

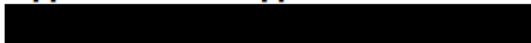
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2208130
Decision Date:	2/7/2023	Hearing Date:	12/08/2022
Hearing Officer:	Rebecca Brochstein	Record Closed:	12/23/2022

Appearances for Appellant:



Appearances for MassHealth:

Robin Brown, OTR/L



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Prior Approval (Durable Medical Equipment)
Decision Date:	2/7/2023	Hearing Date:	12/08/2022
MassHealth's Rep.:	Robin Brown	Appellant's Rep.:	Appellant's Father
Hearing Location:	Board of Hearings (Remote)		

Authority

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

Jurisdiction

Through a notice dated October 26, 2022, MassHealth modified the appellant's request for wheelchair accessories (Exhibit 1). The appellant filed this appeal in a timely manner on October 31, 2022 (130 CMR 610.015(B); Exhibit 2). On November 1, 2022, the Board of Hearings dismissed the appeal because a full copy of the notice had not been provided, but subsequently vacated the dismissal (Exhibits 3 and 4). After hearing on December 8, 2022, the record was held open for additional evidence (Exhibits 7 and 8). Denial of a request for durable medical equipment is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's prior approval request for wheelchair accessories.

Issue

The appeal issue is whether the appellant has demonstrated the medical necessity of the requested equipment.

Summary of Evidence

MassHealth was represented by a consultant who offered the following background through testimony and documentary evidence: The appellant is a woman in her early 30s with diagnoses that include serine deficiency disorder, seizure disorder, and intellectual disability. In September 2022, the appellant's durable medical equipment (DME) provider submitted a request for a manual tilt-in-space wheelchair with accessories, including a SmartDrive power assist feature. On September 9, 2022, MassHealth approved the wheelchair and most of the requested accessories. MassHealth denied certain accessories due to missing documentation, and denied the SmartDrive power assist equipment because it did not meet medical necessity criteria.

Thereafter, the provider submitted a second prior authorization request with additional information. On October 25, 2022, MassHealth partially approved the previously denied items, but continued to deny the requested incontinence cover, adapter pad, and gel wraps (again due to missing documentation), and the SmartDrive power assist feature (again due to medical necessity).¹

According to the DME provider's quote, the items associated with the power assist feature are the SmartDrive MX2+ system, the E3 PushTracker, and a SmartDrive "special frame." See Exhibit 5 at 16-17. The MassHealth representative testified that the cost of SmartDrive equipment is \$5,801.57.² The letter of medical necessity that was submitted with the original prior authorization request (for the wheelchair and accessories) includes the following information from the appellant's physical therapist:

- Assessment: Patient is a . . . female with inborn error of serine metabolism, intellectual disability, and seizures who presents to PT for evaluation of medical necessity for new manual tilt in space wheelchair. She is wheelchair dependent for MRADLs within the home due to her serine metabolism disorder's effect on her motor function and intellectual ability. She is unable to stand or ambulate and therefore non functional in the use of walkers, canes, or crutches. She lacks the cognitive ability to operate a power wheelchair. A standard/lightweight/high strength light weight, or optimally configured manual wheelchair is not appropriate due to her inability to self propel due to cognitive impairment and lack of ability to initiate purposeful movement. She demonstrates poor trunk control and is unable to perform self pressure relief, and therefore requires tilting function. She will use the tilt in space wheelchair for toileting, bathing, feeding, grooming, and dressing. A tilt in space wheelchair in conjunction with appropriate positioning devices will allow her hips to sit back in the chair, improving her posture and reducing her risk for skin breakdown in the absence of the ability to perform self pressure relief. Her caregivers are

¹ The MassHealth representative indicated that MassHealth could approve the incontinence cover, adapter pad, and gel wraps with additional documentation from the DME provider. The appellant's father responded that he would contact the provider for this information, and indicated that there was no need to proceed with this aspect of the appeal.

² The figures listed in the provider's quote vary slightly from this total.

able and willing to operate tilt in space wheelchair 24/7. . . .

