Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2401629
Decision Date:	04/25/2024	**Hearing Date:**	03/07/2024
Hearing Officer:	Patricia Mullen, Deputy Director, BOH	**Record Open to:**	03/21/2024

Appearances for Appellant:

[redacted]

Appearances for Commonwealth Care Alliance (CCA): Cassandra Horne, Appeals & Grievances Manager; Jeremiah Mancuso, RN, Clinical RN Appeals & Grievances Manager

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:**	Denial of requests for fence and generator
Decision Date:	04/25/2024	**Hearing Date:**	03/07/2024
CCA's Reps.:	Cassandra Horne, Appeals & Grievances Manager; Jeremiah Mancuso, RN, Clinical RN Appeals & Grievances Manager	**Appellant's Reps.:**	[redacted]
Hearing Location:	Quincy Harbor South (remote)		

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 December 1, 2023, Commonwealth Care Alliance (CCA), a MassHealth Integrated Care Organization (ICO), denied the appellant's Level 1 appeal of a denial of a prior authorization (PA) request for a fence because CCA determined that the appellant has no medical conditions that would warrant the installation of a fence outside his home, and therefore the request does not meet MassHealth or CCA's medical necessity requirements. (130 CMR 450.204; Exhibit 1). Through a notice dated December 1, 2023, CCA denied the appellant's Level 1 appeal of a denial of a prior authorization request for a generator because CCA determined the request did not meet MassHealth or CCA medical necessity requirements. (130 CMR 450.204; Exhibit 3). The appellant filed the two appeals with the Board of Hearings (BOH) in a timely manner on January 31, 2024 and the appeals were consolidated for hearing. (130 CMR 610.015(B)(7); 610.032(B) and Exhibits 2, 4). An ICO's denial of an internal appeal is valid grounds for appeal to BOH. (130 CMR 610.032(B)(2)).

Action Taken by CCA

CCA denied the appellant's internal appeals of denials of requests for prior authorization for a fence and for a generator.

Issue

Whether MassHealth's agent, CCA, was correct, pursuant to the criteria in its member handbook and 130 CMR 450.204(A), to deny the appellant's internal appeals of denials of requests for prior authorization for a fence and for a generator.

Summary of Evidence

The appellant appeared telephonically and verified his identity. The appellant's spouse listened in on the appeal hearing, but did not testify. The appellant's spouse's physician appeared telephonically as a witness. CCA was represented telephonically by its Appeals & Grievances Manager, and by its Clinical RN Appeals & Grievances Manager (hereinafter, "the CCA representative").

The appellant was given permission to record the hearing for his own personal use, in light of his inability to take notes. The appellant was cautioned that he could share the recording only with his spouse, his attorney, if any, and his physician, but no one else. The appellant was cautioned further that he did not have permission to share the recording with anyone else, nor to disseminate it anywhere. The Deputy Director, who was the hearing officer for the appeal, informed all parties that the Deputy Director's recording is the only official record of the appeal hearing.

Prior to the hearing, the appellant requested that the hearing be rescheduled to give him the opportunity to obtain legal counsel and to get documentation from CCA. The Director of BOH denied the request. The appellant continued to call BOH numerous times and left messages requesting the hearing be rescheduled. At the hearing, the appellant again requested that the hearing be rescheduled. The Deputy Director informed the appellant that the record could be left open for the appellant to submit any additional documentation that the Deputy Director determined might be relevant, after hearing CCA's testimony as to the basis for the denials. The Deputy Director informed the parties that the appellant's argument for a rescheduled hearing would be taken under advisement and addressed in the hearing decision.

The appellant argued that he wanted to subpoena various BOH staff and others, and he wanted transcripts of all his grievances and complaints with CCA. The Deputy Director noted that BOH staff were not connected in any way to the denials of the appellant's requests to CCA and thus could offer nothing relevant to the appeal. The Deputy Director noted further that the appellant's

past grievances and complaints with CCA, and any transcripts pertaining to such grievances, are not relevant to the issues on appeal, namely the denial of the internal appeals of requests for a fence and for a generator. The Deputy Director stated that the only documentation/evidence from CCA that is relevant for this appeal is the documentation/evidence CCA relied on in making its determinations in denying the requests for a fence and for a generator that are at issue in this appeal.

The appellant is age 65 or older and is open on MassHealth Standard. (Exhibit 5). The appellant has been enrolled in the One Care plan through CCA, his Integrated Care Organization (ICO), since April, 2017. (Testimony). The appellant's medical conditions include, but are not limited to, chronic pain, obstructive sleep apnea, oxygen dependent, restrictive airway disease, chronic respiratory failure, lumbar degenerative disc disease, incontinence, esophageal dysmotility with gastrostomy tube in place, bilateral hearing loss and wears hearing aid, complex regional pain syndrome, Parsonage-Turner syndrome, incontinence, depression, anxiety, and post-traumatic stress disorder (PTSD), among other things. (Exhibit 7, pp. 4-6). Hospitalization history includes a social admission in [redacted] because his house was hit by lightning with subsequent fire resulting in no electricity. (Exhibit 7, p. 7).

Fence

On October 20, 2023, the appellant made a request to CCA, through his CCA Care Partner, for a fence to be installed around his yard. (Exhibit 7, p. 69). Per an email to CCA from the appellant's Care Partner, the fence was required to keep the appellant's children safe and was a requirement to get his children back; the appellant's children are in protective services with the Department of Children and Families (DCF). (Exhibit 7, p. 69).

The request for a fence was denied by CCA Initial Notice of Denial dated October 26, 2023. (Exhibit 7, p. 71). In the denial notice, CCA explained that a fence is a non-covered item, is not reasonable, and is not medically beneficial. (Exhibit 7, p. 72). CCA noted that a fence does not meet medical necessity criteria for the appellant in that he does not need a fence to treat his medical conditions. (Exhibit 7, p. 72). Before making the determination of denial, a CCA Medical Director reviewed the request, the CCA non-covered benefit medical necessity guidelines, and the CCA medical necessity guidelines. (Exhibit 7, p. 72).

In the initial denial notice, the CCA Medical Director pointed out that a member may be eligible for a non-covered benefit, or "benefit exception", when CCA is provided a clear determination of need and rationale for how this resource will improve a member's individualized care plan. (Exhibit 7, p. 72). Careful evaluation, individualized risk assessment, and well documented rationale showing how the benefit may be both reasonable (of modest or moderate cost outweighed by other cost savings or benefits) and medically beneficial (of reasonable likelihood to significantly improve a member's health and quality of life) is required. (Exhibit 7, p. 72). The CCA Medical Director noted that CCA will follow the Centers for Medicare and Medicaid

Services (CMS) definition of medical necessity and will cover items or services that are reasonable and necessary under 1862(a)(1)(A) of The Act. According to CMS in the Program Integrity Manual, an item or service is considered to be *reasonable and necessary* if there is evidence to support that it is:

a. Safe and effective; *and*

b. Not experimental or investigational; *and*

i. The exception to this criterion is routine costs of qualifying clinical trial services. Please refer to *MNG #104 Clinical Trials, Routine Patient Care Costs* for more information.

c. Appropriate, including the duration, frequency, and cost-effectiveness, that is considered appropriate for the item or service, in terms of whether it is:

i. Furnished in accordance with accepted standards of medical practice for the diagnosis or treatment of the member's condition or to improve the function of a malformed body member; *and*

ii. Furnished in a setting appropriate to the member's medical needs and condition; *and*

iii. Ordered and furnished by qualified personnel; *and*

iv. One that meets, but does not exceed, the member's medical need; *and*

v. At least as beneficial, comparable in effect/availability/suitability, and no more costly as an existing and available medically appropriate alternative.

AND

d. The items and services, meet the CMS definition of medically necessary, as defined as healthcare services and supplies that are:

i. Proper and needed for the diagnosis or treatment of the member's medical condition; *and*

ii. Provided for the diagnosis, direct care, and treatment of the member's medical condition; *and*

iii. Meet the standards of good medical practice in the local area; *and*

iv. Not mainly for the convenience of the member, their doctor, or their healthcare professional designee.

