

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2179368
Decision Date:	2/17/2022	Hearing Date:	01/20/2022
Hearing Officer:	Paul C. Moore		

Appellant Representatives:




AllWays Health Partners Representatives:

Richard DelVecchio, manager of appeals and grievances; Christina Joseph, member appeals coordinator; Matt Charbonnier, grievance coordinator; James Hellinger, M.D., medical director; Karen Powell, MassHealth senior contract manager (all with Allways Health Partners, and all by telephone; Ms. Powell observing only)



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

APPEAL DECISION

Appeal Decision:	Denied	Issue:	MCO; Medical Necessity
Decision Date:	2/17/2022	Hearing Date:	01/20/2022
Allways Health Partners Reps.:	Dr. Hellinger et al.	Appellant Reps.:	
Hearing Location:	Board of Hearings (remote)		

Authority

This hearing was conducted pursuant to Massachusetts General Laws (“M.G.L.”) Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated December 2, 2021, AllWays Health Partners (AllWays), a Managed Care Organization (MCO) contracted with MassHealth, denied the appellant’s level one internal appeal of a denial of prior authorization (PA) for a bilateral mastopexy and breast augmentation (Exhibit 1). The appellant filed a timely external appeal with the Board of Hearings (BOH) on December 12, 2021 (130 CMR 610.015(B)(7); Exhibit 2).

Denial of a service by a MCO is grounds for appeal to the BOH (130 CMR 610.032(B)).¹

Action Taken by MCO

AllWays denied the appellant’s level one appeal of a denial of the appellant’s PA request for a bilateral mastopexy and breast augmentation due to a lack of medical necessity.

¹ A managed care organization (MCO) is defined at 130 CMR 501.001 as “any entity with which the MassHealth agency contracts under its MCO program to provide, arrange for, and coordinate care and certain other medical services to members on a capitated basis, and is approved by the Massachusetts Division of Insurance as a health-maintenance organization (HMO) and is organized primarily for the purpose of providing health care services.”

Issue

Was the MCO correct in denying the appellant's level one appeal of a PA request denial for a bilateral mastopexy and breast augmentation due to a lack of medical necessity?

Summary of Evidence

AllWays was represented at hearing by an appeals and grievances manager, a member appeals coordinator, a grievance coordinator, and a medical director, all of whom testified by telephone. The AllWays medical director, who is Board-certified in internal medicine and infectious diseases, testified that a plastic surgeon, Dr. Guo, submitted a PA request to AllWays on the appellant's behalf seeking approval of a bilateral mastopexy procedure (CPT code 19316) and breast augmentation (CPT code 19325).² On October 27, 2021, AllWays issued a denial letter to the appellant and to Dr. Guo, which states in relevant part:

Per clinical information submitted by the requesting provider, Dr. Guo, AllWays. . . received a request for Suspension of Breast; Breast Augmentation with Implant for dates of service October 29, 2021 through January 27, 2022. You are a 52-year old female with a history of gastric bypass surgery who lost over 100 pounds and have residual loose skin. You have had multiple body contouring and skin removal procedures. Your breast tissue hangs over your abdomen and you get recurrent fungal infections in the area underneath your breasts.

The request was reviewed against the following medical/policy criteria; Criteria Product: CP: Procedures Criteria Subset: Breast Reconstruction. . . Based upon the clinical information provided, the request does not meet medical necessity guidelines in this criteria (*sic*).

This request cannot be approved as mastopexy (suspension of breast) is only covered for the following conditions:

1. Reconstruction post mastectomy or lumpectomy for breast cancer patient
2. Congenital disorder or condition causing severe breast disfigurement
3. Reconstruction for severe breast disfigurement secondary to trauma or radiation

Additionally, breast augmentation with implants is only covered for the conditions stated above and for gender affirmation surgery.

You do not have any of the qualifying diagnoses or medical history that would meet benefit criteria. Therefore, this request will be denied.

² AllWays did not specify the date the PA request was received.

