Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2200297
Decision Date:	6/28/2022	**Hearing Date:**	03/04/2022
Hearing Officer:	Scott Bernard	**Record Open to:**	05/06/2022

Appearance for Appellant:
Pro se via telephone

Appearance for Integrated Care Organization (ICO):
Cassandra Horne (CCA) *via* telephone

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:**	ICO Prior Authorization (PA) Request - Therapeutic Procedures in a Group Setting (Yoga)
Decision Date:	6/28/2022	**Hearing Date:**	03/04/2022
ICO's Rep.:	Cassandra Horne	**Appellant's Rep.:**	*Pro se*
Hearing Location:	Quincy Harbor South		

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 28, 2021, the ICO denied the appellant's Level 1 Appeal concerning her PA request for therapeutic procedures in a group setting because it was not medically necessary. (See 130 CMR 450.204; Exhibit (Ex.) 1). The appellant filed this appeal in a timely manner on January 10, 2022. (See 130 CMR 610.015(B) and Ex. 2). Denial of a PA request by an ICO is a valid ground for appeal. (See 130 CMR 610.032).

The Board of Hearings initially scheduled the hearing for February 23, 2022. (Ex. 3). At the appellant's request and for good cause, the Board rescheduled the hearing to March 4, 2022. (Ex. 4; Ex. 5). At the end of the hearing, at the appellant's request, the hearing was left open until April 4, 2022 for her to submit documentation. (Ex. 7). The ICO was given until April 11, 2022 to respond to any documentation submitted. (Ex. 7; Ex. 8). This was later extended to May 6, 2022, at which time the record closed. (Ex. 9).

Action Taken by the ICO

The ICO denied the appellant's PA request for therapeutic procedures in a group setting.

Issue

The appeal issue is whether the ICO was correct, pursuant to medical necessity guidelines, in determining that the requested service was not medically necessary.

Summary of Evidence

The appellant is an individual under the age of 60. (Ex. 6, p. 2 *et al*). The appellant has been enrolled with the ICO's One Care plan since October 1, 2017. (Ex. 6, p. 9 *et al*). The ICO assessed the appellant on March 8 and September 24, 2021 and based on these assessments determined that the appellant lives alone, walks with a cane and a walker, and needs help with some ADLs. The appellant also receives massage therapy, which the ICO covered. The ICO previously authorized the appellant to receive Personal Care Services to assist her with some activities of daily living (ADLs) and Instrumental ADLs (IADLs).

On November 29, 2021, the appellant submitted a standard PA request to receive "therapeutic procedures in a group setting" from November 15, 2021 through April 30, 2022. The ICO representative stated that the appellant was requesting the ICO cover payment for yoga classes. The stated reason for the medical need for the yoga classes was to treat the appellant's post-traumatic stress disorder (PTSD). (Ex. 6, p. 12). After careful review by one of the ICO's medical directors, the ICO denied the PA request on November 29, 2021. The ICO representative explained that the ICO did not cover yoga classes. Furthermore, the appellant had not independently demonstrated that yoga classes independently met the requirements of the ICO's medical necessity guidelines. (See Ex. 6, pp. 146-148 (Medical Necessity Guideline 045)).

The ICO notified the appellant verbally of the denial on November 29, 2021. The appellant requested a review of the denial on that date stating she was trying to obtain this service as a alternative to surgery. The ICO sent written notice of the denial on November 30, 2022. (Ex. 6, pp. 16-24). The ICO referred the appellant's review request to a second ICO medical director. The medical director agreed with the original determination and the ICO sent the appellant the notice under appeal on December 28, 2021. (Ex. 1; Ex. 6, pp. 154-160).

The ICO representative stated that the appellant lives alone. The appellant can walk without a cane or walker. The appellant needs help for housework and shopping. The appellant also needs supervision for bathing, dressing, and personal hygiene. The appellant goes to massage therapy, which the ICO pays for. The ICO has approved Personal Care services, agency not PCA, to help with these tasks. [1] The ICO representative stated that group yoga is not part of the appellant's ICO coverage. Yoga is considered as part of fitness, and the ICO does not cover fitness. Generally, when members go to yoga classes it is at a fitness center and a fitness center is not a medical provider. The ICO representative stated that in circumstances where the ICO does not generally cover the requested service, the ICO will consider extenuating circumstances to determine whether it will cover the requested services. For that reason, the ICO used its general medical necessity guidelines

[1] The ICO representative indicated that this means that this is a service is similar to but not the same as the MassHealth Personal Care Services program.

to make this determination. (Ex. 6, pp. 146-148). As stated above, the requested yoga services did not meet the requirement of the medical necessity guidelines.

The ICO representative stated that the ICO does cover massage therapy, which the appellant is receiving. The ICO representative stated that the appellant's authorization expired on December 31, 2021, and the ICO did not know if the appellant wanted to submit a new request.

