

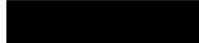
**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Numbers:</b>	2511573, 2511576, 2511581
<b>Decision Date:</b>	11/3/2025	<b>Hearing Date:</b>	09/25/2025
<b>Hearing Officer:</b>	Rebecca Brochstein, BOH Deputy Director	<b>Record Closed:</b>	10/31/2025

**Appearances for Appellant:**



**Appearances for CCA:**

Cassandra Horne, Appeals & Grievances Mgr.



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

# APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Prior Approval
<b>Decision Date:</b>	11/3/2025	<b>Hearing Date:</b>	09/25/2025
<b>CCA's Rep.:</b>	Cassandra Horne	<b>Appellant's Rep:</b>	Pro se
<b>Hearing Location:</b>	Board of Hearings (Telephonic)		

## Authority

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

## Jurisdiction

Through three notices dated April 11, 2025, Commonwealth Care Alliance (CCA) notified the appellant that it had denied his Level 1 appeals regarding his requests for coverage of a yard fence, a whole-house backup generator, and backup batteries for certain medical equipment (Exhibits A1, B1, and C1<sup>1</sup>). The appellant filed timely Level 2 appeals with the Board of Hearings as to each CCA denial (130 CMR 610.015(B); Exhibits A2, B2, and C2). The Board of Hearings initially dismissed all three appeals because the appellant had not signed the hearing request forms, but subsequently vacated the dismissals when the signatures were provided (Exhibits A3, B3, C3). Denial of a request for services is a valid basis for appeal (130 CMR 610.032). A single hearing for the three appeals was held on September 25, 2025; the record was held open until October 31, 2025, for the appellant to submit additional information.

## Action Taken by SCO

CCA denied the appellant's request for coverage of a yard fence, a whole-house backup generator, and backup batteries for certain medical equipment, and then denied his Level 1 appeals of each of those denials.

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<sup>1</sup> For ease of reference, the exhibits from appeal no. 2511573 (yard fence) are marked with the prefix "A"; the exhibits from appeal no. 2511576 (generator) are marked with "B"; and the exhibits from appeal no. 2511581 (batteries) are marked with "C".

## Issue

The appeal issue is whether CCA was correct in denying the appellant's requests for a yard fence, a whole-house backup generator, and backup batteries for medical equipment.

## Summary of Evidence

Commonwealth Care Alliance (CCA) was represented at the telephonic hearing by the CCA Appeals & Grievances Manager. The appellant appeared telephonically on his own behalf and verified his identity; he indicated that his wife, who is his caretaker, was sitting with him but did not speak English and would not testify.<sup>2</sup> Preliminarily, the appellant stated that his medical provider had agreed to appear at the hearing as a witness but had notified the appellant on the morning of the hearing that he was unable to attend (which he had also done at a prior hearing). The appellant also complained that he had received the CCA hearing packets only the day before the hearing and did not have enough time to review them. For these reasons, the appellant requested that the hearing be rescheduled to a later date. The hearing officer denied the request, stating that the appellant could request a record-open period at the close of the hearing so he could further review the records and submit any additional information that he wished.<sup>3</sup>

The records indicate that the appellant is over the age of [REDACTED] and is enrolled in CCA's Senior Care Options (SCO) plan. His diagnoses include chronic pain, obstructive sleep apnea, oxygen dependence, restrictive airway disease, chronic respiratory failure, lumbar degenerative disc disease, incontinence, esophageal dysmotility with gastrostomy tube in place, bilateral hearing loss, complex regional pain syndrome, [REDACTED] depression, anxiety, and post-traumatic stress disorder (PTSD). See Exhibit A6 at 6.

The CCA representative testified that the appellant sought coverage of a yard fence and whole-house backup generator for his home, as well as backup batteries for a variety of medical equipment. The appellant submitted a single medical necessity letter in support of all three requests. The letter, which was signed by [REDACTED] and dated September 9, 2024, states as follows:

I am writing this letter to indicate that all avenues have been exhausted in obtaining for this patient: 1. Yard Safety Fence, 2. Whole House-Auto Back Up Electrical Generator, 3.

