

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision: Denied in part;
Dismissed in part

Appeal Number: 2502813

Decision Date: 5/6/2025

Hearing Date: 04/07/2025

Hearing Officer: Alexandra Shube

Appearance for Appellant:

Via Teams Videoconference:



Appearance for MassHealth:

Via Teams Videoconference:

Phuong Luc, Pharm.D., R.Ph., Consultant
Pharmacist, Drug Utilization Review



*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 in part; Dismissed in part	Issue:	Drug Utilization Review; Prior Authorization
Decision Date:	5/6/2025	Hearing Date:	04/07/2025
MassHealth's Rep.:	Phuong Luc, Pharm.D., R.Ph.	Appellant's Rep.:	Guardian
Hearing Location:	Quincy Harbor South	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 notices dated December 17, 2024, MassHealth denied the appellant's requests for prior authorization seeking coverage of Children's Allegra Allergy 30mg ODT and Benzonatate 100mg capsule (see Exhibit 1). The appellant filed this appeal in a timely manner on February 18, 2025 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's prior authorization requests for Children's Allegra Allergy 30mg ODT and Benzonatate 100mg capsule.

Issue

The appeal issue is whether MassHealth was correct in denying the appellant's prior authorization requests for Children's Allegra Allergy 30mg ODT and Benzonatate 100mg capsule.

Summary of Evidence

At hearing, MassHealth was represented by Phuong Luc, Pharm.D., a registered pharmacist from MassHealth's Drug Utilization Review (DUR) Program. The appellant, who was [REDACTED] years old at the time of hearing but [REDACTED] years old at the time the prior authorization requests were received, was represented by his mother who is his legal guardian.

Through documentary submissions and oral testimony, the MassHealth pharmacist provided the following evidence: through a prior authorization request dated December 16, 2024, the appellant's provider requested Children's Allegra Allergy 30mg ODT. This prior authorization request was initially denied by MassHealth on December 17, 2024 because the documentation provided did not contain sufficient information to determine medical necessity. Since that time, on April 4, 2025, MassHealth received a sufficient letter of medical necessity from the appellant's provider and approved him for the requested Children's Allegra Allergy 30mg ODT on April 5, 2025.

Through a prior authorization request dated December 16, 2024, the appellant's provider also requested Benzonatate 100mg capsules. This prior authorization request was denied by MassHealth on December 17, 2024 because the documentation submitted by the documentation provided did not contain sufficient information to determine medical necessity. The pharmacist explained that it is an antitussive drug for symptomatic relief of cough. Under MassHealth regulation 130 CMR 406.413(B)(2), MassHealth "does not pay for any drug used solely for the symptomatic relief of coughs and colds including, but not limited to, those that contain an antitussive or expectorant as a major ingredient, unless dispensed to a member who is a resident in a nursing facility or an intermediate care facility for individuals with intellectual disabilities." Another prior authorization for Benzonatate was received on March 28, 2025 and a letter of necessity received on April 4, 2025, but there was no additional information included that MassHealth could consider.¹ MassHealth will consider medical necessity for a plan excluded drug if a member is [REDACTED] which the appellant was at the time of the initial prior authorization; however, the information submitted by the appellant's doctor at the time of the prior authorization requests did not support medical necessity. In the appellant's December 17, 2024 prior authorization request, his provider stated it is "medically necessary for patient to have this medication prn for acute cough due to his medical complexity..." The pharmacist explained that this did not meet medical necessity. As a plan-excluded drug, there are not specific guidelines for approval (for those under age 21) and medical necessity is reviewed on a case-by-case basis. MassHealth is looking for information such as specific medical history, clinical literature to support the use, other drugs trialed, and hospitalizations. Treatment of a cough alone was not sufficient to

¹ The doctor states "there is not a preferred drug alternative for this request that MassHealth covers. This is not being used solely for symptomatic relief of a cough/cold. Patient has bad asthma and when he gets a cough/cold he can get extremely sick. The cough keeps him up at night, restless. Patient has used benzonatate in the past with good effect. He is not an institutionalized member, but he is medically complex-wheelchair bound."

meet medical necessity. There was nothing additional included other than his diagnosis and a cough. The burden is on the provider to submit necessary documentation and if the provider has questions she can contact the DUR Program. Now that the appellant is [REDACTED] DUR will not review for medical necessity when it is a plan-excluded drug.

