

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	APPROVED	<b>Appeal Number:</b>	2153659
<b>Decision Date:</b>	11/15/2021	<b>Hearing Date:</b>	09/08/2021
<b>Hearing Officer:</b>	Christopher Taffe	<b>Record Open to:</b>	11/02/2021

**Appearance for Appellant:**  
Appellant (by phone)

**Appearance for MassHealth/MCO:**  
Cassandra Horne, Appeals & Grievance  
Supervisor, Commonwealth Care Alliance  
(by phone)



*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>	APPROVED	<b>Issue:</b>	MCO – Prior Authorization – Dental Bridge
<b>Decision Date:</b>	11/15/2021	<b>Hearing Date:</b>	09/08/2021
<b>MassHealth’s Rep.:</b>	C. Horne	<b>Appellant’s Rep.:</b>	Appellant, pro se
<b>Hearing Location:</b>	HarborSouth Tower, Quincy	<b>Aid Pending:</b>	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 May 4, 2021 titled “*Notice of Adverse Action - Denial of Level 1 Appeal*”, the Medicare-Medicaid Plan of Commonwealth Care Alliance (“CCA”), an Integrated Care Organization ( “ICO”), informed Appellant that it was denying her Level I appeal for a prior authorization request for a Retainer Crown (D6750 on Teeth # 4 and 6) and a Pontic (D6242 on Tooth # 5) (collectively and commonly referred to as fixed bridge work). See Exhibit 5 and 7. On May 14, 2021 Appellant filed via phone with Maximus a timely request for a Fair Hearing before the Board of Hearings as to this adverse action. See Exhibits 1; 130 CMR 610.015(B)(7)(a).

The Board of Hearings (BOH) has limited jurisdiction over denials given to certain MassHealth members when those denials involve requests for assistance related to covered benefits from a Managed Care Contractor (including an ICO like CCA), with which the member is enrolled. See 130 CMR 610.032(B); 130 CMR 508.008 (discussing the role of ICO’s in the MassHealth program); 130 CMR 508.011.

On May 19, 2021, the Board of Hearings initially dismissed this appeal without prejudice due to the need to verify the specifics of the appealable action. See Exhibit 2 and 130 CMR 610.035(A). Appellant attempted to vacate this with a filing on May 26, 2021, but the filing did not contain the complete or correct appealable action notice. See Exhibit 3.<sup>1</sup> The Board of Hearings again

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<sup>1</sup> Appellant’s May 26, 2021 filing in Exhibit 3, attempting to vacate, contained only one page of a similar

dismissed the matter without prejudice on June 23, 2021, seeking the full appealable action. See Exhibit 4 and 130 CMR 610.035. Subsequently, the Board of Hearings requested on Appellant's behalf and received from CCA a copy of the appealable action on July 28, 2021, and the dismissal was vacated. See Exhibit 5.

A hearing was eventually scheduled for and held on September 8, 2021. See Exhibit 6. The record was left open at the end of the hearing until September 17, 2021 to allow Appellant to submit additional evidence not present at hearing; this record open period was extended to September 24, 2021 to give Appellant additional time.<sup>2</sup> See 130 CMR 610.081 and Exhibit 8.

The record was further left open to allow CCA time to review and respond to Appellant's submission. A copy of the Appellant's submission was forwarded to CCA for review on September 24, 2021. See Exhibit 9. Despite repeated inquiries from the Board of Hearings,<sup>3</sup> CCA did not fully respond until November 5, 2021, at which time the record was closed. See Exhibit 10.

from the acting entity. This dismissal was later vacated when the Appellant submitted proper authority on July 2, 2021. See Exhibit 4 and 130 CMR 610.035(B).

## **Action Taken by MassHealth/CCA**

CCA denied the Appellant's request for a dental bridge.

## **Issue**

Is there any entitlement under the MassHealth program to the requested service? Relatedly if there is no standard or requirement, was the CCA administrative decision made logically and consistently with regard to CCA's standards as well as the relevant evidence and regulations?

