

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2301838
Decision Date:	6/2/2023	Hearing Date:	05/16/2023
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:

Via telephone:

Pro se

Appearance for ACO:

Via telephone for WellSense:

Jaqueline Bigbee, Dir. of Member Appeals & Grievances

Felicia DiSciscio, Mgr. of Member Appeals & Grievances

Jessica Rubenstein, MD, Sr. Medical Dir.

Priya Mehta, Asst. General Counsel



*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 – Mounjaro
Decision Date:	6/2/2023	Hearing Date:	05/16/2023
ACO's Rep.:	Jacqueline Bigbee, et al.	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South 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 a notice dated January 13, 2023, WellSense/Boston Medical Center HealthNet Plan (WellSense), a MassHealth accountable care organization (ACO), informed the appellant that it had denied her internal appeal of a prior authorization request for Mounjaro 2.5 mg/0.5 pen injector because the medication is part of a group of drugs that is excluded under the WellSense's Drug Benefit (specifically, MassHealth does not pay for any drug used for the treatment of obesity) (Exhibit 1). The appellant filed this appeal in a timely manner on March 7, 2023 (see 130 CMR 610.015(B) and Exhibit 2). An ACO's denial of a request for prior authorization is valid grounds for appeal to the Board of Hearings (130 CMR 610.032(B)(2)).¹

¹ An accountable care organization is defined at 130 CMR 501.001 as an entity that enters into a population-based payment model contract with EOHHS as an accountable care organization, wherein the entity is held financially accountable for the cost and quality of care for an attributed or enrolled member population. ACOs include Accountable Care Partnership Plans, Primary Care ACOs, and MCO-Administered ACOs.

Action Taken by ACO

WellSense denied the appellant's prior authorization request for Mounjaro 2.5 mg/0.5 pen injector.

Issue

The appeal issue is whether MassHealth's agent or designee, WellSense, was correct, pursuant to 130 CMR 406.413(B)(4), in denying the appellant's internal appeal of a prior authorization request for Mounjaro 2.5 mg/0.5 pen injector because MassHealth does not pay for any drug used for the treatment of obesity, and the appellant did not otherwise meet prior authorization and medical necessity criteria for the requested drug.

Summary of Evidence

The appellant, who is an adult under the age of 65, appeared at hearing via telephone. WellSense appeared at hearing via telephone and was represented by its director of member appeals and grievances, manager of member appeals and grievances, senior medical director, and assistant general counsel.

WellSense testified as follows: on January 11, 2023, it received a prior authorization request for Mounjaro 2.5 mg/0.5 pen injector (hereinafter, "Mounjaro") on behalf of the appellant for the treatment of obesity because she has tried and failed weight loss via surgery, diet, and exercise. On January 11, 2023, a WellSense pharmacist denied the request because the drug is excluded from coverage. On the same day, WellSense received a verbal expedited appeal request from the appellant. On January 13, 2023, a physician reviewer from WellSense denied the request for coverage of Mounjaro 2.5 mg/0.5 pen injector because the medication is part of a group of drugs that is excluded under the plan's drug benefit. Specifically, the drug is excluded for the treatment of obesity. Pursuant to 130 CMR 406.413(B)(4), MassHealth does not pay for any drugs used for the treatment of obesity. As an agent of MassHealth, WellSense must follow the MassHealth regulations.

The appellant testified that she has been trying to get Mounjaro or a similar drug, Wegovy, covered since October 2022. She stated that she has been denied five separate times and has spent a lot of time working with the WellSense pharmacy. Wegovy has been approved for the treatment of weight management. She explained that by treating obesity, Mounjaro and/or Wegovy have many benefits, including preventing high body mass index, high blood sugar levels, and cardiovascular disease. She has tried various diets, exercise, and bariatric surgery but without sustained success. These medications are completely life-changing and important to prevent the progression of other diseases, such as diabetes. Her doctor provided a letter dated [REDACTED],

in support of approving Wegovy to treat obesity.² In the letter, the appellant's provider stated that "[The appellant] has a BMI (body mass index) of 39.10 kg/m (current weight: 226lbs, 5'3". It is well recognized that obesity is a chronic illness associated with many related diseases, such as dyslipidemia and hypertension. Obesity deserves the same treatment and attention as any other chronic illness."