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<sup>2</sup> The appellant requested and was given permission to record the hearing for his own use. The hearing officer cautioned the appellant that he could share his recording with an advocate but could not otherwise disseminate it. She emphasized that the Board of Hearings recording is the only official record of the appeal hearing.

<sup>3</sup> Pursuant to 130 CMR 610.048(A)(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** (emphasis added).

Front Entrance Handicap Porch Ramp. 4. Back up battery for: Normatec Compression Sequential Devise [sic], Model #AL-5C1A, 5. Back up battery for: Respironic Ultra Fill Oxygen Condenser. 6. Back up battery for: Respironic Oxygen Concentrator-10-Litter [sic], 7. Back up battery for: Respironic Oxygen Concentrator-5-Litter [sic], 8. Back up battery for: Feeding Tube Pump- Covidien Kangaroo Joey Pump, 9. Back up battery for: RES-MED CPCAP, S-9 Series, 10. Back up battery for: Inogen One Portable Oxygen, Model BA-300.<sup>4</sup>

I have tried to assist [appellant] in obtaining either the ends or the means to obtain the 10 listed pieces of equipment above. I have been unsuccessful, as has the community support specialist team and social workers worker [sic] on this case. (Exhibit A6 at 87)

CCA denied each of these items and upheld the denial in the appellant's Level 1 appeals.

**Yard fence:**

The record indicates that the appellant requested coverage of a fence for his yard on February 26, 2025. The CCA representative testified that the appellant made a similar request that CCA denied in 2023; that denial was upheld by a Board of Hearings decision in April 2024.

On March 12, 2025, CCA denied the request because it is a non-covered benefit and there was no evidence that the fence was reasonable and necessary pursuant to medical necessity guidelines. See Exhibit A6 at 59-68; 99-105. On March 14, 2025, the appellant filed a Level 1 appeal. CCA reviewed the documentation and, on April 10, 2025, upheld the denial. The denial letter states as follows:

The request for a yard fence was denied because it doesn't meet the guidelines used by CCA, which only approves items that are deemed reasonable and necessary. There is no supporting documentation showing that a yard fence is necessary, and CCA does not cover yard fences.

A letter of medical necessity and a prescription from your PCP were submitted, but there was no explanation of how a fence would benefit you. As per the guidelines, this request remains a non-covered benefit and not medically necessary. (Exhibit A6 at 108-116)

The CCA representative testified that CCA considered all the relevant regulations and guidelines for medical necessity. She emphasized that requested services need to meet the needs of the member and must be ordered and furnished by medical personnel. She testified that CCA found no evidence that the yard fence is to be used to treat a medical condition.

The appellant testified that the fence is medically necessary as a security measure, stating that

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<sup>4</sup> The request for the porch ramp (item no. 3) is not part of this appeal.

he has received death threats and had his house burned down in a hate crime. He testified that he is an activist in the community and that many people hate him because of his ethnicity. He testified that he is bedbound due to his many medical issues and would not be able to get up and run away if he were attacked in his home. He argued that the anxiety and worry he feels over “who will come after them” makes the fence medically necessary for him. The appellant also testified that he has three autistic children, one of whom is nonverbal and has run away from the home. He indicated that the children are not living with him because the home is not safe for them, and he has not seen them in four years— which he stated is the direct result of CCA’s denials. He testified that having his children around would be like “medicine” to him. He argued that his PCP has said the fence is medically necessary and suggested that the CCA medical director has a conflict of interest and does not know all the details of his case.

The appellant argued that under Medicaid guidelines, CCA is required to intervene to assist those who are poor, physically disabled, and have legal issues. He claimed that he should be provided with legal assistance under the “medical-legal partnership.” He complained repeatedly that CCA is engaging in a “conspiracy of inaction and indifference.”

**Backup generator:**

The appellant requested coverage of a whole-house backup generator in March 2025. The CCA representative testified that CCA denied a similar request in 2023 and that the Board of Hearings upheld the denial in April 2024 (as part of the same decision that addressed the fence).

