

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2300227
Decision Date:	2/15/2023	Hearing Date:	02/08/2023
Hearing Officer:	Christopher Jones		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Phuong Luc, PharmD.



*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 – Pharmaceuticals
Decision Date:	2/15/2023	Hearing Date:	02/08/2023
MassHealth’s Rep.:	Phuong Luc, PharmD.	Appellant’s Rep.:	Pro se
Hearing Location:	Remote	Aid Pending:	No

Authority

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

Jurisdiction

Through notices dated January 3, 2023, MassHealth denied appellant’s two prior authorization requests for the medications alprostadil and tadalafil because MassHealth does not cover the requested medications for the appellant’s intended purpose. (Exhibit 2; MassHealth Drug List.) The appellant filed this appeal in a timely manner on January 10, 2023. (Exhibit 2; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth denied the appellant’s requests for prior authorization for two medications: alprostadil and tadalafil, both used to treat erectile dysfunction.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 406.413(B), in determining that MassHealth does not cover payment of the requested medication.

Summary of Evidence

MassHealth was represented at hearing by a pharmacist from the Drug Utilization Review (DUR) program. The appellant represented himself. The hearing was conducted telephonically.

MassHealth's representative testified that on January 3, 2023, MassHealth received two requests for prior authorization on behalf of the appellant. One request was for alprostadil (EDEX) 20 mcg. The second request was for ten 20 mg tablets of tadalafil (brand name Cialis). Both medications were prescribed to treat diagnosis code "N 52.9 ED," or erectile dysfunction, and indicated that Viagra was an ineffective prior treatment. MassHealth denied the request on that same day because, pursuant to 130 CMR 406.413(B)(7), MassHealth does not pay for any drugs when used to treat sexual dysfunction. (Testimony; Exhibit 3.)

The appellant testified that he requires the requested medication to treat erectile dysfunction. He did not specify any other medical needs for which he requires such medication other than to say that it would be distressing if his condition could not be treated. He felt that the regulations cited regarding excluded medications were unjust, and he wanted a decision so that he could continue to pursue his appeal at superior court.

Findings of Fact

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

1. On January 3, 2023, the appellant submitted two prior authorization requests, one for alprostadil, and one for tadalafil, both of which are medications used to treat erectile dysfunction. (Exhibit 3, pp. 3-4, 8-9.)
2. MassHealth denied the request on that same day because, pursuant to 130 CMR 406.413(B)(7), Mass Health does not cover any medication when used to treat sexual dysfunction. (Exhibit 3, pp. 6, 11.)
3. Treatment of erectile dysfunction is the only reason why this medication was prescribed. (Testimony by the appellant; Exhibit 3, pp. 3-4, 8-9.)

Analysis and Conclusions of Law

Typically, MassHealth will not pay for any over the counter or prescription medication unless it is deemed medically necessary. (See 130 CMR 450.204.) 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.

(130 CMR 450.204(A).)

MassHealth has outright prohibited coverage of certain treatments, deeming them never medically necessary. Those treatments include:

406.413: Limitations on Coverage of Drugs

...

(B) Drug Exclusions. The MassHealth agency does not pay for the following types of prescription or over-the-counter drugs or drug therapy.

- (1) Cosmetic. The MassHealth agency does not pay for any drug when used for cosmetic purposes or for hair growth.
- (2) Cough and Cold. The MassHealth agency does not pay for any drug used solely for the symptomatic relief of coughs and colds, including but not limited to, those that contain an antitussive or expectorant as a major ingredient, unless dispensed to a member who is a resident in a nursing facility or an intermediate care facility for the mentally retarded (ICF/MR).
- (3) Fertility. The MassHealth agency does not pay for any drug used to promote male or female fertility.
- (4) Obesity Management. The MassHealth agency does not pay for any drug used for the treatment of obesity.
- (5) Less-Than-Effective Drugs. The MassHealth agency does not pay for any drug products (including identical, similar, or related drug products) that the U.S. Food and Drug Administration has proposed, in a Notice of Opportunity for Hearing (NOOH), to withdraw from the market because they lack substantial evidence of effectiveness for all labeled indications.
- (6) Experimental and Investigational Drugs. The MassHealth agency does not pay for any drug that is experimental, medically unproven, or investigational in nature.
- (7) Drugs for Sexual Dysfunction. The MassHealth agency does not pay for any drug when used for the treatment of male or female sexual dysfunction.

(130 CMR 406.413(B).)

Other drug limitations are managed by requiring prescribers to simply seek prior authorization. (See 130 CMR 406.422.) However, the medications listed in 130 CMR 406.413(B) are excluded from this alternative avenue. (See 130 CMR 406.422(A).) Both medications were prescribed to treat erectile dysfunction. As that falls under the excluded drugs codified in 130 CMR 406.413,

MassHealth was correct in denying the appellant's request for prior authorization. Therefore, this appeal is DENIED.

A fair hearing decision must be issued in compliance with the law, including MassHealth's regulations. (130 CMR 610.082.) Any challenge to those laws must be made on appeal at Superior Court in accordance with 130 CMR 610.092.

Order for MassHealth

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.

Christopher Jones
Hearing Officer
Board of Hearings

cc: MassHealth Representative: UMMS Drug Utilization Review, Commonwealth Medicine,
333 South Street, Shrewsbury, MA 01545