Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	APPROVED	**Appeal Number:**	2206324
Decision Date:	10/3/2022	**Hearing Date:**	09/21/2022
Hearing Officer:	Christopher Taffe		

Appearance for Appellant:
[redacted] (Mother/Appeal Representative) (by phone)

Appearance for MassHealth:
Robin Brown, OTR/L, Clinical Reviewer from OPTUM (by phone)

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:**	PA – Durable Medical Equipment
Decision Date:	10/3/2022	**Hearing Date:**	09/21/2022
MassHealth's Rep.:	R. Brown, OTR/L	**Appellant's Rep.:**	Mother, pro se
Hearing Location:	HarborSouth Tower, Quincy[1]	**Aid Pending:**	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 August 1, 2022, MassHealth modified Appellant's Prior Authorization (PA) request for Durable Medical Equipment ("DME"). Specifically, MassHealth approved a portion of the request for "*…the Cubby bed base and DENIED the Sensory Electronics HUB. The Sensory and Electronic HUB was denied as a non-DME item and is without coverage. 130 CMR 409.414 (K).*" See Exhibit 1 and 130 CMR 409.414(K). Appellant via her mother filed a timely request for a Fair Hearing on August 22, 2022. See 130 CMR 610.015 and Exhibit 1. Challenging a MassHealth determination regarding a denial or modification of the scope of a request for assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth approved a portion of Appellant's request for a bed, by approving the requested bed base and by denying the collective accessories referred to as the sensory and electronics HUB.

[1] Two employees of the Board of Hearings, Kimberly Scanlan and Patrick Grogan, were also present at the hearing for observational purposes.

Issue

Is Appellant entitled to her request for certain hospital bed accessories under the MassHealth regulations governing durable medical equipment ("DME")?

Summary of Evidence

Appellant is currently a [redacted] child and MassHealth member who is enrolled in the Deaf Blind Program at the Perkins School for the Blind. She lives at home with her parents and older sister, and she shares a bedroom with the latter. Appellant had a primary diagnosis of congenital cytomegalovirus (CMV) exposure and polymicrogryria on both hemispheres of her brain. Her secondary and related medical issues include but are not limited to: global developmental delay, seizure disorder, cerebral dysgenesis, mirocephaly, congenital hypotonia, spasticity and dystonic quadriplegia (cerebral palsy), gross motor delay, and deafblindness.

As detailed in a May 2022 letter of support from a physical therapist/doctor at the Perkins School, and consistent with the testimony provided at hearing by her mother, Appellant has a history of safety challenges related to her sleep. Due to her seizure disorder, Appellant needs to be monitored through the night to ensure that she is safe and not experiencing a seizure. If and when Appellant incurs a severe (or grand mal) seizure, which occurs approximately a few types of year, she needs immediate attention which requires immediate treatment and may involve a trip to the hospital for care and monitoring. Appellant has other seizures which may be less severe, on average once per month, which the family tries to address and care for while at home. For at least some seizures, medication may need to be provided immediately or as soon as five minutes. The Perkins School provider states that Appellant has difficulty remaining asleep throughout the night, although the mother testified that approximately 3 to 4 times per week, the Appellant will have a good night and sleep uninterrupted. Although not fully mobile, Appellant has the ability to roll and can roll in bed while sleeping resulting in her potentially putting herself in an unsafe position, all of which justified the need for the request for the Cubby bed at issue, as Appellant is at the age where she has grown out of her pediatric bed. The physical therapist and other providers believe the Cubby Bundled Bed, with the requested accessories, will ensure that Appellant is not only able to maintain her safety, but that she also may be monitored most safely, appropriately, and efficiently during the nights by her caretaker parents.

MassHealth testified at the beginning of hearing that a PA request (PA # P2221301F0) was received on July 27, 2022 for a type of hospital bed, with the brand name Cubby, that, with all bundled accessories, would cost approximately $9,065 per the quote from the DME provider, National Seating & Mobility. MassHealth further explained that the cost of the accessory that was denied was approximately $2,352, meaning the base bed would cost approximately $6,700.[2] MassHealth explained that in addition to the bedframe, canopy, safety sheet and mattress, the extra accessories (as

[2] Although not directly material to the appeal issue, the MassHealth representative explained that the dollar pricing quoted may not be exact, due to things such as pre-negotiated discounts or pricing arrangements agreed to between the agency and a given provider, but that the dollar figures were roughly accurate and were offered to help provide context for the hearing record.

described on page 22 of Exhibit 3) would include in most relevant part an HD camera with night vision, live view and recording ability; motion and sound detection alerts; a circadian lighting system, a meditative breathing program, and a speaker. MassHealth testified that there was no request for the "*add on*" accessories (listed on page 22 of Exhibit 3), such as the weighted blanket, the aromatherapy spray, and the vibration mat.

