

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2311056
<b>Decision Date:</b>	1/12/2024	<b>Hearing Date:</b>	12/13/2023
<b>Hearing Officer:</b>	Marc Tonaszuck		

Appearance for Appellant:



Appearances for Fallon ACO:

Kay George, RN and Mark Dichter, MD



*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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	ACO – Out of Network Provider
<b>Decision Date:</b>	1/12/2024	<b>Hearing Date:</b>	12/13/2023
<b>Fallon ACO's Reps.:</b>	Kay George, RN and Mark Dichter, MD	<b>Appellant's Rep.:</b>	Mother
<b>Hearing Location:</b>	Quincy Harbor South		

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30 and the rules and regulations promulgated thereunder.

### Jurisdiction

Through a notice dated 10/10/2023, Fallon Health (Fallon), a MassHealth accountable care organization<sup>1</sup> (ACO) that manages the appellant's MassHealth benefits, denied the appellant out of network service (Exhibit 1). On 11/06/2023, a timely appeal was filed with the Board of Hearings on the appellant's behalf in a timely manner<sup>2</sup> (130 CMR 610.015(B); Exhibit 2).

Members enrolled in an ACO have a right to request a fair hearing for a decision to deny or provide limited authorization of a requested service, provided the member has exhausted all remedies available through the managed care contractor's internal appeals process (130 CMR 610.032(B)(2)). The appellant exhausted Fallon's internal appeals process.

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<sup>1</sup> Regulations at 130 CMR 501.001 define Accountable Care Organization (ACO) as an entity that enters into a population-based payment model contract with EOHHS as an accountable care organization, wherein the entity is held financially accountable for the cost and quality of care for an attributed or enrolled member population. ACOs include Accountable Care Partnership Plans, Primary Care ACOs, and MCO-Administered ACOs.

<sup>2</sup> The appellant is a minor child who was represented in these proceedings by her mother.

## Action Taken by Fallon ACO

Fallon, a MassHealth ACO, denied the appellant's request for out of network services.

## Issue

Was Fallon, a MassHealth ACO, correct in denying the appellant's request for out of network services?

## Summary of Evidence

Dr. Dichter, VP and Medical Director for Utilization Management, and Ms. George, a Registered Nurse and Clinical Appeals Nurse from Fallon appeared telephonically. Ms. George reviewed a packet of information that was submitted in advance to the hearing record and provided to the appellant (Exhibit 4). She stated that the appellant is a MassHealth member whose care is managed by Fallon's Berkshire Fallon Health Collaborative, a MassHealth ACO.

Ms. George testified that this case involves care the appellant received from Rebecca Sieburth, MD, Northeast Eye, in Latham, NY in September 2023. Dr. Sieburth is a pediatric neuro-ophthalmologist, who is not part of Fallon's network. Under Fallon's policies, prior authorization for an out-of-network physician or specialist must be obtained by Fallon prior to the visit or through a referral from the member's primary care provider.

On 09/11/2023, Fallon received a referral request from the appellant's provider, Community Health Programs, Lee, MA, to Dr. Sieburth. On 09/12/2023, Fallon denied the request "because out of network services that are not an emergency/urgent are not covered."

On 09/15/2023, Fallon received a telephone call from the appellant's mother requesting an expedited internal appeal. In the call, the mother stated:

my daughter has a stat referral from the ophthalmologist to see a neuro-opthamologist. We are not able to get into see a neuro-opthamologist in Massachusetts until next May. We were also referred to Northeastern Eye in Latham NY and they are able to get her in right away on Monday September 18th, 2023. I understand there is a denial on file for the NY provider however we would like to start the appeal process to look at this visit to Northeastern Eye to determine if it can be covered due to the circumstances and precedence of this stat recommended appointment.

On 09/15/2023, Fallon denied the request to expedite the appeal and informed the appellant it would respond to her request within 30 days of the date of the request. On 10/10/2023, Fallon

denied the internal appeal, stating:

We determined that we will not cover these services. This is based on: the request for out of network services to a neuro ophthalmologist is not medically necessary unless it is recommended with an explanation by an in-network ophthalmologist. There is no documented reason why [the appellant] needs to be seen out of network for this non emergent medical issue. Therefore, the denial for out of network services is upheld.