The appellant testified to the following. At some point the appellant woke up with excruciating pain in her back. The appellant stated that she went to the emergency room at Massachusetts General Hospital.[2] MGH sent the appellant to see a doctor and get an MRI, which had on December 6, 2020. The doctor found an intervertebral space and grade one anterolisthesis between discs C6 and C7. A couple months after that the appellant had another MRI that was done with contrast showing the appellant had a pinched nerve. The appellant requested and received water therapy, and physical therapy. This did help but the appellant's PT authorization expired. The appellant confirmed that she is receiving massage.

At some point after the second MRI, the appellant was referred to a neurologist at New England Baptist Hospital. The surgeon was going to do a surgical procedure on the appellant's spine. On the morning of the surgery, the doctors attempted to insert the IV into the appellant's arm. The appellant stated that this caused her such pain that she began screaming loudly. At that point the doctor told the appellant that she was too afraid to work on the appellant's spine because the appellant's pain tolerance was so low, and she was afraid that the surgery would leave the appellant paralyzed.

It was at this point that the surgeon suggested that the appellant do yoga for the stretching. Since it was the summer at that time, the appellant managed to find a free yoga class outside. When the winter came, the appellant wanted to continue yoga classes. That's when her care provider submitted the request to the ICO. The appellant stated she does not take prescribed medications for pain. The appellant did take a number of vitamins and supplements. The appellant argued that it was much less expensive for the ICO to pay for yoga classes than surgery or continued visits to the ER. The appellant stated she needed yoga to alleviate the pinched nerve. The appellant stated that the pinched nerve is not life threatening but it causes her immense pain and loses feeling in her hands. The appellant is concerned that she will become disabled as a result.

The ICO representative stated that the ICO did not make this determination based on relative cost. The appellant stated that she wanted to submit her provider's original prescription for the yoga classes. The ICO representative suggested that the appellant try to get her doctor to write a letter describing in detail that the yoga classes met the definition of medical necessity. For that reason, the appellant was given until April 4, 2022 to submit a letter or letters from one or more of her medical providers showing that the yoga classes were medically necessary. (Ex. 7, p. 1). A copy of 130 CMR 450.204, the MassHealth regulation defining medical necessity, was included with the record open so the appellant could give this to her medical providers to assist them in formulating their letter or letters. (Ex. 7, pp. 2-3). It was arranged that the appellant would have her doctor send this letter to the ICO representative who would then forward a copy to the hearing officer. (Ex. 7, p. 1).

[2] The appellant also stated that she has been to the ER at MGH a total of seven times for her back pain.

On March 30, 2022, the ICO representative forwarded a copy of the letter from the appellant's doctor date March 7, 2022 to the hearing officer by email. (Ex. 8, p. 1). The ICO representative stated that she had forwarded the letter to the ICO's medical director for review and would provide the ICO's response on or before April 11, 2022.

In the letter, the appellant's doctor wrote that the appellant was under his care for multiple musculoskeletal complaint and that yoga could provide multiple benefits for her musculoskeletal conditions. (Ex. 8, p. 2).

The hearing officer did not hear back from the ICO representative by April 11, 2022. On April 26, 2022, the hearing officer emailed the ICO representative requesting the ICO's response to the March 7, 2022 letter from the appellant's doctor. (Ex. 9, p. 1). The ICO representative responded by email on May 6, 2022, stating the following:

> According to the level 1 appeal reviewer the letter of medical necessity was reviewed and the denial reason remains unchanged stating its [sic] not a covered service nor does it meet medical necessity requirements: This patient is self-managing medications and does not have significant issues with completing her activities of daily living or her instrumental activities of daily living. As such, group therapy at this level of service is not appropriate nor in line with medical standards[.] (Id.).

Findings of Fact

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

1. The appellant is an individual under the age of 60. (Ex. 6, p. 2 *et al*; Testimony of the ICO representative).

2. The appellant has been enrolled with the ICO's One Care plan since October 1, 2017. (Ex. 6, p. 9 *et al*; Testimony of the ICO representative).

3. The ICO assessed the appellant on March 8 and September 24, 2021. (Testimony of the ICO representative).

4. The appellant lives alone. (Testimony of the ICO representative).

5. The appellant walks without a cane or a walker. (Testimony of the ICO representative).

6. The appellant requires assistance with housework and shopping. (Testimony of the ICO representative).

7. The appellant also needs supervision for bathing, dressing, and personal hygiene. (Testimony of the ICO representative).

8. The ICO has approved Personal Care services, agency not PCA, to help with these tasks. (Testimony of the ICO representative).

9. The appellant also receives ICO covered massage therapy. (Testimony of the ICO representative).

10. On November 29, 2021, the appellant submitted a standard PA request to receive "therapeutic procedures in a group setting" from November 15, 2021 through April 30, 2022. (Testimony of the ICO representative).

11. The appellant was requesting the ICO cover payment for yoga classes. (Testimony of the ICO representative).

12. The stated reason for the medical need for the yoga classes was to treat the appellant's post-traumatic stress disorder (PTSD). (Testimony of the ICO representative; Ex. 6, p. 12).

