

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2307991

Decision Date: 11/6/2023

Hearing Date: 09/25/2023

Hearing Officer: Alexis Demirjian

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Meghan Serrel, UMMS Drug Utilization
Unit



*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:	Under 65; Prior Authorization; Weight Loss
Decision Date:	11/6/2023	Hearing Date:	09/25/2023
MassHealth's Rep.:	Meghan Serrel	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South 6	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 23, 2023, MassHealth denied the appellant's request for prior authorization for the prescription medication Ozempic 0.25 - 0.5 mg pen. because MassHealth determined that MassHealth does not pay for any drug used for the treatment of obesity (see 130 CMR 406.413(B)(4) and Exhibit 1). The appellant filed this appeal in a timely manner on September 7, 2023 (see 130 CMR 610.015(B) and Exhibit 2). Denial of a request for prior authorization is valid grounds for appeal before the Board of Appeals. (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's request for prior authorization for the prescription medication Ozempic 0.25 - 0.5 mg pen.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 406.413(B)(4) and 130 CMR 450.204, in determining that MassHealth does not cover any drug used for the treatment of obesity.

Summary of Evidence

The appellant appeared telephonically. MassHealth was represented telephonically by a registered pharmacist with MassHealth's Drug Utilization Review Program (DUR). The appellant is between the ages of 19 and 65 and has MassHealth benefits. The MassHealth representative testified that the appellant's provider submitted to MassHealth a request for prior authorization for the prescription medication Ozempic 0.25 - 0.5 mg pen, on August 23, 2023 (Exhibit 4). The provider listed the appellant's primary diagnosis related to the medication request as obesity (Exhibit 5). The MassHealth representative stated that the request was denied on August 23, 2023, pursuant to 130 CMR 406.413(B)(4) which states that MassHealth does not pay for any drug used for the treatment of obesity (Exhibits 3 and 4).

The MassHealth representative explained that Ozempic is an injectable medication used for the treatment of type 2 diabetes (Exhibit 4). The MassHealth representative noted that the package insert for Ozempic states that Ozempic is a glucagon like peptide 1 receptor agonist indicated as an adjunct to diet and exercise to improve glycemic control in adults with type 2 diabetes mellitus (Exhibit 4). The MassHealth representative testified that the provider did not indicate that the appellant has a diagnosis of type 2 diabetes and wrote on the prior authorization request that the Ozempic was prescribed for obesity.

The appellant replied that that even though she does not have a diagnosis of type 2 diabetes, her family has a history of diabetes, and has conditions including fatty liver and other chronic issues that would help if she were treated with Ozempic. The appellant concluded by testifying that she understood the rationale for MassHealth's decision but asked the hearing officer to consider the spirit of the law in the decision to approve or deny the appellant's request. The appellant further argued that the cost of treatment of her other medical conditions would far outweigh the cost of covering Ozempic.

Findings of Fact

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

1. The appellant is between the ages of 19 and 65 and has MassHealth benefits.
2. The appellant's provider submitted to MassHealth a request for prior authorization for the prescription medication Ozempic 0.25 - 0.5 mg pen, on August 23, 2023.
3. The provider listed the appellant's primary diagnosis related to the medication request as obesity.

4. Ozempic is an injectable medication used for the treatment of type 2 diabetes; the package insert for Ozempic states that Ozempic is a glucagon like peptide 1 receptor agonist indicated as an adjunct to diet and exercise to improve glycemic control in adults with type 2 diabetes mellitus.
5. The appellant does not have a diagnosis of diabetes.

Analysis and Conclusions of Law

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.

(130 CMR 406.413(B)(4)).

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.

(130 CMR 406.413(C)).

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.

(130 CMR 406.422(A)).

The appellant's provider prescribed the prescription medication Ozempic to treat the appellant's obesity. The only diagnosis listed on the prior authorization request is obesity and there is no indication that the appellant is diagnosed with diabetes. 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 adequate treatment (130 CMR 406.422(A)). Medication for the treatment of obesity is simply not covered by MassHealth. Although the appellant asked for the spirit of the law to be considered, the regulations clearly state that drugs for the treatment of obesity are not covered by MassHealth, and an exception for medical necessity is specifically not included in 130 CMR 406.422(A). Therefore, it is concluded that the drafters of the regulations intended drugs for the treatment for obesity to not be covered in these circumstances.

If the appellant is diagnosed with diabetes or pre-diabetes, she is advised to have her physician consult the MassHealth Drug List for the prior authorization requirements for Ozempic for the treatment of diabetes.

The 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.

Alexis Demirjian
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Drug Utilization Review Program, ForHealth Consulting at UMass
Chan Medical School, P.O. Box 2586, Worcester, MA 01613-2586, 774-455-3200