

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2303237
Decision Date:	6/21/2023	Hearing Date:	05/31/2023
Hearing Officer:	Paul C. Moore		

Appellant Representative:

Pro se (by telephone)

**Tufts Health Together /Managed Care
Organization Representatives:**

John Shinn, Esq., Sherin and Lodgen, LLP;
Nicole Dally, program manager for appeals and
grievances; David Dohan, M.D., medical
director (all from Tufts Health Plan, and all by
telephone)

Observing: Elana Horwitz, MassHealth
contract manager; Lakshman Swamy,
MassHealth clinical director



*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:	Managed Care Organization/Out-of-Network Benefits
Decision Date:	6/21/2023	Hearing Date :	05/31/2023
MCO Reps.:	Counsel et al.	Appellant Rep.:	Pro se
Hearing Location:	Board of Hearings (Remote)		

Authority

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

Jurisdiction

By notice dated March 16, 2023, Tufts Health Together (Tufts), a MassHealth managed care organization (MCO), informed the appellant that it had denied his internal appeal of a decision not to provide coverage for out-of-network physical therapy visits (Exhibit 1). The appellant filed this external appeal with the Board of Hearings (BOH) in a timely manner on April 24, 2023 (Exhibit 2). A MCO's denial of an internal appeal is grounds for appeal to the BOH (130 CMR 610.032(B)(2)).¹

Action Taken by MCO

Tufts, a MassHealth MCO, denied the appellant's internal appeal of a denial of coverage for out-of-network physical therapy visits.

¹ A managed care organization is defined at 130 CMR 501.001 as any entity with which the MassHealth agency contracts to provide and coordinate care and certain other medical services to members on a capitated basis, including a senior care organization (SCO), an integrated care organization, or an entity that is approved by the Massachusetts Division of Insurance as a health-maintenance organization (HMO), or that otherwise meets the State Plan definition of an HMO.

Issue

Did Tufts correctly deny the appellant's internal appeal of a decision not to provide coverage for out-of-network physical therapy visits?

Summary of Evidence

Tufts was represented at hearing by a medical director, program manager for appeals and grievances, and an attorney. Dr. Dohan, the Tufts medical director, testified that Tufts received a prior authorization (PA) request from the appellant's physical therapist, Dr. Garrett Labberton ("the provider"), in late [REDACTED] 2023 requesting coverage for out-of-network physical therapy visits for the appellant at the in-network level of benefits. Dr. Dohan explained that the appellant is under age 65, enrolled in Tufts Health Together, and suffers from chronic neck and low back pain following multiple motor vehicle accidents over the last fifteen years (Testimony, Exh. 3). On February 8, 2023, Tufts made a decision to deny the PA request, notifying the appellant and the provider in writing that there are in-network physical therapy providers, located at reasonable distances from the appellant's home, with the qualifications and expertise to address his health care needs in a timely manner (Exh. 3, pp. 41-42).

Dr. Dohan indicated that for a member to be approved for physical therapy with an out-of-network provider, the member would need to have been diagnosed with a rare medical condition where there is no in-network provider with the necessary specialization and training to render treatment; or, the member requires a specialized medical procedure for which there is no in-network provider with the necessary specialization and training to perform the procedure; or, the member's primary language is one that the in-network provider does not speak; or, the member is a resident of a skilled nursing facility who cannot travel and in-network providers are not available in that setting; or, in-network providers with the clinical expertise required to treat the member's condition are not located within the plan's geographic access standard (*to wit*, 30 miles from the member's primary residence) (Testimony, Exh. 3, pp. 21-22). According to Dr. Dohan, none of these circumstances were presented in this case.

