

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2308336

Decision Date: 11/2/2023

Hearing Date: 10/19/2023

Hearing Officer: Alexis Demirjian

Appearance for Appellant:



Appearance for Fallon:

Dr. Mark Dichter, Fallon
Kay George, RN, Fallon



*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
Decision Date:	11/2/2023	Hearing Date:	10/19/2023
Fallon's Rep.:	Dr. Dichter Ms. George	Appellant's Rep.:	[REDACTED]
Hearing Location:	Telephonic	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 17, 2023, Fallon Health-Atrius Health (hereinafter "Fallon"), an Accountable Care Options, managed care program that contracts with MassHealth, notified the appellant that it had denied her internal appeal regarding a request for the Intracept Procedure, code 64628. (Exhibit 1). The appellant filed a timely appeal with the Board of Hearings. (see 130 CMR 610.015(B) and Exhibit 2). Denial of a request for services is a valid bases for appeal before the Board of Hearings. (see 130 CMR 610.032).

Action Taken by Fallon

Fallon ACA denied the appellant's request for the Intracept procedure, code 64628, and then denied her internal appeal of that initial decision.

Issue

¹ The appellant's representative works for the medical device company that produces the Intracept device. Although, listed as a representative for the appellant and submitting a signed waiver allowing her to appear on behalf of the appellant, the representative offered no testimony or argument and allowed [REDACTED], a certified physician assistant to offer testimony. [REDACTED] was a witness, and no documentation was filed to confer [REDACTED] authority as an appellant representative.

The appeal issue is whether the evidence supports Fallon ACO's denial of the appellant's request for the Intracept procedure, code 64628.

Summary of Evidence

The Fallon representatives appeared at the hearing by phone and offered the following factual background through testimony and documentary evidence: The appellant is a female, over the age of 21, who is Fallon ACO participant. On June 23, 2023, the appellant's provider requested code 64628, known as the Intracept procedure.

On July 7, 2023, Fallon notified the appellant that it had denied the requested service because it is a non-covered code. On July 7, 2023, Fallon notified the appellant that it had denied her request for procedure code 64628, known as the Intracept procedure, on the basis that the requested service is not covered under the member's benefit package (Exhibit 4, p. 15). On July 10, 2023, the appellant filed an internal appeal of UHC's determination. (Exhibit 4, p. 19) On August 17, 2023, Fallon denied the appellant's internal appeal for the same reason (Exhibit 4, p. 22). The appellant appealed this determination to the Board of Hearings.

The Fallon representatives explained that procedure code 64628 is also referred to as the Intracept Procedure. It is a procedure that is not covered by MassHealth or Fallon. In support of their argument, Fallon representatives pointed to MassHealth Physician Transmittal Letter PHY-168, that code 64628 is non-payable. (Exhibit 4, p. 115).

The appellant appeared at the hearing by telephone and explained that her physician suggested the procedure due to lingering pain that was not responsive to other treatments. The appellant testified that she has not participated in physical therapy for years and does not find it helpful to alleviate her pain.

The appellant's representative testified that the Intracept procedure is safe and effective and argued that professional associations have attested to its benefit for patients with lower back pain. In response, Dr. Dichter rebutted several points made by the appellant's representative and pointed to the fact that several of the professional organizations who endorse the Intracept procedure are funded by industry.

Findings of Fact

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

1. The appellant is a female, over the age of 21, who is a Fallon ACO member.
2. In June of 2023, the appellant's provider requested code 64628, known as the Intracept procedure.
3. On July 7, 2023, Fallon notified the appellant that it had denied the prior authorization for the requested procedure as the procedure is not covered.
4. On July 10, 2023, the appellant's provide filed an internal appeal of Fallon's determination on behalf of the appellant.
5. On August 17,2023, Fallon denied the appellant's internal appeal for the same reason.
6. The appellant appealed this determination to the Board of Hearings.

