Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2313515
Decision Date:	3/7/2024	**Hearing Date:**	1/19/2024
Hearing Officer:	Cynthia Kopka		

Appearance for Appellant:
[redacted]

Appearance for Respondent:
Cassandra Horne, Appeals and Grievances Manager
Jeremiah Mancuso, Clinical RN Appeals and Grievances Manager
Kaley Ann Emery, Appeals Supervisor
Dr. David Mello, Medical Director

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:**	MCO – DME
Decision Date:	3/7/2024	**Hearing Date:**	1/19/2024
Respondent's Rep.:	Cassandra Horne, Jeremiah Mancuso, Kaley Ann Emery, Dr. David Mello	**Appellant's Rep.:**	Pro se, with OT
Hearing Location:	Quincy (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

By notice dated November 29, 2023, Commonwealth Care Alliance (CCA), a MassHealth Integrated Care Organization (ICO), denied Appellant's Level I appeal for a power operated vehicle (POV), a scooter, code K0800. Exhibit 1. Appellant filed this appeal in a timely manner on December 21, 2023. Exhibit 2. 130 CMR 610.015(B). Denial of assistance is a valid basis for appeal. 130 CMR 508.010, 130 CMR 610.032(B).

Action Taken by Respondent

CCA denied Appellant's request for a POV.

Issue

The appeal issue is whether CCA was correct in determining that a POV was not medically necessary.

Summary of Evidence

CCA's representatives, including an appeals and grievances manager, supervisor, nurse review manager, and medical director, appeared by phone and provided written materials in support. Exhibits 4 and 5. Appellant appeared at hearing with her occupational therapist (OT) and submitted records in support. Exhibit 2. A summary of testimony and written materials follows.

Appellant has been enrolled in CCA's OneCare program since June 1, 2023. On September 20, 2023, CCA received a request on Appellant's behalf for durable medical equipment (DME): a scooter, or power operated vehicle (POV), code K0800. Exhibit 4 at 22. On October 3, 2023, CCA denied Appellant's request. At the time the request was submitted, there were no notes in the record stating that Appellant cannot use a manual wheelchair or walker. Appellant uses a quad cane for mobility and an electric bicycle for local travel and transporting items. CCA did not have evidence at the time that Appellant had completed a trial with the POV. CCA also did not have evidence that Appellant's home was POV accessible, as she lives on the second floor and there is no elevator access in her apartment. Appellant receives transportation support from friends and adult-community clinical services (ACCS). Appellant's activities of daily living (ADLs) and mobility-related activities of daily living (MRADLs) were being met at the time. Therefore, CCA did not have evidence that a POV was medically necessary at the time the October 3, 2023 denial issued. Exhibit 4 at 27-33.

On November 1, 2023, Appellant appealed CCA's denial. *Id*. at 39. CCA's medical director reviewed Appellant's Level 1 appeal and requested follow-up information. *Id*. Records in the case show correspondence between CCA and Appellant's providers. *Id*. at 39-44. These records include a report that Appellant safely trialed the POV. *Id*. at 43-44. CCA's medical director testified that since the initial denial was submitted, a subsequent OT assessment was submitted and reviewed demonstrating that Appellant successfully trialed the POV and was able to safely operate it and transfer on and off. Appellant's OT also clarified that Appellant required the POV to benefit Appellant's ADLs outside of the home, not in her apartment.

On November 22, 2023, CCA referred the appeal for review to MCMC, a third party, which recommended denying the appeal. *Id*. at 52. The rationale for denial included that Appellant can accomplish her ADLs and MRADLs in the home with a cane. *Id*. at 53. Additionally, Appellant's home is on the second floor and not accessible. *Id*. The reviewer noted that Appellant has symptoms but not impairments that would preclude her use of a manual wheelchair with rest breaks. *Id*.