On March 12, 2025, CCA denied the request because it is a non-covered benefit and there was no evidence that the generator was reasonable and necessary pursuant to its medical necessity guidelines. See Exhibit B6 at 58-67; 98-104. On March 14, 2025, the appellant filed a Level 1 appeal. CCA reviewed the documentation and, on April 10, 2025, upheld the denial. The denial letter states as follows:

The request for a back-up generator was denied because CCA usually doesn’t cover this item, and after looking at all the documentation provided, there is no proof that a back-up generator is needed. This item is not covered by Medicare. According to Medical Necessity Guidelines used by CCA, the item is not covered, as explained in the Limitations/Exclusions that follow Medicare rules. (Exhibit B6 at 115-122)

The CCA representative testified that the generator is a non-covered benefit and does not meet medical necessity guidelines. She stated that neither the September 2024 letter from the appellant’s PCP nor the prescription offers any rationale as to how the generator would benefit the member.

The appellant testified that there is a big transformer in front of his house and that when it “kicks on” the power to his house can go out. He argued that the generator is medically necessary

because of the risk of losing power at his home.<sup>5</sup> The appellant pointed to the September 2024 letter from his PCP stating that neither the PCP nor the community support specialist team has been successful in obtaining “either the ends or the means” to secure the requested items. See Exhibit B6 at 86. He argued that CCA should be the entity that helps him obtain these items. He contended that it would be more cost-effective for CCA to provide him with what he needs than to pay the bill when he ends up in the hospital.

**Backup batteries:**

The appellant requested coverage of seven backup batteries for medical equipment in March 2025. On March 12, 2025, CCA denied the request because there was no evidence that the requested items were reasonable and necessary pursuant to its medical necessity guidelines. See Exhibit B6 at 58-67; 98-104. On March 14, 2025, the appellant filed a Level 1 appeal. CCA reviewed the documentation and, on April 11, 2025, upheld the denial. The denial letter states as follows:

The request for 7 portable batteries for medical equipment was denied because it doesn't meet the rules for medical necessity. The guidelines say only items that are really needed can be approved, and there is no proof that these portable batteries are necessary.

You asked for backup batteries for different devices, including the Inogen One G3 concentrator, Respiroics 5L and 10L concentrators, Respiroics Ultrafill Station, CPAP-Resmed S9, Normatec compression system, and Kangaroo Joey pump. Some devices already have backup batteries (like the Inogen G), and others, like the Respiroics concentrators, need too much power for a backup battery to work well. Apria, the oxygen supplier, says two tanks last almost 12 hours, and they can give more tanks or bigger ones if needed.

The CPAP Resmed S9 no longer has a backup battery, and it is not a piece of equipment that needs emergency power. The Normatec compression system has its own battery and doesn't need an emergency backup. The Kangaroo Joey pump also has a backup battery and usually runs on AC power, so an extra battery isn't needed. If the power goes out, the backup battery can last long enough for you to move to a safe place. Therefore, the request for backup batteries is not medically necessary according to the guidelines used by CCA. . . . (Exhibit C6 at 111-119)<sup>6</sup>

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<sup>5</sup> He stated that if the generator is approved he does not need the backup batteries he requested for his medical equipment, and vice versa. He emphasized that these requests are interconnected.

<sup>6</sup> CCA's record includes the following notes by the medical director, which offer a bit more detail on the basis for denial of the batteries: “On review of all submitted documentation this member requested back up batteries for the following DME items: Inogen One G3 portable concentrator, Respiroics 5L and 10L concentrators, Respiroics Ultrafill Station, CPAP-Resmed S9, Normatec 2 or 3 (unclear which member has) leg compression system and Kangaroo Joey pump. The oxygen systems are provided with

The CCA representative reiterated the CCA position as to why none of the requested batteries is medically necessary. She added that the appellant should have an emergency evacuation plan in case his home loses power.