## **Summary of Evidence**

Appellant is an adult MassHealth member, over the age of 21, who receives dental benefits as an enrollee in CCA's Medicare-Medicaid Plan, a plan which is sometimes referred to as a "OneCare Plan". For this matter, CCA is an ICO, and an ICO is a specific type of Managed Care Contractor (MCC) that offers benefits to individual enrollees who have both Medicare and Medicaid benefits; the ICO will generally deliver a member's primary care and will authorize, arrange, integrate, and

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notice post-dated 5/14/2021. It is assumed that the post-date (after the filing date) is likely the result of a duplicate submission attempt by the Appellant's dental provider.

<sup>2</sup> Appellant contacted the Board of Hearings on September 23, 2021 to inquire as to whether the submission had been received. No submission had been received. Appellant obtained and submitted the documentation the following day with permission.

<sup>3</sup> After the initial request of September 24, 2021, the Hearing Officer and/or staff members of the Board of Hearings made outreaches for the CCA response on October 5, 2021; October 13, 2021; and November 1, 2021. Any delay in the issuance of this hearing decision may thus be attributed to the agency's failure to comply with 130 CMR 610.062.

coordinate the provision of all covered services for the member available through his or her health insurance benefits.

Appellant represented herself at hearing. CCA was represented at hearing by Ms. Horne, who is the Appeals & Grievances Supervisor for the CCA's Operations Department.<sup>4</sup>

The parties agreed that an initial Prior Authorization (PA) request was submitted by Appellant's dentist on April 4, 2021 for bridgework on teeth # 4 through 6. This request was denied on April 5, 2021. The April 5, 2021 denial notice, found in Exhibit 7, stated in part *"This service is denied. This request is not medically necessary. A bridge is covered if notes sent show why a different treatment (partial dentures) will not fix your dental problems. Records sent do not show that a different treatment will not fix your dental problem. The criteria used for review can be found in the Clinical Criteria section of the Commonwealth Care Alliance Dental Provider Manual."*<sup>5</sup>

On April 13, 2021, Appellant requested by phone a Level I, or internal appeal, to CCA. Per the notes in Exhibit 7 on the internal appeal action, a CCA representative wrote that Appellant's dentist *"stated that bridge is an only option to restore missing teeth due to limited space for restoration for dentures or implants. Also patient cannot wear partial dentures due to gag reflux."*

The Level 1 internal appeal was finalized on May 4, 2021 with a decision to deny the requested treatment. Per the May 4, 2021 letter found in full in Exhibit 7, which is the appealable action, the denial notice states the following as to the basis for the denial:

*"We denied the Level 1 Appeal above because: "the appeal for requested services is denied as the treatment proposed is beyond the scope of coverage and does not meet the criteria for medical necessity. According to the Member Handbook Chapter 3, Section B and Chapter 4, Section C the services (including medical care, behavioral health care, long-term services and supports, other services, supplies and equipment) must be medically necessary. Medically necessary means you reasonably need the services to prevent, diagnose, or treat a medical condition. It also means there is no other similar, less expensive service that is suitable for you."*

At hearing, CCA confirmed that they do cover bridges for members.<sup>6</sup> The question was raised as to why partial dentures would not fix or cover this issue. Appellant testified that her submitting provider said the submitting dentures wouldn't work. She indicated she cannot wear removable partial dentures because her mouth is small and because she has a gagging reflux that prevents removable appliances from being worn and properly used. The CCA representative indicated that,

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<sup>4</sup> The cover to the CCA submission found in Exhibit 7 indicated that at hearing, in addition to Ms. Horne, CCA was to also be represented at hearing by Ms. Jessica Medeiros the "Director of Dental" for CCA. Neither Ms. Medeiros nor any dentist was available and appeared at hearing.

<sup>5</sup> Despite submitting 64 pages in its hearing submission in Exhibit 7, none of the pages from CCA contain any pages or relevant portion from this CCA dental manual. Exhibit 7 consists predominantly of correspondence sent to Appellant.