On November 29, 2023, CCA denied the appeal, finding that Appellant did not meet the guidelines for medical necessity of the POV. *Id*. at 58, 60. The CCA medical director noted that Appellant has the capacity to accomplish her MRADLs in the home and community with a combination of devices such as a cane, walker, manual wheelchair, and bicycle. Therefore, Appellant did not meet CCA's medical necessity guideline no. 45. *Id*. at 58. In the appeal denial, CCA wrote that

> [a]fter review, the Level 1 Appeal Reviewer agreed with the initial decision and denied your request for a Power Operated Vehicle or scooter (POV). You can complete your mobility-related activities in your house with a cane. Your home is on the second floor and has a steep staircase. It is not accessible for a scooter. A manual wheelchair or walker with seat can meet your needs. Given the provided medical records, you do not meet the standards for the requested service. Please work with your Care Team to report any changes in your health status.

Id. at 60-61.

As Appellant was dually eligible for MassHealth and Medicare, Maximus reviewed Appellant's Level 2 appeal. This appeal was denied by Medicare.

CCA testified that MassHealth's regulations for DME provide that items for which there is no MassHealth item-specific medical necessity guideline, and for which there is a Medicare Local Coverage Determination (LCD) indicating Medicare coverage of the item under at least some circumstances, the provider must demonstrate medical necessity of the item consistent with the Medicare LCD. According to CMS LCD 33789 for power mobility devices, Medicare's coverage of a wheelchair or POV is determined solely by the beneficiary's mobility needs within a home. CCA's medical director testified that POV are never approved solely for use outside of the home. Appellant's request was denied because Appellant has other ways of accessing the community and Appellant has no MRADL needs inside the home. Further, the decision support tool provides that medical necessity is not established if the member's needs could be met with a less costly alternative. *Id*. at [redacted].

Appellant's OT testified that she has been working with Appellant for several months. Appellant's OT submitted the request using CCA's Decision Support Tool 040, which does not explicitly state that the device will not be approved for use exclusively outside the home. Rather, it states that a "power operated vehicle (POV) is indicated if the member has a significant mobility limitation that impairs the member's ability to complete ADLs/MRADLS in the **home and/or community**. *Id*. at 48 (emphasis added). Appellant's OT had submitted supporting documentation based on Appellant's community needs.

Appellant does not need, nor could she use, the POV in her home. In the community, Appellant requires her POV for community mobility, including shopping, laundry, and going to appointments. Exhibit 2 at 9. There is space outside Appellant's building to lock the POV and store it safely with a cover. Appellant can remove the battery and carry it inside for charging.

Appellant cannot run her own errands and relies on friends and neighbors. Appellant has homemaker services approved for 2.5 hours per week, but this service is unreliable. Appellant's laundry was stolen when she used CCA's laundry service. The homemaker is only available one time per week. Appellant is also approved for transportation services but must request assistance

with three days' notice. Appellant has executive dysfunction and cannot always predict far enough in advance when she would need to go to the store or pick up a prescription. Appellant would not be able to propel herself with a manual wheelchair, and there is no other alternative that would allow her to be mobile in the community. Appellant requires the POV to maintain her independence in the community and not have to rely on friends and neighbors. The OT's notes in support of the request provide that Appellant's ability to safely and effectively use a walker and/or manual wheelchair to meet her MRADL needs is compromised due to chronic pain, low endurance, and neuropathy. Exhibit 2 at 9. Appellant also cannot continue to use her electric bicycle due to back and leg pain, low endurance, and recent history of falls. *Id*.

Findings of Fact

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

1. Appellant has been enrolled in CCA's OneCare program since June 1, 2023.

2. On September 20, 2023, Appellant submitted a DME request for a POV, code K0800. Exhibit 4 at 22.

3. On October 3, 2023, CCA denied Appellant's request for a POV. *Id*. at 27-33.

4. On November 1, 2023, Appellant appealed CCA's denial. *Id*. at 39.

5. On November 22, 2023, CCA referred the appeal for review to MCMC, a third party, which recommended denying the appeal. *Id*. at 52.

6. On November 29, 2023, CCA denied the appeal, finding that Appellant did not meet the guidelines for medical necessity of the POV. *Id*. at 58, 60.

