

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2207228
Decision Date:	11/14/2022	Hearing Date:	11/01/2022
Hearing Officer:	Paul C. Moore		

Appellant Representative:



MassHealth Representatives:

Robin Brown, licensed occupational therapist;
Justine Zicko, registered nurse (both from
Optum, and both by telephone; Ms. Zicko
observing only)



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th Floor
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APPEAL DECISION

Appeal Decision:	Denied	Issue:	Durable Medical Equipment
Decision Date:	11/14/2022	Hearing Date:	11/01/2022
MassHealth Rep.:	Ms. Brown	Appellant Rep.:	
Hearing Location:	Board of Hearings (remote)		

Authority

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

Jurisdiction

By notice dated September 6, 2022, MassHealth denied the appellant's PA request for 3600 pediatric-sized disposable incontinence pull-ons for the time period September 1, 2022 through August 31, 2023 (Exhibit 1). The appellant filed this appeal in a timely manner with the Board of Hearings (BOH) on September 27, 2022 (Exhibit 2). Denial of assistance is valid grounds for appeal to BOH (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's PA request for 3600 pediatric pull-ons for the time period September 1, 2022 through August 31, 2023.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.204, in denying the appellant's PA request for 3600 pediatric pull-ons for one year.

Summary of Evidence

The MassHealth representative, a licensed occupational therapist and a consultant with Optum, testified by telephone that MassHealth received a PA request on behalf of the appellant from Allcare Medical Supply Co., a durable medical equipment (DME) provider, on September 1, 2022. The PA request sought MassHealth coverage for ten pediatric pull-ons per day, or 3600 per year, for the appellant.¹ The MassHealth representative testified that MassHealth denied the PA request via notice to the appellant dated September 6, 2022; the denial notice states in relevant part:

MassHealth has denied this [PA] request for overage of pediatric pull-ons for not meeting medical necessity. MassHealth covers absorbent products for managing urinary and/or fecal incontinence, increase in product for spilling his drink is not the intended purpose. Refer to MassHealth regulation 130 CMR 450.204 and the Guidelines for Medical Necessity Determination for Absorbent Products.

(Exh. 1)

The MassHealth representative noted that MassHealth had approved, on July 18, 2022, eight (8) pediatric pull-ons per day, or 240 pull-ons per month, for the appellant. It is the two additional pull-ons per day (10 minus 8) requested by the appellant that is at issue in this appeal (Testimony).

A letter of medical necessity (“LOMN”) dated August 23, 2022 was submitted with the instant PA request by Leah Hecht, a pediatric nurse practitioner at ██████████ Children’s Hospital, which notes in relevant part:

[The appellant] is a ██████████ male with differences in craniofacial and brain development of unclear etiology associated with focal epilepsy and global developmental delay, incontinent of bladder and stool. Can stand and pull the pull-ups up and down, is ambulatory and in a toileting program. [The appellant] uses 300 pull ups monthly as he can ONLY drink from an open cup due to his cortical visual impairment (CVI) and he often spills his water on himself, which requires him to be changed more frequently, unfortunately he cannot use a straw or sippy cup. . . .

(Exh. 3, p. 9)

The MassHealth representative referred to the MassHealth Guidelines for Medical Necessity Determination for Absorbent Products (“guidelines”), effective March 3, 2022, as supporting MassHealth’s decision in this matter (Exh. 3, pp. 24-31). She noted that the guidelines apply to absorbent products used for managing urinary and/or fecal incontinence in pediatric, young adult and older adult persons. She testified that the guidelines define “incontinence” as “unintentional or involuntary loss of urine and/or feces due to genitourinary or lower gastrointestinal malfunctions, respectively, as well as inability to use the toilet appropriately due to a chronic impairment that

¹ The terms “pull-ons” and “pull-ups” will be used interchangeably throughout this decision.

limits physical and/or cognitive function” (Exh. 3, p. 24). She asserted that for the briefs/diapers requested by the appellant, used for light to heavy incontinence, the maximum allowable units per day per member is eight (8), equivalent to a change of briefs every three hours (Exh. 3, p. 25). She also noted that the guidelines state that additional medical justification is required to support a request for units in excess of the otherwise maximum allowable units (*Id.*).²

The MassHealth representative testified that MassHealth does not cover the cost of DME that is determined not to be medically necessary for a member, which includes DME that is more costly than medically appropriate and feasible alternative pieces of equipment. In this matter, she asserted that there are less costly, medically appropriate and feasible alternatives to 10 pull-ons per day to protect the appellant when he spills his drinks, including use of a protective bib or other garment to shield his clothing, or the use of an adaptive cup designed to prevent spillage. The MassHealth representative stated that the latter alternatives are considered to be the standard of care for skin and clothing protection for members who spill liquids. For all of these reasons, MassHealth denied the instant PA request for 10 pull-ups per day (Testimony).