(Exhibit 7, pp. 63-65; 72-73).

The initial denial notice states further that the appellant must meet the above criteria to be approved for a fence, the fence was being denied because it is not a medical necessity, it is a non-covered benefit, and only items that are medically necessary may be approved. (Exhibit 7, p. 73).

The appellant filed a Level 1 appeal with CCA on November 15, 2023. (Exhibit 7, p. 81). The Level 1 appeal was done by a CCA Medical Director on November 28, 2023. (Exhibit 7, p. 82).

The CCA Medical Director, a physician Board Certified in physical medicine and rehabilitation, noted that a full and careful review of the provided documentation was performed in the

context of the CCA Knowledge Base. (Exhibit 7, p. 82). The original decision was upheld and the First Appeal was denied. (Exhibit 7, p. 82). The CCA Medical Director noted the following:

> The appellant requested that CCA pay for materials and installation of a fence for his yard. There are no medical conditions that would warrant the installation of a fence outside of member's home. Per MNG 100 (non-covered benefit medical necessity guideline), only items that are medically necessary and reasonable are to be approved. Per E-mail from the appellant's Care Partner, the member is requesting a Safety Fence for his yard. He states that the appellant reported it is required to keep his children safe and is a requirement to get his children back. The appellant's children are in Child Protective Services. The fence was denied in the past but he is requesting it again. Medical Necessity Guideline (MNG) #100, with the following limitations and/or exclusions, applies: Limitations: A member is not eligible for a non-covered benefit if any of the following apply: 1. It is not considered to be medically necessary. This recommendation was made after a comprehensive review of the member's clinical record and comparison to MNG #100.

(Exhibit 7, p. 82).

By notice dated December 1, 2023, CCA denied the appellant's Level 1 appeal, noting that services must be provided according to the rules set by Medicare and MassHealth, and MassHealth requires that services be medically necessary. (Exhibit 1, p. 2). The notice states further that medically necessary means that the appellant reasonably needs the service to prevent, diagnose, or treat a medical condition, and there is no other similar, less expensive service suitable. (Exhibit 1, p. 2). CCA determined that the appellant has no medical conditions that would warrant the installation of a fence outside of his home; the notice advises the appellant to work with his Care Team to report any changes in his health status. (Exhibit 1, p. 2).

The appellant timely filed a Level 2 appeal denial with BOH, and such appeal is at issue in this hearing. Prior to the hearing, CCA submitted a 91 page packet pertaining to the appellant's request for the fence. (Exhibit 7). The packet contains the rationale for the decision written by a CCA Clinical Appeals and Grievances nurse, patient summaries for the appellant consisting of medical history problem list, surgical history, hospitalization history, social/family history, immunizations, vitals, patient encounters, health maintenance, and referrals. (Exhibit 7, pp. 4-54).

The CCA representative testified that CCA members can contact CCA and make a request for anything. Upon questioning by the Deputy Director, the CCA representative stated that although MassHealth requires that requests for prior authorization come from contracted MassHealth providers, CCA has no such requirement. The CCA representative added that a fence would not be covered by MassHealth. The CCA representative testified that all requests from CCA members are reviewed for medical necessity. The CCA representative stated that the

appellant reported that he needs the fence to get his children out of protective services. The CCA representative testified that the requested fence would not directly benefit any medical condition of the appellant. The CCA representative noted that the requested fence is to make the yard safe for the appellant's children, and is not related to the appellant's health. The CCA Appeals & Grievances Manager stated that the requested fence is a non-covered item, and thus the medical necessity review for non-covered items was done. The CCA Appeals & Grievances Manager stated that the CCA Medical Director determined that the requested fence will not improve the appellant's health and the appellant has no medical conditions that would be treated or improved by the installation of a fence. The CCA Appeals & Grievances Manager noted that a requested item must be reasonable and medically necessary to meet medical necessity requirements, and the requested fence is neither reasonable nor medically necessary for the appellant.

The appellant testified that he has filed a number of grievances against CCA and would like transcripts of all the grievances. The appellant stated that his house was burned as part of a hate crime against him and he had to stay in the hospital for 23 days and a [redacted], due to no electricity. The appellant stated that he needs a fence to keep his children safe. The appellant testified that he has 3 children, one of whom is severely autistic. The appellant stated that he cannot afford a $12,000 fence. The appellant noted that his children were taken away as a direct result of not having a fence and a generator in the house. The appellant stated that his severely autistic child ran away from the yard one day and into a neighbor's yard. The neighbor intervened and child protective services[1] got involved. (Testimony). The appellant stated that he has been trying to get a fence and generator for some time and his physician has been sending letters to CCA regarding the medical necessity for a fence and generator. The appellant stated that he has contacted a number of legal aid agencies to help him. The appellant stated that [redacted], his spouse's physician, has also assisted him in trying to get coverage for the fence and generator. The appellant stated that legal aid agencies and elder services agencies advised him that CCA and MassHealth are the agencies to help with the fence and the generator.

The appellant stated that his severely autistic child is in a residential facility and is restrained due to self injurious behavior. The appellant stated that he has not seen this child in 3 years. The appellant stated that his two other children are in foster care and he is worried about them being abused. The appellant noted that he wants to subpoena DCF to show how his children are suffering. The appellant stated that the requested fence is less costly than the amount of money the Commonwealth of Massachusetts is spending to care for his children. The appellant stated that the children were taken into protective custody in [redacted].

The appellant stated that the requested fence is not only necessary for him to get his children back, but he needs it for safety because he is a peace activist who has been subject to hate crimes.

[1] The children are currently in DCF custody.

The appellant's witness, [redacted], testified that he is the primary care clinician for the appellant's spouse and could not testify to the health of the appellant or the children, other than to note that the children are autistic. [redacted] testified that the removal of the children from the home was emotionally devasting to the appellant's spouse and having the children back would help the spouse's mental health. [redacted] noted that he could not speak to the medical necessity for the fence for the appellant. [redacted] stated that he believed the requested generator is important because of the technology dependence of the appellant.

The appellant testified that it was heartbreaking to lose his children and he needs a high fence installed in order for his children to return home. The appellant reiterated that all the agencies he contacted informed him that CCA is the agency to help him. The appellant testified that he also needs a fence to protect himself and his home as a result of hate crimes.

Electric generator

On October 20, 2023, the appellant, through a CCA Care Partner, requested coverage for a backup electricity generator. (Exhibit 8, p. 63). The Care Partner noted that the appellant reported that he is on oxygen and needs a backup generator. (Exhibit 8, p. 63). The Care Partner wrote that the appellant has requested this in the past and has been denied. (Exhibit 8, p. 63). CCA progress notes state that the appellant worked with Community Health Worker Christian Castro to obtain electric hardship documentation to be sent to Eversource for utility protection. (Exhibit 8, p. 63). The appellant's issue with electric hardship was reported to be resolved by his new primary care clinician, Caring Health Center, as of September 9, 2022, as the new PCP sent the requested documentation to Eversource. (Exhibit 8, p. 63). The progress note stated further that there are also protections from utility shut off, especially during winter months. (Exhibit 8, p. 63).

The request for a backup generator was denied by CCA Initial Notice of Denial dated October 27, 2023. (Exhibit 8, p. 64). In the denial notice, CCA explained that a generator is a non-covered item, is not reasonable, is not medically beneficial, and it is not a medical necessity. (Exhibit 8, p. 65). CCA noted that a generator does not meet medical necessity criteria for the appellant in that he does not need a generator to improve his health or quality of life, nor to use his oxygen. (Exhibit 8, p. 65). CCA noted that the appellant's Care Team helped him apply for utility protection and electricity cannot be shut off in certain conditions. (Exhibit 8, p. 65). A CCA Medical Director reviewed the request, the CCA non-covered benefit medical necessity guidelines (MNG #100), and the CCA medical necessity guidelines (MNG # 045). (Exhibit 7, p. 72). CCA denied the request for the backup generator noting "[y]ou must meet the above criteria to be approved for a generator. The generator is being denied because it is not a medical necessity. It is a non-covered benefit. Your care team helped you apply for utility protection. Your care team can give you more resources if needed. Please contact your care team if you need more help with utility protections. Only items that are medically necessary

may be approved. Please contact your care partner or a member of your care team if your needs change." (Exhibit 8, p. 66).