7. Appellant filed this appeal in a timely manner on December 21, 2023. Exhibit 2.

8. Appellant does not require the POV for use in the home.

9. Appellant receives transportation services through CCA and 2.5 hours of homemaker services per week.

10. Appellant's OT wrote that Appellant's ability to safely and effectively use a walker and/or manual wheelchair to meet her MRADL needs is compromised due to chronic pain, low endurance, and neuropathy. Appellant also cannot continue to use her electric bicycle due to back and leg pain, low endurance, and recent history of falls. Exhibit 2 at 9.

Analysis and Conclusions of Law

MassHealth members younger than 65 years old, except those excluded under 130 CMR 508.004, must enroll in the Primary Care Clinician (PCC) Plan or a MassHealth-contracted MCO available for their coverage type. 130 CMR 450.117(A) and 130 CMR 508.002. MassHealth managed care options include an integrated care organization (ICO) for MassHealth Standard and CommonHealth members who also meet the requirements for eligibility set forth under 130 CMR 508.007. Members who participate in an ICO obtain all covered services through the ICO. 130 CMR 450.117(K).

A member may enroll in an ICO if he or she meets the following criteria:

> (A) Eligibility.
>
> > (1) In order to be eligible to enroll in an integrated care organization (ICO), a MassHealth member must meet all of the following criteria, and may not be enrolled or concurrently participate in any of the programs or plans listed in 130 CMR 508.007(F):
> >
> > > (a) be 21 through 64 years of age at the time of enrollment;
> > >
> > > (b) be eligible for MassHealth Standard as defined in 130 CMR 450.105(A): *MassHealth Standard* or MassHealth CommonHealth as defined in 130 CMR 450.105(E): *MassHealth CommonHealth*;
> > >
> > > (c) be enrolled in Medicare Parts A and B, be eligible for Medicare Part D, and have no other health insurance that meets the basic-benefit level as defined in 130 CMR 501.001: *Definition of Terms*; and
> > >
> > > (d) live in a designated service area of an ICO.

130 CMR 508.007.

The ICO will authorize, arrange, integrate, and coordinate the provision of all covered services for the member. Upon enrollment, the ICO is required to provide evidence of its coverage, the range of available covered services, what to do for emergency conditions and urgent care needs, and how to obtain access to specialty, behavioral-health, and long-term services and supports. 130 CMR 508.007(C). ICO members may appeal a determination made by an ICO to the Board of Hearings pursuant to 130 CMR 508.010.

CCA's One Care Plan is a MassHealth ICO. CCA's One Care Member Handbook, pertinent pages included as Exhibit 5, provides which services the plan covers. Per the handbook, CCA's One Care plan covers "all medically necessary DME that Medicare and MassHealth usually pay for" and that prior authorization may be required. Exhibit 5 at 70.

MassHealth covers durable medical equipment (DME) provided to eligible members subject to regulatory restrictions and limitations. 130 CMR 409.403, 409.413(B)(9). For MassHealth to pay for DME, the equipment must meet medical necessity criteria. 130 CMR 409.414(B). The regulatory definition of medical necessity is set forth at 130 CMR 450.204, which states in relevant part:

> (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.

See also 130 CMR 409.414(B)(2) (MassHealth does not pay for DME that is determined by the MassHealth agency not to be medically necessary pursuant to 130 CMR 450.204, which includes but is not limited to items that "are more costly than medically appropriate and feasible alternative pieces of equipment").

According to 130 CMR 409.417 (emphasis added),

> (A) All DME covered by MassHealth must meet the medical necessity requirements set forth in 130 CMR 409.000 and in 130 CMR 450.204: *Medical Necessity*, and any applicable medical necessity guidelines for specific DME published on the MassHealth website.
>
> (B) For items covered by MassHealth for which there is no MassHealth item-specific medical necessity guideline, and for which there is a Medicare Local Coverage Determination (LCD) indicating Medicare coverage of the item under at least some circumstances, the provider must demonstrate medical necessity of the item consistent with the Medicare LCD. However, if the provider believes the durable medical equipment is medically necessary even though it does not meet the criteria established by the local coverage determination, the provider must demonstrate medical necessity under 130 CMR 450.204*: Medical Necessity*.
>
> (C) For an item covered by MassHealth for which there is no MassHealth item-

specific medical necessity guideline, and for which there is a Medicare LCD indicating that the item is not covered by Medicare under any circumstance, the provider must demonstrate medical necessity under 130 CMR 450.204: *Medical Necessity*.

