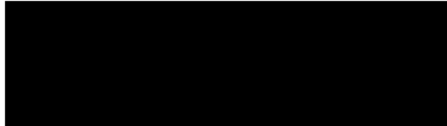


Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2304749
Decision Date:	09/05/2023	Hearing Date:	07/11/2023
Hearing Officer:	Kimberly Scanlon		

Appearance for Appellant:
Via telephone
Pro se

Appearance for MassHealth:
Via telephone
Phuong Luc, Pharm.D., MassHealth 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; Wegovy; Drug Utilization Review (DUR)
Decision Date:	09/05/2023	Hearing Date:	07/11/2023
MassHealth's Rep.:	Phuong Luc, Pharm. D., DUR	Appellant's Rep.:	<i>Pro se</i>
Hearing Location:	Taunton MassHealth Enrollment Center Room 1 (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 June 10, 2023, MassHealth denied the Appellant's request for prior authorization for the prescription medication Wegovy, 0.25 mg/0.5 ml pen, because MassHealth determined that it does not pay for any drug used for the treatment of obesity. (130 CMR 406.413(B)(4); Exhibit 1). The Appellant filed this appeal in a timely manner on June 12, 2023. (130 CMR 610.015(B); Exhibit 2). Denial of a prior authorization request is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the Appellant's request for prior authorization for the prescription medication Wegovy, 0.25 mg/0.5 ml pen.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 406.413(B)(4) and 130 CMR 450.204, in denying the Appellant's prior authorization request for Wegovy, 0.25 mg/0.5 ml pen.

Summary of Evidence

The Appellant appeared telephonically. MassHealth was represented telephonically by a licensed pharmacist with MassHealth's Drug Utilization Review Program (DUR). The Appellant is between the ages of 19 and 65 and is open on MassHealth Care Plus. (Exhibit 3). The MassHealth representative testified as follows: Wegovy is an injectable medication used for the treatment of obesity. Here, the Appellant's provider submitted a request for prior authorization for the prescription medication Wegovy, 0.25 mg/0.5 ml pen to MassHealth on June 9, 2023. (Exhibit 6, p. 7). With respect to "Medication Requested/Other Medication" the MassHealth representative noted that there were not any drugs checked off or otherwise indicated. (Exhibit 6, p. 3). The Appellant's provider listed the Appellant's primary diagnosis related to the medication request as the patient needs to lose 50+ (pounds) to prepare for surgery and Wegovy is Food and Drug Administration (hereinafter "FDA") approved for weight loss since 2021.¹ The MassHealth representative explained that the request was denied on June 10, 2023, pursuant to MassHealth regulations, which state, *inter alia*, that MassHealth does not pay for any drug used for the treatment of obesity. (See, 130 CMR 406.413(B)(4); Exhibit 6, p. 20).²

The Appellant testified that she contacted MassHealth and requested a list of approved medications. Upon doing so, she was told that Wegovy, Mounjaro, and Ozempic are all covered drugs but only for diabetics. Further, Wegovy was approved by the FDA. The Appellant expressed her confusion in receiving conflicting information and further testified that she contacted pharmacies who told her that many people that are prescribed Wegovy is for weight loss purposes. The Appellant explained that most of her primary care physician's (hereinafter "PCP") patients receive MassHealth coverage. Thus, the reason that her PCP prescribed Wegovy is due to other patients currently taking this medication for weight loss purposes. The Appellant is unclear why MassHealth will not cover this medication for her. Moreover, the Appellant expressed her concerns regarding the reasoning for MassHealth denying her request for Wegovy since it is FDA approved.

In response, the MassHealth representative testified that she hears the Appellant's concerns and while she cannot speak to procedures or medical benefits, drugs that are used solely for weight loss, even FDA approved drugs, are not covered by MassHealth, in accordance with its regulations.

¹ Specifically, the explanation provided by the Appellant's provider states as follows: "pt needs to loose 50+ to prepare for her hip surgery and that Wegovy is FDA approved for weight loss since 2021." (Exhibit 6, p. 8).

² The MassHealth representative further testified that MassHealth received the same request from the Appellant's provider again on June 15, 2023.

Therefore, she is not sure where the Appellant received the information that Wegovy would be covered because it is not. With respect to Mounjaro and Ozempic, both prescribed drugs are used for Type II Diabetic patients, and require prior authorization. Thus, if a member is diagnosed with Diabetes and met the failed trials of less-costly alternatives, Mounjaro or Ozempic may be approved for the member for Diabetic purposes, not for weight-loss.

The Appellant testified that she finally received an appointment to see an endocrinologist, because she has been trying to lose weight for the past 2-3 years. She explained that she tried weight-loss medications (over the counter), dieting, personal trainings, nutrition plans, etc. to no avail. The Appellant reiterated that while she understands that MassHealth has regulations to be followed, she does not understand why MassHealth does not advocate for its members. The Appellant testified that she is not only advocating for herself, but also for others who are desperately trying to have this medication approved by MassHealth. Moreover, the Appellant explained that her PCP told her that he wanted to see the Appellant testify because she is not only representative herself, she is representing an entire community that has struggled with weight loss issues.

In response to inquiry made at the hearing, the MassHealth representative explained that Wegovy and Ozempic medications have the same active ingredient called semaglutide. The difference between the two is that Wegovy was FDA approved solely for weight-loss whereas Ozempic was approved for Diabetes. Here, if the Appellant was diagnosed with Diabetes or pre-diabetic conditions and met the failed trials of less-costly alternatives, MassHealth would consider a prior authorization request to approve Ozempic for diabetic purposes (which additionally helps with weight loss). However, there would need to be a diagnosis included in the prior authorization request other than weight loss itself.

