

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2202987

Decision Date: 8/4/2022

Hearing Date: 07/13/2022

Hearing Officer: Patricia Mullen

Appearances for Appellant:

Pro se; [REDACTED], mother; [REDACTED]
[REDACTED], national complex care liaison for
Nexus Hospital

Appearances for ACO:

Kay George, RN, Appeals Nurse; Dr. Hollis
Coblentz, Medical Director



*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:	Out of Network inpatient hospital services
Decision Date:	8/4/2022	Hearing Date:	07/13/2022
ACO's Reps.:	Kay George, RN, Appeals Nurse; Dr. Hollis Coblentz, Medical Director	Appellant's Reps.:	Pro se; mother; national complex care liaison for Nexus Hospital
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 March 25, 2022, Berkshire Fallon Health Collaborative (hereinafter "Fallon"), a MassHealth accountable care organization (ACO), informed the appellant that it had denied her internal appeal of a request for prior authorization for admission to an out of network provider because Fallon determined that the request did not meet Fallon's guidelines or MassHealth regulations. (Exhibits 3, 9; 130 CMR 450.204). The appellant filed this appeal with the Board of Hearings (BOH) in a timely manner on April 19, 2022. (130 CMR 610.015(B)(7) and Exhibit 1). BOH dismissed the appeal by notice dated April 27, 2022 because the appellant did not submit the notice upon which the appeal was based. (Exhibit 2). On May 17, 2022, the appellant submitted Fallon's March 25, 2022 notice and BOH vacated the dismissal. (Exhibits 3, 6). An ACO's denial of a request for prior authorization for admission to an out of network provider is valid grounds for appeal to BOH. (130 CMR 610.032(B)(2)).

Action Taken by ACO

Fallon denied the appellant's request for prior authorization for admission to an out of network provider.

Issue

The appeal issue is whether Fallon was correct, pursuant to its guidelines and 130 CMR 450.204, in determining that the appellant did not meet guidelines for coverage for an out of network provider.

Summary of Evidence

The appellant appeared telephonically at the hearing with her mother (hereinafter "the appellant's representative") and a complex care liaison from the provider hospital (hereinafter "the provider's representative"). Fallon was represented telephonically at the hearing by its Appeals Nurse and its Medical Director.

The appellant is under age 65 and is enrolled in Berkshire Fallon Health Collaborative, a MassHealth ACO. (Testimony). The appellant receives MassHealth Standard as part of her Supplemental Security Income (SSI) benefit. (Exhibit 5). On January 19, 2022, the appellant's provider, Nexus Children's Hospital in Texas, submitted a request for prior authorization to Fallon seeking approval for the appellant to be admitted to the hospital's Jumpstart Health and Wellness program (hereinafter "the Jumpstart program"). (Exhibit 8, p. 5). The appellant's physician reported that the appellant is diagnosed with Prader-Willi syndrome and has had significant weight gain that has increased her dependence on oxygen and affected her ability to breathe substantially; the appellant has a BMI of 84 and she is on BiPAP at night. (Exhibit 8, p. 6). The appellant's physician noted that the appellant is being referred to the Jumpstart program for Prader-Willi syndrome programming in an inpatient setting as well as weight loss management, 24 hour medical management, medication management, neuropsych evaluation and treatment. (Exhibit 8, p. 6). In addition to Prader-Willi syndrome, the appellant is diagnosed with chronic respiratory failure, obstructive sleep apnea, type 2 diabetes, and morbid obesity. (Exhibit 8, p. 9).

By notice dated January 26, 2022, Fallon denied the appellant's request for prior authorization for the admission to Nexus Children's Hospital's Jumpstart program. (Exhibit 8, p. 12). The notice states that Fallon will not pay for this services because Nexus Children's Hospital is an out of network provider, and out of network services are only covered for emergency, post emergency, or urgent care services such as injuries and sudden illnesses. (Exhibit 8, p. 12). Fallon refers the appellant to the covered services listed in Fallon's Member Handbook. (Exhibit 8, p. 13). On February 25, 2022, Nexus Children's Hospital appealed Fallon's denial of the request of coverage for the Jumpstart program. (Exhibit 8, pp. 14, 17). Fallon sought and obtained authorization from the appellant to have Nexus file the internal appeal on her behalf. (Exhibit 8, pp. 17, 91-95).