The appellant’s mother testified by telephone that due to the appellant’s CVI, and an eye nerve disease, he is legally blind, cannot see straight on, and cannot process unfamiliar sights. He has never been able to use a straw or sippy cup appropriately despite being enrolled in numerous feeding studies. He currently uses an adaptive cup that contains an insert, similar to a plunger, but he continues to spill his drinks, and refuses to drink when the insert is present in the cup. He has tried 15 to 20 different adaptive cups, which have not been effective at containing spills. The appellant also has urinary and bowel incontinence. At this time, the appellant’s pull-ons are changed more than ten times a day, including during the night. He is prescribed Miralax for constipation. His pull-ups are also changed at school four to five times a day. He has one to one supervision at school (Testimony).

Due to his seizures, the appellant is prescribed oxcarbazepine and Zonisamide, which can cause dehydration and acidosis if a patient is not well-hydrated; thus, the appellant’s mother and nurse practitioner encourage the appellant to drink as much water as possible (Testimony).

The appellant’s mother testified that a prior PA request for the appellant for 300 pull-ons per month was approved by MassHealth in December, 2021, and this PA approval was slated to continue through December 12, 2022 (Testimony, Exh. 5B). However, in June, 2022, Ms. Hecht, a nurse practitioner at █████ Children’s Hospital, submitted an erroneous new PA request to MassHealth; she is not the appellant’s usual nurse practitioner, according to the appellant’s mother. The new PA request was for 300 diapers per month, not pull-ups. Subsequently, Ms. Hecht corrected the prescription to request 300 pull-ups and submitted this request to MassHealth in August, 2022. At that time, although there was already an approved PA on file for 300 pull-ups per month, MassHealth made a new decision, and modified the requested quantity of pull-ups to the maximum allowable quantity of 240 per month (Testimony).

² The MassHealth representative testified that the appellant also receives the services of a personal care attendant (PCA), paid by MassHealth.

In response to this testimony, the MassHealth representative agreed that MassHealth had approved 300 pull-ons per month for the appellant in the past; she is not sure why this occurred. She offered testimony that diapers are not as costly to MassHealth as pull-ups, and further, that pull-ups are changed less easily than diapers, as use of the former necessitates undressing and re-dressing the wearer. She questioned the choice of pull-ons being requested rather than diapers (Testimony).

The appellant's mother stated that a pull-on is actually less difficult to change than a diaper. The appellant is too mobile and active to lie down while having a diaper changed. His pull-ups can be changed while the appellant is standing, and the appellant can participate in this process. When he spills his drinks, most of the spillage is on his legs. He sometimes throws his cups of water (Testimony).³

The appellant's mother testified that the appellant was born with an as-yet undiagnosed genetic disorder, and is being studied at █████ Children's Hospital. He has scarring on his hippocampus. His pituitary gland is situated incorrectly, and he has hypothyroidism. He has low muscle tone. He is non-verbal. He also a congenital malformation of his inner ears (Testimony, Exh. 3, p. 10).

As part of his Individualized Education Plan (IEP) at school, he is to be offered water to drink every 10 minutes (Testimony).

Prior to hearing, the appellant's mother forwarded to the BOH a letter dated October 10, 2022 from Kimberly Banigan, a complex care nurse practitioner at █████ Children's Hospital, which the hearing officer marked as exhibit 5A. The letter states in pertinent part:

I am writing this letter on behalf of the appellant to advocate that he receive 300 pull-ups per month. [The appellant] was approved to receive 300 pull-ups previously through MassHealth, so this would be a continuation of what he has already been receiving. [The appellant] is a medically complex child who I follow in the Complex Care Service at █████ Children's Hospital. He has an underlying diagnosis of CVI, which precludes his ability to drink from a straw or sippy cup and necessitates the use of an open cup. With this cup, he spills frequently on his diaper, requiring a new diaper. He also has an underlying seizure disorder, for which he receives zonisamide and oxcarbazepine, both of which can be dehydrating. He needs to drink excess fluids to maintain hydration and has a history of acidosis earlier this year, as well as hyponatremia in the past. With the need for extra liquids, he voids more frequently. . . .

(Exh. 5A)

³ With the assent of the parties, following the hearing, the hearing officer viewed a video on the Internet of a child drinking from an adaptive cup known as a "Reflo Smart cup." The appellant's mother indicated that the appellant had used one of these in the past, with little success. The video demonstrated that the cup insert limits the volume of liquid that flows from the cup at one time, and directs the flow of liquid directly to the child's mouth.

