

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2403573
Decision Date:	5/21/2024	Hearing Date:	04/22/2024
Hearing Officer:	Mariah Burns		

Appearance for Appellant:



Appearance for Tufts Health Plan:

John Shinn, Esq., Pratiska Patel, 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

Appeal Decision:	Denied	Issue:	Over 65; Senior Care Organization; Vision Services
Decision Date:	5/21/2024	Hearing Date:	04/22/2024
Tufts Health Plan's Rep.:	John Shinn, Esq., Pratiska Patel, MD	Appellant's Rep.:	[REDACTED]
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 a notice dated February 29, 2024, Tufts Health Plan denied the appellant's level one appeal after a denial of coverage for astigmatism correction laser eye surgery. Exhibit 1. The appellant filed this appeal in a timely manner on March 8, 2024. See 130 CMR 610.015(B) and Exhibit 2. An MCO's decision to provide limited authorization of a requested service is a valid ground for appeal. See 130 CMR 610.032(B)(2).

Action Taken by Tufts Health Plan

Tufts Health Plan denied the appellant's prior authorization request for astigmatism correction laser eye surgery.

Issue

The appeal issue is whether Tufts Health Plan correctly determined that astigmatism correction is not a covered service under the appellant's plan.

Summary of Evidence

The appellant is a MassHealth member over the age of 65 who is currently enrolled in the Tufts Health Plan Senior Care Options plan. She was represented at hearing by her daughter and personal representative. Tufts Health Plan (Tufts) was represented at hearing by its attorney and its medical director. All parties appeared by telephone. The following is a summary of the testimony and evidence provided at hearing.

In October 2023, the appellant underwent laser surgery in both eyes to accomplish two procedures: cataract removal and astigmatism correction. She then submitted a request to Tufts asking for coverage of the cost of the entire surgery on February 5, 2024. On February 15, 2024, Tufts concluded that the cataract removal was a covered service, but astigmatism correction fell under the category of laser vision correction, which is not a service that is covered by either Medicare or Medicaid. As such, Tufts determined that it would cover the appellant's cataract removal portion of her surgery, but not the astigmatism correction. On February 21, 2024, the appellant filed a level one internal appeal to Tufts challenging the denial of coverage of astigmatism correction. The appellant's request was then reviewed by a panel of physicians, who decided to uphold the denial on February 29, 2024. At hearing, Tufts also noted that the appellant's provider reported that it was the appellant's choice to correct her astigmatism during her cataract removal surgery, but that such a procedure was not medically necessary.

The appellant's representative reported that the family was advised that the laser surgery would be a safer procedure than a conventional blade method. She also stated that failure to correct the astigmatism would still prevent the appellant from having clear vision. It was explained that the appellant paid the provider the entire cost of the procedure out of pocket, despite the fact that Tufts/MassHealth had already compensated the provider for the portion of the procedure that was covered.

Findings of Fact

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

1. The appellant is a MassHealth member over the age of 65 who is currently enrolled in the Tufts Health Plan Senior Care Options plan. Testimony, Exhibit 4.
2. In October 2023, the appellant underwent laser surgery in both eyes to accomplish two procedures: cataract removal and astigmatism correction. Testimony.
3. On February 5, 2024, the appellant submitted a request to Tufts Health Plan asking for coverage of the entire procedure. Exhibit 5 at 14.

4. On February 15, 2024, Tufts Health Plan approved coverage of the appellant's cataract removal, but denied coverage of the astigmatism correction. Testimony, Exhibit 5 at 43.
5. On February 21, 2024, the appellant filed a level one internal appeal to Tufts Health Plan. Exhibit 5 at 55.
6. On February 29, 2024, Tufts Plan upheld the denial of coverage of the appellant's astigmatism corrective surgery. Exhibit 1.
7. The appellant filed a request for fair hearing to the MassHealth Board of Hearings in a timely manner on March 8, 2024. Exhibit 2.
8. Laser surgery to correct astigmatism is considered a vision correction procedure. Testimony.