Fallon's Associate Medical Director and a third party endocrinologist reviewed the appellant's

internal appeal and accompanying medical records. (Exhibit 8, pp. 15, 19-87). Fallon's Appeals Nurse stated that the third party endocrinologist, board certified in endocrinology, diabetes, and metabolism, reviewed the appellant's medical records and spoke with the provider. (Exhibit 8, pp. 88-89). In a Peer Review Report dated March 24, 2022, the endocrinologist reported that the provider was not aware of the appellant having been to any outpatient or inpatient weight loss programs in Massachusetts. (Exhibit 8, p. 88). The endocrinologist noted that the requested program treats patients with Prader-Willi syndrome for their obesity addressing comorbid medical issues and incorporating personalized calorie controlled diets, daily schedules, individualized physical training regimens, and behavioral health supports. (Exhibit 8, p. 88). The endocrinologist stated that he was unable to find any publications showing improved health outcomes and noted that the requested inpatient program has not been proven to lead to a long term health outcome better than alternatives. (Exhibit 8, p. 88). The endocrinologist noted that the standard of care is to treat the appellant with obesity medications, diet, exercise, and possibly weight loss surgery within a weight loss management program and he pointed out that there are weight loss management options available to the appellant in Massachusetts, including New Horizon weight loss program, Mass General Hospital digestive weight center, Brigham and Woman's endocrinology weight management program, and Newton Wellesley Hospital young adult weight management program. (Exhibit 8, p. 89).

By notice dated March 25, 2022, Fallon denied the appellant's internal appeal because the request was made for services from a provider outside of the Berkshire Fallon Health Collaborative service area, and only emergency care and urgent care services are covered for providers outside the service area. (Exhibits 3, 8, p. 15). The appellant timely appealed Fallon's March 25, 2022 notice to BOH. (Exhibits 1, 3).

Fallon's Appeals Nurse testified that the appellant's request for prior authorization was denied based on both the restrictions set forth in the MassHealth Member Handbook for the Berkshire Fallon Health Collaborative (hereinafter "the Member Handbook"), and the MassHealth medical necessity regulation. Fallon's Appeals Nurse testified that Nexus Children's Hospital in Texas is not a participating Fallon provider, nor a MassHealth provider, and is therefore out of network. Fallon's Appeals Nurse referred to the Member Handbook, which sets forth a list of member benefits and services, both covered and excluded. (Exhibit 9). The Member Handbook states that when members are outside the Berkshire Fallon Health Collaborative service area, they are only covered for emergency services and urgent care services. (Exhibit 9, p. 13). The Berkshire Fallon Health Collaborative's service area includes all cities and towns in Berkshire County, Massachusetts, and does not include any city or town in Texas. (Exhibit 9, p. 13). The Member Handbook defines Emergency Services as "[s]ervices you get in a hospital or at a provider's office, or through an Emergency Services Program whether inside or outside the Berkshire Fallon Health Collaborative's services area, that are: (1) provided by a qualified provider and (2) needed to evaluate or stabilize an emergency medical condition. This includes an ambulance ride to the nearest appropriate medical facility. The Berkshire Fallon Health Collaborative Provider Directory lists the hospital emergency rooms and Emergency Services Programs in all areas of the state." (Exhibit 9, p. 6). The Member Handbook defines an Emergency Medical Condition as "[a] medical condition whether physical or mental, showing itself by symptoms of enough severity (including severe pain) such that a person, with an average knowledge of health and medicine, could reasonably expect that not getting

medical attention right away would result in: (1) serious risk to the health of the member or another person, or in the case of a pregnant woman, the health of the woman or her unborn child; (2) serious harm to bodily functions; or (3) serious problem with any bodily organ or part.” (Exhibit 9, p. 6). The Member Handbook defines Urgent Care as “[m]edical care that is needed right away, but is not an actual emergency.” (Exhibit 9, p. 9). The Appeals Nurse testified that because Nexus Children’s Hospital is outside the Berkshire Fallon Health Collaborative’s service area and because the appellant was not seeking coverage for emergency services or urgent care, the request for prior authorization for admission to Nexus Children’s Hospital was denied by Fallon pursuant to the Member Handbook.