- Power assist: Justification: Patient's primary caregiver requires power assist due to being on disability for peripheral neuropathy which was exacerbated by chemotherapy. He has numbness below the knees and weakness in his quads and gluteal musculature which makes pushing the wheelchair very difficult especially over inclines such as ramps including the one to enter their home as well as the ADA compliant ramps at medical facilities. Additionally, multiple times a year, he experiences exacerbation of his herniated disk symptoms necessitating the need to go on steroids and therefore making pushing the wheelchair more difficult. Power assist is recommended to allow patient's primary caregiver to operate the wheelchair in order to take patient in/out of the home and to/from doctors appointments. Additionally, it will allow him to take her outdoors and increase her quality of life. (Exhibit 5 at 52)

After MassHealth denied the power assist feature of the original PA request, the physical therapist updated the information in the record as follows:

Addendum to address the denial of power assist on this manual wheelchair. This addendum provides more detail regarding when the power assist would be used and the potential risks of not adding it to the wheelchair. Though an unusual request as the power assist option is typically reserved to aide self-propulsion, [appellant] is dependent on her caregivers for mobility. However, her primary caregiver, her father is unable to push the wheelchair over uneven terrain, inclines such as ramps, and thresholds between rooms. He is on disability himself due to severe peripheral neuropathy which was exacerbated by chemotherapy. It presents as numbness below his knees and weakness in his quads and gluteals, which need good strength to push a wheelchair up ramps, over thresholds, and over uneven terrain. Multiple times a year, he also experiences exacerbating of his lumbar herniated disk symptoms making pushing the wheelchair even more challenging especially in the instances that are already difficult as noted above. Since dad is the primary caregiver, he is pushing [appellant] in the wheelchair within their home daily including over the couple of thresholds between rooms as well as up/down the ramp to enter and exit their home. He also brings [her] to her doctor's appointments which are frequent due to her diagnosis and is unable to push her up the ramps at the doctor's offices without difficulty and exacerbation of his symptoms. They also live in a very hilly neighborhood with steep inclines and it has become very difficult to take her outdoors for socialization and increased quality of life. Without the power assist, Dad is also at risk of exacerbation of his lumbar disk symptoms which renders him incapable of caring for her until they resolve which can sometimes be months. Although it is not a typical request, the additional to [sic] power assist to this chair would be extremely beneficial to allow [appellant's] father to continue to be able to care for her fully both within their home as well as outside of their home. (Exhibit 5 at 55)

The MassHealth representative testified that the SmartDrive equipment attaches to the back of the wheelchair and to the wheel rims. When engaged, she stated, it allows the user to get additional

distance with each push, reducing the strain on the wheelchair user's shoulders and neck. In addition, its technology enables the motor to be activated remotely with a watch that is worn by the person in the wheelchair. The MassHealth representative stated that in this case, the provider is proposing to have the appellant's caregiver operate the device from behind and wear the watch that controls the power. She testified that the device is not meant to be used this way, and can be dangerous for both the person in the wheelchair and the caregiver if used in a manner other than what was intended. She testified that MassHealth never approves this device for use by a caregiver.

The MassHealth representative cited to 130 CMR 450.204(B), which provides that medically necessary services must be of a quality that meets professionally recognized standards of health care. She maintained that because the planned use of this equipment does not meet the standard of care, it is not considered medically necessary.

The appellant was represented by her father, who is also her guardian and primary caregiver. He testified that the appellant is totally dependent on him to get around, as she cannot propel her own wheelchair. He stated that he suffers from physical ailments, including neuropathy and lower back pain, that prevent him from maneuvering the wheelchair over long distances and up ramps. The father argued that the SmartDrive device is in fact medically necessary, as he has been physically unable to get the appellant to all of her medical appointments. He explained that the ramp into his vehicle is twice as steep as ADA-compliant ramps found at commercial buildings, and he often finds that he is unable to push the appellant's wheelchair up the incline. He stated that the SmartDrive device can provide an "assist" to a wheelchair already in motion, or help initiate movement from a stopped position.

The father acknowledged that the device is typically for use by the wheelchair user, but stated that he does not see why it is unsafe for the caregiver to operate it. He explained that the motor only works when the watch accessory (a generic Android watch with a SmartDrive app) is nearby, and will stop if it rolls out of range. He clarified that no element of the SmartDrive system is attached to the wheel rims; rather, the user starts and stops the motor by tapping the watch against the wheels. The father testified that he has not trialed the SmartDrive device on his daughter's wheelchair, but that he has seen it used on the wheelchair of an acquaintance.