(Exh. 4, pp. 8-9)

According to the testimony of the AllWays member appeals coordinator, following this denial, the appellant requested a level one appeal via correspondence, which AllWays received on November 3, 2021. On November 9, 2021, the case was referred to Dr. Hellinger for medical review. Next, on November 15, 2021, Dr. Hellinger sent the matter to an external entity, Medical Review Institute of America, LLC (“MRIoA”) for additional review. In particular, the matter was referred to Aaron Stone, M.D. with MRIoA, who is Board-certified in plastic surgery. According to a consultation note from Dr. Stone, he reached out to Dr. Guo by telephone for a peer-to-peer consultation on two occasions, but they were not able to connect. Dr. Stone documented, in a November 22, 2021 letter, that he had reviewed the appellant’s file, including medical records and photos of her breasts, and concluded that “the breast reconstructive surgery is not medically necessary per the medical policy.” (Exh. 4, pp. 135-141). In addition, Dr. Stone documented that 2021 InterQual criteria applicable to Breast Reconstruction, *to wit*, reconstruction at time of partial mastectomy or partial lumpectomy, or delayed reconstruction following cancer and/or benign disease diagnoses, are not met for the appellant (*Id.*).

On December 2, 2021, AllWays sent a letter to the appellant denying her level one internal appeal, stating as follows:

AllWays Health Partners has completed the review of your appeal on November 22, 2021, regarding bilateral mastopexy. Upon review of the information provided, we are unable to approve your request. An MD specializing in plastic surgery working as a reviewer for [MRIoA] conducted the review.

(Exh. 1)

The December 2, 2021 denial notice also advised the appellant of her right to pursue an independent external appeal with the BOH (*Id.*). The appellant filed the instant appeal with the BOH on December 12, 2021 (Exh. 2).

Dr. Hellinger, with AllWays, testified that CPT code 19316, request by Dr. Guo, corresponds with mastopexy, which is surgical reconstruction and repair of breasts following breast cancer-related surgery, or in the presence of severe chest deformity, or breast trauma; it is not generally authorized due to the natural aging process. Also, Dr. Hellinger indicated that CPT code 19325, also requested by Dr. Guo, corresponds with breast augmentation with implant and prosthetics, and is generally for improving appearance or “cosmetics.” He asserted that if authorized for the appellant, the latter procedure would not address her inframammary intertrigo, the rashes under her breasts (Testimony).³

The appellant testified that she underwent bariatric surgery in 2017, after which she lost 212 lbs. Prior to this surgery, she had both hypertension and hyperlipidemia, but she no longer has these

³ This conclusion was also reached by Dr. Stone with MRIoA. *See*, Exh. 4, p. 137.

conditions. She had a lot of excess, hanging skin on her lower abdomen following her weight loss, and AllWays approved a “tummy tuck” surgery, or a panniculectomy, for the appellant about two years ago. In addition, she had excess, hanging skin on her arms, and AllWays approved brachioplasty procedures on both arms about one and one-half years ago. The appellant explained that under both breasts, she has excess, hanging skin with chronic fungal rashes (twenty-two to twenty-three days per month), which have become infected at times, causing her severe pain. Sometimes the rashes open up and bleed. She finds it too painful to wear a bra, and often needs to hold up her breasts using her forearms. Her primary care physician has prescribed Nystatin powder and cream, and Kenalog cream, to treat the rashes, with modest success. Dr. Torro has recommended Tylenol for the appellant’s pain, and has prescribed oxycodone as well. The rashes under her breasts began about four months after her bariatric surgery, according to the appellant (Testimony).

The appellant testified that had she known that her bariatric surgery would have resulted in excess, hanging skin under her breasts with chronic rashes, she would never have undergone the surgery. She stated that sometimes she would like to take a kitchen knife and cut off her breasts.⁴

The appellant’s primary care physician, John Torro, M.D., testified by telephone on the appellant’s behalf. He indicated that he has been her primary care physician for about seven years, and that following her bariatric surgery, she had excess skin and skin folds; in 2018, he saw her a number of times for treatment of fungal infections under her breasts. He asserted that these infections are chronic, resulting in reddened skin, and are very painful for the appellant. He also asserted that he is concerned that these infections could become blood infections, possibly leading to hospitalization and even death. Dr. Torro stated that he is not aware of the appellant being hospitalized recently. He also asserted that the requested procedures are not cosmetic in nature, but are instead medically necessary to prevent more severe infections in the appellant (Testimony).

Within the exhibit package submitted by AllWays in advance of hearing, which the hearing officer marked collectively as exhibit 4, is a letter from Dr. Torro about the appellant, dated November 8, 2021, which states in pertinent part:

I saw [the appellant] in the office today. Please accept this letter as evidence that [the appellant] has repeated candida intertrigo infections underneath her breasts. Sometimes these infections become severe and can lead to more severe infections such as bacterial cellulitis or even sepsis. For this reason, I feel that it is medically necessary that this excess breast tissue be removed, not for cosmetic purposes, rather to avoid a potentially life-threatening infection.