The appellant disagreed with CCA's position that the batteries are not medically necessary. He testified that he only uses portable oxygen tanks (which last two hours) because the larger ones (that last 12 hours) are too heavy. He stated that the Normatec compression system backup battery does not last long enough, and, similarly, the Kangaroo Joey battery only works for a couple of hours; he stated that he needs something longer than this in case he loses power. As to the battery that is no longer available, the appellant argued that CCA should work with him to find another one that is suitable. He reiterated that if CCA is not going to approve the backup batteries, then it should provide him with the whole-house backup generator that he has requested.

Separately, the appellant also expressed dissatisfaction with his primary care provider group, which he described as ill-equipped to handle the severity of his medical condition.<sup>7</sup> He also requested that the Board of Hearings send the PCP a subpoena demanding the specific information needed for approval of these prior authorization requests, stating that the PCP will not comply otherwise. The hearing officer denied this request at hearing.

At the close of the hearing, the hearing officer renewed the offer to hold the record open for the appellant to submit additional information. The appellant asked if the hearing officer could make a preliminary determination as to whether the appeal could be approved based on the information already in evidence and, if not, to notify the appellant that he could submit additional evidence. The hearing officer responded that BOH regulations do not allow for interlocutory decisions but stated that the record would be held open until October 31, 2025, for any additional documentation that the appellant would like to submit. No further

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a back up battery (Inogen G) or a battery back up would be unpractical and unrealistic as the power draw is too high (Respironics 5L and 10L concentrators and Respironics Ultrafill Station). According to Apria, who supply this member with his oxygen, two tanks last just under 12 hours. More than 2 tanks can be provided on request and/or larger M-tanks could be provided. For the CPAP - Resmed S9 the backup battery is discontinued. Additionally CPAP is not a critical piece of DME that requires emergency power. The Normatec compression system has its own battery and even so is not considered a critical piece of DME that would need emergency backup. The Kangaroo Joey comes with a backup battery and is normally run on AC power via a wall outlet. A second back up battery is not reasonable or necessary. If the power does go out the back up battery could be used until the member can move to a safe location. The AGRN emphasized that this member should have an emergency evacuation plan in place to ensure safety. As such the request for back up batteries is not medically necessary per MNG #45."

<sup>7</sup> The appellant requested that he be allowed to switch from his current PCP to a CCA PCP. The CCA representative stated that she would put in that request for him.

information was received by that date.<sup>8</sup>

### Findings of Fact

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

1. The appellant, who is over the age of [REDACTED] is a MassHealth member who is enrolled in the Commonwealth Care Alliance SCO plan.
2. The appellant's diagnoses include chronic pain, obstructive sleep apnea, oxygen dependence, restrictive airway disease, chronic respiratory failure, lumbar degenerative disc disease, incontinence, esophageal dysmotility with gastrostomy tube in place, bilateral hearing loss, complex regional pain syndrome, [REDACTED] depression, anxiety, and PTSD.
3. The appellant filed prior authorization requests with CCA seeking coverage of a yard fence and whole-house backup generator for his home, as well as backup batteries for a variety of medical equipment.
4. The appellant submitted a single letter of medical necessity from his PCP for all three requests (plus a request for a porch ramp that is not part of this appeal). The letter detailed the requested equipment and stated as follows: "I have tried to assist [appellant] in obtaining either the ends or the means to obtain the 10 listed pieces of equipment above. I have been unsuccessful, as has the community support specialist team and social workers worker [sic] on this case." The letter does not state that any of the items requested are medically necessary or describe how they would benefit the appellant.
5. The appellant requested CCA coverage for a yard fence on February 26, 2025.
  - a. The appellant made a similar request for a yard fence that CCA denied in 2023. The Board of Hearings upheld the denial by a decision in April 2024.
  - b. On March 12, 2025, CCA denied the current request because it is a non-covered benefit and there was no evidence that the fence was reasonable and necessary pursuant to medical necessity guidelines.
  - c. On March 14, 2025, the appellant filed a Level 1 appeal of the denial.
  - d. On April 10, 2025, CCA upheld the denial on the basis that it is a non-covered service, there was no evidence that it was medically necessary, and there was no information in the provider's submission to explain how the fence would benefit

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<sup>8</sup> The appellant called the Board of Hearings on October 31, 2025, to request an extension of the record-open period. The request was denied.

the appellant.

