

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2307166
Decision Date:	10/25/2023	Hearing Date:	09/15/2023
Hearing Officer:	Radha Tilva		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Phuong Luc, UMMS Drug Utilization Review



*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:	PA – Drug Utilization Review
Decision Date:	10/25/2023	Hearing Date:	09/15/2023
MassHealth's Rep.:	Phuong Luc	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.

Jurisdiction

Through a notice dated August 10, 2023, MassHealth denied the appellant's prior authorization requests for Tretinoin .05% cream and Azelaic acid 15% gel (Exhibit 1). The appellant filed this appeal in a timely manner on August 25, 2023 (see 130 CMR 610.015(B) and Exhibit 2). Challenging a denial of a prior authorization request is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied appellant's prior authorization requests for Tretinoin .05% cream and Azelaic acid 15% gel.

Issue

The appeal issue is whether MassHealth was correct in denying the prior authorization request for Tretinoin .05% cream as well as Azelaic acid 15% topical gel.

Summary of Evidence

MassHealth was represented at the hearing by a pharmacist from University of Massachusetts Medical School, a contractor for MassHealth. The MassHealth representative appeared via video conference. The appellant appeared in person.

On August 10, 2023 MassHealth received requests for prior authorization from [REDACTED] for Azelaic acid 15% gel and Tretinoin cream .05% to treat acne vulgaris (see Exhibit 6, pp. 4-10). The Azelaic acid which was requested was denied because the information provided did not contain sufficient information to determine medical necessity (Exhibit 6, p. 16). It was noted in the denial that the prescriber can resubmit a new prior authorization request with additional clinical documentation (e.g. medical records, previous drug trials, dates) (*Id.*). The MassHealth representative testified that Azelaic acid was denied because the severity of the acne was not documented and because there was no documentation that a topical cream was tried with benzoyl peroxide. The Tretinoin cream was denied by MassHealth because the medical necessity to treat a MassHealth member over the age of 22 with an acne product had not been established (Exhibit 6, p. 8). The MassHealth representative testified that the Tretinoin cream was also denied because the severity of the acne was not documented which is a requirement under MassHealth. The MassHealth representative explained that both the cream and the acid requires a grade 2 or higher severity of acne.

The MassHealth representative testified that two letters were sent to the provider on August 25, 2023 and specified exactly what was missing from the letters of medical necessity. The letter was specific and stated that they denied the request for prior authorization because they did not have enough information and asked specifically for the name of the condition, including severity (i.e. grade of acne) for which the Tretinoin cream was prescribed (Exhibit 6, p. 18). The second letter for the Azelaic acid requested that the physician provide the name of the condition, including severity (i.e., grade of acne), for which the Azelaic acid was prescribed, and documentation that you have tried benzoyl peroxide used in combination with a topical antibiotic agent and they did not work, or that you had unacceptable side effects or, in the alternative, documentation which prevents the use of benzoyl peroxide and topical agents (Exhibit 6, p. 20). The MassHealth representative stated that she did get a fax the day before from appellant, but reiterated that the information of medical necessity needs to come from the prescriber. The representative further stated that the burden of documentation is from the provider to show that the request has met medical necessity criteria.

The MassHealth representative testified that appellant was on a managed care plan before MassHealth. In addition, the representative shared that MassHealth had not approved any medication since 2017 as appellant was on that managed care plan.

Appellant argued that MassHealth should accept her testimony as to why the medications are

necessary. The appellant explained that the medications are medically necessary for her to keep using as they help prevent her skin from getting acne. The appellant brought pictures of herself which showed acne flare-ups that the appellant suffered from in the past. The appellant explained that she switched physicians recently and health insurance plans as well. The appellant has been receiving the requested medications for the past three years and does not understand why they were denied this time around when the pharmacy has been approving them every year. The appellant voiced that she did not understand why MassHealth couldn't accept her testimony and history of taking these medications for years and felt that it was unfair that the documentation had to come from a physician. The appellant testified that she is starting to have flare-ups of acne again and it is causing her pain and diarrhea. The appellant stated that she does not have an appointment with the dermatologist for a couple of months but was scheduled to see her PCP later that same day. It was explained to her that, in the essence of time, we can keep the record open for her PCP to submit statements as to the severity of her acne as well as an explanation as to whether benzoyl peroxide was tried as an alternative and why that failed. The appellant stated that she would rather receive a written decision and have the hearing officer issue a denial so that she can keep it up to Superior Court.