The appellant requested a Level 1 appeal of the denial with CCA on November 15, 2023. (Exhibit 8, p. 73). The Level 1 appeal was done by a CCA Medical Director physician, board certified in Physical Medicine and Rehabilitation on November 28, 2023. (Exhibit 8, p. 74).

The CCA Medical Director noted that a full and careful review of the provided documentation was performed in the context of the CCA Knowledge Base and the original decision to deny the backup generator was upheld and the First Appeal was denied. (Exhibit 8, p. 74). The CCA Medical Director noted the following:

> [t]his initial prior authorization was requested by the member due to member being on oxygen and having concerns about his electricity being shut off/disconnected by the Electric Company. Member's CCA Care Team has been working directly with member and protections are in place to prevent this from occurring. Per note from auth 1227TDRAT which is a previous request for a backup generator: 'Member worked with CHW [redacted] to obtain electric hardship documentation to be sent to Eversource for utility protection. Member's issue with the Electric Hardship was reported to be resolved by his new PCP, Caring Health Center as of 9/9/2022 as the new PCP sent the requested documentation to Eversource. There are also protections from utility shut off, especially during the winter months from November 15 -March 15. Member can find this information on https:www.mass.gov/servicedetails/ when-am-i-protected-from-having-myutilities- shut-off or request support from his care team if needed.' Per Guiding Care notes, member is also in the process of obtaining portable Oxygen in addition to home oxygen delivery system which member currently has. Medical Necessity Guideline (MNG) #100 the following limitations and/or exclusions apply: • Clinical Eligibility: A member may be eligible for a non-covered benefit, which may be called a "benefit exception," when CCA is provided a clear determination of need and rationale for how this resource will improve a member's individualized care plan. A member may receive a specified resource after a careful evaluation, individualized risk assessment, and well documented rationale showing how the benefit may be both reasonable (1) and medically beneficial (2). (1) Reasonable—Of modest or moderate cost outweighed by other cost savings or benefits (2) Medically beneficial—Of reasonable likelihood to significantly improve a member's health and quality of life. • Limitations: A member is not eligible for a non-covered benefit if any of the following apply: 1. It is not considered to be medically necessary. Medical Necessity Guideline (MNG) #045 the following limitations and/or exclusions apply: • Limitations: 1. Commonwealth Care Alliance will not cover any of, but not limited to, the following: a. Items or services that are considered to be not medically necessary or reasonable. This recommendation was made after a comprehensive review of the member's clinical record and comparison to MNG #100 and 045.

(Exhibit 8, pp. 74-75).

By notice dated December 1, 2023, CCA denied the appellant's Level 1 appeal noting that Medicare and MassHealth covered services must be provided according to the rules set by Medicare and MassHealth and MassHealth requires that requested services, supplies, and equipment must be medically necessary. (Exhibit 3, pp. 1-2). The notice states further that medically necessary means the appellant reasonably needs the equipment to prevent, diagnose, or treat a medical condition, and there is no other similar, less expensive service that is suitable for the appellant. (Exhibit 3, p. 2). CCA determined that the appellant's request for a backup generator did not meet medical necessity requirements. (Exhibit 3, p. 2).

The appellant timely filed a Level 2 appeal with BOH, and such appeal is at issue in this hearing. Prior to the hearing, CCA submitted an 83 page packet containing the rationale for the denial of the request for a backup generator written by a CCA RN Appeals and Grievances nurse. (Exhibit 8). The packet also contains patient summaries for the appellant consisting of medical history problem list, surgical history, hospitalization history, social/family history, immunizations, vitals, patient encounters, health maintenance, and referrals. (Exhibit 8, pp. 5-55).

The CCA Appeals & Grievances Manager testified that MassHealth covered services are provided pursuant to MassHealth regulations, including MassHealth medical necessity regulations. The CCA Appeals & Grievances Manager stated that a backup generator is a non-covered item under both MassHealth and CCA guidelines. The CCA Appeals & Grievances Manager stated that the requested backup generator is not reasonable or medically beneficial to the appellant, and will not improve the appellant's health or quality of life. The CCA Appeals & Grievances Manager noted that at the time the request for the backup generator was made, the appellant's Care Manager reported that the appellant was concerned about losing electricity because he is on oxygen. The CCA Appeals & Grievances Manager stated that the appellant has been approved for a portable oxygen system and safeguards are in place so that the appellant's electricity will not be shut off.

The CCA representative stated that, like the fence, CCA does not have the MassHealth requirement that requests for prior authorization be made by a contracted provider. The CCA representative stated that the appellant made the request for the backup generator directly to CCA through his Care Partner. The CCA representative testified that a backup generator is a non-covered item under CCA and would need to meet CCA's medical necessity criteria for non-covered items, as well as MassHealth's medical necessity criteria at 130 CMR 450.204. The CCA representative stated that, pursuant to 130 CMR 450.204, there are less costly services than a backup generator to maintain the appellant's medical needs. The CCA representative pointed out that the appellant's spouse and children were not considered in CCA's determination of medical necessity for a backup generator for the appellant, as the spouse and children are not the insured.

The CCA representative stated that the appellant has a prescription script for 2 liters of portable oxygen at rest and 4 liters when active. The CCA representative stated that on January 10, 2024, CCA approved the appellant for a battery operated portable oxygen concentrator. The CCA representative stated that portable oxygen comes in many varieties; there are mini bottles that can be filled by the concentrator in home or by the mini concentrator and the bottles can be carried around. The CCA representative stated that he believes the appellant has the portable battery operated concentrator that pulls oxygen out of the atmosphere. The CCA representative stated that the appellant expressed loss of electricity as cause for concern with regard to his oxygen. The CCA representative stated that while loss of electricity would not be a concern for the appellant's portable oxygen, the home concentrator system does run on electricity. The CCA representative stated that emergency tanks filled with oxygen can maintain up to 24 hours of oxygen. The CCA representative stated that even if the appellant were to lose electricity, the oxygen vendor can come and refill the tanks. The CCA representative pointed out that members on oxygen are supposed to have multiple back up tanks. The CCA representative noted that the appellant also has a feeding pump and IV pump, and these should have battery back up.

The appellant stated that he previously requested a backup generator from CCA and didn't get a response and thus has filed multiple grievances against CCA. The Deputy Director repeatedly asked the appellant why the backup generator was medically necessary. The appellant made general statements about his multiple grievances and complaints against CCA and errors in his medical record. Upon redirection from the Deputy Director, the appellant testified that in [redacted] the electric company shut off the family's electricity, despite the protection in place. The appellant noted that the electric company reported that the power was shut of in error, but it took 24 hours for the power to be restored. The appellant noted that his autistic child was watching television at the time the power went out and became so agitated that he injured himself. The appellant stated that he not only needs a backup generator, but needs a stationary, fixed generator that turns on immediately so as to avoid another incident where his child might injure himself. The appellant stated that such generator has a cost of about $12,000.00. The appellant stated that he sometimes loses electricity as a result of the weather and most recently, about 3 weeks prior to the hearing, he lost power for about 8 hours due to a transformer problem. The appellant noted that he had back up oxygen, but went to stay at a relative's house for fear that the power might be out for more than 24 hours. The appellant noted that CCA and MassHealth have a responsibility to be working on this as it does apply to his children being safe. The appellant stated that he needs to have a backup generator to get his children back. The appellant stated that the backup generator is medically necessary for all 5 of his family members, the lives of his children are at stake, and this is a human rights issue as well as child protection issue.

The appellant stated further that he has medical equipment that runs on electricity and thus needs a backup generator to ensure that his equipment will function in a power outage. The

appellant stated that his oxygen condenser plugs into the wall and he was only recently approved for portable oxygen. The appellant stated that the portable oxygen only goes to 1-4 liters which is not sufficient for him. The appellant stated that he also has a feeding tube that is plugged into an electrical outlet, compression devices that run on electricity, and a C-Pap machine that runs on electricity.

