal in a timely manner on March 28, 2022 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

## Action Taken by CHA PACE

CHA PACE denied Appellant's request for a motorized scooter.

## Issue

The appeal issue is whether CHA PACE correctly denied Appellant's request for a motorized scooter (130 CMR 409.417, 450.204).

## Summary of Evidence

The Cambridge Health Alliance Program of All-Inclusive Care for the Elderly (hereinafter CHA PACE) representative testified that CHA PACE is a managed Medicare & Medicaid replacement program. The CHA Interdisciplinary Team (IT) must review and authorize all care and services and uses clinical judgment on a case-by-case basis and Medicare & Medicaid guidance to make medical necessity determinations. Services that are not covered by CHA PACE include any service not authorized by the IT, even if it is a covered benefit, unless the service is for emergency care (Exhibit 4, p. 12). By notice dated February 14, 2022, CHA PACE informed Appellant that his request for a motorized scooter was denied based on the IT's assessment of Appellant's functional ability and safety concerns while operating a scooter. The notice also informed Appellant that a motorized scooter is typically utilized by individuals who are unable to walk or complete their activities of daily living (ADLs). Appellant is independent with transfers and ambulation and does not require an electric scooter (Exhibit 4, p. 39). The CHA PACE representative stated that the denial was based on evaluations from physical and occupational therapists who report that Appellant is able to transfer and ambulate in his home, and recommend Appellant use a rollator style walker for ambulation. The report notes safety concerns when observing Appellant using a motorized scooter including unsafe reversing, turning, navigating congested areas, and using the device to cross roads. Comments recorded by the occupational therapist state that while trialing a scooter Appellant needed cues to safely navigate the environment, demonstrated impulsive behaviors at times such as making turns at high speeds and driving through deep puddles despite instruction from the occupational therapist (Exhibit 4, pp. 51-52). On March 4, 2022, a third-party appeal review was completed by an external physical therapist who concluded that Appellant demonstrates independent functional mobility for household tasks, mobility, and has safe access to transportation from his elevator-accessible apartment. The reviewer concluded that while a scooter would increase speed and distance navigating in the community, there is valid concern for safe operation in the presence of documented impulsive driving and visual field deficits. The reviewer also noted that dependence on a motorized scooter could contribute to a decline in mobility and recommended use of a rollator walker (Exhibit 4, p. 63). The CHA PACE representative also discussed two scholarly articles showing the risk of accidents caused by electric scooters, and the negative cardiovascular impacts related to overuse of electric scooters (Exhibit 4, pp. 77, 83). On March 10, 2022, CHA PACE informed Appellant that the decision to deny authorization for the motorized scooter was upheld, and the internal appeal was denied (Exhibit 4, p. 64). In upholding the denial, CHA PACE relied on MassHealth Medical Necessity criteria, and Medicare Wheelchair and Scooter Benefit Guidelines which require a written physician order stating that the scooter is needed for use in the home, inability to do ADLs even with the help of a cane, crutch, or walker, and that the scooter can be safely operated (Exhibit 4, p. 92). Because Appellant does not meet these criteria, the prior authorization request was denied.

Appellant testified that he is independent with ADLs and ambulates independently throughout his home with a cane. Appellant stated that he has had an electric scooter for 20 years and MassHealth paid for scooters in the past. He stated that he acquired his current electric scooter 3 or 4 years ago from a relative for \$97. Appellant stated that he does not use the scooter in his home but uses it when food shopping and going to the CHA PACE Center. Appellant added that he tried a rollator

walker 20 years ago, but his legs gave out while using it. Appellant added that his current scooter needs to be repaired or replaced, and he doesn't feel he is accident prone when operating the scooter.

## **Findings of Fact**

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

1. The CHA PACE Program is a comprehensive health program that is designed to keep frail, older individuals who are certified eligible for nursing-facility services living in the community. A complete range of health-care services is provided by one designated community-based program with all medical and social services coordinated by a team of health professionals.
2. The CHA Interdisciplinary Team must review and authorize all care and services and uses clinical judgment on a case-by-case basis and Medicare & Medicaid guidance to make medical necessity determinations.
3. Services that are not covered by CHA PACE include any service not authorized by the Interdisciplinary Team, even if it is a covered benefit, unless the service is for emergency care.
4. By notice dated February 14, 2022, CHA PACE informed Appellant that his request for a motorized scooter was denied based on safety concerns while operating a scooter, and informed Appellant that a motorized scooter is typically utilized by individuals who are unable to walk or complete their activities of daily living (ADLs).
5. Evaluations by physical and occupational therapists recommend Appellant use a rollator style walker for ambulation.
6. When operating a motorized scooter Appellant is unsafe while reversing, turning, navigating congested areas, and crossing roads.
7. When operating a motorized scooter Appellant needs cues to safely navigate the environment and demonstrates impulsive behaviors at times such as making turns at high speeds and driving through deep puddles.
8. CHA PACE denied Appellant's prior authorization request for a motorized scooter. Appellant filed an internal standard appeal.
9. On March 4, 2022, a third-party appeal review was completed by an external physical therapist.
10. Appellant demonstrates independent functional mobility for ADLs; household tasks,

mobility, and has safe access to transportation from his elevator-accessible apartment.

