

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2301244

Decision Date: 3/28/2023

Hearing Date: 03/16/2023

Hearing Officer: Patricia Mullen

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Meghan Serell, R.Ph., Drug Utilization
Review (DUR) Program



*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 Ozempic
Decision Date:	3/28/2023	Hearing Date:	03/16/2023
MassHealth's Rep.:	Meghan Serell, R.Ph., DUR	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 February 9, 2023, MassHealth denied the appellant's request for prior authorization for the prescription medication Ozempic, .25-.5 mg. because MassHealth determined that MassHealth does not pay for any drug used for the treatment of obesity. (see 130 CMR 406.413(B)(4) and Exhibit 1). The appellant filed this appeal in a timely manner on February 15, 2023. (see 130 CMR 610.015(B) and Exhibit 2). Denial of a request for prior authorization is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's request for prior authorization for the prescription medication Ozempic .25-.5 mg.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 406.413(B)(4) and 130 CMR 450.204, in determining that MassHealth does not cover any drug used for the treatment of obesity, and the appellant did not otherwise meet prior authorization and medical necessity criteria for the prescription medication Ozempic, .25-.5 mg.

Summary of Evidence

The appellant appeared telephonically. MassHealth was represented telephonically by a registered pharmacist with MassHealth's Drug Utilization Review Program (DUR). The appellant is between the ages of 19 and 65 and is open on MassHealth Standard. (Exhibit 7). The MassHealth representative testified that the appellant's provider, Dr. Minh Phan, submitted to MassHealth a request for prior authorization for the prescription medication Ozempic, .25-.5 mg dose, on February 9, 2023. (Exhibit 5, p. 3). Dr. Phan listed the appellant's primary diagnosis related to the medication request as weight gain, and the MassHealth representative noted that the listed ICD code of B63.5 was for abnormal weight gain. (Exhibit 5, p. 4). The MassHealth representative stated that the request was denied on February 9, 2023 pursuant to 130 CMR 406.413(B)(4) which states that MassHealth does not pay for any drug used for the treatment of obesity. (Exhibit 5, p. 6).

The MassHealth representative explained that Ozempic, which has the generic name semaglutide, is an injectable medication used for the treatment of type 2 diabetes. (Exhibit 5, p. 13). The MassHealth representative noted that the package insert for Ozempic states that Ozempic is a glucagon like peptide 1 receptor agonist indicated as an adjunct to diet and exercise to improve glycemic control in adults with type 2 diabetes mellitus. (Exhibit 5, p. 13). The MassHealth representative testified that Dr. Phan did not indicate that the appellant has a diagnosis of type 2 diabetes, and wrote on the prior authorization request that the Ozempic was prescribed for weight gain. (Exhibit 5, p. 4). The MassHealth representative noted that even if the appellant had a diagnosis of type 2 diabetes, the prior authorization requirements in the MassHealth Drug List would need to be met, including failed trials of less costly medications for the treatment of diabetes.

The appellant stated that her primary care physician has told her at certain times that her blood sugar was high and that she was on the borderline for diabetes. The appellant stated that she did not go to her physician for help with weight loss and it was the physician who advised that she needed to lose 30 to 40 pounds to avoid getting diabetes, and recommended Ozempic. The appellant noted that she had gastric bypass surgery about 25 years ago but the weight has come back. The appellant stated that she has a family history of diabetes and wants to avoid getting it. The appellant noted that her physician advised exercise, watching her diet and what she eats. The appellant noted that she has developed bursitis and plantar fasciitis due to the weight gain. The appellant stated that she has been on Trulicity for a couple of months and saw a little weight loss on this medication. The MassHealth representative noted that the prescription medication Trulicity does not require prior authorization approval from MassHealth.

The MassHealth representative stated that even if the appellant had a diagnosis of diabetes, she would need to meet prior authorization criteria for Ozempic for the treatment of diabetes. Such criteria includes evidence of failed trials of medications in the same class with a lower cost including Bydureon, Byetta, Victoza, Trulicity, and Metformin. The MassHealth representative stated that if the appellant had a diagnosis of diabetes, MassHealth would want to see the results of a 90 day trial of Metformin with Trulicity before approving Ozempic. The MassHealth representative noted that a diagnosis of pre-diabetes might be acceptable if other criteria was met. The appellant's

provider can consult the MassHealth Drug List for the prior authorization criteria for Ozempic.