The CCA representative stated that he understands that the appellant is now requesting the backup generator for all his medical equipment, not just the oxygen as noted in the initial request to CCA. The CCA representative stated that the feeding pump described on the prescription script was approved in full, most recently in August, 2023. (Exhibit 8, p. 50). The CCA representative noted that the feeding pump is available with a back up battery and the appellant's provider can make a request for this, if the provider feels such is necessary. The CCA representative stated that he sees no denial of a request for a back up battery for any of the appellant's equipment, in CCA's system.

The record was left open for two weeks, until March 21, 2024, to give the appellant the opportunity to submit a letter from his physician, [redacted], regarding medical necessity for a fence and generator. (Exhibit 12). During the record open period[2], the appellant submitted a letter from certified Physician's Assistant [redacted] and a letter from [redacted], who appeared at the hearing. (Exhibits 13-17) The letters were forwarded to CCA for review. The appellant submitted numerous other, non-requested documents. (Exhibits 13-17). On March 25, 2024, the appellant submitted a request to reopen the record and to order a subpoena for records and letters.[3] (Exhibit 18). The appellant wrote that he requested records and confirmation letters from his health insurance, CCA-MassHealth, CCA-Care Partners, CCA-ADA Compliance Officer, CCA-Community Health Workers, CCA-Appeals & Grievances, his Primary Care Office, the Caring Health Center Community Health Workers (CHW) Department, and they have given him the "silent treatment" and refused to provide requested letters and records. (Exhibit 18).
In a letter dated March 18, 2024, PA [redacted] writes that the backup generator could be considered medical necessary for the appellant as it will allow for continuous power to his feeding tube supplies, oxygen condenser, CPAP, and PT/OT equipment in the instance of a power outage. (Exhibit 13, p. 4). PA [redacted] writes further that the appellant told him about the racial violence and fire to his home in [redacted] and he believes the fence could be considered medically necessary as it would provide a layer of safety against attacks to the appellant's home. (Exhibit 13, p. 4).

In a letter dated March 21, 2024, [redacted] noted that the appellant's spouse has suffered from trauma, anxiety, and depression and the removal of the children from her home was devastating; reuniting her with her children will benefit her health greatly, and as such, that of her husband.

[2] Some documentation was sent between 11:00 pm and 11:59 pm on March 21, 2024, which is after business hours for the Board of Hearings (BOH); the documentation was nonetheless accepted as timely and submitted into the record. (Exhibits 14-17).
[3] The appellant sent the request to BOH at 11:54 pm on Friday, March 22, 2024, so, obviously, it was not received at BOH until the next business day, March 25, 2024. (Exhibit 18).

(Exhibit 14, p. 6; exhibit 17, p. 4). [redacted] noted that if indeed the absence of a safety fence and generator are the major barriers to reuniting this family, then he would consider them to be necessary for the spouse's health and well-being. (Exhibit 14, p. 6; exhibit 17, p. 4).

The appellant submitted past requests to CCA for a various services and items, notes of his attempts to get the letter from [redacted], letters regarding the DCF case involving his children, and other letters from past years which do not concern the matter on appeal. (Exhibits 13, 14, 15, 16).

The letters from [redacted] and [redacted] were forwarded to CCA for review. CCA responded that Clinical Nurse reviewer Jeremiah Mancuso reviewed the letters and CCA is going to stand on the denial. (Exhibit 19).

Findings of Fact

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

1. The appellant is age 65 or older and is open on MassHealth Standard; the appellant has been enrolled in One Care through CCA since April, 2017.

2. The appellant's medical conditions include, but are not limited to, chronic pain, obstructive sleep apnea, oxygen dependent, restrictive airway disease, chronic respiratory failure, lumbar degenerative disc disease, incontinence, esophageal dysmotility with gastrostomy tube in place, bilateral hearing loss and wears hearing aid, complex regional pain syndrome, Parsonage-Turner syndrome, incontinence, depression, anxiety, and PTSD, among other things; hospitalization history includes a social admission in [redacted] because his house was hit by lightning with subsequent fire resulting in no electricity.

3. On October 20, 2023, the appellant made a request to CCA, through his CCA Care Partner, for a fence to be installed around his yard.
4. Per an email to CCA from the appellant's Care Partner, the fence was a requirement to get the appellant's children back and to keep them safe in the yard; the appellant's children are in DCF protective services.

5. The appellant's request for a fence was denied by CCA Initial Notice of Denial dated October 26, 2023.

6. In the initial denial notice, CCA explained that a fence is a non-covered item, is not reasonable, and is not medically beneficial; CCA noted that a fence does not meet medical necessity criteria for the appellant in that he does not need a fence to treat his medical

conditions; before making the determination of denial, a CCA Medical Director reviewed the request, the CCA non-covered benefit medical necessity guidelines, and the CCA medical necessity guidelines.

7. The appellant filed a Level 1 appeal of the denial of the fence with CCA on November 15, 2023; the Level 1 appeal was done by a CCA Medical Director on November 28, 2023.

8. The CCA Medical Director, a physician Board Certified in physical medicine and rehabilitation, noted that a full and careful review of the provided documentation was performed in the context of the CCA Knowledge Base; the original decision was upheld and the First Appeal was denied by notice dated December 1, 2023.

9. The appellant timely filed a Level 2 appeal denial with BOH.

10. A fence is a non-covered item under CCA's One Care plan.

11. The requested fence is to make the yard safe for the appellant's children and is not related to the appellant's health nor would it directly address or benefit any medical condition of the appellant.

12. The appellant stated that, prior to being taken into custody by DCF, his severely autistic child ran away from the yard and into a neighbor's yard; the neighbor intervened and DCF got involved; the appellant's 3 children were removed from the home and have been in the custody of the DCF since [redacted]

13. The appellant has contacted a number of legal aid agencies and elder service agencies to help him.

14. The appellant testified that he has been the victim of hate crimes.

15. On October 20, 2023, the appellant, through a CCA Care Partner, requested coverage for a backup electricity generator; the Care Partner noted that the appellant reported that he is on oxygen and needs a backup generator.

16. CCA progress notes state that the appellant worked with Community Health Worker Christian Castro to obtain electric hardship documentation to be sent to Eversource for utility protection; the appellant's issue with electric hardship was reported to be resolved by his new primary care clinician, Caring Health Center, as of September 9, 2022, as the new PCP sent the requested documentation to Eversource; the progress note state further that there are also protections from utility shut off, especially during winter months.

17. The appellant had to stay in the hospital and a [redacted] due to loss of electricity

from a house fire in [redacted].

18. The request for a backup generator was denied by CCA Initial Notice of Denial dated October 27, 2023.

19. In the denial notice, CCA explained that a generator is a non-covered item, is not reasonable, is not medically beneficial, and it is not a medical necessity; CCA noted that a generator does not meet medical necessity criteria for the appellant in that he does not need a generator to improve his health or quality of life, nor to use his oxygen.

20. Before making the denial determination, a CCA Medical Director reviewed the request, the CCA non-covered benefit medical necessity guidelines (MNG #100), and the CCA medical necessity guidelines (MNG # 045).

21. The appellant requested a Level 1 appeal of the denial of the generator with CCA on November 15, 2023.

22. The Level 1 appeal was done by a CCA Medical Director physician, board certified in Physical Medicine and Rehabilitation on November 28, 2023.

23. The CCA Medical Director noted that a full and careful review of the provided documentation was performed in the context of the CCA Knowledge Base and the original decision to deny the backup generator was upheld and the First Appeal was denied.

24. The CCA Medical Director noted the following: "[t]his initial prior authorization was requested by the member due to member being on oxygen and having concerns about his electricity being shut off/disconnected by the Electric Company. Member's CCA Care Team has been working directly with member and protections are in place to prevent this from occurring. Per note from auth 1227TDRAT which is a previous request for a backup generator: 'Member worked with CHW Christian Castro to obtain electric hardship documentation to be sent to Eversource for utility protection. Member's issue with the Electric Hardship was reported to be resolved by his new PCP, Caring Health Center as of 9/9/2022 as the new PCP sent the requested documentation to Eversource. There are also protections from utility shut off, especially during the winter months from November 15 - March 15. Member can find this information on https:www.mass.gov/servicedetails/ when-am-i-protected-from-having-myutilities- shut-off or request support from his care team if needed.' Per Guiding Care notes, member is also in the process of obtaining portable Oxygen in addition to home oxygen delivery system which member currently has.

