

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2301586

Decision Date: 4/11/2023

Hearing Date: 03/28/2023

Hearing Officer: Marc Tonaszuck

Appearance for Appellant:
Pro se

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



*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:	Drug Utilization Review
Decision Date:	4/11/2023	Hearing Date:	03/28/2023
MassHealth's Rep.:	Meghan Serell, R.Ph.	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South	Aid Pending:	No

Authority

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

Jurisdiction¹

Through a notice dated 02/23/2023, 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 02/28/2023 (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).

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

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 he has MassHealth benefits. The MassHealth representative testified that the appellant's provider, Arash Tadbri, M.D., submitted to MassHealth a request for prior authorization for the prescription medication Ozempic, .25-.5 mg dose, on 02/23/2023 (Exhibit 4). Dr. Tadbri listed the appellant's primary diagnosis related to the medication request as weight gain (Exhibit 4). The MassHealth representative stated that the request was denied on 02/23/2023 pursuant to 130 CMR 406.413(B)(4) which states that MassHealth does not pay for any drug used for the treatment of obesity (Exhibits 1 and 4).

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 4). 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 4). The MassHealth representative testified that Dr. Tadbri 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. The physician also wrote that the appellant was "placed on Ozempic for weight control," his height is 6', his weight is 285, and his BMI is 38.6 (Exhibit 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. She informed the appellant that there are other medications prescribed or insulin control that are covered by MassHealth without a PA.

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 include 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.

The appellant described an incident when he was injured at work and when he "shattered his spine." As a result of the injuries he sustained, he is unable to "regulate his fats and sugars." The appellant stated that his primary care physician has told him that his weight gain is caused by insulin sensitivity issue. The requested Ozempic is not to treat the weight gain, it to stabilize his insulin. The weight loss indication by the prescribing provider was inaccurate.

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 benefits.
2. The appellant's provider, Dr. Arash Tadbri, submitted to MassHealth a request for prior authorization for the prescription medication Ozempic, .25-.5 mg dose, on 02/23/2023.
3. Dr. Tadbri listed the appellant's primary diagnosis related to the medication request as weight gain. He also noted that the appellant was "placed on Ozempic for weight control," his height is 6', his weight is 285, and his BMI is 38.6.
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 him that he has an insulin sensitivity issue that causes him to gain weight.
7. The appellant attributes his weight gain to a work-related injury that caused him spinal problems.

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, he is advised to have his 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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

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