Dr. Dichter testified that the referral note from the appellant's provider dated 09/11/2023 states that the appellant was referred to be seen for "disorders of the optic nerve," and that the request was to "schedule within provider's discretion." He testified that there is no evidence that the appellant needed to be seen on an urgent or emergent basis, which would be necessary for Fallon to cover any out-of-network services. Also, there are other providers within Fallon's network. As a result, the appellant's referral request was denied by Fallon.

The appellant suffers from vertigo, dizziness at night, anxiety, and headaches. Dr. Dichter testified that this is a known condition and, according to the documentation, the appellant was "believed to be stable." Dr. Dichter testified that there are other pediatric neuro-ophthalmologists in the Fallon network. He specifically cited to Mass. Eye and Ear in Boston. Dr. Dichter concluded that MassHealth benefits are primarily for Massachusetts residents who receive treatment from Massachusetts providers. Unless there is an urgent or emergent need to see an out-of-state provider, the member needs to seek a provider in Massachusetts.

The appellant's mother testified that the appellant is "still dealing with vertigo and not sleeping." The mother stated that she is a physical therapist who "tries to work within the system." They have seen "many specialists and doctors" for the appellant's condition. There are times when the appellant is not able to sleep at all at night. In early September 2023, the appellant saw her primary care physician (PCP) with "very severe symptoms." She was "not functioning, eating or sleeping." The PCP was "extremely concerned," and told the mother he would file a "stat referral." The mother stated that there was a referral made to three providers, one in Latham, NY (Dr. Sieburth, Northeast Eye) and the others in Massachusetts. When the appellant's mother contacted Mass. Eye and Ear in Boston, she was told there was a five- to eight- month wait for an appointment. The earliest the appellant could be seen was 05/23/2024. The mother understood that the appellant's situation was urgent or emergent and that she should be seen by the provider as soon as possible. Dr. Sieburth was able to see the appellant very quickly. The appellant was seen by Dr. Sieburth one time and the out of pocket expense was \$291.00 for the office visit.

## Findings of Fact

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

1. The appellant, a minor child, is a member of Fallon's Berkshire Fallon Health Collaborative, a MassHealth ACO (Testimony; Exhibit 4).
2. In order for Fallon to cover the services of an out-of-network provider, Fallon must issue a prior authorization for the services (Testimony; Exhibit 4).
3. On 09/11/2023, Fallon received a referral request from the appellant's provider, Community Health Programs, Lee, MA, to Rebecca Sieburth, MD, Northeast Eye, in Latham, NY (Testimony; Exhibit 4).
4. The referral request dated 09/11/2023 states that the appellant was referred to be seen for "disorders of the optic nerve," and that the request was to "schedule within provider's discretion."
5. On 09/12/2023, Fallon denied the referral request "because out of network services that are not an emergency/urgent are not covered." (Testimony; Exhibit 4).
6. On 09/15/2023, Fallon received a telephone call from the appellant's mother requesting an expedited internal appeal. In the call, the mother stated:  
my daughter has a stat referral from the ophthalmologist to see a neuro-ophthalmologist. We are not able to get into see a neuro-ophthalmologist in Massachusetts until next May. We were also referred to Northeastern Eye in Latham NY and they are able to get her in right away on Monday September 18th, 2023. I understand there is a denial on file for the NY provider however we would like to start the appeal process to look at this visit to Northeastern Eye to determine if it can be covered due to the circumstances and precedence of this stat recommended appointment.  
(Testimony; Exhibit 4).
7. On 09/15/2023, Fallon denied the request to expedite the appeal and informed the appellant it would respond to her request within 30 days of the date of the request (Testimony; Exhibit 4).
8. On 10/10/2023, Fallon denied the internal appeal, stating:  
We determined that we will not cover these services. This is based on: the request for out of network services to a neuro ophthalmologist is not medically necessary unless it is recommended with an explanation by an in-network ophthalmologist. There is no

documented reason why [the appellant] needs to be seen out of network for this non emergent medical issue. Therefore, the denial for out of network services is upheld. (Testimony; Exhibits 1 and 4).

