

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2300366
<b>Decision Date:</b>	3/28/2023	<b>Hearing Date:</b>	03/14/2023
<b>Hearing Officer:</b>	Paul C. Moore		

**Appellant Representative:**



**MassHealth Representative:**

Robin Brown, licensed occupational therapist,  
Optum (by telephone)



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, 6<sup>th</sup> Floor  
North Quincy, MA 02171*

# APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Durable Medical Equipment
<b>Decision Date:</b>	3/28/2023	<b>Hearing Date:</b>	03/14/2023
<b>MassHealth Rep.:</b>	Ms. Brown	<b>Appellant Rep.:</b>	Father
<b>Hearing Location:</b>	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 December 20, 2022, MassHealth denied the appellant's PA request for a Convaid cruiser pediatric folding wheelchair ("stroller") because the stated goals for a mobility device can be met with a more cost-efficient transport chair (Exhibit 1). The appellant filed this appeal in a timely manner with the Board of Hearings (BOH) on January 17, 2023 (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 a stroller because the appellant's mobility goals could be met with a more cost-efficient transport chair.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.204 and 130 CMR 409.414(B), in denying the appellant's PA request for a stroller.

## 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 National Seating and Mobility, Inc., a durable medical equipment (DME) provider, on December 16, 2022. The PA request sought MassHealth coverage for a Convaid cruiser pediatric folding wheelchair (“stroller”). The MassHealth representative testified that MassHealth denied the PA request via written notice to the appellant dated December 20, 2022; the denial notice states in relevant part:

The Division will not pay for DME or medical/surgical supplies that are not both necessary and reasonable for the treatment of a member’s medical condition. MassHealth is denying [the appellant’s] PA request. The reason for this decision is that the documentation submitted on [the appellant’s] behalf indicates that the requested services do not meet professionally recognized standards of health care.

MassHealth denied the requested stroller. The stated goals for a mobility device can be met with a more cost-efficient transport chair.

(Exh. 1)

A letter of medical necessity (“LOMN”) dated November 23, 2022 was submitted to MassHealth with the instant PA request by Susan Polcari, the appellant’s physical therapist, which notes in relevant part:

[The appellant] is a [REDACTED] man with diagnoses of autism, Down’s Syndrome, perforated left eardrum, and he is legally blind. [The appellant] is in need of a CX18 Cruiser stroller, standard model with padded H-Harness and 3 point positioning belt with depth adjustable strap.

[The appellant’s] range of motion is within functional limits. He is able to get himself up and down from the floor, at times requiring upper extremity support. His preferred sitting position is tailor sitting. [The appellant] is able to ambulate limited distances, demonstrating a wide base of support, eversion of bilateral feet, and increase in lateral sway bilaterally. . . . He requires frequent verbal and tactile cues to move about in his home environment. In order to go out on appointments and to enjoy family outings, [the appellant] requires the use of a stroller. He currently is using a transport wheelchair which is very difficult for caregivers to maneuver on uneven terrain. Additionally, if [the appellant] were to lean forward excessively, the chair is likely to tip over. [The appellant] was last issued a stroller [REDACTED]. Since that time, [the appellant] has outgrown the stroller and the stroller has also experienced significant wear and tear from regular use.

[The appellant] would benefit from a stroller as requested above to improve his comfort

when sitting and to allow improved mobility over uneven terrain and increased access to participate in community events/activities. A 3 point positioning belt is required for safety and for optimal positioning in the stroller. An H-harness with padded covers is required for optimal positioning due to [the appellant's] lack of safety awareness and limited ability to follow directions. His hearing and visual impairments also contribute to decreased safety. . .

(Exh. 3, p. 9)

The MassHealth representative testified that the cost of the requested stroller to MassHealth is \$1,941.28. She noted 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. She added that MassHealth believes that the appellant has an existing wheelchair that can meet his medical needs. The MassHealth representative added that any wheelchair may potentially tip over if the user leans forward in the wheelchair. In addition, she asserted that any wheelchair can be difficult to navigate over uneven terrain, and added that MassHealth does not approve DME for the convenience of a caregiver. For all of these reasons, MassHealth denied the instant PA request for the stroller, and issued a written notice to this effect to the appellant on December 20, 2022 (Testimony, Exh. 1, Exh. 3).

The appellant's father testified by telephone on the appellant's behalf. He noted that the appellant can ambulate with assistance in his home. He receives one-to-one assistance and supervision from a representative from the Department of Developmental Services (DDS). The appellant exhibits "non-compliant" behaviors, such as dropping to the floor when requested to walk. The appellant's father indicated that MassHealth approved a pediatric Convaid stroller for the appellant in the past, but the appellant has outgrown it. The old stroller has also been damaged and is worn out. The appellant's father testified that he also has a "travel wheelchair" he purchased for the appellant through DDS, and the travel wheelchair has a safety belt. He added that the appellant can "slip through" the safety belt and fall out of the travel wheelchair, by leaning back in the wheelchair and unfastening the safety belt. The appellant is very small (4'9" and 109 lbs.), which makes it easier for him to slip out of the wheelchair. He does this frequently, according to the appellant's father. During the day, the appellant goes to stores, the gym and animal shelters in the community, but always supervised by a DDS representative (Testimony).

The appellant's father added that the requested stroller has an added safety feature, *to wit*, safety straps across the shoulders and a safety strap across the waist ("three-point harness system"). These straps connect at the appellant's midsection. This feature would prevent the appellant from intentionally sliding himself out of the stroller, according to the appellant's father (Testimony).