WellSense responded that the prior authorization request that is under appeal was specific to a request for Mounjaro only, not Wegovy; however, Wegovy is also not covered for treatment of obesity.

Findings of Fact

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

1. The appellant is an adult under the age of 65 (Exhibit 4).
2. The appellant is enrolled in the WellSense/Boston Medical Center HealthNet Plan, a MassHealth accountable care organization (Testimony and Exhibit 5).
3. On January 11, 2023, the appellant's provider submitted a request for prior authorization for the prescription medication Mounjaro 2.5 mg/0.5 pen injector for the treatment of obesity (Testimony and Exhibit 5).
4. On January 11, 2023, a WellSense pharmacist denied the request because the drug is excluded from coverage (Testimony and Exhibit 5).
5. On January 11, 2023, the appellant made a verbal expedited appeal request to WellSense (Testimony and Exhibit 5).
6. On January 12, 2023, a WellSense physician reviewer denied the appellant's internal appeal because Mounjaro is part of a group of drugs that is excluded under the plan's drug benefit. Specifically, the drug is excluded for the treatment of obesity because MassHealth does not pay for any drugs used for the treatment of obesity. (Testimony and Exhibit 5).
7. On March 7, 2023, the appellant timely appealed the denial (Exhibit 2).
8. The appellant has a BMI of 39.10 kg/m and has been unsuccessful with sustained weight loss after bariatric surgery, diet, and exercise (Testimony and Exhibit 6).

² The letter specifically mentions Wegovy, not Mounjaro, which was the drug requested in the prior authorization under appeal. The letter states "[The appellant] is in need of coverage for prescription medication, specifically a GLP-1 agonist, Wegovy, that is not currently covered by her insurance plan."

Analysis and Conclusions of Law

MassHealth members who are younger than 65 years old must enroll in a MassHealth managed care provider available for their coverage type. Members described in 130 CMR 508.001(B) or who are excluded from participation in a MassHealth managed care provider pursuant to 130 CMR 508.002(A) are not required to enroll with a MassHealth managed care provider. 130 CMR 508.001(A).

Pursuant to 130 CMR 508.010(B), members are entitled to a fair hearing under 130 CMR 610.000: *MassHealth: Fair Hearing Rules* to appeal:

(B) a determination by the MassHealth behavioral health contractor, by one of the MCOs, Accountable Care Partnership Plans, or SCOs as further described in 130 CMR 610.032(B), if the member has exhausted all remedies available through the contractor's internal appeals process...

The appellant exhausted the internal appeal process offered through her ACO, and thus is entitled to a fair hearing pursuant to the above regulations. As MassHealth's agent, WellSense is required to follow MassHealth rules and regulations pertaining to a member's care. 130 CMR 406.413 states the following regarding 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...

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

(C) 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.

(Emphasis added).

130 CMR 406.422(A) states the following regarding 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.

The appellant's provider submitted a prior authorization request for the prescription medication Mounjaro 2.5 mg/0.5 pen injector for the treatment of obesity. According to the prior authorization request, testimony, and the doctor's letter dated May 15, 2023, the medication was requested to treat obesity. While the appellant's testimony was credible and well-reasoned, 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 inadequate treatment (130 CMR 406.422(A)). Medication for treatment of obesity is simply not covered by MassHealth.

For these reasons, the appeal is denied.

Order for ACO

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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

ACO Representative: BMC HealthNet Plan, Member Appeals & Grievances, Attn: Felicia DiSciscio, 529 Main Street, Ste. 500, Charlestown, MA 02129