25. By notice dated December 1, 2023, CCA denied the appellant's Level 1 appeal noting that Medicare and MassHealth covered services must be provided according to the rules set by Medicare and MassHealth and MassHealth requires that requested services, supplies, and

equipment must be medically necessary; the notice states further that medically necessary means the appellant reasonably needs the equipment to prevent, diagnose, or treat a medical condition, and there is no other similar, less expensive service that is suitable for the appellant.

26. The appellant timely filed a Level 2 appeal with BOH.

27. A backup electric generator is a non-covered item under CCA's One Care program.

28. The requested backup generator is not reasonable or medically beneficial to the appellant, and will not improve the appellant's health or quality of life.

29. The appellant has been approved for a battery operated portable oxygen concentrator with mini bottles that can be filled by the concentrator in the home or by the portable concentrator.

30. Safeguards are in place so that the appellant's electricity will not be shut off.

31. Emergency tanks filled with oxygen can maintain up to 24 hours of oxygen.

32. The appellant's oxygen vendor can come and refill the tanks in the event of loss of electricity.

33. The appellant's feeding pump and IV pump should have battery back up and the appellant can submit requests for these batteries.

34. The appellant testified that in [redacted], the electric company shut off the family's electricity in error and it took 24 hours for the power to be restored; the appellant noted that his autistic child was watching television at the time the power went out and became so agitated that he injured himself.

35. The appellant wants a stationary, fixed generator that turns on immediately so as to avoid another incident where his child might injure himself; the appellant stated that such generator has a cost of about $12,000.00.

36. The appellant recently lost power for about 8 hours due to a transformer problem; the appellant noted that he had back up oxygen, but went to stay at a relative's house for fear that the power might be out for more than 24 hours.

37. The CCA representative saw no denials of requests for back up batteries for any of the appellant's equipment, in CCA's system.

38. The record was left open for two weeks, until March 21, 2024, to give the appellant the opportunity to submit a letter from his physician, [redacted] regarding medical necessity for a fence and generator.

39. During the record open period[4], the appellant submitted a letter from certified [redacted] and a letter from [redacted], who appeared at the hearing; the letters were forwarded to CCA for review.

40. The appellant also submitted numerous other, non-requested documents.

41. On March 25, 2024, the appellant submitted a request to reopen the record and to order a subpoena for records and letters; the appellant wrote that he had requested records and confirmation letters from his health insurance, CCA-MassHealth, CCA-Care Partners, CCA-ADA Compliance Officer, CCA-Community Health Workers, CCA-Appeals & Grievances, his Primary Care Office, the Caring Health Center Community Health Workers (CHW) Department, and they have given him the "silent treatment" and refused to provide requested letters and records.

42. In a letter dated March 18, 2024, [redacted] writes that the backup generator could be considered medical necessary for the appellant as it will allow for continuous power to his feeding tube supplies, oxygen condenser, CPAP, and PT/OT equipment in the instance of a power outage; [redacted] writes further that the appellant told him about the racial violence and fire to his home in 2019 and he believes the fence could be considered medically necessary as it would provide a layer of safety against attacks to the appellant's home.

43. In a letter dated March 21, 2024, [redacted] noted that the appellant's spouse has suffered from trauma, anxiety, and depression and the removal of the children from her home was devastating; reuniting her with her children will benefit her health greatly, and as such, that of her husband; [redacted] noted that if indeed the absence of a safety fence and generator are the major barriers to reuniting this family, then he would consider them to be necessary for the spouse's health and well being.

44. CCA responded that Clinical Nurse reviewer Jeremiah Mancuso reviewed the letters and the letters did not change CCA's denial determinations.

Analysis and Conclusions of Law

[4] Some documentation was sent between 11:00 pm and 11:59 pm on March 21, 2024, which is after business hours for the Board of Hearings (BOH); the documentation was nonetheless accepted as timely and submitted into the record. (Exhibits 14-17).

After the record open period closed, the appellant requested that the record be reopened and extended because he was unable to obtain records and confirmation letters from CCA-MassHealth, CCA-Care Partners, CCA-ADA Compliance Officer, CCA-Community Health Workers, CCA-Appeals & Grievances, his Primary Care Office, the Caring Health Center Community Health Workers (CHW) Department. Such information was not requested by the Deputy Director at the hearing and it was not requested in the record open form. Further, had the appellant requested to submit such information at the hearing, such request would have been denied. CCA provided all the evidence upon which it relied in making its determinations regarding the requests for a fence and generator at the hearing. The appellant has had the opportunity to testify and submit documentation from his medical providers to support his medical necessity arguments for these items. Vague and general records and letters from CCA-MassHealth, CCA-Care Partners, CCA-ADA Compliance Officer, CCA-Community Health Workers, CCA-Appeals & Grievances, his Primary Care Office, the Caring Health Center Community Health Workers (CHW) Department are not relevant evidence to support that a fence and generator are medically necessary for the appellant. Furthermore, the appellant notes that he has already requested these records and confirmation letters, but they have all refused him. Reopening the record would not change these circumstances. The appellant's request to reopen the record is denied.

The appellant argued that his request for a rescheduled hearing should not have been denied.

Procedures and Requirements for Rescheduling; Rescheduling Before the Day of the Hearing..

> (2) For **good cause shown** as defined in 130 CMR 610.048(D), BOH may, at the request of any party to a hearing, reschedule the hearing provided that the request is received before the date of the hearing. If the BOH Director or his or her designee concludes that the request does not constitute good cause, the request will be denied. (130 CMR 610.048(A)(2)). (emphasis added).

Good Cause.

> (1) The following circumstances may constitute good cause subject to 130 CMR 610.048(D)(2):
>
> (a) a death in the family;
>
> (b) a personal injury or illness that reasonably prevents the party from attending the hearing;
>
> (c) a sudden and serious emergency or act of nature that reasonably prevents the party from attending the hearing;
>
> (d) an obligation or responsibility that a reasonable person in the conduct of his or her serious affairs would conclude takes precedence over attendance at the hearing;
>
> (e) the need for additional time to produce evidence or witnesses or obtain legal assistance; or
>
> (f) for the purposes of 130 CMR 610.048(A) only, the agreement of the parties to reschedule.

(2) In evaluating a party's good cause claim, the BOH Director or his or her designee considers the following factors:

(a) the amount of time during which the party had advance notice of the hearing;

(b) the party's ability to anticipate the circumstances that resulted in his or her inability to appear for the hearing;

(c) the party's ability to reschedule any conflicting event;

(d) delay by the party in notifying BOH of his or her inability to attend the hearing; and

(e) previous rescheduling requests or failure to appear for scheduled hearings that indicate a pattern of delay or noncompliance with the fair hearing rules.

(3) If a party will be required to show good cause at the hearing, BOH will notify that party in advance that a hearing officer will address that issue. The party will also be notified that the party may bring documentation and witnesses in support of the good cause claim and that failure to demonstrate good cause may result in dismissal of the appeal.

(130 CMR 610.048(D)).