- e. On April 11, 2025, the appellant filed a Level 2 appeal with the Board of Hearings.
  - f. The appellant wants the yard fence to protect his home from potential intruders who seek to harm him due to prejudice or dislike of his activism in the community. Additionally, he believes having a fence as a safety measure will help him regain custody of his children.
  - g. The yard fence is not related to the appellant's health and would not directly address or benefit any of his health conditions.
  - h. The yard fence is not durable medical equipment.
6. The appellant requested CCA coverage for a whole-house backup generator in March 2025.
- a. The appellant made a similar request for a generator that CCA denied in 2023. The Board of Hearings upheld the denial by a decision in April 2024.
  - b. On March 12, 2025, CCA denied the request because it is a non-covered benefit and there was no evidence that the generator was reasonable and necessary pursuant to its medical necessity guidelines.
  - c. On March 14, 2025, the appellant filed a Level 1 appeal of the CCA denial.
  - d. On April 10, 2025, CCA upheld the denial on the basis that the item is not covered and there is no evidence that it is necessary.
  - e. The appellant seeks approval of the backup generator in case his house loses power.
  - f. The appellant has battery backups or other less-costly alternatives available to him in the even of a temporary electrical outage.
  - g. The backup generator is not durable medical equipment.
7. The appellant requested CCA coverage for backup batteries for a variety of medical equipment in March 2025. The specific equipment for which batteries were requested was the Inogen One G3 portable concentrator; Respironics 5L and 10L oxygen concentrators; Respironics Ultrafill Station; Resmed S9 CPAP machine; Normatec 2 or 3 leg compression system; and Kangaroo Joey feeding pump.
- a. On March 12, 2025, CCA denied the request because there was no evidence that

the requested items were reasonable and necessary pursuant to its medical necessity guidelines.

- b. On March 14, 2025, the appellant filed a Level 1 appeal of the denial.
- c. On April 11, 2025, CCA upheld the denial on the basis that the requested backup batteries are not necessary.
- d. The Inogen One G3 portable concentrator comes with a backup battery.
- e. The power draw for the Respironics 5L and 10L oxygen concentrators and the Respironics Ultrafill Station is too high for a battery backup.
- f. The appellant has access to oxygen tanks, which do not require electricity to operate. According to the oxygen supplier, two tanks last just under 12 hours, and more than two tanks (or larger tanks) can be provided on request.
- g. The backup battery for the Resmed S9 CPAP machine has been discontinued. A CPAP machine is not considered critical durable medical equipment that requires emergency power backup.
- h. The Normatec compression system has its own battery. It is not considered critical durable medical equipment that requires emergency power backup.
- i. The Kangaroo Joey feeding pump comes with a backup battery. If the power goes out the backup battery can be used until the appellant can move to a safe location.

### **Analysis and Conclusions of Law**

Under 130 CMR 508.010, MassHealth members who are enrolled in MassHealth-contracted managed care plans are entitled to a fair hearing under 130 CMR 610.000: *MassHealth: Fair Hearing Rules* to appeal:

(A) the MassHealth agency's determination that the MassHealth member is required to enroll with a MassHealth managed care provider under 130 CMR 508.001;

(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;

(C) the MassHealth agency's disenrollment of a member under 130 CMR 508.003(D)(1), (D)(2)(a), or (D)(2)(b), or discharge of a member from a SCO under 130 CMR 508.008(E);  
or

(D) the MassHealth agency's determination that the requirements for a member transfer under 130 CMR 508.003(C)(3) have not been met.