As to the request for Allegra, the appellant's guardian questioned why it was initially denied when the doctor included medical necessity information in the prior authorization request. She was also concerned about avoiding this problem in the future. She has had difficulty getting over-the-counter medications billed at the pharmacy once the prior authorization has gone through. The MassHealth pharmacist explained that it was initially denied because there were other less costly alternatives, it is an over-the-counter medication, and the appellant's provider did not submit sufficient information to meet medical necessity. The appellant's provider submitted a second letter of medical necessity on April 4, 2025 which included additional information. Specifically, it referenced another drug (Cetirizine) that the appellant trialed and failed. The appellant's trial of Cetirizine was not mentioned at all in the prior authorization request. Once MassHealth received this required information, it approved the appellant on April 5, 2025.

As to the request for Benzonatate, the appellant's guardian stated that it was discriminatory and did not meet health equity needs to only approve cough medicines for those in institutional settings. She did not elaborate further on this position but pointed to the letter of support she provided from her district's House of Representatives member. She was frustrated by the process and shared that when the appellant was on WellSense, the drug was covered. The appellant's primary insurance is covering the medication, but she still has a \$4.00 co-pay that she wants MassHealth to cover.

The MassHealth pharmacist explained that DUR is not in charge of MassHealth policy and DUR needs to follow current MassHealth regulations and guidelines. She cannot speak to WellSense as it is a different entity. She also explained that Allegra is different as it is an over-the-counter drug with specific guidance for coverage, not a plan-excluded drug like Benzonatate.

Findings of Fact

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

1. The appellant is a MassHealth member who was [REDACTED] years old at the time of hearing but [REDACTED] years old at the time the prior authorization requests were received (Testimony and Exhibit 4).
2. On December 16, 2024, the appellant's provider submitted prior authorization requests for Children's Allegra Allergy 30mg ODT and Benzonatate 100mg capsules (Testimony and Exhibit 5).

3. Both prior authorization requests were initially denied on December 17, 2024 because the documentation provided did not contain sufficient information to determine medical necessity (Testimony and Exhibit 1).
4. On February 18, 2025, the appellant timely appealed both denials (Exhibit 2).
5. On March 28, 2025, MassHealth received second prior authorization requests for both drugs, but no new information was included and the requests were denied; however, these prior authorization requests are not under this appeal (Testimony and Exhibit 6).
6. On April 4, 2025, MassHealth received a letter of medical necessity from the appellant's provider that contained sufficient information to approve the prior authorization request for Children's Allegra Allergy 30mg ODT on April 5, 2025 (Testimony and Exhibit 7).
7. Benzonatate is an antitussive drug used for symptomatic relief of cough. MassHealth does not pay for cough drugs used solely for the symptomatic relief of coughs, unless the member is in a nursing facility or intermediate care facility. (Testimony and Exhibit 5).
8. The appellant is not in an institutional setting (Testimony and Exhibit 5).

Analysis and Conclusions of Law

In certain circumstances, MassHealth requires providers to obtain prior authorization to furnish medical services. These instances are identified in the billing instructions, program regulations, associated lists of service codes and service descriptions, provider bulletins, and other written issuances from MassHealth. See 130 CMR 450.303. MassHealth limitations on coverage of drugs are set forth at 130 CMR 406.413.

