


Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2202856
Decision Date:	7/5/2022	Hearing Date:	06/21/2022
Hearing Officer:	Scott Bernard		

Appearance for Appellant:

 (the appellant's mother) *via* telephone

Appearance for Accountable Care Organization (ACO):

Dr. Duke Dufresne (ACO Senior Medical Director) *via* telephone

John Shinn, Esq. (ACO attorney) *via* telephone

Sandra Brannelly (ACO Appeals and Grievances Manager) *via* telephone


Appearance for MassHealth:

Tom Emswiler (Observing) *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:	Denied	Issue:	ACO Prior Authorization (PA) for Durable Medical Equipment (DME)
Decision Date:	7/5/2022	Hearing Date:	06/21/2022
The ACO's Rep.:	Dr. Duke Dufresne; John Shinn, Esq.; Sandra Brannelly	Appellant's Rep.:	
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 24, 2022, the ACO denied the appellant's PA request for an adaptive stroller because it determined that there were multiple commercial strollers on the market that are able to accommodate the appellant's height and weight. (See 130 CMR 450.204 and Exhibit (Ex.) 1). The appellant filed this appeal in a timely manner on April 8, 2022. (See 130 CMR 610.015(B) and Ex. 2). Denial of a PA request by an ACO is valid grounds for appeal. (See 130 CMR 610.032).

Action Taken by the ACO

The ACO denied the appellant's PA request for an adaptive stroller.

Issue

The appeal issue is whether the ACO was correct, pursuant to 130 CMR 450.204, in determining that the PA request should be denied.

Summary of Evidence

The Senior Medical Director, a doctor, stated the ACO is an Accountable Care Partnership Plan.

The ACO is MassHealth's agent and is required to follow various MassHealth regulations. The appellant, through his medical provider, submitted the PA request January 19, 2022. (Ex. 4, p. 13). The Senior Medical Director stated that the request was for an adaptive stroller, HCPS¹ code E1236, which is a stroller that can be adapted to the medical needs of an individual. (Ex. 4, pp. 13-24).

The appellant is a person under the age of 10 with diagnoses of Down's syndrome and autism. (Ex. 4, p. 14). The Senior Medical Director testified that the appellant's Down's syndrome involves developmental and intellectual delays, and that the appellant's autism may also be the cause of delays in his social development and other developmental markers. In the letter submitted with the PA request, the appellant's provider wrote that the appellant presents with significant impairments in safety awareness. (Ex. 4, p. 16). The cited examples included dropping to the ground and going limp (even if in the middle of the street), darting into traffic, and getting out of bed and wandering putting him in danger of falling downstairs. (Ex. 4, p. 14). The appellant has hypotonia or decreased muscle tone. (Ex. 4, p. 14). This does not mean the appellant's muscles are weak but that he does not have good resting muscle tone. The appellant's provider wrote that the appellant presents with abnormal standing posture and impaired balance. (Ex. 4, p. 16). The appellant's provider wrote that the appellant was no longer fitting in his commercial stroller but required a stroller because he gets fatigued while walking and will drop to the floor or ground and go limp, even if he is in the middle of a road. (Ex. 4, pp. 14, 16). The appellant is 47 inches tall and weighs 49 pounds,

On January 25, 2022, an ACO reviewer determined that the appellant was not in need of adaptive positioning for trunk support. (Ex. 4, pp. 33-34). In making this determination, the reviewer used the ACO's clinical coverage criteria for adaptive strollers.² (Ex. 4, pp. 63-64). These clinical coverage guidelines further refer to a criteria medical decision form (decision form) published by a company that produces clinical screening tools.³ (Ex. 4, p. 33). The Senior Medical Director stated that the ACO is required to use MassHealth criteria when it is available because the ACO has to make everything available to the member that is due under MassHealth. When the regulations lack such guidelines, however, the ACO uses the decision form, which consists of a series of questions meant to assist physicians, nurses, and reviewers in determining whether a PA request meets the criteria for coverage. The ACO sent the appellant notice denying the PA request on the same date. (Ex. 4, pp. 36-37). The denial stated that there were multiple commercially available strollers that could accommodate the appellant's height and weight. (Ex. 4, p. 37). The denial referred the appellant to the website for one specific stroller called the Special Tomato Stroller⁴, which indicated that it had a seat depth of 12 inches. (*Id.*). There were also web links to articles on two different websites. (*Id.*). The first article was from the Little Baby Gear website and was entitled "What Is The Best Stroller For Big Kid [sic]?"⁵ and discussed 17 different strollers, their weights and weight capacities but contained no other specifications.⁶ The second was from the Stroller Site and was entitled "Best

¹ Healthcare Common Procedure Coding System. (See <https://www.cms.gov/medicare/coding/medhcpcsgeninfo>).

