

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2207587
Decision Date:	1/19/2023	Hearing Date:	November 18, 2022
Hearing Officer:	Brook Padgett	Record Open:	January 06, 2023

Appellant Representative:



**MassHealth/Health New England
Representatives:**

Jaime Farrell, Complaint and Appeal Manager,
Eileen Murphy, Appeals and Policy Nurse,
Preeti Narani, Medicaid Policy Manager



*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:	130 CMR 450.204
Decision Date:	1/19/2023	Hearing Date:	November 18, 2022
MassHealth Rep.:	J. Farrell, HNE	Appellant Rep.:	██████████
Hearing Location:	China Trade Center		

Authority

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

Jurisdiction

The Appellant received a Baystate Health Care Alliance Notice of Denial of Internal Appeal dated September 26, 2022, stating: “Your Internal Appeal has been reviewed by Health New England Medical Director. ... The reason(s) for the denial is medical necessity criteria was not met.” . (Exhibit 1).

The Appellant filed this appeal timely on October 11, 2022. (130 CMR 610.015(B); Exhibit 2).

Denial of a request for prior authorization is valid grounds for appeal. (See 130 CMR 610.032).

Action Taken by MassHealth/Health New England

Baystate Health Care Alliance – Health New England denied the Appellant’s request for prior authorization for a laparoscopic sleeve gastrectomy.

Issue

Was the Appellant's request for a laparoscopic sleeve gastrectomy correctly determined?

Summary of Evidence

The Appeals and Policy nurse representing Baystate Health Care Alliance – Health New England (HNE) testified the Appellant's request for laparoscopic sleeve gastrectomy (laprosurgery) was denied because she failed to meet the medical necessity criteria for the procedure. The representative stated the medical records indicate the Appellant is 5'2" with a body mass index (BMI) of 36.6. To be eligible for the procedure you must have a BMI of 40 or more or a BMI of 35-39.9 with significant comorbid diseases such as diabetes, sleep apnea, or cardiovascular disease (a-j of the criteria). The representative maintained the Appellant has not submitted any medical evidence to demonstrate significant co-morbidities, so the request was denied. Further the Appellant has not provide a formal psychological evaluation regarding her weight loss surgery. The representative stated that the Appellant's request along with her medical submission was sent to an external third party reviewer who upheld the HNE denial. As a result the Appellant did not meet the medical necessity criteria and her request for laprosurgery was denied. HNE submitted into evidence the Appellant's request, medical records, notices, third party review and HNE criteria. (Exhibit 4).

The Appellant was representative by a community healthcare worker who stated the Appellant has many medical issues including a thyroid problem, high cholesterol, a hernia and pain walking due to a metal plate from a previously broken leg.

The record remained open until December 19, 2022 for the Appellant to submit medical evidence of co-morbidities as required for a BMI less than 35. The Appellant was provided the criteria list:

- a. CAD or obesity related pulmonary hypertension;
- b. Sleep apnea;
- c. Pickwickian syndrome;
- d. Pseudotumor cerebri;
- e. Obesity related cardiomyopathy;
- f. Type II diabetes;
- g. At least stage I hypertension (SBP>140 and/or DBP>90) after combination pharmacotherapy;
- h. Mechanical arthropathy in a weight-bearing joint (symptomatic degenerative joint disease in a weight bearing joint);
- i. Lower extremity lymphatic or venous obstruction;
- j. Evidence of fatty liver disease (i.e., nonalcoholic fatty liver disease [NAFLD] or nonalcoholic steatohepatitis [NASH]. (Exhibit 5).

The Appellant responded within the time limits submitting a blood test dated March 29, 2022 indicating high cholesterol and glucose within normal range, an ankle evaluation dated November 22, 2022, from New England Orthopedic Surgery and a thyroid examination dated November 30, 2022. (Exhibit 6 and 7).

HNE responded that the additional information provided no evidence of any comorbid condition and therefore the Appellant does not meet the HNE criteria for coverage and the request for the laparoscopic sleeve gastrectomy remains denied. (Exhibit 8).

Findings of Fact

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

1. On July 11, 2022, the Appellant submitted a request to HNE for prior authorization for laparoscopic sleeve gastrectomy. (Exhibit 4).
2. To meet criteria for laparoscopic sleeve gastrectomy the Appellant must provide medical evidence she has a co-morbidity criteria for BMI of greater than 40 or if less than 35 that she has evidence of:
 - a. CAD or obesity related pulmonary hypertension;
 - b. Sleep apnea;
 - c. Pickwickian syndrome;
 - d. Pseudotumor cerebri;
 - e. Obesity related cardiomyopathy;
 - f. Type II diabetes;
 - g. At least stage I hypertension (SBP>140 and/or DBP>90) after combination pharmacotherapy;
 - h. Mechanical arthropathy in a weight-bearing joint (symptomatic degenerative joint disease in a weight bearing joint);
 - i. Lower extremity lymphatic or venous obstruction;
 - j. Evidence of fatty liver disease (i.e., nonalcoholic fatty liver disease [NAFLD] or nonalcoholic steatohepatitis [NASH]. (Exhibit 5).
3. The Appellant is 5'2" and has a BMI of 36.6. ((Exhibit 4 and Testimony).
4. The Appellant has a diagnosis of high cholesterol, a hernia, a thyroid disorder and a metal plate in her leg which causes pain and contributes to difficulty walking. (Exhibit 6 and 7).

Analysis and Conclusions of Law

Pursuant 130 CMR 450.204, the MassHealth agency will 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, or 517.007.

To demonstrate the requested procedure meets the medical necessity criteria the Appellant is required to submit medical evidence that she has a BMI of 40 or more, or a BMI of 35-39.9 with significant comorbid diseases such as diabetes, sleep apnea, or cardiovascular disease. The medical evidence in the record indicates the Appellant has a BMI of 36.6. While at the time of the request the Appellant did submit evidence that she has a thyroid issue, high cholesterol, a hernia and difficulty walking, she presented no evidence that she has any of the co-morbidities as required by the criteria. Despite additional time to supplement the record the Appellant was unable to provide any medical evidence of a significant comorbid disease to establish the requested procedure is a medical necessity.

The HNE's action is upheld and this appeal is denied as there is insufficient medical evidence in the record to establish the Appellant's request for prior authorization for laparoscopic sleeve gastrectomy is "medically necessary". (130 CMR 450.204(A)(1)).

Order for MassHealth/Health New England

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.

Brook Padgett
Hearing Officer
Board of Hearings

cc: MassHealth/HSE representative: Health New England, Jamie Farrell, Complaints & Appeals,
One Monarch Place, #1500, Springfield, MA 01144