The Appeals Nurse stated further that the request did not satisfy the requirements of MassHealth’s medical necessity regulation at 130 CMR 450.204. (Exhibit 8, p. 123). The Appeals Nurse testified that there are less costly, outpatient weight loss programs offered by Fallon providers that the appellant has not tried, including those listed by the third party endocrinologist, New Horizon weight loss program, Mass General Hospital digestive weight center, Brigham and Woman’s endocrinology weight management program, and Newton Wellesley Hospital young adult weight management program. (Exhibit 8, p. 89).

Fallon’s Medical Director testified that the appellant is seeking inpatient treatment for a chronic medical condition, not an emergency medical condition or urgent care issue. Fallon’s Medical Director noted that there are providers in-network that could provide the weight loss, behavioral health, and other services sought by the appellant and the appellant would have to utilize in-network services before Fallon would entertain a request for out of network treatment for her condition. Fallon’s Medical Director advised the appellant to have her case manager coordinate her care and services for her condition. Fallon’s Medical Director testified that the services offered by the Jumpstart program at Nexus Children’s Hospital are also offered by Fallon providers.

The provider’s representative stated that the Jumpstart program is an inpatient program for patients with Prader-Willi syndrome and clinicians work as a team to provide weight loss service, neurology services, psychiatric services, physical therapy, occupational therapy, respiratory therapy, and social work services, to reduce the patient’s BMI and get co-morbidities under control. The provider’s representative stated that the time frame for the inpatient treatment is dependent on the individual, but the average inpatient admission is 3 to 6 months.

The appellant’s representative stated that the appellant has been trying to get coverage for this program for the past few years. The appellant’s representative noted that the appellant’s endocrinologist recommended the program based on concern for the appellant’s weight and need for daily oxygen and CPAP at night. The appellant’s representative stated that she does not believe outpatient treatment will help. The appellant’s representative noted that they did not look into in-network providers because the appellant has always wanted to get into the Jumpstart program. The appellant’s representative stated that the appellant had Blue Cross Blue Shield (BCBS) health insurance coverage for years and BCBS does not cover the Jumpstart program. The appellant’s representative stated that they were waiting to see if Fallon would cover the program before looking into other options. The appellant stated that she feels she would be successful going to the Jumpstart program.

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 Berkshire Fallon Health Collaborative, a MassHealth ACO; the appellant receives MassHealth Standard as part of her SSI benefit.
2. On January 19, 2022, the appellant's provider, Nexus Children's Hospital in Texas, submitted a request for prior authorization to Fallon seeking approval for the appellant to be admitted to the hospital's inpatient Jumpstart Health and Wellness program for Prader-Willi syndrome programming which includes weight loss management, 24 hour medical management, medication management, neurology and psychiatric services, personalized calorie controlled diets, physical and occupational therapy, respiratory therapy, and social work services.
3. The appellant is diagnosed with Prader-Willi syndrome, chronic respiratory failure, obstructive sleep apnea, type 2 diabetes, and morbid obesity; she is on continuous oxygen and uses a C-PAP at night.
4. By notice dated January 26, 2022, Fallon denied the appellant's request for prior authorization.
5. On February 25, 2022, Nexus Children's Hospital appealed Fallon's denial of the request of coverage for the Jumpstart program; Fallon sought and obtained authorization from the appellant to have Nexus file the internal appeal on her behalf.
6. Fallon's Associate Medical Director and a third party endocrinologist, board certified in endocrinology, diabetes, and metabolism, reviewed the appellant's internal appeal and accompanying medical records; the third party endocrinologist also spoke with the provider.
7. The appellant has not been to any outpatient or inpatient weight loss programs in Massachusetts.
8. The standard of care is to treat the appellant with obesity medications, diet, exercise, and possibly weight loss surgery within a weight loss management program.
9. There are weight loss management options available to the appellant in Massachusetts, including New Horizon weight loss program, Mass General Hospital digestive weight center, Brigham and Woman's endocrinology weight management program, and Newton Wellesley Hospital young adult weight management program.
10. By notice dated March 25, 2022, Fallon denied the appellant's internal appeal.
11. Nexus Children's Hospital is not a Fallon provider nor is it a MassHealth provider; it is located in Texas and is outside of the Berkshire Fallon Health Collaborative service area.