The MassHealth representative testified that the appellant could potentially get authorization for an alternative to the SmartDrive device. She stated that under Medicare rules, which MassHealth generally follows, a member in the appellant's position (with a caregiver who is willing but unable to push a manual wheelchair) can be approved for a power wheelchair that can be operated by the father. Additionally, she testified that the Alber "e-fix" power assist device is an alternative that is similar to the SmartDrive but is also cheaper and safer for use by a caregiver. This device features a joystick that attaches to the back of the wheelchair for the caregiver to operate. The MassHealth representative stated that the agency would likely approve this for the appellant if it were requested, noting that she has personally approved this device for MassHealth members in the past.

In response, the father testified that a full power wheelchair could be problematic due to the weight of the equipment and the modifications the appellant requires. He stated that he was not familiar

with the Alber e-fix power assist device, but would consider it as an alternative.³

The record was held open after hearing for the father to further research the Alber e-fix and decide which option to pursue. On December 10, 2022, the father filed a letter which states in relevant part as follows:

Thank you for your time and considerations during the hearing . . . concerning my [daughter's] durable medical equipment and our appeal of a partial denial of PCA #P222520185. As I promised I have since done my due diligence once again in researching ways to enable [her] mobility and access to proper medical care and necessary activities of daily living.

MassHealth's Clinical Reviewer . . . stated the objections to the SmartDrive device being both a lack of medical necessity and cost. The cost issue appeared to be a stumbling block and [the MassHealth representative] suggested looking at the Alber e-fix as a potential possibility and stated the price was in the "hundreds" of dollars and not "thousands" as is the SmartDrive.

The current pricing of the Alber e-fix as shown in their attached pricing documents . . . is actually 900% higher than stated at the meeting, minimally \$8,210.00 for the basic model and minimally \$6001.00 for the Eco model. I say "minimally" because there may be accessories necessary that I am not aware of hence these are the base prices as shown on the attached manufacturer order forms. It is questionable as to whether the Eco model is usable with [appellant's] chair.

[The MassHealth representative] stated that the SmartDrive MX2+ as configured was priced at \$5,801.57, a clear savings over the Alber e-fix and less expensive than any other appropriate device (for [appellant's] needs) that we and our DME provider National Seating and Mobility (NSM) can find.

To clarify how an attendant uses the SmartDrive MX2+ the attendant has a "Throttle Button" on the handles and as stated on NSM's website "When used as an attendant drive the new Throttle Button makes itsimple [sic] to operate and control speed." A video of this device from Living Spinal's website can be seen here: [website]

The manufacturer also clearly states "The thumb throttle buttons can either be used a drive buttons for the user for manouvring [sic] indoor in thigh [sic] spaces or as drive buttons for the attendant to support the user when driving over curbs or ramps" in their SmartDrive Questions & Answers document (page attached).

[The MassHealth representative] referred to the statement that the need for DME must

³ He noted that his quick preliminary research (done during the hearing) showed that both this device and the SmartDrive would meet their needs, though he questioned whether the e-fix would actually be cheaper.

“threaten to cause or worsen a handicap.” Because of the inability to always transport her properly to necessary medical care (including the mentioned post-surgical appointment this past Friday) the need for a device such as the SmartDrive is medically necessary. Additionally, for over a year [appellant] has not had the daily ‘walk’ that we used to have out of the house potentially (and probably) affecting her mental health (she does not communicate so this cannot be easily proven) but obviously affecting her mood.

The request for the SmartDrive MX2+ is a request for the lowest cost wheelchair power assist that will enable [appellant] to be properly medically attended to, allow her to be safely transported, and to participate in daily living activities. These needs were understood by MassHealth as attested to by the discussion and suggestion of other potential solutions—mistakenly thought to be less expensive. For these reasons I am requesting that the appeal process continue and ask for all considerations in reversing the denial at hand. (Exhibit 7)

The appellant’s father attached several pages detailing the cost of the SmartDrive device as well as “Functional Q&A” page from the DME provider. See Exhibit 7 at 8-9.

After reviewing the appellant’s father’s submission, the MassHealth representative responded as follows:

MassHealth received medical documentation dated December 10th, 2022 from . . . the Appellants father and representative. After review, of new documentation and the appellants testimony, MassHealth continues to deny this request based on the support of Regulation 130 CMR450.204 (A)(1)(2) and (B), Regulation 130 CMR 409.403 (A), 130 CMR 450.101 and 130 CMR 409.402.