Under 130 CMR 406.422, prescribers must obtain prior authorization from MassHealth for drugs identified by MassHealth in accordance with 130 CMR 450.303. In addition, 130 CMR 406.413(B) outlines drug exclusions for the following types of prescription or over-the-counter drugs or drug therapy:

(2) Cough and Cold. The MassHealth agency does not pay for any drug used solely for the symptomatic relief of coughs and colds including, but not limited to, those that contain an antitussive or expectorant as a major ingredient, unless dispensed to a member who is a resident in a nursing facility or an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

Additionally, the limitations and exclusions in 130 CMR 406.413(B) do not apply to medically necessary drug therapy for MassHealth Standard and CommonHealth enrollees younger than 21 years old. See 130 CMR 406.413(C)(1).

The threshold considerations for determining whether a service is medically necessary are set forth under 130 CMR 450.204, which states, in full:

450.204: Medical Necessity

(A) 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.

(B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. ...

(C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

(D) Additional requirements about the medical necessity of MassHealth services are contained in other MassHealth regulations and medical necessity and coverage guidelines.

As subsection (D) indicates, MassHealth establishes additional medical necessity criteria throughout its regulations and publications governing specific health-related service-types. For coverage of prescription and over-the-counter drugs, MassHealth publishes and routinely updates a “Drug List” - a formulary that identifies whether a covered drug is subject to prior approval and the specific criteria required to establish medical necessity for the drug. See 130 CMR 406.422; see also 130 CMR 450.303. The criteria used to determine medical necessity is

“based upon generally accepted standards of practice, review of the medical literature, federal and state policies, as well as laws applicable to the Massachusetts Medicaid Program.”² Further, the criteria reflect MassHealth’s policy as described in its pharmacy regulations and the reviews conducted by the agency and the DUR board. See id.

MassHealth received the needed information to establish medical necessity for Children’s Allegra Allergy 30mg ODT and approved the prior authorization on April 5, 2025. As such, the issue on appeal is resolved in favor of the appellant and the appeal is dismissed as to the prior authorization request for Children’s Allegra Allergy 30mg ODT. See 130 CMR 610.035(A)(8); 610.051(B).

Based on the evidence in the record, MassHealth did not err in denying the appellant’s December 17, 2024 prior authorization request for Benzonatate 100mg capsule. Benzonatate, an antitussive used to treat a cough, is specifically excluded by MassHealth regulations unless the member is in an institution. The appellant here is not institutionalized. The appellant’s guardian argued that this was discriminatory and did not meet health equity needs. To the extent this claim is a challenge to the legality of the MassHealth regulations on drug coverage, it cannot be adjudicated in this hearing decision, but may be pursued via judicial review in accordance with M.G.L. c. 30A.³

At the time of the prior authorization request, the appellant was [REDACTED] and, as allowed by 130 CMR 406.413(C)(1), MassHealth’s DUR Program evaluated the request for medical necessity but there was insufficient evidence to find medical necessity. The appellant bears the burden of proof in showing that there is medical necessity and he did not do so. In the appellant’s provider’s April 4, 2025 letter of medical necessity, she stated “this is not being used solely for symptomatic relief of a cough/cold;” however, she goes on to describe treating cough symptoms, albeit for a very medically complex patient. MassHealth’s determination was correct at the time of the December 16, 2024 prior authorization request under appeal. Furthermore, now that the appellant is [REDACTED] medical necessity cannot be considered because Benzonatate is a plan-excluded drug and not paid for by MassHealth and the exception at 130 CMR 406.413(C)(1) no longer applies.

For these reasons, the appeal is denied in part and dismissed in part.

² See <https://mhdل.pharmacy.services.conduent.com/MHDL/>

³ The hearing officer must not render a decision regarding the legality of federal or state law including, but not limited to, the MassHealth regulations. If the legality of such law or regulations is raised by the appellant, the hearing officer must render a decision based on the applicable law or regulation as interpreted by the MassHealth agency. Such decision must include a statement that the hearing officer cannot rule on the legality of such law or regulation and must be subject to judicial review in accordance with 130 CMR 610.092. See 130 CMR 610.082(C)(2) (emphasis added); see also 130 CMR 450.244.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Drug Utilization Review Program, ForHealth Consulting at
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