12. The appellant is seeking inpatient treatment for a chronic medical condition, not an emergency medical condition or urgent care issue.
13. There are providers in the Fallon network that could provide the weight loss, behavioral health, and other services sought by the appellant.

Analysis and Conclusions of Law

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. 130 CMR 508.001(A).

Accountable Care Organizations

(A) Accountable Care Partnership Plans.

(1) Enrollment in an Accountable Care Partnership Plan.

(a) Selection Procedure. When a member becomes eligible for managed care, the MassHealth agency notifies the member of the member's obligation to select a MassHealth managed care provider within the time period specified by the MassHealth agency. The MassHealth agency makes available to the member a list of Accountable Care Partnership Plans in the member's service area. The list of Accountable Care Partnership Plans that the MassHealth agency will make available to members will include those Accountable Care Partnership Plans that contract with the MassHealth agency to serve the coverage type for which the member is eligible and provide services within the member's service area. The member's service area is determined by the MassHealth agency based on zip codes or geographic area. Service area listings may be obtained from the MassHealth agency.

(b) MassHealth members are assigned to Accountable Care Partnership Plans, may transfer from Accountable Care Partnership Plans, may be disenrolled from Accountable Care Partnership Plans, and may be re-enrolled in Accountable Care Partnership Plans as described in 130 CMR 508.003(B) through 130 CMR 508.003(E).

(2) Obtaining Services when Enrolled in an Accountable Care Partnership Plan.

(a) Primary Care Services. When the member selects or is assigned to an Accountable Care Partnership Plan, that Accountable Care Partnership Plan 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.

(b) Other Medical Services. All medical services to members enrolled in an Accountable Care Partnership Plan (except those services not covered under the

MassHealth contract with the Accountable Care Partnership Plan, family planning services, and emergency services) are subject to the authorization and referral requirements of the Accountable Care Partnership Plan. MassHealth members enrolled in an Accountable Care Partnership Plan 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 Accountable Care Partnership Plan should contact their Accountable Care Partnership Plan for information about covered services, authorization requirements, and referral requirements.

(c) Behavioral Health Services. Members who enroll in an Accountable Care Partnership Plan receive behavioral health services through that Accountable Care Partnership Plan. All behavioral health services to members enrolled in an Accountable Care Partnership Plan, except those services not covered under the MassHealth contract with the Accountable Care Partnership Plan, are subject to the authorization requirements and referral requirements of the Accountable Care Partnership Plan. Members enrolled with an Accountable Care Partnership Plan should contact their Accountable Care Partnership Plan for information about covered services, authorization requirements, and referral requirements.

(d) Native Americans and Alaska Natives. Individuals who are Native Americans (within the meaning of "Indians" as defined at 42 U.S.C. 1396u-2) or Alaska Natives who participate in managed care under MassHealth may choose to receive covered services from an Indian health-care provider. Such Indian health care providers may participate in MassHealth subject to applicable provisions of 130 CMR 450.000: Administrative and Billing Regulations.