According to Dr. Dohan, the appellant requested an internal appeal of this PA denial on February 16, 2023. At that point, the case was referred to a consultant with MCMC, an outside medical organization, for case review and for a peer-to-peer consult with Dr. Labberton. The outside consultant prepared a written report following his consult with Dr. Labberton, reflecting that the latter specializes in postural restoration therapy. Dr. Labberton reported to the MCMC consultant that the appellant had two motor vehicle accidents twelve years apart, that he has been treating the appellant using specialized training acquired through the Postural Restoration Institute ("PRI"), and that the respondent has been responding well to treatment (Exh. 3, pp. 59-60). The MCMC consultant concluded that the appellant's needs can be met by an in-network provider, and recommended denial of the internal appeal (*Id.*).

Once Tufts received the MCMC consultant's report, Tufts convened an internal appeals

committee, including a physician, a physical therapist, and a utilization management consultant. The appeals committee met on March 14, 2023, and determined that the appellant's chronic neck and back pain could effectively be treated by an in-network physical therapy provider. Dr. Dohan noted that all licensed physical therapists are trained in postural restoration therapy, and that the PRI is not a recognized subspecialty of physical therapy by the American Physical Therapy Association (APTA) (Testimony). In addition, Dr. Dohan indicated that the appeals committee researched whether there were any peer-reviewed studies about the PRI; they found no studies supporting that this type of training was unique to Dr. Labberton, nor that it could not be rendered by other in-network physical therapists (Testimony). The appeals committee therefore voted to deny the appellant's internal appeal, notifying the appellant and Dr. Labberton of this denial by letter dated March 16, 2023 (Exh. 1).

It is the latter notice that the appellant appealed externally to the BOH on April 24, 2023 (Exh. 2).

The appellant testified by telephone that he enrolled in Tufts effective February 1, 2023, and disenrolled March 31, 2023.² He testified that he began physical therapy (PT) with Dr. Labberton in [REDACTED] 2022. At that time, he was enrolled in a commercial Tufts health insurance plan, through the Health Connector, and this plan paid for his first eight physical therapist visits. He saw Dr. Labberton about twice a week through [REDACTED] 2023, at which time he began seeing him about once a week. The diminished frequency of visits is due both to the progress he has made in therapy, as well as his financial limitations. His specific diagnoses are upper back pain on his right side, and neck pain on the right side (Testimony, Exh. 4).

The appellant testified that Dr. Labberton has special training in PRI, and he asserted that there are no Tufts in-network physical therapists similarly trained. PRI, according to the appellant, focuses not only on back and neck exercises, but also on how various muscle groups connect, and how strengthening his core can mitigate his back and neck pain. He described the PRI approach as more "holistic." He has undergone five or six courses of PT in the past, with limited gains. With PRI therapy, however, the appellant has made more meaningful gains; for example, he is now able to lift fairly heavy boxes, which he was unable to do for about fifteen years. He does exercises with Dr. Labberton that he has not done in other PT sessions in the past. His level of pain has significantly decreased (Testimony).

The appellant noted that the APTA has recognized ten physical therapy "specialties," which he

² Tufts, however, asserted that the appellant's enrollment date was February 4, 2023. The appellant submitted a copy of past correspondence with another BOH hearing officer, and a MassHealth representative, by e-mail to this hearing officer following the hearing. That correspondence reflects that he had previously appealed a "gap" in his MassHealth coverage when he enrolled with Tufts. The appeal was heard by another hearing officer at BOH, but the case was resolved without a formal decision when MassHealth agreed to "back-date" the appellant's coverage with Tufts Health Together to January 25, 2023, with no gap in coverage until his disenrollment on March 31, 2023. Tufts should be aware of this previous appeal resolution, and coverage should begin on January 25, 2023, not February 4, 2023. This post-hearing submission was forwarded to the Tufts attorney via e-mail from this hearing officer (Exh. 7).

asserted are based on specific populations or medical diagnoses. He does not agree that because PRI is not one of these ten listed specialties, that it is not a legitimate treatment modality. He noted also that there is no statement on the APTA Internet website stating that a treatment modality other than these ten specialties is not an evidence-based, effective approach to physical therapy. He added that on the website of the PRI, courses are offered for credit toward continuing physical therapy education and licensure, supporting that PRI is a professionally accepted mode of physical therapy (Testimony).³

The appellant testified that he disagreed that the techniques used by physical therapists trained in PRI are techniques that all physical therapists have learned. Thus, he does not agree that the therapy he is seeking is available in-network. He added that the exercises he does with Dr. Labberton include using weights and pulleys, and sled-pulling, all of which contribute to strengthening his core. This, in turn, strengthens his back and neck muscles (Testimony).