The Appellant stated that all her medical records indicate that she is basically pre-diabetic with her BMI and weight. She stated that MassHealth is negligent and unprofessional because she is receiving conflicting information. Further, the Appellant expressed her frustration with failing trials of less-costly alternatives and does not understand why MassHealth does not support people, like the Appellant, in weight-loss. The Appellant testified that MassHealth does not understand that when people are overweight, they suffer from additional medical complications, and she feels that MassHealth is just money hungry. She testified that the health care system is complete trash and MassHealth is not advocating enough. The Appellant explained that she personally feels everyone should be re-trained.

The MassHealth representative testified, in response, that she would like to offer her support to the Appellant. She explained that when members contact MassHealth, it is typically the Customer Service Department that is initially contacted, which is separate and apart from the DUR. However, the Appellant is welcome to have her provider contact DUR and work directly with them to go over the criteria to be met, along with alternatives, if any. The MassHealth representative explained that for weight-loss specifically, MassHealth is guided by its regulations and medications used solely for weight loss are not covered.

The Appellant made inquiry as to the reason that MassHealth does not follow FDA regulations. She reiterated that it does not make sense to her when all other insurance plans cover it (Wegovy) for weight loss. The Appellant explained that everyone needs health insurance and while she is appreciative of her MassHealth coverage, eventually she will need to pay for her own insurance plan.

The MassHealth representative explained that the FDA approves drugs based on the safety thereof, along with other factors such as trials. MassHealth, as far as criteria in reviewing said drugs, will have its clinical team assess evidence-based medicine, clinical trials, etc., in accordance with its regulations such as Medical Necessity and Limitations on Drugs. Thus, the MassHealth DUR must follow the pertinent regulations. In this case, the MassHealth representative testified that drugs that are FDA approved for weight loss and are solely requested for such are excluded, unfortunately.

The Appellant testified that on one occasion she contacted MassHealth directly and was transferred to the medical department which handles her health plan. She explained that MassHealth told her that certain plans will not cover certain medications. The Appellant next inquired as to why MassHealth does not write down other recommendations and include it in denial notices issued to members. She explained that she has previous work experience in the medical field, and it takes a long time to write out prior authorizations. The Appellant suggested that MassHealth should take the time to write more in-depth information for members trying to better themselves.

The MassHealth representative testified in response, that all members and providers can access its website to ascertain what is and is not covered by MassHealth. With respect to writing suggestions, the MassHealth representative explained that MassHealth cannot dictate to providers what medications they should prescribe to their patients. However, what is covered is public information and accessible to the public.

The Appellant testified that she has a learning disability and cannot take hours out of her day to look at a website to ascertain what medications are covered by MassHealth. She explained that it is MassHealth's job to give her medical advice, based off its knowledge. The Appellant testified that MassHealth should put forth effort into writing other suggestions rather than just issuing a denial notice.

Findings of Fact

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

1. On June 9, 2023, the Appellant's provider submitted to MassHealth, a request for prior authorization for the prescription medication Wegovy, 0.25 mg/0.5 ml pen. (Exhibit 6, p. 7).
2. The request for prior authorization submitted by the Appellant's provider did not indicate any drug was requested. (Exhibit 6, p. 3).
3. On a separate page in the prior authorization request, the Appellant's provider documented that "pt needs to loose 50+ to prepare for her hip surgery and that Wegovy is FDA approved for weight loss since 2021." (Exhibit 6, p. 8).
4. On June 10, 2023, MassHealth denied the Appellant's prior authorization request for Wegovy, 0.25 mg/0.5 ml pen, on the basis that it does not pay for any drug used for the treatment of obesity. (Exhibit 1).
5. The Appellant timely appealed the denial notice on June 12, 2023. (Exhibit 2).
6. The Appellant is between the ages of 19 and 65 and is open on MassHealth Care Plus. (Exhibit 3).
7. The Appellant has attempted to lose weight for the past 2-3 years. (Testimony).

Analysis and Conclusions of Law

Generally, MassHealth will not pay for any services or prescriptions that are not 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)).

Specifically, with respect to pharmaceuticals, MassHealth publishes a Drug List that specifies what

drugs are payable by MassHealth, and these drugs must be “approved by the U.S. Food and Drug Administration and manufactured by companies that have signed rebate agreements with the U.S. Secretary of Health and Human Services pursuant to 42 U.S.C. 1396r-8.”

(130 CMR 406.412(A)(1)).

Wegovy does not appear on the MassHealth Drug List.

Further, MassHealth regulation, 130 CMR 406.413(C)(1) states in pertinent part:

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 younger than 21 years old. 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.

(130 CMR 406.413(C)(1)).

Moreover, MassHealth regulation 130 CMR 406.413(B), “Drug Exclusions” states as follows:

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 individuals with intellectual disabilities (ICF/IID).

(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 drugs when used for the treatment of male or female sexual dysfunction.

(130 CMR 406.413(B)). (Emphasis added).

Finally, MassHealth regulation 130 CMR 406.422(A) states in relevant part:

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)).

In the present case, the Appellant's prescriber requested Wegovy, 0.25 mg/0.5 ml pen specifically for the Appellant to lose 50+ pounds to prepare for surgery. As set forth above, MassHealth does not pay for *any* drug used for the treatment of obesity. There are some exceptions in existence for types of drugs that are typically not covered by MassHealth, as listed at 130 CMR 406.412(A) and 406.413(A) and (C). However, no such exceptions exist for drugs solely used to treat obesity. (See, 130 CMR 406.413(B)(4)).

For these reasons, this 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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

cc:

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