(Exh. 4, p. 103)

Also within exhibit 4, AllWays included a copy of its “Medical Policy Breast Surgeries” (Exh. 4,

⁴ In light of this comment, the hearing officer requested that AllWays arrange for the appellant to receive a call from a nurse case manager, and also suggested to the appellant that she reach out to a behavioral health specialist contracted with AllWays.

pp. 103-119).⁵ The policy notes that “mastopexy” may be covered with prior authorization, and also reflects that “prior authorization is required for all breast reduction and reconstruction surgeries. . . .” (*Id.*, p. 103). The policy covers mastopexy and breast reconstruction surgery related to breast cancer treatment (Exh. 4, pp. 103-104). The policy further indicates:

Breast Reconstruction Related to Other Medical Conditions (photo documentation is required)

AllWays. . . covers medically necessary breast reconstruction surgery including but not limited to augmentation, reduction mammoplasty, and mastopexy in the following instances:

1. For treatment of a member with
 - a. Severe disfigurement due to congenital chest wall deformities causing functional impairments such as in Poland syndrome; OR
 - b. Repair of severe breast asymmetry due to acute trauma

(Exh. 4, p. 105) (bolded in original)⁶

Dr. Hellinger, with AllWays, stated that the requesting provider, Dr. Guo, submitted procedure codes that are primarily cosmetic in nature, and opined that there may be other codes corresponding with medically indicated, non-cosmetic procedures that might more appropriately be requested on the appellant’s behalf. He pointed out that in Dr. Stone’s consultation note, the latter refers to photos of the appellant’s breasts as manifesting “grade 3 ptotic deflated breasts,” which essentially means sagging (Testimony, Exh. 4, pp. 135-141).

In response to a question from Dr. Hellinger, the appellant testified that prior to her bariatric surgery, she used Nystatin powder on her thighs. Following the surgery, as her skin laxity worsened and rashes developed, she also began using Nystatin under her breasts (Testimony).

Findings of Fact

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

1. The appellant is under age 65 and is enrolled in AllWays Health partners, a MassHealth MCO (Testimony, Exh. 4).
2. In 2017, the appellant underwent bariatric surgery, after which she experienced a dramatic weight loss (*Id.*).

⁵ This policy appears to be effective in December, 2020 (Exh. 4).

⁶ The policy also states that “mastopexy for breast reconstruction unless it is for cancer-related mastectomy/lumpectomy or severe deformity due to Poland’s syndrome or breast trauma” is excluded from coverage (Exh. 4, p. 107).

3. The appellant developed excess, hanging skin under her breasts, on her arms, and on her abdomen following her surgery (*Id.*).
4. The appellant underwent “tummy tuck” surgery, or a panniculectomy, about two years ago (*Id.*).
5. The appellant had brachioplasty procedures on both of her arms about one and one-half years ago (*Id.*).
6. In October, 2021, Dr. Guo, a plastic surgeon, submitted a PA request to AllWays on the appellant’s behalf seeking approval of a bilateral mastopexy procedure (CPT code 19316) and breast augmentation (CPT code 19325) (*Id.*).
7. On October 27, 2021, AllWays issued a denial letter to the appellant and to Dr. Guo, noting that mastopexy (suspension of breast) is only covered for the following conditions: reconstruction post-mastectomy or lumpectomy for breast cancer patient; congenital disorder or condition causing severe breast disfigurement; reconstruction for severe breast disfigurement secondary to trauma or radiation. The denial letter further states that breast augmentation with implants is only covered for the conditions stated above and for gender affirmation surgery (Exh. 4, pp. 8-9).
8. On November 3, 2021, the appellant requested a level one internal appeal of this denial notice (Exh. 4).
9. On November 15, 2021, the AllWays medical director sent the matter to an external entity, MRIOA, for additional review; in particular, the matter was referred to Aaron Stone, M.D., who is Board-certified in plastic surgery (*Id.*).
10. Dr. Stone tried to arrange a peer-to-peer consultation with Dr. Guo, without success (*Id.*).
11. Dr. Stone documented, in a November 22, 2021 letter, that he had reviewed the appellant’s file, including medical records and photos of her breasts, and concluded that ‘the breast reconstructive surgery is not medically necessary per the medical policy’ (Exh. 4, pp. 135-141).
12. Dr. Stone opined in his letter that procedure CPT code 19325, if approved, would not address the appellant’s inframammary intertrigo, the rashes under her breasts (*Id.*).
13. Dr. Stone documented that 2021 InterQual criteria applicable to Breast Reconstruction, *to wit*, reconstruction at time of partial mastectomy or partial lumpectomy, or delayed reconstruction following cancer and/or benign disease diagnoses, are not met for the appellant (*Id.*).