Dr. Dohan indicated that Tufts identified, in writing to the appellant, several in-network physical therapists, less than 30 miles from the appellant's home, whom Tufts believes have the necessary training to treat the appellant's conditions. The appellant testified that he has not seen any of these providers. The appellant stated that he checked the website of the PRI to find physical therapists with this training who are in-network at Tufts, but could find none (Testimony).

Since beginning therapy with Dr. Labberton, his daily pain has decreased, and he does not use over-the-counter pain medication (such as Alleve) as frequently as in the past.

As of April 1, 2023, the appellant enrolled in a different MassHealth-affiliated accountable care organization (ACO), Beth Israel Lahey Health. His primary care doctor in this plan, Dr. Li, submitted a PA request to this plan for coverage of visits with Dr. Labberton, but he has not yet received a decision (Testimony).

Dr. Dohan testified that Tufts performed several literature reviews to determine if the PRI modality has proven more effective than "conventional" physical therapy (such as massage and ultrasound), according to peer reviews. None were located (Testimony).

The appellant testified that he was referred to a rheumatologist several years ago, from whom he received a tentative diagnosis of ankylosing spondylitis, but other physicians disagreed with this diagnosis.

The appellant submitted into evidence a March 24, 2023 letter from his primary care physician, Dr. Li, which states in relevant part:

³ Corroboration of this assertion was supplied by the appellant in his request for hearing, to which he attached a printout from the PRI Internet website, *to wit*, a summary of live and online courses offered by PRI, and a list of the states that accept such courses toward completion of continuing education units for state licensure (Exh. 2D).

I am writing in support of [the appellant]. . . who is requesting insurance coverage of out-of-network (OON) physical therapy visits with Garrett Labberton, DPT.

[The appellant] was referred from primary care at Lahey Burlington by one of my colleagues . . . on [REDACTED] for PT evaluation and treatment for upper back pain on right side and neck pain on right side.

Later that month , my office made a referral to Tufts for OON physical therapy with Dr. Labberton. The referral was accepted, and [the appellant] was able to have eight visits covered. [The appellant] recently informed me that his current Tufts plan has denied a request for OON coverage with this same provider. He appealed and Tufts denied the appeal.

I am aware that [the appellant] has previously (in the past 10-12 years) had at least 5 periods of treatment with more typical physical therapists for back and neck pain – but without significant lasting gains. The most recent was in 2021. Two significant motor vehicle accidents (2008 and 2017) are contributing factors to his ongoing pain. A multitude of imaging over the years has not indicated surgery as necessary – but he has consistently experienced chronic symptoms in the areas of pain level, limited range of motion, and need for improved strength.

The Postural Restoration Institute (PRI) training that [Dr. Labberton] has is well suited to a patient like [the appellant]. This approach is more holistic and does not simply focus on the back and neck – but also related muscles that need activation and strengthening. And speaking from experience with [the appellant], it seems clear that he is getting stronger and has less pain than several months ago.

The PRI specialty within physical therapy that [the appellant] is benefitting so much from is not available among any in-network providers. I hope the state sees the benefit and necessity of coverage of this important treatment for [the appellant].

(Exh. 4)

The appellant also submitted into evidence a copy of an April, 2023 letter from Dr. Labberton, stating in pertinent part:

I am writing in support of [the appellant]. . . who is requesting coverage for out-of-network physical therapy services with me at Divergence Physical Therapy and Wellness.

