Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	DENIED	**Appeal Number:**	2411179
Decision Date:	09/26/2024	**Hearing Date:**	08/20/2024
Hearing Officer:	Sharon Dehmand	**Record Open to:**	09/10/2024

Appearance for Appellant:
[redacted]

Appearance for MassHealth:
Sara Pedone, Optum

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171

APPEAL DECISION

Appeal Decision:	DENIED	**Issue:**	Prior Authorization; Durable Medical Equipment (DME)
Decision Date:	09/26/2024	**Hearing Date:**	08/20/2024
MassHealth's Rep.:	Sara Pedone	**Appellant's Rep.:**	[redacted]
Hearing Location:	Remote	**Aid Pending:**	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated July 12, 2024, MassHealth modified and approved the appellant's prior authorization request for a Cubby Basic Bed but denied the technology hub because it determined that it was a non-durable medical equipment. See 130 CMR 450.204; 130 CMR 409.000, et seq.; and Exhibit 1. The appellant filed this appeal in a timely manner on July 17, 2024. See 130 CMR 610.015(B) and Exhibit 2. Any MassHealth agency determination regarding scope and amount of assistance is a valid ground for appeal before the Board of Hearings. See 130 CMR 610.032(A)(5).

Action Taken by MassHealth

MassHealth modified and approved the appellant's prior authorization request for a Cubby Basic Bed but denied the technology hub because it determined that it was a non-durable medical equipment.

Issue

Whether MassHealth correctly denied the appellant's prior authorization request for the technology hub because it determined that it was a non-durable medical equipment pursuant to

130 CMR 450.204 and 130 CMR 409.000, et seq.

Summary of Evidence

The hearing was held virtually. MassHealth was represented by a physical therapist from Optum. The appellant appeared pro se on behalf of her child, verified her identity, and participated telephonically due to some technological problems. The following is a summary of the testimonies and evidence provided at the hearing:

The MassHealth representative testified that a Cubby Basic Bed was approved by MassHealth on July 12, 2024, because of the reasons set forth in the submitted doctor's letter dated April 24, 2024. She added that the appellant was first diagnosed in January 2024, with significant insomnia and self-injurious behavior posing significant risk to himself and others. The bed was deemed medically necessary for the member's safety and good sleep hygiene. The MassHealth representative stated that MassHealth denied the appellant's request for the technology hub which costs an additional $2,111.20 because MassHealth does not pay for non-durable medical equipment (DME) per 130 CMR 409.414(L). See Exhibit 5, p.11. She said that the technology hub which includes an IOS/Android application connection, camera with night vision, motion and sound detection, Carbon Monoxide detector, circadian light, and speaker with preloaded meditative sounds is not considered DME because it does not fit the definition of DME as defined at 130 CMR 409.402. She said that the technology hub is not used primarily for medical purposes and is generally useful in the absence of illness or disability. She also referred to the Guidelines for Medical Necessity Determination for Hospital Beds and stated that the technology hub is not listed as an item on the hospital bed accessories list. See Exhibit 5, p. 24.

The appellant's mother testified that the technology hub is medically necessary to keep the appellant safe. She said that the technology hub will notify her when the appellant wakes and allows for communication during tantrums to help him return to sleep. She testified that the appellant has eloped from the home in the past. She expressed concern for the appellant's safety during the night, as well as the safety of her two other children due to the appellant's threatening behavior. She said that the zipper on the Cubby Bed will secure the appellant inside the enclosure without the technology hub. However, she expressed concerns about the appellant's safety in the event of a fire if he is locked inside the enclosure.

The appellant testified that according to the Cubby Bed provider, she cannot get the Cubby Bed without the technology hub. The MassHealth representative stated that she believes that this information is inaccurate. The record was left open until September 10, 2024, for the appellant to provide a letter from the Cubby Bed provider corroborating her claim and for MassHealth to respond to the submission. See Exhibit 6.

No additional information was submitted by the appellant. On August 20, 2024, the MassHealth

representative forwarded an email from the Cubby Bed provider which stated that "[t]he Cubby Basic Bed CAN be delivered without the tech[nology] hub." See Exhibit 7, p. 2.

Findings of Fact

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

1. The appellant is a child who was first diagnosed with autism, significant insomnia, and self-injurious behavior in January 2024. (Testimony and Exhibit 5).

2. The appellant has had a history of night-time elopement, playing with dangerous objects, and tantrums that involve aggression or threats against others. Id.

