

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	DENIED	Appeal Number:	2207786
Decision Date:	2/14/2023	Hearing Date:	12/07/2022
Hearing Officer:	Kenneth Brodzinski	Record Open to:	12/28/2022

Appearance for Appellant:



**Appearance for MassHealth's Agent,
Tufts Health Plan:**

Attorney John Shinn, Nicole Dally and
David Dohan, MD



*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:	Prior Authorization - surgical
Decision Date:	2/14/2023	Hearing Date:	12/07/2022
Tuft's Rep.:	John Shinn, Esq.	Appellant's Rep.:	Pro se
Hearing Location:	Quincy		

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 June 22, 2022, MassHealth's agent, Tufts Health Plan (Tufts) denied a Level 1 internal appeal of its earlier denial¹ of Appellant's prior authorization request for endoscopic gastric suturing revision ("TORe") of roux-en-y gastric bypass (Exhibit A). Appellant filed for this appeal in a timely manner on October 12, 2022 (see 130 CMR 610.015(B) and Exhibit A). Denial of assistance constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth's agent, Tufts, denied Appellant's prior authorization request for endoscopic gastric suturing revision ("TORe") of roux-en-y gastric bypass.

Issue

The appeal issue is whether Tufts properly applied the controlling MassHealth regulations and guidelines to accurate facts in denying Appellant's prior authorization request for endoscopic gastric suturing revision ("TORe") of roux-en-y gastric bypass.

¹ First denied on May 9, 2022.

Summary of Evidence

Both parties appeared by telephone. Along with her Request For a Hearing, Appellant filed copies of medical records and medical literature concerning the requested endoscopic gastric suturing revision (“TORe”) of roux-en-y gastric bypass (the procedure) (collectively, Exhibit A). Tufts filed a bound packet of documentation with 13 tabbed exhibits (Exhibit B) as well as a copy of the Tufts Member Handbook 2022 (Exhibit C).

After the hearing, Appellant filed additional documentation including copies of research studies and a position statement from the International Federation for the Surgery of Obesity and Metabolic Disorders plus a copy of a one-page document purported to show bariatric procedures paid by MassHealth to Emerson Hospital in fiscal year 2022 (collectively, Exhibit D). Tufts filed a post-hearing memorandum (Exhibit E).

The Tufts representatives testified that prior authorization for the subject procedure was denied on two grounds:

First, that Appellant, an adult female, does not meet the clinical guidelines for bariatric surgery/surgical revision set forth by both MassHealth guidelines and Tuft’s MassHealth-approved reliance on InterQual guidelines. According to Tufts, documentation submitted with the request indicates that Appellant has a Body Mass Index (BMI) of 32, whereas MassHealth and InterQual guidelines require a BMI greater than 35 in order to establish medical necessity for bariatric surgery/revision.

Second, Tufts maintains that the subject procedure is experimental; therefore, it is specifically excluded from coverage by both MassHealth and the Tuft’s Plan. Tufts maintains that the studies submitted into the record by Appellant are neither authoritative nor current practice because they all are limited, not random, retrospective and the authors have conflicts of interest, including six case studies, co-authored by Appellant’s requesting medical provider who has a direct financial interest in the procedure. Tufts addressed each of the eight medical references Appellant submitted and identified the purported limitations and conflicts with each (Exhibit E, pages 5-7).

The Tufts representatives also testified that as an agent of MassHealth, Tufts is bound by all MassHealth regulations and guidelines, and the Plan is periodically reviewed by MassHealth for approval. Tufts further testified that pursuant to its contract with MassHealth, Tufts is authorized to use InterQual criteria for determining medical necessity.

Appellant appeared along with a member of her requesting medical provider’s office who testified to the following: Appellant had successful bariatric surgery in the past, but slowly over time she has regained a significant amount of weight. Appellant is seeking the requested revisional procedure to reduce her weight to a healthy level insofar as all other attempts at weight loss have failed. The requested procedure is not investigational or

experimental. The requesting provider has been successfully performing the procedure for the past 20 years. The procedure is safe and effective for people with a BMI at or above 30 and complication rates are very low. The office member testified that this procedure has been approved and paid for by MassHealth for this same provider in the past.

After the hearing, the record was left open for Appellant to file additional supporting documentation and for Tufts to file a memorandum. As noted above, both parties filed post-hearing submissions in a timely manner.