13. After careful review by one of the ICO's medical directors, the ICO denied the PA request on November 29, 2021. (Testimony of the ICO representative).

14. The ICO did not cover yoga classes and the appellant had not independently demonstrated that yoga classes independently met the requirements of the ICO's medical necessity guidelines. (Testimony of the ICO representative; Ex. 6, pp. 146-148).

15. The ICO notified the appellant verbally of the denial on November 29, 2021. (Testimony of the ICO representative).

16. The appellant requested a review of the denial on that date stating she was trying to obtain this service as an alternative to surgery. (Testimony of the ICO representative).

17. The ICO sent written notice of the denial on November 30, 2022. (Testimony of the ICO representative; Ex. 6, pp. 16-24).

18. The ICO referred the appellant's review request to a second ICO medical director. (Testimony of the ICO representative).

19. The second medical director agreed with the original determination and the ICO sent the appellant the notice under appeal on December 28, 2021. (Testimony of the ICO representative; Ex. 1; Ex. 6, pp. 154-160).

20. The appellant has intervertebral space and grade one anterolisthesis between discs C6 and C7. (Testimony of the appellant).

21. The appellant's condition causes her pain and yoga helps alleviate the pain. (Testimony of the appellant).

22. The record was kept open to allow the appellant to submit documentation from her doctor of the medical necessity of the yoga classes. (Ex. 7).

23. The appellant submitted a letter from her doctor, who wrote that the appellant was under his care for multiple musculoskeletal complaint and that yoga could provide multiple benefits

for her musculoskeletal conditions. (Ex. 8, p. 2).

Analysis and Conclusions of Law

Unless excluded[3] or subject to certain exceptions[4] that do not apply here, MassHealth members who are younger than 65 years old must enroll in a MassHealth managed care provider available for their coverage type. (130 CMR 508.001(A)). MassHealth managed care options include an integrated care organization (ICO) for MassHealth Standard and CommonHealth members who also meet the requirements for eligibility set forth under 130 CMR 508.007. (130 CMR 450.117(B)(5)). An ICO is 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 and Medicaid Services (CMS) and been designated as an ICO to provide services to dual eligible individuals under M.G.L. c. 118E. (130 CMR 450.101). ICOs are responsible for providing enrolled members with the full continuum of Medicare and MassHealth covered services and for that reason members who participate in an ICO obtain all covered services through the ICO. (130 CMR 450.101; 130 CMR 450.117(B)(5); 130 CMR 508.007(C)).

The record shows that neither MassHealth nor the ICO cover yoga classes. For that reason, the ICO utilized MassHealth and its own guidelines concerning medical necessity. MassHealth's definition of medical necessity is located at 130 CMR 450.204 and states the following, in pertinent part:

> [MassHealth] 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.
>
> (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

[3] See 130 CMR 508.002.
[4] See 130 CMR 508.001(B).

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.)

…

(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).

The ICO's Medical Necessity Guideline 045, states the following:

OVERVIEW:

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

DECISION GUIDELINES:

[The ICO] 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 [the ICO] Medical Necessity Guidelines. In addition to these criteria, [the ICO's] 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 [the ICO] Medical Necessity Guidelines, [the ICO] 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.

Disclaimer:

This Medical Necessity Guideline is not a rigid rule. As with all of [the ICO]'s criteria, the fact that a member does not meet these criteria does not, in and of itself, indicate that no coverage can be issued for these services. Providers are advised, however, that if they request services for any member who they know does not meet our criteria, the request should be accompanied by clear and convincing documentation of medical necessity. The preferred type of documentation is the letter of medical necessity, indicating that a request should be covered either because there is supporting science indicating medical necessity (supporting literature (full text preferred) should be attached to the request), or describing the member's unique clinical circumstances, and describing why this service or supply will be more effective and/or costly than another service which would otherwise be covered. Note that both supporting scientific evidence and a description of the member's unique clinical circumstances will generally be required. (Ex. 6, pp. 146-148).

The appellant has not shown by a preponderance of the evidence that the yoga services requested meet the definition of medically necessary services. The appellant testified that one of her doctors suggested that she attend yoga classes as a way of alleviating her back problems. The appellant testified that she feels that she has benefitted from yoga. The appellant also submitted a letter from her doctor who stated that yoga could provide multiple benefits for her musculoskeletal conditions. None of this constitutes evidence showing that yoga is a treatment for the appellant's medical condition that is in accordance with generally accepted standards of medical practice; clinically appropriate, in terms of type, frequency, extent, site, and duration and considered effective for the member's specific illness or disease; and not primarily for the convenience of the member, prescribing health care provider, or

other health care providers. The ICO's determination denying these services was correct under the circumstances.

For the above stated reasons, the appeal is DENIED.

Order for the ICO

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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

Commonwealth Care Alliance ICO, Attn: Cassandra Horne, 30 Winter Street, Boston, MA 02108