3. The requested bed will provide a controlled environment that supports healthy behaviors to improve sleep hygiene and patient safety. Id.

4. A prior authorization request for a Cubby Basic Bed plus technology hub was submitted on the appellant's behalf. (Testimony).

5. On July 12, 2024, MassHealth approved the Cubby Basic Bed but denied the technology hub because it deemed that it was not a durable medical equipment which was medically necessary. (Testimony and Exhibit 1).

6. The appellant filed this appeal in a timely manner on July 17, 2024. (Exhibit 2).

7. The record was held open for the appellant to submit a letter from the Cubby Bed provider stating that it will not provide the Cubby Basic Bed without the technology hub. (Exhibit 6).

8. The appellant did not make any submissions by the time record closed on September 10, 2024.

9. Through an email on August 20, 2024, the Cubby Bed provider stated that it can deliver a Cubby Basic Bed without the technology hub. (Exhibit 7).

Analysis and Conclusions of Law

Regulations governing durable medical equipment (DME) are found at 130 CMR 409.000. DME is defined as equipment that (1) is used primarily and customarily to serve a medical purpose; (2) is generally not useful in the absence of disability, illness or injury; (3) can withstand repeated use over an extended period; and (4) is appropriate for use in any setting in which normal life activities take place, other than a hospital, nursing facility, ICF/IID, or any setting in which payment is or

could be made under Medicaid inpatient services that includes room and board, except as allowed pursuant to 130 CMR 409.415 and 130 CMR 409.419(C). See 130 CMR 409.402.

Pursuant to 130 CMR 409.427(C), the MassHealth agency may only pay for DME if the equipment is medically necessary. See also 130 CMR 409.407; 130 CMR 409.413(A). Medical necessity is defined in the following manner at 130 CMR 450.204 and applies to all providers, including DME providers:

> (A) A service is medically necessary if
>
> (1) it is reasonably calculated to prevent, diagnose, prevent the worsening of, alleviate, correct, or cure conditions in the member that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity; and
>
> (2) there is no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to the MassHealth agency. Services that are less costly to the MassHealth agency include, but are not limited to, health care reasonably known by the provider, or identified by the MassHealth agency pursuant to a prior-authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007: Potential Sources of Health Care, or 517.007: Utilization of Potential Benefits.
>
> (B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to the MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)
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> (C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.
>
> (D) Additional requirements about the medical necessity of MassHealth services are contained in other MassHealth regulations and medical necessity and coverage guidelines.
>
> (E) Any regulatory or contractual exclusion from payment of experimental or unproven services refers to any service for which there is insufficient authoritative evidence that such service is reasonably calculated to have the effect described in 130 CMR 450.204(A)(1).

Here, MassHealth approved a Cubby Basic Bed including the frame, canopy, safety sheets, and mattress as DME, because it deemed that the bed was medically necessary for the appellant. See Exhibit 1. At issue is MassHealth's denial of the authorization for the technology hub consisting of an IOS/Android application, a camera with night vision, motion and sound detection alerts, circadian light, meditative breathing program, speaker with pre-loaded sounds, and smoke and

carbon monoxide alarm. As such, an examination of regulations relevant to whether the technology hub is a covered DME is required.

Pursuant to 130 CMR 409.413(B), covered DME includes, but is not limited to the following

(1) absorbent products;
(2) ambulatory equipment, such as crutches and canes;
(3) compression devices;
(4) augmentative and alternative communication devices;
(5) enteral and parenteral nutrition;
(6) nutritional supplements;
(7) home infusion equipment and supplies (pharmacy providers with DME specialty only);
(8) glucose monitors and diabetic supplies;
(9) mobility equipment and seating systems;
(10) personal emergency response systems (PERS);
(11) ostomy supplies;
(12) support surfaces;
(13) hospital beds and accessories[1];
(14) patient lifts; and
(15) bath and toilet equipment and supplies (including, but not limited to, commodes, grab bars, and tub benches).

However, not all DME will be covered by MassHealth. The list of non-covered DME is set out in 130 CMR 409.414 as follows:

(A) DME that is experimental or investigational in nature;

(B) DME that is determined by the MassHealth agency not to be medically necessary pursuant to 130 CMR 409.000, and 130 CMR 450.204: Medical Necessity. This includes, but is not limited to, items that:
(1) cannot reasonably be expected to make a meaningful contribution to the treatment of a member's illness, disability, or injury;
(2) are more costly than medically appropriate and feasible alternative pieces of equipment; or

[1] Accessories are defined as products that are used primarily and customarily to modify or enhance the usefulness or functional capability of an item of durable medical equipment and that are generally not useful in the absence of the item of durable medical equipment. See 130 CMR 409.402. Pursuant to 130 CMR 409.413(B)(13), accessories for hospital beds are covered services if medically necessary.