Findings of Fact

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

1. On August 10, 2023 MassHealth received requests for prior authorization from [REDACTED] for Azelaic acid 15% gel and Tretinoin cream .05% to treat acne vulgaris (see Exhibit 6, pp. 4-10).
2. On August 10, 2023 the Azelaic acid was denied because the severity of the acne was not documented and because there was no documentation that a topical cream was tried with benzoyl peroxide.
3. On August 10, 2023 the Tretinoin cream was denied because the severity of the acne was not documented.
4. MassHealth has not paid for a medication for appellant since 2017.
 - a. The appellant recently switched health insurance plans and physicians.
5. The requested medications have been approved and provided by appellant's pharmacy for the past 3 years.
6. The appellant needs the acne medications to help her with acne flare-ups.

Analysis and Conclusions of Law

MassHealth does not cover a medical service unless it is “medically necessary.” The threshold considerations for determining whether a service is medically necessary are set forth under 130 CMR 450.204, which states, in full:

450.204: Medical Necessity

(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 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.

(B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. ...

(C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

(D) Additional requirements about the medical necessity of MassHealth services are contained in other MassHealth regulations and medical necessity and coverage guidelines.

(emphasis added).

As subsection (D) indicates, MassHealth establishes additional medical necessity criteria throughout its regulations and publications governing specific health-related service-types. For coverage of prescription drugs, MassHealth publishes and routinely updates a “Drug List” - a formulary that identifies whether a covered drug is subject to prior approval and the specific criteria required to establish medical necessity for the drug. See 130 CMR 406.422; see also 130 CMR 450.303. The provider must submit all prior authorization requests in accordance with

MassHealth instructions. The criteria used to determine medical necessity is “based upon generally accepted standards of practice, review of the medical literature, federal and state policies, as well as laws applicable to the Massachusetts Medicaid Program.”¹ Further, the criteria reflects MassHealth’s policy as described in its pharmacy regulations and the reviews conducted by the agency and the DUR board. See id.

As published in its Drug List, under Table 10: Dermatologic Agents – Acne and Rosacea, MassHealth has imposed the following PA criteria for coverage for the use of Azelaic acid for the diagnosis of acne, cutaneous warts, or folliculitis/pseudofolliculitis:

appropriate diagnosis (e.g., acne grade II or greater); **and** inadequate response, adverse reaction, or contraindication to benzoyl peroxide with a concurrent topical antibiotic.²

Similarly, the following is required for the use of Tretinoin cream for a diagnosis of acne, cutaneous warts, folliculitis/pseudofolliculitis:

appropriate diagnosis (e.g., acne grade II or greater, cutaneous warts, folliculitis/pseudofolliculitis); **and** the member must be greater than 22 years of age.

See Ex. 6, pp. 22-48; see also MassHealth Drug List, Table 10 (www.mass.gov/druglist).

Based on the evidence in the record, MassHealth did not err in denying appellant’s prior authorization request for Azelaic acid 15% gel and Tretinoin .05% cream. Appellant’s provider did not submit documentation to establish the requisite criteria that appellant had an “inadequate response, adverse reaction, or contraindication to benzoyl peroxide with a concurrent topical antibiotic.” The only information provided in the PA request consisted of the requested prescription dosing information and a notation that she tried clindamycin 1% topical gel and tretinoin .05% cream with an inadequate response (Exhibit 6, p. 4). No explanation was given as to whether a benzoyl peroxide was tried in conjunction with any of the other medications as required under MassHealth’s criteria. With respect to the prior authorization request for the tretinoin cream the appellant’s provider failed to document which grade of acne appellant has (must be Grade II or higher). Appellant contends that the agency should accept her testimony as evidence to support medical necessity criteria, however, this argument fails as it is the provider’s burden to submit the prior authorization request and complete it properly. The appellant suggests that the agency has an unreasonable expectation that a provider has to provide that information. To the extent this claim is a challenge to the legality of the MassHealth prior authorization criteria, it cannot be adjudicated in this hearing decision, but may be pursued via judicial review in accordance with G.L. c. 30A.³

¹ See <https://mhd1.pharmacy.services.conduent.com/MHDL/>

² [MassHealth Drug List - Health and Human Services \(conduent.com\)](#) (Last seen October 17, 2023).

³ The hearing officer must not render a decision regarding the legality of federal or state law including,

Based on the foregoing, appellant did not establish, by a preponderance of the evidence, that MassHealth erred in denying her prior authorization request. As such, 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.

Radha Tilva
Hearing Officer
Board of Hearings

cc:

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

but not limited to, the MassHealth regulations. If the legality of such law or regulations is raised by the appellant, the hearing officer must render a decision based on the applicable law or regulation as interpreted by the MassHealth agency. Such decision must include a statement that the hearing officer cannot rule on the legality of such law or regulation and must be subject to judicial review in accordance with 130 CMR 610.092. See 130 CMR 610.082(C)(2) (emphasis added); see also 130 CMR 450.244.