Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	DENIED	**Appeal Number:**	2301516
Decision Date:	5/18/2023	**Hearing Date:**	03/23/2023
Hearing Officer:	Kenneth Brodzinski		

Appearance for Appellant:

[redacted]

Appearance for MassHealth:

Sara Pedone, PT

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:	5/18/2023	**Hearing Date:**	03/23/2023
MassHealth's Rep.:	Sara Pedone, PT	**Appellant's Rep.:**	Mother
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 February 7, 2023, MassHealth modified a request for prior authorization by denying one of two requested items on the grounds that the denied item does not constitute Durable Medical Equipment (DME) (Exhibit A). Appellant filed for this appeal in a timely manner on February 23, 2023 seeking approval for the denied item (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 one of two requested items on the grounds that the denied item does 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 by denying one of two requested items on the grounds that the denied item does 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 including a copy of the written request (Exhibit B, pages 1-30). Appellant made no filing except for his Fair Hearing Request (Exhibit A).

MassHealth was represented by a physical therapist who testified to the following: MassHealth received a request submitted by National Seating and Mobility on behalf of Appellant for a Cubby Bed pediatric enclosed hospital bed with a Technology Hub and Sensory System. The request was received on January 13, 2023, and after deferral, MassHealth made a timely decision on Feb 7, 2023.

MassHealth approved the Cubby Bed enclosed pediatric hospital bed. MassHealth denied the Technology Hub and Sensory System as a non-DME item and that less-costly alternatives are available to meet Appellant's needs.

The cost of the Cubby Bed as approved, with the mark up is $ 6,233.50, the cost of the denied Technology Hub and Sensory System is $2,184.00. MassHealth included an image of what was requested (Exhibit B, page 28) and a list of what is included in the denied Technology Hub and Sensory System (Exhibit B, pages 29-30). The list includes an android app, a night vision camera, motion alarm, smoke and carbon monoxide alarms, Alexa and Google device home integration, a circadian light, a meditative breathing program, and speakers (Id).

Appellant's request was supported by a MassHealth Prescription and Medical Necessity Review Form for Hospital Beds, written by Diana McManus, MD, and a Letter of Medical Necessity written by Holly Wilbur, PT. According to these documents, Appellant is an [redacted] child with diagnoses of Autism, low muscle tone, decreased muscle strength and below-average motor skills. Due to his Autism, Appellant has difficulty falling asleep during the night and elopes creating a safety issue. MassHealth approved the requested Cubby bed to provide a safe sleeping environment for Appellant.

Regarding the Technology Hub and Sensory System, the agency cited reliance on MassHealth regulations which state that DME is defined as items and equipment that are used primarily and customarily to serve a medical purpose and are generally not useful in the absence of disability, illness or injury. 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, the 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.

The agency further cited reliance on *MassHealth Guidelines for Medical Necessity Determination for Hospital Beds*, which lists items that are considered hospital bed accessories. According to MassHealth, none of the items included in the Technology and Sensory Hub are listed in the guideline.

Appellant was represented by his mother who testified that she already owns most of the individual items that are included in the Technology Hub and Sensory System. She explained that the important characteristic of the system is having all of the components incorporated into the bed itself. Appellant's mother explained that Appellant has been able to remove or interfere with the separate components. She believes that Appellant will not be able to get at them if they are actually incorporated into the bed. She noted this is particularly true of the sleep components of the system which would be very important to Appellant's overall health. Appellant's mother testified that Appellant has been afflicted with a sleep disorder since birth. She testified Appellant only gets approximately 4 hours of disrupted sleep per night when he should be getting eight hours of uninterrupted sleep per night.

Appellant's mother disagreed with MassHealth that someone would use the Technology Hub and Sensory System that is integrated into a bed in the absence of a disability. Appellant's mother also claimed to know that MassHealth has paid for this item for other members. In response, the hearing officer stated he would welcome any evidence of this including a recipient's name or even just a prior authorization number (in order to maintain anonymity), but Appellant's mother did not express any interest in pursuing this option.

Appellant's mother claimed that MassHealth's denial of the Technology Hub and Sensory System violated the Massachusetts Autism Omnibus Law, but she did not cite any specific provision of that law or otherwise assert how MassHealth's action

constituted such a violation.

Findings of Fact

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

1. MassHealth received a request submitted by National Seating and Mobility on behalf of Appellant for a Cubby Bed pediatric enclosed hospital bed with a Technology Hub and Sensory System.

2. The request was received on January 13, 2023 and MassHealth made a timely decision on Feb 7, 2023.

3. Appellant's request was supported by a MassHealth Prescription and Medical Necessity Review Form for Hospital Beds, written by Diana McManus, MD, and a Letter of Medical Necessity written by Holly Wilbur, PT (Exhibit B).

4. Appellant is an [redacted] child with diagnoses of Autism, low muscle tone, decreased muscle strength and below-average motor skills.

5. Appellant has been afflicted with a sleep disorder since birth.

6. Appellant gets approximately 4 hours of disrupted sleep per night.

7. Due to his Autism, Appellant elopes during the night creating a safety issue.

8. MassHealth approved the requested Cubby bed to provide a safe sleeping environment for Appellant.

9. MassHealth denied the Technology Hub and Sensory System on the grounds that it is a non-DME item and that less-costly alternatives are available to meet Appellant's needs.

10. The cost of the Cubby Bed as approved, with the mark up is $ 6,233.50; the cost of the denied Technology Hub and Sensory System is $2,184.00.

11. The Technology Hub and Sensory System includes an android app, a night vision camera, motion alarm, smoke and carbon monoxide alarms, Alexa and Google

home integration, a circadian light, a meditative breathing program, and speakers.

12. An android app, a night vision camera, motion alarm, smoke and carbon monoxide alarms, Alexa and Google interfaces, a circadian light, a meditative breathing program, and speakers do not customarily serve a medical purpose and are generally useful in the absence of disability, illness 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)).

At hearing, MassHealth maintained that its denial of the Technology Hub and Sensory System was based on the agency's finding that the system does not constitute DME and that there were less costly alternatives that could meet Appellant's needs. MassHealth failed to explain or develop the less-costly basis for the denial. MassHealth has, however, adequately demonstrated that the Technology Hub and Sensory System does not constitute DME.

MassHealth does not cover equipment or items that are not DME (130 CMR 409.414(L))

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 Technology Hub and Sensory System consists of an android app, a night vision camera, motion alarm, smoke and carbon monoxide alarms, Alexa and Google device integration, a circadian light, a meditative breathing program, and speakers. These components are all commonly used by people for non-medical purposes and in the

absence of disability, illness or injury.

Appellant's mother asserted that the system is needed because they are incorporated into the bed itself where Appellant cannot access and interfere with them. This argument concerns the efficacy of incorporated components versus free standing components; however, it does not change the fact that the components are non-DME insofar as they do not meet the regulatory requirements set forth above (130 CMR 409.414(L) and 130 CMR 409.402).

MassHealth's action is also consistent with the *MassHealth Guidelines for Medical Necessity Determination for Hospital Beds*, which lists items that are considered hospital bed accessories. These include the mattress, side rails, over-bed tables, safety enclosures, and trapeze bars. None of the items included in the Technology and Sensory Hub are listed in the guideline (Exhibit B, page 21).

On this record, Appellant has failed to meet his burden of showing that the agency's action is invalid. For the foregoing reasons, the 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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

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