[Appellant’s father] writes in his statement that cost was the stumbling block to MassHealth denying the requested Smart Drive and the Pushtracker accessory for [appellant’s] wheelchair. MassHealth denied the requested Smart Drive power assist pushrims for the reasons I stated in my testimony – per the documentation submitted, the equipment is being requested for the benefit of the caregiver, [appellant’s father]. Smart Drive’s power assist pushrims for wheelchair are intended to be used by the person using the wheelchair. In this request, the planned use of the equipment is for the caregiver only. This planned use does not meet the standards of care. In my testimony I cited several entries from the letter of medical necessity to support that the equipment was requested for [the father’s] intended use and cited numerous regulations to support that decision to deny this equipment.

I have watched the YouTube video as suggested by [the father]. The video shows a Throttle Button that attaches to the wheelchair. This Throttle Button comes with the Smart Drive and is not the PushTracker 3 accessory that was requested in this case. The PushTracker 3 is a smart watch type device that communicates via Bluetooth to a phone app and to the Smart Drive. This is the Throttle Button in the video – this is a standard

component of all Smart Drive units.⁴

The video shows several locations the manufacturer suggests for mounting the Throttle Button to the wheelchair. The manufacturers question and answer page, attached to [the father's] letter, states that the Throttle Button in the video can be used as "drive buttons for the attendant to *support the user when driving over curbs or ramps*" (italics added). That is to say the attendant can assist the user if the user experiences difficulties. It does not state or suggest that the attendant is intended to be the actual, or only, user of the Smart Drive device.

[Appellant's father's] letter also states his inability to transport [the appellant] to necessary medical care in her wheelchair would threaten to cause or worsen a handicap. However, MassHealth has approved Hannah to receive 70 hours per week of Day/Evening PCA services. Medical Transportation Comments submitted with the request states -Legal guardian, most appts are virtual.

As I stated in the hearing during the discussion, I offered the additional information regarding Medicare's power wheelchair regulation and regarding the Alber Efix to [the father] as a courtesy and provided my knowledge of the costs involved for *privately pursuing through a dealer* alternative equipment to meet his needs.

The MassHealth decision to deny was based on the reasons and the regulations cited in my testimony, not based on cost. (Exhibit 8)

Findings of Fact

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

1. The appellant is a woman in her early 30s with diagnoses that include serine deficiency disorder, seizure disorder, and intellectual disability.
2. In September 2022, the appellant's durable medical equipment provider submitted a request for a manual tilt-in-space wheelchair with accessories.
3. On September 9, 2022, MassHealth approved the wheelchair and most of the requested accessories. MassHealth denied the power assist feature because it found the device did not

⁴ The MassHealth representative included a photograph of the throttle button, known as "SwitchControl," from the SmartDrive marketing materials. The caption states that SwitchControl is a "no charge option included with every SmartDrive." It goes on as follows: "With the push of a button SmartDrive can be engaged for a momentary burst of power or activated in latched mode for consistent power over extended distances. This empowers a more diverse group of people to experience SmartDrive with increased confidence. It also works as a shut off switch while the motor is running. When touched, the motor will disengage and the user stops by grabbing the wheels." See Exhibit 8.

meet medical necessity criteria.

4. In October 2022, the provider submitted a second prior authorization request with additional information.
5. On October 25, 2022, MassHealth partially approved the previously denied items, but continued to deny the incontinence cover, adapter pad, and gel wraps (again due to missing documentation), and the power assist feature (again due to medical necessity).
6. On October 31, 2022, the appellant filed a request for a fair hearing.
7. At hearing on December 8, 2022, the appellant's father indicated that he would contact the DME provider to submit the documentation missing for the incontinence cover, adapter pad, and gel wraps, and therefore did not need to proceed with that aspect of the appeal.
8. The items associated with the power assist feature are the SmartDrive MX2+ system, the E3 PushTracker (a watch that pairs with the system), and a SmartDrive "special frame."
9. The SmartDrive system consists of a motorized device with a wheel that hooks on to the bottom of a manual wheelchair. The user can operate the device by tapping the accessory PushTracker watch, loaded with a SmartDrive app, on the wheelchair rims.
10. The SmartDrive system also comes with a "SwitchControl" button that can be affixed to the wheelchair to operate the motor. According to the company's marketing materials, the button can be used "for a momentary burst of power or activated in latched mode for consistent power over longer distances." The user can disengage the motor by touching the button and then must stop the wheelchair "by grabbing the wheels."
11. The SmartDrive FAQs sheet states that throttle buttons can be used as "drive buttons for the attendant to support the user when driving over curbs or ramps."
12. The SmartDrive system is designed to be operated by the wheelchair user, to provide assistance with mobility over long distances and uneven terrain.
13. The appellant is unable to self-propel in a manual wheelchair, and lacks the cognitive ability to operate a power wheelchair.
14. The appellant's father is her primary caretaker. He has a history of peripheral neuropathy as well as herniated disks, which makes it difficult for him to push the appellant's wheelchair up inclines and over uneven terrain.
15. The provider requested the SmartDrive system for the appellant with a plan for the appellant's father to operate the system from behind the wheelchair.