The Fair Hearing regulations at 130 CMR 610.032(B) describe in greater detail the bases for appeal:

(B) Members enrolled in a managed care contractor have a right to request a fair hearing for any of the following actions or inactions by the managed care contractor, provided the member has exhausted all remedies available through the managed care contractor's internal appeals process (except where a member is notified by the managed care contractor that exhaustion is unnecessary):

(1) failure to provide services in a timely manner, as defined in the information on access standards provided to members enrolled with the managed care contractor;

(2) a decision to deny or provide limited authorization of a requested service, including the type or level of service, including determinations based on the type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit;

(3) a decision to reduce, suspend, or terminate a previous authorization for a service;

(4) a denial, in whole or in part, of payment for a service where coverage of the requested service is at issue, provided that procedural denials for services do not constitute appealable actions. Notwithstanding the foregoing, members have the right to request a fair hearing where there is a factual dispute over whether a procedural error occurred. Procedural denials include, but are not limited to, denials based on the following: (a) failure to follow prior-authorization procedures; (b) failure to follow referral rules; and (c) failure to file a timely claim;

(5) failure to act within the time frames for resolution of an internal appeal as described in 130 CMR 508.012: *Time Limits for Resolving Internal Appeals*;

(6) a decision by a managed care contractor (except a behavioral health contractor) to deny a request by a member who resides in a rural service area served by only one managed care contractor (except the behavioral health contractor) to exercise his or her right to obtain services outside the managed care contractor's network under the following circumstances, pursuant to 42 CFR 438.52(b)(2)(ii):

(a) the member is unable to obtain the same service or to access a provider with the same type of training, experience, and specialization within the managed care contractor's network;

(b) the provider from whom the member seeks service, is the main source of service to the member, except that member will have no right to obtain services from a provider outside the managed care contractor's network if the managed care contractor gave the provider the opportunity to participate in the managed care contractor's network under the same requirements for participation applicable to other providers and the provider chose not to join the network or did not meet the necessary requirements to join the network;

(c) the only provider available to the member in the managed care contractor's network does not, because of moral or religious objections, provide the service the member seeks; or

(d) the member's primary care provider or other provider determines that the member needs related services and that the member would be subjected to unnecessary risk if he or she received those services separately and not all of the related services are available within the managed care contractor's network; or

(7) failure to act within the time frames for making service authorization decisions, as described in the information on service authorization decisions provided to members enrolled with the managed care contractor.

In this case, Commonwealth Care Alliance denied several items for which the appellant sought coverage under the Senior Care Options plan. See 130 CMR 610.032(B)(2). The basis of the denials was that the items did not meet medical necessity criteria. Under 130 CMR 450.204, the "MassHealth agency does not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary." The regulation defines medical necessity as follows:

(A) A service is medically necessary if

(1) it is reasonably calculated to prevent, diagnose, prevent the worsening of, alleviate, correct, or cure conditions in the member that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity; and

(2) there is no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more

conservative or less costly to the MassHealth agency. Services that are less costly to the MassHealth agency include, but are not limited to, health care reasonably known by the provider, or identified by the MassHealth agency pursuant to a prior-authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007: Potential Sources of Health Care, or 517.007: Utilization of Potential Benefits.

(B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to the MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

(C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

(D) Additional requirements about the medical necessity of MassHealth services are contained in other MassHealth regulations and medical necessity and coverage guidelines.

(E) Any regulatory or contractual exclusion from payment of experimental or unproven services refers to any service for which there is insufficient authoritative evidence that such service is reasonably calculated to have the effect described in 130 CMR 450.204(A)(1).<sup>9</sup>

For MassHealth members who, like the appellant, are enrolled in Commonwealth Care Alliance's SCO plan, the member handbook contains similar language regarding medical necessity:

Your services (including medical care, services, supplies, equipment, and Part B prescription drugs) *must* be medically necessary. Medically necessary means that the services, supplies, or drugs are needed for the prevention, diagnosis, or treatment of your medical condition and meet accepted standards of medical practice. (*2025 Evidence of Coverage for CCA Senior Care Options*, Section 2.1; Exhibit A7 at 64)

CCA sets forth additional details regarding medical necessity requirements in its Medical Necessity Guideline No. 045, which states in relevant part as follows:

Commonwealth Care Alliance 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 Social Security 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 all of the following (1 through 4):

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<sup>9</sup> See also 130 CMR 409.417, *Medical Necessity Criteria* for durable medical equipment.

