

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2202800
Decision Date:	8/11/2022	Hearing Date:	07/14/2022
Hearing Officer:	Scott Bernard		

Appearance for Appellant:
Pro se via telephone

Appearance for MassHealth:
Sara Pedone PT *via telephone*



*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:	Approved	Issue:	Prosthetics
Decision Date:	8/11/2022	Hearing Date:	07/14/2022
MassHealth's Rep.:	Sara Pedone PT	Appellant's Rep.:	<i>Pro se</i>
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 March 31, 2022, MassHealth denied the appellant's prior authorization (PA) request for a Right K3 below-knee prosthesis with articulated ankle/socket attached to an endoskeleton prosthetic energy storing K3 flex foot (the prosthesis) because the documentation submitted did not indicate the requested device met recognized standards of care, or was clinically effective for the appellant. (See 130 CMR 450.204; Exhibit (Ex.) 1; Ex. 6, pp. 4-6, 7). Additionally, MassHealth determined that the documentation submitted indicated that the appellant there was a comparable device available that was less costly to MassHealth. (Id.). The appellant filed this appeal in a timely manner on April 7, 2022. (See 130 CMR 610.015(B) and Ex. 2). Denial of assistance is valid grounds for appeal. (See 130 CMR 610.032).

The hearing, initially scheduled for May 18, 2022, was postponed at the appellant's request for good cause until the present date.

Action Taken by MassHealth

MassHealth denied the appellant's PA request for the prosthesis.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 428.408, 428.412, 428.413, 450.204, and 450.303 in determining that the requested prosthesis was not medically necessary.

Summary of Evidence

The MassHealth representative testified to the following. MassHealth received the PA request for a hybrid prosthetic on March 21, 2022. (Ex. 6, pp. 7-16). MassHealth issued a timely denial of the PA request on March 31, 2022. (Ex. 1; Ex. 6, pp. 4-6). The notice stated that the reason for the denial was "...[c]linical documentation submitted to support this request is incomplete and does not establish medical necessity. A further, in depth functional gait analysis with and without the requested hybrid prosthetic as well as clear, specific documentation of all mobility devices the member currently utilized is required to determine medical necessity." (Id.).

The MassHealth representative admitted to being a bit confused about the requested device at first glance. The MassHealth representative referred the hearing officer to the MassHealth submission, which had a picture of the device. (Ex. 6, p. 14). The appellant was requesting a type of prosthetic that he would wear over his right leg. The MassHealth representative referred to a May 2, 2022 letter written by John Zakrzewski, Certified Prosthetist/Orthotist (CPO), from the Orthotic and Prosthetic Center that she thought gave a good description of the device and its function. (Ex. 4, pp. 2-3). In the letter Mr. Zakrzewski gives a good description of the prosthetic and noted its uniqueness. (Id.). The MassHealth representative then read the following from that letter:

I'm writing in regard to the recent denial on behalf of [the appellant] for his hybrid prosthetic and orthotic device. Specifically, L Codes L5301 and L5981 were denied. I understand from the committee's review board perspective, this is a confusing device we have proposed as he is not an amputee. I will explain in greater detail why a prosthesis design is appropriate for [the appellant], not an orthosis.

[The appellant] recently went to Florida to a specialty clinic that deals with his syndrome, TAR¹ syndrome. [The appellant] was prescribed a hybrid device that is both a prosthetic and orthosis. It is called a "Foot over Foot prosthesis". His right lower extremity is very short compared to the left side by 10 cms..² I will design a socket to couple to his left foot and ankle. He does not have a right bending knee, he has a fused knee. His right ankle has limited ROM also. His anatomical foot will connect to a socket like in a BK³ prosthesis. This socket will attach to a short pylon and a prosthetic foot. His anatomical foot will sit on top of the prosthetic foot. The prosthetic foot will go into a normal shoe. (Ex. 4, p. 2).

