Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Approved	**Appeal Number:**	2309138
Decision Date:	11/7/2023	**Hearing Date:**	10/31/2023
Hearing Officer:	Thomas J. Goode		

Appearance for Appellant:
[redacted]

Appearance for MassHealth:
Sara Pedone, 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:	Approved	**Issue:**	Durable Medical Equipment
Decision Date:	11/7/2023	**Hearing Date:**	10/31/2023
MassHealth's Rep.:	Sara Pedone, Optum	**Appellant's Rep.:**	Mother
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 August 28, 2023, MassHealth denied Appellant's prior authorization request for a Cubby Bed Plus because it could not determine medical necessity for the durable medical equipment requested (130 CMR 450.204, 409.000 et seq., Exhibit and 1). Appellant filed this appeal in a timely manner on October 2, 2023 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied Appellant's prior authorization request for a Cubby Bed Plus because it could not determine medical necessity for the durable medical equipment requested.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.204, 409.000 et seq., in determining medical necessity for a Cubby Bed Plus.

Summary of Evidence

MassHealth was represented by a physical therapist who testified that a prior authorization request for a Cubby Bed Plus was submitted on Appellant's behalf, and denied on August 28, 2023 because medical necessity for the durable medical equipment requested could not be determined based on information submitted with the request. During the pendency of the appeal, Appellant's medical providers submitted additional documentation that allowed MassHealth to partially reverse the denial and approve the basic version of the Cubby Bed including the canopy, mattress, and safety sheets; however, MassHealth did not approve the technology hub consisting of a camera and other applications including smoke and carbon monoxide detection and meditative breathing program, and speaker with pre-loaded sounds (Exhibit 5, pp. 17-19). The MassHealth representative testified that the camera and accessories included with the Cubby Bed Plus are not considered durable medical equipment as defined at 130 CMR 409.402 because a camera has other uses in the absence of disability, illness or injury and is therefore a non-covered service under 130 CMR 409.414(K),(L). The MassHealth representative added that the cost of the camera is not separately identified and is part of the technology hub included with the Cubby Bed Plus.

Appellant's mother testified that the Cubby Bed Plus, specifically the camera, is medically necessary to keep Appellant safe while he is sleeping. Appellant is [redacted] years old, diagnosed with autism and sleep apnea, is non-verbal and uses a communication device. Appellant is seen by sleep specialists at [redacted] because he has difficulty sleeping and takes sleep medications. Appellant's mother stated that the camera included with the Cubby Bed Plus would allow her and her husband to monitor and keep Appellant safe and prevent him from trying to access the front door. Appellant's medical providers documented in letters of medical necessity that the technology hub included with the Cubby Bed Plus is medically necessary because Appellant can become frustrated, upset, and challenging to sooth making sleep a constant challenge for him and his family. Appellant has frequent night-waking associated with autism and developmental delays, leading to safety concerns and flight/elopement risks because Appellant attempts to exit the front door of the home at night (Exhibit 5, pp. 2-4). Appellant's mother testified that Appellant must sleep with a parent because when he wakes up during the night, he will try to exit the home. She added that the camera would also benefit Appellant because he continues to be affected by sleep apnea and is trialing sleep medications which require additional monitoring of his sleep patterns. She added that Appellant has been taken to the emergency department twice due to complications from sleep apnea. She added that the ability to record Appellant sleeping would provide valuable data to help treat his condition.

Findings of Fact

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

1. A prior authorization request for a Cubby Bed Plus was submitted on Appellant's behalf, and denied on August 28, 2023 because medical necessity for the durable medical equipment

requested could not be determined based on information submitted with the request.

2. During the pendency of the appeal, Appellant's medical providers submitted additional documentation that allowed MassHealth to partially reverse the denial and approve a basic version of the Cubby Bed including the canopy, mattress, and safety sheets; however, MassHealth did not approve the technology hub consisting of a camera and other applications.

3. Appellant is [redacted] years old, diagnosed with autism and sleep apnea, is non-verbal and uses a communication device.