1. Safe and effective; and
2. Not experimental or investigational; 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; and
3. Appropriate, including the duration, frequency, and cost-effectiveness, that is considered appropriate for the item or service, in terms of whether it is:
  - a. 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
  - b. Furnished in a setting appropriate to the member's medical needs and condition; and
  - c. Ordered and furnished by qualified personnel; and
  - d. One that meets, but does not exceed, the member's medical need; and
  - e. At least as beneficial, comparable in effect/availability/suitability, and no more costly than an existing and available medically appropriate alternative.AND
4. The items and services meet the CMS definition of medically necessary, as defined as healthcare services and supplies, that are:
  - a. Proper and needed for the diagnosis or treatment of the member's medical condition; and
  - b. Provided for the diagnosis, direct care, and treatment of the member's medical condition; and
  - c. Meet the standards of good medical practice in the local area; and
  - d. Not mainly for the convenience of the member, their doctor, or their healthcare professional designee. (Exhibit A6 at 100)<sup>10</sup>

The regulations pertaining to MassHealth's coverage of durable medical equipment (DME) are found at 130 CMR 409.000 et seq. Under 130 CMR 409.414(L), MassHealth does not pay for products that are not considered DME. DME is defined at 130 CMR 409.402 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).

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<sup>10</sup> CCA's Medical Necessity Guideline No. 045, under the heading "Disclaimer," states that the criteria contained in the guideline are not a "rigid rule" and suggests that exceptions are possible. However, it also states that any requests outside the criteria should still "be accompanied by clear and convincing documentation of medical necessity." See Exhibit A6 at 101-102.

This appeal concerns CCA's denial of the appellant's request for coverage of a yard fence, a whole-house backup generator, and battery backups for certain durable medical equipment. After Level 1 internal appeals of each denial, CCA again denied the requests and the appellant now seeks relief at the Board of Hearings.

**Yard fence:**

CCA denied the appellant's request for coverage of a fence for the yard around his home. The basis of the denial is that the fence is a non-covered benefit and there was no evidence that it was reasonable and necessary. CCA denied a similar request two years ago, and that denial was upheld on appeal.

CCA's denial is supported by the MassHealth medical necessity regulations as well as CCA's own guidelines. The appellant stated that he seeks the fence as a home security measure, both to defend his home from potential intruders and to provide additional protection for his children (who do not currently live with him). CCA argued convincingly that the fence is not a covered service and is not related to the appellant's own health needs.<sup>11</sup> Notably, the provider's letter in support of the request for the fence (as well as the other items) does not contend that the item is medically necessary; rather, it states only that the appellant has found no other means of obtaining or paying for it.<sup>12</sup>

There is no evidence that the yard fence is, as required by the MassHealth regulations, "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." See 130 CMR 450.204(A)(1).<sup>13</sup> Similarly, it does not meet the CCA requirement that the requested item or

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<sup>11</sup> The appellant's suggestion that having a fence around his yard would be beneficial to his mental health is not persuasive, as it is too tenuous a connection to the medical necessity requirements and lacks adequate support in the record.

<sup>12</sup> The appellant requested that the Board of Hearings issue a subpoena to the provider who wrote the letter, directing him to submit "the exact information that CCA is requesting" for each of the items at issue in this appeal. Under 130 CMR 610.052(B), "[a]ny 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)** [pertaining to the powers of the hearing officer], BOH allows such request, a subpoena will be issued within three business days of receipt of such request" (emphasis added). The appellant is asking BOH to subpoena *his own provider* and mandate that he tailor a letter of medical necessity to fit CCA's criteria. This is not an appropriate use of the hearing officer's subpoena power.

<sup>13</sup> Notably, MassHealth durable medical equipment regulations also explicitly prohibit payment for home

service be “needed for the prevention, diagnosis, or treatment of [appellant’s] medical condition and meet accepted standards of medical practice.” See Exhibit A7 at 6. There is no error in CCA’s denial of the yard fence.

**Backup generator:**

CCA denied the appellant’s request for coverage of a whole-house, backup generator for his home on the basis that it is a non-covered benefit and there is no evidence that it is reasonable and necessary. As with the fence, CCA denied a similar request two years ago, and that denial was upheld by the Board of Hearings on appeal.