Analysis and Conclusions of Law

By regulation, MassHealth will not pay a provider for services that are not medically necessary. Pursuant to 130 CMR 450.204(A), a service is considered “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 or cause to aggravate a handicap, or result in illness or infirmity; and
- (2) there is no other medical services 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]. . . .

Under 130 CMR 450.204(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.

At issue in this case is MassHealth’s denial of a SmartDrive power assist accessory for the appellant’s manual wheelchair. The primary basis of MassHealth’s denial was that the planned use – for the appellant’s caregiver to operate the device – does not meet professionally recognized standards of care, and therefore does not satisfy medical necessity criteria.⁵

There is no dispute that the SmartDrive device is intended primarily to assist wheelchair users who are able to self-propel. The SmartDrive marketing materials in evidence (print and video) portray wheelchair users wearing the PushTracker watch, tapping it on the side of the wheelchair to engage the motor, and navigating their wheelchairs independently. The appellant is unable to do any of these things. However, the appellant’s father contends that he would be able to safely operate the SmartDrive equipment while pushing the wheelchair, either by using the watch himself or by mounting the SwitchControl button within his reach.

There is no affirmative evidence in this record that the equipment can be used safely in this manner. To the extent the DME company’s published materials mention a caregiver, it is only as support to the wheelchair user. For example, the SmartDrive materials state the SwitchControl button can be used “for the attendant to support the user when driving over curbs or ramps.” This suggests that the caregiver may engage the button to assist the user over difficult terrain, for

⁵ Separately, MassHealth also suggested that the equipment is not medically necessary because it is for the benefit of the appellant’s caregiver. While the father’s own physical condition was the impetus for this prior authorization request, he makes a compelling case that a push assist device is tied to the appellant’s own needs because he has been unable to transport her to medical appointments. This particular argument by MassHealth is also belied by the representative’s testimony that the agency would likely approve a different type of push assist device (one designed to be operated by a caregiver).

brief periods of time, but not to assume full control of the wheelchair. Elsewhere in the SmartDrive marketing materials, use of the button is described as follows:

With the push of a button SmartDrive can be engaged for a momentary burst of power or activated in latched mode for consistent power over extended distances. This empowers a more diverse group of people to experience SmartDrive with increased confidence. It also works as a shut off switch while the motor is running. When touched, the motor will disengage and the user stops by grabbing the wheels.

This description indicates that the wheelchair user – the only person in a position to easily “grab the wheels” – is meant to play a substantial role in the operation of the SmartDrive device, even when the caregiver is assisting. In this case, the appellant is unable to either propel or stop her own wheelchair, potentially placing her at risk if the caregiver were to engage the motor (either with the watch or by using the button in latched mode) and let go of the chair for any reason. There is no clear evidence – in the company’s materials or otherwise – to indicate that the SmartDrive equipment is appropriate for a wheelchair user who is unable to participate in its operation.

As the record does not adequately support the safe use of the SmartDrive device as proposed, MassHealth correctly determined that the requested equipment does not meet professionally recognized standards of care. Accordingly, its denial on the basis of medical necessity was not erroneous.⁶ 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.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Optum

⁶ The only issue in this appeal is the medical necessity of the SmartDrive system and related accessories. As MassHealth’s denial was not based on the availability of a less-costly alternative, but rather on the safety and appropriateness of the requested equipment, it is not necessary to address the relative cost of the SmartDrive and other DME discussed at hearing.