As a basis for its action, MassHealth cited to a series of regulations, including the DME regulation (titled "*Noncovered Services*") at 130 CMR 409.414 which, at subsection (K), states that MassHealth would not cover *"products that are not DME"*. MassHealth also cited to the definition of DME within the DME regulations at 130 CMR 409.402 and stated that the accessories cannot be DME. The MassHealth denial notice cited the above regulation at 130 CMR 409.414 as the basis for its decision. The MassHealth Representative also stated that the medical necessity regulation guideline at 130 CMR 450.204 may come into play, as all services must be medically necessary to be covered by the agency and that medical necessity requires that such services, among other things, reasonably calculated to address a legitimate medical concern and that there be no available comparable or suitable alternative that is least costly to the agency. MassHealth indicated that some commercially available baby monitors may be among the type of alternatives that could help address the situation.

Appellant's mother testified to the contents of some of the various letters submitted by the providers. As to the issue of an alternative, Appellant's mother stated that to use a commercial baby monitor, this would be difficult due to the mesh setting of the net covering the bed, and that such monitors may not be able to successfully monitor the child from the outside and through the mesh, unless they were placed or set up inside the bed. Placing such a monitor inside the bed would entail wiring be placed inside the bed, which would increase a risk of choking or asphyxiation. As part of the need for a type of DME bed, Appellant has a history of falling off a regular bed if not contained and getting wedged in any gaps. Her pediatrician writes that Appellant needs to be monitored at night due to her seizure disorder and both her pediatrician and provider at the Perkins School write that the lighting system of the Cubby bed can help to assess seizures during night awakenings and to assist with maintaining the most consistent sleep routine with minimal awakenings. The speaker system accessory can also be used to help calm the Appellant and its 2-way auditory capabilities may also permit Appellant's parents and caregivers to speak to her if needed during awakenings in the least disruptive manner. The camera system allows the caregivers to best monitor her and even record positions or activity as needed for sharing with her providers. The apps that can interact with a cellphone allows for the most accessible and efficient communication between Appellant and her parents.

Appellant has been seen at Boston Children's Hospital in the past year for a follow-up related to trouble with sleep onset and night waking, and there is a note detailed history and assessment from a PNP at the hospital's Center for Pediatric Sleep Disorders. The documentation from the PNP in October of 2021 indicates that the hospital wanted to watch and track Appellant's current sleep schedule, explore other parts of schedule consolidation to see if it could improve Appellant's sleeping cycles, and determine whether medication related to nighttime or sleeping may be needed for Appellant in the future. See Exhibits 3 and 4.

Findings of Fact

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

1. Appellant is a [redacted] MassHealth member with a primary diagnosis of congenital cytomegalovirus (CMV) exposure and polymicrogryria on both hemispheres of her brain. (Testimony and Exhibits 3 and 4)

2. Appellant's medical diagnosis and issues include: global developmental delay, seizure disorder, cerebral dysgenesis, mirocephaly, congenital hypotonia, spasticity and dystonic quadriplegia (cerebral palsy), gross motor delay and deafblindness. (Testimony and Exhibits 3 and 4)

3. On July 27, 2022, Appellant through her DME provider submitted a PA request (PA # P2221301F0) which sought approval of a hospital bed, under the brand name Cubby, with certain accessories. The extra accessories requested included: an HD camera with night vision, live view and recording ability; motion and sound detection alerts; a circadian lighting system, a meditative breathing program, and a speaker. These requested accessories are collectively referred to elsewhere as the Sensory Electronics HUB. (Testimony and Exhibit 3)

    a. There was no request for certain additional accessories, such as a weighted blanket, the aromatherapy spray, and the vibration mat. (Testimony and Exhibit 3)

4. Through a notice dated August 1, 2022, MassHealth modified Appellant's PA request by approving the Cubby bed base but denying the collective Sensory Electronics Hub accessories. (Testimony and Exhibit 1)

5. Appellant has a history of seizures and such seizures can occur at night. Appellant has severe or grand mal seizures a few times a year, with the most recent happening in August of 2022. She also has relatively less severe seizures at an approximate rate of once per month. (Testimony and Exhibits 3 and 4)