Analysis and Conclusions of Law

Under 130 CMR 508.006, MassHealth members who are enrolled in senior care organizations 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(A);

(B) a determination by the MassHealth behavioral-health contractor, by one of the MassHealth managed care organization (MCO) contractors, or by a senior care organization (SCO), as further described in 130 CMR 610.032(B), if the member has exhausted all remedies available through the contractor's internal appeals process;

(C) the MassHealth agency's denial of a request for an out-of-area MassHealth managed care provider under 130 CMR 508.002(F); or

(D) the MassHealth agency's disenrollment of a member from a MassHealth managed care provider under 130 CMR 508.002(G).

The Fair Hearing regulations at 130 CMR 610.032(B) describe in greater detail the bases for appeal:

(B) Members enrolled in a managed care contractor have a right to request a fair hearing for any of the following actions or inactions by the managed care contractor, provided the member has exhausted all remedies available through the managed care contractor's internal appeals process (except where a member is notified by the managed care contractor that exhaustion is unnecessary):

(1) failure to provide services in a timely manner, as defined in the information on access standards provided to members enrolled with the managed care contractor;

(2) a decision to deny or provide limited authorization of a requested service, including the type or level of service;

(3) a decision to reduce, suspend, or terminate a previous authorization for a service;

(4) a denial, in whole or in part, of payment for a service where coverage of the requested service is at issue, provided that procedural denials for services do not constitute appealable actions. Notwithstanding the foregoing, members have the right to request a fair hearing where there is a factual dispute over whether a procedural error occurred. Procedural denials include, but are not limited to, denials based on the following: (a) failure to follow prior-authorization procedures; (b) failure to follow referral rules; and (c) failure to file a timely claim;

(5) failure to act within the time frames for resolution of an internal appeal as described in 130 CMR 508.010;

(6) a decision by an MCO to deny a request by a member who resides in a rural service area served by only one MCO to exercise his or her right to obtain services outside the MCO's network under the following circumstances, pursuant to 42 CFR 438.52(b)(2)(ii):

(a) the member is unable to obtain the same service or to access a provider with the same type of training, experience, and specialization within the MCO's network;

(b) the provider from whom the member seeks service is the main source of service to the member, except that member will have no right to obtain services from a provider outside the MCO's network if the MCO gave the provider the opportunity to participate in the MCO's network

under the same requirements for participation applicable to other providers and the provider chose not to join the network or did not meet the necessary requirements to join the network;

(c) the only provider available to the member in the MCO's network does not, because of moral or religious objections, provide the service the member seeks; and

(d) the member's primary care provider or other provider determines that the member needs related services and that the member would be subjected to unnecessary risk if he or she received those services separately and not all of the related services are available within the MCO's network; or

(7) failure to act within the time frames for making service authorization decisions, as described in the information on service authorization decisions provided to members enrolled with the managed care contractor.

In this case, the appellant has appealed Fallon's decision to deny her request for the Intracept procedure, and she has appropriately exhausted all remedies available through Fallon's internal appeals process (130 CMR 610.032(B)(2); 508.006(B)).

Fallon denied the appellant's request for the Intracept procedure on the basis that it is not a covered service under the appellant's benefit package. The appellant's representatives argue that the Intracept procedure is a safe and effective treatment for chronic lower back pain and should be covered.

Much of the testimony from the appellant's representatives centered on medical literature they believe supports their position that the procedure should be covered, this testimony is not relevant as this is not the proper forum to get MassHealth or Fallon to cover a new treatment. The appellant is over the age of 21 years old, the appellant's representatives concede that they Intracept procedure is not covered by MassHealth or Fallon. Further, MassHealth expressly states that code 64628 is non-payable and non-covered service.

Accordingly, 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:

Fallon Representative: Fallon Health, Member Appeals and Grievances, 10 Chestnut Street,
Worcester, MA 01608

Appellant Representative: [REDACTED]
[REDACTED]