Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Approved in part Denied in part	**Appeal Number:**	2207091
Decision Date:	1/5/2023	**Hearing Date:**	11/10/2022
Hearing Officer:	Kenneth Brodzinski		

Appearance for Appellant:

[redacted]

Appearance for MassHealth:

Robin Brown, OTR

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 in part Denied in part	**Issue:**	Prior Authorization - DME
Decision Date:	1/5/2023	**Hearing Date:**	11/10/2022
MassHealth's Rep.:	Robin Brown, OTR	**Appellant's Rep.:**	Parents
Hearing Location:	Quincy		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated there under.

Jurisdiction

Through notice dated September 9, 2022, MassHealth modified a request for prior authorization by denying two of three requested items on the grounds that the two items do not constitute Durable Medical Equipment (DME) (Exhibit A). Appellant filed for this appeal in a timely manner on September 22, 2022 seeking approval for two denied items time (see 130 CMR 610.015(B) and Exhibit A). Denial of prior authorization constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified a request for prior authorization by denying two of three requested items on the grounds that the two items do not constitute DME.

Issue

The appeal issue is whether MassHealth properly applied the controlling regulation(s) to accurate facts when it modified Appellant's request for prior authorization and denied two of three requested items on the grounds that the two items do not constitute DME.

Summary of Evidence

Both parties appeared by telephone. At the time of hearing, MassHealth filed a packet of documentation concerning the subject PA request (Exhibit B). Post hearing, Appellant filed documentation (Exhibit C) and MassHealth field a written response to Appellant's post-hearing submission (Exhibit D).

MassHealth was represented by a registered occupational therapist who testified that the agency received a request submitted by Numotion on behalf of Appellant for a Cubby Bed pediatric enclosed hospital bed with a Technology Hub and Sensory System and a waterproof mattress protector. The request was received on September 2, 2022 and MassHealth made a timely decision on September 9, 2022.

MassHealth approved the Cubby Bed enclosed pediatric hospital bed, but denied the Technology Hub and Sensory System and the waterproof mattress protector. MassHealth determined that each denied item was non-DEM; therefore, it was not covered pursuant to regulations.

The MassHealth representative testified that the cost of the Cubby Bed as approved is $6,473.25, the cost of the denied Technology Hub and Sensory System is $2,268.00 and the cost of the denied waterproof mattress protector is $162.00.

Appellant's PA request was supported by a *MassHealth Prescription and Medical Necessity Review Form for Hospital Beds*, written by Clovene Campbell, MD, and a *Letter of Medical Necessity* written by Sarah Barnett, MD of Neurodevelopmental Pediatrics. According to these documents, Appellant is a [redacted] child with diagnoses of autism, epilepsy, developmental delay, and mitochondrial disease. Dr. Barnett writes that Appellant has a lengthy history of ICU and inpatient admissions and emergency room visits due to his epilepsy. She writes that Appellant needs the Cubby Bed because he has impaired sleep patterns, lacks impulse control and has poor self-regulation and is extremely sensitive to sensory overstimulation. She also lists less-costly options which have been tried and failed to meet Appellant's needs including bedrails, a mattress on the floor, window and door locks, and a helmet. Dr. Campbell's prescription contains similar information but with less detail.

MassHealth agreed with the doctors and approved the cubby bed as medically necessary. This bed, like other similar beds, has enclosed sides to keep the child zipped safely inside, retractable side "windows" to control the sensory stimulation, 360 degrees of padding for protection from injury, and safety sheets to prevent injury from entrapment of the child between the mattress and the frame of the bed.

The MassHealth representative testified that the Technology Hub and Sensory System was denied as none of its components qualify as durable medical equipment.

According to MassHealth, the items listed in the Technology Hub and Sensory System, such as the android app, the night vision camera, motion alarm, smoke and carbon monoxide alarms, Alexa and Google home integration, the circadian light, aromatherapy, meditative breathing program, and the speakers are not used primarily to serve a medical purpose and are generally useful in the absence of disability, illness or injury.

MassHealth also cited the *MassHealth Guidelines for Medical Necessity Determination for Hospital Beds*, which lists items that are considered hospital bed accessories which includes the mattress, side rails, over-bed tables, safety enclosures, and trapeze bars (Exhibit B, page 24). According to MassHealth, none of the items included in the Technology Hub and Sensory System are listed therein.

The MassHealth representative testified that the waterproof mattress protector was also denied as it was not mentioned in the letters of medical necessity, it is not considered to be durable medical equipment and is not listed in the *MassHealth Guidelines for Medical Necessity Determination for Hospital Beds* as an accessory.