(3) Copayments. Members who are enrolled in an Accountable Care Partnership Plan must make copayments in accordance with the Accountable Care Partnership Plan's MassHealth copayment policy. Those Accountable Care Partnership Plan copayment policies must

(a) be approved by MassHealth;

(b) exclude the persons and services listed in 130 CMR 506.014: Copayments Required by MassHealth and 520.037: Copayment and Cost Sharing Requirement Exclusions;

(c) not exceed the MassHealth copayment amounts set forth in 130 CMR 506.015: Copayment and Cost Sharing Requirement Exclusions and 520.038: Services Subject to Copayments; and

(d) include the copayment maximums set forth in 130 CMR 506.018: Maximum Cost Sharing and 520.040: Maximum Cost Sharing. (See also 130 CMR 450.130: Copayments Required by the MassHealth Agency.)

(130 CMR 508.006(A)).

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 SCOs as further described in 130 CMR 610.032(B), if the member has exhausted all remedies available through the contractor's internal appeals process.

130 CMR 508.010(A), (B).

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.

(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.)

130 CMR 450.204(A), (B).

The MassHealth Member Handbook for the Berkshire Fallon Health Collaborative states that when members are outside the Berkshire Fallon Health Collaborative service area, they are only covered for emergency services and urgent care services. The Berkshire Fallon Health Collaborative's service area includes all cities and towns in Berkshire County, Massachusetts, and does not include any city or town in Texas. Emergency Services are "[s]ervices you get in a hospital or at a provider's office, or through an Emergency Services Program whether inside or outside the Berkshire Fallon Health Collaborative's services area, that are: (1) provided by a qualified provider and (2) needed to evaluate or stabilize an emergency medical condition. This includes an ambulance ride to the nearest appropriate medical facility. The Berkshire Fallon Health Collaborative Provider Directory lists the hospital emergency rooms and Emergency Services Programs in all areas of the state." An Emergency Medical Condition is "[a] medical condition whether physical or mental,

showing itself by symptoms of enough severity (including severe pain) such that a person, with an average knowledge of health and medicine, could reasonably expect that not getting medical attention right away would result in: (1) serious risk to the health of the member or another person, or in the case of a pregnant woman, the health of the woman or her unborn child; (2) serious harm to bodily functions; or (3) serious problem with any bodily organ or part.” Urgent Care is “[m]edical care that is needed right away, but is not an actual emergency.”

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

The appellant is a member of the MassHealth ACO, Berkshire Fallon Health Collaborative. The appellant submitted a request for prior authorization to Fallon for an inpatient admission to an out of network hospital in Texas, which is outside the Berkshire Fallon Health Collaborative service area. When members are outside the Berkshire Fallon Health Collaborative service area, they are only covered for emergency services and urgent care services. The appellant is seeking coverage for an inpatient admission to the hospital’s Jumpstart Health and Wellness program for Prader-Willi syndrome programming which includes weight loss management, 24 hour medical management, medication management, neurology and psychiatric services, personalized calorie controlled diets, physical and occupational therapy, respiratory therapy, and social work services. The program is, on average, a 3 to 6 month admission. The Jumpstart program admission is to treat the appellant’s chronic medical condition and does not meet the definitions of emergency services or urgent care as set forth in the appellant’s MassHealth Member Handbook for the Berkshire Fallon Health Collaborative.

Further, the request for prior authorization does not meet MassHealth’s medical necessity criteria. The appellant has not tried any in-network or in state outpatient or inpatient programs for weight loss. There are less costly, outpatient weight loss programs offered by Fallon providers that the appellant has not tried, including New Horizon weight loss program, Mass General Hospital digestive weight center, Brigham and Woman’s endocrinology weight management program, and Newton Wellesley Hospital young adult weight management program. Because there are in-network providers that could provide the weight loss, behavioral health, and other services sought by the appellant, the request for prior authorization for the inpatient admission to Nexus Children’s Hospital does not meet MassHealth’s medical necessity criteria set forth at 130 CMR 450.204.

Fallon’s action in denying the appellant’s request for prior authorization is upheld and the appeal is denied.

Order for ACO

None.

Notification of Your Right to Appeal to Court

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

Patricia Mullen
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Fallon Health, Member Appeals and Grievances, 10 Chestnut Street, Worcester, MA 01608

Appellant Rep.: [REDACTED]

Appellant Rep.: [REDACTED]