Findings of Fact

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

1. The appellant is between the ages of 19 and 65 and is open on MassHealth Standard.
2. The appellant's provider, Dr. Minh Phan, submitted to MassHealth a request for prior authorization for the prescription medication Ozempic, .25-.5 mg dose, on February 9, 2023.
3. Dr. Phan listed the appellant's primary diagnosis related to the medication request as weight gain, and the MassHealth representative noted that the listed ICD code of B63.5 was for abnormal weight gain.
4. Ozempic, which has the generic name semaglutide, is an injectable medication used for the treatment of type 2 diabetes; the package insert for Ozempic states that Ozempic is a glucagon like peptide 1 receptor agonist indicated as an adjunct to diet and exercise to improve glycemic control in adults with type 2 diabetes mellitus.
5. The appellant does not have a diagnosis of diabetes.
6. The appellant's physician has told her at certain times that her blood sugar was high and that she was on the borderline for diabetes.
7. The appellant's physician advised the appellant to lose 30 to 40 pounds to avoid getting diabetes.
8. The appellant had gastric bypass surgery about 25 years ago but the weight has come back.
9. The appellant has a family history of diabetes and wants to avoid getting it.
10. The appellant has been on Trulicity for a couple of months and saw a little weight loss on this medication; the prescription medication Trulicity does not require prior authorization approval from MassHealth for coverage.

Analysis and Conclusions of Law

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

(4) Obesity Management. The MassHealth agency does not pay for any drug used for the treatment of obesity.

(130 CMR 406.413(B)(4)).

Service Limitations.

(1) MassHealth covers drugs that are not explicitly excluded under 130 CMR 406.413(B). The limitations and exclusions in 130 CMR 406.413(B) do not apply to medically necessary drug therapy for MassHealth Standard and CommonHealth enrollees under age 21. The MassHealth Drug List specifies those drugs that are payable under MassHealth. Any drug that does not appear on the MassHealth Drug List requires prior authorization, as set forth in 130 CMR 406.000. The MassHealth Drug List can be viewed online at www.mass.gov/druglist, and copies may be obtained upon request. See 130 CMR 450.303: Prior Authorization.

(2) The MassHealth agency does not pay for the following types of drugs, or drug therapies or non-drug products without prior authorization:

(a) immunizing biologicals and tubercular (TB) drugs that are supplied to the provider free of charge through local boards of public health or through the Massachusetts Department of Public Health (DPH); and

(b) any drug, drug therapy, or non-drug product designated in the MassHealth Drug List as requiring prior authorization.

(3) The MassHealth agency does not pay for any drug prescribed for other than the FDA approved indications as listed in the package insert, except as the MassHealth agency determines to be consistent with current medical evidence.

(4) The MassHealth agency does not pay for any drugs that are provided as a component of a more comprehensive service for which a single rate of pay is established in accordance with 130 CMR 450.307: Unacceptable Billing Practices.

(130 CMR 406.413(C)).

Prior Authorization

(A) Prescribers must obtain prior authorization from the MassHealth agency for drugs identified by MassHealth in accordance with 130 CMR 450.303: Prior Authorization. If the limitations on covered drugs specified in 130 CMR 406.412(A) and 406.413(A) and (C) would result in inadequate treatment for a diagnosed medical condition, the prescriber may submit a written request, including written documentation of medical necessity, to the MassHealth agency for prior authorization for an otherwise noncovered drug.

(130 CMR 406.422(A)).

The appellant's provider prescribed the prescription medication Ozempic to treat the appellant's weight gain. The only diagnosis listed on the prior authorization request is weight gain and there is no indication that the appellant is diagnosed with diabetes. Pursuant to 130 CMR 406.413(B)(4), MassHealth does not pay for any drug used for the treatment of obesity. This is not a limitation listed in 130 CMR 406.413(A) or (C), and thus it is irrelevant whether the limitation would result in adequate treatment. (130 CMR 406.422(A)). Medication for treatment of obesity is simply not covered by MassHealth.

If the appellant is diagnosed with diabetes or pre-diabetes, she is advised to have her physician

consult the MassHealth Drug List for the prior authorization requirements for Ozempic for the treatment of diabetes.

The appeal is denied.

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.

Patricia Mullen
Hearing Officer
Board of Hearings

cc: MassHealth Representative: UMMS Drug Utilization Review, Commonwealth Medicine,
333 South Street, Shrewsbury, MA 01545, 774-455-3200