Analysis and Conclusions of Law

MassHealth has contracted with individual private insurance companies, referred to as managed care organizations (MCOs), to deliver care to relevant members under the regulations. See 130 C.M.R. 508. One such type of MCO is a senior care organization (SCO), designed to manage the care of MassHealth members under the age of 65. Regulations define an SCO as follows:

[A]n organization that participates in MassHealth under a contract with the MassHealth agency and the Centers for Medicare & Medicaid Services to provide a comprehensive network of medical, health care, and social service providers that integrates all components of care, either directly or through subcontracts. SCOs are responsible for providing enrollees with the full continuum of Medicare- and MassHealth-covered services.

130 CMR 501.001. The MassHealth regulations establish the member selection process for SCOs at 130 C.M.R. 508.008(B).

The intended purpose of an SCO is to provide at least the same services as MassHealth. See M.G.L. ch. 118E § 9D(d) (“The amount, duration, and scope of Medicaid-covered services shall be at a minimum no more restrictive than the scope of services provided under MassHealth standard coverage”). SCOs are held to this same standard; they must provide everything under the MassHealth regulations and may have services or coverage that range beyond the scope of those provided by MassHealth.

Further, MassHealth regulations apply to SCOs and provide that “[m]embers are entitled to a fair hearing under 130 C.M.R. 610.00: MassHealth Fair Hearing Rules to appeal...a determination by...one of the...SCOs...if the member has exhausted all remedies available through the

contractor's internal appeals process." 130 C.M.R. 508.010(B). This obligates an SCO to follow the fair hearing rules when defending a decision before the Board of Hearings. An SCO appellant is afforded all rights provided in 130 C.M.R. 610, but also bears "the burden 'to demonstrate the invalidity of the administrative determination.'" *Coppinger v. Executive Office of Health and Human Services*, 101 Mass. App. Ct. 1123, 2 (2022), citing *Andrews v. Division of Medical Assistance*, 68 Mass. App. Ct. 228, 231 (2007)).

Regarding non-MCO members, MassHealth pays only for medically necessary services to eligible MassHealth members and may require that medical necessity be established through the prior authorization process. 130 C.M.R. 420.410(A)(1). 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 MassHealth.

130 C.M.R. 450.204(A).

Typically, "[a]ll medical services to members enrolled in an MCO...are subject to the prior authorization and referral requirements of the MCO." 130 C.M.R. 508.004(2). Here, BMC HealthNet Plan provided the clinical guidelines upon which they rely to determine if a member established medical necessity for a prior authorization request. See Exhibit 6 at pg. 163-199.

At hearing, it was made clear that Tufts Health Plan agreed to cover, and has already paid for, the portion of the appellant's laser surgery that involved cataract removal. However, the SCO denied the appellant's request for coverage of her astigmatism correction. The extent of vision services covered by MassHealth are contained within Subchapter 6 of the MassHealth Vision Care Manual, and do not include laser surgery for astigmatism correction. Tufts Health Plan reports that such a procedure is also not covered by Medicare, and the appellant provided no evidence to the contrary. Finally, the Tufts Health Plan Senior Care Options Medical Benefits Chart does not show that laser surgery for vision/astigmatism correction is covered service, and it specifically states that LASIK surgery is not covered by Medicare. See Exhibit 6 at 121-123, 128.

For those reasons, I find that the appellant has not met her burden of proof that she is entitled to coverage of the astigmatism correction portion of her eye surgery. The appeal is hereby DENIED.¹

¹ At hearing, it was discussed that the appellant paid the provider out-of-pocket for the entirety of her surgery, and that Tufts Health Plan has reimbursed the provider for the cataract removal of the procedure. This appeal provides no mechanism to order a provider to return funds to a member, and I make no findings of fact or law related to the issue.

Order for Tufts Health Plan

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.

Mariah Burns
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Tufts Health Plan, Attn: Nicole Dally, Program Manager, Appeals & Grievance, 1 Wellness Way, Canton, MA 02021, 617-972-9400