² "Medical Necessity Guidelines: High Cost Durable Medical Equipment (DME), Adaptive Strollers and Speech Generating Devices". (Ex. 4, pp. 63-67).

³ The name of this company is InterQual®.

⁴ <https://www.specialtomato.com/special-tomato-jogger.html>

⁵ <https://www.littlebabygear.com/best-strollers-big-kids/>.

⁶ Of these, six were double strollers and two were wagon strollers. The remaining nine strollers had maximum weight limits of between 50 and 75 pounds.

Strollers for Big Kids – The Ultimate guide of 2019!”⁷ and discussed 14 different strollers, their weights, and maximum weight capacities but contained no other specifications.

On February 8, 2022, the appellant’s provider requested an internal appeal on the appellant’s behalf. (Ex. 4, p. 45-50). In addition to information submitted previously, the appellant’s provider stated the following: “...He has underlying tone and therefore requires support for upright trunk positioning. Given his low tone, poor positioning could lead to the development of a scoliosis which would require costly interventions. It is medically necessary that he has an adaptive stroller. He requires this device to safely and effectively navigate his environment. Commercial products are too small for him and do not accommodate his size. Winning commercial strollers, his feet drag on the floor. There is nothing commercially available that would meet his needs. Although commercial products are listed to accommodate larger weight, they do not accommodate seat depth lengths greater than 12". [The appellant] has a greater seat depth than 12"...” (Ex. 4, p. 49).

The ACO referred the appeal to an independent medical review company. (Ex. 4, pp. 68-69). This independent reviewer agreed that the need for the stroller did not meet the guidelines. (*Id.*). Based on this assessment, the ACO sent the appellant a letter denying the PA request that is presently under appeal on March 24, 2022. (Ex. 1; Ex. 4, pp. 74-75).

The Senior Medical Director commented on the appellant’s provider’s statement concerning poor positioning resulting in the appellant developing scoliosis. (*See* Ex. 4, p. 49). The Senior Medical Director stated that this was an unusual fear in his experience. The Senior Medical Director stated that hypotonia causing scoliosis is not a common issue for people with Down’s syndrome. The Senior Medical Director also stated that the appellant’s provider did not submit evidence supporting this statement. The Senior Medical Director also commented on the concern regarding seating depth. The Senior Medical Director stated it was unusual for a person of the appellant’s age to require more than 12 inches of seat depth. There was no statement as to why the appellant would need more than 12 inches. The Senior Medical Director did note that the appellant uses a booster seat in the car and generally booster seats do not have a huge depth to them.

The appellant’s mother testified that the appellant does not use a booster seat but a special kind of adaptive car seat. The appellant’s mother did not know what seat depth the appellant required but did know that it was more than 12 inches. The appellant’s mother stated that the denial stated that the appellant had strong trunk support but wondered how the ACO came to that conclusion. The Senior Medical Director referred to the letter the provider wrote in support of the PA request specifically the section title “RECOMMENDED EQUIPMENT”. (Ex. 4, p. 16). The cited sentences read “...The [requested stroller] is trialed in the clinic. Patient presents with good positioning, posture and tolerance **within this device...**” (emphasis added). (*Id.*).

⁷ https://www.thestrollersite.com/guide-to-the-best-stroller-for-big-kids/#Comparison_Chart.

Findings of Fact

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

1. The ACO is an Accountable Care Partnership Plan. (Testimony of the Senior Medical Director).
2. The ACO is MassHealth's agent and is required to follow various MassHealth regulations. (Testimony of the Senior Medical Director).
3. The appellant is a person under the age of 10 with a height of 47 inches and a weight of 49 pounds. (Ex. 4, p. 18).
4. The appellant has diagnoses of Down's syndrome and autism. (Ex. 4, p. 14).
5. The appellant's Down's syndrome involves developmental and intellectual delays, and his autism may also be the cause of delays in his social development and other developmental markers. (Testimony of the Senior Medical Director).
6. The appellant, through his medical provider, submitted the PA request January 19, 2022. (Ex. 4, p. 13; Testimony of the Senior Medical Director).
7. The request was for an adaptive stroller, which is a stroller that can be adapted to the medical needs of an individual. (Ex. 4, pp. 13-24; Testimony of the Senior Medical Director).
8. In the letter submitted with the PA request, the appellant's provider wrote that the appellant presents with significant impairments in safety awareness, such as dropping to the ground and going limp (even if in a road) darting into traffic, and getting out of bed and wandering putting him in danger of falling downstairs. (Ex. 4, pp. 14, 16).
9. The appellant has hypotonia or decreased muscle tone. (Ex. 4, p. 14).
10. This does not mean the appellant's muscles are weak but that he does not have good resting muscle tone. (Testimony of the Senior Medical Director).
11. The appellant's provider wrote that the appellant presents with abnormal standing posture and impaired balance. (Ex. 4, p. 16).
12. The appellant's provider wrote that the appellant was no longer fitting in his commercial stroller but required a stroller because he gets fatigued while walking and will drop to the floor or ground and go limp, even if he is in the middle of a road. (Ex. 4, pp. 14, 16).
13. On January 25, 2022, an ACO reviewer determined that the appellant was not in need of adaptive positioning for trunk support. (Ex. 4, pp. 33-34).
 - a. In making this determination, the reviewer used the ACO's clinical coverage criteria for adaptive strollers. (Ex. 4, pp. 63-64).

