Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2303361
Decision Date:	6/13/2023	**Hearing Date:**	05/23/2023
Hearing Officer:	Patricia Mullen.		

Appearance for Appellant:
[redacted], mother

Appearance for MassHealth:
Elizabeth Miner, OT, Optum

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:	6/13/2023	**Hearing Date:**	05/23/2023
MassHealth's Rep.:	Elizabeth Miner, OT	**Appellant's Rep.:**	Mother
Hearing Location:	Quincy Harbor South		

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 April 4, 2023, MassHealth denied the appellant's request for prior authorization for durable medical equipment, not otherwise specified, code E1399, because MassHealth determined that the requested item is a non-durable medical equipment (DME) item and is without coverage, and less costly items are available to address listed options. (see 130 CMR 409.402, 409.414(L), 409.414(B); Exhibit 1). The appellant filed this appeal in a timely manner on April 25, 2023. (see 130 CMR 610.015(B) and Exhibit 2). Denial of a request for prior authorization is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's request for prior authorization for a Technology Hub Safety and Sensory device.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 409.402; 409.414(B); and 409.414(L), in determining that the item requested by the appellant is not DME as defined in MassHealth regulations.

Summary of Evidence

The appellant is a minor child and was represented telephonically at the hearing by his mother. MassHealth was represented telephonically by an occupational therapist consultant with Optum, the agent of MassHealth that makes the prior authorization determinations for DME. The MassHealth representative stated that the appellant's provider, Numotion, submitted a request for prior authorization for DME, not otherwise specified, under miscellaneous code E1399, on April 4, 2023. (Exhibit 5, p. 3). The MassHealth representative stated that the provider requested MassHealth coverage for a Technology Hub Safety and Sensory device. (Exhibit 5, p. 3). The MassHealth representative noted that the appellant's request for prior authorization for an enclosed Cubby Safety Bed was approved by MassHealth on December 30, 2022, but the Technology Hub Safety and Sensory device was denied at that time. (Exhibit 5, p. 18). The Technology Hub Safety and Sensory device was again denied by MassHealth on March 6, 2023. (Exhibit 5, p. 17). The MassHealth representative stated that the Technology Hub Safety and Sensory device (hereinafter "the requested device") is an accessory to the Cubby Safety Bed which attaches to the bed and provides technology including a camera with night vision, live view, local/iCloud recording, motion and sound detection alerts, smoke and carbon monoxide alarm alerts, Alexa & Google home integrations, IOS and Android apps, circadian light, meditative breathing program, and speaker with pre-loaded sounds and auxiliary input. (Exhibit 5, p. 45). The MassHealth representative stated that the requested item has a cost of $2,184.00. The MassHealth representative noted that the Cubby Safety Bed had a MassHealth cost of $6,233.50. The MassHealth representative stated that by notice dated April 5, 2023, MassHealth again denied the request for coverage of the requested device because it did not meet the MassHealth definition for DME.

The MassHealth representative referred to medical documentation in the record and testified that the appellant is [redacted] and has diagnoses of autism, and developmental delay, and engages in behaviors such as elopement, and head banging. (Exhibit 5, p. 10). The MassHealth representative noted that the Cubby Safety Bed, with padding and safety sheets, was approved by MassHealth as medically necessary to keep the appellant safe due to hand banging and elopement. The MassHealth representative stated that the requested device is not DME pursuant to 130 CMR 409.402 and 409.414(L), because it is not used primarily and customarily for a medical purpose. The MassHealth representative stated that all the components of the requested device are commercially available products and can be used without a medical need. The MassHealth representative pointed out that the appellant's parents have a video monitoring system to monitor the appellant's safety, and the other features of the requested device do not serve a primarily medical purpose. The MassHealth representative stated that the appellant is approved for 17.75 hours per week in personal care attendant (PCA) services.

The MassHealth representative referred to the letter in the record from Dr. Stephen Conway,

dated March 22, 2023, in which Dr. Conway wrote that he feels the requested device is essential for the appellant's safety because it allows the appellant's parents to remotely monitor his activities and needs, the internal monitor alerts to movement and sound changes which is sent to the caregiver's phone, video monitoring with night vision and live view is controlled by a phone app, and the camera and recording feature is a good way for caregivers to be alerted if the appellant wakes in the night or during naps. (Exhibit 5, p. 10). Dr. Conway stated that the requested device will provide a safe, monitored sleeping environment allowing the appellant to sleep safely. In previous letters, Dr. Conway stressed the importance of the enclosed Cubby Safety Bed with padding to ensure maximum safety, to guard against self injurious head banging, to guard against entrapment and suffocation risk, and to prevent elopement. (Exhibit 5, pp. 21, 23, 24). Dr. Conway noted that the appellant's parents have a video monitor to observe and maximize the appellant's safety. (Exhibit 5, p. 24).

