

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2307514
Decision Date:	11/6/2023	Hearing Date:	10/06/2023
Hearing Officer:	Christopher Jones		

Appearance for Appellant:



Appearance for Respondent:

Molly Seto; Dr. Lisa Scarfo, Sr. Med. Dir.;
Christina Thompson, Supervisor of Appeals &
Grievances; Andrea Swasey – Dir. of Appeals
& Grievances; Carlos Trigueros; Chris Fahey – Dir.
Of Behavioral Health; Dr. Lordes Hattrich –
Behavioral Health



*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; OON Provider; Non-Enrolled Provider
Decision Date:	11/6/2023	Hearing Date:	10/06/2023
Respondent's Reps.:	Molly Seto; Dr. Lisa Scarfo; Christina Thompson; Andrea Swasey; Carlos Trigueros; Chris Fahey; Dr. Lordes Hattrich.	Appellant's Rep.:	Pro se
Hearing Location:	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 an Internal Appeal denial dated August 17, 2023, Mass General Brigham Accountable Care Organization ("MGB ACO") denied the appellant's request for coverage to see their requested behavior health provider because she was not an in-network provider. (Exhibit 3.) The appellant filed this appeal in a timely manner on August 21, 2023.¹ (Exhibit 1; 130 CMR 610.015(B).) A managed care contractor's decision to limit requested services is grounds for appeal. (130 CMR 610.032(B).)

¹ The Board of Hearings initially dismissed this appeal, requesting the appellant submit a copy of the notice they wished to appeal. (Exhibit 2.) This notice was submitted on August 29, and this matter was scheduled for hearing. (Exhibit 3; 4.)

Action Taken by Respondent

MGB ACO, through its mental health benefits administrator Optum, denied the appellant's request for coverage to see [REDACTED] because she is not an enrolled provider with Medicaid.

Issue

The appeal issue is whether MGB ACO was correct, pursuant to 130 CMR 450.117 and 508.006(B), in determining that services provided by [REDACTED] are ineligible for payment because she is not a Medicaid-enrolled provider.

Summary of Evidence

The respondent health plan is an accountable care organization ("ACO") that has contracted with MassHealth to administer health coverage for enrolled Medicaid recipients. The appellant filed a "Non-Urgent Pre-Service appeal for [services] received from [out-of-network] provider [REDACTED] for [outpatient] treatment on [dates of service] 07/12/2023 forward." (Exhibit 6, p. 7.) This request was denied; an internal appeal was filed on August 15, 2023, the denial of which is appealed here.

The appellant is a minor child whose MassHealth services are provided through MGB's ACO. The appellant's mother testified that the appellant has been seeing this provider for many years. This care started as weekly, in-home behavioral therapy when the provider worked for a different practice group. About a year ago, the provider moved to a different practice group, and the appellant began seeing her monthly on an outpatient basis. The appellant's mother has been paying out-of-pocket for these visits but wanted [REDACTED] to return to being the appellant's primary therapist for weekly visits. She testified that that the appellant has tried multiple therapists and has never been able to develop a relationship with anyone else. Getting the appellant to go to any other therapist is extremely difficult, which also makes the therapy counterproductive.

MGB's representatives responded that they would be happy to cover treatment with [REDACTED] if she was enrolled as a Medicaid provider. They have reached out multiple times to enroll her with MassHealth as a provider, but she and her new practice group have refused to do so. MGB's representatives explained that the ACO can request a "single case agreement" to cover services with an out-of-network provider on a case-by-case basis, but that provider still needs to be certified and enrolled with MassHealth as a provider. They testified that this is a federal and state law requirement for payment using Medicaid funding. As a practical matter, there is no method for issuing payment in their computer systems in the absence of a Medicaid Provider ID.²

² The respondent's representatives were unwilling to provide more detail about reimbursement rates or specifics of their contracts, stating that information is proprietary.