Findings of Fact

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

1. The appellant is a legally blind child who lives in the community with his parents, and who has medical diagnoses including differences in craniofacial and brain development of unclear etiology, focal epilepsy, CVI, global developmental delay, incontinence of bladder and stool, scarring on his hippocampus, hypothyroidism, low muscle tone, and a congenital malformation of his inner ears (Testimony, Exh. 3, Exh. 5).
2. MassHealth received a PA request on behalf of the appellant from Allcare Medical Supply Co., a DME provider, on September 1, 2022 for 300 pull-ups per month, or 3600 per year (Testimony, Exh. 3).
3. MassHealth denied the PA request via notice to the appellant dated September 6, 2022; the denial notice states in relevant part: “MassHealth has denied this [PA] request for overage of pediatric pull-ons for not meeting medical necessity. MassHealth covers absorbent products for managing urinary and/or fecal incontinence, increase in product for spilling his drink is not the intended purpose. Refer to MassHealth regulation 130 CMR 450.204 and the Guidelines for Medical Necessity Determination for Absorbent Products” (Exh. 1).
4. MassHealth instead approved 240 pull-ons per month for the appellant, the maximum quantity allowable under the MassHealth Guidelines for Medical Necessity Determination for Absorbent Products, by notice dated July 18, 2022 (Testimony).
5. The appellant, through his mother, filed a timely appeal of the September 6, 2022 denial notice with the BOH (Exh. 2).
6. In December, 2021, MassHealth had approved 300 pull-ons per month for the appellant, in error; this PA approval was slated to continue through December 12, 2022 (Testimony, Exh. 5B).
7. Although there was already an approved PA request for 300 pull-ons per month in effect in August, 2022, Leah Hecht, nurse practitioner at █████ Children’s Hospital, submitted a new PA request to MassHealth; the LOMN she wrote states: “[The appellant] is a █████ male with differences in craniofacial and brain development of unclear etiology associated with focal epilepsy and global developmental delay, incontinent of bladder and stool. Can stand and pull the pull-ups up and down, is ambulatory and in a toileting program. [The appellant] uses 300 pull ups monthly as he can ONLY drink from an open cup due to his CVI and he often spills his water on himself, which requires him to be changed more frequently, unfortunately he cannot use a straw or sippy cup. . . .” (Exh. 3, p. 9).
8. Under the MassHealth Guidelines for Medical Necessity Determination for Absorbent

Products, additional medical justification is required to support a request for units in excess of the otherwise maximum allowable units of 240 per month (Exh. 3, p. 25).

9. MassHealth asserts that there are less costly, medically appropriate and feasible alternatives to 10 pull-ons per day to protect the appellant when he spills his drinks, including use of a protective bib or other garment to shield his clothing, or the use of an adaptive cup designed to prevent spillage (Testimony).
10. The appellant is prescribed oxcarbazepine and Zonisamide for seizures, which can cause dehydration and acidosis if a patient is not well-hydrated; thus, the appellant's mother and nurse practitioner encourage the appellant to drink as much water as possible (Testimony, Exh. 5A).
11. The appellant has tried many different adaptive cups to avoid spilling his drinks, including the Reflo Smart cup, which contains an insert that limits the volume of liquid that flows from the cup at one time (Testimony).
12. None of the adaptive cups have worked well for the appellant, and the appellant sometimes throws the adaptive cups (Testimony).
13. Currently, the appellant's mother and PCAs change the appellant's pull-ups approximately 10 times a day, including in the middle of the night, due to his incontinence and spillage (Testimony).

Analysis and Conclusions of Law

Pursuant to MassHealth regulation 130 CMR 450.204:

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. 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.)

(Emphasis added)

Next, pursuant to MassHealth regulations governing DME at 130 CMR 409.414:

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). . . .

(Emphasis added)

In addition, MassHealth has enacted subregulatory guidance regarding absorbent products, effective in March, 2022. The MassHealth Guidelines for Medical Necessity Determination for Absorbent Products focus on absorbent products needed by members with urinary or fecal incontinence. They do not refer at all to the need for such products due to a member spilling water or other consumable liquids on his or her clothing.

The LOMN from a nurse practitioner submitted with the instant PA request refers only to the appellant's use of an open cup, and spillage, as the reason for the frequent pull-up changes throughout the day. A second letter, from the appellant's regular nurse practitioner, refers to both spilling of drinks and increased incontinence (due to consumption of large quantities of water) as alternative reasons for the frequent pull-up changes.

The bulk of testimony at the hearing focused on the appellant's CVI and legal blindness, and his resulting inability to use a cup appropriately, as the causes for the spillage and concomitant need for frequent pull-up changes.

Based on these factors, the hearing officer concludes that the primary rationale for the appellant seeking an overage of 300 pull-ups per month is his inability to drink from a cup and resulting spillage, and not any increased urinary incontinence.

Notwithstanding MassHealth's previous approval of a PA request for 300 pull-ups per month, MassHealth has asserted that there are less costly, medically appropriate and feasible alternative pieces of equipment that may be used to mitigate the appellant's spillage of drinks. These other pieces of equipment include bibs, protective outer garments, and appropriate adaptive cups. I agree that these alternatives are available and medically appropriate for the appellant; despite his lack of success thus far using adaptive cups, the appellant is only [REDACTED], and he may ultimately find an adaptive cup that works well for him.

Therefore, I conclude that the requested PA for 300 pull-ups per month was properly denied by MassHealth, as this quantity is not medically necessary as that term is defined at 130 CMR 450.204(A)(2), above.

For these reasons, the appeal is DENIED.

Order for MassHealth

None, other than to maintain the current approved PA of 240 pediatric-sized disposable incontinence pull-ons per month.

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.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Optum appeals representative