The MassHealth representative stated that the cost of the device would be \$5,190.08. The MassHealth representative referred to the medical necessity letter dated May 4, 2022, which was written by Dr. Susan R. Ehrenthal, a physician at Spaulding Rehabilitation specializing in Physical Medicine and Rehabilitation. (Ex. 4, p. 1). According to the letter the appellant is an individual under the age of 20 with a rare condition called radial aplasia thrombocytopenia syndrome. (Ex. 4, p. 1). As a result of the condition the appellant was "born without arms such that his hands are attached directly to his trunk." (Id.). He also has leg deformities for which he has had multiple surgical

¹ Thrombocytopenia-absent radius.

² The two periods are replicated from the original document.

³ The MassHealth representative explained that this meant Below Knee.

procedures. (Id.). The appellant's right leg is 10 cm or 3.9 inches shorter than his left and his right knee is fused. (Id.). Dr. Ehrenthal wrote that "the prosthetic foot would allow mobility and correct the limb length to help provide a more stable and dynamic gait pattern." (Id.). Dr. Ehrenthal also stated that the appellant has tried an Arizona Ankle Foot Orthosis (AFO) accommodating the 10 cm length difference, but it did not work and as a result has not been used since 2020. (Id.). The MassHealth representative stated that it was unclear from the materials whether the device allows the appellant to have a functional gait. There was nothing presented indicating whether the device and other devices were trialed in the household and in the community.

The MassHealth representative stated that MassHealth approved a Group 3 Power Wheelchair for the appellant in 2012. (Ex. 6, p. 24). In 2017, MassHealth approved a Group 4 Power Wheelchair with power seat elevation and other features. (Ex. 6, p. 23; Ex. 7). MassHealth also approved repairs to the latter wheelchair in January 2022. (Ex. 6, p. 22; Ex. 8). The MassHealth representative stated that the appellant's current Group 4 Power Wheelchair is a high performing wheelchair with a lot of customization. The medical necessity letter that accompanied that PA request for that wheelchair in 2017 stated the appellant was "not a functional ambulator as his maximal stand time is three minutes with assist; therefore, a cane or walker [was] not an appropriate mobility aid." (Ex. 7, p. 3). The MassHealth representative stated that according to the Physical Therapy Evaluation that accompanied the 2017 PA request, the appellant required a power wheelchair. (Ex. 7, p. 7). The MassHealth representative stated that the appellant's current wheelchair was requested with a lot of customization. (Ex. 7, pp. 3-6). This included a power front load system that allows for independent transferring into and out of the chair from the floor and a power seat elevator that allows for independent transfers to his bed, to reach the board in his classroom, and to interact with his family, friends and teachers. (Ex. 7, pp. 4-5). MassHealth approved the wheelchair and the 16 components requested. (Ex. 6, p. 23).

The MassHealth representative stated that the appellant's current power wheelchair allows the appellant to perform ADLs and IADLs independently and gives him access in both his home and community. The documentation from the prosthetist indicates that the appellant will be dependent on a caregiver to assist him with donning and doffing the requested prosthesis whereas the appellant can access the wheelchair without assistance. The MassHealth representative stated that the regulations MassHealth used to reach to determination to deny the requested prosthesis were 130 CMR 450.204(A)(1),(2),(B), and (E); and 428.408. (Ex. 6, pp. 17, 19).

The appellant stated first that he did not use the power wheelchair in his home, as he was independent in his house. The appellant also stated that he does still require the power wheelchair for long distance mobility, like if he had to go to a store or to school. The appellant stated that he needs the prosthesis to ambulate longer distances than he has previously. The appellant stated that in 2017 he had a very big surgical procedure on his leg. The procedure fused his legs from hip to foot to make them straight. The procedure has allowed the appellant to stand and walk for greater distances. MassHealth has provided the appellant with leg braces in the past. The appellant cannot stand in the braces without his right foot being in excruciating pain. The appellant stated that he currently is able to ambulate but that this causes him a great deal of pain if he does so for any length of time.

The appellant stated that he is overweight for his height and that the prosthetic would allow him to

ambulate more for exercise. The appellant did understand that the prosthesis is a special request but that this would improve his quality of life a great deal. The appellant stated that he would still require his power wheelchair for long distance mobility, but the prosthesis would make it more possible for him to also walk without pain.

