

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2300418
Decision Date:	3/22/2023	Hearing Date:	02/15/2023
Hearing Officer:	Christopher Jones		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Elizabeth Miner, OT
Monique Racine, CRT



*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:	Denied	Issue:	Prior Authorization - DME
Decision Date:	3/22/2023	Hearing Date:	02/15/2023
MassHealth's Rep.:	Elizabeth Miner, OT Monique Racine, CRT	Appellant's Rep.:	Pro se
Hearing Location:	Remote	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 January 10, 2023, MassHealth denied the appellant's prior authorization request for coverage of a new continuous airway pressure device and attendant heated humidifier. (Exhibit 2; 101 CMR 322.03; 130 CMR 427.407(D)(3), 450.303.) The appellant filed this appeal in a timely manner on January 17, 2023. (Exhibit 3; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth denied the appellant's prior authorization request for durable medical equipment because the appellant's existing equipment was eligible for free replacement through a manufacturer's recall process.

Issue

The appeal issue is whether MassHealth may deny coverage for a new CPAP machine because the appellant's need for one is due to a manufacturer's recall, and the recall authorized the appellant for a replacement device.

Summary of Evidence

This is the third prior authorization request within 30 days for the same products, a continuous airway pressure (“CPAP”) device and attendant heated humidifier. The most recent request was submitted on January 6, 2023. The relevant facts are not in dispute. The appellant has a diagnosis of obstructive sleep apnea, for which she is prescribed a CPAP machine with a heated humidifier. She received a CPAP with heated humidifier in January 2016, which was in part covered by MassHealth. This device is still functioning; however, its manufacturer has issued a recall, and the appellant is eligible to receive a replacement machine directly from the manufacturer at no cost. MassHealth’s representative explained that 101 CMR 322.03 and 130 CMR 450.303 set forth rules governing how manufacturer recalls are to be handled by members and providers assisting members. Where a device is available for replacement by the manufacturer, a member must take advantage of that avenue for replacement.

The appellant is dissatisfied with this option because her doctor told her that the life expectancy of her machine is only five years. She attempted to get it replaced at the end of five years, but due to the COVID-19 Pandemic, she was unable to get a replacement authorized right when the five years was up. In the interim, the manufacturer issued a recall. The appellant also has a primary insurance company that authorized coverage for a new replacement device, so MassHealth would only be responsible for the appellant’s copayments for the device. The appellant does not believe that MassHealth should be allowed to deny her access to a new device when her old device “expired” and her primary insurance agreed to cover most of the cost for a new device. Further, she objected to the fact that the device she would get through the manufacturer’s recall would be refurbished rather than new.

MassHealth’s representative responded that this issue comes down to the definition of “medical necessity” within MassHealth’s regulations. Pursuing the recall option is a less-costly, equally effective treatment available to the appellant, therefore that is what is covered by MassHealth. The MassHealth representative further testified that there are no true “life expectancies” for these machines. MassHealth would not have covered a replacement simply because the machine was five years old, unless there was some mechanical or medical reason why it was no longer functioning appropriately. For instance, if the machine broke, or something changed in the appellant’s medical condition and the machine no longer met her needs. The mechanical failure here—the recall issued by the manufacturer—is resolved by the manufacturer’s replacement of the machine with one that continues to suit the appellant’s medical condition. The appellant mentioned that she needed to undergo a new sleep study and her prescription had been updated, but she did not allege that the replacement offered by the manufacturer was non-compatible with her current condition.

Findings of Fact

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

1. The appellant is prescribed a CPAP machine with a heated humidifier for her diagnosis of as a diagnosis of obstructive sleep apnea. (Exhibit 4, pp. 11-20.)

2. The appellant's current CPAP machine is about seven years old. It continues to function, but it is subject to a manufacturer's recall. The appellant is eligible for a free replacement machine through this recall process. (Exhibit 4, pp. 8-9; testimony by MassHealth's representative and the appellant.)
3. The appellant's physician told her that CPAP machines generally have a "life expectancy" of five years. Her primary insurance approved the appellant to purchase a new device, and the recall device is going to be a refurbished device. (Testimony by the appellant.)
4. There is no explicit expiration date for CPAP machines. MassHealth only pays for replacement machines when there is a reason why the existing machine can no longer be used, and there is no less costly equally effective option for replacing that machine. (Testimony by MassHealth's representative.)

Analysis and Conclusions of Law

MassHealth only pays for medical services or equipment that are "medically necessary." (130 CMR 409.417.) MassHealth defines medically necessary as follows:

(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.

(130 CMR 450.204(A).)

Non-covered DME includes devices that "are more costly than medically appropriate and feasible alternative pieces of equipment..." (130 CMR 409.414(B)(2).) The specific regulations governing respiratory therapy equipment includes similar language:

The Division does not pay for the following equipment and services:

...

(D) any equipment or services that are not both necessary and reasonable for the treatment of a recipient's pulmonary condition. This includes but is not

limited to:

...

- (2) equipment or services that are substantially more costly than a medically appropriate and feasible alternative; and
- (3) equipment or services that serve essentially the same purpose as equipment already available to the recipient;

(130 CMR 427.407(D).) MassHealth also cited to provider billing regulations to emphasize the fact that a provider may not be paid for new equipment when previously provided equipment is subject to a recall. (See 101 CMR 322.03(15).)

MassHealth's argument is that paying for a new replacement CPAP machine is a more costly alternative than the appellant's receiving a free replacement through the manufacturer's recall procedure, and the replacement device is a "medically appropriate and feasible alternative." The appellant has identified no medical reason why the free device available through the recall procedure is inappropriate. Therefore, this appeal is DENIED. The appellant's other objections to receiving a refurbished device when her primary insurance is willing to cover a new device are understandable from a consumer perspective, but there is no legal obligation for MassHealth to align its coverage criteria with the appellant's primary insurer.

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.

Christopher Jones
Hearing Officer
Board of Hearings

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