14. On December 2, 2021, AllWays sent a letter to the appellant denying her level one internal appeal, stating as follows: “AllWays Health Partners has completed the review of your appeal on November 22, 2021, regarding bilateral mastopexy. Upon review of the information provided, we are unable to approve your request. An MD specializing in plastic surgery working as a reviewer for [MRIOA] conducted the review” (Exh. 1).
15. The appellant filed a timely external appeal with the BOH on December 12, 2021 (Exh. 2).
16. A letter from the appellant’s primary care physician, Dr. Torro, dated November 8, 2021, states in pertinent part: “I saw [the appellant] in the office today. Please accept this letter as evidence that [the appellant] has repeated candida intertrigo infections underneath her breasts. Sometimes these infections become severe and can lead to more severe infections such as bacterial cellulitis or even sepsis. For this reason, I feel that it is medically necessary that this excess breast tissue be removed, not for cosmetic purposes, rather to avoid a potentially life-threatening infection” (Exh. 4, p. 103).
17. Dr. Torro is not aware of any recent hospitalizations of the appellant (Testimony).
18. The appellant experiences severe pain under her breasts due to chronic fungal rashes, for which Dr. Torro has prescribed Nystatin powder and cream and Kenalog cream, with modest success, and Tylenol or oxycodone to address her pain (Testimony).
19. The AllWays “Medical Policy Breast Surgeries” (December, 2020) states, “AllWays. . . covers medically necessary breast reconstruction surgery with a PA request, including but not limited to augmentation, reduction mammoplasty, and mastopexy in the following instances: For treatment of a member with (a) Severe disfigurement due to congenital chest wall deformities causing functional impairments such as in Poland syndrome; OR (b) Repair of severe breast asymmetry due to acute trauma” (Exh. 4, p. 105).
20. The AllWays policy also covers mastopexy and breast reconstruction surgery related to breast cancer treatment (Exh. 4, pp. 103-104).
21. There is no evidence that the appellant has a history of breast cancer, breast radiation or surgery, breast trauma, or congenital chest wall deformities.

Analysis and Conclusions of Law

Pursuant to regulation 130 CMR 508.001, “MassHealth Member Participation in Managed Care:”

(A) Mandatory Enrollment with a MassHealth Managed Care Provider. MassHealth members who are younger than 65 years old must enroll in a MassHealth managed care provider available for their coverage type. Members described in 130 CMR 508.001(B) or who are excluded from participation in a MassHealth managed care

provider pursuant to 130 CMR 508.002(A) are not required to enroll with a MassHealth managed care provider.

(B) Voluntary Enrollment in a MassHealth Managed Care Provider. The following MassHealth members who are younger than 65 years old may, but are not required to, enroll with a MassHealth managed care provider available for their coverage type:

(1) MassHealth members who are receiving services from DCF or DYS;

(2) MassHealth members who are enrolled in the Kaileigh Mulligan Program, described in 130 CMR 519.007(A): The Kaileigh Mulligan Program. Such members may choose to receive all services on a fee-for-service basis;

(3) MassHealth members who are enrolled in a home- and community-based services waiver. Such members may choose to receive all services on a fee-for-service basis; or

(4) MassHealth members who are receiving Title IV-E adoption assistance as described at 130 CMR 522.003: Adoption Assistance and Foster Care Maintenance. Such members may choose to receive all services on a fee-for-service basis.

...

Next, MassHealth regulation 130 CMR 508.004(B) states as follows:

Obtaining Services when Enrolled in an MCO.

(1) Primary Care Services. When the member selects or is assigned to an MCO, that MCO will deliver the member's primary care, determine if the member needs medical or other specialty care from other providers, and determine referral requirements for such necessary medical services. An MCO may provide a member's primary care through an MCO-administered ACO.

(2) Other Medical Services. All medical services to members enrolled in an MCO (except those services not covered under the MassHealth contract with the MCO, family planning services, and emergency services) are subject to the authorization and referral requirements of the MCO. MassHealth members enrolled in an MCO may receive family planning services from any MassHealth family planning provider and do not need an authorization or referral in order to receive such services. Members enrolled with an MCO should contact their MCO for information about covered services, authorization requirements, and referral requirements.

(Emphases added)

MassHealth regulation 130 CMR 508.010, "Right to a Fair Hearing," states as follows:

Members 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 SCO 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.

(Emphasis added)

The appellant exhausted the internal appeal process offered through her MCO, and thereafter, requested a fair hearing with BOH, to which she is entitled pursuant to the above regulations.