[The appellant] was seen on [REDACTED] with complaints of chronic neck, shoulder and upper back pain with a primary emphasis on chronic neck and back pain. . . following multiple motor vehicle accidents (2008 and 2017). He had previously sought treatment from a number of in-network physical therapists with only

intermittent relief from his symptoms. After failing to find relief with traditional Physical Therapy, [the appellant] sought out treatment that is taught at the PRI. PRI trained physical therapists focus on patterns of musculature and movement and design treatment to address muscular overactivity while strengthening weak or underutilized musculature. This focus enables a patient to experience long-term relief as well as autonomy in their daily lives. [The appellant] has also demonstrated significant improvements in overall muscle strength which has further developed his resiliency to environmental stress that had previously aggravated his symptoms. He has demonstrated significant progress with this method of treatment.

There are no PRI trained clinicians in [the appellant's] area and therefore I am appealing to the state to allow for coverage of his continued care.

(Exh. 5)

The Tufts Health Together member handbook for 2023 (Exh. 3A) contains a section called "Continuity of Care" for new members, which specifies the circumstances under which new members may continue to see out-of-network providers; these circumstances include, but are not limited to, when a new member is pregnant; when a new member is receiving outpatient medical, behavioral health, or substance use disorder treatment; when a new member is receiving inpatient hospital care; and when a new member with autism spectrum disorder is actively receiving applied behavioral analysis (ABA) services (*Id.*, pp. 9-10).

Findings of Fact

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

1. The appellant, who is under age 65, was enrolled in Tufts Health Together from January 25, 2023 through March 31, 2023 (Testimony, Exh. 3, Exh. 7).
2. Previously, the appellant was enrolled in a Tufts commercial plan through the Health Connector (Testimony).
3. The appellant's medical diagnoses include chronic neck and low back pain following multiple motor vehicle accidents over the last fifteen years (Testimony, Exh. 3).
4. In late January, 2023, Tufts received a prior authorization (PA) request from the appellant's physical therapist, Dr. Garrett Labberton, requesting coverage for out-of-network physical therapy visits for the appellant at the in-network level of benefits (*Id.*).
5. Dr. Labberton has received training from the Postural Restoration Institute (PRI) (Testimony, Exh. 5).
6. On February 8, 2023, Tufts made a decision to deny the PA request, notifying the appellant

and the provider in writing that there are in-network physical therapy providers, located at reasonable distances from the appellant's home, with the qualifications and expertise to address his health care needs in a timely manner (Exh. 3, pp. 41-42).

7. The appellant requested an internal appeal of this Tufts denial on February 16, 2023 (*Id.*).
8. At that point, the case was referred to a consultant with MCMC, an outside medical organization, for case review and for a peer-to-peer consult with Dr. Labberton (*Id.*).
9. Following a consult with Dr. Labberton, the MCMC consultant determined that the PT needed by the appellant is not so specialized that it requires treatment with an out-of-network physical therapist (Exh. 3, pp. 59-60).
10. The MCMC consultant recommended denial of the appellant's internal appeal (*Id.*).
11. Once Tufts received the MCMC consultant's report, Tufts convened an internal appeals committee, including a physician, a physical therapist, and a utilization management consultant (Testimony).
12. The appeals committee met on March 14, 2023, and determined that the appellant's chronic neck and back pain could effectively be treated by an in-network physical therapy provider (*Id.*).
13. A notice dated March 16, 2023 apprised the appellant that Tufts was denying his level one internal appeal (Exh. 1).
14. The appellant filed a timely appeal of the denial with the BOH on April 24, 2023 (Exh. 2).
15. For a Tufts member to be approved for physical therapy with an out-of-network provider, the member would need to have been diagnosed with a rare medical condition where there is no in-network provider with the necessary specialization and training to render treatment; or, the member requires a specialized medical procedure for which there is no in-network provider with the necessary specialization and training to perform the procedure; or, the member's primary language is one that the in-network provider does not speak; or, the member is a resident of a skilled nursing facility who cannot travel and in-network providers are not available in that setting; or, in-network providers with the clinical expertise required to treat the member's condition are not located within the plan's geographic access standard (*to wit*, 30 miles from the member's primary residence) (Testimony, Exh. 3, pp. 21-22).
16. All licensed physical therapists receive some training in postural restoration therapy (Testimony).
17. PRI is not a recognized subspecialty of physical therapy by the American Physical Therapy

Association (APTA) (Testimony).