A letter dated May 15, 2023, from licensed clinical psychologist Dr. Rafael Castro, was read into the record. (Exhibit 7, p. 2). Dr. Castro noted that the requested device provides a Bluetooth camera for uninterrupted monitoring for the caregiver; the requested device incorporates a two way communication system with a speaker and mic for communicating so as to de-escalate a behavior or provide other verbal cues that the child may require; the requested device assists in providing an environment for sensory regulation to moderate the child's behaviors; the requested device allows the caregiver to control settings through an app to create a soothing, safe environment in order to de-escalate emotions and behaviors. (Exhibit 7, p. 2).

The MassHealth representative stated that the physician letters do not establish medical necessity because the requested device is not DME. The MassHealth representative stated that the enclosed Cubby bed with padding and safety sheets was determined to be medically necessary as DME that would help keep the appellant safe. The MassHealth representative stated that the technology provided by the requested device does not serve a medical purpose and the requested device is not used primarily and customarily for a medical purpose. The MassHealth representative noted that the enclosed Cubby bed has padding and a zipper on the outside so that the appellant cannot open it from the inside and elope. The MassHealth representative stated that the mesh enclosing the bed is extremely transparent with windows and when the shades are up, the caregiver can see completely through it and the child can see out. The MassHealth representative noted that the requested device is electric and requires an electrical outlet to work.

The appellant's mother testified that the appellant has insomnia issues, and is a wanderer. The appellant's mother noted that behavioral therapy and medication has not helped. The appellant's mother stated that the appellant bolts, especially at night, and the bolting is concerning since the appellant is drawn to water and has no safety awareness. The appellant's mother testified that the biggest problem is the appellant's severe head banging. The appellant's mother stated that they have tried many methods to stop this for the past 1 ½ years, but nothing works and the appellant has suffered bruises, cuts, swelling, and injuries from the head banging. The appellant's mother stated that an adult needs to sleep on the floor next to the appellant's tented crib to stop

him from head banging and elopement. The appellant's mother stated that they are desperate for the appellant to have a safe night's sleep, and noted that the parents have not had a quality night's sleep in 18 months.

The appellant's mother stated that they had a camera monitor in place, but they've had to block all the electrical outlets as a safety precaution because the appellant is drawn to the outlets. The appellant's mother stated that the appellant also pulled the camera down by the cord. The appellant's mother noted that the netting on the crib made it difficult to see inside the crib from the camera monitor. The appellant's mother stated that the camera on the requested device is the main thing needed, because they need to see the appellant to intervene if he starts head banging. The appellant's mother stated that the appellant would also benefit from the other features on the requested device such as lighting, music, and the ability to talk to the appellant remotely. The appellant's mother noted that the family has private health insurance, but that insurance did not cover either the Cubby bed or the requested device. The appellant's mother stated that the approved enclosed Cubby Safety Bed has not yet been delivered, but they hope to have it soon.

Findings of Fact

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

1. The appellant's provider, Numotion, submitted a request for prior authorization for DME, not otherwise specified, under miscellaneous code E1399, on April 4, 2023.

2. The appellant's provider requested MassHealth coverage for a Technology Hub Safety and Sensory device.

3. The appellant's request for prior authorization for an enclosed Cubby Safety Bed was approved by MassHealth on December 30, 2022, but the Technology Hub Safety and Sensory device was denied at that time.

4. The Technology Hub Safety and Sensory device was again denied by MassHealth on March 6, 2023.

5. The Technology Hub Safety and Sensory device is an accessory to the Cubby Safety Bed which attaches to the bed and provides technology including a camera with night vision, live view, local/iCloud recording, motion and sound detection alerts, smoke and carbon monoxide alarm alerts, Alexa & Google home integrations, IOS and Android apps, circadian light, meditative breathing program, and speaker with pre-loaded sounds and auxiliary input.