Appellant was represented by his parents who testified that Appellant's diagnosis include epilepsy, autism spectrum disorder, mitochondrial disease and status epilepticus. The parents testified that the seizures have resulted in multiple hospitalizations and emergency service calls. The parents maintain that the Technology Hub and Sensory System is medically necessary to both monitor and record Appellant's seizure activity and this need is specified in both physician letters filed with the PA request. The parents explained that recording the seizures provides Appellant's doctors with meaningful information about the nature and duration of the seizures Appellant is experiencing.

The parents also testified that the use of cameras to monitor seizure activity is supported by both the Epilepsy Foundation's community standards of practice and is also a common hospital practice.

The parents testified that they have considered other options including requesting more PCA hours which MassHealth denied. They also explained that monitoring wristbands that are sometimes used are not indicated for Appellant. Due to Appellant's autism, he will simply remove the wrist bands. Additionally, Appellant's autism negates the use of conventional cameras with power cords and such being within Appellant's reach.

Appellant's parents testified that Appellant's frequent seizures can be life-threatening and the equipment included in the Technology Hub and Sensory System, particularly the cameras and motion sensors, will enable caregivers to quickly intervene when a seizure occurs. The parents also maintain that the equipment is less costly than one-to-one monitoring.

Appellant's parents noted that MassHealth does authorize other cameras for seizure monitoring and they believe that because of Appellant's autism and epilepsy, the

Technology and Sensory Hub, on particular, is medically necessary. Appellant's parents acknowledged, however, that other features such as aromatherapy are not needed.

Upon questioning by the hearing officer, Appellant's parents stated that they did not know if MassHealth covers other cameras or monitoring devices that could be used with the Cubby Bed.

With regard to the waterproof mattress protector, Appellant's parents testified that Appellant has incontinence and is prone to vomiting during seizures; therefore, a waterproof mattress protector is indicated and medically necessary. They also testified that this particular mattress protector is designed to work with the canopy enclosure of the Cubby Bed to keep Appellant from sliding into the corners between the mattress and the canopy. This particular protector also fits the unique size of the Cubby Bed mattress which is extra wide. Appellant's parents also maintain that according to the FDA, all hospital beds should be equipped with waterproof mattress protectors and that this is in fact the common practice in hospitals.

The record was held open until the close of business on the day of hearing to allow Appellant's parents to file any additional documentation about the waterproof mattress protector and for the MassHealth representative to respond.

By the close of business, Appellant's parents filed a copy of the FDA article they referenced during the hearing *"Damaged or Worn Protectors for Medical Bed Mattresses Pose Risk of Contamination and Patient Infection: FDA Safety Communication"* Date Issued: April 19, 2013 (Exhibit C). They did not file any additional documentation concerning the specific requested waterproof mattress protector. They did, however, assert that the cost was lower than the figure cited by MassHealth. In response, the MassHealth representative explained that the MassHealth cost includes a 35% mark-up, so the cited cost of $162.00 is correct.

Findings of Fact

By a preponderance of the evidence, this record supports the following findings:

1. MassHealth received a request submitted by Numotion on behalf of Appellant for a Cubby Bed pediatric enclosed hospital bed with a "Technology Hub and Sensory System" and a waterproof mattress protector.

2. The request was received on September 2, 2022 and MassHealth made a timely decision on September 9, 2022.
3. MassHealth approved the Cubby Bed enclosed pediatric hospital bed, but denied the Technology Hub and Sensory System and the waterproof mattress protector.

4. MassHealth determined that the denied items were non-DEM; therefore, it was not covered.

5. The cost of the Cubby Bed as approved is $6,473.25, the cost of the denied Technology Hub and Sensory System is $2,268.00 and the cost of the denied waterproof mattress protector is $162.00.

6. Appellant's PA request was supported by a *MassHealth Prescription and Medical Necessity Review Form for Hospital Beds*, written by Clovene Campbell, MD, and a *Letter of Medical Necessity* written by Sarah Barnett, MD of Neurodevelopmental Pediatrics.

7. Appellant is a [redacted] child with diagnoses of autism, epilepsy, developmental delay, mitochondrial disease and status epilepticus.

8. Dr. Barnett wrote that Appellant has a lengthy history of ICU and inpatient admissions and emergency room visits due to his epilepsy and Appellant needs the Cubby Bed because he has impaired sleep patterns, lacks impulse control, has poor self-regulation and is extremely sensitive to sensory overstimulation.

9. Appellant unsuccessfully trialed bedrails, a mattress on the floor, window and door locks, and a helmet.

10. Dr. Campbell's prescription contains similar information but with less detail.

11. MassHealth agreed with the doctors and approved the Cubby Bed as medically necessary.

12. The Cubby Bed has enclosed sides to keep Appellant zipped safely inside, retractable side "windows" to control the sensory stimulation, 360 degrees of padding for protection from injury, and safety sheets to prevent injury from entrapment of the child between the mattress and the frame of the bed.