CCA’s denial of the generator is supported by the MassHealth regulations as well as CCA’s own guidelines. First, while the backup generator could be used to provide power to other durable medical equipment in the event of a power outage, the generator does not itself satisfy the definition of durable medical equipment: It is not primarily used to serve a medical purpose, and it is in fact useful in the absence of disability, illness, or injury. Accordingly, the generator is not DME and is not covered under MassHealth regulations. See 130 CMR 409.402, 409.414(L).

Second, the generator does not otherwise meet MassHealth or CCA’s medical necessity rules. As noted earlier, the provider’s letter contains no information regarding the medical (or even non-medical) necessity of a backup generator or any of the other requested items. The provider states only that all other avenues of obtaining and paying for the generator have been exhausted. At hearing, the appellant argued that the generator is medically necessary as a backup power source for his medical equipment in case his home loses electricity. However, as noted *infra*, the appellant already has battery backups or other alternatives available to him in the event of a temporary electrical outage. The record does not indicate that power outages are a frequent occurrence in the appellant’s area.

There is no evidence that the generator is, as required by the MassHealth regulations, “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.” See 130 CMR 450.204(A)(1). It also does not meet the CCA requirement that the requested item or service be “needed for the prevention, diagnosis, or treatment of [appellant’s] medical condition and meet accepted standards of medical practice.” See Exhibit A7 at 6; see also CCA’s *Medical Necessity Guideline No. 045* (item must be proper and needed for the diagnosis or treatment of the member’s medical condition; provided for the diagnosis, direct care, and treatment of the member’s medical condition; meet the standards of good medical practice in the local area; and not mainly be for the convenience of the member, their doctor, or their healthcare professional designee). For these reasons, there is no error in CCA’s denial of the backup generator.

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or vehicle modifications. See 130 CMR 409.414(J).

### **Backup batteries:**

CCA denied the appellant's request for coverage of backup batteries for several pieces of durable medical equipment. The basis of the denial is that the batteries do not meet medical necessity guidelines. Specifically, CCA determined that some of the equipment already comes with a backup battery (the Inogen One G3 portable concentrator; the Normatec compression system; and the Kangaroo Joey feeding pump); some has too high a power draw to make a battery backup feasible (the Respiroics 5L and 10L concentrators and the Respiroics Ultrafill Station); some is not considered critical equipment that requires emergency power backup (the Resmed S9 CPAP machine and the Normatec compression system); and one has a battery that has been discontinued (the Resmed S9 CPAP machine).

The appellant has not offered persuasive evidence that CCA's decision was erroneous. The provider's letter does not say anything about the medical necessity of the backup batteries, and there is nothing else in the record that convincingly demonstrates that they are medically necessary. The appellant contended, for example, that the existing battery backups for the compression system and the feeding pump do not last more than a couple of hours. However, as CCA pointed out, the compression system is not critical equipment that requires emergency backup power, and the battery life on the feeding pump is sufficient to allow the appellant to evacuate to another location with power. As to the oxygen concentrators and fill station (which are too powerful for battery backups), CCA noted that the appellant has access to portable oxygen tanks (which do not require electricity) and can request more if needed. With regard to the battery that has been discontinued, CCA argued persuasively that because the equipment in question is a CPAP machine, like the compression system, it is not critical such that it requires emergency backup power.

Here, CCA's denial is supported by the second prong of MassHealth's medical necessity regulation— i.e., that the appellant has failed to demonstrate that “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.” See 130 CMR 450.204(A)(2). Likewise, this request does not satisfy CCA's requirement that the requested item be “one that meets, but does not exceed, the member's medical need,” and “at least as beneficial, comparable in effect/availability/suitability, and no more costly than an existing and available medically appropriate alternative.” See *CCA's Medical Necessity Guideline No. 045*, Exhibit A6 at 100. CCA has demonstrated that there are existing or less-costly available alternatives to each of the batteries that was requested.

For the foregoing reasons, this appeal is denied.

### **Order for MassHealth/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.

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Rebecca Brochstein  
Deputy Director  
Board of Hearings

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