The material MassHealth submitted into the hearing record states the following in pertinent part. (See Ex. 6). In a letter dated March 14, 2022, Dr. Ehrenthal wrote that due to his leg length discrepancy, the appellant waddles while ambulating and does not have arms to help him balance while ambulating. (Ex. 6, p. 10). The requested prosthesis would provide mobility and limb length correction to help provide a more stable and dynamic gait pattern. (Id.). The appellant is currently able to vary his walking speed and does not use an assistive device for walking. (Id.). Walking exacerbates pain in his back, hips, knees and ankles. (Id.). Dr. Ehrenthal stated that the requested prosthesis would improve his quality of life, reduce the risk of falls, improve his gait efficiency as well as balance and reduce the stress on his other orthopedic structures. (Id.).

Findings of Fact

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

1. The appellant is an individual under the age of 20 with a rare condition called radial aplasia thrombocytopenia (TAR) syndrome. (Ex. 4, p. 1).
2. As a result of TAR syndrome, the appellant's right leg is 10 cm or 3.9 inches shorter than his left. (Ex. 4, pp. 1, 2).
3. As a result of TAR syndrome, the appellant was "born without arms such that his hands are attached directly to his trunk." (Ex. 4, p. 1).
4. The appellant has had multiple surgical procedures including having his legs fused from hip to foot to make them straight in 2017. (Ex. 4, p. 1; Testimony of the appellant).
5. According to documents submitted to MassHealth in 2017, the appellant was "not a functional ambulator as his maximal stand time is three minutes with assist; therefore, a cane or walker [was] not an appropriate mobility aid" and he required a power wheelchair for mobility. (Ex. 7, pp. 3, 7).
6. MassHealth received the PA request for a hybrid prosthetic on March 21, 2022 under codes L5301 and L5981. (Ex. 6, pp. 7-16).
7. The hybrid prosthetic was a foot over foot prosthetic for the appellant's right leg to even out the length of that leg. (Testimony of the MassHealth representative; Ex. 4).
8. The cost of the requested prosthesis was \$5,190.08. (Testimony of the MassHealth representative).
9. MassHealth issued a timely denial of the PA request on March 31, 2022. (Ex. 1; Ex. 6, pp. 4-

6).

10. The notice stated that the reason for the denial was "...[c]linical documentation submitted to support this request is incomplete and does not establish medical necessity. A further, in-depth functional gait analysis with and without the requested hybrid prosthetic as well as clear, specific documentation of all mobility devices the member currently utilized is required to determine medical necessity." (Ex. 1; Ex. 6, pp. 4-6).
11. The appellant's prosthetist provided the following description of the device and the appellant's need for it in a letter dated May 2, 2022:

The appellant] was prescribed a hybrid device that is both a prosthetic and orthosis. It is called a "Foot over Foot prosthesis". His right lower extremity is very short compared to the left side by 10 cms..⁴ I will design a socket to couple to his left foot and ankle. He does not have a right bending knee, he has a fused knee. His right ankle has limited ROM also. His anatomical foot will connect to a socket like in a BK⁵ prosthesis. This socket will attach to a short pylon and a prosthetic foot. His anatomical foot will sit on top of the prosthetic foot. The prosthetic foot will go into a normal shoe. (Ex. 4, p. 2).

12. The appellant has tried an Arizona AFO accommodating the 10 cm length difference in length between right and left legs, but it caused the appellant pain has not been used since 2020. (Ex. 4, p. 1; Testimony of the appellant).
13. MassHealth paid for a Group 3 power wheelchair for the appellant in 2012. (Ex. 6, p. 24).
14. In 2017, MassHealth approved a Group 4 power wheelchair with 16 customizations. (Ex. 6, p. 23; Ex. 7, pp. 3-6).
15. The customizations included a power front load system that allows for independent transferring into and out of the chair from the floor and a power seat elevator that allows for independent transfers to his bed, to reach the board in his classroom, and to interact with his family, friends and teachers. (Ex. 7, pp. 4-5).
16. MassHealth also approved repairs to the Group 4 power wheelchair in January 2022. (Ex. 6, p. 22; Ex. 8).
17. Due to surgeries in 2017, the appellant has been able to ambulate for short distances. (Testimony of the appellant).
18. The appellant ambulates with a waddling gait, which he is able to vary. (Ex. 6, p. 10).
19. The appellant currently ambulates without the use of an assistive device. (Ex. 6, p. 10).