CCA initially denied the appellant's request for prior authorization for a fence on October 26, 2023 and initially denied the appellant's request for prior authorization for a generator on October 27, 2023. CCA issued the denials of the Level 1 appeals of these requests on December 1, 2023. The appellant's hearing was scheduled for March 7, 2024. The appellant had over 4 months from the date of the denials of the requests for prior authorization, and over 3 months from the date of the denials of the Level 1 appeals, to obtain legal counsel. The appellant testified at the hearing that he has contacted numerous legal agencies, but could not procure counsel. The appellant did not submit any other evidence to support that he was in the process of obtaining legal counsel. A reschedule request might be approved to allow newly obtained legal counsel time to prepare for the hearing. This was not the case here. The appellant himself noted that he has had numerous appeals before BOH, and a review of the BOH Appeals Processing System (APS) shows that the appellant has had multiple appeals over the years at BOH, most recently in February, 2024. The appellant is familiar with BOH and had ample time to procure legal counsel prior to the hearing. If no legal counsel was willing to represent him, this is out of the control of BOH and does not support rescheduling an appeal hearing. The appellant further argued that he needed to obtain all of his records from CCA. The appellant did not specify what records CCA has that he would need to support his appeal arguments. All records used in making the determinations on the appellant's requests for prior authorization for the fence and the generator were submitted by CCA at exhibits 7 and 8. Any grievances or complaints the appellant had with CCA in the past are not relevant to his appeal and any documentation or transcripts of grievances and complaints would have no bearing on the issues in this case, namely whether the requested fence and generator meet the medical necessity requirements of MassHealth and CCA.

I do not find good cause for the appellant's request for a rescheduled hearing and such request is denied pursuant to 130 CMR 610.048.

The appellant verbally noted that he wished to subpoena certain BOH staff and some others. After the record open period ended, the appellant requested that the record be reopened and asked that subpoenas be ordered. The request was stated in very general terms. The appellant noted that he has requested records from CCA-MassHealth, CCA-Care Partners, CCA-ADA Compliance Officer, CCA-Community Health Workers, CCA-Appeals & Grievances, his Primary Care Office, the Caring Health Center Community Health Workers (CHW) Department, and received no response. Presumably these are the entities he wishes to subpoena. The record had closed by the time of the second request for subpoena and the Deputy Director did not reopen the record.

Subpoenas
(A) A subpoena under 130 CMR 610.000 is a document that commands a witness to appear at a given time to give testimony at an administrative proceeding. A subpoena can also require the witness to produce for the administrative proceeding any books, documents, papers, or records in his or her possession or control.

(B) Right to Subpoena. Any party to a hearing and BOH on its own have the right to request a subpoena requiring the attendance and testimony of witnesses and the production of any evidence including books, records, correspondence, or documents relating to any matter in question at the hearing. Any party may submit to BOH a written request for the issuance of such subpoena. If, in its discretion and in accordance with 130 CMR 610.065(B), BOH allows such request, a subpoena will be issued within three business days of receipt of such request.

(130 CMR 610.052(A), (B)).

The hearing officer has the following powers to:

> (4) regulate the presentation of evidence and the participation of the parties for the purpose of ensuring an adequate and comprehensive record of the proceedings…;
> (6) examine witnesses and ensure that relevant evidence is secured and introduced.

(130 CMR 610.065(B)(4), (6)).

Evidence (A) General.

> (1) The rules of evidence observed by courts do not apply to fair hearings, but the hearing officer observes the rules of privilege recognized by law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Unduly repetitious or clearly irrelevant evidence may be excluded. (130 CMR 610.071(A)(1)).

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If the appellant is making a request to subpoena BOH staff to whom he spoke with while making multiple requests to reschedule the hearing, such request is denied because no relevant evidence with regard to the issues on appeal would be obtained by such subpoenas.

The request made after the record closed was not made timely. It was not clear if the appellant wished to subpoena all the CCA departments and the Caring Center Community Health Workers Department, nor did he provide specific persons, addresses, or relevant documentation to be obtained. The appellant had a 2 hour hearing to present his case. CCA submitted into the record the documentation upon which it relied in making the determinations in this case. The appellant was given the opportunity to submit physician letters during a record open period, and such were submitted and entered into the record. The appellant did not note on his request what specific documentation CCA or the CHW Department have that would support his request for a fence and generator. Accordingly, had such request been timely, it would have been denied. (see 130 CMR 610.082(A)). Further, the verbal request to subpoena BOH staff and others is denied. (see also 130 CMR 610.065(A)(5)[5], and 130 CMR 610.065(B)(4)[6]).
Obtaining Services When Enrolled in an ICO.
When a member is enrolled in an ICO in accordance with the requirements under 130 CMR 508.007(A), 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)).

Integrated Care Organization (ICO, also known as a One Care plan) – an organization with a comprehensive network of medical, behavioral health care, and long-term services and supports providers that integrates all components of care, either directly or through subcontracts, and has contracted with the Executive Office of Health and Human Services (EOHHS) and the Centers for Medicare & Medicaid Services (CMS) and been designated as an ICO to provide services to dual eligible individuals under M.G.L. c. 118E. ICOs are responsible for providing enrolled members with the full continuum of Medicare- and MassHealth-covered services. (130 CMR 610.004).

[5] The hearing officer has the power to receive, rule on, exclude, or limit evidence.
[6] The hearing officer has the power to regulate the presentation of evidence and the participation of the parties for the purpose of ensuring an adequate and comprehensive record of the proceedings.

Members are entitled to a fair hearing under 130 CMR 610.000: *MassHealth: Fair Hearing Rules* to appeal…

> (B) a determination by the MassHealth behavioral health contractor, by one of the MCOs, Accountable Care Partnership Plans, or SCOs as further described in 130 CMR 610.032(B), if the member has exhausted all remedies available through the contractor's internal appeals process…

(130 CMR 508.010(B)).

The appellant exhausted the internal appeal process offered through his ICO, and thus is entitled to a fair hearing pursuant to the above regulations. As MassHealth's agent, CCA is required to follow MassHealth laws and regulations pertaining to a member's care.

Fence

The appellant requested CCA coverage for a fence to be installed around the yard outside of his home. The appellant is on MassHealth Standard and the list of services covered for MassHealth Standard members is found at 130 CMR 450.105(A). Home modification/improvement is not a service listed in 130 CMR 450.105(A) and is specifically listed as a non-covered service under the MassHealth durable medical equipment regulations. (130 CMR 409.414(J)). Accordingly, a fence would not be covered by MassHealth. CCA entertains requests for prior authorization from members, without the limitations set forth in the MassHealth regulations. Accordingly, we turn to the CCA One Care Member Handbook for the criteria for approval of a request for a fence.

CCA's One Care Member Handbook for 2023 states the following:

Rules for getting your healthcare and long-term services and supports (LTSS) and other services covered by the plan
CCA One Care covers services covered by Medicare and MassHealth. This includes behavioral health, long-term services and supports (LTSS), and prescription and over-the counter (OTC) drugs. CCA One Care will pay for the healthcare and services you get if you follow the plan rules listed below. To be covered by our plan:
• The care you get must be a **plan benefit.** This means that it must be included in the plan's Benefits Chart. (The chart is in Chapter 4, Section D of this handbook).
• The care must be **medically necessary**. Medically necessary means that the services are reasonable and necessary:
o For the diagnosis and treatment of your illness or injury; **or**
o To improve the functioning of a malformed body part; **or**
o Otherwise medically necessary under Medicare law
o In accordance with Medicaid law and regulation and per MassHealth, services are medically necessary if:

▪ They could be reasonably calculated to prevent, diagnose, prevent the worsening of, alleviate, correct, or cure conditions that endanger your life, cause you suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a disability, or result in illness or infirmity; **and**
▪ There is no other medical service or place of service that is available, works as well, and is suitable for you that is less expensive. The quality of medically necessary services must meet professionally recognized standards of healthcare, and medically necessary services must also be supported by records including evidence of such medical necessity and quality.

(Exhibit 21, pp. 1-2; CCA One Care Member Handbook, pp. 31-32).

Our plan's Benefits Charts
The Benefits Charts in Section D tell you which services the plan covers. The charts list and explain the covered services.
• We will pay for the services listed in the Benefits Charts only when the following rules are met. You do not pay anything for the services listed in the Benefits Chart, as long as you meet the coverage requirements described below.
• Your Medicare and MassHealth covered services must be provided according to the rules set by Medicare and MassHealth.
• The services (including medical care, behavioral healthcare, Long-term Services and Supports, other services, supplies, and equipment) must be medically necessary. Medically necessary means you reasonably need the services to prevent, diagnose, or treat a medical condition or to maintain your current health status. This includes care that keeps you from going into a hospital or nursing home. It also means the services, supplies, or drugs meet accepted standards of medical practice and that there is no other similar, less expensive service suitable for you.
• You get your care from a network provider. A network provider is a provider who works with CCA One Care. In most cases, the plan will not cover care you get from an out-of-network provider. Chapter 3 has more information about using network and out-of-network providers.
• Some of the services listed in the Benefits Charts are covered only if your care team, doctor, or other network provider gets approval from us first. This is called prior authorization (PA). Covered services that need PA are marked in the Benefits Charts in bold and italic type.
• Some of the services in the Benefits Charts are covered only if you and your care team decide that they are right for you and they are in your Individualized Care Plan (ICP).