Findings of Fact

Based on a preponderance, this record supports the following findings:

1. MassHealth's agent, Tufts Health Plan (Tufts) denied a Level 1 internal appeal of its earlier denial of Appellant's prior authorization request for endoscopic gastric suturing revision ("TORe") of roux-en-y gastric bypass.
2. As MassHealth's agent, Tufts must adhere to all MassHealth regulations and guidelines.
3. Tufts Health Plan is reviewed and approved by MassHealth on a regular basis.
4. Pursuant to its contract with MassHealth, Tufts is authorized to use InterQual criteria for determining medical necessity.
5. Appellant, an adult female, had successful bariatric surgery in the past, but slowly over time, she has regained a significant amount of weight.
6. Appellant is seeking the requested revisional procedure to reduce her weight to a healthy level insofar as all other attempts at weight loss have failed.
7. Tufts denied the subject procedure on the grounds that Appellant does not meet InterQual or MassHealth Medical Necessity Guidelines and that the subject procedure is not covered because it is an experimental or investigational procedure.
8. Documentation submitted with the request indicates that Appellant has a Body Mass Index (BMI) of 32.
9. Studies submitted into the record by Appellant are neither authoritative nor current practice because they all are limited, not random, and retrospective and the authors have conflicts of interest, including six case studies, co-authored by Appellant's requesting medical provider who has a direct financial interest in the procedure.

(Exhibit E, pages 5-7).

Analysis and Conclusions of Law

"The burden of proof is on the appealing party to show that the order appealed from is invalid, and we have observed that this burden is heavy" (Massachusetts Inst. of Tech. v. Department of Pub. Utils., 425 Mass. 856, 867, 684 N.E.2d 585 (1997)).

Pursuant to MassHealth's *Guidelines for Medical Necessity Determination for Bariatric Surgery*, Section 2, criteria for medical necessity, adult candidates for bariatric surgical eligibility must have either a body mass index (BMI) equal to or > 40 kg/m² (Class III obesity), or a BMI equal to 35–39.9 kg/m² (Class II obesity) with one or more specified high-risk comorbid medical conditions.

Subpart B of Section 2 of MassHealth's *Guidelines for Medical Necessity Determination for Bariatric Surgery* states (emphasis supplied):

*Noncoverage MassHealth does not provide coverage for **bariatric surgery (primary or revision)** when the procedures have not been sufficiently studied to determine their effectiveness and safety for the medical indication. MassHealth also does not consider bariatric surgery to be medically necessary under certain other circumstances. Examples of when the surgery may not be considered medically necessary include, but are not limited to, the following: (1) Bariatric surgery as a treatment for infertility; (2) Bariatric procedures with limited evidence of efficacy, such as "Band over sleeve" or Laparoscopic adjustable silicone gastric banding (LASGB) revision of prior sleeve gastrectomy; and (3) **Bariatric surgery not meeting the medical-necessity criteria above.***

Pursuant to these guidelines, the minimum BMI required to establish medical necessity for primary or revisional bariatric surgery is 35. It was undisputed that Appellant had a BMI below 35; therefore, Tufts' determination that medical necessity has not been established and the denial of Appellant's prior authorization request are correct.

130 CMR 433.404: Nonpayable Circumstances (emphasis supplied):

*(B) The MassHealth agency does not pay a physician for performing, administering, or dispensing any **experimental, unproven**, cosmetic, or otherwise medically unnecessary procedure or treatment.*

On the matter of whether the subject procedure is experimental, I find Tuft's position persuasive that the medical literature provided by the Appellant is not sufficient given the limitations and conflicts of interest outlined by Tufts in its post-hearing memorandum (Exhibit E, pages 5-7). To be clear, no finding is made that the procedure is experimental, rather, on this record, Appellant has not evidenced that the procedure is

proven and not experimental. A finding is made, however, that the Tufts Plan specifically identifies the procedure in its *Medical Necessity Guidelines: Bariatric Surgery* effective March 4, 2022, as being “*investigational and, therefore, not medically necessary*” (Exhibit B, page 77 under “Limitations” 2nd bullet). The Tuft Plan is reviewed and approved by MassHealth and Appellant has made no showing that the Plan is in any way inconsistent with MassHealth regulations.

I further concur with Tufts regarding the one-page document Appellant filed to support her assertion that MassHealth has authorized and paid for the subject procedure in the past. The document, consisting of merely a one-line assertion and two lines copied from some sort of spreadsheet, does not show that payments were made specifically for the requested procedure, endoscopic gastric suturing revision (“TORe”) of roux-en-y gastric bypass (Exhibit D, page 45).

On this record, Appellant has failed to meet her burden of showing Tuft’s determinations to be invalid. Accordingly, the appeal is DENIED.

Order for MassHealth/Tufts

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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Tufts Health Plan, Attn: Nicole Dally, Program Manager, Appeals & Grievance, 1 Wellness Way, Canton, MA 02021, 617-972-9400