As MassHealth's agent, AllWays is required to follow MassHealth laws and regulations pertaining to a member's care. Under the regulations pertaining to MassHealth MCOs, above, AllWays is empowered to determine if the appellant needs medical or other specialty care from other providers, and determine referral requirements for such necessary medical services.

MassHealth will pay a provider only for those for services that are medically necessary. Pursuant to 130 CMR 450.204(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 MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider, or identified by MassHealth pursuant to a prior authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007, or 517.007.

The MassHealth Guidelines for Medical Necessity Determination for Excision of Excessive Skin and Subcutaneous Tissue, effective in December, 2017, state in pertinent part:

These Guidelines for Medical Necessity Determination (Guidelines) identify the clinical information that MassHealth needs to determine medical necessity for the excision of excessive skin and subcutaneous tissue from the abdomen, thigh, leg, hip, buttock, arm, forearm or hand, submental fat pad, or other area (described by CPT® codes 15830 – 15839). Panniculectomy is a surgical procedure to remove excessive skin and subcutaneous tissue from the abdomen. This excessive abdominal skin and

subcutaneous tissue is called a panniculus. Panniculectomy does not include relocating the umbilicus or tightening of the abdominal muscles (abdominoplasty). Brachioplasty, also known as an arm lift, is a surgical procedure to remove excessive skin and subcutaneous tissue from the upper arm area. Thighplasty, also known as a thigh lift, is a surgical procedure to remove excessive skin and subcutaneous tissue from the thigh. These Guidelines are based on generally accepted standards of practice, review of the medical literature, and federal and state policies and laws applicable to Medicaid programs. **These Guidelines do not address excision of excessive breast tissue, i.e., mastopexy (CPT 19316), reduction mammoplasty (CPT 19318) or mastectomy for gynecomastia (CPT 19300).**

...

(Emphasis added)

The MassHealth Guidelines for Medical Necessity Determination for Excision of Excessive Skin do not explicitly address mastopexy, CPT code 19316. This was one of the codes requested by the appellant. In the absence of specific MassHealth criteria addressing this procedure, the MassHealth general medical necessity regulation, 130 CMR 450.204, controls.

Here, the appellant experienced dramatic weight loss following bariatric surgery, resulting in excess, hanging skin under her breasts. The evidence shows that she has experienced chronic rashes under her breasts, which are painful for the appellant. However, it is not clear that if the appellant were approved for CPT code 19316, breast augmentation with implant and prosthetics, that this would address the underlying rashes. In fact, medical documentation from a consulting plastic surgeon, Dr. Stone, suggests that it would not.

Also, the AllWays policy on breast surgeries clearly covers mastopexy and breast reconstruction surgery (CPT code 19316) related to breast cancer treatment, but the appellant has no such diagnosis. In addition, the AllWays policy reflects that medically necessary breast reconstruction surgery for members is covered with a PA request, for treatment of a member with (a) severe disfigurement due to congenital chest wall deformities causing functional impairments such as in Poland syndrome; OR (b) repair of severe breast asymmetry due to acute trauma. There is no evidence that the appellant has either of these diagnoses.

The CPT codes for which the appellant seeks approval are primarily cosmetic in nature.

This is not to minimize the physical pain and emotional distress the appellant is experiencing due to her chronic rashes, or the risk of her potentially developing a more serious infection. There may, in fact, be other medical procedure codes that are more appropriately requested by the appellant's primary care physician and/or plastic surgeon to address the skin laxity and chronic rashes the appellant has under her breasts. Further, there may be stronger and more effective topical and/or powder medications to address these rashes.

However, based on the published AllWays criteria for breast surgeries, the MassHealth medical necessity regulation at 130 CMR 450.204(A)(1) and (2), and the MassHealth Guidelines for Medical

Necessity Determination for Excision of Excessive Skin and Subcutaneous Tissue, there was no error in the AllWays decision to deny the appellant's level one internal appeal of the denial of PA for a bilateral mastopexy and breast augmentation.

For these reasons, the appeal must be DENIED.

Order for MCO

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.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Richard DelVecchio, Manager of Appeals and Grievances, AllWays Health Partners, 399 Revolution Drive, #820, Somerville, MA 02145

cc: Christina Joseph, Member Appeals Coordinator, AllWays Health Partners, 399 Revolution Drive, #820, Somerville, MA 02145

cc: Karen Powell, Senior Contract Manager, Office of Medicaid, 100 Hancock Street, 8th Floor, Quincy, MA 02171