

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2202869

**Decision Date:** 6/14/2022

**Hearing Date:** 05/24/2022

**Hearing Officer:** Radha Tilva

**Appearance for Appellant:**

 Mother

**Appearance for MassHealth:**

Linda Phillips, R.N., UMass Medical  
Virdany Ruiz, Respiratory Therapist



*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>	PA – DME
<b>Decision Date:</b>	6/14/2022	<b>Hearing Date:</b>	05/24/2022
<b>MassHealth's Rep.:</b>	Linda Phillips, Virdany Ruiz	<b>Appellant's Rep.:</b>	Mother
<b>Hearing Location:</b>	Quincy Harbor South	<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 25, 2022, MassHealth denied appellant's prior authorization request for a backup ventilator (Exhibit 1). The appellant filed this appeal in a timely manner on March 29, 2022 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

## Action Taken by MassHealth

MassHealth denied appellant's prior authorization request for a backup ventilator.

## Issue

The appeal issue is whether MassHealth was correct in denying appellant's prior authorization request for a backup ventilator.

## Summary of Evidence

MassHealth was represented by a Registered Nurse and Respiratory Therapist who appeared on behalf of MassHealth to defend MassHealth's Community Case Management (CCM) decision. CCM provides authorization and coordination of MassHealth long-term services and supports

which includes continuous skilled nursing (CSN) services, personal care attendant (PCA) services, and Durable Medical Equipment (DME), to a defined population of MassHealth eligible, medically complex members.

The MassHealth representative testified that appellant is a male in his twenties who has been involved with CCM since 2019. He has a primary diagnosis of congenital myopathy and receives 58 hours of CSN services per week and 47 hours and 45 minutes of day/evening PCA services and 2 hours per night. On July 22, 2021 an assessment was conducted by CCM via Zoom. MassHealth received a request on February 11, 2022 to purchase a backup ventilator. After reviewing all submitted documentation and review with the CCM Allied Health team, the team determined that in accordance with the letter of medical necessity the request for a backup ventilator is a duplication to equipment that serves the same purpose as equipment that is already available to appellant. MassHealth determined that the backup ventilator was determined not to be medically necessary to meet appellant's respiratory needs in the community. In making its determination MassHealth looked at several submissions including, but not limited to, a letter of medical necessity, an order form, an LTSS needs assessment, and the CCM service record.

The respiratory therapist called the appellant's mother on February 22, 2022. The mother shared the following information with the respiratory therapist: appellant has required continuous ventilator use via an Astril 150 ventilator with no plans to wean. Appellant shared some additional information as specific examples when appellant stated that there were two ventilator incidents in the past two years. The first time was two years ago when they were preparing for an appointment and the ventilator just stopped working. They waited for the therapist to arrive and provide a new ventilator. The second time occurred in October or November 2021 on a Friday night. An error message appeared on the ventilator and it read that the member should be switched to a backup ventilator. They were able to get in contact with the therapist on call who informed them that she was two hours away and instructed for them to reset the ventilator which she did. The resetting of the ventilator corrected the problem and the family has not had a problem since but does not want to be put in another situation like that again. Due to pandemic concerns she would also like to avoid taking her son to the hospital. The MassHealth representative testified that based on extensive review with the MassHealth/CCM team and in accordance with MassHealth regulations, CCM determined that the requested second ventilator is not medically necessary for appellant's respiratory needs in the community and is a duplication of the previously approved ventilator. The MassHealth representative further stated that MassHealth looked at 130 CMR 450.204(A) and (B) and 130 CMR 407.427(D)(3).

The appellant's mother also appeared by telephone and testified that she would like the backup ventilator because taking her son to the hospital during the pandemic is not an option. The mother further testified that the first time the vent stopped working it took two hours for it to work. The mother stated that she cannot bag him for two hours next time this happens.

## **Findings of Fact**

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

1. On February 11, 2022 MassHealth received a request to purchase a backup ventilator.
2. Appellant is a male in his twenties with a primary diagnosis of congenital myopathy.
3. Appellant is using an Astril 150 ventilator which he requires continuously and with no plans to wean.
4. Appellant had two episodes in the past two years where the ventilator temporarily stopped working.
5. Appellant would like to avoid having to take her son into the hospital due to COVID.

## **Analysis and Conclusions of Law**

MassHealth determined that a backup ventilator is not medically necessary to meet appellant's needs in the community. MassHealth relied upon 130 CMR 450.204(A)(2) which states that a service is not medically necessary if 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 MassHealth. 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 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.

In addition, under 130 CMR 427.407(D)(3), the MassHealth agency does not pay for equipment or services that serve essentially the same purpose as equipment already available to the recipient. As appellant already has a ventilator that serves the same purpose as a secondary ventilator MassHealth is correct in denying the prior authorization request as it is duplicative. MassHealth cannot be expected to provide services or equipment for anticipatory or prospective issues that may or may not arise. A reasonable alternative here would be to seek services in a hospital should no one be able to bring a backup ventilator to him in time. For the reasons above this appeal is 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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Radha Tilva  
Hearing Officer  
Board of Hearings

cc:  
MassHealth Representative: Prior Authorization

Appellant Representative: [REDACTED]