The MassHealth representative explained that the requested stroller has a 30-degree fixed backward tilt, which is typically used for persons with impaired balance. The requested stroller also has a "self-tensioning" seating system, which molds to the appellant's body. She added that in the past, MassHealth approved a Convaid stroller for the appellant when he was much younger, weaker, and having difficulty navigating distances at his high school. She noted that there are a number of other

standard wheelchairs with safety harnesses (or to which safety harnesses may easily be attached) that may also meet the appellant's current medical and mobility needs, pointed out that these options have not been presented to the appellant, and noted that such wheelchairs would be less costly to MassHealth (in the range of \$364 to \$847). For MassHealth to approve the requested stroller, the appellant would first have to show that he has tried these less expensive alternatives (Testimony).

The appellant's father stated that his main concern for the appellant is his safety, which he asserted would be supported by the stroller. He noted that the requested stroller has not only safety harnesses, but also a form-fitting seating structure, hard inflatable tires and shock absorbers that can navigate outdoor terrain (Testimony).

The appellant's father indicated that his main health insurance is Blue Cross/Blue Shield, and he has not submitted a request to them for coverage of the requested stroller. He stated he does not believe Blue Cross/Blue Shield will provide coverage for this stroller (Testimony).

## Findings of Fact

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

1. The appellant is a [REDACTED] MassHealth member with diagnoses of autism, Down's Syndrome, perforated left eardrum, and he is legally blind (Testimony, Exh. 3).
2. MassHealth received a PA request on behalf of the appellant from National Seating and Mobility, a DME provider, on December 16, 2022 seeking coverage for a Convaid cruiser pediatric folding wheelchair ("stroller") (*Id.*).
3. The appellant is able to ambulate with supervision and support inside his home, but requires a wheelchair when he leaves his home for outings in the community (Testimony, Exh. 3).
4. The appellant has an old stroller, the cost of which MassHealth paid for in the past, and has a travel wheelchair from DDS (Testimony).
5. The cost of the requested stroller to MassHealth is \$1,941.28 (Testimony).
6. MassHealth denied the PA request via notice to the appellant dated December 20 2022; the denial notice states in relevant part: "The Division will not pay for DME or medical/surgical supplies that are not both necessary and reasonable for the treatment of a member's medical condition. MassHealth is denying [the appellant's] PA request. The reason for this decision is that the documentation submitted on [the appellant's] behalf indicates that the requested services do not meet professionally recognized standards of health care" (Exh. 1).
7. The appellant filed a timely appeal with the BOH on January 17, 2023 (Exh. 2).

8. According to a LOMN from Susan Polcari, a licensed physical therapist: “[The appellant’s] range of motion is within functional limits. He is able to get himself up and down from the floor, at times requiring upper extremity support. His preferred sitting position is tailor sitting. [The appellant] is able to ambulate limited distances, demonstrating a wide base of support, eversion of bilateral feet, and increase in lateral sway bilaterally. . . . He requires frequent verbal and tactile cues to move about in his home environment” (Exh. 3, p. 9).
9. The appellant can “slip through” the safety belt and fall out of the travel wheelchair, by leaning back in the wheelchair and unfastening the safety belt; he does this frequently (Testimony).
10. The requested stroller has an added safety feature, *to wit*, safety straps across the shoulders and a safety strap across the waist (“three-point harness system”). These straps connect at the appellant’s midsection (Testimony).
11. The requested stroller also has a 30-degree backward tilt, a form-fitting seating structure, hard inflatable tires and shock absorbers that can navigate outdoor terrain (Testimony).
12. There are a number of other standard wheelchairs with safety harnesses (or to which safety harnesses may easily be attached) that may also meet the appellant’s current medical and mobility needs (Testimony).
13. The appellant has not trialed any other standard wheelchairs with safety harnesses to date (Testimony).
14. The cost to MassHealth of other standard wheelchairs with safety harnesses is in the range of \$364 to \$847 (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)

Pursuant to MassHealth regulation 130 CMR 409.413(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. All DME must be approved for community use by the federal Food and Drug Administration (FDA). DME that is appropriate for use in the member's home may also be used in the community.

For DME such as a wheelchair, a prior authorization request must be submitted to MassHealth for approval (130 CMR 409.418).

Next, pursuant to 130 CMR 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);

...

(Emphasis added)

In the instant appeal, the appellant seeks coverage of a Convaid pediatric folding wheelchair. MassHealth denied the request because the appellant already has a transport wheelchair for use in the community. The appellant does not need a wheelchair to ambulate in his home.

The appellant asserts that the requested stroller has a three-point harness system, which may prevent the appellant from slipping out of the stroller. This behavior is frequently exhibited by the appellant in his current wheelchair.

Also, the appellant asserts that the requested stroller has a form-fitting seating structure, hard inflatable tires and shock absorbers that can navigate outdoor terrain.

MassHealth covered the cost of such a stroller for the appellant in the past, when he was a high school student, and when the appellant was weaker and having difficulty navigating distances at school.

The main concern for the appellant is his safety, according to the appellant's father. He asserts that the appellant would benefit from the harness safety system affixed to the stroller.

MassHealth noted that there are other "standard" wheelchairs with harness safety systems that have not been trialed by the appellant; such other wheelchairs would be considerably less costly to MassHealth. The appellant did not dispute this fact.

It may also be possible for the appellant's current travel wheelchair to be equipped with a harness safety system.

According to 130 CMR 409.414(B), above, MassHealth does not pay for DME that is more costly than other medically appropriate and feasible alternative pieces of equipment. The appellant has not shown by a preponderance of the evidence that there are no other medically appropriate and feasible alternative pieces of equipment that may meet his mobility and safety needs, that are less costly to MassHealth.

As such, MassHealth was correct that the requested stroller is not medically necessary for the appellant, as defined at 130 CMR 450.204(A)(2), above.

For these reasons, this appeal must be 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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Paul C. Moore  
Hearing Officer  
Board of Hearings

cc: Optum appeals representative