<sup>6</sup> The MassHealth program does not cover bridges for member it directly insures. However, CCA, like any MCC, is free to offer additional services and benefits that go above and beyond those required by the state Medicaid programs.

if this was documented, it may serve as justification which could allow for consideration of approval.

The record was left open to allow Appellant time to obtain and submit a letter from her dentist. Appellant submitted a letter (Exhibit 8) from her dentist on September 24, 2021 which reads in substantive entirety as follows:

*“[Appellant] is seen here at Somerville First Dental (sic) we have been trying to get the pre-authorization (sic) approved for a while now included is the narrative for pt: Bridge (sic) is recommended to restore missing tooth number 6 since patient has bad gag reflex and can not tolerate any removable prosthesis.” See Exhibit 8.*

During the Record Open period, MassHealth/CCA was asked for a response multiple times between September 24, 2021 and November 2021. See Exhibit 9. CCA finally responded on November 5, 2021. The response (Exhibit 10) is as follows (with the second paragraph signed by Dr. Allen Finkelstein, DDS):

*“Per the dental consultants (sic) review of the additional information/documentation the appeal uphold determination will remain unchanged.*

*I attest to reviewing the appeals for member [Appellant] and still upheld the denial as fixed bridgework is contraindicated in a high risk uncontrolled caries mouth. MA guidelines allows approval for a partial denture.”*

## **Findings of Fact**

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

1. Appellant is an adult MassHealth member over the age of 21 who submitted to CCA a PA for bridgework on teeth # 4 through 6. (Testimony and Exhibit 7)
2. The initial denial of CCA stated that the bridgework could only be covered “*if notes sent show why a different treatment (partial dentures) will not fix your dental problems.*” (Testimony and Exhibit 7)
3. After a Level 1 appeal to CCA, CCA upheld the denial on the grounds of the medical necessity stating in part that there was an alternative treatment which might be suitable for the member. (Testimony and Exhibit 7)
4. Based on his PA submission and letter in support, Appellant’s treating dentist believes bridgework is an appropriate and suitable procedure for this member. (Exhibits 7 and 9)
5. Appellant cannot use a partial denture or any removable dental procedure due to gag reflux. (Testimony and Exhibit 7)

6. When presented with this information about gag reflux during the Record Open period, CCA responded by stating that bridgework was not only contraindicated in a “*high risk uncontrolled caries mouth*” but that the alternative treatment of a partial denture could be done. (Exhibit 10)

## Analysis and Conclusions of Law

Massachusetts’s Secretary of Health and Human Services is authorized to participate in a demonstration program to integrate care for individuals, aged 21 to 64 at the time of enrollment, who are dually eligible for benefits under MassHealth Standard or CommonHealth and Medicare and do not have any additional comprehensive health coverage. MGL ch. 118E, § 9F(a). This particular waiver program allows MassHealth to contract jointly with the Centers for Medicare and Medicaid Services (“CMS”) and Integrated Care Organizations (“ICOs”) to provide integrated, comprehensive Medicaid and Medicare services, including medical, behavioral health and long-term support services for a prospective blended payment from the executive office and the Centers for Medicare and Medicaid Services. *Id.* Such medical services include dental benefits, and CCA is one such ICO.

Whenever an ICO like CCA makes an adverse benefit decision, it must provide notice to the affected member. 130 CMR 508.011. An ICO has 30 days to resolve any internal appeals, and the member then has 120 days to request a “Level II” Fair Hearing from the Board of Hearings, which is what happened here. *See* 130 CMR 508.012; 130 CMR 610.015(B)(7).

As to the prior authorization request, the MassHealth program is generally required to cover services and treatments that are “*medically necessary*”:

The MassHealth regulation at 130 CMR 450.204 in the “All Provider” regulatory manual reads in relevant part as follows:

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.*

However, additional guidance “*about the medical necessity of MassHealth services are contained in other MassHealth regulations and medical necessity and coverage guidelines.*” See 130 CMR 450.204(D).