Here, CCA determined that MassHealth does not have guidelines related specifically to POV.[1] However, CMS's LCD 33789 (a copy of which is included in the record as Exhibit 6) provides that for a power mobility device to be covered, all of the following criteria must be met:

A. The beneficiary has a mobility limitation that significantly impairs his/her ability to participate in one or more mobility-related activities of daily living (MRADLs) such as toileting, feeding, dressing, grooming, and bathing in customary locations in the home. A mobility limitation is one that:
   - Prevents the beneficiary from accomplishing an MRADL entirely, or
   - Places the beneficiary at reasonably determined heightened risk of morbidity or mortality secondary to the attempts to perform an MRADL; or
   - Prevents the beneficiary from completing an MRADL within a reasonable time frame.

B. The beneficiary's mobility limitation cannot be sufficiently and safely resolved by the use of an appropriately fitted cane or walker.

C. The beneficiary does not have sufficient upper extremity function to self-propel an optimally-configured manual wheelchair in the home to perform MRADLs during a typical day.

   - Limitations of strength, endurance, range of motion, or coordination, presence of pain, or deformity or absence of one or both upper extremities are relevant to the assessment of upper extremity function.
   - An optimally-configured manual wheelchair is one with an appropriate wheelbase, device weight, seating options, and other appropriate nonpowered accessories.

For a request for code K0800, the next criteria must also be met:

D. The beneficiary is able to

   - Safely transfer to and from a POV, and

[1] *See* https://www.mass.gov/lists/masshealth-guidelines-for-medical-necessity-determination#m---v- (last reviewed March 4, 2024).

- Operate the tiller steering system, and
- Maintain postural stability and position while operating the POV in the home

E. The beneficiary's mental capabilities (e.g., cognition, judgment) and physical capabilities (e.g., vision) are sufficient for safe mobility using a POV in the home.

F. The beneficiary's home provides adequate access between rooms, maneuvering space, and surfaces for the operation of the POV that is provided.

G. The beneficiary's weight is less than or equal to the weight capacity of the POV that is provided and greater than or equal to 95% of the weight capacity of the next lower weight class POV – i.e., a Heavy Duty POV is covered for a beneficiary weighing 285 – 450 pounds; a Very Heavy Duty POV is covered for a beneficiary weighing 428 – 600 pounds.

H. Use of a POV will significantly improve the beneficiary's ability to participate in MRADLs and the beneficiary will use it in the home.

I. The beneficiary has not expressed an unwillingness to use a POV in the home.

Finally, the LCD provides under policy limitations that

> [a]lthough beneficiaries who qualify for coverage of a power mobility device may use that device outside the home, because Medicare's coverage of a wheelchair or POV is determined solely by the beneficiary's mobility needs within the home, the encounter must clearly distinguish the beneficiary's abilities and needs within the home from any additional needs for use outside the home.

In this matter, the facts are undisputed that Appellant will not use the POV in her home, and that made the request solely to meet her community needs. As the LCD does not contemplate approval of a POV for needs solely outside the home, Appellant must demonstrate that the POV is medically necessary under 130 CMR 450.204. 130 CMR 409.417(C). However, CCA has argued that Appellant's needs for assistance with community activities may be met with less costly alternatives such as transportation and homemaker services. Appellant argued that her needs are not being met with CCA's transportation, laundry, and shopping services because they are unreliable and insufficient. Appellant argued that her laundry was stolen, the assistant only comes once per week, and the transportation request must be made three days in advance. Though inconvenient, there

is not enough evidence in the record to show that Appellant's needs cannot be met with an adjustment or expansion of these less costly alternatives, such as an increase of hours or using different vendors. There is also no evidence regarding Appellant's ability to use additional alternatives such as a walker with a seat.

Accordingly, this appeal is denied.

Order for CCA

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:
MassHealth Representative: Commonwealth Care Alliance SCO, Attn: Cassandra Horne, 30 Winter Street, Boston, MA 02108

[redacted]