4. Appellant has difficulty sleeping and takes sleep medications.

5. Appellant is seen by sleep specialists at [redacted].

6. Appellant continues to be affected by sleep apnea and has been taken to the emergency room twice due to complications from sleep apnea.

7. Appellant is trialing sleep medications which require additional monitoring of his sleep patterns.

8. Appellant can become frustrated, upset, and challenging to sooth making sleep a constant challenge for him and his family.

9. Appellant has frequent night-waking associated with autism and developmental delays, leading to safety concerns and flight/elopement risks because Appellant attempts to exit the front door of the home at night.

10. Appellant must sleep with a parent because when he wakes during the night, he attempts to exit the home.

Analysis and Conclusions of Law

Regulations governing durable medical equipment (DME) are found at 130 CMR 409.000. Pursuant to 130 CMR 409.427(C), the MassHealth agency may only pay for DME if the equipment is medically necessary. See also 130 CMR 409.407; 130 CMR 409.413(A). Medical necessity is defined at 130 CMR 450.204 and applies to all providers, including DME providers, and appears in relevant part below:

130 CMR 450.204: Medical Necessity

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…

(**Bolded** emphasis added)

Covered services for DME are identified at 130 CMR 409.413 below:

409.413: Covered Services

(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. …*

(B) MassHealth covers the DME listed in Subchapter 6 of the Durable Medical Equipment Manual, the DME and Oxygen Payment and Coverage Guideline Tool, and any successor guidance issued by the MassHealth agency or its designee. Providers may request prior authorization for medically necessary DME if the corresponding service code is not listed in Subchapter 6 or the DME and Oxygen Payment and Coverage Guideline Tool. ***Covered DME includes, but is not limited to***

(1) absorbent products;

(2) ambulatory equipment, such as crutches and canes;

(3) compression devices;

(4) augmentative and alternative communication devices;

(5) enteral and parenteral nutrition;

(6) nutritional supplements;

(7) home infusion equipment and supplies (pharmacy providers with DME specialty only);

(8) glucose monitors and diabetic supplies;

(9) mobility equipment and seating systems;

(10) personal emergency response systems (PERS);

(11) ostomy supplies;

(12) support surfaces;

(13) hospital beds AND ACCESSORIES*;*
(14) patient lifts; and
(15) bath and toilet equipment and supplies (including, but not limited to, commodes, grab bars, and tub benches).
(**Bolded and CAPITALIZED** emphasis added)

Limitations on payment for DME are outlined at 130 CMR 409.414:

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);
(C) the repair of any DME …;
(D) the repair of any equipment … ;
(E) routine periodic testing, cleaning, regulating, and checking of DME that is owned by the member;
(F) DME that is not of proven quality and dependability, consistent with 130 CMR 409.404(B)(12);
(G) DME furnished through a consignment/stock and bill closet …;
(H) DME that has not been approved by the federal Food and Drug Administration (FDA) for community use;
(I) evaluation or diagnostic tests conducted by the DME provider to establish the medical need for DME;
(J) home or vehicle modifications …;
(K) common household and personal hygiene items generally used by the public including, but not limited to, washcloths, wet wipes, and non-sterile swabs;
(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)****;*
(M) certain DME provided to members in facilities in accordance with 130 CMR 409.415; and
(N) provider claims for non-covered services under 130 CMR 409.414 for MassHealth members with other insurance, except as otherwise required by law.
(**Bolded** emphasis added)

Definitions relevant to DME and the appeal at hand are found at 130 CMR 409.402 below:

409.402: Definitions
The following terms used in 130 CMR 409.000 have the meanings given in 130 CMR 409.402 unless

the context clearly requires a different meaning. Payment for services defined in 130 CMR 409.402 is not determined by these definitions, but by application of regulations elsewhere in 130 CMR 409.000, 101 CMR 322.00: Durable Medical Equipment, Oxygen and Respiratory Therapy Equipment, and in 130 CMR 450.000: Administrative and Billing Regulations.