13. MassHealth denied the Technology Hub and Sensory System because its components do not qualify as durable medical equipment.

14. Items listed in the Technology Hub and Sensory System, such as the android app, smoke and carbon monoxide alarms, Alexa and Google home integration, the circadian light, aromatherapy, meditative breathing program, and the speakers are not used primarily to serve a medical purpose and are generally useful in the absence of disability, illness or injury.

15. MassHealth relied in part on the *MassHealth Guidelines for Medical Necessity Determination for Hospital Beds*, which lists items that are considered hospital bed accessories which includes the mattress, side rails, over-bed tables, safety

enclosures, and trapeze bars (Exhibit B, page 24).

16. Appellant seeks the Technology and Sensory Hub to both monitor and record Appellant's seizure activity.

17. Recording the seizures provides Appellant's doctors with meaningful information about the nature and duration of the seizures Appellant is experiencing.

18. Appellant's frequent seizures can be life-threatening and the equipment included in the Technology and Sensory Hub, particularly the cameras and motion sensors, will enable caregivers to quickly intervene when a seizure occurs.

19. Appellant has considered other options including requesting more PCA hours which MassHealth denied.

20. Monitoring wristbands that are sometimes used are not indicated for Appellant due to his autism.

21. Appellant has not explored whether or not MH covers other cameras or monitoring devices that could be used with the Cubby Bed.

22. Appellant has incontinence and is prone to vomiting when he is having a seizure.

23. The requested waterproof mattress protector is designed to work together with the Cubby Bed canopy enclosure to keep Appellant from sliding into the corners between the mattress and the canopy.

24. The requested protector also fits the unique size of the Cubby Bed mattress which is extra wide.

25. A waterproof mattress protector is primarily and customarily used to serve a medical purpose (to keep bodily fluids and secretions from penetrating a mattress where such can be expected through injury or disfunction such as Appellant's incontinence and vomiting).

26. A waterproof mattress protector is generally not used in the absence of the anticipation of being exposed to bodily fluids or secretions which would be expected from disability, illness (disfunction) or injury.

Analysis and Conclusions of Law

"The burden of proof is on the appealing party to show that the order appealed from is invalid, and we have observed that this burden is heavy" (*Massachusetts Inst. of Tech. v. Department of Pub. Utils.*, 425 Mass. 856, 867, 684 N.E.2d 585 (1997)).

MassHealth's determinations concerning the Technology and Sensory Hub and the waterproof mattress protector were not based on a lack of medical necessity. The determinations were based on the agency's finding that these items do not constitute DME.

This record, applied to the controlling regulations, supports MassHealth's finding with regard to the Technology and Sensory Hub, but not to the denial of the waterproof mattress protector.

MassHealth regulation 130 CMR 409.402 defines DME as follows (emphasis supplied):

> *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).*

The cameras and recording devices sought by Appellant to monitor and record seizures do not stand alone, but are components of a collection of devices. This collection includes many items that are not used primarily and customarily to serve a medical purpose and that are generally useful in the absence of disability, illness or injury. These include the android app, smoke and carbon monoxide alarms, Alexa and Google home integration, circadian light, aromatherapy, meditative breathing program, and speakers. Not only do these elements of the hub not meet the definition of DME, but Appellant's parents acknowledged that they were really seeking the camera and recording devices and not concerned with the other components.

Whether cameras and recording devices constitute DME in this particular case, given Appellant's needs and limitations, should not be decided now where there has been no claim that these items can be separated out of the Technology and Sensory Hub and where Appellant has acknowledged that he has yet to request independent approval for these separate devices through MassHealth.

By way of common knowledge and in part from the article provided by Appellant's parents after hearing (Exhibit C), a waterproof mattress protector is primarily and customarily used to serve a medical purpose (to keep bodily fluids and secretions from penetrating a mattress where such can be expected through injury or disfunction such as Appellant's incontinence and vomiting). Also, a waterproof mattress protector is generally not used in the absence of the anticipation of a mattress being exposed to bodily fluids or secretions which would be expected from disability, illness (disfunction) or injury. Accordingly, MassHealth's determination that a waterproof mattress does not

constitute DME because it fails to meet the regulatory definition of DME, is not supported by adequate facts. The guidelines cited by MassHealth at hearing concerning hospital bed accessories are sub-regulatory, do not specifically exclude a waterproof mattress protector and do not supersede the governing regulation.

For the foregoing reasons, the appeal is APPROVED as to the waterproof mattress protector and DENIED as to the Technology and Sensory Hub.

Order for MassHealth

Approve waterproof mattress protector as requested.

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.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. 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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

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