6. If Appellant has a seizure, she often needs immediate attention and/or medication from her family, and, in the case of more severe seizures, she may need emergency treatment including care received at a hospital. (Testimony and Exhibits 3 and 4)

7. Appellant has difficulty sleeping uninterrupted through the night, as she is prone to awakenings on a semi-regular basis. (Testimony and Exhibits 3 and 4)

8. MassHealth approved the hospital bed for Appellant in part to minimize or eliminate the chances when she may inadvertently get herself wedged in any gaps at the edge of the bed. (Testimony and Exhibit 3)

9. The approved hospital bed has a mesh netting around it that can make things difficult to see from a commercial monitor set up on the outside. (Testimony and Exhibit 3)

a. Setting up a commercial monitor inside the approved bed may create a choking risk. (Testimony and Exhibit 3)

10. Appellant is a patient at Boston Children's Hospital who has seen providers at the institution's Center for Pediatric Sleep Disorders with the goal of forming better and safer sleep habits to assist with her health. (Testimony and Exhibits 3 and 4)

11. Appellant's pediatrician and physical therapist provider have written letters in support of a decision to approve the accessories for the bed. (Exhibits 3 and 4)

12. Having the camera monitor within the bed will help to assess Appellant's awakenings and whether she is having a seizure. (Testimony and Exhibits 3 and 4)\

13. The other application, such as the lighting system, the speaker system, and the related application can also help Appellant's family with assessing Appellant during a given night while also minimizing unneeded intrusions into the bedroom shared by Appellant and her sibling. (Testimony and Exhibit 3)

Analysis and Conclusions of Law

The regulations concerning DME services are found at 130 CMR 409.000. Pursuant to 130 CMR 409.427(C), the MassHealth agency may only pay for DME if the equipment is medically necessary. See also 130 CMR 409.407; 130 CMR 409.413(A). There are also limits or moments when the DME requested may not be coverable. See 130 CMR 409.414.

As to the question of what is medically necessary, the MassHealth regulation in 130 CMR 450.204, which applies to all providers, including DME, describes what kind of services meet the definition for this term, and appears in relevant part below:

130 CMR 450.204: Medical Necessity
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…

(**Bolded** emphasis added.)

MassHealth's denial notice in Exhibit 1 cites to 130 CMR 409.414(K), and the initial reason offered by the MassHealth representative listed both this regulation and the definition of DME in 130 CMR 409.402. Portions of those regulations, relevant to this appeal, are as follows:

409.414: Non-covered Services
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 130 CMR 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);

(C) the repair of any DME …;
(D) the repair of any equipment … ;
(E) routine periodic testing, cleaning, regulating, and checking of DME that is owned by the member;
(F) DME that is not of proven quality and dependability, consistent with 130 CMR 409.404(B)(12);
(G) DME furnished through a consignment/stock and bill closet …;
(H) DME that has not been approved by the federal Food and Drug Administration (FDA) for community use;
(I) evaluation or diagnostic tests conducted by the DME provider to establish the medical need for DME;
(J) home or vehicle modifications …;
(K) common household and personal hygiene items generally used by the public including, but not limited to, washcloths, wet wipes, and non-sterile swabs;
(L) ***products that are not DME (except for augmentative and alternative communication devices covered pursuant to M.G.L. c. 118E, § 10H under 130 CMR 409.428)****;*
(M) certain DME provided to members in facilities in accordance with 130 CMR 409.415; and
(N) provider claims for non-covered services under 130 CMR 409.414 for MassHealth members with other insurance, except as otherwise required by law.

(**Bolded** emphasis added.)

409.402: Definitions
The following terms used in 130 CMR 409.000 have the meanings given in 130 CMR 409.402, unless the context clearly requires a different meaning. Payment for services defined in 130 CMR 409.402 is not determined by these definitions, but by application of regulations elsewhere in 130 CMR 409.000, 101 CMR 322.00: Durable Medical Equipment, Oxygen and Respiratory Therapy

Equipment, and in 130 CMR 450.000: Administrative and Billing Regulations.
…
Accessories - products that are used primarily and customarily to modify or enhance the usefulness or functional capability of an item of durable medical equipment and that are generally not useful in the absence of the item of durable medical equipment.
…
DME - as used in 130 CMR 409.000, DME means the durable medical equipment and medical supplies covered by 130 CMR 409.000.
…
Durable Medical Equipment (DME) - equipment that

(1) is used primarily and customarily to serve a medical purpose;
(2) is generally not useful in the absence of disability, illness or injury;
(3) can withstand repeated use over an extended period; and
(4) is appropriate for use in any setting in which normal life activities take place, other than a hospital, nursing facility, ICF/IID, or any setting in which payment is or could be made under Medicaid inpatient services that includes room and board, except as allowed pursuant to 130 CMR 409.415 and 130 CMR 409.419(C).