(3) serve the same purpose as DME already in use by the member, with the exception of the devices described in 130 CMR 409.413(D);

(C) the repair of any DME that is not identified as a covered service in Subchapter 6 of the Durable Medical Equipment Manual, the DME and Oxygen Payment and Coverage Guideline Tool or any other guidance issued by the MassHealth agency;

(D) the repair of any equipment where the cost of the repair is equal to or more than the cost of purchasing a replacement;

(E) routine periodic testing, cleaning, regulating, and checking of DME that is owned by the member;

(F) DME that is not of proven quality and dependability, consistent with 130 CMR 409.404(B)(12);

(G) DME furnished through a consignment/stock and bill closet (unless permitted by specific MassHealth guidance, pursuant to 130 CMR 409.405(M));

(H) DME that has not been approved by the federal Food and Drug Administration (FDA) for community use;

(I) evaluation or diagnostic tests conducted by the DME provider to establish the medical need for DME;

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

(K) common household and personal hygiene items generally used by the public including, but not limited to, washcloths, wet wipes, and non-sterile swabs;

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

(M) certain DME provided to members in facilities in accordance with 130 CMR 409.415; and

(N) provider claims for non-covered services under 130 CMR 409.414 for MassHealth members with other insurance, except as otherwise required by law.

Here, MassHealth denied the technology hub because it argued that it is a non-DME item under 130 CMR 409.414(L). The MassHealth representative argued that the technology hub does not fit

the definition of a DME as defined by 130 CMR 409.402 because it is not used primarily for medical purpose and is generally useful in the absence of illness or disability.

As a preliminary matter, I find that the technology hub is not an accessory per 130 CMR 409.402 for the following reasons. The technology hub which is equipped with a camera with night vision, motion and sound detection alerts, circadian light, meditative breathing program, speaker with pre-loaded sounds, and smoke and carbon monoxide alarm is used primarily and customarily to enhance the usefulness of an item of DME, however, it is also generally useful in the absence of the item of DME which is in contradiction with the regulation. See 130 CMR 409.402(accessories are generally **not** useful in the absence of the item of DME). Any caretaker of a young child can benefit from the convenience of this technology hub to be used in monitoring and improving a child's sleep hygiene. Additionally, the fact that the technology hub is offered as an add-on item, separate and distinct from the Cubby Basic Bed is supportive of the assertion that it is generally useful independently from the DME item. To that end, the appellant was unable to produce any supporting document that would show that the Cubby Basic Bed cannot be provided to the appellant without the technology hub. See Craven v. State Ethics Comm'n, 390 Mass. 191, 200 (1983)("[p]roof by a preponderance of the evidence is the standard generally applicable to administrative proceedings"). In fact, in an email on August 20, 2024, the Cubby Bed provider stated that the Cubby Basic Bed can be delivered without the technology hub. Thus, I find that in this case, the technology hub is NOT an accessory per 130 CMR 409.402.

Even if arguendo the technology hub was deemed to be an accessory; accessories are covered services only if they are medically necessary. Medical necessity is defined at 130 CMR 450.204, supra. Here, the appellant's medical provider documented the appellant's medical need for a Cubby Bed. This supportive document centered around the appellant's "night-time elopement from the home, playing with dangerous objects…., and tantrums that involve aggression or threats against others…" See Exhibit 5, p. 12. The appellant's mother testified consistently. She said that this technology is required because it will notify her when the child is awake, so that she can monitor and prevent him from eloping from the home in the middle of the night. She added that she is concerned for the safety of her other two children due to the appellant's threatening behavior. However, she admitted that the enclosure that is part of the Cubby Basic Bed will allow the child to be secured inside the Cubby Bed. Thus, the Cubby Basic Bed itself will alleviate the safety issues raised by the appellant's mother and his provider. See 130 CMR 450.204(A)(2)(MassHealth will only cover medically necessary DME if 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).

Therefore, I find that the technology hub is a non-DME and is not medically necessary in this case. For the foregoing reasons, this appeal is DENIED.

Order for MassHealth

None.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Sharon Dehmand, Esq.
Hearing Officer
Board of Hearings

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