18. The appellant began treatment with Dr. Labberton in [REDACTED] 2022, and saw him twice per week through about [REDACTED] 2023 (Testimony).
19. The appellant asserted that PRI therapy focuses on how various muscle groups connect, how strengthening his core can mitigate his back and neck pain, and is more “holistic” than traditional PT (Testimony).
20. The appellant has made more meaningful gains in PRI therapy with Dr. Labberton than he has in the past with traditional PT (Testimony).
21. Tufts performed several literature reviews to determine if the PRI modality has proven more effective than “conventional” physical therapy (such as massage and ultrasound), according to peer reviews. None were located (Testimony).
22. Tufts identified, in writing to the appellant, several in-network physical therapists, less than 30 miles from the appellant’s home, whom Tufts believes have the necessary training to treat the appellant’s conditions (Testimony).
23. The Tufts Health Together member handbook for 2023 contains a section called “Continuity of Care” for new members, which specifies the circumstances under which new members may continue to see out-of-network providers; these circumstances include, but are not limited to, when a new member is pregnant; when a new member is receiving outpatient medical, behavioral health, or substance use disorder treatment; when a new member is receiving inpatient hospital care; when a new member with autism spectrum disorder is actively receiving applied behavioral analysis (ABA) services; and when a new member was receiving, at the time of enrollment, PT authorized by MassHealth, a MassHealth MCO, or a MassHealth ACO (Exh. 3A, pp. 9-10).

Analysis and Conclusions of Law

Pursuant to MassHealth regulation 130 CMR 508.001(A):

Mandatory Enrollment with a MassHealth Managed Care Provider. 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.

Next, MassHealth regulation 130 CMR 508.003, “Enrollment with a MassHealth Managed Care Provider,” provides in relevant part:

(A) Member Selection

(1) In accordance with 130 CMR 508.004 through 508.006, members required or permitted to select a MassHealth managed care provider may select any MassHealth managed care provider from the MassHealth agency's list of MassHealth managed care providers for the member's coverage type in the member's service area, if the provider is able to accept new members. . . .

(B) Member Assignment to a MassHealth Managed Care Provider. If a member does not choose a MassHealth managed care provider within the time period specified by the MassHealth agency in a notice to the member or in other circumstances determined appropriate by the MassHealth agency and consistent with applicable laws, the MassHealth agency assigns the member to an available MassHealth managed care provider. . . .

Next, MassHealth regulation 130 CMR 508.004(B), "Obtaining Services when Enrolled in an MCO," states:

- (1) Primary Care Services. When the member selects or is assigned to an MCO, that MCO will deliver the member's primary care, determine if the member needs medical or other specialty care from other providers, and determine referral requirements for such necessary medical services. An MCO may provide a member's primary care through an MCO-administered Accountable Care Organization.
- (2) Other Medical Services. **All medical services to members enrolled in an MCO (except those services not covered under the MassHealth contract with the MCO, family planning services, and emergency services) are subject to the authorization and referral requirements of the MCO.** MassHealth members enrolled in an MCO may receive family planning services from any MassHealth family planning provider and do not need an authorization or referral in order to receive such services. Members enrolled with an MCO should contact their MCO for information about covered services, authorization requirements, and referral requirements.