- i. These clinical coverage guidelines further refer to a criteria medical decision form (decision form) published by a company that produces clinical screening tools. (Ex. 4, p. 33).
 - ii. The ACO is required to use MassHealth criteria when it is available because the ACO has to make everything available to the member that is due under MassHealth. (Testimony of the Senior Medical Director).
 - iii. When the regulations lack such guidelines, however, the ACO uses the decision form, which consists of a series of questions meant to assist physicians, nurses, and reviewers in determining whether a PA request meets the criteria for coverage. (Testimony of the Senior Medical Director).
14. On the same date, the ACO sent the appellant notice denying the PA. (Ex. 4, pp. 36-37).
- a. The denial stated that there were multiple commercially available strollers that could accommodate the appellant's height and weight. (Ex. 4, p. 37).
 - b. The denial referred the appellant to the website for one specific stroller called the Special Tomato Stroller, which indicated that it had a seat depth of 12 inches. (Ex. 4, p. 37 with link to <https://www.specialtomato.com/special-tomato-jogger.html>).
 - c. There were also web links to articles on two different websites. (Ex. 4, p. 37).
 - i. The first article was from the Little Baby Gear website and was entitled "What Is The Best Stroller For Big Kid [sic]?" and discussed 17 different strollers, their weights and weight capacities but contained no other specifications. (Ex. 4, p. 37 with link to <https://www.littlebabygear.com/best-strollers-big-kids/>).
 - ii. The second was from the Stroller Site and was entitled "Best Strollers for Big Kids – The Ultimate guide of 2019!" and discussed 14 different strollers, their weights, and maximum weight capacities but contained no other specifications. (Ex. 4, p. 37 with link to https://www.thestrollersite.com/guide-to-the-best-stroller-for-big-kids/#Comparison_Chart).
15. On February 8, 2022, the appellant's provider requested an internal appeal on the appellant's behalf. (Ex. 4, pp. 45-50).
16. As part of this appeal, the appellant's provider submitted another letter, which stated: "...He has underlying tone and therefore requires support for upright trunk positioning. Given his low tone, poor positioning could lead to the development of a scoliosis which would require costly interventions. It is medically necessary that he has an adaptive stroller. He requires this device to safely and effectively navigate his environment. Commercial products are too small for him and do not accommodate his size. Winning commercial strollers, his feet drag on the floor. There is nothing commercially available that would meet his needs. Although commercial products are listed to accommodate larger weight, they do not accommodate seat depth lengths greater than 12". [The appellant] has a greater seat depth than 12"..." (Ex.

4, p. 49).

17. The ACO referred the appeal to an independent medical review company. (Ex. 4, pp. 68-69).
18. This independent reviewer agreed that the need for the stroller did not meet the guidelines. (Ex. 4, pp. 68-69; Testimony of the Senior Medical Director).
19. Based on this assessment, the ACO sent the appellant a letter denying the PA request on March 24, 2022. (Ex. 1; Ex. 4, pp. 74-75).

Analysis and Conclusions of Law

MassHealth members who are younger than 65-years old must enroll in a MassHealth managed care provider available for their coverage type. (130 CMR 508.001(A)). Members may select any MassHealth managed care provider from MassHealth's list of managed care providers for the member's coverage type in the member's service area if the provider is able to accept new members. (130 CMR 508.003(A); 130 CMR 508.006(A)(1)(a)). One such type of managed care provider is an ACO. An ACO is an entity that enters a population-based payment model contract with the Executive Office of Health and Human Services as an accountable care organization, wherein the entity is held financially accountable for the cost and quality of care for an attributed or enrolled member population. (130 CMR 450.101). An Accountable Care Partnership Plan is a type of ACO with which MassHealth contracts under its ACO program to provide, arrange for, and coordinate care and certain other medical services to members on a capitated basis and is approved by the Massachusetts Division of Insurance as a health-maintenance organization (HMO) and is organized primarily for the purpose of providing health care services. (Id.).

When the member selects an Accountable Care Partnership Plan, that Accountable Care Partnership Plan will deliver the member's primary care, determine if the member needs medical or other specialty care from other providers, and determine referral requirements for such necessary medical services. (130 CMR 508.006(A)(2)(a)). All medical services to members enrolled in an Accountable Care Partnership Plan (except those services not covered under the MassHealth contract with the Accountable Care Partnership Plan, family planning services, and emergency services) are subject to the authorization and referral requirements of the Accountable Care Partnership Plan. (130 CMR 508.006(A)(2)(b)). This includes provision of Durable Medical Equipment.