11. Appellant ambulates independently with a cane.
12. A scooter would increase speed and distance navigating in the community; however, there is a valid concern for safe operation in the presence of documented impulsive driving and visual field deficits.
13. Dependence on a motorized scooter could contribute to a decline in mobility.
14. On March 10, 2022, CHA PACE informed Appellant that the decision to deny authorization for the motorized scooter was upheld, and the internal appeal was denied.
15. Use of a motorized scooter increases the risk of accidents and can negatively impact the cardiovascular system if overused.

## **Analysis and Conclusions of Law**

Regulation 130 CMR 450.204: Medical Necessity states:

The MassHealth agency does 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: *Potential Sources of Health Care*, or 517.007: *Utilization of Potential Benefits*.

Medical Necessity Criteria for Durable Medical Equipment is found at 130 CMR 409.417 which follows:

(A) All DME covered by MassHealth must meet the medical necessity requirements set

forth in 130 CMR 409.000 and in 450.204: *Medical Necessity*, and any applicable medical necessity guidelines for specific DME published on the MassHealth website.

(B) For items covered by MassHealth for which there is no MassHealth item-specific medical necessity guideline, and for which there is a Medicare Local Coverage Determination (LCD) indicating Medicare coverage of the item under at least some circumstances, the provider must demonstrate medical necessity of the item consistent with the Medicare LCD. However, if the provider believes the durable medical equipment is medically necessary even though it does not meet the criteria established by the local coverage determination, the provider must demonstrate medical necessity under 130 CMR 450.204: *Medical Necessity*.

(C) For an item covered by MassHealth for which there is no MassHealth item-specific medical necessity guideline, and for which there is a Medicare LCD indicating that the item is not covered by Medicare under any circumstance, the provider must demonstrate medical necessity under 130 CMR 450.204: *Medical Necessity*.

The DME provider must obtain prior authorization from the MassHealth agency or its designee as a prerequisite for payment of DME identified in the DME and Oxygen Payment and Coverage Guideline Tool or other guidance specified by MassHealth or its designee as requiring prior authorization, or pursuant to 130 CMR 409.413(B), for service codes not listed in Subchapter 6 or in the DME and Oxygen Payment and Coverage Guideline Tool (130 CMR 409.418)

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

(A) DME that is experimental or investigational in nature;

(B) DME that is determined by the MassHealth agency not to be medically necessary pursuant to 130 CMR 409.000 and 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);

The PACE program is a comprehensive health program that is designed to keep frail, older individuals who are certified eligible for nursing-facility services living in the community. A complete range of health-care services is provided by one designated community-based program with all medical and social services coordinated by a team of health professionals. The MassHealth agency administers the program in Massachusetts as the Elder Service Plan (ESP). Persons enrolled in PACE have services delivered through managed care in day-health centers; at home; and in specialty or inpatient settings, if needed (130 CMR 519.007(C)). Appellant is enrolled in the PACE program administered by CHA which reviewed Appellant's prior

authorization request for a motorized scooter. The MassHealth Durable Medical Equipment Manual includes scooters in the definition of Mobility Systems (130 CMR 409.402); and Mobility Equipment is potentially covered by MassHealth (130 CMR 409.413(B)(9)). However, MassHealth only covers medically necessary DME that can be appropriately used in the member's home or setting in which normal life activities take place, and in certain circumstances described in 130 CMR 409.415 for use in facilities. DME that is appropriate for use in the member's home may also be used in the community (130 CMR 409.413(A)).<sup>1</sup> Appellant is independent with transfers and ambulation in the home with a cane and has safe access to transportation from his elevator-accessible apartment. Further, safety concerns with Appellant's ability to operate a motorized scooter are well-documented in the clinical record by physical and occupational therapists who recommend that Appellant use a rollator style walker for ambulation. Therefore, a motorized scooter is not medically necessary for use in Appellant's home, and CHA PACE correctly denied prior authorization for a motorized scooter.

The appeal is DENIED.

## **Order for CHA PACE**

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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Thomas J. Goode  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Cambridge Health Alliance, Attn: Kathryn Tylander, PT, DPT, Manager of Quality and Compliance, 163 Gore Street, Cambridge, MA 02141

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<sup>1</sup> Medicare Wheelchair and Scooter Benefit Guidelines also require a written physician order stating that a scooter is needed for use in the home, inability to do ADLs even with the help of a cane, crutch, or walker, and that the scooter can be safely operated (Exhibit 4, p. 92).