Upon review of the regulations, MassHealth's initial reliance in its denial notice on 130 CMR 409.414 seems a bit misguided. That is because of how 130 CMR 409.413 is written and its one specific reference to the term "*accessories*". The regulation reads in written part as follows:

409.413: Covered Services
(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****, and in certain circumstances described in 130 CMR 409.415 for use in facilities. …*
(B) MassHealth covers the DME listed in Subchapter 6 of the Durable Medical Equipment Manual, the DME and Oxygen Payment and Coverage Guideline Tool, and any successor guidance issued by the MassHealth agency or its designee. Providers may request prior authorization for medically necessary DME if the corresponding service code is not listed in Subchapter 6 or the DME and Oxygen Payment and Coverage Guideline Tool. ***Covered DME includes, but is not limited to***

(1) absorbent products;
(2) ambulatory equipment, such as crutches and canes;
(3) compression devices;
(4) augmentative and alternative communication devices;
(5) enteral and parenteral nutrition;
(6) nutritional supplements;
(7) home infusion equipment and supplies (pharmacy providers with DME specialty only);
(8) glucose monitors and diabetic supplies;
(9) mobility equipment and seating systems;
(10) personal emergency response systems (PERS);
(11) ostomy supplies;
(12) support surfaces;
(13) hospital beds AND ACCESSORIES*;*
(14) patient lifts; and

(15) bath and toilet equipment and supplies (including, but not limited to, commodes, grab bars, and tub benches).

(**Bolded and CAPITALIZED** emphasis added.)

It is noteworthy that of the 15 categories of DME, the phrase "*and accessories*" only appears in the context of hospital beds and does not appear for any of the other items. A hospital bed is the exact type of DME item for which Appellant is requesting coverage. So the argument of whether these accessories are actually "DME" per the definitions, or whether they are more properly thought of as accessories, appears to be a semantical argument that will not ultimately be determinative. That is because accessories for a hospital bed can potentially be covered. See 130 CMR 404.413(B)(13). This would seem to be an exception to the restriction of 130 CMR 409.414(K) of only covering DME; otherwise, the addition of the phrases *"and accessories"* to this one subset of the regulation would be unnecessary and make no sense, and such a strict interpretation would lead to a huge logical inconsistency within the DME regulatory manual.

Once it is established that accessories for a hospital bed may be covered under the DME regulations, the remaining issue is whether the requested accessories are medically necessary for this child. Based on the record established by the Appellant's family and her providers, I conclude that the request is proper and reasonable, and that it should be covered by MassHealth. First the request is more than reasonable and seems tailored toward Appellant's medical needs, with a plan to improve her overall health and minimize her from unnecessary risk and adverse events. The PA request does not contain a gratuitous request for all possible accessories. Instead, all the requested accessories in the HUB Sensory system, from the camera to the speakers to the circadian and nighttime lighting system are defended and described as needed in a rational way by the collective team of Appellant's medical providers. As the mother correctly points out, mesh netting limits the use of certain alternative cameras, and the idea of putting an alternative camera system that works with this bed would likely bring more unnecessary risk than it is worth for this child, and there is ample evidence to show how Appellant would benefit from the DME as originally requested.

Based on the above analysis, I find the Appellant's request to be appropriate, medically necessary, and allowable under the agency's DME regulations. The Appellant's appeal is thus APPROVED.

Order for MassHealth/OPTUM

Rescind the denial notice of August 1, 2022. Within 30 days of the date of this decision, and as soon as possible, MassHealth must issue to Appellant and her submitting DME provider an approval notice for the Cubby Bed with the Sensory Electronics HUB as requested on PA # P2221301F0.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact OPTUM through either the MassHealth Prior Authorization Unit (1-800-862-8341) or general MassHealth Customer Service (1-800-841-2900). 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.

Christopher Taffe
Hearing Officer
Board of Hearings

cc: Appeals Coordinator @ OPTUM/MassHealth OLTSS