(Exhibit 22, p. 6; CCA One Care Member Handbook, 2023, p. 57).

Home modifications

The plan covers modifications to your home if you qualify. The modifications must be designed to ensure your health, welfare and safety or make you more independent in your home. Modifications may include the following:
• ramps
• grab-bars
• widening of doorways
• special systems for medical equipment
For more information, please call Member Services.
Prior Authorization is required.

(Exhibit 23; CCA One Care Member Handbook, 2023, p. 113).

The Commonwealth Care Alliance non-covered benefit medical necessity guideline (MNG #100) states the following in part:

> A non-covered benefit is a service/resource that is not covered by Medicare and/or Medicaid that CCA care teams may consider medically necessary. There are, normally, rare exceptions to the yearly CCA benefit plan for a specific member based on their unique health needs, clinical context, or "story". Such exceptions can be shown or reasonably anticipated to show a clear clinical value to the individual member and to CCA's overall programming for all members. (Exhibit 7, p. 57)
>
> CCA follows applicable Medicare and Medicaid regulations to review prior authorization requests for medical necessity. The Medical Necessity Guideline applies to all CCA Products unless a more expansive and applicable CMS National Coverage Determination, Local Coverage Determination, or state-specific medical necessity guideline exists. (Exhibit 7, p. 57).
>
> Clinical Eligibility:
> A member may be eligible for a non-covered benefit, which may be called a "benefit exception," when CCA is provided a clear determination of need and rationale for how this resource will improve a member's individualized care plan by the member's care provider. A member may receive a specified resource after a careful evaluation, individualized risk assessment, and well documented rationale showing how the benefit may be both reasonable (1) and medically beneficial (2).
> (1) Reasonable-- Of modest or moderate cost outweighed by other
> cost savings or benefits
> (2) Medically beneficial—Of reasonable likelihood to significantly
> improve a member's health and quality of life.
>
> Documentation required for the prior authorization review includes, individual care plan documentation outlining the specific need that would be met by the non-covered

benefit, documented evidence that the resource has clinical value for the identified need, clinical documentation that alternative and covered approaches have been trialed and results of trials, clinical documentation (if relevant) as to why ordinary alternatives are less or ineffective, individualized risk assessment demonstrating the risk of not providing this benefit to the member, anticipated outcome, how the outcome will be measured and evaluated. (Exhibit 7, p. 58). A member is not eligible for a non-covered benefit if it is not determined to be medically necessary.

(Exhibit 7, pp. 57-62; 72).

The Commonwealth Care Alliance medical necessity medical necessity guideline (MNG #045) states the following in part:

> Medical necessity is a term that means health care services or products that a physician would provide to an individual member for the purpose of evaluating, diagnosing, or treating an illness or disease in a manner that is:
> 1. In accordance with generally accepted standards of medical practice
> 2. Clinically appropriate, in terms of type, frequency, extent, site, and duration and considered effective for the member's specific illness or disease
> 3. Not primarily for the convenience of the member, prescribing health care provider, or other health care providers

Commonwealth Care Alliance (CCA) reviews determinations of medical necessity for services based on federal regulations and coverage criteria including National Coverage Determinations and applicable Local Coverage Determinations, applicable state regulations and coverage criteria, Change Healthcare InterQual® criteria, and CCA Medical Necessity Guidelines. In addition to these criteria, CCA Medical Directors evaluate requests for a specific health care service or product based on this Medical Necessity Guideline and in accordance with Medicare and relevant state Medicaid definitions of medical necessity:

1. CMS describes the "reasonable and necessary" standard for medical necessity in the CMS Program Integrity Manual, including that a service is appropriate, including the duration and frequency that is considered appropriate for the item or service, in terms of whether it is: Furnished in accordance with accepted standards of medical practice for the diagnosis or treatment of the patient's condition or to improve the function of a malformed body member; Furnished in a setting appropriate to the patient's medical needs and condition; Ordered and furnished by qualified personnel; One that meets, but does not exceed, the patient's medical need; and at least as beneficial as an existing and available medically appropriate alternative. AND

2. CMS defines medical necessity to only allow Services or Supplies that: are proper and needed for the diagnosis or treatment of your medical condition, are provided for the diagnosis, direct care, and treatment of your medical condition, meet the standards of

good medical practice in the local area, and aren't mainly for the convenience of you or your doctor.

Consistent with all CCA Medical Necessity Guidelines, CCA uses this MNG as a guide in making individualized coverage determinations. Requesting providers are advised that requests for healthcare services or products under this MNG should be accompanied by clear documentation of medical necessity. Supporting documentation should include justification that the request aligns with accepted standards of medical practice including: (1) Credible scientific evidence in reputable, peer-reviewed medical literature; (2) Physician or Health Care Provider Specialty Society Recommendations; and (3) Other relevant factors specific to the member.

(Exhibit 7, pp. 63-64).

CCA covers modifications to a member's home such as ramps, grab-bars, widening of doorways, and special systems for medical equipment, designed to ensure a member's health, welfare and safety or make a member more independent in the home. Prior authorization is required to determine if a member qualifies for such modification. (Exhibit 23; CCA One Care Member Handbook, 2023, p. 113). The home modification examples set forth in the CCA One Care Member Handbook all have to do with addressing a member's functional limitations based on medical conditions be it by making entering and exiting the home easier via a ramp, widening doors to allow for wheelchair access, grab bars to keep a member safe from falling, and systems for medical equipment. The appellant is requesting a fence because he believes it will help his chances of getting his children back from DCF protective services. The appellant is seeking a fence to ensure the safety of the children in the yard, should he be successful in his attempts to re-gain custody. At the hearing, the appellant further argued that he needs a fence because he has been the victim of violent crimes and feels a fence might afford some protection. Health insurance is not a means to cover home security to guard against criminal activity. A home modification, as indicated in the handbook, is to help with making a member more independent in the home. A fence to keep children enclosed in a yard or to guard against criminal activity has nothing to do with the any of the appellant's medical conditions and is not a home modification that would make a member more independent in the home. The fence is not being requested to address the appellant's health, welfare, or safety in his home. [7]

The CCA representative testified that a fence is a non-covered item under CCA guidelines thus the Commonwealth Care Alliance non-covered benefit medical necessity guideline (MNG #100 applies. Such guideline states that a non-covered benefit is a service/resource that is not covered by Medicare and/or Medicaid that CCA care teams may consider medically necessary. These are rare exceptions to the yearly CCA benefit plan for a specific member based on their

[7] The use of the word "safety" here does not mean safety from crime, rather if refers to modifications that would create a more safe home environment for persons whose functional limitations and/or medical conditions might result in falls or other accidents.

unique health needs, clinical context, or "story". Such exceptions can be shown or reasonably anticipated to show a clear clinical value to the individual member. CCA follows applicable Medical and Medicaid regulations to review prior authorization requests for medical necessity.

The MassHealth regulation regarding medical necessity states:

> 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.

(130 CMR 450.204(A)).

Services that are not medically necessary according to the standards of Medicare and MassHealth are not covered by CCA's One Care plan. [redacted] wrote that the appellant told him about the racial violence and fire to his home in 2019 and he believes the fence could be considered medically necessary as it would provide a layer of safety against attacks to the appellant's home[8]. The fence is not being requested to prevent, diagnose, prevent the worsening of, alleviate, correct, or cure **conditions in the appellant** that endanger his life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity. (emphasis added). The appellant is requesting the fence as protection for his children and himself, not to address any of his medical conditions. Accordingly, CCA's denial of the appellant's internal appeal of the denial of his request for coverage for installation of a fence is supported by MassHealth regulations and CCA criteria. The appeal is denied as to this issue.