9. On 11/06/2023, the appellant appealed Fallon's denial to the Board of Hearings (Exhibit 2).
10. The appellant was seen by the out-of-network provider in September 2023 and incurred a medical bill of \$291.00 (Testimony).
11. There are in-network pediatric neuro-ophthalmologists in Massachusetts who are part of the Fallon network (Testimony).

## **Analysis and Conclusions of Law**

MassHealth regulations at 130 CMR 508.006(A)(2) address Obtaining Services when Enrolled in an Accountable Care Partnership Plan as follows:

(a) Primary Care Services. When the member selects or is assigned to an Accountable Care Partnership Plan, that Accountable Care Partnership Plan will deliver the member's primary care, determine if the member needs medical or other specialty care from other providers, and determine referral requirements for such necessary medical services.

(b) Other Medical Services. All medical services to members enrolled in an Accountable Care Partnership Plan (except those services not covered under the MassHealth contract with the Accountable Care Partnership Plan, family planning services, and emergency services) are subject to the authorization and referral requirements of the Accountable Care Partnership Plan. MassHealth members enrolled in an Accountable Care Partnership Plan may receive family planning services from any MassHealth family planning provider and do not need an authorization or referral in order to receive such services. Members enrolled with an Accountable Care Partnership Plan should contact their Accountable Care Partnership Plan for information about covered services, authorization requirements, and referral requirements.

Under 130 CMR 508.010, MassHealth members who are enrolled in MassHealth-contracted SCO are entitled to a fair hearing under 130 CMR 610.018: *MassHealth: Fair Hearing Rules* if the ACO internal appeals process denies a member's requested covered benefits in whole or in part. The member may appeal to the Office of Medicaid Board of Hearings.

Under 130 CMR 450.204, the MassHealth agency will not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a

service or for admitting a member to an inpatient facility where such service or admission is not medically necessary. 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)

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass. App. Ct. 333, 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386, 390 (1998).

At the fair hearing, the Fallon representatives testified that its policy requires prior authorization or referral from a primary care physician for out-of-network specialists. On 09/11/2023, the appellant submitted a request for a referral for a pediatric ophthalmologist. Her primary care provider made referrals to specialists in Massachusetts and one in Latham, NY. The referral request states that the appellant was referred to be seen for "disorders of the optic nerve," and that the request was to "schedule within provider's discretion." Fallon denied the request on 09/12/2023.

On 09/15/2023, Fallon received a telephone call from the appellant's mother requesting an expedited internal appeal. In the call, the mother stated:

my daughter has a stat referral from the ophthalmologist to see a neuro-ophthalmologist. We are not able to get into see a neuro-ophthalmologist in Massachusetts until next May. We were also referred to Northeastern Eye in Latham NY and they are able to get her in right away on Monday September 18th, 2023. I understand there is a denial on file for the NY provider however we would like to start the appeal process to look at this visit to Northeastern Eye to determine if it can be

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The appellant made and kept the appointment with the out-of-network provider, which resulted in a medical bill of \$291.00 for the office visit. She seeks to be reimbursed for the cost of the visit and also to have additional visits to the provider be approved by Fallon. In support of her position, the appellant argues that her primary care physician told her it was an emergency for her to see the specialist. Additionally, the Massachusetts specialists have a long waiting period for appointments. The out-of-network provider was able to see the appellant very quickly. In the denial of out-of-network services, Fallon cited to the referral request that states that the provider “schedule [the appointment] within provider’s discretion” to show that the need to see the out-of-network provider was not urgent or emergent in nature. Since the referral request was not urgent or emergent in nature, Fallon denied the request.

Fallon’s position is supported by the documentary evidence in the hearing record, as well as the relevant regulations. Other than the mother’s recollection of a conversation she had with the primary care physician, there is nothing in the medical record to show that the appellant needed an urgent or emergency appointment with the specialist. In fact, the referral indicates that appointment was to be scheduled within the providers discretion. As a result, the appellant is unable to show that Fallon must pay for the visit to the out-of-network provider. This appeal is therefore denied.

## **Order for 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.

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Marc Tonaszuck  
Hearing Officer  
Board of Hearings

cc:

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