6. The cost of the requested item is $2,184.00.

7. The requested item requires an electrical outlet for use.

8. The appellant is [redacted] and has diagnoses of autism, and developmental delay, and engages in behaviors such as elopement, and head banging; the appellant suffers from insomnia.

9. MassHealth approved the request for prior authorization for the Cubby Safety Bed, with padding and safety sheets, as medically necessary to keep the appellant safe due to head banging and elopement.

10. The appellant's parents have a video monitoring system

11. The appellant pulled the video camera down by the cord and it was removed from the appellant's room.

12. The appellant is approved for 17.75 hours per week in PCA services.

13. The technology provided by the requested device is available in commercial products and can be used in a setting where there is no medical condition.

14. The mesh enclosing the bed is transparent with windows and when the shades are up, the caregiver can see completely through it and the child can see out.

15. The electric outlets in the appellant's room are blocked for safety reasons.

16. The appellant has not yet received the approved Cubby Safety Bed.

Analysis and Conclusions of Law

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 409.419(C).

(130 CMR 409.402).

Non-covered Services The MassHealth agency does not pay for the following:…
(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)…

(L) products that are not DME (except for augmentative and alternative communication devices covered pursuant to M.G.L. c. 118E § 10H under 130 CMR 409.428).

(130 CMR 409.414(B), (L)).

The MassHealth agency does 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: Potential Sources of Health Care, or 517.007: Utilization of Potential Benefits.

(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.)
(C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.
(D) Additional requirements about the medical necessity of MassHealth services are contained in other MassHealth regulations and medical necessity and coverage guidelines.
(E) Any regulatory or contractual exclusion from payment of experimental or unproven services

refers to any service for which there is insufficient authoritative evidence that such service is reasonably calculated to have the effect described in 130 CMR 450.204(A)(1).

(130 CMR 450.204).

The appellant's mother testified that behavioral therapy and medication has not helped the appellant's insomnia and the family is desperate for a safe night's sleep for the appellant, and sleep for the parents who have been sleeping beside the appellant to keep him safe. The approved enclosed Cubby Safety Bed is meant to address the safety issues involved with the appellant's head banging and elopement. The enclosed Cubby Safety Bed has a zipper on the outside to prevent the appellant from elopement, and the padding will hopefully alleviate the injuries from the appellant's head banging. The appellant's mother also expressed concern about the opaqueness of the netting on the appellant' crib tent, however the MassHealth representative testified that the mesh on the enclosed Cubby Safety Bed is transparent and can easily be seen through. The appellant has not yet received this bed, and hopefully it will address the concerns outlined as support for the approval for the bed.

The requested device would not address the safety issues involved in the head banging and elopement and offers nothing to prevent or alleviate these behaviors. The requested device in and of itself does not make the appellant safe, rather it allows a more convenient way for a caregiver to monitor and calm the appellant. Further, the video and two way audio components noted by the appellant's representative as necessary to monitor the appellant, do not stand alone, but are components of a collection of technology offered by the requested device. This collection includes many items that are not used primarily and customarily to serve a medical purpose and are generally useful in the absence of disability, illness or injury. These include the local/iCloud recording, motion and sound detection alerts, smoke and carbon monoxide alarms, Alexa and Google home integration, IOS and Android apps, circadian light, meditative breathing program, and speakers with preloaded sounds. These components are all commonly used by people for non-medical purposes and in the absence of disability, illness or injury. Not only do these elements of the requested device not meet the definition of DME, the testimony at hearing focused mainly on the video monitoring component of the device as necessary.

Based on testimony and the physician's letter, the appellant had a video monitoring system in place, but it was removed due to safety concerns with the plug and electrical outlet. The requested device requires an electrical outlet, so whatever means the appellant's caregivers were going to use to operate the requested device (electrical outlet blocked by furniture, etc.) could be used for the video monitor.

Further, 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; bed board; over-bed table; bed cradle; bed side rails; board, table, or support device; safety enclosure frame/canopy; and trapeze bars. (Exhibit 8, p.

6). None of the items included in the Technology and Sensory Hub are listed in the guidelines. (Exhibit 8, p. 6).

Because the requested device is not DME, and because there is a less costly alternative to monitoring the appellant in bed, namely the video monitor, MassHealth's denial is upheld and 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.

Patricia Mullen
Hearing Officer
Board of Hearings

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