⁴ The two periods are replicated from the original document.

⁵ The MassHealth representative explained that this meant Below Knee.

20. Walking exacerbates pain in the appellant's back, hips, knees and ankles. (Ex. 6, p. 10; Testimony of the appellant).
21. The requested prosthesis would provide the appellant with more mobility and limb length correction to help provide a more stable and dynamic gait pattern. (Ex. 6, p. 10).
22. The requested prosthetic device would allow the appellant to ambulate more for exercise without pain. (Testimony of the appellant).
23. The appellant does not use his power wheelchair to move in his home. (Testimony of the appellant).
24. The appellant still requires his power wheelchair for long distance mobility, like when he goes to school or goes shopping. (Testimony of the appellant).

Analysis and Conclusions of Law

MassHealth requires providers to obtain prior authorization to provide medical services in certain instances identified in the billing instructions, program regulations, associated lists of service codes and service descriptions, provider bulletins, and other written issuances from MassHealth. (130 CMR 450.303). Prior authorization is a prerequisite for the purchase and repair of prosthetic devices, customized equipment, and supplies under MassHealth, including those for the billing codes (L5301 and L5981) under consideration in this appeal. (130 CMR 428.412(A)). Prior authorization determines the medical necessity for requested prosthetic devices, customized equipment, and supplies under MassHealth. (130 CMR 450.303; 130 CMR 428.412; 130 CMR 428.413).

The MassHealth regulation concerning medical necessity is located at 130 CMR 450.204 and states the following in pertinent part:

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.

(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...

This is reflected in the MassHealth regulations concerning prosthetics, which state that MassHealth does not pay for prosthetic services that are not both medically necessary in accordance with 130 CMR 450.204 and reasonable for the treatment of a member's condition. (130 CMR 428.408(D)). This includes services that cannot reasonably be expected to make a meaningful contribution to the treatment of a member's condition or the performance of the member's activities of daily living; and are more costly than a medically comparable and suitable alternative or that serve essentially the same purpose as equipment already available to the member. (130 CMR 428.408(D)(1),(2)).

The appellant is an individual with a 10 cm differential in leg length. He has no arms, as such. The appellant has undergone surgeries that allow him to ambulate and to do so without the use of an assistive device. The combination of leg length differential and the lack of arms for balance, however, puts a great deal of stress on the appellant's body, exacerbating the pain in his back, hips, knees, and ankles. For that reason, the appellant only can walk short distances and for brief periods of time. The record shows that the appellant has trialed an Arizona AFO in the past, but this device does not alleviate the pain he experiences while walking. The appellant admitted that he still requires the use of a power wheelchair in order to move for longer periods of time, such as when he is in school or when he goes shopping. The appellant also stated, however, that he does not use the power wheelchair in his home and would like to walk more because it is good exercise. The appellant stated that he would walk more if walking did not cause him as much pain as it currently does.

The appellant has shown that while his wheelchair continues to be necessary to assist in his mobility, it is a complementary mode of mobility and not one that is comparable in effect to the device that would allow him to walk with less pain. The requested prosthetic device would make a meaningful contribution to the appellant's mobility. The use of the requested prosthetic device would alleviate or, at least, prevent the worsening of the pain the appellant experiences while walking. The appellant has therefore shown that the prosthetic device is medically necessary.

For the above stated reasons, the appeal is APPROVED.

Order for MassHealth

Authorize payment for the prosthetic device specified in the PA request.

Implementation of this Decision

If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

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