(Emphasis added)

Next, MassHealth regulation 130 CMR 508.010, "Right to a Fair Hearing," states as follows:

Members are entitled to a fair hearing under 130 CMR 610.000: *MassHealth: Fair Hearing Rules* to appeal

(A) the MassHealth agency's determination that the MassHealth member is required to enroll with a MassHealth managed care provider under 130 CMR 508.001;

(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;

...

(Emphasis added)

Here, the appellant exhausted the internal appeal process offered through his MCO, and thereafter, requested a fair hearing with the BOH, to which he is entitled pursuant to the above regulations.

As MassHealth's agent, Tufts is required to follow MassHealth laws and regulations pertaining to a member's care. Under the regulations pertaining to MassHealth MCOs, above, Tufts is empowered to determine if the appellant needs medical or other specialty care from other providers, subject to its prior authorization and referral requirements.

MassHealth will pay a provider only for those for services that are medically necessary. Pursuant to 130 CMR 450.204(A), 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 MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider, or identified by MassHealth 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.

The appellant applied for out-of-network physical therapy visits with Dr. Labberton, a physical therapist who is trained in PRI techniques. The appellant describes PRI techniques as more holistic than traditional physical therapy, with a focus on muscular overactivity while strengthening weak or underutilized musculature. The appellant's previous commercial health plan covered the cost of some of these visits. Upon enrollment with a MassHealth MCO, however, the appellant has been unable to have such visits covered because the MCO determined that the appellant's medical conditions can be treated successfully by in-network providers.

The Tufts decision is supported by evidence that all physical therapists have some training in postural restoration techniques. There is no doubt that PRI is a legitimate modality of PT; however, there is a substantial question whether PRI is so specialized, and suited to the appellant's unique needs, that he should be authorized to see an out-of-network provider to receive such services.

The criteria used by Tufts to determine if the appellant may go to an OON provider are as follows: the member would need to have been diagnosed with a rare medical condition where there is no in-network provider with the necessary specialization and training to render treatment; or, the member requires a specialized medical procedure for which there is no in-network provider with the necessary specialization and training to perform the procedure; or, the member's primary language is one that the in-network provider does not speak; or, the member is a resident of a skilled nursing facility who cannot travel and in-network providers are not available in that setting; or, in-network providers with the clinical expertise required to treat the member's condition are not located within the plan's geographic access standard (*to wit*, 30 miles from the member's primary residence). These criteria are sound and logical, and it is clear that the appellant does not meet any of these conditions.

Further, the Tufts Health Together member handbook for 2023 contains a section called "Continuity of Care" for new members, which specifies the circumstances under which new members may continue to see out-of-network providers; these circumstances include, but are not limited to, when a new member is pregnant; when a new member is receiving outpatient medical, behavioral health, or substance use disorder treatment; when a new member is receiving inpatient hospital care; when a new member with autism spectrum disorder is actively receiving ABA services; and when a new member was receiving, at the time of enrollment, PT authorized by MassHealth, a MassHealth MCO, or a MassHealth ACO. Again, the evidence shows that the appellant does not fall into any of these categories.

Thus, I agree with Tufts that the appellant's needs can be met by seeing an in-network physical therapist within his geographic area (*to wit*, within 30 miles or less of his primary residence). There is insufficient evidence in the record to show that Dr. Labberton's training in PRI approaches is more meaningful and effective, and more directly relevant to the specific treatment the appellant needs. While the appellant has demonstrated significant gains in his work with Dr. Labberton, there is little evidence that he could not make similar gains working with another in-network physical therapist, of whom there are many.

Thus, I conclude that PT visits with Dr. Labberton are not medically necessary for the appellant at this time under 130 CMR 450.204(A)(2), since there are other medical services comparable in effect, available, and suitable for the appellant, that are more conservative or less costly to the MassHealth MCO agent, Tufts Health Together.

For all of these reasons, the appeal must be DENIED.

Order for MCO

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.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Nicole Dally, Program Manager II, Appeals and Grievances Department, Tufts Health Plan, One Wellness Way, Canton, MA 02021