Accessories - products that are used primarily and customarily to modify or enhance the usefulness or functional capability of an item of durable medical equipment and that are generally not useful in the absence of the item of durable medical equipment.

DME - as used in 130 CMR 409.000, DME means the durable medical equipment and medical supplies covered by 130 CMR 409.000.

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).

(**Bolded** emphasis added)

MassHealth's denial notice dated August 28, 2023 cites 130 CMR 409.414(B) and 450.204(B) in denying that the Cubby Bed Plus requested because documentation submitted established that the member requires a bed with the capability of elevating the head (Exhibit 1). During the pendency of the appeal, Appellant submitted additional medical documentation which allowed MassHealth to approve a basic Cubby Bed including the canopy, mattress, and safety sheets; however, MassHealth did not approve the technology hub consisting of a camera and other applications including smoke and carbon monoxide detection and meditative breathing program, and speaker with pre-loaded sounds. The parties agree that the main component at issue is the camera included with the technology hub that comes with the Cubby Bed Plus. MassHealth denied the technology hub because it considered the camera a non-DME item under 130 CMR 409.414(L) because a camera would have other uses in the absence of disability, illness, or injury under the definition of DME. The argument would have merit provided the camera were requested as a stand-alone item likely rendering it non-DME as it could be used for other common purposes unrelated to durable medical equipment. However, the technology hub which includes the camera is requested as an accessory built into a pediatric hospital bed which MassHealth determined is medically necessary for Appellant during the pendency of the appeal.[1] In this light, the camera's usefulness

[1] See Guidelines for Medical Necessity Determination for Hospital Beds effective July 1, 2019, which "identifies the clinical information that MassHealth needs to determine medical necessity for hospital beds/specialized pediatric beds used in the home," and confirms that the bed at issue is correctly considered a hospital bed. The application of the Guidelines is not addressed as MassHealth determined that Appellant meets medical necessity criteria for the

for other common purposes drastically diminishes outside of its dedicated function as an integrated accessory to the hospital bed for the purposes of monitoring Appellant for safety during night-waking and monitoring and/or recording sleep patterns (See Exhibit 4, p. 17). Therefore, I find that the camera and associated applications that comprise the technology hub that comes with the Cubby Bed Plus are accessories as defined at 130 CMR 409.402 (i.e., *products that are used primarily and customarily to modify or enhance the usefulness or functional capability of an item of durable medical equipment and that are generally not useful in the absence of the item of durable medical equipment)*. Pursuant to 130 CMR 409.413(B)(13), accessories for hospital beds are covered services if medically necessary. Appellant's medical providers have documented that the technology hub included with the Cubby Bed Plus is medically necessary due to Appellant's medical conditions as he can become frustrated, upset, and challenging to sooth making sleep a constant challenge for him and his family. While the camera is the primary focus, it appears that Appellant would also benefit from the other features included with the technology hub to aid with sleep. Further, Appellant has frequent night-waking associated with developmental delays and autism resulting in safety concerns and flight/elopement risks as Appellant attempts to exit the front door of the home at night (Exhibit 5, pp. 2-4). Appellant's mother testified credibly that Appellant must sleep with a parent because when he wakes up during the night, he tries to exit the home. Appellant continues to be affected by sleep apnea and has been taken to the emergency room twice and is also trialing sleep medications which require additional monitoring of his sleep patterns. Based on Appellant's mother's testimony and the clinical evidence in the hearing record, Appellant has carried the burden of proof in showing that the integrated technology hub with a camera that is included with the Cubby Bed Plus is a medically necessary accessory for the pediatric hospital bed approved by MassHealth.

The appeal is APPROVED.

Order for MassHealth

Rescind the August 28, 2023 notice, and approve the Cubby Bed Plus with technology hub as requested.

Cubby Bed, but not for the technology hub included with the Cubby Bed Plus.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Thomas J. Goode
Hearing Officer
Board of Hearings

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