Generator

The appellant requested an electric generator because he was concerned his electricity would be shut off. The appellant worked with Community Health Worker Christian Castro to obtain electric hardship documentation to be sent to Eversource for utility protection. The appellant's issue with electric hardship was resolved by his new primary care clinician, Caring Health

[8] The letter from [redacted] the appellant's spouse's physician, spoke to the needs of the appellant's spouse and not to the medical needs of the appellant and thus does not support the appellant's request.

Center, as of September 9, 2022, as the new PCP sent the requested documentation to Eversource. There are also protections from utility shut off, especially during winter months.

The appellant testified that when his children were still living with him, the power went out and his autistic child became agitated to the point of injuring himself when his television program went off. The appellant argued that he needs a stationary, fixed generator that turns on immediately so as to avoid another incident where his child might injure himself. The appellant stated that he needs to have a backup generator to get his children back. The appellant's argument as to the need for a generator to get his children back from DCF custody is not persuasive as to the medical necessity for the generator for his own medical needs. Such request is not to address a medical condition or functional limitation of the appellant, but rather is for the benefit of his children. A request made on behalf of someone else would not be covered under the appellant's CCA plan. If the generator is being requested as part of the appellant's efforts to get his children back from DCF custody, then it is not for the appellant's medical benefit and was correctly denied by CCA.

We look first to MassHealth regulations to see if the requested backup generator would be considered durable medical equipment covered by MassHealth.

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).

MassHealth entertains requests for prior authorization for durable medical equipment, only from MassHealth contracted providers. (130 CMR 409.404; 409.405). Further such requests require a prescription and/or letter of medical necessity from a clinician. (130 CMR 409.416).

409.417: Medical Necessity Criteria
(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.

(130 CMR 409.417).

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);…

(J) home or vehicle modifications, including but not limited to, ramps, elevators, or stair lifts; …
(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), (J), (L)).

The requested backup electrical generator is not durable medical equipment for which a contracted MassHealth provider has submitted a request for prior authorization. Further the backup generator is not used primarily and customarily to serve a medical purpose and is generally useful in the absence of disability, illness or injury, thus does not meet the MassHealth definition of durable medical equipment. (see 130 CMR 409.402). Finally, the backup generator cannot reasonably be expected to make a meaningful contribution to the treatment of a member's illness, disability, or injury. The appellant is requesting the generator for convenience in the anticipatory event of a power outage and the generator itself is not medical equipment.

For all the reasons noted, the requested backup generator would not be covered under the MassHealth regulations and thus we look to CCA's One Care Member handbook to determine if the request meets CCA's criteria for coverage.

The CCA One Care Member handbook states in part:

Durable medical equipment (DME), including related supplies, replacement parts, training, modifications and repairs
(For a definition of "Durable medical equipment (DME)," refer to Chapter 12 as well as Chapter 3, Section M of this handbook.)
The following items are examples of DME that are covered:
• wheelchairs
• crutches
• powered mattress systems
• diabetic supplies
• hospital beds ordered by a provider for use in the home
• intravenous (IV) infusion pumps
• speech generating devices
• oxygen equipment and supplies
• nebulizers
• walkers
• canes
• personal emergency response system (PERS) rental
Other DME items may be covered, including environmental aids or assistive/adaptive technology. The plan may also cover you learning how to use, modify, or repair your DME item. Your care team will work with you to decide if these other DME items and services are right for you and will be in your Individualized Care Plan (ICP). We cover all medically necessary DME that Medicare and MassHealth usually pay for. If our supplier in your area does not carry a particular brand or maker, you may ask them if they can special-order it for you. Limits may apply to certain DME.
Prior authorization may be required.

(Exhibit 22, p. 19; CCA One Care Member Handbook, 2023, p. 70).

F. Benefits not covered by CCA One Care, Medicare, or MassHealth
This section tells you what kinds of benefits are excluded by the plan. "Excluded" means that the plan does not pay for these benefits. Medicare and MassHealth will not pay for them, either. The list below describes some services and items that are not covered by the plan under any conditions, and some that are excluded by the plan only in some cases. The plan will not cover the excluded medical benefits listed in this section (or anywhere else in this **Member Handbook**) except under the specific conditions listed. Even if you receive the services at an emergency facility, the plan will not pay for the services. If you think that we should pay for a service that is not covered, you can file an appeal. For information about filing an appeal, refer to Chapter 9.
In addition to any exclusions or limitations described in the Benefits Chart, **the following items and services are not covered by our plan.**
• Services that are not medically necessary according to the standards of Medicare and MassHealth.

(Exhibit 24, p. 1; CCA One Care Member Handbook, 2023, p. 117).

The CCA representative testified that a backup generator is a non-covered item under the CCA One Care program. CCA's non-covered benefit medical necessity guideline, MNG #100, states that a non-covered benefit is a service/resource that is not covered by Medicare and/or Medicaid that CCA care teams may consider medically necessary. There are, normally, rare exceptions to the yearly CCA benefit plan for a specific member based on their unique health needs, clinical context, or "story". Such exceptions can be shown or reasonably anticipated to show a clear clinical value to the individual member. CCA follows applicable Medicare and Medicaid regulations to review prior authorization requests for medical necessity. A member may be eligible for a non-covered benefit, which may be called a "benefit exception," when CCA is provided a clear determination of need and rationale for how this resource will improve a member's individualized care plan by the member's care provider. A member may receive a specified resource after a careful evaluation, individualized risk assessment, and well documented rationale showing how the benefit may be both reasonable, that is, of modest or moderate cost outweighed by other cost savings or benefits, and medically beneficial, that is, it has a reasonable likelihood to significantly improve a member's health and quality of life. Documentation required for the prior authorization review includes, individual care plan documentation outlining the specific need that would be met by the non-covered benefit, documented evidence that the resource has clinical value for the identified need, clinical documentation that alternative and covered approaches have been trialed and results of trials, clinical documentation (if relevant) as to why ordinary alternatives are less or ineffective, individualized risk assessment demonstrating the risk of not providing this benefit to the member, anticipated outcome, how the outcome will be measured and evaluated. A member is not eligible for a non-covered benefit if it is not determined to be medically necessary.

In addition to any exclusions or limitations described in the CCA Benefits Chart, services that are not medically necessary according to the standards of Medicare and MassHealth are not covered by CCA's One Care plan. [redacted] writes that the backup generator could be considered medically necessary for the appellant as it will allow for continuous power to his medical equipment in the instance of a power outage[9]. The generator is not being requested to prevent, diagnose, prevent the worsening of, alleviate, correct, or cure conditions in the appellant that endanger his life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity. The requested generator is not *medically beneficial*, in that is does not have a reasonable likelihood to significantly improve the appellant's health and quality of life. Further the generator is not reasonable in that it is not of modest or moderate cost outweighed by other cost savings or benefits. (emphasis added).

[9] The letter from [redacted], the appellant's spouse's physician, spoke to the needs of the appellant's spouse and not to the medical needs of the appellant and thus does not support the appellant's request.

Concern for a power outage is an anticipatory event and not unique to the appellant's situation. The appellant would have 24 hours of oxygen available in emergency backup tanks and if the outage exceeds 24 hours, the appellant's oxygen vendor can refill his tanks. Further, if a power outage exceeds the life of the backup batteries[10] on the appellant's medically necessary medical equipment, he noted that he can stay with relatives. State run emergency shelters would also be available to him if there was a prolonged power outage. In case of emergency, a hospital stay would be available as a last resort. The appellant had a social hospitalization in the past when his home was damaged by fire. There are less costly alternatives to the purchase of a backup electric generator.

CCA's denial of the appellant's internal appeal of the denial of his request for coverage for a backup generator is supported by MassHealth regulations and CCA criteria. The appeal is denied as to this issue.

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.

Patricia Mullen
Deputy Director
Board of Hearings

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

[10] The CCA representative saw no requests for backup batteries in the CCA system and the appellant is advised to have his medical equipment providers request backup batteries if such are determined to be medically necessary.