As the ACO is MassHealth's agent, MassHealth regulations concerning DME apply in this case. Under MassHealth regulations the DME provider must obtain prior authorization from MassHealth or its designee as a prerequisite for payment for the DME. (130 CMR 409.418(A)). MassHealth covers medically necessary DME that can be appropriately used in the member's home or setting in which normal life activities take place. (130 CMR 409.413(A)). DME that is appropriate for use in the member's home may also be used in the community. (Id.).

MassHealth covers the DME listed in Subchapter 6 of the Durable Medical Equipment Manual, which includes the adaptive stroller (E1236) under consideration in this appeal. ((130 CMR 409.413(B); See DME Manual, Subchapter 6, § 602). All DME covered by MassHealth must meet the medical necessity requirements set forth in the MassHealth DME regulations and 130 CMR

450.204, as well as any applicable medical necessity guidelines for specific DME published on the MassHealth website. (130 CMR 409.417(A)). 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. (130 CMR 409.417(B)). MassHealth does not have a medical necessity guideline for the adaptive stroller at issue here, but there is Medicare LCD L33788⁸ that does apply to that stroller.⁹ (See LCD L33788, p. 8).

LCD L33788 states that a manual wheelchair for use inside the home is covered if certain criteria are met. First, all the following criteria must be met:

- 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 toileting, feeding, dressing, grooming, and bathing in customary locations in the home. A mobility limitation is one that:
 - 1. Prevents the beneficiary from accomplishing an MRADL entirely, or
 - 2. Places the beneficiary at reasonably determined heightened risk of morbidity or mortality secondary to the attempts to perform an MRADL; or
 - 3. Prevents the beneficiary from completing an MRADL within a reasonable time frame.
- B. The beneficiary's mobility limitation cannot be sufficiently resolved by the use of an appropriately fitted cane or walker.
- C. The beneficiary's home provides adequate access between rooms, maneuvering space, and surfaces for use of the manual wheelchair that is provided.
- D. Use of a manual wheelchair will significantly improve the beneficiary's ability to participate in MRADLs and the beneficiary will use it on a regular basis in the home. [and]
- E. The beneficiary has not expressed an unwillingness to use the manual wheelchair that is provided in the home. (LCD L33788, pp. 3-4).

Additionally, one of the following two criteria must also be met:

⁸ Available on the website of the Centers for Medicare and Medicaid Services at <https://www.cms.gov/medicare-coverage-database/view/lcd.aspx?LCDId=33788&ContrId=389>.

⁹ LCD L33788, though not itself submitted into the record, is referenced at Ex. 4, p. 78, contained within the ACO's Medical Necessity Guidelines: High Cost Durable Medical Equipment (DME), Adaptive Strollers and Speech Generating Devices. Given that the ACO, as MassHealth's designee, is required to follow the above-cited DME regulations, it is a bit baffling why the ACO consulted its own MNG and the InterQual document without first using LCD L33788.

- F. The beneficiary has sufficient upper extremity function and other physical and mental capabilities needed to safely self-propel the manual wheelchair that is provided in the home 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 [or]
- G. The beneficiary has a caregiver who is available, willing, and able to provide assistance with the wheelchair. (LCD L33788, p. 4).

The appellant has not demonstrated by a preponderance of the evidence that the requested adaptive stroller is medically necessary. Specifically, the appellant does not meet criteria A quoted above. The record does not show that the appellant has a mobility limitation that significantly impairs his ability to participate in one or more MRADLs such as toileting, feeding, dressing, grooming, and bathing in customary locations in the home. There is no evidence in the record that the appellant has a mobility limitation that prevents him from accomplishing an MRADL entirely or within a reasonable time frame. The appellant's behaviors of dropping to the floor or ground without regard to his surroundings and darting into traffic could be seen as mobility limitations that place him at reasonably determined heightened risk of morbidity or mortality. But those particular examples neither occur in the home nor appear to be secondary to an attempt to perform a MRADL. Getting out of bed and wandering at night could be seen as a behavior that puts the appellant at risk of morbidity or mortality and does occur in the home. Again, however, it does not appear to be secondary to attempt to perform a MRADL. Furthermore, it is hard to determine how the requested stroller would assist in preventing this behavior. The record, therefore, does not show that the appellant has met the first of five criteria, all of which must be met in order to demonstrate the requested DME was medically necessary.

For the above stated reasons, this appeal is DENIED.

Order for the ACO

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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

Tufts Health Plan Plan ACO, Attn: Sandra Brannelly, Program Manager III, Appeals & Grievance, 1 Wellness Way, Canton, MA 02021