With regard to dental, MassHealth’s own dental regulations specifically indicate that fixed bridgework like that at issue here is only covered for members who are younger than age 21. See 130 CMR 420.421(D)(2) and 130 CMR 420.429(A). Despite this non-requirement in the MassHealth regulations,<sup>7</sup> CCA has agreed to cover fixed bridgework for its enrollees on a limited basis. The record in this appeal indicates that CCA is making its decision on a prior authorization based on medical necessity. Thus, in reviewing the CCA decision, it should consistently and fairly apply the medical necessity regulation of 130 CMR 450.204 in a logical manner. Based on the record before me, I conclude that CCA did not so apply the medical necessity regulation correctly and this denial should be overturned.

Specifically, at multiple times in both its initial denial and Level 1 denial, CCA indicates that Appellant should consider the alternative of a removable partial denture in lieu of the bridgework. The first denial notice stated that Appellant should consider a denture but stated that CCA would be open to consideration if a partial removable denture was not feasible. The initial request for reconsideration and a level 1 appeal by the Appellant indicated that a denture was not feasible. At hearing, when this issue about the partial denture surfaced, CCA then stated that there would need to be documentation showing why a denture was not feasible. Appellant obtained such documentation from her dentist, which reiterated why the alternative suggestion of a partial denture would not work for this member. The letter from Appellant’s dentist is clearly based on his review and condition of the Appellant’s dentition and urges approval of the bridgework.

In response to this Record Open submission, after a lengthy Record Open delay, CCA slightly pivoted to a position that not only once again urged for a partial denture, but which also raised, for the first time, the idea that the bridge work was “*contraindicated*” by a high caries mouth. That reasoning is not persuasive, in that CCA did not bring up the health of the mouth or the “*high caries*” factor in either its denial notice, in the paperwork in its submission, or during the hearing in its testimony. Specifically, CCA did not present a dentist or argument at hearing attesting what the high caries situation was, and what was that based on. In contrast, by asking for a bridge, Appellant’s treating dentist indicates that Appellant is a candidate for such procedure. Without more substance to support its position about the contraindication, I am not persuaded by this generic and somewhat conclusory position of CCA. Further, CCA did not present any relevant portions of the CCA Dental Provider Manual that speak to the standards for fixed bridgework, so it is difficult to judge where this basis comes from or how healthy the mouth or teeth of CCA enrollees must be in order to satisfy CCA’s criteria and receive this service. Instead, by once again raising the possibility of a partial denture without refuting or addressing the feasibility concern of Appellant

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<sup>7</sup> See fn. 6, *infra*.

and her dentist, it does not appear that CCA's decision is consistent with the medical necessity regulation. I thus find the services requested by the Appellant in this matter to be medically necessary.

For those reasons, the appeal is APPROVED.

## **Order for MassHealth/CCA**

Within no later than 30 days of the date of this decision and as soon as possible, CCA must send an approval notice to both Appellant and her current dental provider which gives prior approval for both a Retainer Crown (D6750) on Teeth # 4 and 6 and a Pontic (D6242) on Tooth # 5.

## **Implementation of this Decision**

If this decision is not implemented within 30 days after the date of this decision, you should contact Commonwealth Care Alliance – Member Services at 1-866-610-2273.<sup>8</sup> If you experience problems after 30 days with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings at the address on the first page of this decision.

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Christopher Taffe  
Hearing Officer  
Board of Hearings

cc: ICO Commonwealth Care Alliance  
Attn: Cassandra Horne  
30 Winter Street  
Boston, MA 02108

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<sup>8</sup> This contact information is from the May 4, 2021 adverse action notice in Exhibit 7 which states this number may be in service from 8AM to 8PM seven days a week. The same adverse action notice also suggests that other places to potentially get help with implementation may include the "My Ombudsman" office (1-855-781-9898, Monday through Friday, 9AM to 4 PM) or MassHealth Customer Service (1-800-841-2900, Monday through Friday, 8AM to 5PM).