The appellant's mother responded that she was told that Medicaid does not pay enough, and that is why the provider is unwilling to enroll. However, she testified that someone at MGB ACO told her they would reimburse her out-of-pocket expenses from April 1 through August 31, 2023, as a continuity of care for a time frame, even if they could not cover [REDACTED] going forward as an out-of-network provider. She recalled this telephone conversation happening sometime around September 6, 2023. None of MGB's representatives was able to address the specifics of this conversation, but [REDACTED] assumed that whomever the appellant's mother spoke with had not known that the provider was unwilling to get a Medicaid ID number. He testified that this situation has arisen in other cases, and that they are able to pay historical services once the provider has a Medicaid Provider ID.

The appellant's mother was upset that her desired provider was unwilling to register as a Medicaid provider based upon the reimbursement rates set by Medicaid. She was also upset that MGB was no longer willing to reimburse her. She testified she had faxed \$900 in receipts at MGB's direction and felt she should still be reimbursed. She testified that she wants the best possible care for her children, and she believed that the providers available on MassHealth are not the best, and it is not fair that her kid cannot get the best just because she did not make a lot of money.

Findings of Fact

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

1. The appellant is a minor child who has his MassHealth benefits administered through MGB's ACO. (Testimony by respondent's representatives.)
2. The appellant has been treated by [REDACTED] for several years. She was a covered provider in her old practice, but she moved practice groups and is no longer enrolled as a Medicaid Provider. (Testimony by the appellant's representative and respondent's representatives.)
3. The appellant's mother has been paying out-of-pocket for monthly outpatient services since [REDACTED] has changed practices. MGB ACO offered to reimburse the appellant's mother for her out-of-pocket expenses from April 1 through August 31, 2023. However, they have since refused to do so. (Testimony by the appellant's representative.)
4. MGB ACO has reached out to the provider to ask that she enroll as a Medicaid provider so that they can negotiate a single case agreement with her. MGB ACO requires a Medicaid Provider ID in order to issue payments for services. [REDACTED] has refused to enroll as a Medicaid provider. (Testimony by respondent's representatives.)

Analysis and Conclusions of Law

MassHealth members who do not have another form of insurance are generally enrolled in a Managed care organization. (See 130 CMR 508.001; 508.002; see also 130 CMR 450.105.) Managed care organizations provide “management of medical care, including primary care, behavioral health services, and other medical services” for enrolled members. (130 CMR 450.117(B).) “Members who enroll with a Primary Care ACO obtain services in accordance with 130 CMR 508.006(B)(2): Obtaining Services when Enrolled in a Primary Care ACO.” (130 CMR 450.117(B)(4).)

(2) Obtaining Services when Enrolled in a Primary Care ACO.

...

(c) Behavioral Health Services. All members enrolled with a Primary Care ACO receive behavioral health (mental health and substance use disorder) services, except those services not covered under the MassHealth contract with the behavioral health contractor, through the MassHealth behavioral health contractor as follows:

1. Nonemergency Behavioral Health Services. Behavioral health services, except for emergency services, may be obtained **only from a provider that has entered into an agreement with the MassHealth behavioral health contractor. The MassHealth behavioral health contractor is responsible for authorizing or denying behavioral health services based on the member’s medical need for those services.**
2. Emergency Behavioral Health Services. Members may obtain emergency behavioral health services **from any qualified participating MassHealth provider as well as any provider that has entered into an agreement with the MassHealth behavioral health contractor.**

(130 CMR 508.006(B)(2) (emphasis added).)

The requirement that Medicaid providers be participating providers is also reflected in the federal law: “The State Medicaid **agency must require all** ordering or referring physicians or other **professionals providing services** under the State plan or under a waiver of the plan to **be enrolled as participating providers.**” (42 CFR § 455.410(b) (emphasis added).)

This decision takes no position on the discussions regarding reimbursement between MGB ACO’s staff and the appellant’s mother. Nor can it take any position regarding what reimbursement rates MGB ACO may be able to offer if [REDACTED] were an enrolled provider. However, I find no error with MGB ACO’s determination that [REDACTED] is not an enrolled provider and is therefore ineligible for payment for services rendered on behalf of a Medicaid recipient. This appeal is DENIED.

Order for MGB 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.

Christopher Jones
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Mass General Brigham Health Plan, Attn: Christina Thompson,
399 Revolution Drive, Suite 810, Somerville, MA 02145